

INTERIOR ACTS

PUBLIC LAW 108–148—DEC. 3, 2003

Public Law 108–148
108th Congress

An Act

To improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes.

Dec. 3, 2003
[H.R. 1904]

Healthy Forests
Restoration Act
of 2003.

16 USC 6501
note.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Healthy Forests Restoration Act of 2003”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

TITLE I—HAZARDOUS FUEL REDUCTION ON FEDERAL LAND

- Sec. 101. Definitions.
- Sec. 102. Authorized hazardous fuel reduction projects.
- Sec. 103. Prioritization.
- Sec. 104. Environmental analysis.
- Sec. 105. Special administrative review process.
- Sec. 106. Judicial review in United States district courts.
- Sec. 107. Effect of title.
- Sec. 108. Authorization of appropriations.

TITLE II—BIOMASS

- Sec. 201. Improved biomass use research program.
- Sec. 202. Rural revitalization through forestry.
- Sec. 203. Biomass commercial utilization grant program.

TITLE III—WATERSHED FORESTRY ASSISTANCE

- Sec. 301. Findings and purposes.
- Sec. 302. Watershed forestry assistance program.
- Sec. 303. Tribal watershed forestry assistance.

TITLE IV—INSECT INFESTATIONS AND RELATED DISEASES

- Sec. 401. Findings and purpose.
- Sec. 402. Definitions.
- Sec. 403. Accelerated information gathering regarding forest-damaging insects.
- Sec. 404. Applied silvicultural assessments.
- Sec. 405. Relation to other laws.
- Sec. 406. Authorization of appropriations.

TITLE V—HEALTHY FORESTS RESERVE PROGRAM

- Sec. 501. Establishment of healthy forests reserve program.
- Sec. 502. Eligibility and enrollment of lands in program.
- Sec. 503. Restoration plans.
- Sec. 504. Financial assistance.
- Sec. 505. Technical assistance.
- Sec. 506. Protections and measures
- Sec. 507. Involvement by other agencies and organizations.
- Sec. 508. Authorization of appropriations.

TITLE VI—MISCELLANEOUS

- Sec. 601. Forest stands inventory and monitoring program to improve detection of and response to environmental threats.

16 USC 6501.

SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to reduce wildfire risk to communities, municipal water supplies, and other at-risk Federal land through a collaborative

PUBLIC LAW 108-148—DEC. 3, 2003

process of planning, prioritizing, and implementing hazardous fuel reduction projects;

(2) to authorize grant programs to improve the commercial value of forest biomass (that otherwise contributes to the risk of catastrophic fire or insect or disease infestation) for producing electric energy, useful heat, transportation fuel, and petroleum-based product substitutes, and for other commercial purposes;

(3) to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape;

(4) to promote systematic gathering of information to address the impact of insect and disease infestations and other damaging agents on forest and rangeland health;

(5) to improve the capacity to detect insect and disease infestations at an early stage, particularly with respect to hardwood forests; and

(6) to protect, restore, and enhance forest ecosystem components—

(A) to promote the recovery of threatened and endangered species;

(B) to improve biological diversity; and

(C) to enhance productivity and carbon sequestration.

SEC. 3. DEFINITIONS.

16 USC 6502.

In this Act:

(1) **FEDERAL LAND.**—The term “Federal land” means—

(A) land of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))) administered by the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), the surface of which is administered by the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(2) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

TITLE I—HAZARDOUS FUEL REDUCTION ON FEDERAL LAND

SEC. 101. DEFINITIONS.

16 USC 6511.

In this title:

(1) **AT-RISK COMMUNITY.**—The term “at-risk community” means an area—

(A) that is comprised of—

(i) an interface community as defined in the notice entitled “Wildland Urban Interface Communities Within the Vicinity of Federal Lands That Are at High Risk From Wildfire” issued by the Secretary of Agriculture and the Secretary of the Interior in accordance with title IV of the Department of the Interior and Related Agencies Appropriations Act, 2001 (114 Stat. 1009) (66 Fed. Reg. 753, January 4, 2001); or

(ii) a group of homes and other structures with basic infrastructure and services (such as utilities and collectively maintained transportation routes) within or adjacent to Federal land;

(B) in which conditions are conducive to a large-scale wildland fire disturbance event; and

PUBLIC LAW 108-148—DEC. 3, 2003

(C) for which a significant threat to human life or property exists as a result of a wildland fire disturbance event.

(2) AUTHORIZED HAZARDOUS FUEL REDUCTION PROJECT.—The term “authorized hazardous fuel reduction project” means the measures and methods described in the definition of “appropriate tools” contained in the glossary of the Implementation Plan, on Federal land described in section 102(a) and conducted under sections 103 and 104.

(3) COMMUNITY WILDFIRE PROTECTION PLAN.—The term “community wildfire protection plan” means a plan for an at-risk community that—

(A) is developed within the context of the collaborative agreements and the guidance established by the Wildland Fire Leadership Council and agreed to by the applicable local government, local fire department, and State agency responsible for forest management, in consultation with interested parties and the Federal land management agencies managing land in the vicinity of the at-risk community;

(B) identifies and prioritizes areas for hazardous fuel reduction treatments and recommends the types and methods of treatment on Federal and non-Federal land that will protect 1 or more at-risk communities and essential infrastructure; and

(C) recommends measures to reduce structural ignitability throughout the at-risk community.

(4) CONDITION CLASS 2.—The term “condition class 2”, with respect to an area of Federal land, means the condition class description developed by the Forest Service Rocky Mountain Research Station in the general technical report entitled “Development of Coarse-Scale Spatial Data for Wildland Fire and Fuel Management” (RMRS-87), dated April 2000 (including any subsequent revision to the report), under which—

(A) fire regimes on the land have been moderately altered from historical ranges;

(B) there exists a moderate risk of losing key ecosystem components from fire;

(C) fire frequencies have increased or decreased from historical frequencies by 1 or more return intervals, resulting in moderate changes to—

(i) the size, frequency, intensity, or severity of fires; or

(ii) landscape patterns; and

(D) vegetation attributes have been moderately altered from the historical range of the attributes.

(5) CONDITION CLASS 3.—The term “condition class 3”, with respect to an area of Federal land, means the condition class description developed by the Rocky Mountain Research Station in the general technical report referred to in paragraph (4) (including any subsequent revision to the report), under which—

(A) fire regimes on land have been significantly altered from historical ranges;

(B) there exists a high risk of losing key ecosystem components from fire;

(C) fire frequencies have departed from historical frequencies by multiple return intervals, resulting in dramatic changes to—

(i) the size, frequency, intensity, or severity of fires; or

(ii) landscape patterns; and

(D) vegetation attributes have been significantly altered from the historical range of the attributes.

(6) DAY.—The term “day” means—

(A) a calendar day; or

PUBLIC LAW 108-148—DEC. 3, 2003

(B) if a deadline imposed by this title would expire on a nonbusiness day, the end of the next business day.

(7) DECISION DOCUMENT.—The term “decision document” means—

(A) a decision notice (as that term is used in the Forest Service Handbook);

(B) a decision record (as that term is used in the Bureau of Land Management Handbook); and

(C) a record of decision (as that term is used in applicable regulations of the Council on Environmental Quality).

(8) FIRE REGIME I.—The term “fire regime I” means an area—

(A) in which historically there have been low-severity fires with a frequency of 0 through 35 years; and

(B) that is located primarily in low elevation forests of pine, oak, or pinyon juniper.

(9) FIRE REGIME II.—The term “fire regime II” means an area—

(A) in which historically there are stand replacement severity fires with a frequency of 0 through 35 years; and

(B) that is located primarily in low- to mid-elevation rangeland, grassland, or shrubland.

(10) FIRE REGIME III.—The term “fire regime III” means an area—

(A) in which historically there are mixed severity fires with a frequency of 35 through 100 years; and

(B) that is located primarily in forests of mixed conifer, dry Douglas fir, or wet Ponderosa pine.

