

104TH CONGRESS
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S. 391

To authorize and direct the Secretaries of the Interior and Agriculture to undertake activities to halt and reverse the decline in forest health on Federal lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10 (legislative day, JANUARY 30), 1995

Mr. CRAIG (for himself, Mr. HEFLIN, Mr. BURNS, Mr. DOMENICI, Mr. GORTON, Mr. KEMPTHORNE, Mr. MURKOWSKI, and Mr. PACKWOOD) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources with instructions that when reported the bill be referred jointly to the Committees on Agriculture, Nutrition, and Forestry and Environment and Public Works for a period not to exceed 20 days of session to report or be discharged

A BILL

To authorize and direct the Secretaries of the Interior and Agriculture to undertake activities to halt and reverse the decline in forest health on Federal 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 “Federal Lands Forest
5 Health Protection and Restoration Act”.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act, the term—

3 (1) “Federal lands” means—

4 (A) public lands as defined in section
5 103(e) of the Federal Land Policy and Manage-
6 ment Act of 1976 (43 U.S.C. 1702(e));

7 (B) lands reserved or withdrawn from the
8 public domain and designated to the National
9 Wildlife Refuge System as defined in 16 U.S.C.
10 668dd(a); and

11 (C) lands within the National Forest Sys-
12 tem as defined in section 11(a) of the Forest
13 and Rangeland Renewable Resources Planning
14 Act of 1974 (16 U.S.C. 1609(a));

15 (2) “forest health management activity” means
16 any thinning, salvage, timber stand improvement, re-
17 forestation, controlled burning or other fuels man-
18 agement, insect or disease control, riparian or other
19 habitat improvement, soil stabilization or other
20 water quality improvement, or other activity, the
21 purpose of which is to meet one or more of the ob-
22 jectives set forth in section 3(c)(1);

23 (3) “land management plan” means—

24 (A) a land use plan prepared by the Bu-
25 reau of Land Management pursuant to section
26 202 of the Federal Land Policy and Manage-

1 ment Act of 1976 (43 U.S.C. 1712), or other
2 multiple use plan currently in effect, for a unit
3 of the Federal lands described in paragraph
4 (1)(A); or

5 (B) a land and resource management plan
6 (or, if no final plan is currently in effect, a
7 draft land and resource management plan) pre-
8 pared by the Forest Service pursuant to section
9 6 of the Forest and Rangeland Renewable Re-
10 sources Planning Act of 1974 (16 U.S.C. 1604)
11 for one or more units of the Federal lands de-
12 scribed in paragraph (1)(C); and

13 (4) “Secretary” means—

14 (A) with respect to Federal lands described
15 in paragraph (1)(A), the Secretary of the Inte-
16 rior, or, except for section 6, a designee;

17 (B) with respect to Federal lands described
18 in paragraph (1)(B), the Secretary of the Inte-
19 rior, or except for section 6, a designee; and

20 (C) with respect to Federal lands described
21 in paragraph (1)(C), the Secretary of Agri-
22 culture, or, except for section 6, a designee.

1 **SEC. 3. DESIGNATION OF AREAS AND SELECTION AND AU-**
2 **THORIZATION OF ACTIVITIES.**

3 (a) GENERAL DIRECTION.—The Secretary of the In-
4 terior and the Secretary of Agriculture are each directed—

5 (1) as frequently as necessary but no less than
6 annually, to review the forest health conditions on
7 the federal lands; and

8 (2) from time to time, or pursuant to a petition
9 submitted in accordance with subsection (d), when
10 warranted by conditions set forth in subsection (b),
11 to designate a specific area of the Federal lands as
12 a forest health emergency or high risk area and se-
13 lect and authorize the forest health management ac-
14 tivity or activities to be undertaken in such area.

