NLWJC- Kagan

Counsel - Box 010 - Folder 002

Timber- Legislative Materials [2]

Elena –

New version
w/ your
latest changes,

Chris

Subtitle F—Timber Contract Replacement, Modification, Suspension, or Termination

Sec. 8501. AMENDMENTS TO THE RESCISSIONS ACT

(a) FINDING.—The Congress finds and declares that it is in the national interest to ensure that valuable natural resources in Oregon and Washington are protected to prevent environmental injury to forest resources, chinook salmon and other wildlife, and rivers and streams, and jeopardy to the livelihoods of those who depend on commercial and sport fisheries and other natural resources; and that the Secretaries of Agriculture and the Interior will use the authority provided in this section with discretion, and in conjunction with a continuation of agency efforts to reach mutually agreeable accommodations with timber purchasers to protect these resources.

(b) PURPOSES.—The purposes of these amendments are to—

(i) clarify the intent of Congress with regard to certain provisions of section 2001 of the Rescissions Act,

(ii) protect the Secretaries' authority to implement the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl, and

(iii) provide the Secretaries concerned with additional authority to replace, modify, suspend or terminate certain timber contracts.

(c) DEFINITION.—As used in this section, "Rescissions Act" means the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy that occurred at Oklahoma City, and Rescissions Act, 1995 (Pub. Law No. 104-19).

(d) AWARD AND RELEASE OF TIMBER SALE CONTRACTS SUBJECT TO SECTION 318 OF PUBLIC LAW 101-121.—Subsection 2001(k) of the Rescissions Act is amended—

(1) in paragraph (1) by striking "offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318" and inserting ", suspended as of July 27, 1995, that were offered or awarded in fiscal year 1990 under the authority of, and in compliance with, section 318(b)";

(2) in paragraph (2) by striking "be nesting within the acreage that is the subject of the sale unit." and inserting "occupy for nesting or breeding purposes the sale unit or a stand overlapping the sale unit. The Secretary concerned shall make this determination of occupancy for nesting or breeding purposes in accordance with scientifically recognized principles, such as the Pacific Seabird Group protocol.";

(3) in paragraph (3)—

(A) by striking "If for any reason a sale cannot be released and completed under the terms of this subsection" and inserting "If a sale unit cannot be released and completed under paragraph (2) of this subsection"; and

(B) by inserting ", or shall provide the purchaser appropriate compensation in accordance with paragraph (4) of this subsection" after "quantities"; and

(4) by adding after paragraph (3) the following new paragraph:

"(4) REPLACEMENT, MODIFICATION, SUSPENSION, OR TERMINATION OF TIMBER SALE CONTRACTS.

"(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), the Federal Land Management Policy Act (43 U.S.C. 1701 et seq.), the Oregon & California Lands Act (43 U.S.C. 1181a et seq.) or other law applicable to the award, release, completion, replacement, modification, suspension, or termination of timber sale contracts, the Secretary concerned may replace, modify, suspend, or terminate any timber sale contract affected by or released pursuant to this subsection, as initially enacted or as amended, when the Secretary concerned, in his

discretion, finds that such replacement, modification, suspension, or termination is authorized pursuant to originally advertised terms of the contract or that release or completion of the contract may have an adverse effect on the environment or natural resources. Any replacement, modification, suspension, or termination shall be effective immediately upon issuance of the Secretary's finding.

"(B) The Secretary concerned may expend, without further appropriation action, from sums otherwise available in the Treasury, up to $50 million in compensation to contract holders for changes made pursuant to the authority provided in subparagraph (A) of this paragraph.

"(C) All claims by a contractor against the government relating to a contract replaced, modified, suspended, or terminated pursuant to subparagraph (A) are subject to the Contract Disputes Act."

(e) OPTION 9 TIMBER SALES.—Subsection 2001(d) is amended—

(1) by amending the subsection heading to read as follows—

"OPTION 9 TIMBER SALES."; and

(2) in the first sentence by—

(A) striking "on Federal lands described" and inserting "allowed under and consistent with the standards and guidelines specified"; and

(B) inserting ", or as may be amended" after "1994".

(f) EFFECT ON PLANS, POLICIES, AND ACTIVITIES.—Section 2001(l) is amended in the first sentence by—

(1) striking "or permit"; and

(2) striking ", except" and all that follows through "program".

104TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr Kerry, Mr. Baucus, Mr. Bumpers, and Mrs. Feinstein

Mrs. MURRAY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To repeal the emergency salvage timber sale program, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Participation in Timber Salvage Act of 1996".

SEC. 2. FINDINGS.

Congress finds that—

(1) when events such as forest fire, wind storms, or epidemic insect infestations occur, the Forest Service and the Bureau of Land Management should have available the tools necessary to harvest

1 timber expeditiously in order to get a high commod-
2 ity value from dead or dying trees;
3 (2) improving the health of our forests is a na-
4 tional priority that should be addressed through
5 comprehensive analysis and public involvement, and
6 should focus not only on the health of trees, but on
7 the health of the entire forest, including watersheds,
8 soils, fisheries, and wildlife; and
9 (3) timber sales, including salvage timber sales,
10 should be conducted in accordance with all applica-
11 ble laws in order to ensure the sustainability of the
12 components and functions of the forests.

13 TITLE I—REPEAL OF EMER-
14 GENCY SALVAGE TIMBER
15 SALE PROGRAM

16 **SEC. 101. REPEAL OF EMERGENCY SALVAGE TIMBER SALE**
17 **PROGRAM.**

18 Section 2001 of Public Law 104–19 (109 Stat. 240;
19 16 U.S.C. 1611 note) is repealed.

20 **SEC. 102. EXISTING TIMBER SALE CONTRACTS.**

21 (a) SUSPENSION.—Notwithstanding any outstanding
22 judicial order or administrative proceeding interpreting
23 subsection (k) of section 2001 of Public Law 104–19 (109
24 Stat. 240; 16 U.S.C. 1611 note) (as in existence prior to
25 the date of enactment of this Act), the Secretary of Agri-

1 culture and the Secretary of the Interior shall suspend
2 each timber sale or activity that was being undertaken in
3 whole or in part under the authority provided in the sub-
4 section.

5 (b) REPLACEMENT OR TERMINATION OF TIMBER
6 SALE CONTRACTS.—

7 (1) IN GENERAL.—Notwithstanding any other
8 provision of law, the Secretary concerned shall nego-
9 tiate with a purchaser of timber offered, awarded, or
10 released pursuant to section 318 of Public Law 101–
11 121 (103 Stat. 745) or section 2001(k) of Public
12 Law 104–19 (109 Stat. 246; 16 U.S.C. 1611 note)
13 (as in existence prior to the date of enactment of
14 this Act) to provide, within 1 year of the date of en-
15 actment of this Act, a volume, value, and kind of al-
16 ternative timber as a replacement for the remaining
17 timber under contract.

18 (2) ENVIRONMENTAL AND NATURAL RESOURCE
19 LAWS.—Replacement timber provided under para-
20 graph (1) shall comply with—

21 (A) any applicable environmental or natu-
22 ral resource law;

23 (B) any forest plan in existence on the
24 date of enactment of this Act, including the
25 Northwest Forest Plan and any plan developed

1 under the Interior Columbia Basin Ecosystem
2 Management Project; and
3 (C) any relevant standard or guideline, in-
4 cluding PACFISH, INFISH, and Eastside
5 screens.
6 (3) TERMINATION.—If the Government and the
7 purchaser do not reach agreement under paragraph
8 (1), the Secretary concerned may—
9 (A) exercise any provision of the original
10 contract that authorizes termination and pay-
11 ment of specified damages; or
12 (B) terminate the contract to avoid adverse
13 effects on the environment or natural resources.
14 (c) PAYMENT FOR TIMBER SALE CONTRACTS RELIN-
15 QUISHED.—Any claim, whether as a result of a judgment
16 or an agreement, against the Federal Government arising
17 from a timber sale contract offered under section 318 of
18 Public Law 101–121 (103 Stat. 745), from section
19 2001(k) of Public Law 104–19 (109 Stat. 246; 16 U.S.C.
20 1611 note) (as in existence prior to the date of enactment
21 of this Act), from this Act, or from the exercise of the
22 Secretary's right under a timber sale contract to terminate
23 the contract may be—
24 (1) paid from funds made available under sec-
25 tion 1304 of title 31, United States Code, and shall

1 not require reimbursement under section 13(c) of
2 the Contract Disputes Act of 1978 (41 U.S.C.
3 612(c));
4 (2) paid through a certificate of bidding rights
5 credits to be used by the purchaser (or a successor
6 or assign of the purchaser) for future timber sales;
7 (3) offset by forgiveness of a Federal Govern-
8 ment loan or loan guarantee; or
9 (4) paid through funds appropriated for the
10 purpose.
11 (d) NEGOTIATIONS BETWEEN THE SECRETARY CON-
12 CERNED AND THE PURCHASER.—The Secretary con-
13 cerned and the timber sale purchaser may use any com-
14 bination of methods provided in subsections (b), (c), and
15 (d) or other authorized means to dispose of a timber sale
16 contract under this section.
17 (e) DISPUTES.—Any claim by a purchaser against
18 the Federal Government relating to a contract replaced,
19 modified, suspended, or terminated under this section
20 shall be subject to the Contract Disputes Act of 1978 (41
21 U.S.C. 601 et seq.).
22 **SEC. 103. SALES INITIATED UNDER EXISTING LAW.**
23 (a) IN GENERAL.—A sale initiated but not awarded
24 to a purchaser by the Forest Service or the Bureau of
25 Land Management under subsection (b) or (d) of section

2001 of Public Law 104–19 (109 Stat. 240; 16 U.S.C. 1611 note) (as in existence prior to the date of enactment of this Act) as of March 5, 1996, shall be subject to title III of this Act and all environmental and natural resource laws.

(b) SALES AWARDED TO PURCHASERS.—

(1) IN GENERAL.—A timber sale contract that has been awarded to a purchaser under subsection (b) or (d) of section 2001 of Public Law 104–19 (109 Stat. 240; 16 U.S.C. 1611 note) (as in existence prior to the date of enactment of this Act) shall, notwithstanding the commencement of contract performance, be subject to—

(A) in the case of Forest Service sales, administrative appeal in accordance with section 322 of the Department of the Interior and Related Agencies Appropriations Act, 1993 (106 Stat. 1419; 16 U.S.C. 1612 note);

B) in the case of Bureau of Land Management sales, protests filed in accordance with 43 C.F.R. section 5003.3; and

(C) ~~(B)~~ judicial review.

(2) HARVEST ACTIVITIES.—On the filing of an appeal or a protest under paragraph (1), all harvest activities shall be suspended.

(3) REQUIREMENTS.—Section 2001 of Public Law 104–19 (109 Stat. 240; 16 U.S.C. 1611 note) (as in existence prior to the date of enactment of

this Act) shall apply to any claim under paragraph (1) related to compliance with any expedited procedural requirement. Any other claim shall be subject to applicable law.

TITLE II—NORTHWEST FOREST PLAN

SEC. 201. NORTHWEST FOREST PLAN.

(a) DIRECTION TO COMPLETE TIMBER SALES.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management, and the Secretary of Agriculture, acting through the Chief of the Forest Service, shall expeditiously prepare, offer, and award timber sale contracts consistent with the Northwest Forest Plan.

(b) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—The Secretary of Agriculture and the Secretary of the Interior shall, to the maximum extent practicable, make funds available for qualified personnel, such as biologists, hydrologists, and geologists, to complete any watershed assessment or other analyses required for the preparation, advertisement, and award of timber sale contracts in order to meet the probable sale quantities and other goals of the Northwest Forest Plan.

(2) SOURCE.—If there are no other unobligated funds appropriated to the Secretary of Agriculture

or the Secretary of the Interior that may be made available as required by paragraph (1), the Secretary concerned shall make funds available from amounts that are available for the purpose of constructing forest roads or from use of any permanent funds in the regions to which the Northwest Forest Plan applies.

(c) SAVINGS PROVISION.—Nothing in this title affects the legal duties of Federal agencies with respect to the planning and offering of timber sales, including salvage timber sales under this Act.

TITLE III—LAWFUL EXPEDITING OF SALVAGE TIMBER SALES

SEC. 301. DEFINITIONS.

In this title:

(1) DISLOCATED RESOURCE WORKER.—The term "dislocated resource worker" means a resource worker who—

(A) has been terminated or received notice of termination from employment and is unlikely to return to employment in the forest products industry, including employment in the harvest or management of logs, transportation of logs or wood products, processing of wood products (including pulp), or the manufacturing and dis-

1 tribution of wood processing or logging equip-
2 ment because of diminishing demand for the
3 worker's skills;
4 (B) has been terminated or received notice
5 of termination from employment as a result of
6 salmon harvest reductions, including a worker
7 employed in the commercial and recreational
8 harvesting of salmon or the buying and process-
9 ing of salmon; or
10 (C) is self-employed and has been displaced
11 from the worker's business in the forest prod-
12 ucts or fishing industry because of diminishing
13 demand for the business's services or goods.
14 (2) LEVEL 1 INTERAGENCY FIELD TEAM.—The
15 term "level 1 interagency field team" means a perti-
16 nent combination of biologists from the Forest Serv-
17 ice, the Bureau of Land Management, the United
18 States Fish and Wildlife Service, and the National
19 Marine Fisheries Service with experience and exper-
20 tise to make biological determinations and bring con-
21 sultation under the Endangered Species Act of 1973
22 (16 U.S.C. 1531 et seq.) to conclusion at a field
23 level.
24 (3) LEVEL 2 INTERAGENCY FIELD TEAM.—The
25 term "level 2 interagency field team" means a perti-

1 nent combination of forest supervisors from the For-
2 est Service, district managers from the Bureau of
3 Land Management, and personnel from the United
4 States Fish and Wildlife Service and the National
5 Marine Fisheries Service with decisionmaking au-
6 thority under the Endangered Species Act of 1973
7 (16 U.S.C. 1531 et seq.).
8 (4) SALVAGE TIMBER SALE.—The term "sal-
9 vage timber sale" means a timber sale—
10 (A) in which each unit is designed to re-
11 move trees that are dead from any cause (ex-
12 cept arson found to have been committed to
13 produce timber sales), or that have been deter-
14 mined by reliable scientific methods to have a
15 high probability of dying within 1 year as a re-
16 sult of insect-related, blowdown, or fire damage;
17 and
18 (B) that includes a small percentage of
19 other trees to the extent necessary to secure
20 human safety or provide for commercially rea-
21 sonable and environmentally sound access to
22 and removal of dead or dying trees described in
23 subparagraph (A).

