

NLWJC- Kagan

Counsel - Box 010 - Folder 003

Timber- Legislative Materials [3]



U.S. SENATOR
PATTY MURRAY
FAX

CONTACT: (202) 224-2621
FAX: (202) 224-0238

DATE: _____

TO: Dinah Bear

FROM: Marla Marvin

FAX #: _____

I couldn't get your buyback language in before the draft came back. Please let me know your suggested changes before close of business Friday.

PAGES SENT (INCLUDING COVER SHEET): _____

THANKS!

PLEASE CONTACT OUR OFFICE IF YOU ARE MISSING
PART OR ALL OF THIS TRANSMISSION.

#3

Confidential

104TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

- 8 (1) when catastrophic events occur such as for-
9 est fires or epidemic insect infestations, the Forest
10 Service and the Bureau of Land Management should
11 have available the tools necessary to harvest timber

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1 expeditiously in order to get the highest commodity
2 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) salvage timber sales should be conducted in
10 accordance with all applicable laws in order to en-
11 sure the sustainability of the forests, components of
12 the forests, 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19 16 U.S.C. 1611 note) is repealed.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. IMMEDIATE SUSPENSION OF SECTION 2001(k)**
21 **PROJECTS.**

22 (a) SUSPENSION.—

23 (1) IN GENERAL.—Notwithstanding any out-
24 standing judicial order or administrative proceeding
25 interpreting subsection (k) of section 2001 of Public

1 Law 104-19 (109 Stat. 240; 16 U.S.C. 1611 note)
2 (as in existence prior to the date of enactment of
3 this Act), the Secretary of Agriculture and the Sec-
4 retary of the Interior shall suspend for 30 days each
5 activity that was being undertaken in whole or in
6 part under the authority provided in the subsection
7 if the activity allows for such a suspension for envi-
8 ronmental concerns.

9 (2) RESUMPTION OF AN ACTIVITY.—The Sec-
10 retary of Agriculture and the Secretary of Interior
11 may not resume an activity suspended as a result of
12 this title until the Secretary concerned determines
13 that the activity (including any modification after
14 the date of enactment of this Act) complies with en-
15 vironmental and natural resource laws as amended
16 by this Act.

17 (b) TIMING AND CONDITIONS OF ALTERNATIVE VOL-
18 UME.—In the case of any unharvested sale subject to sec-
19 tion 2001(k) of Public Law 104-19 (109 Stat. 240; 16
20 U.S.C. 1611 note) (as in existence prior to the date of
21 enactment of this Act), the Secretary concerned shall
22 reach agreement with the purchaser to provide, within 3
23 years, by a date agreed to, a volume, value, and kind of
24 alternative timber satisfactory to the purchaser as an

1 equivalent substitute for the value of timber relinquished
2 under this section.

3 (c) BUYBACK FUNDS.—Any claim against the Fed-
4 eral Government arising from a timber sale contract of-
5 fered under section 318 of Public Law 101-121 (103 Stat.
6 745), from section 2001(k) of Public Law 104-19 (109
7 Stat. 240; 16 U.S.C. 1611 note) (as in existence prior to
8 the date of enactment of this Act), or from repeal of the
9 section (whether as a result of a judgment or an agree-
10 ment) shall be paid from funds made available under sec-
11 tion 1304 of title 31, United States Code, and shall not
12 require reimbursement under section 13(c) of the Contract
13 Disputes Act of 1978 (41 U.S.C. 612(c)).

14 (d) LOAN FORGIVENESS.—If a purchaser has entered
15 into a contract for a sale subject to section 2001(k) of
16 Public Law 104-19 (109 Stat. 240; 16 U.S.C. 1611 note)
17 (as in existence prior to the date of enactment of this Act)
18 and obtained a Federal Government loan or loan guaran-
19 tee, the Federal agency providing the loan may forgive the
20 loan in the amount agreed on by the agency and the pur-
21 chaser in exchange for the purchaser returning the sales
22 to the Federal agency.

1 **SEC. 109. ADVERTISED AND OTHER SALES UNDER THE**
2 **PROGRAM.**

3 (a) **ADVERTISED SALES.**—Section 2001 of Public
4 Law 104–19 (109 Stat. 240; 16 U.S.C. 1611 note) (as
5 in existence prior to the date of enactment of this Act)
6 shall apply to a sale offered under subsections (b) and (d)
7 of the section if—

8 (1) the sale was advertised, but was not award-
9 ed to a purchaser, prior to the date of enactment of
10 this Act; and

11 (2) neither the United States Fish and Wildlife
12 Service nor the National Marine Fisheries Service
13 objected to the sale under paragraph (5) of the
14 Memorandum of Agreement of August 9, 1995.

15 (b) **OTHER SALES.**—A sale initiated by the Forest
16 Service or the Bureau of Land Management under section
17 2001 of Public Law 104–19 (109 Stat. 240; 16 U.S.C.
18 1611 note) (as in existence prior to the date of enactment
19 of this Act) shall be subject to title III of this Act and
20 all environmental and natural resource laws.

21 **TITLE II—NORTHWEST FOREST**
22 **PLAN**

23 **SEC. 201. NORTHWEST FOREST PLAN.**

24 (a) **DIRECTION TO COMPLETE TIMBER SALES.**—The
25 Secretary of the Interior, acting through the Director of
26 the Bureau of Land Management, and the Secretary of

1 Agriculture, acting through the Chief of the Forest Serv-
2 ice, shall expeditiously prepare, offer, and award timber
3 sale contracts consistent with the Northwest Forest Plan.

4 (b) AVAILABILITY OF FUNDS.—

5 (1) IN GENERAL.—The Secretary of Agriculture
6 and the Secretary of the Interior shall, to the maxi-
7 mum extent practicable, make funds available for
8 personnel to complete any watershed assessment or
9 other analyses required for the preparation, adver-
10 tisement, and award of timber sale contracts in
11 order to meet the timber sale targets established in
12 the Northwest Forest Plan.

13 (2) SOURCE.—If there are no other unobligated
14 funds appropriated to the Secretary of Agriculture
15 or the Secretary of the Interior that can be available
16 as required by paragraph (1), the Secretary con-
17 cerned shall make funds available from amounts
18 that are available for the purpose of constructing
19 forest roads in the regions to which the Northwest
20 Forest Plan applies.

21 (c) SAVINGS PROVISION.—Nothing in this title af-
22 fects the legal duties of Federal agencies with respect to
23 the planning and offering of timber sales, including sal-
24 vage timber sales under this Act.

1 **TITLE III—LAWFUL EXPEDITING**
2 **OF SALVAGE TIMBER SALES**

3 **SEC. 301. DEFINITIONS.**

4 In this title:

5 (1) **COLLABORATIVE DECISIONMAKING PROC-**
6 **ESS.**—The term “collaborative decisionmaking proc-
7 **ess”** means a process similar to that initiated on the
8 **Wenatchee National Forest** by which a Federal
9 **agency** seeks input from the public about means of
10 **improving a situation, rather than solving a problem,**
11 **through open communication and joint learning.**

12 (2) **DISLOCATED TIMBER WORKER.**—The term
13 **“dislocated timber worker”** means—**[To be sup-**
14 **plied]**

15 (3) **SALVAGE TIMBER SALE.**—The term “sal-
16 **vage timber sale”** means a timber sale in which a
17 **preponderance of the trees are dead or have been de-**
18 **termined to have a high probability of dying within**
19 **1 year.**

20 **SEC. 302. SALVAGE TIMBER SALES.**

21 (a) **IN GENERAL.**—The Secretary of Agriculture, act-
22 **ing through the Chief of the Forest Service, and the Sec-**
23 **retary of the Interior, acting through the Director of the**
24 **Bureau of Land Management, shall—**

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1 (1) offer salvage timber sales of forest stands
2 on Forest Service and Bureau of Land Management
3 land located outside—

4 (A) any unit of the National Wilderness
5 Preservation System; or

6 (B) any roadless area that—

7 (i) is administratively designated as a
8 roadless area in the managing agency's
9 most recent land management plan in ef-
10 fect as of the date of enactment of this Act
11 (not including land designated as a Fed-
12 eral wilderness area); or

13 (ii) is under consideration for inclu-
14 sion in the National Wilderness Preserva-
15 tion System;

16 (C) any area in which a salvage timber
17 sale would be inconsistent with agency stand-
18 ards and guidelines applicable to areas adminis-
19 tratively withdrawn for late successional and ri-
20 parian reserves; and

21 (D) any area withdrawn by Federal Law
22 for any conservation purpose;

23 (2) expeditiously prepare, offer, and award tim-
24 ber salvage sales described in paragraph (1) by—

1 (A) entering into the Geographical Infor-
2 mation System and making easily available to
3 incorporate into individual projects, basic forest
4 inventory, including data on vegetation, soils,
5 riparian systems, fisheries, wildlife habitat, and
6 other relevant data; and

7 (B) marking or designating either individ-
8 ual or classes of trees to be included in the sal-
9 vage timber sale, based on the criteria devel-
10 oped under subsection (e);

11 (3) perform appropriate revegetation oper-
12 ations; and

13 (4) undertake watershed and other restoration
14 activities in or near the salvage timber sale by using
15 dislocated timber workers.

16 (b) **APPLICABILITY.**—This section applies only to a
17 salvage timber sale that occurs as a result of a cata-
18 strophic event in which expedited access to dead or dying
19 timber is necessary to provide a higher value timber prod-
20 uct and higher revenue returns to the Federal treasury
21 than would be possible under the natural resource and en-
22 vironmental laws.

23 (c) **CRITERIA FOR DETERMINATIONS.**—The Sec-
24 retary of Agriculture and the Secretary of the Interior
25 shall develop, in consultation with scientific experts,

1 forest- and district-specific criteria for making determina-
2 tions as to whether a timber sale is a salvage timber sale.

3 **SEC. 308. SALE DOCUMENTATION.**

4 (a) PREPARATION OF DOCUMENTS.—In conducting a
5 salvage timber sale under this title—

6 (1) except as otherwise provided in this Act,
7 each Federal agency shall comply with the Memo-
8 randum of Agreement entered into on August 9,
9 1995, by the United States Department of Agri-
10 culture, the United States Department of the Inte-
11 rior, the Department of Commerce, and the Envi-
12 ronmental Protection Agency, designed to expedite
13 compliance with the Endangered Species Act of
14 1973 (16 U.S.C. 1531 et seq.), the National Envi-
15 ronmental Policy Act of 1969 (42 U.S.C. 4321 et
16 seq.), and other environmental statutes; and

17 (2) the Forest Service and the Bureau of Land
18 Management shall facilitate public participation in
19 salvage timber sale planning and preparation by—

20 (A) allowing any member of the public to
21 attend the first interdisciplinary team meeting
22 conducted to review a salvage timber sale and
23 the last interdisciplinary team meeting prior to
24 publishing the notice inviting the public to com-
25 ment on a proposed timber salvage sale; and

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1 (B) using a collaborative decisionmaking
2 process to the maximum extent feasible.

3 (b) FEDERAL ADVISORY COMMITTEE ACT.—The
4 Federal Advisory Committee Act (5 U.S.C. App.) shall not
5 apply to public participation in decisionmaking for salvage
6 timber sales under this Act.

7 (c) PROCEDURAL SAFEGUARDS.—Advice shall not be
8 accepted from a non-Federal person concerning a salvage
9 timber sale unless rendered in a public forum or through
10 an opportunity made available to all interested persons.

11 (d) EXPEDITING ADMINISTRATIVE APPEALS.—Ad-
12 ministrative review of a decision of the Forest Service or
13 the Bureau of Land Management under this title shall be
14 conducted in accordance with section 322 of the Depart-
15 ment of the Interior and Related Agencies Appropriations
16 Act, 1993 (106 Stat. 1419; 16 U.S.C. 1612 note), except
17 that—

18 (1) an appeal must be filed not later than 21
19 days after the issuance of a decision by the manag-
20 ing agency; and

21 (2) the managing agency shall issue a final de-
22 cision not later than 30 days after an administrative
23 appeal is filed and may not extend the closing date
24 for a final decision.

25 (e) EXPEDITING JUDICIAL REVIEW.—

1 (1) TIME FOR CHALLENGE.—Any challenge to
 2 a salvage timber sale under this title shall be
 3 brought as a civil action in a United States district
 4 court not later than 30 days after the later of—

5 (A) the date on which an agency an-
 6 nounces a decision to proceed with a salvage
 7 timber sale; or

8 (B) the date on which an agency issues a
 9 final decision regarding an administrative ap-
 10 peal of a salvage timber sale.

11 (2) EXPEDITIOUS CONSIDERATION.

12 (A) IN GENERAL.—The court shall, to the
 13 maximum extent practicable, expedite proceed-
 14 ings in a civil action under paragraph (1).

15 (B) PROCEDURES.—To expedite proceed-
 16 ings under paragraph (1), a court may shorten
 17 the time allowed for the filing of papers or for
 18 other procedures that would otherwise apply.

19 (3) PRESUMPTIONS.—

20 (A) IN GENERAL.—There shall be a rebut-
 21 table presumption that any salvage timber sale
 22 that is in compliance with applicable land man-
 23 agement plans and interim or other standards
 24 and guidelines meets the requirements of envi-
 25 ronmental laws.

1 (B) LEGAL DUTIES.—Subparagraph (A)
2 does not affect the legal duties of a Federal
3 agency in connection with the planning and of-
4 fering of a salvage timber sale.

5 **SEC. 304. FUNDING.**

6 To facilitate implementation of this title, salvage tim-
7 ber sales, collection of basic forest data, and environ-
8 mental restoration projects, a Federal agency may trans-
9 fer funds among the following accounts without making
10 reprogramming requests to Congress:

- 11 (1) Timber salvage fund.
12 (2) Road construction funds.
13 (3) Timber sale preparation.

14 **SEC. 305. EXPEDITED PROCEDURES.**

15 (a) IN GENERAL.—Not later than 180 days after the
16 date of enactment of this Act, the Secretary concerned
17 shall, with the assistance of the Council on Environmental
18 Quality, develop expedited procedures to prepare the docu-
19 mentation required for a decision selecting and authoriz-
20 ing a salvage timber sale.

21 (b) TIME LIMIT.—The time to prepare documenta-
22 tion required for a decision selecting and authorizing a
23 salvage timber sale shall not exceed 120 days from the
24 date of notice of a proposed salvage timber sale.

1 **SEC. 306. PILOT PROGRAM TO SELL WOOD.**

2 (a) **IN GENERAL.**—The Secretary of the Interior, act-
3 ing through the Bureau of Land Management, and the
4 Secretary of Agriculture, acting through the Forest Serv-
5 ice, shall implement a program to demonstrate the fea-
6 sibility of alternative timber sale contracts for salvage tim-
7 ber sales.

8 (b) **AREAS.**—

9 (1) **INTERIOR.**—The Secretary of the Interior
10 shall carry out this section in between 5 and 10 Bu-
11 reau of Land Management districts.

12 (2) **AGRICULTURE.**—The Secretary of Agri-
13 culture shall carry out this section in between 10
14 and 25 Forest Service ranger districts.

15 (c) **PROCESS.**—To carry out this section, the Sec-
16 retary concerned shall establish a process to—

17 (1) offer a contract to harvest and transport
18 wood to the lowest bidder;

19 (2) collect and sort the wood; and

20 (3) sell the wood to the highest bidder.

21 **TITLE IV—TIMBER STAND**
22 **HEALTH PRIORITIZATION**

23 **SEC. 401. REVIEW OF FOREST HEALTH.**

24 The Secretary of the Interior and the Secretary of
25 Agriculture shall review the forest health conditions on

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1 Forest Service and Bureau of Land Management lands

2 and—

3 (1) identify on or before March 1 of each year,
4 the areas on Forest Service and Bureau of Land
5 Management lands that do not represent the historic
6 range of variability or comprise healthy ecosystems;

7 and

8 (2) prepare a plan to restore the land to the
9 land's historic range of variability.

The Public Participation in Timber Salvage Act
(as of morning of 2/29/96)

Findings:

* When catastrophic fires or insect infestation occurs, dead or dying timber should be salvaged as expeditiously as possible.

* Improving the health of our forests is a top priority, and such be addressed through analysis and public participation and consider the health of the entire forest, including watersheds, soils, fisheries, and wildlife habitat.

* Timber salvage should be conducted in accordance with all applicable laws.

Title I--Repeal

Section 1: Repeal Section 2001 of PL 104-19.

Section 2: Immediate Suspension of Section 2001(k) Projects

a) All section 2001(k) sales are immediately suspended.

b) The Secretary shall attempt to reach agreement with section 2001(k) purchasers to provide a volume, value and kind of alternative timber within 3 years satisfactory to the purchaser and government.

c) The Secretary is authorized to use funds from the federal claims settlement account to buy back section 2001(k) contracts.

d) The federal government may exchange timber contracts for other federal loan forgiveness (Mayr Bros. provisions).

Section 3: Section 2001(b) and (d) Projects

a) Sales offered under 2001(b) and (d) that have been advertised for sale, but have not been awarded to a purchaser, and for which neither the USFWS nor the NMFS have objected under paragraph five (5) of the MOA of August 9, 1995, the provisions of section 2001 of PL 104-19 shall apply.

b) Sales initiated by the Forest Service or the BLM pursuant to section 2001(b) and (d) of PL 104-19 shall be subject to the provisions of Title III of this Act and all environmental and natural resource laws.

*how?
suspend
on sales
already awarded
to have (what?)
stop them.*

Title II -- NW Forest Plan

Section 1. Expedite timber sales under the NW Forest Plan.

Section 2. The agencies shall make funds available to fund personnel to complete watershed assessments and other analysis. Where there are no unobligated funds, the forests should use road construction funds.

Title III -- Expediting Salvage Sales

Section 1: Definitions

- a) Salvage Timber Sale: a sale in which each unit is composed of forest stands in which a majority of trees are dead or have a high probability of dying within 1 year.
- b) Dislocated Timber Worker
- c) Collaborative Decisionmaking Process: a process initiated on the Wenatchee N.F. in which federal agencies seek input from the public about ways to improve a situation through open communication and joint learning.

Section 2: Timber Salvage Sales.

- a) This act applies only to timber salvage sales located outside of Wilderness, any roadless area designated as not available for timber harvest, any area in which such a sale would be inconsistent with agency standards and guidelines, including areas administratively withdrawn for late successional and riparian reserves;
- b) expeditiously prepare, offer and award timber salvage sales by
 - 1) establishing basic forest inventory data in the GIS and making data available to incorporate into projects
 - 2) reducing individual tree marking requirements and establishing harvestable trees based on readily determinable characteristics
- c) perform appropriate revegetation operations; and
- d) undertake any necessary watershed and other restoration activities in or near the timber salvage sale unit by using dislocated timber workers.

Section 3. Sale Documentation

a) Document preparation

2/95

1) agencies shall comply with the MOA of 9/95 designed to expedite compliance with ESA, NEPA, and other environmental statutes

2) agencies shall facilitate public participation by

A) allowing the public to attend interdisciplinary team meetings

B) where practicable, using a collaborative decisionmaking process

C) waiving FACA provisions that impede public participation in timber salvage sale preparation.

b) Expediting administrative appeals

1) appeals shall be filed within 21 days

2) agencies shall issue a final decision within 30 days

c) Expediting judicial appeals

1) appeals shall be filed within 30 days after the agency announces a decision to proceed or issues a final decision

2) courts should expedite proceedings and shorten the times allowed for filing of papers, etc.

