

104TH CONGRESS
2D SESSION

S. 1590

To repeal the emergency salvage timber sale program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 1996

Mrs. MURRAY (for herself, Mr. LEAHY, Mr. BAUCUS, Mr. BUMPERS, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To repeal the emergency salvage timber sale program, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Participation
5 in Timber Salvage Act of 1996”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) when events such as forest fire, wind
9 storms, or epidemic insect infestations occur, the
10 Forest Service and the Bureau of Land Management

1 should have available the tools necessary to harvest
2 timber expeditiously in order to get a high commod-
3 ity value from dead or dying trees;

4 (2) improving the health of our forests is a na-
5 tional priority that should be addressed through
6 comprehensive analysis and public involvement, and
7 should focus not only on the health of trees, but on
8 the health of the entire forest, including watersheds,
9 soils, fisheries, and wildlife; and

10 (3) timber sales, including salvage timber sales,
11 should be conducted in accordance with all applica-
12 ble laws in order to ensure the sustainability of the
13 components and functions of the forests.

14 **TITLE I—REPEAL OF EMER-**
15 **GENCY SALVAGE TIMBER**
16 **SALE PROGRAM**

17 **SEC. 101. REPEAL OF EMERGENCY SALVAGE TIMBER SALE**
18 **PROGRAM.**

19 Section 2001 of Public Law 104–19 (109 Stat. 240;
20 16 U.S.C. 1611 note) is repealed.

21 **SEC. 102. EXISTING TIMBER SALE CONTRACTS.**

22 (a) **SUSPENSION.**—Notwithstanding any outstanding
23 judicial order or administrative proceeding interpreting
24 subsection (k) of section 2001 of Public Law 104–19 (109
25 Stat. 240; 16 U.S.C. 1611 note) (as in existence prior to

1 the date of enactment of this Act), the Secretary of Agri-
2 culture and the Secretary of the Interior shall suspend
3 each timber sale or activity that was being undertaken in
4 whole or in part under the authority provided in the sub-
5 section.

6 (b) REPLACEMENT OR TERMINATION OF TIMBER
7 SALE CONTRACTS.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law, the Secretary concerned shall nego-
10 tiate with a purchaser of timber offered, awarded, or
11 released pursuant to section 318 of Public Law 101–
12 121 (103 Stat. 745) or section 2001(k) of Public
13 Law 104–19 (109 Stat. 246; 16 U.S.C. 1611 note)
14 (as in existence prior to the date of enactment of
15 this Act) to provide, within 1 year of the date of en-
16 actment of this Act, a volume, value, and kind of al-
17 ternative timber as a replacement for the remaining
18 timber under contract.

19 (2) ENVIRONMENTAL AND NATURAL RESOURCE
20 LAWS.—Replacement timber provided under para-
21 graph (1) shall comply with—

22 (A) any applicable environmental or natu-
23 ral resource law;

24 (B) any forest plan in existence on the
25 date of enactment of this Act, including the

1 Northwest Forest Plan and any plan developed
2 under the Interior Columbia Basin Ecosystem
3 Management Project; and

4 (C) any relevant standard or guideline, in-
5 cluding PACFISH, INFISH, and Eastside
6 screens.

7 (3) TERMINATION.—If the Government and the
8 purchaser do not reach agreement under paragraph
9 (1), the Secretary concerned may—

10 (A) exercise any provision of the original
11 contract that authorizes termination and pay-
12 ment of specified damages; or

13 (B) terminate the contract to avoid adverse
14 effects on the environment or natural resources.

15 (c) PAYMENT FOR TIMBER SALE CONTRACTS RELIN-
16 QUISHED.—Any claim, whether as a result of a judgment
17 or an agreement, against the Federal Government arising
18 from a timber sale contract offered under section 318 of
19 Public Law 101–121 (103 Stat. 745), from section
20 2001(k) of Public Law 104–19 (109 Stat. 246; 16 U.S.C.
21 1611 note) (as in existence prior to the date of enactment
22 of this Act), from this Act, or from the exercise of the
23 Secretary’s right under a timber sale contract to terminate
24 the contract may be—

1 (1) paid from funds made available under sec-
2 tion 1304 of title 31, United States Code, and shall
3 not require reimbursement under section 13(c) of
4 the Contract Disputes Act of 1978 (41 U.S.C.
5 612(c));

6 (2) paid through a certificate of bidding rights
7 credits to be used by the purchaser (or a successor
8 or assign of the purchaser) for future timber sales;

9 (3) offset by forgiveness of a Federal Govern-
10 ment loan or loan guarantee; or

11 (4) paid through funds appropriated for the
12 purpose.