(11) IMPLEMENTATION PLAN.—The term “Implementation Plan” means the Implementation Plan for the Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment, dated May 2002, developed pursuant to the conference report to accompany the Department of the Interior and Related Agencies Appropriations Act, 2001 (House Report No. 106-64) (and subsequent revisions).

(12) MUNICIPAL WATER SUPPLY SYSTEM.—The term “municipal water supply system” means the reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, and other surface facilities and systems constructed or installed for the collection, impoundment, storage, transportation, or distribution of drinking water.

(13) RESOURCE MANAGEMENT PLAN.—The term “resource management plan” means—

(A) a land and resource management plan prepared for 1 or more units of land of the National Forest System described in section 3(1)(A) under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604); or

(B) a land use plan prepared for 1 or more units of the public land described in section 3(1)(B) under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).

(14) SECRETARY.—The term “Secretary” means—

(A) the Secretary of Agriculture, with respect to land of the National Forest System described in section 3(1)(A); and

(B) the Secretary of the Interior, with respect to public lands described in section 3(1)(B).

(15) THREATENED AND ENDANGERED SPECIES HABITAT.—The term “threatened and endangered species habitat” means Federal land identified in—

PUBLIC LAW 108-148—DEC. 3, 2003

(A) a determination that a species is an endangered species or a threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) a designation of critical habitat of the species under that Act; or

(C) a recovery plan prepared for the species under that Act.

(16) WILDLAND-URBAN INTERFACE.—The term “wildland-urban interface” means—

(A) an area within or adjacent to an at-risk community that is identified in recommendations to the Secretary in a community wildfire protection plan; or

(B) in the case of any area for which a community wildfire protection plan is not in effect—

(i) an area extending ½-mile from the boundary of an at-risk community;

(ii) an area within 1½ miles of the boundary of an at-risk community, including any land that—

(I) has a sustained steep slope that creates the potential for wildfire behavior endangering the at-risk community;

(II) has a geographic feature that aids in creating an effective fire break, such as a road or ridge top; or

(III) is in condition class 3, as documented by the Secretary in the project-specific environmental analysis; and

(iii) an area that is adjacent to an evacuation route for an at-risk community that the Secretary determines, in cooperation with the at-risk community, requires hazardous fuel reduction to provide safer evacuation from the at-risk community.

16 USC 6512.

SEC. 102. AUTHORIZED HAZARDOUS FUEL REDUCTION PROJECTS.

(a) AUTHORIZED PROJECTS.—As soon as practicable after the date of enactment of this Act, the Secretary shall implement authorized hazardous fuel reduction projects, consistent with the Implementation Plan, on—

(1) Federal land in wildland-urban interface areas;

(2) condition class 3 Federal land, in such proximity to a municipal water supply system or a stream feeding such a system within a municipal watershed that a significant risk exists that a fire disturbance event would have adverse effects on the water quality of the municipal water supply or the maintenance of the system, including a risk to water quality posed by erosion following such a fire disturbance event;

(3) condition class 2 Federal land located within fire regime I, fire regime II, or fire regime III, in such proximity to a municipal water supply system or a stream feeding such a system within a municipal watershed that a significant risk exists that a fire disturbance event would have adverse effects on the water quality of the municipal water supply or the maintenance of the system, including a risk to water quality posed by erosion following such a fire disturbance event;

(4) Federal land on which windthrow or blowdown, ice storm damage, the existence of an epidemic of disease or insects, or the presence of such an epidemic on immediately adjacent land and the imminent risk it will spread, poses a significant threat to an ecosystem component, or forest or rangeland resource, on the Federal land or adjacent non-Federal land; and

(5) Federal land not covered by paragraphs (1) through (4) that contains threatened and endangered species habitat, if—

PUBLIC LAW 108-148—DEC. 3, 2003

(A) natural fire regimes on that land are identified as being important for, or wildfire is identified as a threat to, an endangered species, a threatened species, or habitat of an endangered species or threatened species in a species recovery plan prepared under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533), or a notice published in the Federal Register determining a species to be an endangered species or a threatened species or designating critical habitat;

(B) the authorized hazardous fuel reduction project will provide enhanced protection from catastrophic wildfire for the endangered species, threatened species, or habitat of the endangered species or threatened species; and

(C) the Secretary complies with any applicable guidelines specified in any management or recovery plan described in subparagraph (A).

(b) RELATION TO AGENCY PLANS.—An authorized hazardous fuel reduction project shall be conducted consistent with the resource management plan and other relevant administrative policies or decisions applicable to the Federal land covered by the project.

(c) ACREAGE LIMITATION.—Not more than a total of 20,000,000 acres of Federal land may be treated under authorized hazardous fuel reduction projects.

(d) EXCLUSION OF CERTAIN FEDERAL LAND.—The Secretary may not conduct an authorized hazardous fuel reduction project that would occur on—

(1) a component of the National Wilderness Preservation System;

(2) Federal land on which the removal of vegetation is prohibited or restricted by Act of Congress or Presidential proclamation (including the applicable implementation plan); or

(3) a Wilderness Study Area.

(e) OLD GROWTH STANDS.—

(1) DEFINITIONS.—In this subsection and subsection (f):

(A) APPLICABLE PERIOD.—The term “applicable period” means—

(i) the 2-year period beginning on the date of enactment of this Act; or

(ii) in the case of a resource management plan that the Secretary is in the process of revising as of the date of enactment of this Act, the 3-year period beginning on the date of enactment of this Act.

(B) COVERED PROJECT.—The term “covered project” means an authorized hazardous fuel reduction project carried out on land described in paragraph (1), (2), (3), or (5) of subsection (a).

(C) MANAGEMENT DIRECTION.—The term “management direction” means definitions, designations, standards, guidelines, goals, or objectives established for an old growth stand under a resource management plan developed in accordance with applicable law, including section 6(g)(3)(B) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(g)(3)(B)).

(D) OLD GROWTH STAND.—The term “old growth stand” has the meaning given the term under management direction used pursuant to paragraphs (3) and (4), based on the structure and composition characteristic of the forest type, and in accordance with applicable law, including section 6(g)(3)(B) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(g)(3)(B)).

(2) PROJECT REQUIREMENTS.—In carrying out a covered project, the Secretary shall fully maintain, or contribute toward the restoration of, the structure and composition of old growth

PUBLIC LAW 108-148—DEC. 3, 2003

stands according to the pre-fire suppression old growth conditions characteristic of the forest type, taking into account the contribution of the stand to landscape fire adaptation and watershed health, and retaining the large trees contributing to old growth structure.

(3) NEWER MANAGEMENT DIRECTION.—

(A) IN GENERAL.—If the management direction for an old growth stand was established on or after December 15, 1993, the Secretary shall meet the requirements of paragraph (2) in carrying out a covered project by implementing the management direction.

(B) AMENDMENTS OR REVISIONS.—Any amendment or revision to management direction for which final administrative approval is granted after the date of enactment of this Act shall be consistent with paragraph (2) for the purpose of carrying out covered projects.

(4) OLDER MANAGEMENT DIRECTION.—

(A) IN GENERAL.—If the management direction for an old growth stand was established before December 15, 1993, the Secretary shall meet the requirements of paragraph (2) in carrying out a covered project during the applicable period by implementing the management direction.

(B) REVIEW REQUIRED.—Subject to subparagraph (C), during the applicable period for management direction referred to in subparagraph (A), the Secretary shall—

(i) review the management direction for affected covered projects, taking into account any relevant scientific information made available since the adoption of the management direction; and

(ii) amend the management direction for affected covered projects to be consistent with paragraph (2), if necessary to reflect relevant scientific information the Secretary did not consider in formulating the management direction.

(C) REVIEW NOT COMPLETED.—If the Secretary does not complete the review of the management direction in accordance with subparagraph (B) before the end of the applicable period, the Secretary shall not carry out any portion of affected covered projects in stands that are identified as old growth stands (based on substantial supporting evidence) by any person during scoping, within the period—

(i) beginning at the close of the applicable period for the management direction governing the affected covered projects; and

(ii) ending on the earlier of—

(I) the date the Secretary completes the action required by subparagraph (B) for the management direction applicable to the affected covered projects; or

(II) the date on which the acreage limitation specified in subsection (c) (as that limitation may be adjusted by a subsequent Act of Congress) is reached.