(d) New NEPA Regulations

Within six months of enactment of this Act, the Secretary concerned shall, with the assistance of the Council on Environmental Quality, develop expedited procedures to prepare the documentation required for a decision selecting and authorizing a salvage timber sale. The regulations shall set the time for preparation of such documents at 120 days.

(e) Pilot Program to Sell Wood, Not Timber Sales.

The Secretaries shall each implement a program to demonstrate the feasibility of alternative timber sale contracts for salvage timber sales. In carrying out the pilot program established pursuant to this section, the Secretary concerned shall select

comment
45
45

from areas under the jurisdiction of each of the agencies referred to between 10-25 Forest Service ranger districts and 5-10 BLM districts to demonstrate this alternative approach. The agency concerned will establish a process in which:

- 1) the agency offers a contract to the lowest bidder to harvest and transport the wood;
- 2) the agency collects and sorts the wood; and
- 3) the agency sells the wood to the highest bidder.

Section 4. Funding

To facilitate implementation of this Act, salvage timber sales, collection of basic forest data, and environmental restoration projects, the agencies may transfer funds among the timber salvage fund, the road construction fund, and the timber sale preparation fund, without making reprogramming requests to Congress.

Title III. Forest Health Study

The agencies shall undertake a forest-by-forest analysis about the health of the forest and potential timber stand improvement projects.

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

27-Feb-1996 09:58am

TO: Elena Kagan

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

SUBJECT: try again

Draft Amendments to ? 2001, Pub. L. 104-19

Section _____. 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) OPTION 9 TIMBER SALES -- Section 2001 is amended-

- (1) by striking subsection (d);

(2) by redesignating subsections (e) through (l)

as (d) through (k), respectively;

(3) in subsection (d) (as so redesignated), by striking ", timber sales conducted under subsection (d),";

(4) in subsection (e) (as so redesignated), -

(A) in paragraph (1), by striking ", and a timber sale to be conducted under subsection (d),";

(B) in paragraph (2), by striking "or a timber sale to be conducted under subsection (d),";

(C) in paragraph (3), by striking "or any

decision to prepare, advertise, offer, award, or operate a timber sale pursuant to subsection (d),";

(5) in subsection (h) (as so redesignated), by striking "and any timber sale under subsection (d)";

(6) in subsection (i) (as so redesignated), -

(A) in the first sentence, by striking "subsections (b) and (d)" and inserting "subsection (b)";

(B) in the second sentence, by striking "and timber sale contracts offered under subsection (d)".

(e) AWARD AND RELEASE OF TIMBER SALE CONTRACTS SUBJECT TO SECTION 318 OF PUBLIC LAW 101-121 -- Subsection 2001(j) (as redesignated by subsection (d) of this Section) is amended-

(1) by striking paragraphs (1) through (3) and inserting the following new paragraphs:

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

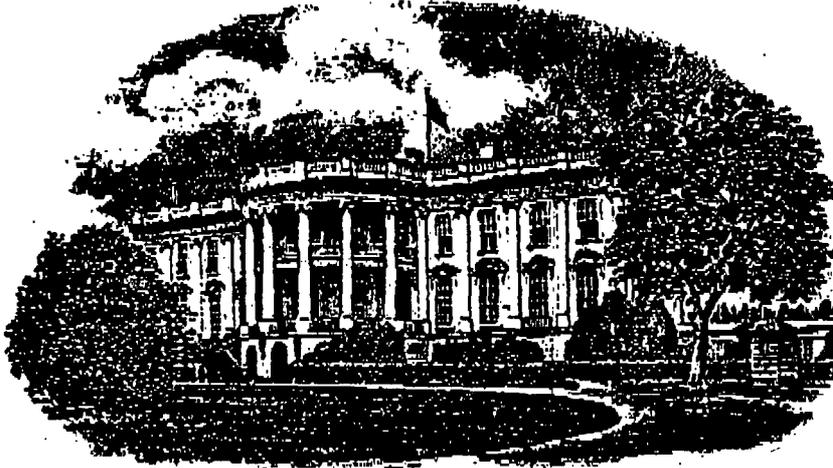
(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), the Federal Land Management Policy Act (43 U.S.C. 1701 et seq.), the Oregon & California Lands Act (43 U.S.C. 1181a et seq.) or other law applicable to the award, release, completion, replacement, modification suspension or termination of timber sale contracts, the Secretary concerned may replace, modify, suspend or terminate any timber sale contract, currently suspended, that was offered or awarded in fiscal year 1990 under the authority of, and in compliance with, section 318(b) or that was released pursuant to this subsection where 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.

(2) CONTRACT DISPUTES.- All claims by a contractor against the government relating to a contract replaced, modified, suspended or terminated

pursuant to subparagraph (A) shall be subject to the
Contract Disputes Act.

(f) EFFECT ON PLANS, POLICIES AND ACTIVITIES -- Section 2001 is
further amended by striking subsection (k) (as redesignated by
subsection (d) of this Section).

EXECUTIVE OFFICE OF THE PRESIDENT**Office of Management and Budget****Natural Resources, Agriculture Branch****Fax Transmittal Cover Sheet**Number of pages (including cover) 6Date: 2/29

To: TJ GLAUTHIER
DINAH BEAR 60753
ELENA KAGAN 61647
TED BOLING 616-8543

Phone: _____ Fax: _____

From: CHRIS NOLIN

Comments: THE FOLLOWING ARE COMMENTS RECEIVED
 FROM USDA & INTERIOR ON OUR TIMBER FIX
 LANGUAGE. I THINK THEY RAISE SOME GOOD
 POINTS - ALTHOUGH ^{MOSTLY} TECHNICAL ONES.

Phone: (202) 395-3446 Fax: (202) 395-4941

USDA

COMMENTS ON DRAFT TIMBER AMENDMENTS

- * **Repeal of subsections 2001 (d) and (l) (as originally enacted) highlights the need to develop as soon as possible a record evaluating "new information" since the April 1994 ROD. In the event this provision is enacted, we would anticipate a lawsuit would be filed as soon as the amendment of 2001 becomes effective.**
- * **Retaining salvage sales under section 2001(b) and the MOA is much less disruptive than the Murray proposal which would also repeal subsection (b).**
- * **Language in 2001(j)(1)(A) (as amended and re-designated by this bill) is a bit confusing. The provision could state more clearly that timber sales subject to this section include those sales awarded or released pursuant to the original 2001(k) as originally enacted.**

Are the findings that "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" at the end of 2001(j)(1)(A) judicially reviewable? Who could challenge these findings? Contract holders? Counties? Interest groups? What sort of administrative record is required for the finding of "adverse effect on the environment or natural resources"? Does NEPA apply to these findings?

If the 2001(j)(1)(A) finding is judicially reviewable, then how does the "effective immediately" language work?

It appears that NEPA, ESA, administrative appeal and judicial review would not apply to replacement timber as the finding is effective immediately?

What are the standards for replacement timber? NEPA, ESA, other environmental law? The President's Northwest Forest Plan? LRMP standards and guidelines? PACFISH? INFISH?

- * **2001(j)(1)(B). Why have a cap on the amount of damages? The fastest and least disruptive of the options to get out of the current green timber offerings in the President's Northwest Forest Plan area would be to "cash-out" all of the claims currently pending. "Cashing-out" also appears to present the least threat to the President's Northwest Forest Plan.**
- * **2001(j)(1)(2). Why not allow the claims to be paid out of the Judgment Fund without reimbursement from agency appropriations? The "cashing-out" of the claims benefits a multi-state area and seems to have great public benefit.**

Memorandum

To: Chris Nolan
Mark Weatherby

From: Karen Mouritsen *KM*
Office of the Solicitor

Nancy Hayes *NH*
Bureau of Land Management

Re: Comments on Feb. 28, 1996 Version of Draft Legislation

Here are comments, in no particular order.

Section (e): AWARD AND RELEASE OF TIMBER SALE CONTRACTS SUBJECT TO SECTION 318 OF PUBLIC LAW 101-121:

In proposed section (1) (A):

1. Line 5: "other law applicable to the award, release," The term "other law" would include the ESA and NEPA. This would allow the land management agencies to disregard the ESA and NEPA in design of replacement contracts, and in design of modifications to contracts. I would guess that the drafters intended "other law" to refer to specific laws concerning the BLM and FS contracting process. If so, I suggest listing specific contract laws. One important BLM contracting requirement that should be specifically listed is the prohibition on negotiating timber sales (or modifications to timber sales) if the amount of timber is in excess of 250 M board feet. 43 CFR § 5402.0-6(a).

2. Define the terms "replace" and "replacement". These are not BLM contracting terms. The Reversion Act itself uses the term "alternative offer." The definition should cover the concept of cancelling or terminating a contract, and then providing another contract in place of the cancelled contract, in lieu of damages for breach of the original contract.

In another section, we need to address how the agencies will decide that the replacement contract is comparable to the cancelled contract. (For example, will the focus be on providing timber of the same species, or will the focus be on providing timber of the same monetary value, even if it is of a different species or size). Or we could provide that the Secretary needs to reach agreement with the purchaser within a certain period to provide replacement timber. We could provide that the purchaser may elect to take monetary damages at any time within that period in lieu of alternative timber.

3. Line 9 to 10: The term "currently suspended" could be read to limit the operation of this section to contracts that the Forest Service has awarded but suspended. It is not crystal clear that the language below would cover contracts that have been awarded,

and are not suspended. See paragraph 6 below. (BLM does not have any suspended contracts -- most BLM contracts covered by § 2001(k) or Judge Hogan's orders are awarded and the contractors have the ability now to operate the contracts.) One way to handle would be to list the contracts by name -- the BLM has approximately six contracts that it would like to replace or modify or terminate.

4. The title to this section refers solely to 318 sales, but the body of the section also refers to the 1991 and 1992 sales released pursuant to Judge Hogan's order. Consider renaming this section.

5. Line 11 to 12: "in compliance with section 318(b)": The corrective measures of this section would not cover the four Forest Service sales enjoined by Judge Dwyer due to non-compliance with the section 318 fragmentation requirements. Nor would this language cover the First and Last sales, as we have argued that they are not in compliance with § 318. In addition, it does not appear that we have provided a shield for judicial review of this part of the section. Therefore, we might get litigation over whether sales actually did comply with § 318 (for example, if a contract holder does not want his contract replaced).

6. Line 12 to 13: "Pursuant to this subsection": It is not clear that you are referring to sales released pursuant to the old § 2001(k) and Judge Hogan's orders.

7. Line 13 and 14: Keep in mind that "in his discretion" effectively eliminates judicial review of the Secretary's decision to replace or modify or terminate a contract. However, although there would be no review of this decision, there would still be judicial review available of whether we provided adequate replacement timber or liquidated damages.

In proposed Section (1)(B):

1. We read this to provide \$50 million to each Secretary. This would be adequate for the BLM.

Section (f): EFFECT ON PLANS, POLICIES AND ACTIVITIES

1. Consider keeping this section in order to shield us from NEPA and ESA challenges until the end of this year. We are in the process of analyzing new information and determining how the Forest Plan may need to be amended.



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

MEMORANDUM

TO: Chris Nolin
Mark Weatherly

CC: Dinah Bear

FROM: Robert L. Baum
Associate Solicitor--Conservation and Wildlife

David Gayer
Attorney/Advisor

RE: Draft Amendments to 2001 of P.L. 104-19

DATE: February 29, 1996

Below are the Division of Conservation and Wildlife's comments to the Draft Amendments to Section 2001 of P.L. 104-19. If you would like to discuss this further, please do not hesitate to contact us at 202-4344 or 202-5172.

comments on draft amendments to timber rider in Reversions Act (all comments on revised subsection 2001(j)):

1. We are extremely concerned about the language "other applicable law" in line 4 of (j)(1)(A) which would include such laws as the Endangered Species Act and the National Environmental Policy Act. The effect would be to allow the Forest Service and BLM to make decisions to replace, modify, suspend, or terminate timber sale contracts without regard to these or any other environmental statutes and the impact on natural resources. In essence, we would be replacing one environmental controversy with potentially another. We understand that this result probably is unintentional, since the purpose of the "other applicable law" language is to capture all other laws governing the Forest Service and BLM contracting processes, but not to bring in other law in the U.S. Code that applies to this process. We understand that attorneys for the BLM have suggested taking care of this problem by listing specific contracting laws, which makes sense to us.

2. Lines 9-10 makes that provision only apply to 318 sales that are "currently suspended." However, most of those sales are no longer suspended, due to section 2001(k). Therefore, either

"currently suspended" should merely be deleted, or replaced with something to the effect of "were suspended prior to enactment of PL 104-19".

3. Lines 10-12 leave uncovered timber sales contracts for sales that are either not section 318 sales or that the government considers not to be in compliance with the requirements of section 318. Contracts not covered would include contracts awarded pursuant to court orders construing existing 2001(k)(1) as applying to all sales in the section 318 area as well as contracts for at least six sales the government considers not to have met section 318's requirements, but which Judge Hogan ordered or declared should be released. We also note that the language in those lines would allow lawsuits challenging whether particular sale contracts were in fact "offered or awarded ... under the authority of, and in compliance with section 318(b)." This is a two edged sword: it could allow the environmentalists to hold up replacement timber by challenging the bona fides of the underlying sales, but also allow the timber folks to sue challenging the authority of the Administration to offer replacement timber for 318 area or non-conforming sales.

Jan 4 12:00

*Language is -
unacceptable*

* Revision of Sec. 318 amendment

AMENDMENT

Sec. ___ Amend subsection 2001 (k) of Public Law 104-19 by striking "in fiscal years 1995 and 1996" in paragraph (1) and amending paragraph (5) to read:

"(3) ALTERNATIVE VOLUME—If a sale subject to paragraph (1) cannot be released and completed under paragraph (2) within 10 days of the date of enactment of this paragraph, the Secretary concerned, within 45 days of the date of enactment of this paragraph, shall provide, subject to the approval of the timber sale purchaser, an equal volume of timber, of like kind and value, which shall be subject to the original terms of the contract. For any other sale subject to paragraph (1), the Secretary concerned may, within 45 days of the date of enactment of this paragraph, subject to the approval of the purchaser, provide an equal volume of timber, of like kind and value. Any sales subject to this subsection shall be awarded, released and completed pursuant to paragraph (1) for a period equal to the length of the original contract, and shall not count against the current allowable sales quantity or timber sales to be offered under subsections (b) and (d)."

→ this is worse for us.

No NEPA for alternative volume

like value +
volume

- Alternative volume can be provided for any reason but purchasers would have to agree, which puts them in the drivers seat.

- Under present law - if a known nest, then

promptly:

320 million board feet

Jim 703-243-7939
Dillo 701-869-5045

16TH REPORT of Level 1 printed in FULL format.

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Committee Reports

104th Congress; 1st Session

House Rept. 104-71

104 H. Rpt. 71

MAKING SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 1995, AND FOR OTHER
PURPOSES

DATE: March 8, 1995. Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

SPONSOR: Mr. Livingston, from the Committee on Appropriations, submitted the following

REPORT (To accompany H.R. 1159)

together with DISSENTING VIEWS

TEXT:

The Committee on Appropriations submits the following report in explanation of the accompanying bill making supplemental appropriations and rescissions for the fiscal year ending September 30, 1995, and for other purposes.

COMMITTEE ACTIONS

The Committee has completed action on rescissions, included in four separate bills, that total over \$20 billion. Some of the savings that will occur as a result of these rescissions have been used to offset supplemental appropriations requests for the Department of Defense, FEMA Disaster Assistance, debt relief for Jordan, payment to the Coast Guard for refugee support in the Caribbean, and several other necessary supplementals for fiscal year 1995. This bill includes supplemental funding for debt relief for Jordan, food inspection services, and others.

The rescissions have been made across the Government. They are our first step in the direction of downsizing the Government. By taking this action in fiscal year 1995, the Committee is taking the opportunity to accelerate savings proposed in several legislative actions already taken or under way in the House, proposed by the National Performance Review activity of the Vice President and proposed in the Presidents budget request for fiscal year 1996. Taking these actions now is putting us on a course to provide better government at lower cost to better meet the needs of all the people of the United States and the beneficiaries of the programs served. Not only will making these rescissions enable us to offset the supplementals for those people hurt by last years natural disasters, but it also means we are taking steps necessary to insure the Nations financial future that affects our children and grandchildren. Saving

Exhibit D

The Committee recommends a general provision (Section 301) to prohibit the use of any funds in any appropriations act for fiscal year 1995 to issue, administer or enforce any executive order, or other rule or order, that prohibits Federal contracts with companies that hire permanent replacements for striking employees. The Committee has taken this action because it believes that the Congress, and not the Executive Branch, has the responsibility to write the Nation's labor laws.

The Committee is recommending nullification for the one-for-one public housing replacement requirement through September 30, 1995 (Section 302). During this time period, the Department is urged to approve expeditiously applications for public housing demolition and disposition.

The Committee has recommended three general provisions which impact activities of the Environmental Protection Agency associated with implementation of the Clean Air Act. Restrictions of funds have been recommended for the imposition and enforcement of requirements that States must implement both an inspection and maintenance program for vehicular emissions and trip reduction measures to reduce vehicular emissions (Sections 303 and 304). While not required to include these two programs, State implementation plans under the Clean Air Act could still contain such programs at the discretion of the States. In those States where such programs have already been initiated, the Committee believes that every effort should be made to recognize the substantial investment by the private sector. The remaining provision (Section 305) clarifies that the promulgation of a Federal implementation plan under the Clean Air Act for three areas of California shall have no further force and effect. This action removes the cloud which exists as a result of promulgating a Federal implementation plan at the same time a State implementation plan is undergoing its approval process by the Environmental Protection Agency.

Section 306. The Committee hereby expressly declares that this provision is necessary not to effectuate any change in federal law or policy, but rather to correct erroneous administrative and judicial understandings of its prior enactments.

Timber Salvage Sales

The Committee has included bill language (Section 307) to establish a two-year emergency timber salvage program to address the short term aspects of the emergency fire, insect and disease situation on Forest Service and Bureau of Land Management (BLM) lands.

Millions of acres of trees on public lands have burned in recent years. In 1994, more than 4 million acres of public lands burned. On Forest Service lands alone, over 6 billion board feet of timber was killed by fire, while a mere 1 billion board feet of salvage timber volume was offered. More timber burned in 1994 than was harvested from Forest Service land, and 33 firefighters died fighting the forest fires of 1994. The federal costs to fight the 1994 fires approached \$1 billion.

Since 1986, timber mortality due to insects and disease is up nearly 25%. Eleven million of 64 million acres of National Forest timber land in eleven western states were infested with pine beetles and spruce budworms. Those 11 million acres contain enough wood to build 13 million new homes.

The gypsy moth and a parasitic fungus have defoliated 2 million acres in the northeast and central states. In 1992-93, pine beetles and other southern pests damaged 14 million acres of southern pine forests.

Despite an estimated backlog of 21 billion board feet of dead and dying timber due to insect, disease, or fire on public forests, the Forest Service timber salvage program has averaged approximately 1.8 billion board feet during the last five years. For fiscal 1995, 1.57 billion board feet are programmed by the Forest Service. In fiscal year 1996, 1.449 billion board feet are programmed for harvest.

Within 6 to 24 months, much of the salvage timber deteriorates and becomes unmerchantable. This underscores the need to expedite salvage timber sales. However, the current lengthy Forest Service process for providing salvage timber, delayed further by appeals and lawsuits, is not conducive to providing nearly enough salvage timber to the marketplace before it rots.

The Committee has recommended the creation of an emergency, two-year timber salvage program to address this dire situation, revitalize public land forests, and enhance the ability of the Forest Service to expeditiously prepare environmental documentation to provide salvage timber to market.