13 (d) NEGOTIATIONS BETWEEN THE SECRETARY CON-
14 CERNED AND THE PURCHASER.—The Secretary con-
15 cerned and the timber sale purchaser may use any com-
16 bination of methods provided in subsections (b), (c), and
17 (d) or other authorized means to dispose of a timber sale
18 contract under this section.

19 (e) DISPUTES.—Any claim by a purchaser against
20 the Federal Government relating to a contract replaced,
21 modified, suspended, or terminated under this section
22 shall be subject to the Contract Disputes Act of 1978 (41
23 U.S.C. 601 et seq.).

1 **SEC. 103. SALES INITIATED UNDER EXISTING LAW.**

2 (a) IN GENERAL.—A sale initiated but not awarded
3 to a purchaser by the Forest Service or the Bureau of
4 Land Management under subsection (b) or (d) of section
5 2001 of Public Law 104–19 (109 Stat. 240; 16 U.S.C.
6 1611 note) (as in existence prior to the date of enactment
7 of this Act) as of March 5, 1996, shall be subject to title
8 III of this Act and all environmental and natural resource
9 laws.

10 (b) SALES AWARDED TO PURCHASERS.—

11 (1) IN GENERAL.—A timber sale contract that
12 has been awarded to a purchaser under subsection
13 (b) or (d) of section 2001 of Public Law 104–19
14 (109 Stat. 240; 16 U.S.C. 1611 note) (as in exist-
15 ence prior to the date of enactment of this Act)
16 shall, notwithstanding the commencement of con-
17 tract performance, be subject to—

18 (A) in the case of Forest Service sales, ad-
19 ministrative appeal in accordance with section
20 322 of the Department of the Interior and Re-
21 lated Agencies Appropriations Act, 1993 (106
22 Stat. 1419; 16 U.S.C. 1612 note);

23 (B) in the case of Bureau of Land Man-
24 agement sales, protests filed in accordance with
25 43 C.F.R. section 5003.3; and

26 (C) judicial review.

1 (2) HARVEST ACTIVITIES.—On the filing of an
2 appeal or a protest under paragraph (1), all harvest
3 activities shall be suspended.

4 (3) REQUIREMENTS.—Section 2001 of Public
5 Law 104–19 (109 Stat. 240; 16 U.S.C. 1611 note)
6 (as in existence prior to the date of enactment of
7 this Act) shall apply to any claim under paragraph
8 (1) related to compliance with any expedited proce-
9 dural requirement. Any other claim shall be subject
10 to applicable law.

11 **TITLE II—NORTHWEST FOREST** 12 **PLAN**

13 **SEC. 201. NORTHWEST FOREST PLAN.**

14 (a) DIRECTION TO COMPLETE TIMBER SALES.—The
15 Secretary of the Interior, acting through the Director of
16 the Bureau of Land Management, and the Secretary of
17 Agriculture, acting through the Chief of the Forest Serv-
18 ice, shall expeditiously prepare, offer, and award timber
19 sale contracts consistent with the Northwest Forest Plan.

20 (b) AVAILABILITY OF FUNDS.—

21 (1) IN GENERAL.—The Secretary of Agriculture
22 and the Secretary of the Interior shall, to the maxi-
23 mum extent practicable, make funds available for
24 qualified personnel, such as biologists, hydrologists,
25 and geologists, to complete any watershed assess-

1 ment or other analyses required for the preparation,
 2 advertisement, and award of timber sale contracts in
 3 order to meet the probable sale quantities and other
 4 goals of the Northwest Forest Plan.

5 (2) SOURCE.—If there are no other unobligated
 6 funds appropriated to the Secretary of Agriculture
 7 or the Secretary of the Interior that may be made
 8 available as required by paragraph (1), the Secretary
 9 concerned shall make funds available from amounts
 10 that are available for the purpose of constructing
 11 forest roads or from use of any permanent funds
 12 in the regions to which the Northwest Forest Plan
 13 applies.

14 (c) SAVINGS PROVISION.—Nothing in this title af-
 15 fects the legal duties of Federal agencies with respect to
 16 the planning and offering of timber sales, including sal-
 17 vage timber sales under this Act.

