

115TH CONGRESS
1ST SESSION

S. 1731

To address the forest health crisis on National Forest System land, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2017

Mr. THUNE introduced the following bill; which was read twice and referred
to the Committee on Environment and Public Works

A BILL

To address the forest health crisis on National Forest System
land, 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 “Forest Management
5 Improvement Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) CATEGORICAL EXCLUSION.—The term “cat-
9 egorical exclusion” means an exclusion from the re-
10 quirement to prepare an environmental assessment

1 or an environmental impact statement under section
2 102 of the National Environmental Policy Act of
3 1969 (42 U.S.C. 4332) for a category of forest man-
4 agement activities.

5 (2) FOREST MANAGEMENT ACTIVITY.—The
6 term “forest management activity” means a project
7 or activity carried out by the Secretary on National
8 Forest System land.

9 (3) FOREST PLAN.—The term “forest plan”
10 means a land and resource management plan pre-
11 pared by the Forest Service in accordance with sec-
12 tion 6 of the Forest and Rangeland Renewable Re-
13 sources Planning Act of 1974 (16 U.S.C. 1604).

14 (4) NATIONAL FOREST SYSTEM.—The term
15 “National Forest System” has the meaning given
16 the term in section 11(a) of the Forest and Range-
17 land Renewable Resources Planning Act of 1974 (16
18 U.S.C. 1609(a)).

19 (5) SECRETARY.—The term “Secretary” means
20 the Secretary of Agriculture, acting through the
21 Chief of the Forest Service.

22 **SEC. 3. CATEGORICAL EXCLUSIONS.**

23 (a) ESTABLISHMENT OF CATEGORICAL EXCLU-
24 SIONS.—

1 (1) EARLY SERAL HABITAT CREATION.—A cat-
 2 egorical exclusion is available to the Secretary to
 3 conduct a forest management activity the purpose of
 4 which is the creation of an early seral habitat forest.

5 (2) WILDLIFE HABITAT IMPROVEMENT.—A cat-
 6 egorical exclusion is available to the Secretary to
 7 conduct a forest management activity the purpose of
 8 which is the improvement of wildlife habitat.

9 (3) FOREST THINNING.—A categorical exclu-
 10 sion is available to the Secretary to conduct a forest
 11 management activity the purpose of which is com-
 12 mercial thinning of forest stands on suited
 13 timberland, including—

14 (A) the incidental removal of trees for
 15 landings, skid trails, and road clearing; and

16 (B) the construction of a temporary road
 17 that is not longer than 1 mile to carry out that
 18 commercial thinning.

19 (4) SALVAGE OF DEAD AND DYING TREES.—A
 20 categorical exclusion is available to the Secretary to
 21 conduct a forest management activity the purpose of
 22 which is the salvage of trees that are dead, dying,
 23 or both, and were damaged by wind, an ice storm,
 24 fire, or another event, including—

1 (A) the incidental removal of trees for
2 landings, skid trails, and road clearing; and

3 (B) the construction of a temporary road
4 that is not longer than 1 mile to carry out that
5 salvage of trees.

6 (b) ACREAGE LIMITATIONS.—Forest management
7 activities using the categorical exclusions under each of
8 paragraphs (1) through (4) of subsection (a) may be con-
9 ducted on not more than 10,000 acres of National Forest
10 System land for each categorical exclusion.

11 (c) EXTRAORDINARY CIRCUMSTANCES.—The Sec-
12 retary may apply the extraordinary circumstances proce-
13 dures under section 220.6 of title 36, Code of Federal
14 Regulations (or successor regulations), in determining
15 whether to use a categorical exclusion under subsection
16 (a).

17 (d) CONSISTENCY.—In carrying out forest manage-
18 ment activities using the categorical exclusions under sub-
19 section (a), the Secretary shall ensure that the forest man-
20 agement activities are consistent with the applicable forest
21 plans.

22 (e) CUMULATIVE IMPACTS.—The Secretary shall not
23 be required to conduct a cumulative impact analysis in an
24 environmental document prepared under the National En-
25 vironmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

1 for a forest management activity carried out using a cat-
 2 egorical exclusion made available to the Secretary under
 3 subsection (a) or any other provision of law (including reg-
 4 ulations).

5 (f) EXPANSION OF CATEGORICAL EXCLUSION FOR
 6 INSECT AND DISEASE INFESTATION.—

7 (1) PERMANENT AUTHORITY.—Section 602(f)
 8 of the Healthy Forests Restoration Act of 2003 (16
 9 U.S.C. 6591a(f)) is amended by striking “each of
 10 fiscal years 2014 through 2024.” and inserting
 11 “each fiscal year.”.

12 (2) ADMINISTRATIVE REVIEW.—Section 603 of
 13 the Healthy Forests Restoration Act of 2003 (16
 14 U.S.C. 6591b) is amended—

15 (A) in subsection (a), in the matter pre-
 16 ceding paragraph (1), by striking “described in
 17 subsection (b)”;

18 (B) by striking subsection (b);

19 (C) by redesignating subsections (c)
 20 through (g) as subsections (b) through (f), re-
 21 spectively; and

22 (D) in subsection (b) (as so redesign-
 23 ated)—

24 (i) in paragraph (1), by striking
 25 “3000” and inserting “10,000”; and

1 (ii) in paragraph (2), by striking
 2 “shall be” in the matter preceding sub-
 3 paragraph (A) and all that follows through
 4 the period at the end of subparagraph (B)
 5 and inserting “may be carried out in any
 6 area designated under section 602(b), in-
 7 cluding areas in Fire Regime Groups IV
 8 and V.”.