Using the procedures of the amendment, the Secretaries of Agriculture and Interior must prepare, advertise, offer, and award contracts for not less than 3 billion board feet of salvage timber sales in each of two years. The document for each sale combines an environmental assessment under the National Environmental Policy Act and a biological evaluation under the Endangered Species Act. Each Secretary has flexibility in that the volume that receives an environmental assessment may total in excess of the volume requirements of the bill; however, each Secretary may select among the sales prepared in order to attain the minimum volume required. Flexibility in the first year of the program has been added which allows the Secretary to offer sales which total fifty percent of the total volume within three months of enactment and the remaining volume evenly distributed throughout the first year period. Each Secretary is required to report to appropriate House and Senate committees on their attainment of volume requirements during the two year emergency period.

The two agencies are urged to use all available authorities to meet the deadlines, including contracting for private sector timber cruising and other sales preparation activities. The total time period permitted for the preparation and offering of salvage timber sales under the amendment is 120 days for the one-half of first years sales. The remaining first year emergency salvage sales shall occur in an evenly distributed time frame. Second year sales shall have similar flexibility.

The Forest Service and BLM are free to redesign or disapprove sales, particularly if warranted by the analysis contained in the consolidated documents, so long as they substitute other sales to satisfy the annual volume requirements. Those documents and agency decisions based on them are the only documents and procedures required to conduct the salvage timber sales and are deemed to satisfy federal environmental laws and regulations by the provision. The emergency salvage timber provision also overrides any court orders and restraining orders or decisions issued prior to enactment.

Each Secretarys duties include reforestation after emergency salvage sales are harvested, consistent with the agencies regulations.

The emergency salvage sale provision bars administration appeals of sales conducted pursuant to the provision. This allows challengers to go directly to court and hastens a final disposition of the challenge, while the dead and dying timber can still be sold and harvested if the courts ultimately determine that the sales are valid. The maximum timeframe for the total process for preparing the document to harvest of the sale is 120 days for half of the first year volume.

Finally, in language borrowed verbatim from previously enacted law, the amendment sets deadlines for filing and appealing lawsuits challenging salvage timber sales (15 days and 30 days respectively) and for the district courts to decide the lawsuits (45 days unless otherwise required by the Constitution). To protect challengers, the amendment requires an automatic 45 days stay while the district court hears and decides the case. Thus, restraining orders and preliminary injunctions are unnecessary and therefore barred. If the court decides the sale is valid prior to expiration of the automatic stay, the stay is lifted and harvesting can begin.

The emergency salvage provision prohibits harvesting in National Wilderness Preservation System lands, roadless areas designated by Congress for wilderness study, and roadless areas recommended for wilderness designation in the most recent land management plan.

The section also includes subsection (i), a provision to release a group of sales that have already been sold under the provisions of Section 318 of the fiscal year 1990 Interior and Related Agencies Appropriations Act. The harvest of these sales was assumed under the Presidents Pacific Northwest Forest Plan, but their release has been held-up due to subsequent review by the U.S. Fish and Wildlife Service. Release of these sales will remove tens of millions of dollars of liability from the government for contract cancellation. Also, the revenues from timber receipts will increase by over \$155 million from current estimates.

The Presidents Pacific Northwest Forest Plan has recently been upheld in a federal district court challenge brought by environmental groups and the timber industry. Paragraph 2 of this provision specifies that compliance with the terms of subsection (i) shall not permit a second court review of the Presidents Plan.

bureau of labor statistics

consumer price index

The Committee has heard testimony from officials at the Bureau of Labor Statistics regarding efforts to improve the accuracy of the Consumer Price Index. The CPI does not only determine spending in a variety of government programs, but it also is used widely in the private sector, because it carries the imprimatur of an official government measure. For this reason, any inaccuracies in that measurement not only effect the federal budget, but also cause distortions in the overall economy. Therefore, improving the accuracy of the CPI is urgent and important.

The Committee believes BLS must redouble and accelerate its efforts to produce a more accurate CPI.

conditions while providing the secondary benefit of increased fiber supplies for our region's mills.

Mr. Chairman, I would have liked to offer a balanced alternative to this proposal today, but the Republican leadership would not allow it. The issue should never have been brought to the floor in this fashion. Salvage and forest health should be properly debated in the committees with jurisdiction and expertise and not written by special interests in the back rooms out of the public eye.

This proposal lacks even the most basic environmental protections for steep, unstable slopes, fragile soils, critical riparian habitat, even wild and scenic rivers. It defines what is to be harvested as dead, dying, diseased or associated with the large stands of green timber to be harvested.

I have legislated salvage before, but I did it properly in my first term in Congress. I played a major role in resolving a salvage controversy at least as contentious as the forest debate now raging here in Congress. The Silver Fire burned and erodes this area of the Siskiyou National Forest, long defended by environmental activists. That salvage was successfully done without harm. We could do the same across the Western United States if we were given the chance to offer a proper amendment.

Mr. Chairman, for too long, the extremes in the debate over western forest management have dominated the stage. On one side, are those who oppose any timber harvest on our public lands, even if it is necessary to improve forest health and reduce the risk of catastrophic fires. On the other side, there are those who would treat our National Forests as little more than industrial tree farms, sacrificing even the most basic environmental protections in the interests of short-term profit.

In my first term in Congress, I played a major role in resolving a salvage controversy at least as contentious as the forest health debate now raging in Congress. The Silver Fire burned in a roadless area of the Siskiyou National Forest long defended by environmental activists. The industry wanted to extend a road into the area and engage in wholesale salvage of dead and green timber. I was able to mediate an agreement that prevented new road building and green timber harvest, but allowed a significant amount of helicopter salvage of burned timber.

Neither the industry nor the environmental community were entirely happy with the agreement we reached. But today the Silver Fire salvage stands as an example of environmentally sound salvage that had the additional benefit of providing a significant volume of timber.

Today, I once again find myself somewhere between the extremes. On one side are those who oppose any thinning and salvage logging in the fire and pest-stricken forests of the West. On the other side are those who would throw all environmental protection out the window, and maximize timber production under the guise of a sound salvage program. Neither side has it right.

Forests across the West are in the grip of

conditions. The forest health crisis is the result of long term drought and a combination of human impacts in the form of fire suppression, timber harvesting, and the introduction of foreign pests, to name a few. The result is that millions of acres of public forest are in the worst shape they've ever been, victim to disease, insect infestation, and fire.

Fire suppression has played a big part in undermining forest health. Controlling wildfires in forests where frequent, low intensity fires historically kept vegetation sparse has allowed a huge build-up of dense understory vegetation to take place. One study on the Boise National Forest in Idaho found that tree density on one site was about 29 trees per acre for the 300-plus years before 1906. Today on the same site, tree density has increased to 533 trees per acre and the species composition has changed from predominantly Ponderosa pine to predominantly Douglas Fir.

Last summer's Western wildfires provided a hint of what may lie ahead. Catastrophic fires, unlike the low-intensity fire regime that has been the historical norm, could devastate habitat for many declining and threatened species, including Columbia basin salmon populations.

An ecologically sensitive program of thinning, controlled burning and salvage logging is essential to restoring forest health across millions of acres in the West. If done with care, such a program could improve forest conditions, while providing the secondary benefit of increased fiber supplies for the region's mills.

We need legislation to help expedite a response to the forest health crisis in the West. But a sound salvage and forest health program needs some environmental safeguards. Unfortunately, the Taylor-Dicks amendment contains none. The Taylor-Dicks amendment would allow logging in Wild and Scenic River corridors and sensitive riparian and roadless areas, with no restrictions based on slope or soil conditions. Its definition of salvage is so broad that it opens the door to wholesale logging in the region's remaining old growth forests and roadless areas. This is not the balanced approach to forest management that most Oregonians want to see.

By setting an arbitrary minimum timber sale level, while prohibiting any environmental considerations on the part of the Forest Service, the Taylor-Dicks salvage amendment guarantees that sensitive salmon streams will be damaged, roadless areas will be opened up to commercial timber harvest, and areas that are simply unsuitable for timber management will be logged. This is a proposal that lurches from one unacceptable extreme to the other. That's why I will vote against this proposal and hope we have the opportunity to craft a salvage bill that gets the job done while protecting the values that Oregonians share.

I would have liked to offer a balanced alternative to this proposal today, but the Republican leadership wouldn't allow it. The issue should never have been brought to the floor in this fashion. Salvage and forest health should be properly debated in the committees with jurisdiction and expertise, not written by industry lawyers in backrooms out of the public eye.

So I am faced with two unacceptable choices—an extreme salvage program with no environmental safeguards or the status quo

It bears stating that the Forest Service is moving ahead with a salvage program, though slowly. The agency plans to offer at least 1.4 billion board feet of salvage in each of the next 2 years. Assistant Secretary Lyons tells me they could offer even more if Congress would appropriate more money for sale preparation and other related activities. But the salvage bill contains no additional money for sale preparation.

Oregonians, by and large, support policies that protect our environment and quality of life, without sacrificing our state's economic well-being. I hope to have an opportunity in the weeks ahead to offer a balanced Oregon alternative to the extreme log-it-at-all-costs salvage approach offered here today. I believe I'll have the support of most of my state's citizens when I do so.

Mr. LIVINGSTON. Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina (Mr. TAYLOR), the sponsor of the amendment and a distinguished member of the subcommittee.

Mr. TAYLOR of North Carolina. Mr. Chairman, in 2 minutes I can tell my colleagues several things about this. First of all, it will restore forest health. Most of the things that have been said about it so far just are not true. Scientists recognize that the forests are undergoing a serious ecological decline because of a lack of management. Fire disasters, unnatural species compositions, disease, insect infestation; all of these are threatening the forest health, and this legislation which has been worked out with professionals, it has been worked out in consulting with the Forest Service, as many people as we could find to try to alleviate this emergency were brought in in this short period of time, and it is an emergency. Even the chief of the Forest Service, Mr. Chairman, has said we need to increase our salvage cutting for forest health.

Second, there are tens of billions of dollars of revenue coming to the Treasury, or millions of dollars of revenue coming to the Treasury. It is not a loss. CBO scored it \$37 million last year. FPA says it could be as much as \$650 million. So it is a very positive revenue producer.

Third, it will stabilize the cost of homes. It will create jobs, and that is why the home builders, and realtors and many others are supporting this. It will create thousands of jobs all across this country in a much needed area, putting timber in the pipeline, and that is why the Teamsters Union supports it. It is why the Western Council of Industrial Workers supports it, the United Paperworkers International Union supports it, the United Brotherhood of Carpenters supports it, the International Association of Machinists and the Association of Western Paperworkers, because these are men and women who make the livings of this country and recognize that this will produce jobs, and they are endorsing this amendment in this legislation.

Mr. Chairman, I am now yielding

provide forest health and to provide a good amendment to this bill).

Mr. Chairman, I rise to address the provisions of section 307 of H.R. 1159, a measure co-authored by myself and Mr. Dicks, and supported strongly by a number of our colleagues on the Appropriations Committee and on the authorizing committees with jurisdiction.

I wish to outline the intent of the provision, and the direction we have provided to the agencies affected for two reasons. First, I wish to be sure that the requirements of the provision are not misrepresented as the debate over this bill continues to the other body. Second, and perhaps more importantly, I wish to provide clear direction to the implementing agencies, and do everything possible to assure that the agencies understand, and can execute the direction we have provided.

To this latter end, the authors of section 307 have met several times with U.S. Forest Service Chief Jack Ward Thomas, and his staff since the provision imposes most of its requirements on the Forest Service. The Chief and his staff have been quite helpful in reviewing the terms of section 307, suggesting modifications to assure that these requirements are technically correct, and evaluating the Forest Service's technical and operational capability to meet the requirements of section 307, including the volume targets for timber salvage. As a forester by training, I am very sensitive to saddling our Federal agencies with mandates that they are not able to implement.

Based upon our discussion with Chief Thomas it is the clear understanding of the authors of section 307 that—aside from the question of whether the Clinton administration agrees with the goals of section 307 as a matter of politics and policy—the Forest Service can implement the provision of section 307 in a fashion that meets the timber salvage targets contained in this section. Today, I have sent a letter to Chief Thomas which I will include in the RECORD at the end of this statement. In this letter, I review with the Chief the intention of the authors of section 307 and our expectations about Forest Service implementation of the measure. I have asked the Chief for a prompt response so that, if there is any difference in interpretation, this can be reviewed during Senate consideration of the bill and any necessary adjustments can be made. If the measure passes both bodies and is signed into law, we expect appropriate implementing actions to carry out a clear congressional intent which is, itself, grounded in an understanding of agency capabilities.

Now let me review the terms of section 307. Section 307 would provide authority and direction to the Secretaries of Agriculture and the Interior to conduct a 2-year emergency salvage timber sales program on lands of the Forest Service and the Bureau of Land Management (BLM). The purpose of this one-time, short duration congressional mandate is to eliminate the extraordinary backlog of dead and dying trees on Federal lands in all regions of the country. This backlog has been created by the alarming decline in forest health and the unprecedented scale of wildfires over the last 2 years. Without an accelerated and dedicated response from the land management agencies in planning and conducting these emergency salvage timber sales, the decaying trees will soon lose any commercial value, thereby preventing harvesting and the timely

accomplishment of reforestation and other restoration activities on the affected lands.

The two Secretaries are directed to offer a sufficient number of salvage timber sales during the 2-year emergency period following enactment to ensure that a minimum of 3-billion board feet is sold each year on Forest Service lands and 115-million board feet is sold each year on BLM lands (subsec. (b)(2)).

These volume targets were derived after extensive discussion with the Forest Service and BLM. The Forest Service targets were established after consultation with the Agency's field offices. They are statutory mandates that represent reasonable progress toward reducing the backlog of dead and dying timber on our Federal forests. The agencies have indicated that it is within their capability to achieve these targets and thereby improve the health of our Federal forests under the terms of section 307.

A timber sale qualifies as a salvage timber sale that can be offered under the provisions of section 307 only if an important reason for the sale is the removal of diseased or insect-infested trees; dead, damaged, or down trees; or trees affected by fire or imminently susceptible to fire or insect attack. Removal of associated trees for the purpose of ecosystem improvement or rehabilitation can occur if the sale has an identifiable component of trees to be salvaged. (Subsec. (a)(4).)

Salvage timber sales are to be offered whether or not revenues derived from the sales are likely to exceed the sales' costs (subsec. (c)(5)). In conducting the sales, the Secretaries are authorized to use salvage sale funds otherwise available to them (subsec. (b)(3)). But the Secretaries are not to substitute salvage timber sales under section 307 for planned non-salvage sales (subsec. (c)(7)).

Section 307 does not permit any salvage timber sales on specifically protected lands, namely areas designed by Congress as units of the National Wilderness Preservation System, any roadless areas in Colorado or Montana which were specifically designated by acts of Congress by geographical name or map reference as Wilderness Study Areas, any roadless areas recommended by the Forest Service or BLM for wilderness designation in their most recent land management plans, and areas where timber harvesting for any purpose has been specifically prohibited by a specific statutory provision. This proscription does not include any prohibition in any regulation, land management plan, agency guidance, research study, or settlement agreement which purports to rely on general statutory authority (subsec. (g)(2)).

This last distinction is important because we do not, even by inference, want to prohibit application of this section in areas where the agencies on their own have restricted timber harvesting. This includes agency initiatives such as the timber sale screens on the Eastside of the Cascades and the California Spotted Owl Report, the following environmental assessment, and the pending draft Environmental Impact Statement. Whether and to whatever extent the agencies choose to restore the forest health by scheduling salvage sales in such areas, they are still bound to meet the salvage targets in subsection (b)(2) of this section.

In order to ensure that the sales are conducted in a timely manner, section 307 requires the two land management agencies to

follow certain schedules, expedited procedures, and reporting requirements. The schedule for offering timber sales requires that sales for at least 50 percent of the volume each agency is directed to make available in the first year must be offered in the first 3 months after enactment, and sales for at least 50 percent of the volume each agency is directed to make available in the second year must be offered within 15 months after enactment. Sales for the remaining 50 percent of the volume required each year can be spread evenly throughout the remaining 9 months of the year. (Subsec. (c)(2).) To track compliance with this schedule, the Secretaries are required to report to Congress every 3 months throughout the 2-year emergency period on the sales and volumes offered during the last 3-month period and expected to be offered during the next 3-month period (subsec. (b)(2)).

To meet this schedule, the Secretaries are admonished to use all available authority in preparing and advertising the salvage timber sales. This includes use of private contractors, and applying the type of expedited contracting procedures used to fight fires to the tasks of advertising and preparing salvage sales. To augment the available personnel, section 307 authorizes employment of former employees who received voluntary separation incentive payments under the Federal Workforce Restructuring Act of 1994 (P.L. 103-226) without applying the provisions of Section 3(d)(1) of P.L. 103-226. (Subsec. (c)(4).)

Sale procedures are expedited by the requirement that each Secretary prepare a single document analyzing the environmental effects of each salvage sale. The level of analysis in this consolidated environmental analysis document is to be that normally contained in an environmental assessment (not an environmental impact statement) under the National Environmental Policy Act (NEPA) on the environmental impacts of the sale generally and in a biological evaluation under the Endangered Species Act (ESA) on any specific effects the sale may have on any endangered or threatened species. (Subsec. (c)(1).) The language of this provision is explicit that these are the only document and the only procedure required from an environmental standpoint to comply with existing laws and regulations (subsec. (c)(6)). For example, the agency does not have to prepare a Finding of No Significant Impact under NEPA, nor consult with the Fish and Wildlife Service or National Marine Fisheries Service under the ESA after completing the consolidated environmental analysis document. Nor is an agency bound by any existing documents. On the other hand, if a NEPA document or a biological evaluation is already prepared for any particular sale by the date of enactment, a consolidated environmental analysis document need not be prepared for that sale. (Subsec. (c)(1).)

Each Secretary is to make the decisions on a sale's configuration and whether to offer the sale on the basis of the consolidated environmental analysis document. The Secretary may decide to not offer the sale or to reduce the size of the sale for an environmental reason grounded in the consolidated environmental analysis document, but he must then determine if he can meet the applicable volume requirement on schedule. If he determines he cannot, he must substitute another sale or

sales with volume equal to the shortfall. (Subsec. (c)(3).)

The Secretary's decision, based on that consolidated environmental documentation, is deemed to satisfy all applicable environmental and land management laws (subsec. (c)(8)). This means, for example, that the Secretary cannot be sued for violation of the Clean Water Act, the provisions of the National Forest Management Act concerning species' viability, unsuitability, or consistency with the resource management plans, or the jeopardy or take standards of the Endangered Species Act. Furthermore, as indicated, a sale can be offered that does not comport with a resource management plan, or interim guidelines, or management directives. This provision is both reasoned and consistent with the one-time, emergency nature of section 307. Few if any such plans, guidelines, screens, or other agency guidance contemplated the dramatic decline in forest health and consequent unprecedented wildfires. Section 307 does not excuse long-term compliance with such agency guidance; instead, it permits only a one-time divergence therefrom. Without such temporary divergence, the very wildlife and other resources that the guidance is intended to protect may be destroyed or damaged, thereby rendering the guidance ineffective for the longer term. Finally, a sale can be offered even if it would be barred under any decision, injunction, or order of any federal court (subsec. (c)(8)).

Expedited procedures continue to apply after the decision to offer a salvage timber sale. Section 307 bars an administrative appeal of any sale decision (subsec. (e)). This allows challengers to go directly to court and hastens a final disposition of the challenge—a disposition timely enough to permit the sale and harvesting of dead and dying timber if the court ultimately determines that the sale is legally valid.