(5) LIMITATION TO COVERED PROJECTS.—Nothing in this subsection requires the Secretary to revise or otherwise amend a resource management plan to make the project requirements of paragraph (2) apply to an activity other than a covered project.

(f) LARGE TREE RETENTION.—

(1) IN GENERAL.—Except in old growth stands where the management direction is consistent with subsection (e)(2), the Secretary shall carry out a covered project in a manner that—

PUBLIC LAW 108-148—DEC. 3, 2003

(A) focuses largely on small diameter trees, thinning, strategic fuel breaks, and prescribed fire to modify fire behavior, as measured by the projected reduction of uncharacteristically severe wildfire effects for the forest type (such as adverse soil impacts, tree mortality or other impacts); and

(B) maximizes the retention of large trees, as appropriate for the forest type, to the extent that the trees promote fire-resilient stands.

(2) WILDFIRE RISK.—Nothing in this subsection prevents achievement of the purposes described in section 2(1).

(g) MONITORING AND ASSESSING FOREST AND RANGELAND HEALTH.—

(1) IN GENERAL.—For each Forest Service administrative region and each Bureau of Land Management State Office, the Secretary shall—

(A) monitor the results of a representative sample of the projects authorized under this title for each management unit; and

(B) not later than 5 years after the date of enactment of this Act, and each 5 years thereafter, issue a report that includes—

Deadline.
Reports.

(i) an evaluation of the progress towards project goals; and

(ii) recommendations for modifications to the projects and management treatments.

(2) CONSISTENCY OF PROJECTS WITH RECOMMENDATIONS.—An authorized hazardous fuel reduction project approved following the issuance of a monitoring report shall, to the maximum extent practicable, be consistent with any applicable recommendations in the report.

(3) SIMILAR VEGETATION TYPES.—The results of a monitoring report shall be made available for use (if appropriate) in an authorized hazardous fuels reduction project conducted in a similar vegetation type on land under the jurisdiction of the Secretary.

(4) MONITORING AND ASSESSMENTS.—Monitoring and assessment shall include a description of the changes in condition class, using the Fire Regime Condition Class Guidebook or successor guidance, specifically comparing end results to—

(A) pretreatment conditions;

(B) historical fire regimes; and

(C) any applicable watershed or landscape goals or objectives in the resource management plan or other relevant direction.

(5) MULTIPARTY MONITORING.—

(A) IN GENERAL.—In an area where significant interest is expressed in multiparty monitoring, the Secretary shall establish a multiparty monitoring, evaluation, and accountability process in order to assess the positive or negative ecological and social effects of authorized hazardous fuel reduction projects and projects conducted pursuant to section 404.

(B) DIVERSE STAKEHOLDERS.—The Secretary shall include diverse stakeholders (including interested citizens and Indian tribes) in the process required under subparagraph (A).

(C) FUNDING.—Funds to carry out this paragraph may be derived from operations funds for projects described in subparagraph (A).

(6) COLLECTION OF MONITORING DATA.—The Secretary may collect monitoring data by entering into cooperative agreements or contracts with, or providing grants to, small or micro-businesses, cooperatives, nonprofit organizations, Youth Con-

PUBLIC LAW 108-148—DEC. 3, 2003

servation Corps work crews, or related State, local, and other non-Federal conservation corps.

(7) TRACKING.—For each administrative unit, the Secretary shall track acres burned, by the degree of severity, by large wildfires (as defined by the Secretary).

(8) MONITORING AND MAINTENANCE OF TREATED AREAS.—The Secretary shall, to the maximum extent practicable, develop a process for monitoring the need for maintenance of treated areas, over time, in order to preserve the forest health benefits achieved.

16 USC 6513.

SEC. 103. PRIORITIZATION.

(a) IN GENERAL.—In accordance with the Implementation Plan, the Secretary shall develop an annual program of work for Federal land that gives priority to authorized hazardous fuel reduction projects that provide for the protection of at-risk communities or watersheds or that implement community wildfire protection plans.

(b) COLLABORATION.—

(1) IN GENERAL.—The Secretary shall consider recommendations under subsection (a) that are made by at-risk communities that have developed community wildfire protection plans.

(2) EXEMPTION.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the planning process and recommendations concerning community wildfire protection plans.

(c) ADMINISTRATION.—

(1) IN GENERAL.—Federal agency involvement in developing a community wildfire protection plan, or a recommendation made in a community wildfire protection plan, shall not be considered a Federal agency action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) COMPLIANCE.—In implementing authorized hazardous fuel reduction projects on Federal land, the Secretary shall, in accordance with section 104, comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) FUNDING ALLOCATION.—

(1) FEDERAL LAND.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall use not less than 50 percent of the funds allocated for authorized hazardous fuel reduction projects in the wildland-urban interface.

(B) APPLICABILITY AND ALLOCATION.—The funding allocation in subparagraph (A) shall apply at the national level. The Secretary may allocate the proportion of funds differently than is required under subparagraph (A) within individual management units as appropriate, in particular to conduct authorized hazardous fuel reduction projects on land described in section 102(a)(4).

(C) WILDLAND-URBAN INTERFACE.—In the case of an authorized hazardous fuel reduction project for which a decision notice is issued during the 1-year period beginning on the date of enactment of this Act, the Secretary shall use existing definitions of the term “wildland-urban interface” rather than the definition of that term provided under section 101.

(2) NON-FEDERAL LAND.—

(A) IN GENERAL.—In providing financial assistance under any provision of law for hazardous fuel reduction projects on non-Federal land, the Secretary shall consider recommendations made by at-risk communities that have developed community wildfire protection plans.

(B) PRIORITY.—In allocating funding under this paragraph, the Secretary should, to the maximum extent practicable, give priority to communities that have adopted a community wildfire protection plan or have taken

PUBLIC LAW 108-148—DEC. 3, 2003

proactive measures to encourage willing property owners to reduce fire risk on private property.

SEC. 104. ENVIRONMENTAL ANALYSIS.

16 USC 6514.

(a) **AUTHORIZED HAZARDOUS FUEL REDUCTION PROJECTS.**—Except as otherwise provided in this title, the Secretary shall conduct authorized hazardous fuel reduction projects in accordance with—

(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.); and

(2) other applicable laws.

(b) **ENVIRONMENTAL ASSESSMENT OR ENVIRONMENTAL IMPACT STATEMENT.**—The Secretary shall prepare an environmental assessment or an environmental impact statement pursuant to section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) for each authorized hazardous fuel reduction project.

(c) **CONSIDERATION OF ALTERNATIVES.**—

(1) **IN GENERAL.**—Except as provided in subsection (d), in the environmental assessment or environmental impact statement prepared under subsection (b), the Secretary shall study, develop, and describe—

(A) the proposed agency action;

(B) the alternative of no action; and

(C) an additional action alternative, if the additional alternative—

(i) is proposed during scoping or the collaborative process under subsection (f); and

(ii) meets the purpose and need of the project, in accordance with regulations promulgated by the Council on Environmental Quality.

(2) **MULTIPLE ADDITIONAL ALTERNATIVES.**—If more than 1 additional alternative is proposed under paragraph (1)(C), the Secretary shall—

(A) select which additional alternative to consider, which is a choice that is in the sole discretion of the Secretary; and

(B) provide a written record describing the reasons for the selection.

(d) **ALTERNATIVE ANALYSIS PROCESS FOR PROJECTS IN WILDLAND-URBAN INTERFACE.**—

(1) **PROPOSED AGENCY ACTION AND 1 ACTION ALTERNATIVE.**—

For an authorized hazardous fuel reduction project that is proposed to be conducted in the wildland-urban interface, the Secretary is not required to study, develop, or describe more than the proposed agency action and 1 action alternative in the environmental assessment or environmental impact statement prepared pursuant to section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)).