1 **SEC. 302. SALVAGE TIMBER SALES SCOPE AND FACILITA-**
2 **TION.**

3 The Secretary of Agriculture, acting through the
4 Chief of the Forest Service, and the Secretary of the Inte-
5 rior, acting through the Director of the Bureau of Land
6 Management, shall—

7 (1) offer salvage timber sales under this Act
8 only on Forest Service and Bureau of Land Manage-
9 ment land utilizing existing and generally operable
10 roads (except that spur roads of less than .25 mile
11 may be constructed or reconstructed to permit ac-
12 cess to individual timber sale units) located out-
13 side—

14 (A) any unit of the National Wilderness
15 Preservation System or any study area officially
16 recommended for consideration as wilderness;
17 or

18 (B) any roadless area in which forest and
19 land management resource plans preclude tim-
20 ber sale or roads;

21 (C) any area in which a salvage timber
22 sale would be inconsistent with agency stand-
23 ards and guidelines applicable to areas admini-
24 stratively identified as late successional or ripar-
25 ian or withdrawn from timber harvest for other
26 conservation purposes; and

1 (D) any area withdrawn by Federal law for
2 any conservation purpose;
3 (2) expeditiously prepare, offer, and award tim-
4 ber salvage sales described in paragraph (1);
5 (3) enter basic forest inventory, including data
6 on vegetation, soils, riparian systems, fisheries, wild-
7 life habitat, and other relevant information into the
8 Geographical Information System or other resource
9 mapping system and make the inventory data easily
10 available to incorporate into individual projects;
11 (4) notwithstanding section 6(d)(4) of the Of-
12 fice of Federal Procurement Policy Act (41 U.S.C.
13 405(d)(4)), permit forest and district offices to pro-
14 cure computer software using available funds to fa-
15 cilitate resource inventory;
16 (5) if helpful in expediting salvage sales, alter
17 the agency tree marking and designating require-
18 ments by writing into timber sale contracts—
19 (A) readily determinable characteristics to
20 guide the contractor in selecting trees to har-
21 vest; and
22 (B) fines and penalties, including debar-
23 ment, to enforce subparagraph (A),
24 except that this paragraph shall not alter agency
25 marking or designating requirements for trees to re-

1 main uncut for wildlife, riparian, or other conserva-
2 tion measures;
3 (6) perform timely revegetation and slash re-
4 moval operations consistent with applicable laws,
5 regulations, and silvacultural practice; and
6 (7) undertake watershed and other restoration
7 activities, including road decommissioning, in or near
8 the salvage timber sale by first offering the work to
9 dislocated resource workers or individuals certified
10 by an appropriate resource management apprentice-
11 ship program and ensure work is performed accord-
12 ing to requirements of the Service Contract Act of
13 1965 (41 U.S.C. 351 et seq.).

14 **SEC. 303. SALVAGE TIMBER SALE DOCUMENTATION AND**
15 **APPEAL PROCEDURES.**

16 (a) PREPARATION OF DOCUMENTS.—In conducting a
17 salvage timber sale under this title—
18 (1) to speed compliance with the Endangered
19 Species Act of 1973 (16 U.S.C. 1531 et seq.), agen-
20 cies shall, to the maximum extent practicable—
21 (A) complete informal consultation not
22 later than 30 days and formal consultation not
23 later than 60 days after submission of a biologi-
24 cal assessment using a level 1 interagency field
25 team and a level 2 interagency field team;

1 (B) establish a key contact person in each
2 regional office of the Forest Service, the Bu-
3 reau of Land Management, the Fish and Wild-
4 life Service, and the National Marine Fisheries
5 Service to facilitate issue resolution; and
6 (C) establish regional and national inter-
7 agency dispute resolution teams; and
8 (2) in the case of the Forest Service and the
9 Bureau of Land Management, prior to publishing a
10 notice of a proposed action under section 215.5 of
11 title 36, Code of Federal Regulations, on a proposed
12 timber salvage sale, facilitate public participation in
13 the sale planning and preparation by providing prop-
14 er notice and allowing any member of the public to
15 attend not less than 1 interdisciplinary team meet-
16 ing, not less than 1 of which will be held during
17 evening hours.
18 (b) ADVISORY COMMITTEES.—
19 (1) IN GENERAL.—The Forest Service and Bu-
20 reau of Land Management may form 1 or more
21 committees to advise agencies on proposed salvage
22 timber sales if each committee will facilitate public
23 involvement in decisionmaking.
24 (2) FEDERAL ADVISORY COMMITTEE ACT.—The
25 Federal Advisory Committee Act (5 U.S.C. App.)

1 shall not apply to a committee formed under para-
2 graph (1).
3 (3) NOTICE.—The Secretary concerned shall
4 provide notification to the public of any meeting of
5 a committee formed under paragraph (1) at least 10
6 days prior to the meeting and the meeting shall be
7 open to the public, unless the Secretary concerned
8 determines that all or a portion of the meeting will
9 be closed in accordance with section 552b(c) of title
10 5, United States Code.
11 (c) EXPEDITING ADMINISTRATIVE APPEALS.—
12 (1) IN GENERAL.—Subject to paragraph (2),
13 administrative review of a decision of the Forest
14 Service or the Bureau of Land Management under
15 this title shall be conducted—
16 (A) in the case of the Forest Service, in
17 accordance with section 322 of the Department
18 of the Interior and Related Agencies Appropria-
19 tions Act, 1993 (106 Stat. 1419; 16 U.S.C.
20 1612 note); and
21 (B) in the case of the Bureau of Land
22 Management, after the Secretary approves the
23 sales.
24 (2) EXCEPTIONS.—

1 (A) APPEAL.—An appeal of a decision
2 must be filed not later than the later of—
3 (i) 30 days after the publication of a
4 decision document for a salvage timber
5 sale; or
6 (ii) mailing of notice to interested par-
7 ties, in keeping with relevant agency regu-
8 lations.
9 (B) FINAL DECISION.—The agency con-
10 cerned shall issue a final decision not later than
11 30 days after the deadline for an administrative
12 appeal has ~~failed~~ tolled and may not extend the clos-
13 ing date for a final decision.
14 (d) EXPEDITING JUDICIAL REVIEW.—
15 (1) TIME FOR CHALLENGE.—Absent good
16 cause, any challenge to a salvage timber sale under
17 this title shall be brought as a civil action in a Unit-
18 ed States district court not later than 30 days after
19 the date on which an agency provides notice of a
20 final decision regarding a salvage timber sale.
21 (2) TIME FOR APPEAL.—Any appeal of a dis-
22 trict court decision on a salvage timber sale under
23 this Act shall be brought not later than 30 days
24 after the first date on which the appeal may first be
25 filed.

1 (3) EXPEDITIOUS CONSIDERATION.—
2 (A) IN GENERAL.—The district and appel-
3 late courts shall, to the extent practicable, expe-
4 dite proceedings in a civil action under this sub-
5 section.
6 (B) PROCEDURES.—To expedite proceed-
7 ings under this subsection, a court may shorten
8 the time allowed for the filing of papers or for
9 other procedures that would otherwise apply.
10 **SEC. 304. FUNDING TO IMPLEMENT THIS TITLE.**
11 (a) IN GENERAL.—To facilitate implementation of
12 section 302, a Forest Service regional office or a Bureau
13 of Land Management district may transfer funds among
14 the following accounts in the agency budget of the office
15 or district without making reprogramming requests to
16 Congress:
17 (1) Timber salvage fund.
18 (2) Road construction and maintenance ac-
19 counts.
20 (3) Timber sale preparation accounts.
21 (b) NOTICE.—An office or district that transfers
22 funds under subsection (a) shall provide notice to Con-
23 gress not later than 60 days after the transfer.

1 **SEC. 305. EXPEDITED PROCEDURAL REGULATIONS.**

2 (a) IN GENERAL.—Not later than 1 year after the
3 date of enactment of this Act, the Secretary concerned,
4 in consultation with the Council on Environmental Qual-
5 ity, shall develop regulations to expedite full compliance
6 with the National Environmental Policy Act of 1969 (42
7 U.S.C. 4321 et seq.) and any other appropriate environ-
8 mental laws for a decision regarding a proposed salvage
9 timber sale authorized under this Act.

10 (b) TIME LIMIT.—The Secretary and the Council on
11 Environmental Quality shall, to the extent practicable—

12 (1) limit the time necessary for public participa-
13 tion and agency analysis for a proposed action re-
14 garding a salvage timber sale authorized under this
15 Act to 120 days; and

16 (2) establish safeguards to provide flexibility on
17 the limitation referred to in paragraph (1) to provide
18 for full compliance with the National Environmental
19 Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any
20 other appropriate environmental law.

21 **SEC. 306. PILOT PROGRAM TO SELL HARVEST CONTRACTS**
22 **FOR FOREST SERVICES.**

23 (a) IN GENERAL.—The Secretary of the Interior, act-
24 ing through the Bureau of Land Management, and the
25 Secretary of Agriculture, acting through the Forest Serv-
26 ice, shall implement a program to demonstrate the fea-

1 sibility of harvest contracts for salvage timber sales and
2 associated forest activities.
3 (b) AREAS.—
4 (1) INTERIOR.—The Secretary of the Interior
5 shall establish up to 5 pilot projects per Bureau of
6 Land Management district to carry out this section.
7 (2) AGRICULTURE.—The Secretary of Agri-
8 culture shall establish up to 5 pilot projects per For-
9 est Service region to carry out this section.
10 (c) PROCESS.—To carry out this section, the Sec-
11 retary concerned shall establish a process to—
12 (1) offer 1 or more contracts to a bidder to
13 carry out forest rehabilitation and stewardship ac-
14 tivities, including salvage timber sales and to collect
15 and sort any wood harvested; and
16 (2) have the agency concerned sell, or contract
17 with a private enterprise different than the contrac-
18 tor in paragraph (1) to sell, the harvested wood.

19 TITLE IV—TIMBER STAND
20 HEALTH PRIORITIZATION

21 **SEC. 401. REVIEW OF TIMBER STAND HEALTH.**
22 The Secretary of the Interior and the Secretary of
23 Agriculture, respectively, shall review the health of timber
24 stands on Bureau of Land Management and Forest Serv-
25 ice lands and shall each—

1 (1) identify, not later than March 1 of each
2 year, the timber stands on Bureau of Land Manage-
3 ment or Forest Service lands, as applicable, that are
4 not in a healthy condition; and
5 (2) prepare a document to prioritize areas that
6 would benefit from rehabilitation activities to restore
7 timber stands to a healthy condition.

8 **SEC. 402. REHABILITATION PRIORITIZATION.**

9 To determine which areas of land should receive the
10 first attention, each resource area or ranger district shall
11 consider where intervention or treatment—
12 (1) has the best opportunity to restore health to
13 affected timber stands;
14 (2) has the greatest potential to reduce the risk
15 of wildfires, especially where human safety and pri-
16 vate property are threatened; and
17 (3) is the least controversial, such as on lands
18 located outside of wilderness, unroaded areas, ripar-
19 ian areas, late successional reserves, or other sen-
20 sitive areas.

21 **SEC. 403. FOREST TIMBER STAND HEALTH REPORT.**

22 (a) IN GENERAL.—The Secretary of the Interior and
23 the Secretary of Agriculture shall prepare an annual re-
24 port (which shall be known as the Forest Timber Stand
25 Health Report) to evaluate the overall health of the forest

1 timber stands on Bureau of Land Management and Forest
2 Service lands, respectively.
3 (b) REQUIRED INFORMATION.—The Forest Timber
4 Stand Health Report shall contain—
5 (1) quantitative and qualitative data on the
6 health of timber stands concerned; and
7 (2) a review of the actions taken to attempt to
8 improve the health of the timber stands.
9 **SEC. 404. AUTHORIZATION FOR FUNDING.**
10 There are authorized to be appropriated such funds
11 as are necessary to carry out this title.

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Mar-1996 09:19am

TO: (See Below)

FROM: Christine L. Nolin
Office of Mgmt and Budget, NRD

SUBJECT: Additional Comments on Murray Bill priorities

This morning I have received two additional comments:

Interior would support moving to the high priority list the change in Sec. 102(b) and (c) to include the ability to modify and suspend contracts (and perhaps some other alternatives) in addition to terminating them.

NOAA is fine with the policy priorities.

Distribution:

TO: T J Glauthier
TO: Ron Cogswell
TO: Dinah Bear
TO: Mark A. Weatherly

CC: Alison C. Perkins
CC: Janet W. Minkler
CC: Ruth D. Saunders

E X E C U T I V E O F F I C E O F T H E P R E S I D E

07-Mar-1996 06:54pm

TO: (See Below)

FROM: Christine L. Nolin
Office of Mgmt and Budget, NRD

SUBJECT: Murray Amendment Comments

Responses from Agencies on Consolidated Comments

These comments are only on the following items, which were regarded as the high priority issues:

High Priority

1 - Clarify section 102(a) to resolve the geographic scope issue. Also, as written it may suspend Forest Plan sales, which would not be desirable.