Finally as to expedited procedures, in language borrowed verbatim from previously enacted law (section 318 of Public Law 101-121), section 307 sets deadlines for challengers for filing and appealing lawsuits challenging salvage timber sales (15 days and 30 days, respectively) (subsec. (f)(1) and (7)) and for the district courts to decide the lawsuits (45 days, unless the particular court decides a longer period is necessary to satisfy Constitutional requirements) (subsec. (f)(5)). To protect challengers, the section requires that each challenged timber sale must be stayed by the appropriate agency for the same 45-day period in which the court hears and decides the case (subsec. (f)(2)). With a mandated automatic stay, restraining orders or preliminary injunctions are unnecessary and, therefore, are barred (subsec. (f)(3)).

A court is free to issue a permanent injunction against, order modification of, or void an individual salvage timber sale if it determines that the decision to prepare, advertise, offer, award, or operate the sale was arbitrary and capricious or otherwise not in accordance with law (subsec. (f)(4)). As the sale is deemed by law to satisfy the environmental and land management laws (subsec. (c)(6)), the challengers must allege and prove to the court under this standard that the sale was arbitrary or capricious under, or violates a specific provision of section 307.

The Secretaries' duties do not stop after the salvage timber sales are sold; they are di-

rected to complete reforestation of the lands as expeditiously as possible after harvesting but no later than any periods required by law or the agencies' regulations. This last requirement is every bit as important as the rest of the section because it completes the forest restoration process and highlights the authors' commitment to sound forest stewardship.

Section (i) of section 307 addresses another related timber supply problem of an emergency nature. In this case, the emergency involves government liability for failure to perform the terms of a contract.

Previously-offered timber sales in the Northwest cannot be operated due to administrative delays and reviews. Many of these sales were mandated by Congress in Section 318 of the Department of Interior and Related Agencies Appropriations Act, Fiscal Year 1990, Pub. L. 101-121; others were offered in fiscal year 1991 and some more recently. Many of these sales were awarded to purchasers years ago; the government will have to pay tens of millions of dollars in contract buyouts if these sales were cancelled. Other sales were auctioned years ago but never awarded; in some cases the agencies rejected bids well after the auction due to administrative reviews and delays and changing standards. This is the case even though the preponderance of these sales were approved for harvest in the Record of Decision accompanying the President's Pacific Northwest Forest Plan, as not jeopardizing the continued existence of any of the numerous species of wildlife considered by that plan. The government will forego \$207.8 million in timber receipts if these sales are not operated.

Subsection 307(i)(1) frees up all these sales, saving the government over one hundred million dollars in buyout claims, generating the \$207.8 million in revenues and immediately providing substantial amounts of timber for mills hurt by Federal supply reductions. It applies to all national forests and BLM districts that were subject to section 318 of the Department of Interior and Related Agencies Appropriations Act, fiscal year 1990, Pub. L. 101-121; it applies throughout fiscal years 1995 and 1996, or longer as necessary, notwithstanding any other provision of law; and it requires full compliance by the agencies within 30 days of the date of enactment of the section. It directs the award of all unawarded sales as originally advertised, whether or not bids on a sale previously rejected, and it directs the release of these sales and all other awarded sales in the affected area so that all the sales can be operated to completion, on their original terms, in fiscal years 1995 and 1996.

Subsection (i)(2) provides that agency compliance with this section will not provide a legal basis for a court to block an existing agency management plan, or to order an agency to change an existing plan. It leaves in place all other grounds unrelated to this section that may exist for any person to challenge an agency plan for any reason. It does not affect pending cases challenging agency plans for reason unrelated to this section.

CONGRESS OF THE UNITED STATES.

Washington, DC, March 15, 1995.

Dr. JACK WARD THOMAS,
Chief, U.S. Forest Service,
Department of Agriculture,
Washington, DC.

DEAR CHIEF THOMAS: We write to continue our important dialogue on the emergency

forest health amendment contained in Section 307 of HR 1159. This amendment has bipartisan support in the House, and will shortly be considered in the Senate when that body takes up HR 1159.

We thank you and your staff for the technical assistance you provided to us as we developed the provision. While we understand the Administration has yet to take a position on the measure, we nevertheless appreciate the nonpartisan assistance the Forest Service provided to make sure that the amendment is drafted in a technically and legally sound fashion. We are sensitive to the need to avoid adding our federal resource management agencies with mandates that cannot be implemented on the ground.

To this end we request one more review by your resource specialists and attorney advisors of the final language of Section 307. Enclosed is the final language and a floor statement we made during House consideration explaining our intent in writing this amendment. We want to ensure that the amendment can be implemented in a manner that brings salvage timber to the marketplace as quickly as possible within the environmental process provided.

We would like your review to assure that your specialists agree that the language would have the on-the-ground effect that we intend. Alternatively, if this is not the case, we would like to know which provisions are problematic, why this is the case, and what technical changes would better accomplish our purposes.

Let me be clear that we are not asking whether the Administration, the Agency, or you support the amendment or agree with its intent. We respect any difference of opinion you might have with specific requirements. Nevertheless, we need to be sure that we have a common understanding that our intent is implementable under the terms of amendment. If the amendment is passed by both Houses of Congress and signed by the President we will expect full implementation of its terms.

Since the bill is being taken up in Subcommittee in the Senate next Wednesday, we will need your response by Monday, March 20. We apologize for the short notice, but we are victims of the legislative schedule.

We appreciate your continuing assistance and cooperation on this matter.

Sincerely,

CHARLES H. TAYLOR,
Member, U.S. Congress.

Don YOUNG,
Chairman.

Mr. YATES, Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. MILLER].

(Mr. MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. MILLER of California. Mr. Chairman, I rise in strong support of the Yates amendment to strike the Taylor Timber Salvage Language. We have all heard the old adage that you have to spend money to make money but the timber salvage provisions of H.R. 1159 turn this into a case where we will be spending money to lose money. Nominally, CBO shows that such sales will bring in \$134 million, a far cry from the \$1 billion in receipts proponents were touting just 2 weeks ago. The other side of the CBO analysis which bill proponents will not be speaking about is that salvage is direct spending, and thus the money goes right back out.

The taxpayer loses under the Taylor Salvage Language because whatever profitable

Calendar No. 39

104TH CONGRESS }
1st Session

SENATE

{ REPORT
104-17

**MAKING ADDITIONAL SUPPLEMENTAL APPROPRIATIONS
AND RESCISSIONS FOR THE FISCAL YEAR ENDING SEP-
TEMBER 30, 1995, AND FOR OTHER PURPOSES**

MARCH 24 (legislative day, MARCH 23), 1995.—Ordered to be printed

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

REPORT

[To accompany S. 617]

The Committee on Appropriations reports the bill (S. 617) mak-
ing additional supplemental appropriations and rescissions for the
fiscal year ending September 30, 1995, and for other purposes, re-
ports favorably thereon and recommends that the bill do pass.

TITLE II—GENERAL PROVISIONS

TIMBER SUPPLY

Section 2001. The Committee is concerned about the impacts of current policies on timber supply and forest management issues on timber-dependent communities across the Nation. The Committee has included language in its bill to assist the administration in its commitment to conduct aggressive forest health operations, and to provide harvestable timber to the people who live and work in the region of option 9—western Washington and Oregon, and northern California. The Committee acknowledges that the administration is currently unable to take the prompt action needed on these important issues, in large part, because of duplicative environmental restrictions, and the filing of legal challenges. The Committee has included language to give the administration the opportunity to fulfill its commitment to the people of the Pacific Northwest to provide some level of harvest of timber from Federal lands, and to implement an aggressive program to restore health to our Nation's forests.

Emergency salvage timber sales.—The Committee has included bill language to address the emergency situation in our Nation's forests created by past wildfires, increased fuel load, or bug infested and diseased timber stands. In 1994 alone, nearly 4 billion board feet of timber on Federal lands was killed by fire, firefighters died fighting the summer fires, and Federal costs to fight the fires approached \$900,000,000.

Prompted by this Committee last year, the administration issued a report on the health of western forests and recognized the need to conduct salvaging, thinning, and other important forest health operations. The Committee is concerned, however, about the slow action by the administration to expedite the preparation and award of salvage timber sales nationwide. Quick action by the agencies is critical because of the short lifespan of burnt, dead, dying, blow down, and bug infested timber stands. Adding to the emergency situation is the need to act quickly to conduct these forest health operations before the start of the upcoming fire season.

The Committee notes that the House has included language on this subject in its bill. The Senate's language takes a similar approach with a few exceptions. The bill language directs the Forest Service and BLM expeditiously to prepare, offer, and award salvage timber sale contracts for the thinning and salvaging of dead, dying, bug infested, downed, and burnt timber on these Federal lands nationwide. The agencies are further directed to perform the appropriate revegetation and tree planting operations in the areas in which the salvage operations have taken place.

The Forest Service's planned timber salvage program for fiscal years 1995-96 is roughly 1.5 billion board feet for each fiscal year.

(123)

The Committee fully expects the Forest Service to meet these programmed targets, and undertake significant efforts to harvest additional salvage timber to the maximum extent feasible. Similarly, the Bureau of Land Management's programmed timber salvage program in fiscal year 1995 is 64 million board feet and 45 million board feet in fiscal year 1996. The Committee expects BLM to meet these programmed targets, and the bill further directs the Forest Service and BLM to undertake significant efforts to harvest additional salvage timber to the maximum extent feasible.

Due to the emergency situation in our Nation's forests, and in an effort to give each Secretary the ability to meet both the target volumes and to work toward to higher volume target, the bill language deems the salvage timber sales prepared under this section of the bill to satisfy the requirements of applicable Federal environmental laws. The Committee urges the agencies to expedite these timber sales, and does not believe that the issuance of regulations is necessary to implement this provision. Furthermore, because of the emergency nature of these sales, the bill language also provides for an expedited process for legal challenges to any such timber sale, and limits administrative review of the sales.

Released timber sales.—The Committee also includes language to release a group of sales that have already been sold in the region affected by section 318 of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act. Included are all sales offered, awarded, or unawarded, whether or not bids have subsequently been rejected by the offering agency. The harvest of these sales was assumed under the President's Pacific Northwest forest plan, but their release has been held up due to extended subsequent review by the U.S. Fish and Wildlife Service. Release of these sales will remove tens of millions of dollars of liability from the Government for contract cancellation. The only limitation on release of these sales is in the case of a nesting of an endangered bird species with a known nesting site in a sale unit. In this case, the Secretary must provide a substitute volume under the terms of subsection (e)(3).

Option 9.—The Committee has also included bill language to provide the Forest Service and Bureau of Land Management the authority to expedite timber sales allowed for under the President's forest plan for the Pacific Northwest, commonly known as option 9. Option 9 was selected by the Secretaries of Interior and Agriculture on April 13, 1994, and promised the people in the region of option 9 (Washington, Oregon, and California) an annual harvest of 1.1 billion board feet. Despite this commitment, in fiscal year 1994 only 247 million board feet of timber was offered from combined Forest Service and BLM lands from the region—this total is dramatically less than that promised to the region in option 9. The Committee is concerned that the administration has not taken the efforts necessary to fulfill the commitment it made to the people of the region to achieve an annual harvest level of 1.1 billion board feet and has included bill language to assist the administration in this effort.

On December 21, 1994, the Federal District Court issued an opinion upholding option 9 as valid under all present environmental laws. Other challenges to option 9 are pending and are not

option 9 -
Senate report
helps us

Support 11

Mr. HATFIELD. I am sorry, I did not hear the Senator.

Mrs. MURRAY. Is it my understanding that the unanimous-consent language will agree that there will be no second-degrees?

Mr. HATFIELD. And there will be no second-degree amendments to the Murray amendment. In other words, in the regular form.

Mr. DODD. Mr. President, reserving the right to object and I do not intend to object, but I just want to make it as clear as I possibly can that, while I am agreeing at this particular juncture to this approach to accommodate our colleague from Montana and a colleague from the State of Washington as well, I hope we could come to closure on the D'Amato amendment. Because I do want to make it clear that this is a matter which I take very, very, very seriously. I understand the desire of everyone to move on to the rescission package.

This was not my intention to have this amendment come up. It is up before us. But I do not intend for it to be disposed of within an abbreviated debate. I am not suggesting a filibuster here at all. But it is an important matter that deserves a lot of consideration.

So, while I am agreeing to this particular unanimous consent at this juncture, no one should interpret this agreement on this particular amendment to mean I will agree to future such requests. I say that with all due respect to my colleague from Oregon.

Mr. SARBANES. Will the chairman yield for a question?

Mr. HATFIELD. I will.

Mr. SARBANES. It is my understanding, then, that upon completion of the Murray amendment, which will take an hour—at least there is an hour of time for consideration of the Murray amendment—and then I take it there may be a vote? Or not?

Mr. HATFIELD. I think so.

Mr. SARBANES. At the end of that we would be back on the D'Amato amendment, in the exact posture in which we find ourselves?

Mr. HATFIELD. The circumstances of this moment will not be changed. They merely will be postponed for an hour.

The PRESIDING OFFICER. Without objection, the unanimous consent is agreed to.

Mr. HATFIELD. Mr. President, I would like just a moment to thank Senator DODD and Senator SARBANES and others for cooperating on this, and Senator D'AMATO on our side as the author of the amendment.

Once again, it will be a Burns amendment to the Gorton amendment, and then Senator MURRAY will offer an amendment as a probable substitute. So that means no second-degree amendments to the amendment of Senator MURRAY.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 68 TO AMENDMENT NO. 68
(Purpose: To broaden areas in which salvage timber sales are not to be conducted)

Mr. BURNS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. BURNS] proposes an amendment numbered 428 to Amendment No. 420.

Mr. BURNS. Mr. President, I ask unanimous-consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 69, strike lines 7 through 10 and insert the following:

"(A) expeditiously prepare, offer, and award salvage timber sale contracts on Federal lands, except in—

"(i) any area on Federal lands included in the National Wilderness Preservation System;

"(ii) any roadless area on Federal lands designated by Congress for wilderness study in Colorado or Montana;

"(iii) any roadless area on Federal lands recommended by the Forest Service or Bureau of Land Management for wilderness designation in its most recent land management plan in effect as of the date of enactment of this Act; or

"(iv) any area on Federal lands on which timber harvesting for any purpose is prohibited by statute; and"

Mr. BURNS. Mr. President, this is a perfecting amendment to the Gorton amendment that merely accedes to the House language of the bill in the timber harvest. The House-passed bill contains language regarding lands which are exempt from the timber provision. However, the language as reported out of the Senate Committee on Appropriations is more limited than that passed by the House. So my amendment is the same language as that of the House, as it was passed through the House of Representatives.

It exempts land designated by Congress for wilderness study in Montana and Colorado, Federal lands recommended by the Forest Service or Bureau of Land Management for wilderness designation in its most recent land management plan in effect; the Federal lands on which timber harvesting for any purpose is prohibited by statute.

In other words, what this does is prevents harvesting timber inside of now-designated wilderness areas, those study areas, and also those areas that have been proposed for wilderness by any forest plan that is now in effect under the forest plan. I believe this amendment addresses most of the concerns that have been raised by my colleagues. I hope the Senate will accept my amendment.

I thank Senator GORTON of Washington for allowing me to perfect his amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, this amendment conforms the section of the proposal in the bill to what the House has passed. It clearly exempts wilderness areas and the like from the effect of the legislative language in the bill and I believe that, while the opponents to the whole section do not like it, they do like this addition.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 428) to amendment No. 420 was agreed to.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 69 TO AMENDMENT 68
(Purpose: To require timber sales to go forward)

Mrs. MURRAY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY] proposes an amendment numbered 429 to amendment No. 420.

Mrs. MURRAY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 68, strike line 9 and all that follows through page 79, line 3, and insert the following:

(a) DEFINITION.—In this section:

(1) CONSULTING AGENCY.—The term "consulting agency" means the agency with which a managing agency is required to consult with respect to a proposed salvage timber sale if consultation is required under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(2) MANAGING AGENCY.—The term "managing agency" means a Federal agency that offers a salvage timber sale.

(3) SALVAGE TIMBER SALE.—The term "salvage timber sale" means a timber sale—

(A) in which each unit is composed of forest stands in which more than 50 percent of the trees have suffered severe insect infestation or have been significantly burned by forest fire; and

(B) for which agency biologists and other agency forest scientists conclude that forest health may be improved by salvage operations.

(b) SALVAGE TIMBER SALES.—

(1) DIRECTION TO COMPLETE SALVAGE TIMBER SALES.—The Secretary of Agriculture, acting through the Chief of the Forest Service, and the Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall—

(A) expeditiously prepare, offer, and award salvage timber sale contracts on Forest Service lands and Bureau of Land Management lands that are located outside—

(i) any unit of the National Wilderness Preservation System; or

(ii) any roadless area that—

(I) is under consideration for inclusion in the National Wilderness Preservation System; or

(II) is administratively designated as a roadless area in the managing agency's most recent land management plan in effect as of the date of enactment of this Act (not including land designated as a Federal wilderness area); or

(iii) any area in which such a sale would be inconsistent with agency standards and guidelines applicable to areas administratively withdrawn for late successional and riparian reserves; or

(iv) any area withdrawn by Act of Congress for any conservation purpose; and

(B) perform the appropriate revegetation and tree planting operations in the area in which the salvage occurred.

(2) **SALE DOCUMENTATION.**—

(A) **PREPARATION OF DOCUMENTS.**—In preparing a salvage timber sale under paragraph (1), Federal agencies that have a role in the planning, analysis, or evaluation of the sale shall fulfill their respective duties expeditiously and, to the extent practicable, simultaneously.

(B) **PROCEDURES TO EXPEDITE SALVAGE TIMBER SALES.**—

(i) **IN GENERAL.**—When it appears to a managing agency that consultation may be required under section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1536(a)(2))—

(I) the managing agency shall solicit comments from the consulting agency within 7 days of the date of the decision of the managing agency to proceed with the required environmental documents necessary to offer to sell the salvage timber sale; and

(II) within 30 days after receipt of the solicitation, the consulting agency shall respond to the managing agency's solicitation concerning whether consultation will be required and notify the managing agency of the determination.

(ii) **CONSULTATION DOCUMENT.**—In no event shall a consulting agency issue a final written consultation document with respect to a salvage sale later than 30 days after the managing agency issues the final environmental document required under the National Environmental Policy Act of 1973 (16 U.S.C. 1531 et seq.).

(iii) **DELAY.**—A consulting agency may not delay a salvage timber sale solely because the consulting agency believes it has inadequate information, unless—

(aa) the consulting agency has been actively involved in preparation of the required environmental documents and has requested in writing reasonably available additional information from the managing agency that the consulting agency considers necessary under part 402 of title 50, Code of Federal Regulations, to complete a biological assessment; and

(bb) the managing agency has not complied with the request.

(3) **STREAMLINING OF ADMINISTRATIVE APPEALS.**—Administrative review of a decision of a managing agency under this subsection shall be conducted in accordance with section 322 of the Department of the Interior and Related Agencies Appropriations Act, 1983 (106 Stat. 1419), except that—

(A) an appeal shall be filed within 30 days after the date of issuance of a decision by the managing agency; and

(B) the managing agency shall issue a final decision within 30 days and may not extend the closing date for a final decision by any length of time.

(4) **STREAMLINING OF JUDICIAL REVIEW.**—

(A) **TIME FOR CHALLENGE.**—Any challenge to a timber sale under subsection (a) or (b) shall be brought as a civil action in United States district court within 30 days after the later of—

(i) the decision to proceed with a salvage timber sale is announced; or

(ii) the date on which any administrative appeal of a salvage timber sale is decided.