18 **TITLE III—LAWFUL EXPEDITING** 19 **OF SALVAGE TIMBER SALES**

20 **SEC. 301. DEFINITIONS.**

21 In this title:

22 (1) DISLOCATED RESOURCE WORKER.—The
 23 term “dislocated resource worker” means a resource
 24 worker who—

1 (A) has been terminated or received notice
2 of termination from employment and is unlikely
3 to return to employment in the forest products
4 industry, including employment in the harvest
5 or management of logs, transportation of logs
6 or wood products, processing of wood products
7 (including pulp), or the manufacturing and dis-
8 tribution of wood processing or logging equip-
9 ment because of diminishing demand for the
10 worker's skills;

11 (B) has been terminated or received notice
12 of termination from employment as a result of
13 salmon harvest reductions, including a worker
14 employed in the commercial and recreational
15 harvesting of salmon or the buying and process-
16 ing of salmon; or

17 (C) is self-employed and has been displaced
18 from the worker's business in the forest prod-
19 ucts or fishing industry because of diminishing
20 demand for the business's services or goods.

21 (2) LEVEL 1 INTERAGENCY FIELD TEAM.—The
22 term “level 1 interagency field team” means a perti-
23 nent combination of biologists from the Forest Serv-
24 ice, the Bureau of Land Management, the United
25 States Fish and Wildlife Service, and the National

1 Marine Fisheries Service with experience and exper-
2 tise to make biological determinations and bring con-
3 sultation under the Endangered Species Act of 1973
4 (16 U.S.C. 1531 et seq.) to conclusion at a field
5 level.

6 (3) LEVEL 2 INTERAGENCY FIELD TEAM.—The
7 term “level 2 interagency field team” means a perti-
8 nent combination of forest supervisors from the For-
9 est Service, district managers from the Bureau of
10 Land Management, and personnel from the United
11 States Fish and Wildlife Service and the National
12 Marine Fisheries Service with decisionmaking au-
13 thority under the Endangered Species Act of 1973
14 (16 U.S.C. 1531 et seq.).

15 (4) SALVAGE TIMBER SALE.—The term “sal-
16 vage timber sale” means a timber sale—

17 (A) in which each unit is designed to re-
18 move trees that are dead from any cause (ex-
19 cept arson found to have been committed to
20 produce timber sales), or that have been deter-
21 mined by reliable scientific methods to have a
22 high probability of dying within 1 year as a re-
23 sult of insect-related, blowdown, or fire damage;
24 and

1 (B) that includes a small percentage of
2 other trees to the extent necessary to secure
3 human safety or provide for commercially rea-
4 sonable and environmentally sound access to
5 and removal of dead or dying trees described in
6 subparagraph (A).

7 **SEC. 302. SALVAGE TIMBER SALES SCOPE AND FACILITA-**
8 **TION.**

9 The Secretary of Agriculture, acting through the
10 Chief of the Forest Service, and the Secretary of the Inte-
11 rior, acting through the Director of the Bureau of Land
12 Management, shall—

13 (1) offer salvage timber sales under this Act
14 only on Forest Service and Bureau of Land Manage-
15 ment land utilizing existing and generally operable
16 roads (except that spur roads of less than .25 mile
17 may be constructed or reconstructed to permit ac-
18 cess to individual timber sale units) located out-
19 side—

20 (A) any unit of the National Wilderness
21 Preservation System or any study area officially
22 recommended for consideration as wilderness;
23 or

1 (B) any roadless area in which forest and
2 land management resource plans preclude tim-
3 ber sale or roads;

4 (C) any area in which a salvage timber
5 sale would be inconsistent with agency stand-
6 ards and guidelines applicable to areas adminis-
7 tratively identified as late successional or ripar-
8 ian or withdrawn from timber harvest for other
9 conservation purposes; and

10 (D) any area withdrawn by Federal law for
11 any conservation purpose;

12 (2) expeditiously prepare, offer, and award tim-
13 ber salvage sales described in paragraph (1);

14 (3) enter basic forest inventory, including data
15 on vegetation, soils, riparian systems, fisheries, wild-
16 life habitat, and other relevant information into the
17 Geographical Information System or other resource
18 mapping system and make the inventory data easily
19 available to incorporate into individual projects;

20 (4) notwithstanding section 6(d)(4) of the Of-
21 fice of Federal Procurement Policy Act (41 U.S.C.
22 405(d)(4)), permit forest and district offices to pro-
23 cure computer software using available funds to fa-
24 cilitate resource inventory;

1 (5) if helpful in expediting salvage sales, alter
2 the agency tree marking and designating require-
3 ments by writing into timber sale contracts—