2 - Section 102(b)(1): Replacement timber should be provided within three years instead of one.

3 - Section 103(b)(1): Eliminate ability to appeal salvage sales that have already been awarded. (Question: do we also want to exclude Forest Plan sales from this appeal ability?) Section 103(b)(3) may attempt a distinction between procedural compliance and substantive compliance with environmental laws and will be litigated.

4 - Section 302: Need to clarify that the Secretaries retain authority to conduct salvage under existing law.

Comments from DOJ:

DOJ has two comments, based on a telephone conversation Ted Boling and Dinah Bear had this afternoon with Sen. Murray's staff. The comments reflect changes they believe are necessary in light of that conversation.

On bullet # 2, Sen. Murray's staff seems unwilling to extend the provision of replacement timber to three years except by agreement of the purchaser.

On bullet # 3, Sen. Murray's staff seems to be unwilling to make this change. For purposes of presentation at a meeting

tomorrow with the Senator's staff, DOJ suggests rewording this to read: "Clarify the extent to which the Rescissions Act applies to awarded sales."

Comments from USDA:

Before the first sentence of bullet # 2 insert "This section should be revised to exclude section 318 sales released prior to and not under the authorization of PL 104-19.

At the end of the replacement timber bullet, # 2, insert "The Secretaries should have the flexibility to negotiate the kind, volume and value of replacement timber."

In bullet # 3 add "Eliminate the requirement that initiated and unawarded 2001 (b) & (d) sales be subject to Title III."

Comments from Interior:

BLM notes that in some cases they have sales that have already been cut and they would like to be able to let the purchasers take the timber. While they first suggested this should be included as an amendment to bullet # 1, they would be satisfied if we included some language to address this in the technical amendments.

FWS does not support a dual track salvage program under the current law's definition of salvage timber.

No comments yet from NOAA.

Distribution:

TO: T J Glauthier
TO: Ron Cogswell
TO: Dinah Bear
TO: Mark A. Weatherly

CC: Alison C. Perkins
CC: Janet W. Minkler
CC: Ruth D. Saunders

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

TELECOPIER FOR RESOURCES-DEFENSE-INTERNATIONAL BRANCH ONLY

FACSIMILE NUMBER: (202)395-5691 **ROOM** 7230/NEOB

VERIFICATION NUMBER: (202)395-6194

DATE: 3/8 **TIME** 1240

 # OF PAGES TO FOLLOW 1 **FROM:** Alison Perkins
LEGISLATIVE REFERENCE DIV.

TO: Elena Kagan
Ted Boling

COMMENT: Here are NOAA comments. Dinah already has these. I have spoken with USDA and Interior + identified which items they need to be working on. The Interior lawyer working on this is Karen Moritson 208-6356 and the USDA lawyer is Janet Poland 205-3626. I will fax the language to you as soon as I get it.

ACTION: **FYI**____ **RESPOND BY:**_____

SPECIFIC COMMENTS ON THE BILL

sec 102(b)(2). Add new para. (D) tpo read "any provisions and conditions in ESA sec 7 consultations issued by NMFS or FWS".

sec 103. Should the title read "Sales initiated under Sec 2001 of PL 104-19" instead of under 'existing law'?

sec 301(b)(1). add "through Interagency Transfers when appropriate" to allow qualified agencies outside DOI or DOA to participate in this process.

sec 301(2). Delete "experience and expertise" and insert "the authority" after "the National Marine Fisheries Service with." Alternatively, reference should made to "FWS or NMFS, as appropriate," depending on the species at issue.

sec. 301(4)(A). The definition of salvage timber sale should include a reference to removal of trees to protect the health of the forest.

sec 302(1)(D). As stated above, the term "withdrawn" needs to be defined. NOAA prefers a broad definition that would include critical habitat designations under the ESA.

sec. 302(2)(1)(B). Should be modified to include mention not only forest and land management resource plans that may preclude road construction in roadless areas, but also other initiatives, such as the President's Forest Plan, PACFISH, INFISH or the LRMP biological opinion, that may preclude road construction in roadless areas.

sec 302(3) & (4). These provisions should be moved to Title II so the lands under the Forest Plan would benefit from the effort. This would then include some areas subject to salvage provisions and the sections in Title II could be referenced here for inclusion of salvage sales outside the NWFP.

sec 402. Since the public is involved in the salvage process they should be given an opportunity to review and provide input to forest health/rehabilitation issues.

END

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION
P.L.S.L., ROOM 2133
WASHINGTON, D.C. 20530

FAX NUMBER (202) 616-8543
CONFIRMATION NUMBER (202) 514-1442

DATE: March 8, 1996

FROM: Edward A. Boling

PHONE NUMBER: 202-514-2715

NUMBER OF PAGES TO BE TRANSMITTED (including cover): 7

TO: Alison Perkins, Chris Nolin, Dinah Bear & Elena Kagan

PHONE NUMBER:

MESSAGE: My Markup of Murray

RECEIVING FAX NUMBER: 395-5691, 395-4941, 456-0753, 456-1647

1 culture and the Secretary of the Interior shall suspend
2 each timber sale ~~or activity~~ that was being undertaken ~~in~~
3 ~~whole or in part~~ under the authority provided in the sub-
4 section.

the Secretary concerned determines

5 (b) REPLACEMENT OR TERMINATION OF TIMBER
6 SALE CONTRACTS.—

7 (1) IN GENERAL.—Notwithstanding any other
8 provision of law, the Secretary concerned shall nego-
9 tiate with a purchaser of timber offered, awarded, or
10 released pursuant to section 318 of Public Law 101–
11 121 (103 Stat. 745) or section 2001(k) of Public
12 Law 104–19 (109 Stat. 246; 16 U.S.C. 1611 note)
13 (as in existence prior to the date of enactment of
14 this Act) to provide, within 1 year of the date of en-
15 actment of this Act, a volume, value, and kind of al-
16 ternative timber as a replacement for the remaining
17 timber ~~under contract~~ offered, awarded, or released

unless otherwise agreed

18 (2) ENVIRONMENTAL AND NATURAL RESOURCE
19 LAWS.—Replacement timber provided under para-
20 graph (1) shall comply with—

21 (A) any applicable environmental or natu-
22 ral resource law;

23 (B) any forest plan ~~in existence on the~~
24 ~~date of enactment of this Act~~, including the
25 Northwest Forest Plan and any plan developed

1 under the Interior Columbia Basin Ecosystem
2 Management Project; and
3 (C) any relevant standard or guideline, in-
4 cluding PACFISH, INFISH, and Eastside
5 screens.
6 (3) TERMINATION.—If the Government and the
7 purchaser do not reach agreement under paragraph
8 (1), the Secretary concerned may—
9 (A) exercise any provision of the original
10 contract that authorizes termination and pay-
11 ment of specified damages; or
12 (B) terminate or modify the contract when the Secretary concerned determines that such termination or modification is necessary to avoid adverse
13 effects on the environment or natural resources.
14 (c) PAYMENT FOR TIMBER SALE CONTRACTS RELIN-
15 QUISHED.—Any claim, whether as a result of a judgment
16 or an agreement, against the Federal Government arising
17 from a timber sale contract offered, awarded or released under section 318 of
18 Public Law 101–121 (103 Stat. 745), from section
19 2001(k) of Public Law 104–19 (109 Stat. 246; 16 U.S.C.
20 1611 note) (as in existence prior to the date of enactment
21 of this Act), from this Act, or from the exercise of the
22 Secretary's right ~~under a timber sale contract~~ to suspend, modify or terminate
23 the contract may be—
24 (1) paid from funds made available under sec-
25 tion 1304 of title 31, United States Code, and shall

not require reimbursement under section 13(c) of the Contract Disputes Act of 1978 (41 U.S.C. 612(c));

(2) paid through a certificate of bidding rights credits to be used by the purchaser (or a successor or assign of the purchaser) for future timber sales;

(3) offset by forgiveness of a Federal Government loan or loan guarantee; or

(4) paid through funds appropriated for the purpose.

(d) NEGOTIATIONS BETWEEN THE SECRETARY CONCERNED AND THE PURCHASER.—The Secretary concerned and the timber sale purchaser may use any combination of methods provided in subsections (b), (c), and (d) or other authorized means to dispose of a timber sale contract under this section.

(e) DISPUTES.—Any claim by a purchaser against the Federal Government relating to a contract replaced, modified, suspended, or terminated under this section shall be subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

SEC. 103. SALES INITIATED UNDER EXISTING LAW.

(a) IN GENERAL.—A sale ~~initiated~~ but not awarded offered to a purchaser by the Forest Service or the Bureau of Land Management under subsection (b) or (d) of section

1 **SEC. 302. SALVAGE TIMBER SALES SCOPE AND FACILITA-**
2 **TION.**

under this Title and

3 The Secretary of Agriculture, acting through the
4 Chief of the Forest Service, and the Secretary of the Inte-
5 rior, acting through the Director of the Bureau of Land
6 Management, shall—

under this Title and under this Title

7 (1) offer salvage timber sales under this Act
8 only on Forest Service and Bureau of Land Manage-
9 ment land utilizing existing and generally operable
10 roads (except that spur roads of less than .25 mile
11 may be constructed or reconstructed to permit ac-
12 cess to individual timber sale units) located out-
13 side—

14 (A) any unit of the National Wilderness
15 Preservation System or any study area officially
16 recommended for consideration as wilderness;
17 or

18 (B) any roadless area in which forest and
19 land management resource plans preclude tim-
20 ber sale or roads;

21 (C) any area in which a salvage timber
22 sale would be inconsistent with agency stand-
23 ards and guidelines applicable to areas admini-
24 stratively identified as late successional or ripar-
25 ian or withdrawn from timber harvest for other
26 conservation purposes; and

1 main uncut for wildlife, riparian, or other conserva-
2 tion measures;
3 (6) perform timely revegetation and slash re-
4 moval operations consistent with applicable laws,
5 regulations, and silvacultural practice; and
6 (7) undertake watershed and other restoration
7 activities, including road decommissioning, in or near
8 the salvage timber sale by first offering the work to
9 dislocated resource workers or individuals certified
10 by an appropriate resource management apprentice-
11 ship program and ensure work is performed accord-
12 ing to requirements of the Service Contract Act of
13 1965 (41 U.S.C. 351 et seq.).

Nothing in this Title shall be construed to affect the authorit of the Sec. of Ag., acti through the Chief of th Forest Service, or the Sec. of the Interi acting through the Dire of BLM, to conduct salvage timber sale under other applica law

14 **SEC. 303. SALVAGE TIMBER SALE DOCUMENTATION AND**
15 **APPEAL PROCEDURES.**
16 (a) PREPARATION OF DOCUMENTS.—In conducting a
17 salvage timber sale under this title—
18 (1) to speed compliance with the Endangered
19 Species Act of 1973 (16 U.S.C. 1531 et seq.), agen-
20 cies shall, to the maximum extent practicable—
21 (A) complete informal consultation not
22 later than 30 days and formal consultation not
23 later than 60 days after submission of a biologi-
24 cal assessment using a level 1 interagency field
25 team and a level 2 interagency field team;

1 (A) APPEAL.—An appeal of a decision
2 must be filed not later than the later of—
3 (i) 30 days after the publication of a
4 decision document for a salvage timber
5 sale; or
6 (ii) mailing of notice to interested par-
7 ties, in keeping with relevant agency regu-
8 lations.
9 (B) FINAL DECISION.—The agency con-
10 cerned shall issue a final decision not later than
11 30 days after the deadline for an administrative
12 appeal has ~~failed~~ tolled and may not extend the clos-
13 ing date for a final decision.
14 (d) EXPEDITING JUDICIAL REVIEW.—
15 (1) TIME FOR CHALLENGE.—~~Absent good~~
16 ~~cause;~~ any challenge to a salvage timber sale under
17 this title shall be brought as a civil action in a Unit-
18 ed States district court not later than 30 days after
19 the date on which an agency provides notice of a
20 final decision regarding a salvage timber sale.
21 (2) TIME FOR APPEAL.—Any appeal of a dis-
22 trict court decision on a salvage timber sale under
23 this Act shall be brought not later than 30 days
24 after the first date on which the appeal may first be
25 filed.

URGENT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 3704
FILE NO: 1972

3/7/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 6

TO: Legislative Liaison Officer - See Distribution below:

FROM: Ron PETERSON (for) Assistant Director for Legislative Reference

OMB CONTACT: Alison PERKINS 395-3857 Legislative Assistant's line (for simple responses): 395-6194
C=US, A=TELEMAIL, P=GOV+EOP, S=PERKINS, G=ALISON, I=C
perkins_a@a1.eop.gov

SUBJECT: OMB Request for Views on Public Participation in Timber Salvage Act --
(see attached issue sheet)

DEADLINE: COB Thursday, March 07,1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Your response to this LRM should conform to the schedule under (1) and (2):

(1) BY NO LATER THAN 5 PM TODAY, please confirm that the attachment correctly lists the Administration's four "High Priority" issues as identified in today's interagency meeting regarding Sen. Murray's draft proposal entitled the "Public Participation in Timber Salvage Act of 1996." and

(2) BY 3 PM, FRIDAY, MARCH 8TH, provide the following information regarding the attachment's "Technical Issues." For each listed issue that directly affects your agency, please provide a specific legislative amendment that resolves the issue (where a proposed amendment is stated in the attachment, confirm that it is correct). In addition, provide a brief statement explaining the nature of your proposed amendment. If an issue does not require an amendment, please explain briefly why such is the case.

