



Center for Biological Diversity

*Protecting endangered species and wild places through
science, policy, education, and environmental law.*

“Healthy Forests Restoration Act of 2003”

FACT SHEET as of December, 2003

Thursday October 30, the Senate passed HR1904, the "*Healthy Forests Restoration Act*," by a final tally of 80-14 with 6 not voting. President Bush signed the bill into law on Wednesday, December 3, 2003.

The "*Healthy Forests Restoration Act*" is the Bush Administration's push to increase logging and decrease public participation in decisions that affect our national forests. The initiative is based on the false assumption that landscape-wide logging will decrease forest fires. The bill will increase corporate, industrial logging on 20 million acres of our national forests, a stated goal of the administration since day one, prompted in no small part by the lobbying of the timber industry. The timber industry has contributed \$14.1 million to political campaigns, 80 percent of it going to Republicans, according to an analysis by the Center for Responsive Politics. The Bush Administration received \$519,350 from the industry in that period. The timber industry also spent \$23.8 million on lobbying efforts since 2000, according to figures compiled by Political Money Line.

The "*Healthy Forests Restoration Act of 2003*" (HR 1904)

The bill that passed the House-Senate conference in November 2003 grants the timber industry and the Bush Administration the authority to sidestep many environmental laws that protect our national forests. It also does not address the very significant cumulative effects of the legislation together with other elements of the Bush Administration's "*Healthy Forests Initiative*" and related regulatory "rollback" actions (such as National Forest Management Act regulations).

Geographic Scope:

The bill's expedited procedures can be applied to hazardous fuel reduction projects on several categories of federal land, up to a total of 20 million acres. Sec. 102(a) and (c). Probably the biggest catch-all category is any "Federal land on which wind throw or blowdown, ice storm damage, or the existence of disease or insect infestation, poses a significant threat to an ecosystem component, or forest or rangeland resources, on the Federal land or adjacent non-Federal land." Sec. 102(a)(4). While limited to areas posing a "significant" threat, the Forest Service is expert at abusing this sort of discretionary language. It could be used to substantially expand treatments on federal lands, regardless of their proximity to communities or even their fire condition class. Other land categories within the bill's geographic scope include the wildland-urban interface (WUI), which is now expanded to lands within 1½ mile from a community. Roadless areas, municipal water supplies, and endangered species habitat are left unprotected as well. The bill's expedited procedures will extend to federal lands that are considerably farther away from communities. It will also mean that less federal money could be spent on projects in immediate proximity to homes and communities.

Prioritization:

The bill stipulates that at least 50% of the money allocated for hazardous fuel reduction must be spent on federal lands within the wildland-urban interface (WUI). Sec. 103(d)(1)(A). Since fuel reduction activities are likely to be more expensive in the WUI than elsewhere, more acres will actually be treated outside the WUI. For the past two years, about 45% of federal lands treated have been in the WUI, so the bill may result in little if any increased prioritization for community protection. Also, the 50% standard applies at the national scale; Consequently, in most states, **much less** than half the funding could go toward community protection.

Funding:

The bill authorizes \$760 million per year for hazardous fuel reduction projects, including grants to States, local governments and community-based groups, that presumably could be used on non-federal lands. Sec. 108. However, the bill does not provide any guaranteed funding, nor does it require any minimum allocation of funds for projects on non-federal lands.

National Environmental Policy Act (NEPA):

The bill aims to reduce the evaluation of alternatives normally required by the National Environmental Policy Act (NEPA). Rather than evaluating an adequate range of alternatives as mandated by NEPA, the agency will only be required to evaluate their preferred action, a "no action" alternative and, in some circumstances, one "action" alternative to the agency's proposed action. Sec. 104(b). Consideration of an "action" alternative would be allowed only if the alternative was proposed early in the planning process and met the agency's purpose and need for the project. Only the agencies' preferred action would be considered if the project is within the WUI.

The bill includes categorical exclusions from environmental review for logging projects up to 1,000 acres in size for projects intended to combat "forest-damaging insects."

Appeals:

The bill exempts hazardous fuel reduction projects from the normal administrative appeals process. Instead, the Forest Service will establish a "predecisional administrative review process." Sec. 105. In addition, the bill requires any plaintiff in a lawsuit challenging a project to use the administrative review process and attempts to limit the plaintiff's claims to specific written issues raised during the administrative review, unless the court determines that the process is futile or inadequate with respect to a specific plaintiff or claim. Sec. 105(c). For example, people who voice concerns at a public meeting, but do not send in written comments, would be ineligible to participate. This change will make it easier for agency officials to dismiss public objections to hazardous fuel projects.

Judicial Review:

The bill modifies the judicial review process for lawsuits challenging hazardous fuel reduction projects in several ways. First, it limits court venue to the local federal district court. Sec. 106(a). Second, it encourages courts to reach a decision in such cases "as soon as practicable." Sec. 106(b). Third, it sunsets preliminary injunctions after 60 days, unless the courts affirmatively act

to renew them. Sec. 106(c). (These provisions are modeled after the Wyden-Feinstein bill, S. 1352.) In addition, the bill retains a provision requiring judges to consider the long- and short-term effects on the ecosystem of undertaking or not undertaking a project. Sec. 106(c)(3). It drops the requirement for judges to give weight to agency findings on this balance of harms. The justification for these extraordinary changes in the judicial review process is highly questionable, given that only 3% of hazardous fuel reduction projects are challenged in court, according to the General Accounting Office.

Roadless Areas:

The bill does not exempt roadless areas from expedited hazardous fuel reduction projects, nor does it restrict road building in any way.

Old Growth and Large Trees:

The bill requires the Forest Service to "fully maintain, or contribute toward the restoration of, the structure and composition of old growth stands according to the pre-fire suppression old growth conditions characteristic of the forest type.." Sec. 102(e). The bill does not define old growth forests; instead it relies on definitions and standards in agency plans adopted in the past 10 years. In forests covered by older plans, the agency must review the plans within 2 years and amend them to comply with the old growth provisions in the bill regarding maintaining and restoring old growth structure. Regarding large trees, the bill requires the agency to "maximize the retention of large trees, as appropriate for the forest type, to the extent that the trees promote fire-resilient stands.." Sec. 102(f)(2). The bill contains a troubling loophole: the old growth and large tree protection requirements specifically do not apply to projects meant to address significant threats from existing epidemics of disease or insects, or the presence of such an epidemic on immediately adjacent land and the imminent risk it will spread. Sec. 102(a)(4)., blowdown, or ice storm damage. This exception may be open to abuse by federal land managers.

CENTER FOR BIOLOGICAL DIVERSITY PO BOX TUCSON, AZ 85702
520.623.5252 *www.biologicaldiversity.org*