(2) **PROPOSED AGENCY ACTION.**—Notwithstanding paragraph (1), but subject to paragraph (3), if an authorized hazardous fuel reduction project proposed to be conducted in the wildland-urban interface is located no further than 1½ miles from the boundary of an at-risk community, the Secretary is not required to study, develop, or describe any alternative to the proposed agency action in the environmental assessment or environmental impact statement prepared pursuant to section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)).

(3) **PROPOSED AGENCY ACTION AND COMMUNITY WILDFIRE PROTECTION PLAN ALTERNATIVE.**—In the case of an authorized hazardous fuel reduction project described in paragraph (2), if the at-risk community has adopted a community wildfire protection plan and the proposed agency action does not implement the recommendations in the plan regarding the general location and basic method of treatments, the Secretary shall

PUBLIC LAW 108-148—DEC. 3, 2003

evaluate the recommendations in the plan as an alternative to the proposed agency action in the environmental assessment or environmental impact statement prepared pursuant to section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)).

(e) PUBLIC NOTICE AND MEETING.—

(1) PUBLIC NOTICE.—The Secretary shall provide notice of each authorized hazardous fuel reduction project in accordance with applicable regulations and administrative guidelines.

(2) PUBLIC MEETING.—During the preparation stage of each authorized hazardous fuel reduction project, the Secretary shall—

(A) conduct a public meeting at an appropriate location proximate to the administrative unit of the Federal land on which the authorized hazardous fuel reduction project will be conducted; and

(B) provide advance notice of the location, date, and time of the meeting.

(f) PUBLIC COLLABORATION.—In order to encourage meaningful public participation during preparation of authorized hazardous fuel reduction projects, the Secretary shall facilitate collaboration among State and local governments and Indian tribes, and participation of interested persons, during the preparation of each authorized fuel reduction project in a manner consistent with the Implementation Plan.

(g) ENVIRONMENTAL ANALYSIS AND PUBLIC COMMENT.—In accordance with section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) and the applicable regulations and administrative guidelines, the Secretary shall provide an opportunity for public comment during the preparation of any environmental assessment or environmental impact statement for an authorized hazardous fuel reduction project.

(h) DECISION DOCUMENT.—The Secretary shall sign a decision document for authorized hazardous fuel reduction projects and provide notice of the final agency actions.

16 USC 6515.

SEC. 105. SPECIAL ADMINISTRATIVE REVIEW PROCESS.

(a) INTERIM FINAL REGULATIONS.—

Deadline.

(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Agriculture shall promulgate interim final regulations to establish a predecisional administrative review process for the period described in paragraph (2) that will serve as the sole means by which a person can seek administrative review regarding an authorized hazardous fuel reduction project on Forest Service land.

(2) PERIOD.—The predecisional administrative review process required under paragraph (1) shall occur during the period—

(A) beginning after the completion of the environmental assessment or environmental impact statement; and

(B) ending not later than the date of the issuance of the final decision approving the project.

(3) ELIGIBILITY.—To be eligible to participate in the administrative review process for an authorized hazardous fuel reduction project under paragraph (1), a person shall submit to the Secretary, during scoping or the public comment period for the draft environmental analysis for the project, specific written comments that relate to the proposed action.

(4) EFFECTIVE DATE.—The interim final regulations promulgated under paragraph (1) shall take effect on the date of promulgation of the regulations.

(b) FINAL REGULATIONS.—The Secretary shall promulgate final regulations to establish the process described in subsection (a)(1) after the interim final regulations have been published and reasonable time has been provided for public comment.

PUBLIC LAW 108-148—DEC. 3, 2003

(c) ADMINISTRATIVE REVIEW.—

(1) IN GENERAL.—A person may bring a civil action challenging an authorized hazardous fuel reduction project in a Federal district court only if the person has challenged the authorized hazardous fuel reduction project by exhausting—

(A) the administrative review process established by the Secretary of Agriculture under this section; or

(B) the administrative hearings and appeals procedures established by the Department of the Interior.

(2) ISSUES.—An issue may be considered in the judicial review of an action under section 106 only if the issue was raised in an administrative review process described in paragraph (1).

(3) EXCEPTION.—

(A) IN GENERAL.—An exception to the requirement of exhausting the administrative review process before seeking judicial review shall be available if a Federal court finds that the futility or inadequacy exception applies to a specific plaintiff or claim.

(B) INFORMATION.—If an agency fails or is unable to make information timely available during the administrative review process, a court should evaluate whether the administrative review process was inadequate for claims or issues to which the information is material.

SEC. 106. JUDICIAL REVIEW IN UNITED STATES DISTRICT COURTS.

16 USC 6516.

(a) VENUE.—Notwithstanding section 1391 of title 28, United States Code, or other applicable law, an authorized hazardous fuels reduction project conducted under this title shall be subject to judicial review only in the United States district court for a district in which the Federal land to be treated under the authorized hazardous fuels reduction project is located.

(b) EXPEDITIOUS COMPLETION OF JUDICIAL REVIEW.—In the judicial review of an action challenging an authorized hazardous fuel reduction project under subsection (a), Congress encourages a court of competent jurisdiction to expedite, to the maximum extent practicable, the proceedings in the action with the goal of rendering a final determination on jurisdiction, and (if jurisdiction exists) a final determination on the merits, as soon as practicable after the date on which a complaint or appeal is filed to initiate the action.

(c) INJUNCTIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the length of any preliminary injunctive relief and stays pending appeal covering an authorized hazardous fuel reduction project carried out under this title shall not exceed 60 days.

(2) RENEWAL.—

(A) IN GENERAL.—A court of competent jurisdiction may issue 1 or more renewals of any preliminary injunction, or stay pending appeal, granted under paragraph (1).

(B) UPDATES.—In each renewal of an injunction in an action, the parties to the action shall present the court with updated information on the status of the authorized hazardous fuel reduction project.

(3) BALANCING OF SHORT- AND LONG-TERM EFFECTS.—As part of its weighing the equities while considering any request for an injunction that applies to an agency action under an authorized hazardous fuel reduction project, the court reviewing the project shall balance the impact to the ecosystem likely affected by the project of—

(A) the short- and long-term effects of undertaking the agency action; against

(B) the short- and long-term effects of not undertaking the agency action.

PUBLIC LAW 108-148—DEC. 3, 2003

16 USC 6517.

SEC. 107. EFFECT OF TITLE.

(a) **OTHER AUTHORITY.**—Nothing in this title affects, or otherwise biases, the use by the Secretary of other statutory or administrative authority (including categorical exclusions adopted to implement the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)) to conduct a hazardous fuel reduction project on Federal land (including Federal land identified in section 102(d)) that is not conducted using the process authorized by section 104.

(b) **NATIONAL FOREST SYSTEM.**—For projects and activities of the National Forest System other than authorized hazardous fuel reduction projects, nothing in this title affects, or otherwise biases, the notice, comment, and appeal procedures for projects and activities of the National Forest System contained in part 215 of title 36, Code of Federal Regulations, or the consideration or disposition of any legal action brought with respect to the procedures.

16 USC 6518.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated \$760,000,000 for each fiscal year to carry out—

- (1) activities authorized by this title; and
- (2) other hazardous fuel reduction activities of the Secretary, including making grants to States, local governments, Indian tribes, and other eligible recipients for activities authorized by law.

TITLE II—BIOMASS**SEC. 201. IMPROVED BIOMASS USE RESEARCH PROGRAM.**

7 USC 8101 note.

(a) **USES OF GRANTS, CONTRACTS, AND ASSISTANCE.**—Section 307(d) of the Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note; Public Law 106-224) is amended—

- (1) in paragraph (3), by striking “or” at the end;
- (2) in paragraph (4), by striking the period at the end and inserting “; or”; and
- (3) by adding at the end the following:

“(5) research to integrate silviculture, harvesting, product development, processing information, and economic evaluation to provide the science, technology, and tools to forest managers and community developers for use in evaluating forest treatment and production alternatives, including—

“(A) to develop tools that would enable land managers, locally or in a several-State region, to estimate—

“(i) the cost to deliver varying quantities of wood to a particular location; and

“(ii) the amount that could be paid for stumpage if delivered wood was used for a specific mix of products;

“(B) to conduct research focused on developing appropriate thinning systems and equipment designs that are—

“(i) capable of being used on land without significant adverse effects on the land;

“(ii) capable of handling large and varied landscapes;

“(iii) adaptable to handling a wide variety of tree sizes;

“(iv) inexpensive; and

“(v) adaptable to various terrains; and

“(C) to develop, test, and employ in the training of forestry managers and community developers curricula materials and training programs on matters described in subparagraphs (A) and (B).”