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RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

LRM NO: 3704
FILE NO: 1972

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.
If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.
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(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Alison PERKINS 395-3857
Office of Management and Budget
Fax Number: 395-5691
Branch-Wide Line (to reach legislative assistant): 395-6194

FROM: _____ (Date)

_____ (Name)

_____ (Agency)

_____ (Telephone)

SUBJECT: OMB Request for Views on Public Participation in Timber Salvage Act --
(see attached issue sheet)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of ____ pages, attached to this response sheet

Consolidated Agency Comments on Senator Murray's Timber Bill

HIGH PRIORITY

Clarify section 102(a) to resolve the geographic scope issue. Also, as written it may suspend Forest Plan sales, which would not be desirable.

Section 102(b)(1): Replacement timber should be provided within three years instead of one.

Section 103(b)(1): Eliminate ability to appeal salvage sales that have already been awarded. (Question: do we also want to exclude Forest Plan sales from this appeal ability?) Section 103(b)(3) may attempt a distinction between procedural compliance and substantive compliance with environmental laws and will be litigated.

Section 302: Need to clarify that the Secretaries retain authority to conduct salvage under existing law.

TECHNICAL ISSUES

Section 2

In the findings on page 1, line 9, insert "disease" after "epidemic", and on page 10 line 16, insert "disease" after "result of..."

Title I

Section 102

Resolve the difference in language between Section 102(a) and 102(b) with respect to sales covered. What does "activity" mean in 102(a)?

Change wording of Section 102(b)(1) from "under contract" to "offered or awarded."

Amend Section 102(b)(2)(B) to allow for changes in forest plans, resource management plans and standards and guidelines.

Add new D to Section 102(b)(2) to read "any provisions and conditions in completed consultations under Section 7 of the Endangered Species Act."

Section 102(b)(3): this section should provide the ability to modify or suspend

sales in addition to the ability to terminate sales.

Drop language in Section 102(b)(3) that says "and payment of specified damages."
Section 102(b)(3)(A): BLM contracts do not have provisions authorizing termination.

Section 102(b)(3)(B): language may create litigation as drafted. Who determines whether "adverse effects" are present?

Change language in section 102(b)(3)(B) to read "to suspend, modify, or terminate."

Section 102(c): language should track 102(a) and 102(b) with respect to sales covered.

Change language in section 102(c) to read "to suspend, modify, or terminate."

Clarify section 102(c) to indicate that the Secretary possesses discretion, in the case of agreements, to determine the source of payment as provided in paragraphs 1-4. However, judgments should be payable only from the judgment fund.

Section 102(c) would result in a PAYGO scoring of $50 million.

Section 102(c) includes 318 sales not under 2001(k).

Define "certificate of bidding rights" in Section 102(c)(2).

Section 102(c)(3) may not accomplish the purpose for which it is intended. It is not possible to forgive a loan guarantee.

Section 102(d): subsection references itself.

Section 102(e) provides that all claims by a purchaser be subject to the Contract Disputes Act, yet
Section 102(c)(1) provides for no repayment of the judgment fund. These provisions need to be reconciled.

<u>Section 103</u>

Section 103(b)(1)(B): BLM's protest period is before a sale contract is awarded, so if we suspend an awarded contract to resolve a protest, BLM needs to have authority to terminate the contract and correct it if the protest is valid.

Title II

Section 201(b)(2): BLM doesn't have a "road construction and maintenance fund." With respect to the Forest Service roads program, a common misconception is that timber roads dollars actually go toward construction of roads. They don't. Over two-thirds of the timber roads funding is S&E. This funding pays for the people who design the roads, oversee the road construction to make sure it is properly done and administer the purchaser election and purchaser credit program.

Title III

Section 301

Section 301 (2) and (3) should be amended to provide additional flexibility to the agencies under the MOA. The provision should include EPA in its list of agencies.

Section 301(4): may need policy call on salvage sale definition.

Section 302

Section 302(1): roadless areas - may be need for policy call.

Section 302(1)(C): this provision needs to be clarified, it may apply standards where they don?t belong.

Section 302(1)(D) "Conservation purpose" should be defined. "Withdrawn" should be clarified.

Section 302(3) change "other resource mapping systems" to "other existing resource maps".

Section 302(4) erroneously references the Administrator's authority to oversee the Federal Procurement Data System (6(d)(4) of the OFPPA).

Section 302(5): this provision is unclear. There may need to be a policy call on whether timber purchasers should be allowed to perform tree marking and designation, if that is what was intended.

Section 303

Section 303(a)(1)(A) should be changed so read "and a level 2 interagency field team where required."

Section 303(a)(2): delete under section 215.5 of title 36, Code of Federal Regulations? as that does not apply to BLM. The language regarding public notice

of meetings must be clarified.

Section 303(c): Time periods for administrative appeals should be definite. The Secretary of Interior does not normally get involved in making final decisions on sales. An Assistant Secretary's sign-off is final agency action.

Section 303(d): time period for judicial review should be definite.

Section 304

Section 304(a). - We should question the need for this language. It seems inappropriate to mix the Salvage Sale fund, which is mandatory, with the timber sales management and roads money, which is discretionary. This would add about $50 million over three years to PAYGO scoring for this legislation. Furthermore, BLM doesn't have a "road construction and maintenance fund."

Section 305

Section 305: is a special NEPA regulation for salvage necessary?

Section 305(b): clarify when the 120 day period would begin.

Section 401

Section 401 This section should make clear that the review of timber stand health is a reporting requirement, not a planning requirement that requires plan amendments for implementation.
Change date in Section 401(1) from March 1 to June 1.

DOJ
3/7/96

Comments on Murray bill

Title I - Repeal of Emergency Salvage Timber Sale Program

Sec. 101 - Straight repeal. It should be made clear to all that our exposure on impacts to the Forest Plan begins upon repeal. The benefits of an immediate suspension of 2001(k) sales [probably] outweigh this concern.

Sec. 102 (a) Immediate suspension of all timber sales under 2001(k).
(b)(1) First, the geographic scope issue is not resolved by requiring negotiation with a purchaser of timber offered, awarded or released under section 318 or 2001(k). We understand that Murray intends to provide legislative history in support of our interpretation. Second, it may be impossible "to provide, within 1 year" replacement timber. The 1 year deadline should apply to negotiations, if at all. Third, this language fails to precisely track similar language in sec. 102(a), raising the question of whether the drafter intended the negotiation requirement of sec. 102(b) to apply to all of the activities suspended under sec. 102(a). Finally, the term "under contract" is inapplicable to contracts offered, but not awarded.
(b)(2)(B) Replacement timber complies with any plan "in existence on the date of enactment" - does not include subsequent amendments.
(b)(3) If no agreement, Secretary may terminate under contract or to avoid environmental impact. Presumably, these exclude other remedies (i.e., 1 year is a hard deadline for replacement) This authorizes only termination, not further suspension or unilateral modification. Further, the words "and payment of specified damages" in lines 10 and 11 are potentially problematic. The government may wish to exercise rights under clauses that do not provide for payment of specified damages.
(c) This remedy provision does not track the language of either 102(a) or 102(b)(1). The phrase "to terminate" in line 22 should be broadened to "to suspend, modify, or terminate." Sec. 102(c) should be clarified to indicate that the Secretary possesses discretion, in the case of agreements, to determine the source of payments as provided in paragraphs (1) - (4). However, judgments should be payable only from the judgment fund specified in paragraph (1) (i.e., 31 U.S.C. § 1304).

Sec. 103 Sales Initiated Under Existing Law
(a) "initiated" sale appears to be any sale not awarded under 2001(b) or (d). Subject to Title III (salvage) and applicable law.
(b)(1) Awarded sales may be challenged administratively and judicially. (No time limit for initiating challenges) (2) Are suspended upon challenge. (3) Remain subject to 2001 to extent that a claim is "related to compliance with any expedited procedural requirement." This may attempt a distinction between procedural compliance, which would allow us to continue to rely on the EA/BE, and substantive compliance with environmental laws. Lacking a reference to specific laws, it will be litigated. Moreover, it means that we will be required to relitigate sales like Thunderbolt.

Title II - Northwest Forest Plan

Sec. 201 directs that timber sales shall be prepared, offered and awarded "expeditiously" and consistent with the Forest Plan.

Title III - Lawful Expediting of Salvage Timber Sales

Sec. 301 Definitions
(2) & (3) Level 1 and Level 2 Interagency Teams, drawn from the August 9 MOA, have a specific composition that may not be necessary in all cases.
(4) Salvage Timber Sale is based on a timber sale unit and may include "a small percentage" of green timber to the extent necessary for commercially reasonable and environmentally sound access.

Sec. 302 Salvage Timber Sales Scope and Facilitation
(1) Salvage sales under this Title can only use existing roads and .25 mile spur roads (presumably allows helicopter logging in roadless areas) outside Wilderness and "officially recommended" WSAs and roadless areas where plans preclude timber or roads (few outside WSAs). Also, "any area" where salvage would be inconsistent with standards for late successional, riparian or withdrawn conservation areas - This may apply standards where they don't belong.

Sec. 303 Salvage Sale Documentation and Appeal
(a)(1) "to the maximum extent practicable," do ESA consultation within 30 or 60 days using level 1 and 2 field teams.

(a)(2) At least one interdisciplinary team (undefined term) meeting must be public, using FS notice provision for FS and BLM.

(b) Advisory Committees - may be formed, not subject to FACA

(c) Administrative appeals expedited by requiring appeal "not later than" 30 days after publication of the decision or an undefined "mailing of notice" under "relevant agency regulations." Time periods should be definite.

(d) Judicial Review must be sought within 30 days of an agency decision "absent good cause" (which will be litigated). This is a jurisdictional provision, and should be definite. (2) Time for Appeal is 30 days "agter the first date on which appeal may first be filed." The government should be allowed to appeal in accordance with the Federal Rules of Civil Procedure. Otherwise, this may require us to appeal all final orders within 30 days or forego an issue for appeal. (3) Expeditious consideration of cases may be required before the government has had sufficient time to prepare. We would have to argue a briefing schedule in every case.

Sec. 304 Funding Not a DOJ matter

Sec. 305 Expedited Procedural Regulations - Is a special NEPA reg for salvage necessary?

Title IV - Timber Stand Health Prioritization

Sec. 401 This section should make clear that the review of timber stand health is a reporting requirement, not a planning requirement that requires plan amendments for implementation.

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

LRM NO: 3690
FILE NO: 1972

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.
If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.
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(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Alison PERKINS 395-3857
Office of Management and Budget
Fax Number: 395-5691
Branch-Wide Line (to reach legislative assistant): 395-6194

FROM: _____ (Date)
Mark Gaede (Name)
USDA (Agency)
_____ (Telephone)

SUBJECT: OMB Request for Views on Public Participation in Timber Sales Act

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of ____ pages, attached to this response sheet

OGC comment

TECHNICAL COMMENTS ON THE "PUBLIC PARTICIPATION IN TIMBER SALVAGE ACT OF 1996," AS INTRODUCED

TITLE I -- REPEAL OF EMERGENCY SALVAGE TIMBER SALE PROGRAM

Sec. 102(a). This subsection suspends each timber sale or activity undertaken in whole or in part under the authority provided in section 2001(k) of the Rescissions Act. Under Judge Hogan's ruling in ONRC v. Thomas, D. Ore (1995), an argument could be made that this would require suspension of sales offered and awarded after the Record of Decision for the President's NW Forest Plan and before July 27, 1995. We question whether that is the intent.

Sec. 102(b)(2). The introduced bill clearly provides that NEPA, the ESA, administrative appeal, any applicable environmental or natural resource law, and judicial review apply to the provision of alternative timber. This alternative timber is to be "provided" within 1 year of the date of enactment. It is questionable whether compliance with all applicable laws can be achieved within this 1 year period. Additionally, it is not clear what provided means -- that cutting is to commence within a year?

Sec. 102(c)(2). "Certificate of bidding rights" is not defined anywhere in the bill. This is a new concept with minimal statutory direction for implementation. It will generate issues such as how long such a certificate would last, and whether it would automatically qualify a holder as the automatic high bidder?

Sec. 102(c)(1) and sec. 102(e). Section 102(c)(1) clearly states that reimbursement under section 13(c) of the Contract Disputes Act would not be required for damages paid from the Judgment Fund. However, section 102(e) provides that all claims by a purchaser against the Federal Government relating to a contract replaced, modified, suspended or terminated under section 102 would be subject to the Contract Disputes Act. To avoid any ambiguity over whether subsection (e) overrides subsection (c)(1), subsection (e) should clearly state that claims are subject to the provisions of the Contract Disputes Act except for section 13(c) of that Act.

Sec. 103(a). We note that some sales that would fall within section 103(a) (i.e., those initiated but not awarded under subsections 2001(b) or (d) of the Rescissions Act) might not meet the narrower definition of "salvage timber sale" in section 301(4), and thus, would not be subject to the provisions in Title III of this legislation. Those sales would proceed under existing authorities. Consequently, the agency would have to administer two categories of salvage and Option 9 sales, each governed by different authorities.

Sec. 103(b). This subsection makes sales awarded under section 2001(b) or (d)

subject to administrative and judicial review, notwithstanding commencement of contract performance. This could result in numerous administrative appeals, including appeals of sales that have undergone judicial review. Such a result could require a tremendous shift in workload and could raise new takings claims. (see, Winstar Corporation v. United States, 1995 WL 509409 (Fed. Cir.).

