

107TH CONGRESS
2^D SESSION

H. R. 5341

To authorize and direct the Secretary of Agriculture to take actions to promptly address the risk of fire and insect infestation in National Forest System lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 5, 2002

Mr. TAYLOR of North Carolina introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize and direct the Secretary of Agriculture to take actions to promptly address the risk of fire and insect infestation in National Forest System lands, 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 “National Forest Fire
5 Fuels Reduction Act”.

1 **SEC. 2. ACTIONS TO ADDRESS FIRE HAZARDS DUE TO IN-**
2 **SECT AND DISEASE INFESTATION AND TREE**
3 **OVERCROWDING IN NATIONAL FOREST SYS-**
4 **TEM LANDS.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) Forest health conditions within National
7 Forest System lands are deteriorating and imme-
8 diate action to cut timber on these lands is in the
9 public interest.

10 (2) Pending litigation prevents timely action to
11 reduce the risk of wildfire in National Forest System
12 lands.

13 (3) Existing administrative and legal processes
14 cannot address the fire danger in time to enable the
15 Secretary of Agriculture to take action to reduce the
16 danger.

17 (4) Immediate action to address the fire danger
18 in an environmentally responsive manner is sup-
19 ported by the States and local governments, local in-
20 dustry users, and some environmental groups.

21 (5) The Forest Service and State and local fire
22 officials are encouraged to take actions as necessary
23 to create a defensible fuel zone within State owned
24 lands adjacent to National Forest System lands.

25 (b) FIRE AND INSECT RISK REDUCTION IN EXISTING
26 TIMBER SALE ANALYSIS AREAS.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 the Secretary is authorized to cut additional timber
3 within or outside the existing cutting units for Na-
4 tional Forest System timber sales and within the
5 analysis areas for these sales as is necessary to re-
6 duce insect and disease infestation or fire hazard.

7 (2) CRITERIA.—In implementing additional
8 timber harvests within the timber sale analysis areas
9 referred to in paragraph (1), the Secretary shall use,
10 in order of priority, the following criteria:

11 (A) Areas within $\frac{1}{4}$ mile of private prop-
12 erties where private property owners have taken
13 or are taking actions to cut timber on their
14 lands.

15 (B) Stands that are a fire hazard or insect
16 and disease infested, and are near private lands
17 or in proximity to communities.

18 (C) Areas that have the highest intensity
19 or concentration of insect or disease infestation
20 that will move to other areas.

21 (D) Stands that are a fire hazard or insect
22 and disease infested, and are near areas of high
23 resource value where retaining green trees is
24 important, such as wildlife habitats, sensitive

1 landscapes, forest growth, recreation areas, and
2 developments.

3 (E) Stands that are a high fire hazard or
4 insect and disease infested, and are within skid-
5 ding distance of existing roads.

6 (F) Concentrations of insect or disease in-
7 fested trees or areas that are high fire hazards
8 due to accumulated forest debris.

9 (G) Stands with the highest density that
10 are most susceptible to insect or disease attack
11 and are in close proximity to infested trees.

12 (c) USE OF FOREST FIRE FUELS REDUCTION SALE
13 FUNDS.—To conduct timber sales under this section, the
14 Secretary may use forest timber sale funds otherwise
15 available to the Secretary.

16 (d) SALES IN PREPARATION.— Any timber sale in
17 preparation on the date of the enactment of this Act shall
18 be subject to the provisions of this section.

19 (e) USE OF AVAILABLE AUTHORITIES.—The Sec-
20 retary shall make use of all available authority, including
21 the employment of private contractors and the use of expe-
22 dited fire contracting procedures, to prepare and advertise
23 timber sales under this section.

24 (f) EXEMPTIONS.—The preparation, solicitation, and
25 award of forest fire fuels reduction timber sales shall be

1 exempt from the requirements of the Competition in Con-
2 tracting Act (41 U.S.C. 253 et seq.) and the implementing
3 regulations in the Federal Acquisition Regulation issued
4 pursuant to section 25(e) of the Office of Federal Procure-
5 ment Policy Act (41 U.S.C. 421(e)) and any departmental
6 acquisition regulations and the notice and publication re-
7 quirements in section 18 of such Act (41 U.S.C. 416) and
8 8(e) of the Small Business Act (15 U.S.C. 637(e)) and
9 the implementing regulations in the Federal Acquisition
10 Regulations and any departmental acquisition regulations.