4 (A) readily determinable characteristics to
5 guide the contractor in selecting trees to har-
6 vest; and

7 (B) fines and penalties, including debar-
8 ment, to enforce subparagraph (A),
9 except that this paragraph shall not alter agency
10 marking or designating requirements for trees to re-
11 main uncut for wildlife, riparian, or other conserva-
12 tion measures;

13 (6) perform timely revegetation and slash re-
14 moval operations consistent with applicable laws,
15 regulations, and silvacultural practice; and

16 (7) undertake watershed and other restoration
17 activities, including road decommissioning, in or
18 near the salvage timber sale by first offering the
19 work to dislocated resource workers or individuals
20 certified by an appropriate resource management ap-
21 prenticeship program and ensure work is performed
22 according to requirements of the Service Contract
23 Act of 1965 (41 U.S.C. 351 et seq.).

1 **SEC. 303. SALVAGE TIMBER SALE DOCUMENTATION AND**
2 **APPEAL PROCEDURES.**

3 (a) PREPARATION OF DOCUMENTS.—In conducting a
4 salvage timber sale under this title—

5 (1) to speed compliance with the Endangered
6 Species Act of 1973 (16 U.S.C. 1531 et seq.), agen-
7 cies shall, to the maximum extent practicable—

8 (A) complete informal consultation not
9 later than 30 days and formal consultation not
10 later than 60 days after submission of a biologi-
11 cal assessment using a level 1 interagency field
12 team and a level 2 interagency field team;

13 (B) establish a key contact person in each
14 regional office of the Forest Service, the Bu-
15 reau of Land Management, the Fish and Wild-
16 life Service, and the National Marine Fisheries
17 Service to facilitate issue resolution; and

18 (C) establish regional and national inter-
19 agency dispute resolution teams; and

20 (2) in the case of the Forest Service and the
21 Bureau of Land Management, prior to publishing a
22 notice of a proposed action under section 215.5 of
23 title 36, Code of Federal Regulations, on a proposed
24 timber salvage sale, facilitate public participation in
25 the sale planning and preparation by providing prop-
26 er notice and allowing any member of the public to

1 attend not less than 1 interdisciplinary team meet-
2 ing, not less than 1 of which will be held during
3 evening hours.

4 (b) ADVISORY COMMITTEES.—

5 (1) IN GENERAL.—The Forest Service and Bu-
6 reau of Land Management may form 1 or more
7 committees to advise agencies on proposed salvage
8 timber sales if each committee will facilitate public
9 involvement in decisionmaking.

10 (2) FEDERAL ADVISORY COMMITTEE ACT.—The
11 Federal Advisory Committee Act (5 U.S.C. App.)
12 shall not apply to a committee formed under para-
13 graph (1).

14 (3) NOTICE.—The Secretary concerned shall
15 provide notification to the public of any meeting of
16 a committee formed under paragraph (1) at least 10
17 days prior to the meeting and the meeting shall be
18 open to the public, unless the Secretary concerned
19 determines that all or a portion of the meeting will
20 be closed in accordance with section 552b(c) of title
21 5, United States Code.

22 (c) EXPEDITING ADMINISTRATIVE APPEALS.—

23 (1) IN GENERAL.—Subject to paragraph (2),
24 administrative review of a decision of the Forest

1 Service or the Bureau of Land Management under
2 this title shall be conducted—

3 (A) in the case of the Forest Service, in
4 accordance with section 322 of the Department
5 of the Interior and Related Agencies Appropria-
6 tions Act, 1993 (106 Stat. 1419; 16 U.S.C.
7 1612 note); and

8 (B) in the case of the Bureau of Land
9 Management, after the Secretary approves the
10 sales.

11 (2) EXCEPTIONS.—

12 (A) APPEAL.—An appeal of a decision
13 must be filed not later than the later of—

14 (i) 30 days after the publication of a
15 decision document for a salvage timber
16 sale; or

17 (ii) mailing of notice to interested par-
18 ties, in keeping with relevant agency regu-
19 lations.

20 (B) FINAL DECISION.—The agency con-
21 cerned shall issue a final decision not later than
22 30 days after the deadline for an administrative
23 appeal has tolled and may not extend the clos-
24 ing date for a final decision.

25 (d) EXPEDITING JUDICIAL REVIEW.—

1 (1) TIME FOR CHALLENGE.—Absent good
2 cause, any challenge to a salvage timber sale under
3 this title shall be brought as a civil action in a Unit-
4 ed States district court not later than 30 days after
5 the date on which an agency provides notice of a
6 final decision regarding a salvage timber sale.