9 **SEC. 4. EXPEDITED ENVIRONMENTAL REVIEW.**

10 (a) ENVIRONMENTAL IMPACT STATEMENTS.—In an
 11 environmental impact statement prepared pursuant to sec-
 12 tion 102(2) of the National Environmental Policy Act of
 13 1969 (42 U.S.C. 4332(2)) for a forest management activ-
 14 ity, the Secretary shall be required to study, develop, and
 15 describe only the following 2 alternatives:

- 16 (1) The forest management activity.
- 17 (2) The alternative of no action.

18 (b) ENVIRONMENTAL ASSESSMENTS.—In an environ-
 19 mental assessment prepared pursuant to section 102(2)
 20 of the National Environmental Policy Act of 1969 (42
 21 U.S.C. 4332(2)) for a forest management activity, the
 22 Secretary shall not be required to study, develop, and de-
 23 scribe the alternative of no action.

1 **SEC. 5. GOOD NEIGHBOR AUTHORITY.**

2 (a) IN GENERAL.—Section 8206(a)(3)(B)(i) of the
3 Agricultural Act of 2014 (16 U.S.C. 2113a(a)(3)(B)(i))
4 is amended by striking “or permanent”.

5 (b) REPEAL.—Section 331 of the Department of the
6 Interior and Related Agencies Appropriations Act, 2001
7 (16 U.S.C. 1011 note) is repealed.

8 **SEC. 6. STEWARDSHIP END RESULT CONTRACTING**
9 **PROJECTS.**

10 Section 604 of the Healthy Forests Restoration Act
11 of 2003 (16 U.S.C. 6591c) is amended—

12 (1) in subsection (c), by adding at the end the
13 following:

14 “(8) Retention of existing wood products infra-
15 structure.”;

16 (2) in subsection (d)(1), by inserting “, or low-
17 est-cost-technically-acceptable,” after “best-value”;
18 and

19 (3) in subsection (e)(2)(A), by inserting “, sub-
20 ject to the condition that 25 percent of the gross re-
21 ceipts shall be disbursed to the county in which the
22 project site is located” before “; and”.

23 **SEC. 7. LITIGATION RELIEF.**

24 Section 106 of the Healthy Forests Restoration Act
25 of 2003 (16 U.S.C. 6516) is amended—

1 (1) by redesignating subsections (a) through (c)
 2 as subsections (b) through (d), respectively;

3 (2) by inserting before subsection (b) (as so re-
 4 designated) the following:

5 “(a) DEFINITION OF COVERED PROJECT.—In this
 6 section, the term ‘covered project’ means—

7 “(1) with respect to a project on land of the
 8 National Forest System described in section 3(1)(A),
 9 any vegetation management project carried out by
 10 the Secretary of Agriculture, except on land on
 11 which vegetation management is prohibited by law
 12 or the applicable land and resource management
 13 plan described in section 101(13)(A); and

14 “(2) with respect to public lands described in
 15 section 3(1)(B), an authorized hazardous fuels re-
 16 duction project conducted under this title.”;

17 (3) in subsection (b) (as so redesignated)—

18 (A) by striking “an authorized hazardous
 19 fuels reduction project conducted under this
 20 title” and inserting “a covered project”; and

21 (B) by striking “the authorized hazardous
 22 fuels reduction project” and inserting “the cov-
 23 ered project”;

(4) in subsection (c) (as so redesignated), by striking “subsection (a)” and inserting “subsection (b)”;

(5) in subsection (d) (as so redesignated)—

(A) in paragraph (1), by striking “an authorized hazardous fuel reduction project carried out under this title” and inserting “a covered project”;

(B) in paragraph (2)(B), by striking “authorized hazardous fuel reduction project” and inserting “covered project”; and

(C) in paragraph (3), in the matter preceding subparagraph (A), by striking “an authorized hazardous fuel reduction project” and inserting “a covered project”; and

(6) by adding at the end the following:

“(e) FOREST SERVICE PILOT ARBITRATION PROGRAM.—

“(1) ESTABLISHMENT.—

“(A) IN GENERAL.—The Secretary of Agriculture (referred to in this subsection as the ‘Secretary’) shall establish within the Forest Service a pilot arbitration program (referred to in this subsection as the ‘program’) to designate any of the projects described in para-

graph (2) for an alternative dispute resolution procedure to replace judicial review of the projects.

“(B) DESIGNATION PROCESS AND ARBITRATION PROCEDURE.—The Secretary shall—

“(i) establish a process for the designation of projects and an alternative dispute resolution procedure for the program in accordance with this subsection; and

“(ii) publish in the Federal Register the process and procedure described in clause (i).

“(2) DESCRIPTION OF PROJECTS.—The Secretary may designate for the program projects for—

“(A) vegetation management;

“(B) forest thinning;

“(C) hazardous fuels reduction; and

“(D) any other project, as determined by the Secretary.

“(f) COSTS AND FEES.—

“(1) IN GENERAL.—In awarding fees or other expenses under section 2412 of title 28, United States Code, for a civil action relating to a covered project, the court shall—

1 “(A) restrict the award to reasonable hour-
2 ly reimbursements; and

3 “(B) ensure that the award is not granted
4 to—

5 “(i) a party other than a prevailing
6 party; or

7 “(ii) a person that has substantial fi-
8 nancial resources.

9 “(2) REGULATIONS.—The Secretary shall pro-
10 mulgate regulations for what constitutes—

11 “(A) reasonable hourly reimbursements
12 under paragraph (1)(A); and

13 “(B) substantial financial resources under
14 paragraph (1)(B)(ii).”.

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