(B) **EXPEDITIOUS.**—The court shall, to the extent practicable, expedite proceedings in a civil action under subparagraph (A), and for the purpose of doing so may shorten the times allowed for the filing of papers and

taking of other actions that would otherwise apply.

(C) **ASSIGNMENT TO SPECIAL MASTER.**—The court may assign to a special master all or part of the proceedings in a civil action under subparagraph (A).

(c) **OPTION 9.**—

(1) **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 on Federal lands in the forests specified in Option 9, as selected by the Secretary of the Interior and the Secretary of Agriculture on April 13, 1994.

(2) **ESTABLISHMENT OF REBUTTABLE PRESUMPTION.**—A rebuttable presumption exists that any timber sale on Federal lands encompassed by Option 9 that is consistent with Option 9 and applicable administrative planning guidelines meets the requirements of applicable environmental laws. This paragraph does not affect the applicable legal duties that Federal agencies are required to satisfy in connection the planning and offering of a salvage timber sale under this subsection.

(3) **AVAILABILITY OF FUNDS.**—

(A) **IN GENERAL.**—The Secretary of Agriculture and the Secretary of the Interior shall make available 100 percent of the amount of funds that will be required to hire or contract with such number of biologists, hydrologists, geologists, and other scientists to permit completion of all watershed assessments and other analyses required for the preparation, advertisement, and award of timber sale contracts prior to the end of fiscal year 1995 in accordance with and in the amounts authorized by the Record of Decision in support of Option 9.

(B) **SOURCE.**—If there are no other unobligated funds appropriated to the Secretary of Agriculture or the Secretary of the Interior, respectively, for fiscal year 1995 that can be available as required by subparagraph (A), the Secretary concerned shall make funds available from amounts that are available for the purpose of constructing forest roads only from the regions to which Option 9 applies.

(d) **SECTION 318.**—

(1) **IN GENERAL.**—With respect to each timber sale awarded pursuant to section 318 of Public Law 101-121 (103 Stat. 745) the performance of which is, on or after July 30, 1995, precluded under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) due to requirements for the protection of the marbled murrelet, the Secretary of Agriculture shall provide the purchaser replacement timber, at a site or sites selected at the discretion of the Secretary, that is equal in volume, kind, and value to that provided by the timber sale contract.

(2) **TERMS AND CONDITIONS.**—Harvest of replacement timber under paragraph (1) shall be subject to the terms and conditions of the original contract and shall not count against current allowable sale quantities.

(e) **EXPIRATION.**—Subsections (b) and (c) shall expire on September 30, 1996, but the terms and conditions of those subsections shall continue in effect with respect to timber sale contracts offered under this Act until the contracts have been completely performed.

Mrs. MURRAY. Mr. President, I rise today to offer an alternative to the timber management authorizing language in this bill. I offer my amendment because I believe the language included in the bill by my colleague, the senior Senator from Washington, will

backfire. I believe it will hurt—not help—timber communities and workers in the Northwest.

The authorizing language contained in this bill is designed to accomplish three things: respond to a timber salvage problem resulting from last year's forest fires; speed up the rate of timber sales under the President's forest plan, option 9; and to release a few timber sales remaining from legislation passed by Congress 4 years ago.

These are goals with which I can agree. My problem is with the method. I believe the language proposed by my colleague will cause a blizzard of lawsuits, cause political turmoil within the Northwest, and take us right back to where we were 4 years ago.

Our region has been at the center of a war over trees that has taken place in the courtrooms and Congress for almost a decade. There is a history of waiving environmental laws to solve timber problems; that strategy has not worked.

It has made the situation worse. Until 1993, the Forest Service was paralyzed by lawsuits, the courts were managing the forests, and acrimony dominated public discourse in the region.

Now this bill contains language that will reopen those old wounds. I strongly believe that would not be in the best interest of the region.

Let me briefly explain my amendment, and why I think it makes more sense than the underlying bill. There are two distinct issues in question: salvage of dead and dying timber in the arid inland west, and management of the old growth fir forests along the Pacific coast.

There is a legitimate salvage issue right now throughout the West. Last year's fire season was one of the worst ever. There are hundreds of thousands of acres with burned trees sitting there. I believe these trees can and should be salvaged and put to good public use.

I believe there is a right way and a wrong way to conduct salvage operations on Federal lands. The wrong way is to short cut environmental checks and balances. The wrong way is to cut people out of the process. The wrong way is to invite a mountain of lawsuits.

The right way is to expedite compliance with the law. The right way is to make sure the agencies can make correct decisions quickly. The right way is to let people participate in the process—so they do not clog up the courts later.

I believe we can offer eastside timber communities hope, not only in the short term—by delivering salvage volume—but in the long term, too. By following the law, we can immediately harvest timber—and sustain it in the future—because we will not be tied up in lawsuits; we conserve our natural environment by not allowing poorly planned clearcuts to slide into salmon-bearing streams; and we protect human

*Murray amendment
on 0.9 - defeated.
area - but leaves authority
to Secys*

throughout this Nation. We must not give the agencies free rein to cut timber without regard to environmental considerations.

My amendment is a moderate, reasonable alternative. It expedites salvage. It expedites option 9. It ensures appropriate levels of environmental protection. And most importantly, it protects communities and workers from burdensome, frustrating litigation. Such litigation is sure to result from the underlying bill.

Mr. President, 10 days ago I went to Gray's Harbor in my home State of Washington, and I talked to people who have lived through the nightmare of Congress and the courts deciding their lives. They are just starting to get back on their feet. Hope is beginning to return. They do not want more empty promises. They do not need congressional interference that may backfire. They do need promises kept, and they do need Congress to act with common sense.

That is what my amendment does, and I urge my friends here in the Senate to support it.

Mr. President, I retain the balance of my time.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, who controls the time?

The PRESIDING OFFICER. Does the Senator from Washington yield time?

Mr. GORTON. Does the Senator from Alaska wish to speak in support of the amendment?

Mr. MURKOWSKI. The Senator from Alaska would like to speak in support of the Gorton salvage amendment.

Mr. GORTON. I yield 5 minutes to the Senator from Alaska.

PRIVILEGE OF THE FLOOR

Mr. GORTON. Mr. President, before I do so, I ask unanimous consent that privilege of the floor be granted to Dave Robertson and Art Gaffrey, congressional fellows attached to Senator HATFIELD's staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair. I thank my colleague from Washington.

Mr. President, I rise to again commend the Gorton salvage amendment. I share, as Senator from the State of Alaska, a dilemma facing all of us: that is, a shortage of timber. We have seen our industry shrink by about three-quarters by a combination of the inability of the Forest Service to meet its proposed contractual agreements. As a consequence, the industry has shrunk. As I see the issue before us, we have an opportunity because of an unfortunate act of God, to bring into the pipeline a supply of timber that otherwise would not be available. Clearly, without the help of the Gorton salvage amendment the Forest Service is absolutely incapable—make no mistake

about it—in capable of addressing this in an expeditious manner.

So those who suggest that we simply proceed under the status quo will find that the timber will be left where the bugs or the fire last left it when we are here next year and the year after. So, do not be misled by those who are of the extreme environmental bent to see this as an opportunity simply to stop the timber process. It is unfortunate that we could not make the decision on what to do with this timber based on sound forest practice management—what is best for the renewability of the resource.

The Gorton salvage amendment is an essential response to an emergency forest health situation in our Federal forests as evidenced by last year's fire season. Our committee, the Committee on Energy and Natural Resources, has held oversight in the area, has recognized the severity of the problem, and I strongly recommend we do a positive step of forest management practice and support the Gorton amendment as an appropriate emergency response to the problem.

I have listened to the critics of the amendment both on the floor and off the floor. I have come to conclude that they must be discussing some other provision than the one offered by the senior Senator from Washington.

First, they say the Gorton amendment mandates increased salvage timber sales. The Gorton amendment does not mandate timber sales. It provides the administration with the flexibility to salvage sales to the extent feasible. I trust the administration to properly utilize that flexibility. Opponents of the Gorton amendment apparently do not trust this administration. I cannot tell whether they do not want to rehabilitate burned forests or whether they need individual sign off from the Forest Service Chief, Jack Ward Thomas, the Secretary of Agriculture, or maybe even Vice President Gore to trust the administration.

Second, they say that the Gorton amendment suspends all environmental laws. The Gorton amendment expedites existing administrative procedures under the Endangered Species Act, the National Environmental Policy Act, and other measures. If the agency successfully follows the expedited procedure, their performance is deemed adequate to comply with existing environmental and natural resource statutes. These expedited procedures are essential as we must appropriately respond to the forest health emergency, and it is an emergency that we face. If you have an emergency, Mr. President, you respond to it and you expedite a process. That is what the Gorton amendment is all about.

Third, they say the Gorton amendment eliminates judicial review. It simply does not. The amendment provides an expedited form of judicial review that has already been upheld by the Supreme Court in previous litigation.

Fourth, they would say the Forest Service cannot meet the salvage targets. The amendment does not have any targets. I wish it did. Today, the Forest Service is working on its capability statement on the House version of this amendment. There are strong indications that with the expedited procedure the House bill will match in pertinent part the Gorton amendment. The agencies can meet the House targets and still comply with substantive requirements of existing environmental and natural resources.

Fifth, they say the amendment will cost the Treasury. This is simply false. The Gorton amendment has received a positive score from CBO.

Sixth, they say the amendment may disrupt and actually reduce timber sales. Well, if that were true, I would expect them to strongly support the Gorton amendment. But it is not true. The Gorton amendment contains protective language to assure potential environmental litigants cannot disrupt other agencies' functions due to this amendment.

Finally, Mr. President, I have been genuinely perplexed by the misconceptions that accompany the attacks on this amendment, but today perhaps I know why this is the case. Yesterday, Senator GORTON and Congressman CHARLES TAYLOR along with Senator CRAIG, the author of S. 391, which is a measure directed at another aspect of this problem, offered to meet, as I understand, with groups of activists opposed to both the Gorton amendment and S. 391 together. It is my understanding they cleared time on their calendars at 9 a.m., but they found that the activists were evidently more interested in preparing for their 9:30 a.m. press conference than meeting with the authors of the three provisions which they proceeded to lambaste. That sort of interest group behavior I do not think can be tolerated if we are to continue to have informed debates in this body.

So, Mr. President, I rise in support of the Gorton amendment, and against other modifying amendments. I encourage my colleagues to proceed with what this is, an emergency.

I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Washington.

Mr. GORTON. Mr. President, as recently as half a dozen years ago, there was a booming, successful forest products industry in rural towns all up and down the north Pacific coast of the United States. In region 6, in Washington, Oregon, and northern California, approximately 5 billion board feet of timber was being harvested. Towns were prosperous and optimistic. Families were happy and united. Schools were full. The contribution that these people made to the economy of the United States is difficult to underestimate. It was easier and less expensive to build homes, to publish newspapers, to engage in all of the activities which

arise out of the forest products industry. And even during that time of maximum harvests every year in the Pacific Northwest more board feet of new timber was growing than was being harvested.

Beginning with the controversy over the spotted owl in the Pacific Northwest—in which incidentally, the recovery goal at the time of its listing has now long since been exceeded by the discovery of additional spotted owls—at the time of the beginning of that controversy, that harvest began to drop precipitately, to the point at which in the last few years the harvest on lands of the United States of America has been close to zero. Communities have been devastated. Families have broken up. Small businesses have failed. Homes purchased by the work of many years have become useless because they cannot be sold.

And we have constantly heard from those whose conscious policies drove the litigation leading to this end that the people in these towns should seek other employment in some other place or be the subject of various kinds of relief activities. So where they provided a net income to the United States from their income taxes, they now are a net drain on the people of the United States for welfare programs which have benefited primarily planners and contractors and advisors and not the people who lost their jobs.

Mr. President, these people, these communities, their contributions to America have been largely ignored by the mainstream media of this country. Their professions have been denigrated. They who live in this country and have a greater investment in seeing to it that it remains booming and prosperous have been accused of utter indifference and attacks on the environment.

Mr. President, that only has not been terribly unjust but it has been destructive of balance and destructive of the economy of our country.

Now, into this controversy some 3 years ago came the then candidate for President of the United States, Bill Clinton, promising in a well-attended meeting in Portland, OR, balance and relief, promising to listen to the people of the Pacific Northwest, to protect the environment but at the same time to restore a significant number of the lost jobs and some degree of hope and prosperity to those communities.

The first part of later President Clinton's promise was kept in 1993 when as President he returned to Portland, OR, and held a timber summit.

Long after the completion of that summit came what is now known as option 9, an option which the President stated met all of the environmental laws in the United States which he was unwilling to change in any respect but also promised something more than 1 billion board feet of harvest of timber to the people of the Northwest—1 billion as against 5, or 20 percent of the historic level.

I did not then and I do not now believe that that constitutes balance or that it was at all necessary to protect the environment. But it was a promise, Mr. President, of some form of relief.

Since then, the President has had that option validated by a U.S. district court judge who has taken charge of this area in Seattle. But do our people have 1.1 billion board feet of harvest? No, Mr. President, they do not. In spite of the time at which that promise was made, they are nowhere close to that because the Forest Service in its personnel cuts has cut mostly the people who work in the woods preparing these sales and because the Clinton administration knows that almost no single action taken pursuant to this option will escape an appeal within the Forest Service and a lawsuit being stretched out forever and ever.

That is one element, Mr. President.

The second is that last summer, regrettably, was a time of major forest fires in almost every corner of the United States—loss of life in Colorado, huge fires in Idaho and Utah, large fires in my own State of Washington. Those fires have left billions of board feet of timber that is now dead, absolutely dead, but for a relatively short period of time harvestable. If it is not harvested, Mr. President, it will become worthless very quickly by rotting away and at the same time will be timber for future forest fires.

And yet the opponents to harvest say that's nature's way. Forest fires start; let them burn. Very few of them live in communities near where these fires have taken place, whose summers have been ruined by them, may I say, incidentally.

And so in this bill, as in the bill produced by the House, we attempt to enable the President of the United States to keep his own promises; nothing more than that, Mr. President.

It is true that the provisions in the House bill set a mandated harvest level roughly double what the administration deems to be appropriate. The proposal attacked by my colleague from the State of Washington, however, has no such requirement in it. It simply says that, after all of these years, all of these promises, all of this devastation, that we will liberate the administration to do what it wants to do.

And yet, this is attacked as if, somehow or another, this administration had no concern for the environment whatsoever; that Secretary Babbitt was simply out to cut down the forests of the Bureau of Land Management; that President Clinton's Forest Service wanted to do nothing else but that, and to ignore environmental laws from one end of this country to another. It is astounding, Mr. President, that the administration itself does not wish help in keeping its own commitments.

Now, both the amendment which is a part of this bill and the substitute amendment by the junior Senator from Washington cover three distinct, separate but related subjects.

One on salvage timber is nationwide in scope. The administration proposes in this fiscal year to sell something over 1.5 billion board feet of salvaged timber, dead or dying timber. In region 6, which is the Pacific Northwest, the figure is about one-fifth of that total. Four-fifths of it are from other regions of the country and they include every Forest Service region in the United States.

My proposal, the proposal in the bill, does not require the administration to double that offering. In fact, it has no number in it at all. But it says that the administration, having carefully considered every environmental law, is enabled to do what it tells us that it wants to do.

Does this suspend the environmental laws? No, Mr. President. This administration has certainly tried its best to abide by all of them and all of them remain on the books, those I agree with and those I disagree with.

And I cannot imagine that Members of this body will accuse the administration of wanting to ignore those statutes. It simply says that the administration's own decisions will not further be attacked in court by the often inconsistent provisions of six or seven or eight different statutes passed at different times with different goals.

The amendment that is sought to be substituted for that which is in the bill does not reduce litigation in the slightest, Mr. President. It calls for certain expedited procedures, but it still allows every timber sale to be appealed within the Forest Service or the BLM, and every one to go to court. And they all will go to court, Mr. President, because those who will attack them, those who want nothing to be done, will recognize that all they have to do is to delay it for another season and there will not be anything to sell, because it will be worthless. So that portion of the substitute amendment is simply an invitation to have no salvage at all.

The second and third elements in both amendments have to do with option 9 and with so-called section 318 sales. Section 318 was a part of the Appropriations Act in 1990, designed to provide some interim help for the forest in the two Northwest States. But many of the sales directed by this Congress pursuant to that law have been held up by subsequent environmental actions.

The proposal that the committee has made simply says that those sales would go ahead unless they involved places in which endangered species are actually found, in which case, substitute lands will take their place.

Our option 9 provision, I repeat, Mr. President, simply says that the President can keep the promises he made some time ago, almost 2 years ago, under option 9 and not be subject to constant harassing lawsuits. That is all that it says. It does not require him to get to the 1.1 billion board feet of harvest that he promised, and he will not.

Gorkin on Option 9 -
supportive of us.

It does say that he can do what he wishes to do.

Now, the substitute amendment, in each case, for all practical purposes, makes dealing with this issue at the level of Congress pointless. All of the lawsuits will still be able to be brought, but perhaps we will actually find ourselves in a damaging situation.

The Presiding Officer is from the State of New Hampshire. I presume that some small portion of this salvage timber is in his State. But if this substitute amendment passes, all of the personnel of the Forest Service from the rest of the United States will have to go to Washington and Oregon in order to meet the requirements of the substitute amendment, at the cost of every other region in the United States.

Now I would like to have that kind of service in my State, but I do not believe it to be fair. I do not think we can say that we are the only ones who under any circumstances should get anything out of one of these amendments.

The definition of what salvage timber is in the bill is the Forest Service's own definition. The definition in the substitute amendment is a different definition, one highly susceptible to further litigation.

The exceptions provided by the amendment of the Senator from Montana keeps this kind of salvage logging out of wilderness areas and certain other well-defined areas. The proposal by the junior Senator from Washington keeps them out of any area that is under consideration for inclusion in the national wilderness preservation system.

Mr. President, under that proposal, one bill by one Member of the House of Representatives introduced to put the entire National Forest System included in a wilderness preservation system would stop any harvest anywhere. It would be under consideration by Congress. What it does, in effect, is to give any of the 535 Members of Congress a veto power over the entire proposal.

Mr. President, the issue in this case is clear. Do we care at all about people, not just in the Pacific Northwest but all across the United States, who live in timber communities? Do we care about our supply of lumber and of paper products? Or do we only care about the well-being of certain environmental organizations and their lawyers?

That is what we are debating with respect to this amendment. Do we want the President of the United States to be able to keep his commitments, his promises, however inadequate they are? Or do we have so little trust in him that we believe that he will ignore every environmental law and decide suddenly to cut down our national forests?

Mr. President, that is not going to happen. The lawsuits will, under this proposed substitute amendment, pro-

vide relief for people who need relief. Income for the Treasury of the United States will only come from rejecting the substitute amendment and accepting the bill in its present form.

Mr. LEAHY. Mr. President, will the Senator from Washington yield me 5 minutes?

Mrs. MURRAY. I am happy to yield 5 minutes to the Senator.

Mr. LEAHY. Mr. President, I thank my good friend and distinguished Senator from Washington [Mrs. MURRAY].

Mr. President, this timber salvage language in H.R. 1158—so people understand the history, this represents the 12th time since 1964 this body would vote to exempt timber sales from environmental laws; 12 times since 1964.