We also question when the appeal period starts to run for sales where contract performance has commenced. Presumably it would commence for all such sales on the date of enactment. Moreover, we assume the shortened administrative appeal time period provided under section 303(c) does not apply here.

Sec. 103(b)(3). This subsection is very unclear. We are not sure what it requires.

TITLE III – LAWFUL EXPEDITING OF SALVAGE TIMBER SALES

Sec. 301(4). As discussed in the comment to section 103(a), this legislation would result in administration of two categories of salvage sales. Given the added notice and public participation requirements related to interdisciplinary team meetings under this legislation, it might be faster to proceed under existing authorities regardless of the shortened administrative appeal periods.

Sec. 302(1). This paragraph establishes a general limitation on salvage sales under Title III that goes beyond roadless areas. This could limit significantly the number of salvage sales that can occur under the legislation. The Forest Service can better assess how limiting this provision might be.

Sec. 302(1)(B). This language should refer to roadless areas in which forest and land management resource plans preclude timber sales or **timber** roads. Forest plans can preclude roading for timber harvest but absent a Congressional or statutory withdrawal under the FLPMA, roads cannot be precluded for mining activities and ANILCA access.

Sec. 302(1)(C). This subsection appears to preclude sales in any area, even areas not designated as late successional, riparian, or withdrawn from timber harvest, if a sale in that area would be inconsistent with standards and guidelines applicable to late successional, riparian or withdrawn areas. Is this the intent?

Sec. 302(1)(D). "Conservation purpose" should be defined. Additionally, does "withdrawn" mean Congressionally withdrawn or withdrawn under FLPMA? Subsection (a)(4) is too vague as written.

Perhaps the language in section 302(1) should be revised to prohibit salvage in Congressionally designated wilderness areas; in roadless areas designated by Congress for wilderness study; in roadless areas recommended by the BLM, the FWS or the FS for wilderness designation; in roadless areas contained in legislative proposals in the 103rd or 104th Congress that passed either House of Congress or in other areas where the salvage is otherwise prohibited by law, by court order, or by an

applicable land management plan unless the plan is amended.

Sec. 302(3). It would be preferable to refer to "other existing resource maps" instead of "other resource mapping systems". This would allow the use of current systems or current maps in places where no systems presently exist.

Sec. 302(5). If the intent of this paragraph is to authorize the Secretary to allow timber contractors to perform tree marking and designation notwithstanding 16 U.S.C. 472a(g), this should be clearly stated. Otherwise, it is not clear that the Secretary would be authorized to alter these requirements.

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Sec. 303(c)(2)(A). It is not clear why two dates for filing an appeal are provided. It would be simpler to provide that an appeal is to be filed not later than 30 days after mailing of notice to interested parties of the decision.

Sec. 303(d). Who determines when good reason is absent, and what is good reason?

Sec. 305(a). This subsection does not appear to add anything. Any regulations developed would have to be consistent with the other requirements of the legislation, such as a notice period for ID team meetings, etc. Thus the ability to expedite would be greatly limited.

Sec. 305(b). When does the 120 day period begin--from notice of the initial ID meeting or from notice of the proposed action under 36 CFR 215? What does paragraph (2) regarding agency flexibility mean?

mments on Murray Bill

tle I.
ction 101. would repeal P.L. 104-19

We have maintained that the salvage provisions in P.L. 104-19 are working ok since the Administration is following environmental laws and forest plan standards and guidelines. The major controversy is over section 2001 (k) of the Act.

section 102. applies to existing contracts

All section 2001 (k) sales would be suspended. This could lead to some monetary damage claims on sales where harvesting has begun and operations are partially complete.

All section 2001 (k) sales or section 318 sales would need to be replaced with alternative volume. This appears to incorporate section 318 sales that have not been in dispute--some sales were released for harvest under the F&WS biological opinion last summer that have not been contested and it appears they would also have to be included.

NO - only those under 2001(k)

Alternative volume would need to meet applicable environmental law and standards and guidelines, but the act would require that it be provided within 1 year. The volume could not clear the enviromental analysis process in a year since some of the species survey protocols call for site visits during nesting season over 2 years.

This act could be interpreted to codify the standards and guidelines in the Northwest Forest Plan, the Interior Columbia River Basin EM Project, PACFISH, INFISH, and eastside screens. This could make it very difficult for the Administration to changes those standards and guidelines if needed for any reason.

Payments for any claims could be paid through the judgement fund w/o reimbursement, a certificate of bidding rights, offset by forgivness of loans, or appropriated funds. Some of these payment methods are new and would like raise disputes as to how they should be conducted without the benefit of detailed regulations.

Section 103.--existing salvage and option 9 sales would be completed under revised procedures in Title III

Existing sales would be subject to the administrative appeals process and judicial review. The filing of an appeal would automatically stay harvest activities. This could result in more purchaser claims where sales are held up and timber deterioration occurs. Some sales that have already cleared judicial review may return to court.

Title II
Section 201. Establishes direction to complete timber sales.

This section may be interpreted to codify the probable sale quantity in the Pacific Northwest Forest plan, which would make it difficult for the

Administration to change. In addition, it may set up an impossible situation for the agency to accomplish the probable sale quantity if the revision of forest plans indicates that the total volume originally expected is not available. Some plan revisions indicate that this is the case (Region 5).

It appears that "permanent funds," such as the salvage sale fund, could be used to prepare option 9 sales, but there does not appear to be any method to reimburse those funds from the sale revenues.

Title III.
Section 318. definitions

limiting salvage to dead or dying trees may make it physically impossible to operate the sale and may create some unsound silvicultural prescriptions. In many cases, green trees must be harvested along with dead trees to facilitate removal. The silviculture that would result in some cases would unscientific and may create future forest growth and regeneration problems. This is equivalent to legislating unsound science.

No just for expedited

Section 302. scope of sales.

Would limit salvage to existing roaded areas or where roads of less than .25 miles are needed. This could limit management options in areas where salvage sales can help reduce fuel loading and achieve habitat management objectives. This part of the act may also be inconsistent with the portion that adopts the PNW forest plan standards and guidelines since it allows salvage in other areas.

The same problem with limiting management option in roadless areas and other withdrawn areas also applies. OGC

The requirement to enter data into GIS systems would be onerous for some forests since they are not yet up and running on "615" computer systems and have no other GIS data base system for the forest. The requirement to purchase additional computer equipment may take years to meet.

The act could be read to require a rewrite of the basic timber sale contract, making contracting options to fit local situations less flexible.

Section 303. would establish documentation and appeal procedures for salvage sales.

no comments

Section 304. identifies funding sources

no comments

Section 305. requires procedural regulations be developed

no comments

Section 306. establishes pilot program to sell "harvest" contracts

DRAFT Forest Service COMMENTS DRAFT

Sec 103 (Sales Initiated Under Existing Law

(b) Sales awarded - Suspending all harvest activities and allowing the decision to come under the 215 project appeal process will heavily impact the timber sale preparation program. The same people who will be asked to process new salvage proposals under this draft legislation will undoubtedly be the same ones called upon to process the appeals, etc, for sales initiated under PL 104-19. This will greatly slow down timber sale preparation.

Sec 304 - It is not clear if listed funds could be used for restoration work as per section 302 (7).

Sec 403 - (b) A stand by stand report would be overwhelming, hundreds of thousands of individual stands.

Sec 302 (7) This provision would require a separate service contract outside of the timber sale contract.

Sec. 101(b)(1) -- Change the words "...a volume, value, and kind of alternative timber..." to "...a volume and value of alternative timber...", or in some other way modify the wording to allow a different "kind" to be offered as replacement. Perhaps the "kind" could be different if the contractor agrees. In some cases, it may be more feasible and environmentally sustainable to offer replacement volume if it does not have to be the same "kind", e.g. being able to offer younger trees instead of late-successional or old growth.

Sec 101(b)(2)(B) (page 3,line 25;and page 4, lines 1-2) -- It is confusing to reference to the Interior Columbia River Basin Ecosystem Management Project ICBEMP because to date no plans have been prepared under it, and in fact if completed as proposed it will result in amendments to FS and BLM plans.

Sec.201(b)(1) (page 7, lines 21 22) -- Does the wording "...in order to meet the probable sale quantities..." imply a requirement that those quantities be offered for sale? It would be better to re word the text to avoid any such implication.

Sec.301(2) and Sec.301(3) (page 9, lines 14-25; page 10, lines 1-7) -- Replace both sections with text defining the "Streamlined Consultation Process". The intent of the text appears to be to legislate the streamlined process as it is being carried out in the northwest. The interagency salvage MOA, and the implementing guidelines included as Enclosure 4 of the August 18, 1995, interagency letter on salvage, made the streamlined process apply nationwide. <u>However</u>, that direction included a caveat that approaches <u>other than</u> the Level 1 and Level 2 teams may be used if they satisfy the streamlined process objectives of early communication and coordination, completion of consultation within NEPA timeframes, and having an established process for resolving conflicts. In many areas outside the northwest, such as the southeast, we have not found it necessary to establish the Level 1 and Level 2 teams and to do so could slow down the sale preparation process without necessarily having any conservation benefits. We urge that the bill text be replaced with text defining the "streamlined consultation process" as that described in the MOA and the August 18, 1995, letter on implementation of the MOA. Or, if there is a desire to avoid reference to the MOA, then reference the original interagency

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL # of pages ▶

To Allison	From Maureen
Dept/Agency	Phone #
Fax #	Fax #

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memos regarding the streamlined process with text taken from Item 4 of the MOA and Items 4, 5, and 6 of the August 18, 1995 interagency letter.

Sec. 302(1)(C) (page 11, lines 21-26) -- This text is very confusing and seems to imply that no salvage sales could be offered in late successional or riparian reserves. The Northwest Forest Plan does allow salvage in these areas according to specific guidelines that are in the Record of Decision (ROD) for that plan (see "Guidelines for Salvage", pages C-13 through C-16 of the ROD).

Sec.303(a)(1)(A) (page 13, lines 21-25) -- There are some circumstances under which it may be important to have the flexibility to exceed the 30 day and 60 time periods for completing informal or formal consultation, respectively. This is particularly the case if there are complex issues involved and/or time is needed for issue resolution. Also, as explained in the comments (above) on

Sec.301(2) and Sec. 301(3), we recommend against language that would require the use of Level 1 and Level 2 teams everywhere because in some areas an alternative approach to interagency consultation may be more efficient and effective.

Title IV (pages 19-21) -- How is "timber stand health" being defined? Does it include the "health" of species listed under the Endangered Species Act and the ecosystems on which they depend? How would the priorities relate to recovery plans for listed species? Does "health" include water quality? Would the Fish and Wildlife Service, National Marine Fisheries Service, or EPA be involved in any way with respect to listed species, water quality, or other matters over which they have some regulatory responsibility? Does timber stand health include consideration of biological diversity? What is the definition of a "timber stand" and how would this requirement apply to other areas that might be in need of management to restore or maintain ecosystem health but which are not in a "timber stand"? What is a "healthy condition?" Absent better definitions and clarification, it would be appropriate to either delete this section or give all the appropriate agencies a specific timeframe and sideboards for developing a process for establishing annual priorities and reporting on them.

OPTIONAL FORM 99 (7-90)

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To Allison	From Maureen
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TECHNICAL COMMENTS ON THE "PUBLIC PARTICIPATION IN TIMBER SALVAGE ACT OF 1996," AS INTRODUCED

TITLE I -- REPEAL OF EMERGENCY SALVAGE TIMBER SALE PROGRAM

Sec. 102(a). This subsection suspends each timber sale or activity undertaken in whole or in part under the authority provided in section 2001(k) of the Rescissions Act. Under Judge Hogan's ruling in ONRC v. Thomas, D. Ore (1995), an argument could be made that this would require suspension of sales offered and awarded after the Record of Decision for the President's NW Forest Plan and before July 27, 1995. We question whether that is the intent.

Sec. 102(b)(2). The introduced bill clearly provides that NEPA, the ESA, administrative appeal, any applicable environmental or natural resource law, and judicial review apply to the provision of alternative timber. This alternative timber is to be "provided" within 1 year of the date of enactment. It is questionable whether compliance with all applicable laws can be achieved within this 1 year period. Additionally, it is not clear what provided means -- that cutting is to commence within a year?

Sec. 102(c)(2). "Certificate of bidding rights" is not defined anywhere in the bill. This is a new concept with minimal statutory direction for implementation. It will generate issues such as how long such a certificate would last, and whether it would automatically qualify a holder as the automatic high bidder?

Sec. 102(c)(1) and sec. 102(e). Section 102(c)(1) clearly states that reimbursement under section 13(c) of the Contract Disputes Act would not be required for damages paid from the Judgment Fund. However, section 102(e) provides that all claims by a purchaser against the Federal Government relating to a contract replaced, modified, suspended or terminated under section 102 would be subject to the Contract Disputes Act. To avoid any ambiguity over whether subsection (e) overrides subsection (c)(1), subsection (e) should clearly state that claims are subject to the provisions of the Contract Disputes Act except for section 13(c) of that Act.

Sec. 103(a). We note that some sales that would fall within section 103(a) (i.e., those initiated but not awarded under subsections 2001(b) or (d) of the Rescissions Act) might not meet the narrower definition of "salvage timber sale" in section 301(4), and thus, would not be subject to the provisions in Title III of this legislation. Those sales would proceed under

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existing authorities. Consequently, the agency would have to administer two categories of salvage and Option 9 sales, each governed by different authorities.

Sec. 103(b). This subsection makes sales awarded under section 2001(b) or (d) subject to administrative and judicial review, notwithstanding commencement of contract performance. This could result in numerous administrative appeals, including appeals of sales that have undergone judicial review. Such a result could require a tremendous shift in workload and could raise new takings claims. (see, Winstar Corporation v. United States, 1995 WL 509409 (Fed. Cir.).