15 (b) FOREST HEALTH EMERGENCY AND HIGH RISK
16 AREAS.—(1) An area of the Federal lands shall be des-
17 ignated as a forest health emergency area pursuant to
18 subsection (a)(2) if the Secretary concerned finds that—

19 (A) forests on such lands have experienced dis-
20 turbances, from wildfires, insect infestations, dis-
21 ease, or other natural causes that have caused more
22 than 50 percent of the trees to be dead or dying,
23 and will suffer further environmental degradation,
24 such as soil erosion, stream damage, or habitat loss;
25 and

1 (B) implementation of one or more forest
2 health management activities on such lands can re-
3 duce or eliminate such degradation.

4 (2) An area of the Federal lands shall be designated
5 as a forest health high risk area pursuant to subsection
6 (a)(2) if the Secretary concerned finds that—

7 (A) the forest structure, function, or composi-
8 tion on such lands has been so altered by human or
9 natural causes as to increase substantially the risk
10 of insect infestation, disease, or wildfire and the con-
11 sequent risks of significant ecosystem, watershed, or
12 habitat damage or loss of life or property; and

13 (B) implementation of one or more forest
14 health management activities on such lands can re-
15 duce or eliminate such risks.

16 (3) Each Secretary shall accord priority in the des-
17 ignation of forest health emergency and high risk areas
18 to—

19 (A) areas where the Secretary determines the
20 need to reduce or eliminate the degradation or risk
21 specified in paragraph (1) or paragraph (2) is the
22 greatest; and

23 (B) wildland/urban interface areas where the
24 Secretary determines human life and property are

1 threatened by wildfire from the affected Federal
2 lands.

3 (c) FOREST HEALTH MANAGEMENT ACTIVITIES.—

4 (1) The forest health management activity or activities se-
5 lected and authorized for each forest health emergency or
6 high risk area pursuant to subsection (a)(2) shall be those
7 activities which the Secretary determines are designated
8 to address the specific site conditions of the areas with
9 the combination of management practices, treatment, and
10 protection needed to arrest the decline in forest health and
11 restore forest health to a condition capable of supporting
12 and sustaining the uses within the historic range of varia-
13 bility of the area as determined in the applicable land
14 management plan or plans, and to meet the following addi-
15 tional objectives:

16 (A) safeguard human life, property, and com-
17 munities;

18 (B) protect the various forest resources placed
19 at risk, including air and water quality, wildlife, and
20 recreation and visual values;

21 (C) restore, maintain, or enhance the integrity
22 of ecosystems, watersheds and habitats damaged or
23 placed at risk; and

24 (D) protect previous Federal investments in the
25 Federal land resources and environmental values,

1 and future Federal, State, and local revenues that
2 otherwise will be foregone.

3 (2) No forest health management activity shall be
4 precluded because the costs thereof are likely to exceed
5 the revenues therefrom.

6 (3) The Secretary concerned shall publish a schedule
7 for initiating, completing, and monitoring the forest health
8 management activity or activities in each forest health
9 emergency or high risk area in the document containing
10 the Secretary's final decision designating the area and se-
11 lecting and authorizing the activity or activities pursuant
12 to subsection (a)(2).

13 (4) Whenever the harvest of live trees is expected to
14 occur in a forest health management activity, the Sec-
15 retary concerned shall provide in the document containing
16 the Secretary's final decision selecting and authorizing
17 such activity pursuant to subsection (a)(2) a statement of
18 whether the removal of live trees is necessary to meet one
19 or more of the objectives set forth in paragraph (1) of
20 this subsection.

21 (5) Each Secretary may undertake forest health man-
22 agement activities not selected and authorized pursuant
23 to subsection (a)(2) in accordance with applicable provi-
24 sions of law other than this Act.

1 (d) PETITION PROCESS.—Any interested person may
2 petition either Secretary to designate a specific area of
3 lands of at least 100 acres in size within the Secretary’s
4 jurisdiction as a forest health emergency or high risk area
5 pursuant to subsection (a)(2). The petition shall contain
6 a reasonably precise description of the boundaries of the
7 area and the reasons why the petitioner believes the condi-
8 tions set forth in subsection (b)(1)(A) or subsection
9 (b)(2)(A) exist in such area. The Secretary to which the
10 petition is submitted shall make a decision within 45 days
11 of the date of submission of the petition whether the des-
12 ignation sought by the petition may be warranted. If the
13 Secretary determines that the designation may be war-
14 ranted, the Secretary shall accept the petition and render
15 a final decision whether to make such designation pursu-
16 ant to subsection (a)(2) within 90 days of the date of sub-
17 mission in the case of a petition to designate a forest
18 health emergency area or 150 days of the date of submis-
19 sion in the case of a petition to designate a forest health
20 high risk area. If the Secretary decides not to accept the
21 petition, the Secretary shall provide promptly to the peti-
22 tioner a written statement of the decision and the reasons
23 therefor.