(b) **FUNDING.**—Section 310(b) of the Biomass Research and Development Act of 2000 (7 U.S.C. 7624 note; Public Law 106-

PUBLIC LAW 108-148—DEC. 3, 2003

224) is amended by striking “\$49,000,000” and inserting “\$54,000,000”. 7 USC 8101 note.

SEC. 202. RURAL REVITALIZATION THROUGH FORESTRY.

Section 2371 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 6601) is amended by adding at the end the following:

“(d) RURAL REVITALIZATION TECHNOLOGIES.—

“(1) IN GENERAL.—The Secretary of Agriculture, acting through the Chief of the Forest Service, in consultation with the State and Private Forestry Technology Marketing Unit at the Forest Products Laboratory, and in collaboration with eligible institutions, may carry out a program—

“(A) to accelerate adoption of technologies using biomass and small-diameter materials;

“(B) to create community-based enterprises through marketing activities and demonstration projects; and

“(C) to establish small-scale business enterprises to make use of biomass and small-diameter materials.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$5,000,000 for each of fiscal years 2004 through 2008.”.

SEC. 203. BIOMASS COMMERCIAL UTILIZATION GRANT PROGRAM.

16 USC 6531.

(a) IN GENERAL.—In addition to any other authority of the Secretary of Agriculture to make grants to a person that owns or operates a facility that uses biomass as a raw material to produce electric energy, sensible heat, transportation fuel, or substitutes for petroleum-based products, the Secretary may make grants to a person that owns or operates a facility that uses biomass for wood-based products or other commercial purposes to offset the costs incurred to purchase biomass.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2004 through 2008.

TITLE III—WATERSHED FORESTRY ASSISTANCE

SEC. 301. FINDINGS AND PURPOSES.

16 USC 6541.

(a) FINDINGS.—Congress finds that—

(1) there has been a dramatic shift in public attitudes and perceptions about forest management, particularly in the understanding and practice of sustainable forest management;

(2) it is commonly recognized that the proper stewardship of forest land is essential to sustaining and restoring the health of watersheds;

(3) forests can provide essential ecological services in filtering pollutants, buffering important rivers and estuaries, and minimizing flooding, which makes forest restoration worthy of special focus; and

(4) strengthened education, technical assistance, and financial assistance for nonindustrial private forest landowners and communities, relating to the protection of watershed health, is needed to realize the expectations of the general public.

(b) PURPOSES.—The purposes of this title are—

(1) to improve landowner and public understanding of the connection between forest management and watershed health;

(2) to encourage landowners to maintain tree cover on property and to use tree plantings and vegetative treatments as creative solutions to watershed problems associated with varying land uses;

PUBLIC LAW 108-148—DEC. 3, 2003

(3) to enhance and complement forest management and buffer use for watersheds, with an emphasis on community watersheds;

(4) to establish new partnerships and collaborative watershed approaches to forest management, stewardship, and conservation;

(5) to provide technical and financial assistance to States to deliver a coordinated program that enhances State forestry best-management practices programs, and conserves and improves forested land and potentially forested land, through technical, financial, and educational assistance to qualifying individuals and entities; and

(6) to maximize the proper management and conservation of wetland forests and to assist in the restoration of those forests.

SEC. 302. WATERSHED FORESTRY ASSISTANCE PROGRAM.

The Cooperative Forestry Assistance Act of 1978 is amended by inserting after section 5 (16 U.S.C. 2103a) the following:

16 USC 2103b.

“SEC. 6. WATERSHED FORESTRY ASSISTANCE PROGRAM.

“(a) DEFINITION OF NONINDUSTRIAL PRIVATE FOREST LAND.—In this section, the term ‘nonindustrial private forest land’ means rural land, as determined by the Secretary, that—

“(1) has existing tree cover or that is suitable for growing trees; and

“(2) is owned by any nonindustrial private individual, group, association, corporation, or other private legal entity, that has definitive decisionmaking authority over the land.

“(b) GENERAL AUTHORITY AND PURPOSE.—The Secretary, acting through the Chief of the Forest Service and (where appropriate) through the Cooperative State Research, Education, and Extension Service, may provide technical, financial, and related assistance to State foresters, equivalent State officials, or Cooperative Extension officials at land grant colleges and universities and 1890 institutions for the purpose of expanding State forest stewardship capacities and activities through State forestry best-management practices and other means at the State level to address watershed issues on non-Federal forested land and potentially forested land.

“(c) TECHNICAL ASSISTANCE TO PROTECT WATER QUALITY.—

“(1) IN GENERAL.—The Secretary, in cooperation with State foresters or equivalent State officials, shall engage interested members of the public, including nonprofit organizations and local watershed councils, to develop a program of technical assistance to protect water quality described in paragraph (2).

“(2) PURPOSE OF PROGRAM.—The program under this subsection shall be designed—

“(A) to build and strengthen watershed partnerships that focus on forested landscapes at the State, regional, and local levels;

“(B) to provide State forestry best-management practices and water quality technical assistance directly to owners of nonindustrial private forest land;

“(C) to provide technical guidance to land managers and policymakers for water quality protection through forest management;

“(D) to complement State and local efforts to protect water quality and provide enhanced opportunities for consultation and cooperation among Federal and State agencies charged with responsibility for water and watershed management; and

“(E) to provide enhanced forest resource data and support for improved implementation and monitoring of State forestry best-management practices.

PUBLIC LAW 108-148—DEC. 3, 2003

“(3) IMPLEMENTATION.—In the case of a participating State, the program of technical assistance shall be implemented by State foresters or equivalent State officials.

“(d) WATERSHED FORESTRY COST-SHARE PROGRAM.—

“(1) IN GENERAL.—The Secretary shall establish a watershed forestry cost-share program—

“(A) which shall be—

“(i) administered by the Forest Service; and

“(ii) implemented by State foresters or equivalent State officials in participating States; and

“(B) under which funds or other support provided to participating States shall be made available for State forestry best-management practices programs and watershed forestry projects.

“(2) WATERSHED FORESTRY PROJECTS.—The State forester, an equivalent State official of a participating State, or a Cooperative Extension official at a land grant college or university or 1890 institution, in coordination with the State Forest Stewardship Coordinating Committee established under section 19(b) (or an equivalent committee) for that State, shall make awards to communities, nonprofit groups, and owners of non-industrial private forest land under the program for watershed forestry projects described in paragraph (3).

“(3) PROJECT ELEMENTS AND OBJECTIVES.—A watershed forestry project shall accomplish critical forest stewardship, watershed protection, and restoration needs within a State by demonstrating the value of trees and forests to watershed health and condition through—

“(A) the use of trees as solutions to water quality problems in urban and rural areas;

“(B) community-based planning, involvement, and action through State, local, and nonprofit partnerships;

“(C) application of and dissemination of monitoring information on forestry best-management practices relating to watershed forestry;

“(D) watershed-scale forest management activities and conservation planning; and

“(E)(i) the restoration of wetland (as defined by the States) and stream-side forests; and

“(ii) the establishment of riparian vegetative buffers.

“(4) COST-SHARING.—

“(A) FEDERAL SHARE.—

“(i) FUNDS UNDER THIS SUBSECTION.—Funds provided under this subsection for a watershed forestry project may not exceed 75 percent of the cost of the project.