We also question when the appeal period starts to run for sales where contract performance has commenced. Presumably it would commence for all such sales on the date of enactment. Moreover, we assume the shortened administrative appeal time period provided under section 303(c) does not apply here.

Sec. 103(b)(3). This subsection is very unclear. We are not sure what it requires.

TITLE III -- LAWFUL EXPEDITING OF SALVAGE TIMBER SALES

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3

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FAX COVER SHEET

Dept. of Interior Comments (BLM + Solicitor's Office)

PLEASE DELIVER TO:

NAME: Alison Perkins

ORGANIZATION: OMB

PHONE:

FAX #:

PAGES TO FOLLOW: 7

FROM:

NAME: Barry Crowell

Legislative Counsel
U.S.Department of the Interior
Phone: (202) 208-6706
Fax: (202) 208-7619

DATE:

MESSAGE: BLM + SOL Comments

Fax Numbers: **OMB--Legislative Reference:**

1-Resources	(Peterson)	395-5691
2-Gen. Government	(Jukes)	395-3109
3-Labor/Welfare	(Sweeney)	395-6148

OMB--Budget

Interior	(Beard)	395-6899
Water	(Kazel)	395-4652

To. Legislative Counsel

From: BLM Office of Legislative Affairs

Subject: Proposed Sen. Murray bill on Timber Salvage

1. Section 2, page 1, line 9, insert "disease" after "epidemic"; also, on page 10, line 16, insert "disease" after "suit of ..."

2. Sec. 102(b)(2)(B) – Page 3, line 23.

BLM does not have forest plans, but rather resource management plans. We recommend this phrase be amended to read:

"any forest plan under National Forest Management Act or resource management plan or MFP under FLPMA in existence ..."

3. Sec. 102© – page 5, lines 4-8.

Re (2)"certificate of bidding rights" ... needs to be defined (our program people have never heard of it)

Re (3) "forgiveness of a Federal Government loan or loan guarantee" ... does this include VA mortgage or student loans?

4. Sec. 103(b), p.6, lines 7-22. BLM's protest period is before a sale contract is awarded, and therefore BLM has no way to resolve protests filed after a sale is awarded; our protest process does not allow us to cancel a contract. Unhappy parties have to then go to court. So, to provide an effective administrative remedy, BLM needs:

(A) process spelled out in bill as to how we will handle protests after contract awarded; or

(B) Suggest they move this provision and put it in our appeal process (after K, can go to IBLA, can issue stay, etc.)

5. Sec. 201(b). Page 6, lines 3-7. Significant Budget impact.

6. Sec. 301(2), p. 9, line 14. Institutionalizes our MOA, but left out EPA. May want to amend to include EPA.

7. Sec. 302, p.11, lines 7-13. As written, this would not permit salvage sale offerings that require helicopter logging, not ground transportation. BLM has several salvage sales that are helicopter only, so we ask that specific language be inserted to permit these sales.

8. Sec. 302, page 12, lines 5-15, re resource inventory; also, page 13, lines 6-13; ALSO, page 21, lines 3-8: major budget implications.

9. Sec. 303(a)(2), p. 14, lines 10-11. Title 36 CFR does not apply to the BLM.

10. Sec. 303(c), page 15, lines 22-23. Under our protest and appeals processes, the Secretary does not get involved in making final decisions on sales. Normally, an Assistant Secretary's sign-off on a sale is the final agency action, which can then be appealed to a court. Alternatively, there is IBLA. We believe the Secretary should not become involved in this process.

11. Sec.303(c), p. 16, lines 1-13. Appears to conflict with BLM's current appeal and protest processes.

12. Sec.304(a), p. 17, line 18. BLM doesn't have a "road construction and maintenance" fund.

13. Sec. 401, page 20, line 1. March 1,... This date is useless for evaluation purposes. A lot of the damage doesn't show up until after the spring thaw, so we won't know which stands are damaged. June would allow us to give a determination based on facts.

timber expeditiously in order to get a high commodity value from dead or dying trees;

(2) improving the health of our forests is a national priority that should be addressed through comprehensive analysis and public involvement, and should focus not only on the health of trees, but on the health of the entire forest, including watersheds, soils, fisheries, and wildlife; and

(3) timber sales, including salvage timber sales, should be conducted in accordance with all applicable laws in order to ensure the sustainability of the components and functions of the forests.

TITLE I—REPEAL OF EMERGENCY SALVAGE TIMBER SALE PROGRAM

SEC. 101. REPEAL OF EMERGENCY SALVAGE TIMBER SALE PROGRAM.

Section 2001 of Public Law 104–19 (109 Stat. 240; 16 U.S.C. 1611 note) is repealed.

SEC. 102. EXISTING TIMBER SALE CONTRACTS.

(a) SUSPENSION.—Notwithstanding any outstanding judicial order or administrative proceeding interpreting subsection (k) of section 2001 of Public Law 104–19 (109 Stat. 240; 16 U.S.C. 1611 note) (as in existence prior to the date of enactment of this Act), the Secretary of Agri-

one judge Hogan's decisions suggests that option 9 sales (Pres. Forest Plan Sales) also fall under 2001(K). Is the intent to suspend those sales also??

1 culture and the Secretary of the Interior shall suspend
2 each timber sale or activity that was being undertaken in
3 whole or in part under the authority provided in the sub-
4 section.

5 (b) REPLACEMENT OR TERMINATION OF TIMBER
6 SALE CONTRACTS.—

7 (1) IN GENERAL.—Notwithstanding any other
8 provision of law, the Secretary concerned shall nego-
9 tiate with a purchaser of timber offered, awarded, or
10 released pursuant to section 318 of Public Law 101–
11 121 (103 Stat. 745) or section 2001(k) of Public
12 Law 104–19 (109 Stat. 246; 16 U.S.C. 1611 note)
13 (as in existence prior to the date of enactment of
14 this Act) to provide, within 1 year of the date of en-
15 actment of this Act, a volume, value, and kind of al-
16 ternative timber as a replacement for the remaining
17 timber under contract.

does this mean sign contracts? have admin & judicial review finished?

18 (2) ENVIRONMENTAL AND NATURAL RESOURCE
19 LAWS.—Replacement timber provided under para-
20 graph (1) shall comply with—

this doesn't describe BLM plans. use?

21 (A) any applicable environmental or natu-
22 ral resource law;

LRMP Regional Guide (under NFMA) and RMP or MFP under FLPMA

23 (B) any forest plan in existence on the
24 date of enactment of this Act, including the
25 Northwest Forest Plan and any plan developed

1 under the Interior Columbia Basin Ecosystem
2 Management Project; and
3 (C) any relevant standard or guideline, in-
4 cluding PACFISH, INFISH, and Eastside
5 screens.
6 (3) TERMINATION.—If the Government and the
7 purchaser do not reach agreement under paragraph
8 (1), the Secretary concerned may—
9 (A) exercise any provision of the original
10 contract that authorizes termination and pay-
11 ment of specified damages; or
12 (B) terminate the contract to avoid adverse
13 effects on the environment or natural resources.
14 (e) PAYMENT FOR TIMBER SALE CONTRACTS RELIN-
15 QUISHED.—Any claim, whether as a result of a judgment
16 or an agreement, against the Federal Government arising
17 from a timber sale contract offered under section 318 of
18 Public Law 101–121 (103 Stat. 745), from section
19 2001(k) of Public Law 104–19 (109 Stat. 246; 16 U.S.C.
20 1611 note) (as in existence prior to the date of enactment
21 of this Act), from this Act, or from the exercise of the
22 Secretary's right under a timber sale contract to terminate
23 the contract may be—
24 (1) paid from funds made available under sec-
25 tion 1304 of title 31, United States Code, and shall

may get litigation on what "adverse effects" means and whether we applied it correctly. Reviewable by courts?

BLM contracts do not have this provision

what if we don't need to terminate to avoid adverse effects? What if a mutual modification would satisfy evt requirement

What if we don't have adv. effects funding can we lift suspension?

this includes §318 sales not impacted by §2001(K)

this can be read as contracts in addition to ones mentioned above - any contract

1 not require reimbursement under section 13(c) of
2 the Contract Disputes Act of 1978 (41 U.S.C.
3 612(c));
4 (2) paid through a certificate of bidding rights
5 credits to be used by the purchaser (or a successor
6 or assign of the purchaser) for future timber sales;
7 (3) offset by forgiveness of a Federal Govern-
8 ment loan or loan guarantee; or
9 (4) paid through funds appropriated for the
10 purpose.
11 (d) NEGOTIATIONS BETWEEN THE SECRETARY CON-
12 CERNED AND THE PURCHASER.—The Secretary con-
13 cerned and the timber sale purchaser may use any com-
14 bination of methods provided in subsections (b), (c), and
15 (d) or other authorized means to dispose of a timber sale
16 contract under this section.
17 (e) DISPUTES.—Any claim by a purchaser against
18 the Federal Government relating to a contract replaced,
19 modified, suspended, or terminated under this section
20 shall be subject to the Contract Disputes Act of 1978 (41
21 U.S.C. 601 et seq.).
22 SEC. 103. SALES INITIATED UNDER EXISTING LAW.
23 (a) IN GENERAL.—A sale initiated but not awarded
24 to a purchaser by the Forest Service or the Bureau of
25 Land Management under subsection (b) or (d) of section

NEED definition how long is certificate good for? Can use of certificate make bidder the high bidder? Does certificate holder get award of K automatically? Political fallout from other bidders who essentially are not able to bid??

what are these?

Define any limits on types of loans? Student loans? VA loans? etc?

?

what is in (d) ((d) is this section)

except for § 13(c) pertaining to reimbursement of judgment fund.

1 2001 of Public Law 104–19 (109 Stat. 240; 16 U.S.C.
2 1611 note) (as in existence prior to the date of enactment
3 of this Act) as of March 5, 1996, shall be subject to title
4 III of this Act and all environmental and natural resource
5 laws.

6 (b) SALES AWARDED TO PURCHASERS.—

7 (1) IN GENERAL.—A timber sale contract that
8 has been awarded to a purchaser under subsection
9 (b) or (d) of section 2001 of Public Law 104–19
10 (109 Stat. 240; 16 U.S.C. 1611 note) (as in exist-
11 ence prior to the date of enactment of this Act)
12 shall, notwithstanding the commencement of con-
13 tract performance, be subject to—

14 (A) in the case of Forest Service sales, ad-
15 ministrative appeal in accordance with section
16 322 of the Department of the Interior and Re-
17 lated Agencies Appropriations Act, 1998 (106
18 Stat. 1419; 16 U.S.C. 1612 note);
19 (C)~~(B)~~ judicial review.

20 (2) HARVEST ACTIVITIES.—On the filing of an
21 appeal or a protest under paragraph (1), all harvest activities
22 shall be suspended.

23 (3) REQUIREMENTS.—Section 2001 of Public
24 Law 104–19 (109 Stat. 240; 16 U.S.C. 1611 note)
25 (as in existence prior to the date of enactment of

This applies even to contracts that have already had administrative and/or judicial review.

B) in the case of Bureau of Land Management sales, protests filed in accordance with 43 C.F.R. section 5003.3; and

Protest procedures in 43 CFR 5003.3 are for before contract awarded.

If we suspend contract to resolve a protest, need to give us authority to terminate contract & correct it if the protest is valid.

1 main uncut for wildlife, riparian, or other conserva-
2 tion measures;
3 (6) perform timely revegetation and slash re-
4 moval operations consistent with applicable laws,
5 regulations, and silvacultural practice; and
6 (7) undertake watershed and other restoration
7 activities, including road decommissioning, in or near
8 the salvage timber sale by first offering the work to
9 dislocated resource workers or individuals certified
10 by an appropriate resource management apprentice-
11 ship program and ensure work is performed accord-
12 ing to requirements of the Service Contract Act of
13 1965 (41 U.S.C. 351 et seq.).

14 **SEC. 303. SALVAGE TIMBER SALE DOCUMENTATION AND**
15 **APPEAL PROCEDURES.**

16 (a) PREPARATION OF DOCUMENTS.—In conducting a
17 salvage timber sale under this title—
18 (1) to speed compliance with the Endangered
19 Species Act of 1973 (16 U.S.C. 1531 et seq.), agen-
20 cies shall, to the maximum extent practicable—
21 (A) complete informal consultation not
22 later than 30 days and formal consultation not
23 later than 60 days after submission of a biologi-
24 cal assessment using a level 1 interagency field
25 team and a level 2 interagency field team;

aren't level 2 just in case of disagreements?

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION
P.L.S.L., ROOM 2133
WASHINGTON, D.C. 20530

FAX NUMBER (202) 616-8543
CONFIRMATION NUMBER (202) 514-1442

ENVIRONMENT branch

DATE: March 6, 1996

FROM: Edward A. Boling

PHONE NUMBER: 202-514-2715

NUMBER OF PAGES TO BE TRANSMITTED (including cover): 5

TO: Alison Perkins

PHONE NUMBER: 395-3857

MESSAGE: Draft DOJ comments on the Murray bill

RECEIVING FAX NUMBER: 395-5691

Comments on Murray bill

Title I - Repeal of Emergency Salvage Timber Sale Program

Sec. 101 - Straight repeal. It should be made clear to all that our exposure on impacts to the Forest Plan begins upon repeal. The benefits of an immediate suspension of 2001(k) sales [probably] outweigh this concern.