11 (g) COST CONSIDERATIONS.—Forest fire fuels reduc-
12 tion timber sales undertaken pursuant to this section shall
13 not be precluded because the costs of such activities are
14 likely to exceed the revenues derived from such activities.

15 (h) EFFECT OF FOREST FIRE FUELS REDUCTION
16 TIMBER SALES.—The Secretary shall not substitute forest
17 fires fuels reduction timber sales conducted for planned
18 non-forest fire fuels reduction timber sales.

19 (i) REFORESTATION OF FOREST FIRE FUELS RE-
20 Duction TIMBER SALE PARCELS.—The Secretary shall
21 plan and implement reforestation of each parcel of land
22 harvested under a forest fire fuels reduction timber sale
23 conducted as expeditiously as possible after completion of
24 the harvest on the parcel, but in no case later than any
25 applicable restocking period required by law or regulation.

1 (j) EFFECT ON JUDICIAL DECISIONS.—The Sec-
2 retary may conduct forest fire fuels reduction timber sales
3 notwithstanding any decision, restraining order, or injunc-
4 tion issued by a United States court before the date of
5 the enactment of this section.

6 (k) DIRECTION TO COMPLETE TIMBER SALES ON
7 LANDS.—Notwithstanding any other law (including a law
8 under the authority of which any judicial order may be
9 outstanding on or after the date of enactment of this Act),
10 the Secretary shall expeditiously prepare, offer, and award
11 timber sale contracts on Federal lands described in the
12 “Record of Decision for Amendments to Forest Service
13 and Bureau of Land Management Planning Documents
14 Within the Range of the Northern Spotted Owl”, signed
15 by the Secretary of the Interior and the Secretary of Agri-
16 culture on April 13, 1994. The Secretary may conduct
17 timber sales under this subsection notwithstanding any de-
18 cision, restraining order, or injunction issued by a United
19 States court before the date of the enactment of this sec-
20 tion. The issuance of any regulation pursuant to section
21 4(d) of the Endangered Species Act of 1973 (16 U.S.C.
22 1533(d)) to ease or reduce restrictions on non-Federal
23 lands within the range of the northern spotted owl shall
24 be deemed to satisfy the requirements of section
25 102(2)(C) of the National Environmental Policy Act of

1 1969 (42 U.S.C. 4332(2)(C)), given the analysis included
2 in the Final Supplemental Impact Statement on the Man-
3 agement of the Habitat for Late Succession and Old
4 Growth Forest Related Species Within the Range of the
5 Northern Spotted Owl, prepared by the Secretary of Agri-
6 culture and the Secretary of the Interior in 1994, which
7 is, or may be, incorporated by reference in the administra-
8 tive record of any such regulation. The issuance of any
9 such regulation pursuant to section 4(d) of the Endan-
10 gered Species Act of 1973 (16 U.S.C. 1533(d)) shall not
11 require the preparation of an environmental impact state-
12 ment under section 102(2)(C) of the National Environ-
13 mental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

14 (l) ADMINISTRATIVE REVIEW.—Forest fire fuels re-
15 duction timber sales and any decision of the Secretary con-
16 cerned in connection with such sales, shall not be subject
17 to administrative review.

18 (m) JUDICIAL REVIEW.—

19 (1) PLACE AND TIME OF FILING.—A forest fire
20 fuels reduction timber sale to be conducted, and a
21 timber sale shall be subject to judicial review only in
22 the United States district court for the district in
23 which the affected Federal lands are located. Any
24 challenge to such sale must be filed in such district
25 court within 15 days after the date of initial adver-

1 tishment of the challenged sale. The Secretary may
2 not agree to, and a court may not grant, a waiver
3 of the requirements of this paragraph.

4 (2) EFFECT OF FILING ON AGENCY ACTION.—
5 For 45 days after the date of the filing of a chal-
6 lenge to a forest fire fuels reduction timber sale, the
7 Secretary shall take no action to award the chal-
8 lenged sale.

9 (3) PROHIBITION ON RESTRAINING ORDERS,
10 PRELIMINARY IN-JUNCTIONS, AND RELIEF PENDING
11 REVIEW.—No restraining order, preliminary injunc-
12 tion, or injunction pending appeal shall be issued by
13 any court of the United States with respect to any
14 decision to prepare, advertise, offer, award, or oper-
15 ate a forest fire fuels reduction timber sale or any
16 decision to prepare, advertise, offer, award, or oper-
17 ate a timber sale pursuant to this section. Section
18 705 of title 5, United States Code, shall not apply
19 to any challenge to such a sale.