“(ii) OTHER FEDERAL FUNDS.—The percentage of the cost of a project described in clause (i) that is not covered by funds made available under this subsection may be paid using other Federal funding sources, except that the total Federal share of the costs of the project may not exceed 90 percent.

“(B) FORM.—The non-Federal share of the costs of a project may be provided in the form of cash, services, or other in-kind contributions.

“(5) PRIORITIZATION.—The State Forest Stewardship Coordinating Committee for a State, or equivalent State committee, shall prioritize watersheds in that State to target watershed forestry projects funded under this subsection.

“(6) WATERSHED FORESTER.—Financial and technical assistance shall be made available to the State Forester or equivalent State official to create a State watershed or best-management practice forester position to—

“(A) lead statewide programs; and

“(B) coordinate watershed-level projects.

PUBLIC LAW 108-148—DEC. 3, 2003

“(e) DISTRIBUTION.—

“(1) IN GENERAL.—Of the funds made available for a fiscal year under subsection (g), the Secretary shall use—

“(A) at least 75 percent of the funds to carry out the cost-share program under subsection (d); and

“(B) the remainder of the funds to deliver technical assistance, education, and planning, at the local level, through the State Forester or equivalent State official.

“(2) SPECIAL CONSIDERATIONS.—Distribution of funds by the Secretary among States under paragraph (1) shall be made only after giving appropriate consideration to—

“(A) the acres of agricultural land, nonindustrial private forest land, and highly erodible land in each State;

“(B) the miles of riparian buffer needed;

“(C) the miles of impaired stream segments and other impaired water bodies where forestry practices can be used to restore or protect water resources;

“(D) the number of owners of nonindustrial private forest land in each State; and

“(E) water quality cost savings that can be achieved through forest watershed management.

“(f) WILLING OWNERS.—

“(1) IN GENERAL.—Participation of an owner of nonindustrial private forest land in the watershed forestry assistance program under this section is voluntary.

“(2) WRITTEN CONSENT.—The watershed forestry assistance program shall not be carried out on nonindustrial private forest land without the written consent of the owner of, or entity having definitive decisionmaking over, the nonindustrial private forest land.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2004 through 2008.”.

16 USC 6542.

SEC. 303. TRIBAL WATERSHED FORESTRY ASSISTANCE.

(a) IN GENERAL.—The Secretary of Agriculture (referred to in this section as the “Secretary”), acting through the Chief of the Forest Service, shall provide technical, financial, and related assistance to Indian tribes for the purpose of expanding tribal stewardship capacities and activities through tribal forestry best-management practices and other means at the tribal level to address watershed issues on land under the jurisdiction of or administered by the Indian tribes.

(b) TECHNICAL ASSISTANCE TO PROTECT WATER QUALITY.—

(1) IN GENERAL.—The Secretary, in cooperation with Indian tribes, shall develop a program to provide technical assistance to protect water quality, as described in paragraph (2).

(2) PURPOSE OF PROGRAM.—The program under this subsection shall be designed—

(A) to build and strengthen watershed partnerships that focus on forested landscapes at the State, regional, tribal, and local levels;

(B) to provide tribal forestry best-management practices and water quality technical assistance directly to Indian tribes;

(C) to provide technical guidance to tribal land managers and policy makers for water quality protection through forest management;

(D) to complement tribal efforts to protect water quality and provide enhanced opportunities for consultation and cooperation among Federal agencies and tribal entities charged with responsibility for water and watershed management; and

PUBLIC LAW 108-148—DEC. 3, 2003

(E) to provide enhanced forest resource data and support for improved implementation and monitoring of tribal forestry best-management practices.

(c) WATERSHED FORESTRY PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a watershed forestry program in cooperation with Indian tribes.

(2) PROGRAMS AND PROJECTS.—Funds or other support provided under the program shall be made available for tribal forestry best-management practices programs and watershed forestry projects.

(3) ANNUAL AWARDS.—The Secretary shall annually make awards to Indian tribes to carry out this subsection.

(4) PROJECT ELEMENTS AND OBJECTIVES.—A watershed forestry project shall accomplish critical forest stewardship, watershed protection, and restoration needs within land under the jurisdiction of or administered by an Indian tribe by demonstrating the value of trees and forests to watershed health and condition through—

(A) the use of trees as solutions to water quality problems;

(B) application of and dissemination of monitoring information on forestry best-management practices relating to watershed forestry;

(C) watershed-scale forest management activities and conservation planning;

(D) the restoration of wetland and stream-side forests and the establishment of riparian vegetative buffers; and

(E) tribal-based planning, involvement, and action through State, tribal, local, and nonprofit partnerships.

(5) PRIORITIZATION.—An Indian tribe that participates in the program under this subsection shall prioritize watersheds in land under the jurisdiction of or administered by the Indian tribe to target watershed forestry projects funded under this subsection.

(6) WATERSHED FORESTER.—The Secretary may provide to Indian tribes under this section financial and technical assistance to establish a position of tribal forester to lead tribal programs and coordinate small watershed-level projects.

(d) DISTRIBUTION.—The Secretary shall devote—

(1) at least 75 percent of the funds made available for a fiscal year under subsection (e) to the program under subsection (c); and

(2) the remainder of the funds to deliver technical assistance, education, and planning in the field to Indian tribes.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$2,500,000 for each of fiscal years 2004 through 2008.

TITLE IV—INSECT INFESTATIONS AND RELATED DISEASES

SEC. 401. FINDINGS AND PURPOSE.

16 USC 6551.

(a) FINDINGS.—Congress finds that—

(1) high levels of tree mortality resulting from insect infestation (including the interaction between insects and diseases) may result in—

(A) increased fire risk;

(B) loss of old trees and old growth;

(C) loss of threatened and endangered species;

(D) loss of species diversity;

(E) degraded watershed conditions;

(F) increased potential for damage from other agents of disturbance, including exotic, invasive species; and

PUBLIC LAW 108-148—DEC. 3, 2003

- (G) decreased timber values;
- (2)(A) forest-damaging insects destroy hundreds of thousands of acres of trees each year;
- (B) in the West, more than 21,000,000 acres are at high risk of forest-damaging insect infestation, and in the South, more than 57,000,000 acres are at risk across all land ownerships; and
- (C) severe drought conditions in many areas of the South and West will increase the risk of forest-damaging insect infestations;
- (3) the hemlock woolly adelgid is—
- (A) destroying streamside forests throughout the mid-Atlantic and Appalachian regions;
- (B) threatening water quality and sensitive aquatic species; and
- (C) posing a potential threat to valuable commercial timber land in northern New England;
- (4)(A) the emerald ash borer is a nonnative, invasive pest that has quickly become a major threat to hardwood forests because an emerald ash borer infestation is almost always fatal to affected trees; and
- (B) the emerald ash borer pest threatens to destroy more than 692,000,000 ash trees in forests in Michigan and Ohio alone, and between 5 and 10 percent of urban street trees in the Upper Midwest;
- (5)(A) epidemic populations of Southern pine beetles are ravaging forests in Alabama, Arkansas, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia; and
- (B) in 2001, Florida and Kentucky experienced 146 percent and 111 percent increases, respectively, in Southern pine beetle populations;
- (6) those epidemic outbreaks of Southern pine beetles have forced private landowners to harvest dead and dying trees, in rural areas and increasingly urbanized settings;
- (7) according to the Forest Service, recent outbreaks of the red oak borer in Arkansas and Missouri have been unprecedented, with more than 1,000,000 acres infested at population levels never seen before;
- (8) much of the damage from the red oak borer has taken place in national forests, and the Federal response has been inadequate to protect forest ecosystems and other ecological and economic resources;
- (9)(A) previous silvicultural assessments, while useful and informative, have been limited in scale and scope of application; and
- (B) there have not been sufficient resources available to adequately test a full array of individual and combined applied silvicultural assessments;
- (10) only through the full funding, development, and assessment of potential applied silvicultural assessments over specific time frames across an array of environmental and climatic conditions can the most innovative and cost effective management applications be determined that will help reduce the susceptibility of forest ecosystems to attack by forest pests;
- (11)(A) often, there are significant interactions between insects and diseases;
- (B) many diseases (such as white pine blister rust, beech bark disease, and many other diseases) can weaken trees and forest stands and predispose trees and forest stands to insect attack; and
- (C) certain diseases are spread using insects as vectors (including Dutch elm disease and pine pitch canker); and
- (12) funding and implementation of an initiative to combat forest pest infestations and associated diseases should not come

PUBLIC LAW 108-148—DEC. 3, 2003

at the expense of supporting other programs and initiatives of the Secretary.