Sec. 102 (a) Immediate suspension of all timber sales under 2001(k).
(b)(1) First, the geographic scope issue is not resolved by requiring negotiation with a purchaser of timber offered, awarded or released under section 318 or 2001(k). We understand that Murray intends to provide legislative history in support of our interpretation. Second, it may be impossible "to provide, within 1 year" replacement timber. The 1 year deadline should apply to negotiations, if at all.
(b)(2)(B) Replacement timber complies with any plan "in existence on the date of enactment" - does not include subsequent amendments.
(b)(3) If no agreement, Secretary may terminate under contract or to avoid environmental impact. Presumably, these exclude other remedies (i.e., 1 year is a hard deadline for replacement)
(c) Unclear whether the Secretary selects the form of payment for contracts.

Sec. 103 Sales Initiated Under Existing Law
(a) "initiated" sale appears to be any sale not awarded under 2001(b) or (d). Subject to Title III (salvage) and applicable law.
(b)(1) Awarded sales may be challenged administratively and judicially. (No time limit for initiating challenges) (2) Are suspended upon challenge. (3) Remain subject to 2001 to extent that a claim is "related to compliance with any expedited procedural requirement." This may attempt a distinction between procedural compliance, which would allow us to continue to rely on the EA/BE, and substantive compliance with environmental laws. Lacking a reference to specific laws, it will be litigated. Moreover, it means that we will be required to relitigate sales like Thunderbolt.

Title II - Northwest Forest Plan

Sec. 201 directs that timber sales shall be prepared, offered and awarded "expeditiously" and consistent with the Forest Plan.

Title III - Lawful Expediting of Salvage Timber Sales

Sec. 301 Definitions
(2) & (3) Level 1 and Level 2 Interagency Teams, drawn from the August 9 MOA, have a specific composition that may not be necessary in all cases.
(4) Salvage Timber Sale is based on a timber sale unit and may include "a small percentage" of green timber to the extent necessary for commercially reasonable and environmentally sound access.

Sec. 302 Salvage Timber Sales Scope and Facilitation
(1) Salvage sales under this Title can only use existing roads and .25 mile spur roads (presumably allows helicopter logging in roadless areas) outside Wilderness and "officially recommended" WSAs and roadless areas where plans preclude timber or roads (few outside WSAs). Also, "any area" where salvage would be inconsistent with standards for late successional, riparian or withdrawn conservation areas - This may apply standards where they don't belong.

Sec. 303 Salvage Sale Documentation and Appeal
(a)(1) "to the maximum extent practicable," do ESA consultation within 30 or 60 days using level 1 and 2 field teams.
(a)(2) At least one interdisciplinary team (undefined term) meeting must be public, using FS notice provision for FS and BLM.

(b) Advisory Committees - may be formed, not subject to FACA

(c) Administrative appeals expedited by requiring appeal "not later than" 30 days after publication of the decision or an undefined "mailing of notice" under "relevant agency regulations." Time periods should be definite.

(d) Judicial Review must be sought within 30 days of an agency decision "absent good cause" (which will be litigated). This is a jurisdictional provision, and should be definite. (2) Time for Appeal is 30 days "agter the first date on which appeal may first be filed." The government should be allowed to appeal in accordance with the Federal Rules of Civil Procedure. Otherwise, this may require us to appeal all final orders within 30 days or forego an issue for appeal. (3) Expeditious consideration of cases may be required before the government has had sufficient time to

prepare. We would have to argue a briefing schedule in every case.

Sec. 304 Funding Not a DOJ matter

Sec. 305 Expedited Procedural Regulations - Is a special NEPA reg for salvage necessary?

Title IV - Timber Stand Health Prioritization

Sec. 401 This section should make clear that the review of timber stand health is a reporting requirement, not a planning requirement that requires plan amendments for implementation.

DOJ - Civil Litigation Division

[illegible] in Civil Division

March 6, 1996

TO: David M. Cohen

FROM: Richard E. Rice
Chief of Timber Litigation in Civil Division

RE: Comments Concerning Murray Bill As Introduced

1. Why does sec. 102(a) mandate, rather than authorize, suspension? Authorizing suspension would avoid the necessity of suspending all sales and activities.

2. Sec. 102(b)(1) requires negotiations with respect to timber offered, awarded, or released pursuant to section 318 of P.L. 101-121. Why doesn't this negotiation requirement track the suspension requirement of 102(a), which refers to section 2001(k) and not to section 318 of P.L. 101-121? Did the drafter intend the negotiation requirement of sec. 102(b)(1) to apply to activities other than those specified in sec. 102(a)?

3. Sec. 102(b)(1) also requires negotiations with respect to timber offered, awarded, or released pursuant to 2001(k). This language fails to precisely track similar language in sec. 102(a), raising the question of whether the drafter intended the negotiation requirement of sec. 102(b) to apply to all of the activities suspended under sec. 102(a).

4. A last point concerning sec. 102(b)(1): the terminology "under contract" is inapplicable to contracts offered, but not awarded.

5. Sec. 102(b)(3) authorizes only termination. It should also authorize suspension and modification. Further, the words "and payment of specified damages" in lines 10 and 11 are potentially problematic. The government may wish to exercise rights under clauses that do not provide for payment of specified damages.

6. Section 102(c) fails to track the language of either 102(a) or 102(b)(1). The phrase "to terminate" in line 22 should be broadened to "to suspend, modify, or terminate." Sec. 102(c) should be clarified to indicate that the Secretary possesses discretion, in the case of agreements, to determine the source of payments as provided in paragraphs (1) - (4). However, judgments should be payable only from the judgment fund specified in paragraph (1) (i.e., 31 U.S.C. § 1304).

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

LRM NO: 3690
FILE NO: 1972

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.
If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.
You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Alison PERKINS 395 3857
Office of Management and Budget
Fax Number: 395-6691
Branch-Wide Line (to reach legislative assistant): 395-6194

FROM: 3-6-96 (Date)
Pete DALMET (Name)
DOC OGC COMMERCE (Agency)
(Telephone)

SUBJECT: OMB Request for Views on Public Participation in Timber Sales Act

The following is the response of our agency to your request for views on the above-captioned subject:

____ Concur

____ No Objection

____ No Comment

____ See proposed edits on pages ____

____ Other: 2

____ FAX RETURN of ____ pages, attached to this response sheet

~~[illegible]~~ If possible we would suggest that the Bill be modified in the two instances that are attached

(4) COMMERCE

1 under the Interior Columbia Basin Ecosystem
2 Management Project; and
3 (C) any relevant standard or guideline, in-
4 cluding PACFISH, INFISH, and Eastside
5 screens.
6 (3) TERMINATION.—If the Government and the
7 purchaser do not reach agreement under paragraph
8 (1), the Secretary concerned may—
9 (A) exercise any provision of the original
10 contract that authorizes termination and pay-
11 ment of specified damages; or
12 (B) terminate the contract to avoid adverse
13 effects on the environment or natural resources.
14 (e) PAYMENT FOR TIMBER SALE CONTRACTS RELIN-
15 QUISHED.—Any claim, whether as a result of a judgement
16 or an agreement, against the Federal Government arising
17 from a timber sale contract offered under section 318 of
18 Public Law 101-121 (103 Stat. 745), from section
19 2001(k) of Public Law 104-19 (109 Stat. 266; 16 U.S.C.
20 1611 note) (as in existence prior to the date of enactment
21 of this Act), from this Act, or from the exercise of the
22 Secretary's right under a timber sale contract to terminate
23 the contract may be—
24 (1) paid from funds made available under sec-
25 tion 1304 of title 31, United States Code, and shall

(1) Any provisions and conditions in completed ESA Section 7 consultation with NMFS and FWS.

COMMERCE

1 nent combination of forest supervisors from the For-
2 est Service, district managers from the Bureau of
3 Land Management, and personnel from the United
4 States Fish and Wildlife Service and the National
5 Marine Fisheries Service with decisionmaking au-
6 thority under the Endangered Species Act of 1973
7 (16 U.S.C. 1531 et seq.).

8 (4) SALVAGE TIMBER SALE.—The term "sal-
9 vage timber sale" means a timber sale—

10 (A) in which each unit is designed to re-
11 move trees that are dead from any cause (ex-
12 cept arson found to have been committed to
13 produce timber sales), or that have been deter-
14 mined by reliable scientific methods to have a
15 high probability of dying within 1 year as a re-
16 sult of insect-related, blowdown, or fire damage; A
17 and

that constitute a significant ecological or economic risk

18 (B) that includes a small percentage of
19 other trees to the extent necessary to secure
20 human safety or provide for commercially rea-
21 sonable and environmentally sound access to
22 and removal of dead or dying trees described in
23 subparagraph (A).

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

06-Mar-1996 09:28pm

TO: Alison C. Perkins

FROM: Mathew C. Blum
Office of Mgmt and Budget, OFPP

CC: William S. Coleman Jr,
CC: Linda G. Williams

SUBJECT: LRM 3690 (Timber Sales Act)

Although we have no comment, we would simply note as a technical matter that the reference to section 6(d)(4) of the OFPP Act on p. 12 doesn't seem to make sense. That section deals with the Administrator's authority to oversee the Federal Procurement Data System.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

06-Mar-1996 05:30pm

TO: Alison C. Perkins
TO: Christine L. Nolin
TO: Clifford S. Nelms
TO: Ruth D. Saunders

FROM: Alicia K. Kolaian
Office of Mgmt and Budget, BASD

SUBJECT: LRM no 3690

Hi

On this forest health bill

I think we would say this is paygo. Starting on p. 4, it looks like they have some kind of compensation deal for people whose contracts are terminated because of the repeal. There's a list of things, including forgiving loans, bidding credits and a reference to 31 USC sec 1304, which appears to be the claims and judgments fund. Payments from that are considered paygo.

p. 12 there is a reference to penalties. If these would be newly established, that unfortunately is scorable as well.

Also, in section 304, they authorize moving money between accounts. As Spencer notes, this could have some paygo impact as well. I'm fairly certain that CBO scores things like this, and Art confirms.

Chris, what do you think? This roughly is about what my voice mail to you says.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

06-Mar-1996 06:03pm

TO: Alicia K. Kolaian

FROM: Ruth D. Saunders
Office of Mgmt and Budget, NRD

CC: Alison C. Perkins
CC: Christine L. Nolin
CC: Clifford S. Nelms

SUBJECT: RE: LRM no 3690

Yes, we agree on all accounts. We are waiting for additional information from the Forest Service, but estimate at this time that the bill would increase the deficit by $50 - $100 million.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

06-Mar-1996 06:06pm

TO: Alison C. Perkins

FROM: Clifford S. Nelms
Office of Mgmt and Budget, BRCD

CC: Alicia K. Kolaian

SUBJECT: Comments on LRM No. 3690

Thanks for the opportunity to comment on LRM No. 3690. I have the following comment.

There are a couple of provisions which appear to be PAYGO. First, the language which provides for payment from the claims and judgment fund for contracts which have been terminated. Second, as I understand it, the provisions which allow funds to be transferred from the timber salvage fund, road construction and maintenance, and timber sale preparations accounts could be scorable to the extent it alters the spendout of funds which were appropriated to the original accounts.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Mar-1996 09:37am

TO: Dinah Bear

FROM: Martha Foley
Office of the Chief of Staff

SUBJECT: RE: omnibus report

No, no letter went up. We sent a letter on the whole bill (Labor, HHS, Commerce etc) that did not talk about ANY language (abortion etc) except to say that in the case of the Senate it was somewhat better but still had bad stuff and in the case of the House that it was terrible AND AFTER BEATING UP OMB, I GOT THEM TO ADD THAT THE TONGASS STUFF IN PARTICULAR, WHILE MODIFIED, WAS STILL TERRIBLE.

On the issue of the Murray bill vs. the rest of the riders, I have to say that there is about a 1-2% chance of the original Murray bill (if adopted by the Senate) making it through the House. So I don't think that we will have the luxury of that choice. If we do, I am confident that we will still stand firm for the big things in Interior.

On the Hatfield language, I think maybe we should have a memo from you or Elena giving the layman's version of the disparity between what he said and what the committee said done for LEP/POTUS. Let's talk about this. The final report is available, so we can get that. I would be curious if Murray's people know what the report says. She is on approps of course.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Mar-1996 01:26pm

TO: Dinah Bear

FROM: Martha Foley
Office of the Chief of Staff

SUBJECT: RE: omnibus report

I would envision this as a fairly brief, rather non-lawyerly piece that simply makes the reader aware of what Hatfield says his views are and what the report language says, and lays out any other nefarious stuff in there and what it is as well (even if Hatfield has not directly addressed in a contradictory manner).

I have final report language and will get it to you shortly.

Exhaustd - give what he's said to us re: expanding 2501 beyond what he believed it to mean

areas v sales - 9/13
Not just 318 sales but all sales w/in area

12/5

Nothing on Dec 5
Dec 6 hearing - omnibus TRO for Bolton Creek 318 sales
denial of TRO to stop BK (w/drawn sales)

ruled against hi bidder ~~[illegible]~~ market to proceed on previously empirical sales

1/17/96 — ruled for us on physical imposs, + on sales prior to 318.

market decision - 1/19/96 insofar as it determined that admin's interp of K2 was in error.

cf & rejected US pos. but also rejected industry's pos. Said that didn't give ins all it wanted.

Is admin's flexibility re rep timber → (implies we don't have it now)

Also no buyout

Divisibility issue

Makes non-mar rep timber subject to ag of purchaser not enough.

Allows purchaser of mar to cur emtl design of alternatives.

Prohibits us from using dg/salvage for rep.

Alison Perkins

Last month, Senator Hatfield stated to Administration officials that court interpretations had stretched the implementation of the Rescissions Act timber rider far beyond what he had intended. Indeed, the Senator stated that the courts had "a different interpretation than I had understood. The federal district court has removed the fundamental authority I thought was vested in Jack Ward Thomas" to avoid harvesting sales that would adversely affect threatened marbled murrelets or that had other serious problems.