Frankly, I find that disturbing. It means that the American people are going to be asked to believe that when it comes to cutting national forests, somehow environmental laws do not apply. These exemptions, which should have been, if at all, in emergency situation, instead are becoming routine and standard practice. It is not a short-term solution. I have to wonder how long this will go on. To me the exemption from environmental law is an extreme position. The majority of the American would not accept, nor should they. The distinguished Senator from Idaho, Senator CRAIG, and I streamlined the process in 1992. We are speaking of public lands, and in public lands, every American has a right to express his or her public interest. H.R. 1158 takes away the opportunity to participate in public land management. I do not see how the U.S. Senate can accept a provision that strips people of this right and takes the right out of the people's hands and puts it solely into the hands of bureaucrats. This would not create any more open government. In fact, this seals the same government agents off from public interest.

I respect the concerns of my fellow colleagues from other timber States. Even though I am a tree farmer, that is not my sole source of livelihood. I have talked with people in that area. It makes sense to address the problem, but with a sensible, responsible, moderate solution that respects the true interests of the American people and, in the long term, the apolitical needs of the forest resource.

I believe Senator MURRAY has proposed a fair solution. In fact, she inherited this divisive timber issue when she was elected. She promised the people of Washington a responsible solution. I have discussed this with her since she has come here. I believe that since her election, she has helped put the timber industry on a reliable path that the timber industries can bank on.

In fact, with the work she has done, there has been an increase of 400 jobs, not a decrease in the lumber, paper, and allied wood products industry in the State of Washington since her election. She has an alternative that moves toward long-term sustainability, not a quick fix. Above everything else,

what Senator MURRAY has done is what timber-dependent communities want, especially the younger generations—long-term sustainability. People go into this for the long term, not with the idea that every 10 months, or year, or 14 months we are going to suddenly change the rules of the game.

So I urge my colleagues to support Senator MURRAY and abandon the extreme approaches that failed us in the past and removed any kind of public input from the process. Look at her long-term solution and adopt her amendment.

I am going to yield my time back to the Senator from Washington.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington controls the time.

Mrs. MURRAY. I assume the Senator from Washington, Senator GORTON, will yield time to the Senator from Montana.

Mr. GORTON. I yield 30 seconds to the Senator from Montana.

Mr. BURNS. Mr. President, I rise today to oppose the amendment offered by Senator MURRAY of Washington. This amendment severely weakens what this provision is intended to do—respond to our forest health emergency, restore our forests to health, and create jobs. This substitute amendment is only a clever way to do nothing.

The committee-passed provision is responsive to not only forest health, but to the people who support their families in the wood products industry. But this amendment is no more than status quo. And Montanans do not want status quo.

This substitute amendment does not streamline the process, limit the frivolous appeals, or allow for salvage sales to be expedited. Instead this amendment forces agencies to consult with other agencies, and does nothing to cut through the environmental red tape and still allows for endless delays.

It replaces the Forest Service definition of "salvage timber sale," which is included in the committee's bill, with a new definition. This definition doesn't take into account overcrowded forests which need to be thinned, and it forces the land managers to always consult with biologists.

This amendment also eliminates the legal sufficiency language which is needed in the preparation of sale documents. If we are truly serious about salvaging timber, we need to have sufficiency language included, and we need to retain streamlined timeframes to assure that the environmental procedure process is not abused.

Currently, delays in Federal land management arise primarily from two sources—multiple analysis requirements and administrative appeals and judicial review. Without this sufficiency language, we will continue to have lengthy delays which will substantially lead to the more dead and dying timber in our forests.

on an appropriations bill. It should be in the authorizing committee. It is not. It is the wrong piece of legislation on the wrong bill at the wrong time, and it should be rejected because it sets an incredibly dangerous precedent.

Mr. HATFIELD. Mr. President, in my State, and throughout most of our Federal forest nationwide, we are experiencing a forest health crisis of epic proportions. In 1994, 80 years of fire suppression and almost a decade of drought conditions culminated in one of the worst national fire seasons on record. Thirty-three fire fighters lost their lives and \$900 million was spent fighting these fires. Fourteen of the fire fighters who died were from Prineville, OR, a small town in my home State. Congress must act swiftly to address this situation or face a 1995 fire season as bad or worse than 1994.

Congress has known about the forest health and fire danger problem for a long time. In July 1992, the Senate Energy and Natural Resources Committee held a hearing on forest health. At this hearing, Jack Ward Thomas, then a researcher and now Chief of the Forest Service, stated "we should proceed with salvage as soon as possible, and as carefully as possible." In fact, at that 1992 hearing, the Forest Service identified 850 million board feet of timber in eastern Oregon and Washington alone that needed to be salvaged in 1992 and 1993. Only half of that volume, however, has been actually salvaged.

The forest health crisis exists nationwide, but in my State it is particularly acute. Of the 5 million acres of Oregon's Blue Mountains, 50 to 75 percent contains predominantly dead or dying trees. According to the Forest Service, the land management practices of the past 80 or 100 years are the primary reasons for the poor health of Oregon's, and the Nation's, forests. Fire suppression, the single largest contributing factor, has prevented naturally occurring, low-intensity fires to clear out the understory of forest stands. This has allowed less-resilient, shade tolerant tree species such as white fir, and Douglas fir, to flourish. These trees have been prime targets for disease, insect infestation, and now wildfire.

It is time to begin the healing process in our forests that Jack Ward Thomas felt was so important 3 years ago. Congress can live up to its responsibility to provide direction to the land management agencies by passing the Gorton salvage amendment.

As many of my colleagues know, salvage logging is not without controversy. Although it is part of regular Forest Service practice, some seek now to block the salvage of diseased and bug infested timber as a land management option. To put their position in perspective, these same voices have publicly stated that their preferred goal is to eliminate the harvesting of any and all trees from Federal lands—even for the enhancement of forest health. This dogma is so set, the catastrophic loss of our

sources through disease, insect infestation and fire is preferable to having the health of these forests restored for future generations.

The radical doctrine of no use, which certain groups are now advocating, not only threatens the future health of our forests, it threatens the underlying base of political support for one of our Nation's most important environmental laws—the Endangered Species Act.

I was the original sponsor of the 1972 version of the bill which eventually went on to become the Endangered Species Act. I believe the act epitomizes the respect we, as a nation, hold for our environment and our natural surroundings. While I have made it clear that I believe some fine tuning of the act needs to occur during the upcoming reauthorization debate, I worry that when moderate positions, such as the one put forth in the Gorton amendment, become polarized, fodder is given to those whose goal is to abolish or gut the act. I will do my best to prevent this from happening, but the position of some groups on this salvage amendment simply perpetuates the attitude that all environmental laws, including the ESA, have gone too far and need to be significantly altered or scrapped.

These concerns are merely symptoms of a larger problem—the breakdown of our Nation's land management laws. The result of this breakdown is a problem of national significance with little ability in the law for land managers to take care of the problem in a timely manner.

Unfortunately, for those of us who have been around a while, this situation is all too familiar.

Almost 6 years ago, I stood here on the floor with my colleagues from the Pacific Northwest, the Senate Appropriations Committee and the Senate authorizing committees to announce a temporary solution to a crisis in the Pacific Northwest. This compromise was sponsored by myself and then-Senator Adams from Washington State, and was supported by every member of the Pacific Northwest delegation. It was truly an extraordinary measure, meant to address an extraordinary situation.

Recognizing the temporary nature of this solution, many Members of Congress believed that larger issues loomed and needed to be addressed. Namely, that the forest management and planning laws, originally enacted in 1976, were in serious need of revision. During the course of the debate on the Hatfield-Adams amendment I entered into a colloquy with then-chairman of the Senate Agriculture Committee, Senator LEAHY, to proclaim the temporary nature of the amendment and announce our intentions to pursue a long-term solution through the review and revision of our Nation's forest management laws in the authorizing committees.

When the Northwest timber compromise was developed in 1989, I took the promises of my colleagues to address our Nation's long-term forest management laws very seriously, and I was determined to do my part to address this growing dilemma. In 1990, I introduced legislation, called the National Forest Plan Implementation Act, to assist with the implementation of forest plans developed as a result of the 10-year planning processes enacted by Congress in 1976. Two years later, another comprehensive bill was introduced by Senator Adams to address the long-term issue. Both of these measures were referred to the Senate Agriculture Committee where no hearings were held and they died in committee.

The next year, in 1991, I was a primary cosponsor of Senator PACKWOOD's Forest and Families Protection Act, which dealt with a number of the same issues as my 1990 bill and also addressed the issues of rural development and workers. This legislation was referred to the Senate Energy and Natural Resources Committee, of which I am a member, where we were able to hold several hearings and a markup on the bill. Unfortunately, the bill never made it to the floor for consideration.

My point is, Mr. President, many of us have undertaken significant efforts to live up to the commitments of 1989 to address the long-term management of our forest resources through the authorizing committees. Unfortunately for the entire Nation, the other Senate authorizing committees with jurisdiction over this issue have not felt compelled to do the same.

The Gorton amendment to the rescission bill begins to address this problem by doing three things to address the emergency situation that now exists in many forests. The first is national in scope and provides our Federal land management agencies with the flexibility to conduct environmentally sensitive forest health salvage activities. These activities will be done using the agencies' own standards and guidelines for forest and wildlife management.

Second, the Gorton amendment releases 375 million board feet of timber sales in western Oregon that were previously sold to timber purchasers. Most of these sales, originally authorized by the Northwest timber compromise amendment of 1989, were determined by the record of decision for President Clinton's option 9 plan not to jeopardize the existence of any species. To ensure further protections, the Gorton amendment includes provisions prohibiting activities in timber sale units which contain any nesting threatened or endangered species.

Finally, the Gorton amendment gives the Clinton administration more tools with which to implement timber sales in the geographic area covered by its option 9 plan. As a vocal critic of option 9 and the process that was used to develop it, I have some concerns about this section of the Gorton amendment. Nevertheless, I applaud the sponsor's

Hatfield shut -
option 9
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(but next 9 -
more us)

efforts to give the administration all possible tools to meet its promises to get wood to the mills of the Pacific Northwest in the next 18 months.

While the first portion of the Gorton amendment is national in scope, these last two sections will assist the President in meeting his commitments to the workers, families, and environment of both western and eastern Oregon and Washington.

I came to the floor in 1989 to offer the Northwest timber compromise because we were witnessing what was then a crisis for the rural communities of my State. Since that time, 213 mills have closed in Oregon and Washington and over 21,800 workers have lost their forestry-related jobs. In addition, the forests in the eastern half of these two States are in the worst health in a hundred years.

These national forests and communities cannot wait through another fire season like 1994 for Congress to finally meet its commitments to rewrite the Nation's forest management laws. I have every confidence that the new Republican Congress will do its best to meet that challenge, but the Gorton amendment is necessary to help us bridge that gap. It is a much needed piece of legislation for our Nation's forests and timber dependent communities.

There are those whose agenda is to prevent people from managing our forests altogether. They would rather let our dead and dying forests burn by catastrophic fire, endangering human life and long-term forest health, than harvest them to promote stability in natural forest ecosystems and communities dependent on a supply of timber from Federal lands. The Gorton amendment says we can be reasonable in what we do in the forests and harvest trees for many uses—forest health, community stabilization, ecosystem restoration, and jobs for our workers.

I urge my colleagues to support the Gorton amendment to the fiscal year 1995 rescissions bill.

The PRESIDING OFFICER (Mr. BENNETT). All time has expired.

Mrs. MURRAY. Mr. President, I ask for the yeas and nays.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. I move to table the Murray amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion of the Senator from Washington to lay on the table the amendment of the Senator from Washington (Mrs. MURRAY). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota (Mr. CONRAD), the Senator from North Dakota (Mr.

DORGAN) and the Senator from Florida (Mr. GRAHAM) are necessarily absent.

Mr. LOTT. I announce that the Senator from North Carolina (Mr. FAIRCLOTH) is necessarily absent.

I also announce that the Senator from Kansas (Mrs. KASSEBAUM) and the Senator from Minnesota (Mr. GRAMS) are absent due to a death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 48, nays 46, as follows:

(Rollcall Vote No. 121 Leg.)

YEAS—48

Abraham	Corton	Martinez
Ashcroft	Gramm	Wickles
Bennett	Grassley	Packwood
Bond	Gregg	Prunier
Brown	Hatch	Reid
Burns	Hatfield	Sasser
Campbell	Heins	Shelby
Coats	Hutchison	Strom
Cochran	Inhofe	Smith
Coverdell	Kempthorne	Snowe
Craig	Lott	Specter
D'Amato	Lugar	Stevens
DeWine	Mack	Thomas
Dole	McCain	Thompson
Domenici	McConnell	Thurmond
Frist		Warner

NAYS—46

Ahaka	Feinstein	Lieberman
Baucus	Ford	Mikulski
Biden	Gleason	Mohrley-Braas
Blumenthal	Harkin	Moyahes
Boner	Heflin	Murray
Bradley	Hollings	Nunn
Brock	Inouye	Pall
Bryant	Jeffords	Pryor
Bumpers	Johnston	Robb
Byrd	Kennedy	Rockefeller
Chafee	Kerry	Roche
Coburn	Kerry	Santorum
Conrad	Kohl	Simon
Cook	Laanenberg	Wellstone
Crain	Leahy	
Feingold	Levin	

NOT VOTING—6

Conrad	Faircloth	Gramm
Dorgan	Graham	Kassebaum

So the motion was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

HONORING JEREMY BULLOCK

Mr. BAUCUS. Mr. President, I would like to welcome some special friends to Washington today. They are Penny Copps of Butte, and Penny's son, Steve Bullock, late of Montana and now living here in Washington, DC.

Just about a year ago, the entire Bullock family weathered about the worst blow any family can take.

Eleven-year-old Jeremy Bullock—the grandson of Penny and her husband Jack; Steve's nephew; the son of Bill and Robin; Joshua's twin; the elder brother of Sam, Max and now Kaitlyn—was shot and killed, on the playground at the Margaret Leary Elementary

School, by an emotionally troubled fourth grader.

The family and the whole Butte community, has been through a terrible test. The loss can never be repaired. But they are working together to use this tragedy to make our State of Montana, and all of America more sensitive to and aware of the violence that has hurt so many of our youth. They have a spent a year teaching, learning, and doing their best to make sure no other family suffers such a loss.

It is now my great privilege to read to you a statement written by the Bullock family in memory of their son, Jeremy.

There is nothing more infectious than a child's laugh.

Nothing more disarming than the innocence of a child's question.

What fills the void when our children's voices can no longer be heard?

On April 12, 1994, Jeremy and Joshua, eleven-year-old-identical twins, woke, dressed, had breakfast and left for school that day, the same as any other day. It was library day, so Jeremy's backpack was heavy with books he had read and was returning.

Weeks later, a police officer worked up the courage to give Jeremy's family that backpack. He had tried to scrub the blood from the canvas, trying to ease the pain in the only way he knew how. For on April 12, 1994, eleven-year-old Jeremy was shot and killed at his school by a child whose only explanation was "No one loves me."

Jeremy Michael Seidlitz Bullock lived in a home in Montana where violence was not condoned. He was not allowed to watch violence on television or play games glamorizing violence. Instead, he was active in sports. Jeremy loved to sing. He listed his hobby as getting good grades. School was his second home, a place where children laughed and learned.

Jeremy wanted to become a teacher or an environmental engineer. Jeremy and his brother Josh would spend hours on hikes, coming home with their pockets overflowing with garbage they picked up along the way. Jeremy believed that leaving places he visited better than the way he found them was a good way to live.

Jeremy loved and was deeply loved. Yet, he was not safe because collectively we allowed Jeremy's voice to be silenced.

Every day in America the voices of 10 of our children are silenced by violent acts. Over three million of our children ages 3 to 17 are exposed to parental violence every year. Our children will witness over 200,000 acts of violence on television by the time they turn 18. A new handgun is manufactured every 20 seconds in America. And many of them wind up in the wrong hands.

We passively listen and accept the statistics, but do we listen for the voices lost?

On behalf of Jeremy's family and children everywhere, we will designate April 12 as a day of remembrance of

production effort at Yellow Creek. The bill language included by the conferees on the transfer of the NASA Yellow Creek facility reflects the most recent commitment made by the NASA Administrator to the Governor of the State of Mississippi. The major investment by the State of Mississippi in facilities and infrastructure to support Yellow Creek, in excess of \$100,000,000, is a key factor in NASA's agreement to turn the site over to the State of Mississippi. The main elements of the agreement reached between NASA and the State of Mississippi, which the conferees expect to be adhered to by the two parties, are as follows:

The Yellow Creek facility will be turned over to the appropriate agency of the State of Mississippi within 30 days of enactment of this Act. All of the NASA property on Yellow Creek which the State of Mississippi requires to facilitate the transfer of the site transfers with the site to the State, subject to the following exceptions anticipated by the conferees:

(1) Any property assigned to a NASA facility other than Yellow Creek prior to May 2, 1995, but located at Yellow Creek, will be returned to its assigned facility;

(2) Only those contracts for the sale of NASA property at Yellow Creek signed by both parties prior to May 2, 1995 shall be executed;

(3) Those items deemed to be in the "national security interest" of the federal government shall be retained by NASA. The national security clause shall be narrowly construed and shall apply only in a limited manner, consistent with established criteria relating to national security interests. This clause shall not be used to circumvent the intent of this Act, which is to transfer the site and all of its property, except as otherwise noted, to the State of Mississippi; and

(4) Other items of interest to NASA may be retained by NASA with the consent of the State of Mississippi.

It is the expectation of the conferees that all other NASA personal property will transfer to the State of Mississippi. The conferees further expect facilities on the site not subject to the above provisions, such as the environmental lab, to be left as is.

Any environmental remediation of Yellow Creek necessary as a result of the activities of governmental agencies, such as NASA, or quasi-governmental agencies, such as the Tennessee Valley Authority, will be the responsibility of the federal agency or quasi-federal agency, including any successors and interests.

Within thirty days of enactment of this Act, \$10,000,000 will be transferred from NASA to the appropriate agency of the State of Mississippi.

The site's environmental permits will become the property of the State of Mississippi. NASA will provide all necessary assistance in transferring these permits to the State of Mississippi.

NATIONAL SCIENCE FOUNDATION

ACADEMIC RESEARCH INFRASTRUCTURE

Receivds \$131,867,000, as proposed by both the House and the Senate.

CORPORATIONS

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC AFFORDABLE HOUSING PROGRAM

Receivds \$11,281,034 from the FDIC Affordable Housing program as proposed by the House and Senate.

TITLE II—GENERAL PROVISIONS

EMERGENCY TIMBER SALVAGE

The managers have included bill language (section 2001) that directs the appropriate Secretary to prepare, advertise, offer, and award salvage timber sale contracts utilizing

emergency processes and procedures provided in the bill.

The managers, in order to establish their expectation of performance have included salvage timber sale volume requirements in this statement. The managers have not included volume requirements directly in bill language but expect the Secretary concerned to reduce backlogged salvage volume and award additional salvage sale contracts to the maximum extent feasible. However, the managers underscore their intent that the salvage volume levels are not merely aspirational; each Secretary is expected to meet the volume levels specified herein.

The managers, in cooperation with the authorizing committees of jurisdiction, have agreed to monitor the USDA and BLM progress toward meeting the salvage levels set out herein. The committees of jurisdiction will carefully assess the reports to determine whether or not the agencies have met the salvage levels put forward in the statement of the managers. Depending on performance, the need for volume targets will be reevaluated in future appropriations bills, beginning in FY 1996.

Forest Health

The managers note that the emergency forest health situation from fire, insect infestation and disease has approached epidemic levels. As a result, the backlog of dead and dying trees in National Forests and other public lands is substantial.

In part, the severe risk of permanent damage to forest land necessitates removal of dead, dying, and salvage trees before greater damage occurs—including second phase fires which burn hotter and destroy land and streams. Once removal of salvage trees occurs, reforestation is required by the emergency salvage provision. Reforestation will facilitate regrowth of healthy forests that are less prone to fire damage, insect infestation, and disease.