(b) PURPOSES.—The purposes of this title are—

(1) to require the Secretary to develop an accelerated basic and applied assessment program to combat infestations by forest-damaging insects and associated diseases;

(2) to enlist the assistance of colleges and universities (including forestry schools, land grant colleges and universities, and 1890 Institutions), State agencies, and private landowners to carry out the program; and

(3) to carry out applied silvicultural assessments.

SEC. 402. DEFINITIONS.

16 USC 6552.

In this title:

(1) APPLIED SILVICULTURAL ASSESSMENT.—

(A) IN GENERAL.—The term “applied silvicultural assessment” means any vegetative or other treatment carried out for information gathering and research purposes.

(B) INCLUSIONS.—The term “applied silvicultural assessment” includes timber harvesting, thinning, prescribed burning, pruning, and any combination of those activities.

(2) 1890 INSTITUTION.—

(A) IN GENERAL.—The term “1890 Institution” means a college or university that is eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 et seq.).

(B) INCLUSION.—The term “1890 Institution” includes Tuskegee University.

(3) FOREST-DAMAGING INSECT.—The term “forest-damaging insect” means—

(A) a Southern pine beetle;

(B) a mountain pine beetle;

(C) a spruce bark beetle;

(D) a gypsy moth;

(E) a hemlock woolly adelgid;

(F) an emerald ash borer;

(G) a red oak borer;

(H) a white oak borer; and

(I) such other insects as may be identified by the Secretary.

(4) SECRETARY.—The term “Secretary” means—

(A) the Secretary of Agriculture, acting through the Forest Service, with respect to National Forest System land; and

(B) the Secretary of the Interior, acting through appropriate offices of the United States Geological Survey, with respect to federally owned land administered by the Secretary of the Interior.

SEC. 403. ACCELERATED INFORMATION GATHERING REGARDING FOREST-DAMAGING INSECTS.

16 USC 6553.

(a) INFORMATION GATHERING.—The Secretary, acting through the Forest Service and United States Geological Survey, as appropriate, shall establish an accelerated program—

(1) to plan, conduct, and promote comprehensive and systematic information gathering on forest-damaging insects and associated diseases, including an evaluation of—

(A) infestation prevention and suppression methods;

(B) effects of infestations and associated disease interactions on forest ecosystems;

(C) restoration of forest ecosystem efforts;

(D) utilization options regarding infested trees; and

(E) models to predict the occurrence, distribution, and impact of outbreaks of forest-damaging insects and associated diseases;

PUBLIC LAW 108-148—DEC. 3, 2003

(2) to assist land managers in the development of treatments and strategies to improve forest health and reduce the susceptibility of forest ecosystems to severe infestations of forest-damaging insects and associated diseases on Federal land and State and private land; and

(3) to disseminate the results of the information gathering, treatments, and strategies.

(b) COOPERATION AND ASSISTANCE.—The Secretary shall—

(1) establish and carry out the program in cooperation with—

(A) scientists from colleges and universities (including forestry schools, land grant colleges and universities, and 1890 Institutions);

(B) Federal, State, and local agencies; and

(C) private and industrial landowners; and

(2) designate such colleges and universities to assist in carrying out the program.

16 USC 6554.

SEC. 404. APPLIED SILVICULTURAL ASSESSMENTS.

(a) ASSESSMENT EFFORTS.—For information gathering and research purposes, the Secretary may conduct applied silvicultural assessments on Federal land that the Secretary determines is at risk of infestation by, or is infested with, forest-damaging insects.

(b) LIMITATIONS.—

(1) EXCLUSION OF CERTAIN AREAS.—Subsection (a) does not apply to—

(A) a component of the National Wilderness Preservation System;

(B) any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;

(C) a congressionally-designated wilderness study area;

or

(D) an area in which activities under subsection (a) would be inconsistent with the applicable land and resource management plan.

(2) CERTAIN TREATMENT PROHIBITED.—Nothing in subsection (a) authorizes the application of insecticides in municipal watersheds or associated riparian areas.

(3) PEER REVIEW.—

(A) IN GENERAL.—Before being carried out, each applied silvicultural assessment under this title shall be peer reviewed by scientific experts selected by the Secretary, which shall include non-Federal experts.

(B) EXISTING PEER REVIEW PROCESSES.—The Secretary may use existing peer review processes to the extent the processes comply with subparagraph (A).

(c) PUBLIC NOTICE AND COMMENT.—

(1) PUBLIC NOTICE.—The Secretary shall provide notice of each applied silvicultural assessment proposed to be carried out under this section.

(2) PUBLIC COMMENT.—The Secretary shall provide an opportunity for public comment before carrying out an applied silviculture assessment under this section.

(d) CATEGORICAL EXCLUSION.—

(1) IN GENERAL.—Applied silvicultural assessment and research treatments carried out under this section on not more than 1,000 acres for an assessment or treatment may be categorically excluded from documentation in an environmental impact statement and environmental assessment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) ADMINISTRATION.—Applied silvicultural assessments and research treatments categorically excluded under paragraph (1)—

PUBLIC LAW 108-148—DEC. 3, 2003

(A) shall not be carried out in an area that is adjacent to another area that is categorically excluded under paragraph (1) that is being treated with similar methods; and

(B) shall be subject to the extraordinary circumstances procedures established by the Secretary pursuant to section 1508.4 of title 40, Code of Federal Regulations.

(3) **MAXIMUM CATEGORICAL EXCLUSION.**—The total number of acres categorically excluded under paragraph (1) shall not exceed 250,000 acres.

(4) **NO ADDITIONAL FINDINGS REQUIRED.**—In accordance with paragraph (1), the Secretary shall not be required to make any findings as to whether an applied silvicultural assessment project, either individually or cumulatively, has a significant effect on the environment.

SEC. 405. RELATION TO OTHER LAWS.

16 USC 6555.

The authority provided to each Secretary under this title is supplemental to, and not in lieu of, any authority provided to the Secretaries under any other law.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

16 USC 6556.

There are authorized to be appropriated such sums as are necessary to carry out this title for each of fiscal years 2004 through 2008.

TITLE V—HEALTHY FORESTS RESERVE PROGRAM

SEC. 501. ESTABLISHMENT OF HEALTHY FORESTS RESERVE PROGRAM.

16 USC 6571.

(a) **ESTABLISHMENT.**—The Secretary of Agriculture shall establish the healthy forests reserve program for the purpose of restoring and enhancing forest ecosystems—

(1) to promote the recovery of threatened and endangered species;

(2) to improve biodiversity; and

(3) to enhance carbon sequestration.

(b) **COORDINATION.**—The Secretary of Agriculture shall carry out the healthy forests reserve program in coordination with the Secretary of the Interior and the Secretary of Commerce.

SEC. 502. ELIGIBILITY AND ENROLLMENT OF LANDS IN PROGRAM.

16 USC 6572.

(a) **IN GENERAL.**—The Secretary of Agriculture, in coordination with the Secretary of the Interior and the Secretary of Commerce, shall describe and define forest ecosystems that are eligible for enrollment in the healthy forests reserve program.

(b) **ELIGIBILITY.**—To be eligible for enrollment in the healthy forests reserve program, land shall be—

(1) private land the enrollment of which will restore, enhance, or otherwise measurably increase the likelihood of recovery of a species listed as endangered or threatened under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); and

(2) private land the enrollment of which will restore, enhance, or otherwise measurably improve the well-being of species that—

(A) are not listed as endangered or threatened under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); but

(B) are candidates for such listing, State-listed species, or special concern species.