1 **SEC. 4. EXPEDITED PROCEDURES FOR THE DECISION TO**
2 **DESIGNATE AN AREA AND SELECT AND AU-**
3 **THORIZE ACTIVITIES.**

4 (a) NOTICE.—(1) Each Secretary shall publish in the
5 Federal Register notice of the prospective decision to des-
6 ignate a forest health emergency or high risk area and
7 select and authorize a forest health management activity
8 or activities therefor pursuant to section 3(a)(2).

9 (2) The notice shall—

10 (A) set forth the location of the affected area;

11 (B) describe the forest health conditions in such
12 area;

13 (C) provide the reasons for proposing to des-
14 ignate such area; and

15 (D) contain a detailed description of the forest
16 health management activity or activities which the
17 Secretary proposes to select for such area (and
18 which shall constitute the preferred alternative in
19 any documentation prepared pursuant to section
20 102(2) of the National Environmental Policy Act
21 and subsection (b)(1) of this section).

22 (b) COMPLIANCE WITH CERTAIN LAWS.—(1) Except
23 as provided in paragraph (2), if the decision of a Secretary
24 designating a forest health emergency or high risk area
25 and selecting and authorizing a forest health management
26 activity or activities therefor pursuant to section 3(a)(2)

1 requires documentation pursuant to section 102(2) of the
2 National Environmental Policy Act of 1969 (42 U.S.C.
3 4332(2))—

4 (A) in the case of a forest health emergency
5 area, the document required shall be an environ-
6 mental assessment prepared pursuant to subpara-
7 graph (E) of such section 102(2); or

8 (B) in the case of a forest health high risk area,
9 the Secretary, in his or her discretion, may prepare
10 such an environmental assessment.

11 (2) Each Secretary shall provide by regulation a pol-
12 icy establishing categorical exclusions from the docu-
13 mentation requirements of section 102(2) of the National
14 Environmental Policy Act of 1969 for decisions pursuant
15 to section 3(a)(2) for forest health management activities
16 which remove 250,000 board feet or less of merchantable
17 wood products or salvage 1,000,000 board feet or less of
18 merchantable wood products, which require one mile or
19 less of standard road construction, and which assure re-
20 generation of harvested or salvaged areas, where required.

21 (3) If the decision of a Secretary designating a forest
22 health emergency or high risk area and selecting and au-
23 thorizing a forest health management activity or activities
24 therefor pursuant to section 3(a)(2) requires formal con-
25 sultation pursuant to section 7 of the Endangered Species

1 Act of 1973 (16 U.S.C. 1536), such consultation shall be
2 concluded within 45 days of the publication of the Federal
3 Register notice of the prospective decision pursuant to
4 subsection (a).

5 (c) PUBLIC COMMENT.—The Secretary concerned
6 shall provide a period of 30 days from the date of publica-
7 tion of a Federal Register notice pursuant to subsection
8 (a) for submission of public comment on the prospective
9 decision pursuant to section 3(a)(2). The Secretary may
10 hold a hearing on such decision during such period. The
11 Secretary shall respond in writing to the public comment
12 received during such period in the document containing
13 the Secretary's final decision.

14 (d) ADMINISTRATIVE REVIEW.—(1) Any decision of
15 a Secretary pursuant to section 3(a)(2) which includes
16 designation of a forest health emergency area shall be a
17 final agency action and shall not be subject to administra-
18 tive review.