Much of this salvage volume must be removed within one year or less for the timber to retain maximum economic value, and to prevent future disasters from fire that can permanently damage forest land, eradicate wildlife, and ruin aquatic habitat. Therefore, the managers have included bill language to provide all necessary tools to expedite environmental processes, streamline, administrative procedures, expedite judicial review, and give maximum flexibility to the Secretary concerned in order to provide salvage timber for jobs, to improve forest health, and prevent future forest fires.

The managers expect the agencies to implement available flexibility to achieve maximum returns and that agency personnel expeditiously process the environmental documentation needed to finalize emergency timber sales.

Volume Levels

The managers have carefully reviewed the materials submitted by the Departments concerning the capability of the Forest Service and Bureau of Land Management to respond to the emergency nature of the forest health situation. For the Forest Service, the documents submitted indicate that the total merchantable salvage volume (dead and dying trees) in national forests exceeds 18.25 BBF. The Forest Service identified 12.68 BBF of volume which is economically operable during the next two years, while still complying with basic forest land stewardship protection measures.

Of particular interest in the Forest Service's assessment that 6.75 BBF of volume could be available during the next three years using the expedited procedures of this section, without violating the substantive requirements of existing environmental laws. This volume estimate was developed by

Forest Service line managers and biologists. The Forest Service reports that there is a significant margin of error (+/- 25%) in these estimates, and it is reasonable to expect that the volumes may increase somewhat as on-the-ground implementation gets underway. Given the margin of error in the estimates, it appears the Forest Service could meet the salvage volumes in the House bill without sacrificing the substantive objectives of all environmental laws. The Senate bill contained no sale volumes.

The managers extended the provisions of this section through FY 1997, effectively making the program duration 2.5 years. Based on the capability statements by the Forest Service and similar representatives by the Bureau of Land Management, the managers expect that the procedures of this section will expedite the implementation of existing programmed salvage volumes and allow the Secretary of Agriculture to prepare, advertise, offer, and award contracts for an additional increment of salvage volume as follows: FY 1995—750 million board feet; FY 1996—1.5 billion board feet; FY 1997—1.5 billion board feet. These programmed levels for the Forest Service are contained in the attachment to the April 25, 1995, letter to the Chairman of the House Resources Committee. Similarly, the managers expect an emergency timber salvage program from the Secretary of the Interior as follows: FY 1995—115 million board feet; FY 1996—115 million board feet; FY 1997—115 million board feet. These numbers are within the range of achievement in an environmentally sound program. Each Secretary may exceed these salvage levels if field conditions demonstrate additional salvage opportunities.

The managers have directed periodic reporting on the agencies' progress in implementing the procedures of this section in order to reassess their expectation concerning achievement of specified salvage volumes and agency performance. The managers expect that the committees of jurisdiction will remain actively involved in the monitoring of the emergency salvage program.

Process

The managers intend that as the environmental processes are completed for individual sales, the Secretary concerned may choose among the completed combined documents to determine how sales should go forward.

The bill language provides a process for judicial review of emergency salvage sales by the Federal District Courts. The managers provided this mechanism for legitimate concerns with agency actions. Automatic stays for 45 days are required pending the final decision on review of the record by the district court within that time period. Due to the exigency of the emergency salvage situation administrative appeals are waived.

For emergency timber salvage sales, Option 9, and sales in Section 318 areas, the bill contains language which deems sufficient the documentation on which the sales are based, and significantly expedites legal actions and virtually eliminates dilatory legal challenges. Environmental documentation, analysis, testimony, and studies concerning each of these areas are exhaustive and the sufficiency language is provided so that sales can proceed.

The managers are aware of the high cost, time, and personnel commitment needed to mark salvage trees individually. The managers also recognize the requirement for federal agencies to designate timber authorized for cutting. Federal agencies are directed to determine the extent to which the use of designation by description is practical and are further directed to use the most effective method of designation to prepare salvage timber sales.

The emergency salvage provision clearly prohibits harvesting in National Wilderness Preservation System lands, roadless areas designated by Congress for wilderness study, and roadless areas recommended for wilderness designation in the most recent land management plan. Lands not specifically protected by the provision include prohibitions such as agency initiatives, timber sale screens, interim guidelines, settlement agreements, the CASPO Report, riparian areas covered by other initiatives, and any other area where the agencies restrict timber harvesting on their own accord.

The bill also allows all salvage sales proposals in development on the date of enactment of this Act to be immediately brought into conformity with this, the emergency salvage provision.

Reporting

The bill language directs the agencies to prepare a report by August 30, 1995, detailing the steps the agency is taking, and intends to take, to meet salvage timber sale volumes. The report shall also include a statement of the intention of the Secretary concerned with respect to the salvage volumes specified herein.

The managers will carefully review the Administration's implementation of the salvage program, and, if found to be inadequate, will employ such actions as deemed necessary. Such actions might include, but are not limited to, reallocation within budget categories or other prioritizations to be determined by the Congress.

Option 9

The managers have retained bill language added by the Senate that provides the Forest Service and Bureau of Land Management the authority to expedite timber sales allowed under the President's forest plan for the Pacific Northwest, commonly known as option 9. The managers are concerned that the administration has not made the necessary efforts to fulfill the commitment it made to the people of the region to achieve an annual harvest level of 1.1 billion board feet and have included bill language to assist the administration in this effort.

On December 21, 1994, the Federal District Court issued an opinion upholding option 9 as valid under all present environmental laws. The managers wish to make clear that the bill language does not independently validate option 9 and does not restrict pending or future challenges.

The managers have added bill language to eliminate the need for an additional environmental impact statement in order to speed up the issuance of a final 4(d) rule, which will provide expedited relief to thousands of nonfederal landowners in the region. The managers understand that the Secretary of the Interior is extending the comment period on the proposed Section 4(d) rule, and expect the Secretary to review carefully the extensive Special Emphasis Areas in Washington to assure regulatory relief for nonfederal lands, particularly in light of new owl population data on the Olympic Peninsula. As provided in bill language, the managers have agreed that no environmental impact statement will be required for the Section 4(d) rule notwithstanding the outcome of pending litigation over Option 9. Finally, nothing in this provision is intended to prejudice the outcome of pending litigation over Endangered Species Act Section 9 prohibitions.

Released Timber Sales

The bill releases all timber sales which were offered for sale beginning in fiscal year 1990 to the date of enactment which are listed in any unit of the National Forest System or District of the Bureau of Land Management within the geographic area encom-

passed by Section 318 of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act. Included are all sales offered, awarded, or unawarded, whether or not bids have subsequently been rejected by the offering agency, with no change in original terms, volumes, or bid prices. The sales will go forward regardless of whether the bid bond from the high bidder has been returned, provided it is resubmitted before the harvesting begins. The harvest of many of these sales was assumed under the President's Pacific Northwest forest plan, but their release has been held up in part by extended subsequent review by the U.S. Fish and Wildlife Service. The only limitation on release of these sales is in the case of any threatened or endangered bird species with a known nesting site in a sale unit. In this case, the Secretary must provide a substitute volume under the terms of subsection (k)(3).

FUNDS AVAILABILITY

The conference agreement retains a Senate provision (section 2002) restricting funds availability to the current fiscal year unless otherwise stated. The House bill contained no similar provision.

DOWNWARD ADJUSTMENTS IN DISCRETIONARY SPENDING LIMITS

The conferees agree to include a provision (section 2003) included in both the House and Senate bills that would reduce the discretionary spending limits by the savings resulting from this act for the fiscal years 1995 through 1998. The House bill also included an additional provision that would have made additional projected reductions by assuming that similar savings would be enacted in each of the next three fiscal years. The conferees recommend that spending limit adjustments for actions projected for the future should be made in appropriate legislative vehicles such as reconciliation bills. Also, the House bill included provisions that would appropriate the savings from the bill to a deficit reduction fund. By including the provision dealing with spending limit adjustments and the prohibition on the use of savings to offset tax cuts mentioned below, the intent of these House provisions is accommodated.

PROHIBITION ON USE OF SAVINGS TO OFFSET DEFICIT

INCREASES RESULTING FROM DIRECT SPENDING OR RECEIPTS LEGISLATION

The conference agreement includes a provision (section 2004) included in both the House and Senate versions of the bill that would preclude the savings in this bill from being used for any tax reductions or other similar direct spending or receipts legislation.

NATIONAL KOREAN WAR VETERANS ARMISTICE DAY

The conference agreement inserts language (section 2005), not contained in the House or Senate bill, which designates July 27 of each year, until the year 2003, as "National Korean War Veterans Armistice Day".

ASSISTANCE TO ILLEGAL DOMIGRANTS

The conference agreement includes an amended House provision (section 2006) that prohibits any individual who is not lawfully in the United States from receiving any direct benefit or assistance from funds in the bill except for emergency assistance. The conference agreement expands the provision to include direction that agencies should take reasonable steps in determining the lawful status of individuals seeking assistance. Also, a nondiscrimination clause has been added. The Senate bill did not include any provision on this subject.

This provision is essentially the same provision that was included in the initial emergency

supplemental appropriations act that provided relief from the earthquake that hit the Los Angeles area in 1994 (Public Law 103-211). The conferees understand that this provision was implemented for that bill in a manner that did not delay non-emergency assistance to appropriate recipients. The conferees agree that this should be the situation for this bill.

SENSE OF THE SENATE REGARDING TAX AVOIDANCE

The conference agreement deletes a Senate provision that expressed the sense of the Senate that Congress should act as quickly as possible to preclude persons from avoiding taxes by relinquishing their citizenship. The House bill contained no similar provision.

FEDERAL ADMINISTRATIVE AND TRAVEL EXPENSES

The conference agreement deletes two Senate provisions that would have rescinded \$342,500,000 for administrative and travel activities. The conferees agree that it is more appropriate to make rescissions in the regular accounts rather than making across the board rescissions.

IMPACT OF LEGISLATION ON CHILDREN

The conference agreement deletes a sense of the Congress provision included in the Senate version of the bill that Congress should not adopt any legislation that would increase the number of children who are hungry or homeless. The House bill contained no similar provision.

TITLE III

EMERGENCY SUPPLEMENTAL APPROPRIATIONS

ANTI-TERRORISM INITIATIVES

OKLAHOMA CITY RECOVERY

Chapter I

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES

After House and Senate consideration of this bill, the Administration requested emergency supplemental appropriations of \$71,455,000 for the Department of Justice and \$10,400,000 for the Judiciary to address urgent needs arising from the Oklahoma City bombing and for enhanced anti-terrorism efforts. The conference agreement provides an emergency supplemental appropriation of \$113,360,000 for the Department of Justice and \$16,640,000 for the Judiciary for these purposes, an increase of \$48,145,000. These funds are designated by the Congress as emergency requirements pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended and amounts above the supplemental request are available as emergency spending only to the extent that the President also designates these funds as emergency requirements.

The conference agreement provides funding through fiscal year 1996 for the full anticipated costs of expenses related to the investigation and prosecution of persons responsible for the bombing as well as the full cost of funding new personnel for enhanced counterterrorism efforts. The conference agreement also provides for a more flexible mechanism for the Attorney General to reimburse Department of Justice law enforcement agencies and State and local expenses related to the Oklahoma City bombing by appropriating funds requested for these expenses to a new Counterterrorism Fund.

While awaiting the Administration's 1996 budget amendment, the conferees have attempted to anticipate and fully fund the requirements for enhanced counterterrorism activities in both 1996 and 1998. To the extent that the supplemental does not fully anticipate the requirements, the conferees expect

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Option 9 - conf report

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Reich, Health and Human Services Secretary Donna Shalala, and then Secretary Lloyd Bentsen of the Treasury, all members of the Clinton cabinet, said:

The federal hospital insurance trust fund, which pays inpatient hospital expenses, will be able to pay for only about seven years and is severely out of financial balance in the long range.

The trustees, therefore, have logically called for prompt, effective and decisive action to save the fund from its own insolvency. As well the bipartisan commission on entitlement and tax reform, headed by Senator BOB KERREY and Senator John Danforth came to the same conclusion.

This impending disaster only came to light very recently. The Clinton administration had tried to sweep it under the rug. His fiscal year 1995 budget proposes no changes or solutions to Medicare's problems, and he even did not bring that up when he had the White House Conference on Aging. It was not even addressed by him.

As Medicare travels the road toward bankruptcy, President Clinton has been AWOL, absent without leadership, on this issue. He has even refused to participate in a bipartisan effort to save Medicare. Not until the Republicans had come forward to talk openly and honestly about how we can save, preserve and protect Medicare has the problem been described and the options been discussed.

House Republicans are determined to work with House Democrats to save Medicare by using new approaches, new management, new technologies to improve it, preserve it and protect it. Congress has an unprecedented opportunity, Mr. Speaker, to undertake a fundamental reform of this important Medicare Program.

One of the steps many of us are taking are Medicare preservation task forces, where we have senior citizens, people involved with AARP, RSVP, groups across our country like my own in Montgomery, Pennsylvania to make sure we include seniors in the solution. Seniors need to be served. We want to make sure we hear from them about options on making sure we protect it not only for seniors now but for generations to come.

The General Accounting Office has estimated that there is \$44 billion that is wasted on fraud and abuse in the Medicare and the Medicaid funds. As much as 30 cents of every \$1 is simply wasted or lost due to mismanagement.

House Republicans will increase Medicare spending under our proposal from \$4,700 per retiree to as much as \$6,300 per retiree by 2002. This is a 45-percent increase in Medicare spending per retiree.

We will preserve the current Medicare system but we need to develop a new series of options for our senior citizens so they can control their own future. I believe that by working together both sides of the aisle we can save Medicare, preserve and protect it

so that we can provide the best possible health care at the lowest cost to our senior citizens so they can control their destiny. And we working together with them, we will in fact have a bright future.

TIMBER SALVAGE

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentleman from North Carolina [Mr. TAYLOR] is recognized for 60 minutes as the designee of the majority leader.

Mr. TAYLOR of North Carolina. Mr. Speaker, we are here today to talk about the Presidential veto of the timber rescission or timber salvage amendment that is part of the rescission package that has passed this House, passed the Senate, has been confirmed, from the conferees, by the House and is waiting confirmation in the Senate.

The President has promised to veto the entire rescission package, and that includes the timber salvage amendment. The salvage amendment was put together after considerable consultation with the Forest Service, with many groups; in fact, the final amendment reflected a good many suggestions from the White House itself, and still the White House wishes to veto the entire rescission package, including the timber amendment.

What we are talking about with the timber amendment tonight is to tell people what is going to be the result of that Presidential veto. First of all, we have to look at what is happening to our forests and what is happening to the jobs related to forest harvesting. Our forests are deteriorating in health because we are not managing them along the lines of our best scientific knowledge in forests. We have a well-funded special interest of environmental groups in Washington that take in over \$600 million, and they take in that money by scaring people into thinking the last tree is going to be cut tomorrow or some other fantasy in order to bring those hundreds of millions of dollars in to themselves. This does not meet with true science or with what is actually happening in the forest.

The forests are deteriorating because of the bad management that has been pushed by these organizations creating the policy over the last several years.

The salvage amendment was an effort to try to return sensible environmentalism and sensible science back to the harvest of our timber. And what else is at stake? Is it better environmental policy for us not to harvest dead and dying wood in our forests, to lose tens of thousands of jobs because we do not allow that harvest, to make the people of our country have to use alternative resources other than wood? And what is the consequence of using alternative resources other than wood?

We will make this podium, these chairs, this table out of either wood,

metal or plastic. If we make them out of plastic, then we have to import the oil from the Middle East. We have to fight to get it out, many times. We spill it several times along the way. The toxicity in the manufacturing is greater than it is in wood manufacturing. And it is much harder to recycle or to dispose of when its usefulness is over.

The same thing with metal. We dig it from the ground. A great deal of energy in the smelting process, and it is much harder to recycle than is the renewable resource of wood. Also, both of those items are finite resources; when they are gone, they are gone.

The renewable resource of wood managed on a perpetual yield basis can take our lands, our best suited lands for timber and grow over and over again the multitude of products that we need for all of our home products, paper, many resources that otherwise we would have to use finite resources.

Now, it is better for us to use the renewable resource of wood or use up our finite resources?

We are today importing over one-third of the timber that we need, over 16 billion board feet. Often this is harvested from far more sensitive environmental areas than we have available to us in the United States.

So by forcing these imports, we are damaging tropical rain forests in many cases and other more sensitive parts of land.

What we tried to do with the timber amendment, a bipartisan amendment that had the support of the United Brotherhood of Carpenters, the United Paperworkers International Union, Western Council of Industrial Workers, National Association of Home Builders, Realtors, Women in Timber and many other small business organizations. It was to craft language that would provide us with 59,000 more jobs during the three years in the timber communities. It would bring in an additional \$2 billion in payroll for timber workers in communities all over this country. It would provide over \$450 million in additional tax revenue, and it would put over \$423 million returned to the Treasury directly. Two hundred three million dollars would be shared with the counties, mostly going to education, which is where the counties put funds coming from the harvest of timber.

It would also bring us a lower cost in fighting forest fires, which utilized \$1 billion in Federal cost in 1994 and cost us 32 lives in this country fighting fire.

The President plans to veto this bill, the entire rescission bill and the timber salvage provision. That would put people back to work, reduce expenditures on forest fires, and improve forest health.

Included also was section 318 timber. Many people have said that the timber salvage bill is not needed because the Government has a process now for harvesting salvaged timber. It does. But it has been used in such a way by many organizations through the appeals

process, through delaying processes, that they render the harvest in salvaging of timber useless. If timber in the Northwest, in the Southeast, the Southwest, is not utilized within 6 to 24 months, then it usually is lost as far as any practical use and the ability to salvage it.

So it must be done quickly. Appeals and other actions by special interests in this country delay it for years.

For instance, the section 318 timber, it is in Washington and Oregon, this area has already met all the environmental requirements. This is green timber but it has not yet been released. It has been waiting since 1990, over 5 years. And this meets all the environmental requirements, and it meets, it has already been approved to move, but it has been held up for over 5 years while people in Washington and Oregon are without jobs.

I think the salvage bill itself provides an opportunity to review environmental laws. It requires the secretary of agriculture to see that those laws are followed; if he feels that a tract can be salvaged following the Environmental Species Act and the Forest Acts and some other group disagrees with him, they have the right to appeal. They cannot have endless appeals. They must appeal directly to a federal judge, a district court judge and they have 45 days in which the judge will hear the evidence and then make a ruling, and then that is the end.

If he feels the environment is endangered, then he can declare the sale unacceptable. If he thinks there is no environmental damage to be done, he can declare the sale to move ahead, and that is the end of the appeals process.

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The Forest Service itself then puts together, through professionals, the sale, and puts it out to the highest bidder. There is no forest giveaway, there is a sale to the highest bidder for the timber to be utilized.

Mr. Speaker, the fact that this legislation brings in revenue, puts people back to work, uses our best science, and gives full protection for environmental laws should mean that the President should not veto this legislation, but should pass it.

Mr. Speaker, I will yield to some of the people affected by this. I yield to the gentleman from California (Mr. DOOLITTLE).

Mr. DOOLITTLE. Mr. Speaker, I thank the gentleman for yielding to me. I wish to acknowledge the gentleman's leadership on this salvage issue as a member of the Committee on Appropriations and a member of the conference committee. He is to be commended for the work that he has done.

Mr. Speaker, this will definitely result in a vast improvement for the quality of our forest health, which is so desperately needed in many parts of my district. In many parts of California and the Sierras, the percentages range up to one-third of dead and dying

trees. A third of the Sierras in parts are dead and dying trees.