(c) **OTHER CONSIDERATIONS.**—In enrolling land that satisfies the criteria under subsection (b), the Secretary of Agriculture shall give additional consideration to land the enrollment of which will—

(1) improve biological diversity; and

PUBLIC LAW 108-148—DEC. 3, 2003

(2) increase carbon sequestration.

(d) **ENROLLMENT BY WILLING OWNERS.**—The Secretary of Agriculture shall enroll land in the healthy forests reserve program only with the consent of the owner of the land.

(e) **MAXIMUM ENROLLMENT.**—The total number of acres enrolled in the healthy forests reserve program shall not exceed 2,000,000 acres.

(f) **METHODS OF ENROLLMENT.**—

(1) **IN GENERAL.**—Land may be enrolled in the healthy forests reserve program in accordance with—

(A) a 10-year cost-share agreement;

(B) a 30-year easement; or

(C) an easement of not more than 99 years.

(2) **PROPORTION.**—The extent to which each enrollment method is used shall be based on the approximate proportion of owner interest expressed in that method in comparison to the other methods.

(g) **ENROLLMENT PRIORITY.**—

(1) **SPECIES.**—The Secretary of Agriculture shall give priority to the enrollment of land that provides the greatest conservation benefit to—

(A) primarily, species listed as endangered or threatened under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); and

(B) secondarily, species that—

(i) are not listed as endangered or threatened under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); but

(ii) are candidates for such listing, State-listed species, or special concern species.

(2) **COST-EFFECTIVENESS.**—The Secretary of Agriculture shall also consider the cost-effectiveness of each agreement or easement, and associated restoration plans, so as to maximize the environmental benefits per dollar expended.

16 USC 6573.

SEC. 503. RESTORATION PLANS.

(a) **IN GENERAL.**—Land enrolled in the healthy forests reserve program shall be subject to a restoration plan, to be developed jointly by the landowner and the Secretary of Agriculture, in coordination with the Secretary of Interior.

(b) **PRACTICES.**—The restoration plan shall require such restoration practices as are necessary to restore and enhance habitat for—

(1) species listed as endangered or threatened under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); and

(2) animal or plant species before the species reach threatened or endangered status, such as candidate, State-listed species, and special concern species.

16 USC 6574.

SEC. 504. FINANCIAL ASSISTANCE.

(a) **EASEMENTS OF NOT MORE THAN 99 YEARS.**—In the case of land enrolled in the healthy forests reserve program using an easement of not more than 99 years described in section 502(f)(1)(C), the Secretary of Agriculture shall pay the owner of the land an amount equal to not less than 75 percent, nor more than 100 percent, of (as determined by the Secretary)—

(1) the fair market value of the enrolled land during the period the land is subject to the easement, less the fair market value of the land encumbered by the easement; and

(2) the actual costs of the approved conservation practices or the average cost of approved practices carried out on the land during the period in which the land is subject to the easement.

PUBLIC LAW 108-148—DEC. 3, 2003

(b) **THIRTY-YEAR EASEMENT.**—In the case of land enrolled in the healthy forests reserve program using a 30-year easement, the Secretary of Agriculture shall pay the owner of the land an amount equal to not more than (as determined by the Secretary)—

(1) 75 percent of the fair market value of the land, less the fair market value of the land encumbered by the easement; and

(2) 75 percent of the actual costs of the approved conservation practices or 75 percent of the average cost of approved practices.

(c) **TEN-YEAR AGREEMENT.**—In the case of land enrolled in the healthy forests reserve program using a 10-year cost-share agreement, the Secretary of Agriculture shall pay the owner of the land an amount equal to not more than (as determined by the Secretary)—

(1) fifty percent of the actual costs of the approved conservation practices; or

(2) fifty percent of the average cost of approved practices.

(d) **ACCEPTANCE OF CONTRIBUTIONS.**—The Secretary of Agriculture may accept and use contributions of non-Federal funds to make payments under this section.

SEC. 505. TECHNICAL ASSISTANCE.

16 USC 6575.

(a) **IN GENERAL.**—The Secretary of Agriculture shall provide landowners with technical assistance to assist the owners in complying with the terms of plans (as included in agreements or easements) under the healthy forests reserve program.

(b) **TECHNICAL SERVICE PROVIDERS.**—The Secretary of Agriculture may request the services of, and enter into cooperative agreements with, individuals or entities certified as technical service providers under section 1242 of the Food Security Act of 1985 (16 U.S.C. 3842), to assist the Secretary in providing technical assistance necessary to develop and implement the healthy forests reserve program.

SEC. 506. PROTECTIONS AND MEASURES.

16 USC 6576.

(a) **PROTECTIONS.**—In the case of a landowner that enrolls land in the program and whose conservation activities result in a net conservation benefit for listed, candidate, or other species, the Secretary of Agriculture shall make available to the landowner safe harbor or similar assurances and protection under—

(1) section 7(b)(4) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(4)); or

(2) section 10(a)(1) of that Act (16 U.S.C. 1539(a)(1)).

(b) **MEASURES.**—If protection under subsection (a) requires the taking of measures that are in addition to the measures covered by the applicable restoration plan agreed to under section 503, the cost of the additional measures, as well as the cost of any permit, shall be considered part of the restoration plan for purposes of financial assistance under section 504.

SEC. 507. INVOLVEMENT BY OTHER AGENCIES AND ORGANIZATIONS.

16 USC 6577.

In carrying out this title, the Secretary of Agriculture may consult with—

- (1) nonindustrial private forest landowners;
- (2) other Federal agencies;
- (3) State fish and wildlife agencies;
- (4) State forestry agencies;
- (5) State environmental quality agencies;
- (6) other State conservation agencies; and
- (7) nonprofit conservation organizations.

PUBLIC LAW 108-148—DEC. 3, 2003

16 USC 6578.

SEC. 508. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title—

- (1) \$25,000,000 for fiscal year 2004; and
- (2) such sums as are necessary for each of fiscal years 2005 through 2008.

TITLE VI—MISCELLANEOUS

16 USC 6591.

SEC. 601. FOREST STANDS INVENTORY AND MONITORING PROGRAM TO IMPROVE DETECTION OF AND RESPONSE TO ENVIRONMENTAL THREATS.

(a) **IN GENERAL.**—The Secretary of Agriculture shall carry out a comprehensive program to inventory, monitor, characterize, assess, and identify forest stands (with emphasis on hardwood forest stands) and potential forest stands—

- (1) in units of the National Forest System (other than those units created from the public domain); and
- (2) on private forest land, with the consent of the owner of the land.

(b) **ISSUES TO BE ADDRESSED.**—In carrying out the program, the Secretary shall address issues including—

- (1) early detection, identification, and assessment of environmental threats (including insect, disease, invasive species, fire, and weather-related risks and other episodic events);
- (2) loss or degradation of forests;
- (3) degradation of the quality forest stands caused by inadequate forest regeneration practices;
- (4) quantification of carbon uptake rates; and
- (5) management practices that focus on preventing further forest degradation.

(c) **EARLY WARNING SYSTEM.**—In carrying out the program, the Secretary shall develop a comprehensive early warning system for potential catastrophic environmental threats to forests to increase the likelihood that forest managers will be able to—

- (1) isolate and treat a threat before the threat gets out of control; and
- (2) prevent epidemics, such as the American chestnut blight in the first half of the twentieth century, that could be environmentally and economically devastating to forests.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2004 through 2008.

Approved December 3, 2003.

LEGISLATIVE HISTORY—H.R. 1904:

HOUSE REPORTS: Nos. 108-96, Pt. 1 (Comm. on Agriculture) and Pt. 2 (Comm. on the Judiciary) and 108-386 (Comm. of Conference).

SENATE REPORTS: No. 108-121 (Comm. on Agriculture, Nutrition, and Forestry).

CONGRESSIONAL RECORD, Vol. 149 (2003):

May 20, considered and passed House.

Oct. 29, 30, considered and passed Senate, amended.

Nov. 21, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 39 (2003):

Dec. 3, Presidential remarks.