7 (2) TIME FOR APPEAL.—Any appeal of a dis-
8 trict court decision on a salvage timber sale under
9 this Act shall be brought not later than 30 days
10 after the first date on which the appeal may first be
11 filed.

12 (3) EXPEDITIOUS CONSIDERATION.—

13 (A) IN GENERAL.—The district and appel-
14 late courts shall, to the extent practicable, expe-
15 dite proceedings in a civil action under this sub-
16 section.

17 (B) PROCEDURES.—To expedite proceed-
18 ings under this subsection, a court may shorten
19 the time allowed for the filing of papers or for
20 other procedures that would otherwise apply.

21 **SEC. 304. FUNDING TO IMPLEMENT THIS TITLE.**

22 (a) IN GENERAL.—To facilitate implementation of
23 section 302, a Forest Service regional office or a Bureau
24 of Land Management district may transfer funds among
25 the following accounts in the agency budget of the office

1 or district without making reprogramming requests to
2 Congress:

3 (1) Timber salvage fund.

4 (2) Road construction and maintenance ac-
5 counts.

6 (3) Timber sale preparation accounts.

7 (b) NOTICE.—An office or district that transfers
8 funds under subsection (a) shall provide notice to Con-
9 gress not later than 60 days after the transfer.

10 **SEC. 305. EXPEDITED PROCEDURAL REGULATIONS.**

11 (a) IN GENERAL.—Not later than 1 year after the
12 date of enactment of this Act, the Secretary concerned,
13 in consultation with the Council on Environmental Qual-
14 ity, shall develop regulations to expedite full compliance
15 with the National Environmental Policy Act of 1969 (42
16 U.S.C. 4321 et seq.) and any other appropriate environ-
17 mental laws for a decision regarding a proposed salvage
18 timber sale authorized under this Act.

19 (b) TIME LIMIT.—The Secretary and the Council on
20 Environmental Quality shall, to the extent practicable—

21 (1) limit the time necessary for public participa-
22 tion and agency analysis for a proposed action re-
23 garding a salvage timber sale authorized under this
24 Act to 120 days; and

1 activities, including salvage timber sales and to collect
2 and sort any wood harvested; and

3 (2) have the agency concerned sell, or contract
4 with a private enterprise different than the contrac-
5 tor in paragraph (1) to sell, the harvested wood.

6 **TITLE IV—TIMBER STAND** 7 **HEALTH PRIORITIZATION**

8 **SEC. 401. REVIEW OF TIMBER STAND HEALTH.**

9 The Secretary of the Interior and the Secretary of
10 Agriculture, respectively, shall review the health of timber
11 stands on Bureau of Land Management and Forest Serv-
12 ice lands and shall each—

13 (1) identify, not later than March 1 of each
14 year, the timber stands on Bureau of Land Manage-
15 ment or Forest Service lands, as applicable, that are
16 not in a healthy condition; and

17 (2) prepare a document to prioritize areas that
18 would benefit from rehabilitation activities to restore
19 timber stands to a healthy condition.

20 **SEC. 402. REHABILITATION PRIORITIZATION.**

21 To determine which areas of land should receive the
22 first attention, each resource area or ranger district shall
23 consider where intervention or treatment—

24 (1) has the best opportunity to restore health to
25 affected timber stands;

1 (2) has the greatest potential to reduce the risk
2 of wildfires, especially where human safety and pri-
3 vate property are threatened; and

4 (3) is the least controversial, such as on lands
5 located outside of wilderness, unroaded areas, ripar-
6 ian areas, late successional reserves, or other sen-
7 sitive areas.

8 **SEC. 403. FOREST TIMBER STAND HEALTH REPORT.**

9 (a) IN GENERAL.—The Secretary of the Interior and
10 the Secretary of Agriculture shall prepare an annual re-
11 port (which shall be known as the Forest Timber Stand
12 Health Report) to evaluate the overall health of the forest
13 timber stands on Bureau of Land Management and Forest
14 Service lands, respectively.

15 (b) REQUIRED INFORMATION.—The Forest Timber
16 Stand Health Report shall contain—

17 (1) quantitative and qualitative data on the
18 health of timber stands concerned; and

19 (2) a review of the actions taken to attempt to
20 improve the health of the timber stands.

21 **SEC. 404. AUTHORIZATION FOR FUNDING.**

22 There are authorized to be appropriated such funds
23 as are necessary to carry out this title.

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