19 (2) Administrative review of any decision by a Sec-
20 retary pursuant to section 3(a)(2) which includes designa-
21 tion of a forest health risk area shall be governed by appli-
22 cable existing statutory or regulatory administrative ap-
23 peal requirements, including, for Federal lands described
24 in section 2(1)(C), the administrative appeal provisions
25 section 322 of the Fiscal Year 1993 Interior and Related

1 Agencies Appropriation Act (106 Stat. 1419): *Provided*,
2 That no extension of the 30-day period for disposition of
3 the appeal authorized by subsection (d)(3) of such section
4 322 may be granted, and subsection (d)(4) of such section
5 322 shall apply at the conclusion of the 30-day period.

6 (e) JUDICIAL REVIEW.—(1) Any decision by a Sec-
7 retary pursuant to section 3(a)(2) to designate a forest
8 health emergency or high risk area and to select and au-
9 thorize a forest health management activity or activities
10 therefor, or any decision by a Secretary pursuant to sec-
11 tion 3(d) not to accept a petition to designate such an
12 area shall be subject to judicial review only by the United
13 States District Court for the District in which the affected
14 Federal lands are located.

15 (2) Any action brought pursuant to this subsection
16 shall be filed not later than 45 days after the date of publi-
17 cation of the final decision of the Secretary or, for those
18 decisions for which administrative review is available and
19 undertaken, 30 days after the publication of the decision
20 on review.

21 (3) Any appeal from the final decision of a District
22 Court in an action brought pursuant to this subsection
23 shall be filed not later than 30 days after the date of the
24 decision.

1 (4) In an action brought pursuant to this subsection,
2 the District Court shall render a final decision and dis-
3 solve any temporary restraining order or preliminary in-
4 junction not later than 90 days after the date of the filing
5 of the action when the action concerns a forest health
6 emergency area, or 120 days after the date of filing of
7 the action when the action concerns a forest health high
8 risk area.

9 (5) In any appeal brought pursuant to this sub-
10 section, the Court of Appeals shall render a final decision
11 on the appeal and dissolve any injunction pending appeal
12 not later than 90 days after the date of the filing of the
13 appeal when the appeal concerns a forest health emer-
14 gency area, or 120 days after the date of filing of the ap-
15 peal when the appeal concerns a forest health high risk
16 area.

17 **SEC. 5. EXCLUDED LANDS.**

18 Neither Secretary may select, authorize, or undertake
19 any forest health management activity pursuant to section
20 3(a)(2) on any Federal lands located within—

21 (1) any unit of the National Wilderness Preser-
22 vation System;

23 (2) any roadless area designated by the Con-
24 gress for wilderness study;

1 (3) any roadless area recommended by the Bu-
2 reau of Land Management, Fish and Wildlife Serv-
3 ice, or Forest Service for wilderness designation; or

4 (4) any other area in which implementation of
5 the specific forest health management activity for
6 any purpose is expressly prohibited by law or by any
7 applicable land management plan, unless the plan is
8 amended to permit the activity to occur in accord-
9 ance with section 202 of the Federal Land Policy
10 and Management Act of 1976 (43 U.S.C. 1712) or
11 section 6 of the Forest and Rangeland Renewable
12 Resources Planning Act of 1974 (16 U.S.C. 1604).

13 **SEC. 6. ANNUAL FOREST HEALTH REPORT.**

14 (a) REPORT REQUIRED.—The Secretary of the Inte-
15 rior and the Secretary of Agriculture shall prepare jointly
16 an annual Forest Health Report to evaluate forest health
17 on the Federal lands.

18 (b) CONTENT OF REPORT.—Each report required to
19 subsection (a) shall contain—

20 (1) qualitative and quantitative data on forest
21 health on the Federal lands;

22 (2) assessment of the factors generally respon-
23 sible for forest problems;

1 (3) judgment of each Secretary on the status of
2 and trend in forest health of the Federal lands
3 under such Secretary's jurisdiction;

4 (4) maps disclosing the status of forest health
5 on all Federal lands at a scale sufficient to display
6 discrete areas, including areas designated as forest
7 health emergency or high risk areas, in each unit of
8 the Federal lands;