Contrast that statement with language in the Senate Appropriations Committee report for the Omnibus appropriations bill that actually endorses the very court decisions referenced by Senator Hatfield. The report language specifically endorses each and every ruling by Judge Hogan, who sits in the federal district court in Oregon and has repeatedly ruled against the federal government on questions of geographical scope, injunctive relief, identity of purchasers and the standard for determining whether marbled murrelets are nesting in a given area. Indeed, the language is so precisely supportive of these court decisions that it will no doubt appear in the timber industry's next relevant brief.

Senator Hatfield went on to say during his meeting with the Chief of Staff and other officials that he wanted to give the Administration the flexibility to go back to his original intent and to allow for substitution of alternative timber. Yet the language that he and Senator Gorton have offered in the omnibus bill accomplishes neither of those goals. First, it simply does not even purport to address the expansive interpretations of the rider rendered by Judge Hogan. Second, the authority their language would provide the Administration for replacement timber or buy-back authority is constrained by unrealistic timeframes and the requirement that the land management agencies have to negotiate with the timber companies over either price or replacement timber. Further, it would force the land management agencies to continue harvesting timber until such an agreement is reached, and would shield replacement timber sales from the application of environmental laws. All of these features are unacceptable to the Administration.

panying EIS's are not used to produce one-size-fits-all solutions to land and water resource issues in the Columbia basin; (3) protect this effort from broad scale legal challenges that could enjoin land management activities regionwide, producing gridlock; and (4) direct the Forest Service and the BLM to follow proper National Forest Management Act and Federal Land and Policy Management Act procedures in revising individual land and resource management plans. The managers are especially concerned that local considerations be properly evaluated in any land management plan changes emanating from the project.

The provision does not impede completion of the project, nor does it exclude any information from the project documents. Finally, the provision protects the land management agencies from the sort of litigation-induced gridlock that has plagued resource managers in the Columbia basin region for the past several years.

SEC. 325. The previous language regarding the redefinition of the marbled murrelet nesting area is replaced with a provision that amends subsection 2001(k) of Public Law 104–19. The language does not expand the sales to be released under this provision, and does not affect prior judicial decisions. The Committee agrees with the interpretations of section 2001(k) made by the Federal district court in Oregon on September 13, 1995, December 5, 1995, and January 17, 1996, and agrees with that court's January 19, 1996, ruling insofar as it determined that the administration's interpretation of subsection (k)(2) was in error.

The amendment increases the administration's flexibility by allowing the Secretary concerned to agree with a purchaser within 45 days of the date of enactment of the amendment to provide alternative volume for part or all of any sale subject to subsection (k), in a volume, value, and kind satisfactory to the purchaser, by a date agreed to by the purchaser.

The amendment also reflects that the administration has delayed implementing subsection 2001(k) well beyond the original 45-day time limit set by Congress, and still has not released all the sales required under the statute. For any sale that cannot be released due to paragraph (2), the amendment requires the agreement for alternative volume, in quantity, value, kind, and location satisfactory to the purchaser, and by a date agreed to by the purchaser, to be reached within 45 days of the date of enactment of this amendment.

The precise designation of alternative timber need not occur within the initial 45-day period, but after the date for designation of timber agreed to between the purchaser and the Secretary, the purchaser is entitled to operate the original sale under subsection (k) until the Secretary designates and timber purchaser subsequently agrees to the quantity, value, kind, and location of the new volume. A purchaser may not be compelled to accept alternative volume over the purchaser's objection as he cannot be under present law. Sales with alternative volume under the amendment are subject to the original terms of the contract unless the parties agree otherwise, and are subject to paragraph (1) of subsection (k). Any alternative volume under paragraphs (3) or (4) shall not count against current allowable sales quantities or timber sales to be offered under subsections (b) and (d) of section 2001 of Public Law

?

to the same extent as under

104–19 and may, in the Secretary's discretion, come from areas not otherwise contemplated for harvesting.

Paragraph 5 would grant, upon request of the sale owner, the administration the authority to purchase all or a specific volume of timber under the sale contract covered under this subsection. The volume would be purchased from funds available to the Secretary concerned, except for those accounts governing or related to forest land management, fire-fighting, timber sale preparation, harvest administration, road construction and maintenance, timber sale program support; any accounts associated with preparing or administering the sale of timber from any public lands under the jurisdiction of the Secretary concerned, range or minerals management; or any permanent appropriation or trust funds, such as the timber salvage sale funds and the Knudsen-Vandenburg fund. The volume and payment must be mutually agreed to by the Secretary and the purchaser. The authority provided under paragraph 5 expires 45 days after the date of enactment.

SEC. 336. In response to recent court decisions, this section has been added to the bill to prohibit the Department of the Interior and the Department of Agriculture from expending funds to assume management authority of navigable waters in the State of Alaska. The prohibition expires on May 15, 1997.

Assumption of additional subsistence management responsibilities could cost the two Departments well over $20,000,000 annually. In an era of declining budgets, this added burden would have an adverse impact on other important programs funded in the Interior bill. The Committee, therefore, has included a moratorium to provide sufficient time for the development of a viable, long-term solution to the subsistence problem. The Committee strongly urges all parties involved to work diligently toward this goal, and to develop a solution that provides State management of fish and wildlife in Alaska while protecting those who depend on subsistence resources.

V:\14REPT\1996\FURCON.000

[COMMITTEE PRINT]

NOTICE: This is a draft for use of the Committee and its staff only, in preparation for markup.

Calendar No.

104TH CONGRESS, 2d Session } SENATE { REPORT 104–000

MAKING OMNIBUS CONSOLIDATED RESCISSIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1996, AND FOR OTHER PURPOSES

MARCH 00 (legislative day MARCH 00), 1996.—Ordered to be printed

Mr. HATFIELD, from the Committee on Appropriations, submitted the following

REPORT

[To accompany S. 0000]

The Committee on Appropriations reports the bill (S. 0000) making omnibus consolidated rescissions and appropriations for the fiscal year ending September 30, 1996, and for other purposes, reports favorably thereon and recommends that the bill do pass.

23-903 oo

[In thousands of dollars]

	Prior conference agreement	Revised amount	Change
Subtotal, departmental offices			−1,611
Department of Energy:			
Fossil energy: Headquarters program direction	11,321	11,095	−226
Energy conservation: Policy and management	7,666	7,510	−156
Subtotal, Department of Energy			−382
Total, changes from prior conference agreement			−1,476

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

The provision providing $599,999 for the management of the East Mojave National Scenic Area has been removed.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

The provision restricting the National Park Service's involvement in the Mojave National Preserve has been removed.

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

Adjustments totaling $2,700,000 have been made to four Forest Service appropriations to reflect international forestry expenditures made by the agency. These expenditures were authorized under the continuing resolutions in effect through March 15, 1996

A minor addition is made to the Columbia Gorge Discovery Center conference language to allow the Forest Service to include the granting of related trail construction funds to the Non-Profit Citizens for the Columbia Gorge Discovery Center.

ADMINISTRATIVE PROVISIONS

The Tongass National Forest provision is similar to the language in H.R. 1977 in that it allows continuation of the current Tongass National Forest land management planning process. In amending or revising the current plan, the Secretary may establish habitat conservation areas, and impose any restriction or land use designations deemed appropriate, so long as the number of acres in the timber base and resulting allowable sale quantity is not less than the amounts identified in the preferred alternative (alternative P) in the October 1992 Tongass land and resource management plan. The Secretary may implement compatible standards and guidelines, as necessary, to protect habitat and preserve multiple uses of the Tongass National Forest.

The language has been augmented from the version included in H.R. 1977 to address the administration's concerns about clearcutting. The provision makes it clear that nothing in this section shall be interpreted as mandating clearcutting or unsustainable timber harvesting. The language also makes it clear that any revision, amendment, or modification shall be based on the application of the scientific method and sound, verifiable scientific data. Data is sound, verifiable, and scientific only when it is collected and analyzed using the scientific method. The scientific method requires the statement of a hypothesis capable of proof or disproof; preparation of a study plan designed to collect accurate data to test the hypothesis; collection and analysis of the data in conformance with the study plan; and confirmation, modification, or denial of the hypothesis based upon peer-reviewed analysis of the collected data. The data used shall be from the southeast Alaska ecosystem.

The section also includes language to allow certain timber sales to be awarded that have cleared the National Environmental Policy Act [NEPA] and the Alaska National Interest Lands Conservation Act [ANILCA] review process if the Forest Service determines that additional analysis under NEPA and ANILCA is not necessary.

OTHER RELATED AGENCY

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

PUBLIC DEVELOPMENT

(RESCISSION)

The Committee recommends a rescission of $2,172,000 to be derived from prior year unobligated balances available through previous appropriations. The rescission offsets funding provided for salaries and expenses in previous continuing resolutions for fiscal year 1996.

GENERAL PROVISIONS

SEC. 314. The Committee has modified the language dealing with the Columbia River Basin project to provide the administration with more time to complete the assessment and two accompanying draft environmental impact statements by the two project offices. The language is also modified to provide the Forest Service and the Bureau of Land Management more time to utilize the information contained in the assessment to amend individual unit plans of the National Forest System or the public domain, and to eliminate the requirement that any plan amendment which changes the plan's land allocation or goals and objectives must be treated as a significant plan amendment. Most importantly, the managers have deleted from the provision language that could be interpreted as limiting the contents of the documents to exclude information on fisheries and watersheds. In all other significant respects, the language has the same effect as the original language in section 314 of H.R.1977.

The basic purposes of this section are to: (1) release all existing scientific information; (2) assure that the assessment and accom-

panying EIS's are not used to produce one-size-fits-all solutions to land and water resource issues in the Columbia basin; (3) protect this effort from broad scale legal challenges that could enjoin land management activities regionwide, producing gridlock; and (4) direct the Forest Service and the BLM to follow proper National Forest Management Act and Federal Land and Policy Management Act procedures in revising individual land and resource management plans. The managers are especially concerned that local considerations be properly evaluated in any land management plan changes emanating from the project.

The provision does not impede completion of the project, nor does it exclude any information from the project documents. Finally, the provision protects the land management agencies from the sort of litigation-induced gridlock that has plagued resource managers in the Columbia basin region for the past several years.

SEC. 325. The previous language regarding the redefinition of the marbled murrelet nesting area is replaced with a provision that amends subsection 2001(k) of Public Law 104–19. The language does not expand the sales to be released under this provision, and does not affect prior judicial decisions. The Committee agrees with the interpretations of section 2001(k) made by the Federal district court in Oregon on September 13, 1995, December 5, 1995, and January 17, 1996, and agrees with that court's January 19, 1996, ruling insofar as it determined that the administration's interpretation of subsection (k)(2) was in error.

The amendment increases the administration's flexibility by allowing the Secretary concerned to agree with a purchaser within 45 days of the date of enactment of the amendment to provide alternative volume for part or all of any sale subject to subsection (k), in a volume, value, and kind satisfactory to the purchaser, by a date agreed to by the purchaser.

The amendment also reflects that the administration has delayed implementing subsection 2001(k) well beyond the original 45-day time limit set by Congress, and still has not released all the sales required under the statute. For any sale that cannot be released due to paragraph (2), the amendment requires the agreement for alternative volume, in quantity, value, kind, and location satisfactory to the purchaser, and by a date agreed to by the purchaser, to be reached within 45 days of the date of enactment of this amendment.

The precise designation of alternative timber need not occur within the initial 45-day period, but after the date for designation of timber agreed to between the purchaser and the Secretary, the purchaser is entitled to operate the original sale under subsection (k) until the Secretary designates and timber purchaser subsequently agrees to the quantity, value, kind, and location of the new volume. A purchaser may not be compelled to accept alternative volume over the purchaser's objection as he cannot be under present law. Sales with alternative volume under the amendment are subject to the original terms of the contract unless the parties agree otherwise, and are subject to paragraph (1) of subsection (k). Any alternative volume under paragraphs (3) or (4) shall not count against current allowable sales quantities or timber sales to be offered under subsections (b) and (d) of section 2001 of Public Law

104–19 and may, in the Secretary's discretion, come from areas not otherwise contemplated for harvesting.

Paragraph 5 would grant, upon request of the sale owner, the administration the authority to purchase all or a specific volume of timber under the sale contract covered under this subsection. The volume would be purchased from funds available to the Secretary concerned, except for those accounts governing or related to forest land management, fire-fighting, timber sale preparation, harvest administration, road construction and maintenance, timber sale program support; any accounts associated with preparing or administering the sale of timber from any public lands under the jurisdiction of the Secretary concerned, range or minerals management, or any permanent appropriation or trust funds, such as the timber salvage sale funds and the Knudsen-Vandenburg fund. The volume and payment must be mutually agreed to by the Secretary and the purchaser. The authority provided under paragraph 5 expires 45 days after the date of enactment.

SEC. 336. In response to recent court decisions, this section has been added to the bill to prohibit the Department of the Interior and the Department of Agriculture from expending funds to assume management authority of navigable waters in the State of Alaska. The prohibition expires on May 15, 1997.

Assumption of additional subsistence management responsibilities could cost the two Departments well over $20,000,000 annually. In an era of declining budgets, this added burden would have an adverse impact on other important programs funded in the Interior bill. The Committee, therefore, has included a moratorium to provide sufficient time for the development of a viable, long-term solution to the subsistence problem. The Committee strongly urges all parties involved to work diligently toward this goal, and to develop a solution that provides State management of fish and wildlife in Alaska while protecting those who depend on subsistence resources.