20 (4) STANDARD OF REVIEW.—The courts shall
21 have authority to enjoin permanently, order modi-
22 fication of, or void an individual forest fire fuels re-
23 duction timber sale if it is determined by a review
24 of the record that the decision to prepare, advertise,
25 offer, award, or operate such sale was arbitrary and

1 capricious or otherwise not in accordance with appli-
2 cable law (other than those laws specified in sub-
3 section (f) or (p)).

4 (5) TIME FOR DECISION.—Civil actions filed
5 under this subsection shall be assigned for hearing
6 at the earliest possible date. The court shall render
7 its final decision relative to any challenge within 45
8 days from the date such challenge is brought, unless
9 the court determines that a longer period of time is
10 required to satisfy the requirement of the United
11 States Constitution. In order to reach a decision
12 within 45 days, the district court may assign all or
13 part of any such case or cases to one or more Spe-
14 cial Masters, for prompt review and recommenda-
15 tions to the court.

16 (6) PROCEDURES.—Notwithstanding any other
17 provision of law, the court may set rules governing
18 the procedures of any proceeding brought under this
19 subsection which set page limits on briefs and time
20 limits on filing briefs and motions and other actions
21 which are shorter than the limits specified in the
22 Federal rules of civil or appellate procedure.

23 (7) APPEAL.—Any appeal from the final deci-
24 sion of a district court in an action brought pursu-

1 ant to this subsection shall be filed not later than 30
2 days after the date of decision.

3 (n) EXCLUSION OF CERTAIN FEDERAL LANDS.—

4 (1) EXCLUSION.—The Secretary may not select,
5 authorize, or undertake any forest fire fuels reduc-
6 tion timber sale on any excluded lands described in
7 paragraph (2).

8 (2) DESCRIPTION OF EXCLUDED LANDS.—The
9 lands referred to in paragraph (1) are as follows:

10 (A) Any area on Federal lands included in
11 the National Wilderness Preservation System.

12 (B) Any roadless area on Federal lands
13 recommended by the Forest Service or Bureau
14 of Land Management for wilderness designation
15 in its most recent land management plan in ef-
16 fect as of the date of the enactment of this Act.

17 (C) Any area on Federal lands on which
18 timber harvesting for any purpose is prohibited
19 by statute.

20 (o) RULE MAKING.—The Secretary is not required
21 to issue formal rules under section 553 of title 5, United
22 States Code, to implement this section or carry out the
23 authorities provided by this section.

24 (p) EFFECT ON OTHER LAWS.—The documents and
25 procedures required by this section for the preparation,

1 advertisement, offering, awarding, and operation of any
2 forest fire fuels reduction timber sale shall be deemed to
3 satisfy the requirements of the following applicable Fed-
4 eral laws (and regulations implementing such laws):

5 (1) The Forest and Rangeland Renewable Re-
6 sources Planning Act of 1974 (16 U.S.C. 1600 et
7 seq.).

8 (2) The Federal Land Policy and Management
9 Act of 1976(43 U.S.C. 1701 et seq.).

10 (3) The National Environmental Policy Act of
11 1969 (42 U.S.C. 4321 et seq.).

12 (4) The Endangered Species Act of 1973 (16
13 U.S.C. 1531 et seq.).

14 (5) The National Forest Management Act of
15 1976 (16 U.S.C. 472a et seq.).

16 (6) The Multiple-Use Sustained-Yield Act of
17 1960 (16 U.S.C. 528 et seq.).

18 (7) Any compact, executive agreement, conven-
19 tion, treaty, and international agreement, and imple-
20 menting legislation related thereto.

21 (q) THREATENED OR ENDANGERED SPECIES.—No
22 sale unit shall be released or completed under this sub-
23 section if any threatened or endangered bird species is
24 known to be nesting within the acreage that is the subject
25 of the sale unit.

1 (r) ROADLESS CHARACTER.—The actions authorized
2 by this section shall not affect the determination of any
3 area’s wilderness capability, wilderness suitability, or
4 roadless character.

5 (s) REPORTING.—The Secretary shall report to Con-
6 gress on the implementation of this section on or by No-
7 vember 30, 2002 and every 6 months thereafter.

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