9 (5) identification of the forest health emergency
10 areas and high risk areas designated pursuant to
11 section 3(a)(2) during the previous fiscal year and
12 the reasons for such designations;

13 (6) identification of areas in which adverse for-
14 est health conditions are equal to or more severe
15 than the areas identified in paragraph (5) and a de-
16 tailed discussion of the reasons of the Secretary con-
17 cerned for not designating such areas as forest
18 health emergency or high risk areas pursuant to sec-
19 tion 3(a)(2);

20 (7) discussion of any expenditures or actions,
21 other than any forest health management activities,
22 made or taken by the Bureau of Land Management,
23 Fish and Wildlife Service, or Forest Service in the
24 areas identified in paragraph (6) and a statement of
25 the reasons therefor;

1 (8) a description of the forest health manage-
2 ment activities selected and authorized pursuant to
3 section 3(a)(2) during the previous fiscal year;

4 (9) a description of all forest health activities
5 undertaken in designated forest health emergency or
6 high risk areas in the previous fiscal year;

7 (10) a summary of the estimated impacts, in
8 terms of changed conditions or risks, resulting from
9 each forest health management activity described in
10 paragraph (8);

11 (11) a report on the timeliness, effectiveness
12 and cost of each forest health management activity
13 described in paragraph (8);

14 (12) the total of the acres treated under this
15 Act at the end of the previous fiscal years and a
16 comparison thereof to the total acres planned for,
17 and total acres requiring, forest health management
18 activities both within and outside of designated for-
19 est health emergency or high risk areas;

20 (13) a discussion of any delays encountered in
21 the previous fiscal years and likely in the present fis-
22 cal year in meeting the schedules established pursu-
23 ant to section 3(c)(3), for initiating, accomplishing,
24 and monitoring forest health management activities
25 in designated forest health emergency or high risk

1 areas, the reasons for such delays, and the specific
2 steps which the Secretary concerned has directed to
3 be taken to ensure timely adherence to the estab-
4 lished schedules or any changes in such schedules
5 which the Secretary concerned has made;

6 (14) identification of forest health emergency
7 areas and high risk areas which no longer require
8 forest health management activities pursuant to this
9 Act and from which the Secretaries will remove the
10 emergency area or high risk area designations 60
11 days after submission of the report;

12 (15) an estimate of the funding needs in future
13 years to address fully the forest health conditions
14 disclosed in paragraphs (1) and (3) to ensure that
15 all Federal lands are capable of supporting and sus-
16 taining the uses within the historic range of varia-
17 bility as determined in the applicable land manage-
18 ment plans; and

19 (16) a description of additional authorities, if
20 any, needed to carry out the purposes of this Act.

21 (c) SUBMISSION OF REPORT.—The report required
22 by subsection (a) shall be completed not later than April
23 1 of each year beginning in the first year after the first
24 full fiscal year following the date of enactment of this Act
25 and shall cover conditions and activities during the pre-

1 vious fiscal years. The Secretary of the Interior and the
2 Secretary of Agriculture shall submit the report to Chairs
3 and ranking members of the Senate Energy and Natural
4 Resources and Agriculture, Nutrition, and Forestry and
5 House Resources and Agriculture Committees.

6 **SEC. 7. BUDGET DISCLOSURES.**

7 Beginning with the fiscal budget for the first full fis-
8 cal year following the date of enactment of this Act, re-
9 quests presented by the President to the Congress govern-
10 ing activities of the Bureau of Land Management, Fish
11 and Wildlife Service, or Forest Service shall summarize
12 the current forest health situation as described in the re-
13 port prepared pursuant to section 6, report on costs in-
14 curred and revenues generated through forest health ac-
15 tivities conducted pursuant to this Act, and express in
16 qualitative and quantitative terms the extent to which the
17 projected activities under the budget fully achieve the pur-
18 poses, and implement the provisions, of this Act. The reve-
19 nues generated by forest health activities conducted pursu-
20 ant to this Act shall be displayed as offsetting Federal
21 costs in current and future fiscal years.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated in fiscal
3 years 1996 through 2006 such sums as may be necessary
4 to carry out the provisions of this Act.

○