I believe the gentleman is the only licensed forester in the United States Congress, so the gentleman has an expertise that no one else really does, not to the degree that the gentleman does. He understands what happens when we have a forest fire, and the environmental damage that that does when it burns so hot. He understands that if we do not take this dead and dying timber while it still has commercial value, then the taxpayer is burdened by shelling out money out of, I guess, the general fund to go remove these trees. There is nothing to be regained in terms of repaying the Treasury.

Is that your understanding?

Mr. TAYLOR of North Carolina. This is true, and not only that, I doubt if we could get that money expended, and the wood would not go to create jobs, in most cases, if it was harvested that way.

Mr. DOOLITTLE. Yes, because it has a no value. So at that point they are just doing something to improve the health.

I would comment, we have had a highly slanted, unfair, biased report called the Green Scissors Report, which is a coalition of, I believe, Earth First and the National Taxpayers Union and Citizens Against Government Waste, which is, I think, just shocking in terms of the distortion that is in that report. One of the things they attack is so-called below-cost timber sales.

What I find interesting is that many of these self-professed groups that profess to protect the environment drag out the appeals process as long as they can, so they make sure that timber has no commercial value, and then, when money is spent to get rid of that timber to protect the health of the forest, I believe that counts against the overall tree program, and so it is bootstrapping. They make sure that it does not recover the costs, and then they try and show "Look what pork barrel scandal support of industry we have here, because the taxpayer money is going to support the timber industry," when in reality, their own actions have guaranteed that result.

Mr. TAYLOR of North Carolina. Mr. Speaker, I yield to the gentleman from Washington (Mr. METCALF), whose State is also involved in this, if he would talk to us about the impact in his area.

(Mr. METCALF asked and was given permission to revise and extend his remarks.)

Mr. METCALF. Mr. Speaker, the President will soon have on his desk legislation that would make good use of a valuable natural resource. However, without the President's signature, this resource will rot away.

Tonight I will tell Members the story of just one tree, one in thousands in western Washington State. The Forest Service estimates that over \$20 billion board feet of dead, dying, or downed

timber is now in our forests. This tree on this picture and many others like it blew down in a windstorm on the Olympic Peninsula.

This is not an uncommon occurrence in this Washington State coast. While this tree grew in a region that is perfect for its growth, the unique combination of heavy rainfall, wet soil, and high winds caused trees like this giant 500-year-old growth Douglas fir tree to blow down. Thousands of these blown-down trees are lying on the forest floor right now.

However, this tree had a chance to be different. Mr. Jim Carlson, in the picture, tried to purchase this tree from the Forest Service, to be cut up in his sawmill and sold to the public. His sawmill used to employ about 100 people. The Quinault Ranger District refused to sell this tree to him. Mr. Carlson later came back to the Forest Service and asked to buy the tree, pay money for it, the lumber to be used in the construction of an interpretive building that he wanted to build on this ranch as part of an economic diversification project. This would have allowed Mr. Carlson to get into the tourism business which, as long as we are going to put him out of the timber business, seems to me about the least we could do.

The request was also denied, in spite of the fact that provisions for this type of sale were contained in the Grays Harbor Federal Sustained Yield Unit Agreement.

The taxpayers are the big losers in this story, though. This tree contained, just look at this tree, it contained 21,000 board feet of lumber. The sale of this tree by the Federal Government to Mr. Carlson would have brought the taxpayers, would have brought the Federal Government, \$10,000 to \$20,000. Mr. Carlson would have been able to manufacture that lumber from this one tree and sell it for approximately \$60,000 on the retail market. That is the value of that one tree.

Mr. Speaker, the sad end for this tree came in a perfectly legal, though terribly wasteful manner. An out-of-work timber worker, armed with a firewood permit and a chain saw, cut up this grand old giant for \$5 a cord and paid about \$115, \$115 to the taxpayers of this Nation, instead of the \$10,000 to \$20,000 that that tree was worth when it fell.

The rest of the story, as Paul Harvey likes to say, is that this past year this timber worker had his home sold on the steps of the county courthouse, because he could not pay \$932 in back taxes, while the Quinault Ranger District that would not sell him the tree for lumber did not have enough money to purchase the diesel fuel to run their road grader.

The extreme environmentalists oppose harvesting downed or diseased timber. For those who feel good to have that fine timber rot on the forest floor, for those people, I remind them that 15 billion board feet that lies there now will rot. There are no roads to get

health conditions in our Nation's forests. My amendment was soundly rejected by the Democratic-controlled Congress.

But this year, things are different. Today, after years of struggle and suffering, the voices of timber families in Washington State have finally been heard. Today, the Senate will finally pass legislation, and send it to the President that will result in real relief for people in my State. Real relief, Mr. President, not simply promises on paper to be waved around at press conferences.

EMERGENCY SALVAGE TIMBER PROVISION

The provision in H.R. 1944 is virtually identical to that which passed the House and Senate in the conference report to H.R. 1158. The conference report to H.R. 1158 was, of course, vetoed by the President. The legislation before the Senate today includes four key modifications to the timber language included in the conference report to H.R. 1158. Allow me to briefly explain these changes, and the rationale behind each.

First, in subsection (c)(IXA) of H.R. 1944, the change worthy of notice was included at the request of the administration. This Senator did not believe that this change was necessary because of the way that the entire provision is drafted. The fundamental concept of the timber language is that the Secretary has the discretion to put forward the salvage timber sales of which he approves. Consequently, I was baffled by the administration's demand that in this subsection language be included to give direction to the Secretary "to the extent the Secretary deemed, at his sole discretion, considers appropriate and feasible" that timber salvage sales "be consistent with any standards and guidelines from the management plans applicable to the National Forest or Bureau of Land Management District on which the salvage timber sale occurs." The administration demanded that some mention of "standards and guidelines" be included in this section. After a series of negotiations this is the compromise that the House and Senate worked out with the administration.

Subsection (c)(IXA) gives the administration the broadest latitude to prepare the salvage timber sales that it deems appropriate. It already has the discretion to make the decision of whether or not to put forward a sale that is consistent with the standards and guidelines of a particular forest unit or BLM district. Essentially this request by the administration and the language ultimately included at its request is nothing more than redundant.

Subsection (k) releases sales that were authorized under section 318 of the fiscal year 1990 Interior appropriations bill. Roughly 300 mbf of timber sales have been held up due to agency gridlock over the marbled murrelet. The administration asked the House and Senate to include in (k)(2) its definition of "occupancy." That change in

subsection (k)(2) of the Emergency Salvage Timber provision would undermine the ability to move these sales forward. That suggestion was soundly rejected by the House and Senate authors of the provision.

The language of (k)(2) requires that if a threatened or endangered bird species is "known to be nesting" in the sale unit that the administration not harvest that unit, but come up with an equal amount of timber in exchange for preserving that unit. This was written to give the administration flexibility to protect that individual sale unit in which the bird resides.

I wish to clarify that it is the intention of the House and Senate authors of this provision that the administration must provide physical evidence that the bird is "nesting" in that unit before the administration may enact (k)(3) to avoid the harvest of that sale unit.

The administration also requested that the date in subsection (k) be changed from 30 days for the release of the sales, to 45 days. The House and Senate authors of the provision included this request in H.R. 1944.

The third change included at the request of the administration relates to subsection (l)—Effect on Plans, Policies, and Activities—of the Timber provision. The subsection addresses the effect that salvage timber sales have on other multiple use activities. The provision was revised to create a limited exception to language that prohibits modifying land plans and other administrative actions as a consequence of implementing the section. The change, as requested by the administration, allows for modifications under extremely limited circumstances when needed to meet the salvage program agreed to by the conferees, or to reflect the particular effect of the salvage sale program.

It is critical to note that this modification expressly prohibits the administration from using salvage timber sales as the basis for limiting other multiple use activities. If the administration does need to modify an existing plan or program, project decisions, such as salvage sales, or other activities, cannot be halted or delayed by the modification. This is a critical point. This provision, as included in the conference report to H.R. 1158, was requested by the U.S. Forest Service as a way in which to ensure that the Forest Service would not be subject to legal challenge for the "cumulative effects" of a salvage sales when combined with another multiple use activity.

Last, the fourth change requested by the administration is, perhaps, the most interesting. The administration requested that the expiration date of the timber language be changed from September 30, 1997 to December 31, 1996. The administration aggressively pursued this request, with the express knowledge that its own agency officials in the Forest Service specifically asked the House and Senate conferees on H.R. 1158 to extend the Senate passed date

of September 30, 1996 to September 30, 1997. The Forest Service made this request of the conferees for budgetary and planning purposes. Despite this fact, the administration was undaunted, however, in their desire to change the date to December 31, 1996.

When asked why the administration needed the date to be changed to December 31, 1996, the response was this: the current administration cannot control the actions of future administrations.

This is certainly an interesting concept, and an idea that I totally reject. Why? We cannot predict what will happen between now and the next election. Will we continue to have a Republican controlled House and Senate? Will one body return back to Democratic control? This is the subject of elections, and should not be the subject of policy discussions. But this President, unlike almost any other in recent history, has made election politics a consideration in nearly every one of his policy deliberations.

Aside from these changes the principle of the timber language in this legislation remains the same. The timber language simply provides the President the ability to keep the multitude of promises that have been made and broken to the people who live and work in timber communities in the Pacific Northwest. It's just that simple.

Briefly, the three components of my amendment are: emergency salvage timber sales, Released timber sales, and option 9.

Emergency salvage timber sales: An emergency situation exists in our Nation's forests created by past wildfires, increased fuel load, or bug infested and diseased timber stands. Time and again, the administration has publicly committed to putting together an aggressive salvage timber program. My amendment gives the administration the ability to do just that.

The bill language directs the Forest Service and BLM expeditiously to prepare, offer and award salvage timber sale contracts for the thinning and salvaging of dead, dying, but infested, downed, and burnt timber on these Federal lands nationwide, and to perform the appropriate revegetation and tree planting operations in the areas in which the salvage operations have taken place.

The bill language deems the salvage timber sales to satisfy the requirements of applicable Federal environmental laws. It also provides for an expedited process for legal challenges to any such timber sale, and limits administrative review of the sales.

Released timber sales: Language has also been included to release a group of sales that have already been sold under the provisions of Section 318 of the fiscal year 1990 Interior and Related Agencies Appropriations Act. The harvest of these sales was assumed under the President's Pacific Northwest forest plan, but their release has been held up due to extended subsequent review by the U.S. Fish and Wildlife

Service. Release of these sales will remove tens of millions of dollars of liability from the government for contract cancellation. The only limitation on release of these sales is in the case of a nesting of an endangered bird species with a known nesting site in a sale unit. In this case, the Secretary must provide substitute volume for the sale unit.

Option 9: First, let me make clear that I do not agree with, or support, option 9. I do not believe it comes close to striking an appropriate balance between the needs of people and their environment. My amendment simply provides the Forest Service and Bureau of Land Management the authority to expedite timber sales allowed for under option 9. The administration promised the people in the region of option 9—Washington, Oregon and California—an annual harvest of 1.1 billion board-feet, and the time has come for it to keep its promise.

My amendment specifies that timber sales prepared under the provision satisfy the requirements of Federal environmental laws, provides for an expedited process for legal challenges, and limits administrative review of such sales. Let me make clear that my amendment does not independently validate option 9 and does not restrict future legal challenges to option 9.

Mr. President, although I believe that the negotiations that have gone on over the timber language were unnecessary given the broad latitude that the administration has in this legislation, it is a part of the legislative process. More important than these negotiations, and the last minute interest of this administration in the legislation, in the opinion of this Senator, are the people in timber communities. The people in timber communities across my State will have won their first victory when the President signs this bill. It's a victory they deserve and one we should give to them. I encourage my colleagues to support H.R. 1944.

SUBSECTION (I) OF SECTION 2001

Mr. HATFIELD. Mr. President, I want to take a moment to share with my colleagues my understanding of subsection (i) of section 2001 of H.R. 1944. This subsection contains references to several specific Federal statutes as well as general references to Federal laws, including treaties, compacts, and international agreements. It is my understanding that the reference to treaties is made in response to allegations that passage and implementation of section 2001 would result in violation of the North American Free-Trade Agreement or the General Agreement on Tariffs and Trade.

FOREST HEALTH

Mr. LIEBERMAN. Mr. President, I voted for the rescission bill that passed the Senate earlier today because I believe so strongly that we must bring our Federal budget under control, and hopefully balance it in the near future. The longer we delay this process the more difficult our choices become in

cutting spending for truly important Federal programs. But I remain strongly opposed to the provision in this rescission bill to exempt Federal logging from all Federal environmental laws for 2 years under the justification of salvage harvests. Not only is this provision unrelated to spending cuts—and probably will be budget negative—it sets very inadvisable policy and precedent.

"Timber salvage" in this provision is defined broadly to include virtually all Federal forests, potentially including areas set aside or managed scientifically for critical watersheds, endangered species, roadless areas, or special recreation uses. It defines salvage to include "dead, dying, and associated trees"—which may include virtually all mature timber. And, it provides exemptions from citizens suits, appeals, and judicial review of agency actions. These actions do not appear warranted based on timber harvest data from public lands.

According to U.S. Forest Service data, since 1992 less than one-half of 1 percent of forest sales by volume have been delayed by citizen suits, and less than 3 percent by litigation. In the first 11 months of 1994 over 1 billion board feet of timber was harvested from the "Option 9" areas developed for salmon and spotted owl protection—very close to the 1.2 billion board feet promise made for the 12 month period of 1994. Further, U.S. Forest Service data shows that a substantial number of timber sales in this region have been offered but not taken due to lack of demand.

In a recent issue of Random Lengths, industry's weekly report on North American Forest Products Markets, the lead story states that:

Consensus has developed that there is simply too much production chasing too few orders. Most buyers and sellers now agree that unless demand revives in a big way, and soon, the industry is headed for widespread shutdowns and curtailments.

Futures prices for softwood continue to be very low in relation to past years, further indicating low demand relative to supply.

Many experts believe that the timber industry faces a crisis of demand, not supply. Even if this were not the case, it is doubtful that exemptions from Federal environmental laws would help smaller mills facing log shortages. Mills that are most threatened by log shortages from public lands often cannot outbid larger mills at auction. Auctions tend to be won by deep pockets, with no guarantee that mills needing logs the most will get them.

During debate over original passage of this bill Senator MURRAY offered a moderating amendment, which I voted for, that would have expedited but not eliminated implementation of environmental laws on Federal forest lands. It failed by only one vote. The timber provision that finally passed contains a change over previous language to expand the role of the Secretary of Agri-

culture to require his signature in order to implement new sales. Although I do not think this is a sufficient fix to this legislation, I do think it is essential for the administration to faithfully execute this authority in order to prevent serious abuse of the legal exemptions in this provision.

This timber provision is an unrelated, inadvisable and unnecessary addition to the rescission bill that will only further confuse our efforts to bring thoughtful, balanced reform to Federal environmental protection, without sacrificing important safeguards.

Mr. BOND. Mr. President, over 2 months ago, the President first announced his determination to veto H.R. 1158, the rescission and supplemental appropriations bill agreed to by the joint House-Senate conference committee. In part, he decried the agreement on the basis of the rescission proposed for HUD. At the time, I said that rationale for the veto was groundless. It is ironic, and very significant, that this measure, H.R. 1944, which the President now finds acceptable, rescinds \$137 million more from HUD than did the bill which he vetoed.

Some have questioned why HUD is being cut by nearly \$6.5 billion, more than three-quarters of a total rescission of \$8.4 billion for the subcommittee. The answer is simple: That cut is roughly proportionate to that Department's available budgetary resources. Although HUD received new appropriations for fiscal year 1995 of \$25.7 billion, about 39 percent of the funding for our major agencies, it also carried into this fiscal year \$35.2 billion in unobligated prior year balances. In other words, it more than doubled its total available budgetary resources with this massive influx of unspent, unobligated funding.

We must cut HUD, and we must begin now if there is to be any hope of surviving the very constrained freeze-minus future for discretionary spending reflected in the budget resolution. The Congressional Budget Office analysis of the cost of the President's original budget submission for subsidized housing demonstrated a 50-percent expenditure increase over the next 5 years. This is a crisis. Unless we act now to curb the spiraling growth in outlays, we will have to make truly draconian cuts in the forthcoming fiscal year, including widespread evictions of low-income families from subsidized housing and accelerated deterioration in public and assisted housing across the country.

The solution is simple: Turn-off the pipeline of new subsidized units. That is the fundamental focus of the rescission bill. We have also restored cuts proposed by the House in CDBG, modernization, and operating subsidies, and redirected available resources toward another urgent aspect of restoring budgetary sanity to this out of control Department: demolish the failed housing developments, and put the rest

Amend

Option 9 -
Metcalf floor stmt?
Supports us

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Printed Status Report

COMMITTEE ON
 ENERGY AND NATURAL RESOURCES
 WASHINGTON, DC 20540-5110

July 27, 1995

The Honorable Dan Glickman
 Secretary of Agriculture
 U.S. Department of Agriculture
 14th Street and Independence Ave., S.W.
 Washington, D.C. 20250

The Honorable Bruce Babbitt
 Secretary of the Interior
 U.S. Department of the Interior
 18th and C Streets, N.W.
 Washington, D.C. 20240

Dear Secretary Glickman and Secretary Babbitt:

As responsible committee chairmen and other interested Members of Congress who will oversee the Administration's compliance with the salvage timber program enacted by Congress in Section 2001 of H.R. 1994, we are delighted that President Clinton has given his consent to carry out this vital program with the full resources of his Administration, and we want to assist your departments in their efforts to fulfill the congressional policies expressed in this program. To that end, you can expect our active oversight of your implementation of the measure.

The salvage legislation will require prompt and effective action by the Forest Service and the Bureau of Land Management, in some cases within 45 days of enactment of the law. Because time is so critical, and because the need to restore timber supply to dependent communities is so urgent, we are writing this letter to assure that your departments embark from the outset on the path intended by Congress in enacting this legislation. Other letters may follow as we review implementation of various elements of the program.

We are concerned at preliminary reports that the Office of Forestry and Economic Development in Portland, Oregon may be operating under some vital misunderstandings about this legislation, and we want to ensure that any such misunderstandings are corrected before we are unnecessarily in conflict with the Administration. The interpretation of the Office of Forestry and Economic Development is, in several important respects, at odds with the results of Administration-Congressional agreements and the terms of the legislation.

1. We want to make it clear that subsection (2) of the salvage legislation applies within the geographic area of National Forest units and BLM districts that were subject to Section 318 of the Department of Interior and Related Agencies Appropriations Act, Fiscal Year 1990, Pub. L. 101-121, and within that geographic area requires the release of all previously offered or awarded timber sales, including Section 318 sales as well as all sales offered or awarded in other years (such as Fiscal Years 1991-95) that are not subject to Section 318. The reference to Section 318 in subsection (X)(1) defines the geographic area that is subject to subsection (2).

This interpretation is vital to the policies intended in Section 2001. The legislation directs all sales referenced in subsection (2) to be released promptly to local mills to avoid further economic disruption in rural timber-dependent communities.

2. We have been informed that the Office of Forestry and Economic Development has suggested that subsection (X)(2) bars the release of any timber sale unit that has previously been determined to be "occupied" by a marbled murrelet. This interpretation of the law (1) directly contradicts the agreement reached between Congress and the Administration: (2) imposes language which we explicitly rejected; and (3) is flatly illegal.

Subsection (2)(2) bars the release of a timber sale unit only if a threatened or endangered bird species "is known to be nesting" within the unit. This approach is much narrower than all "occupied" units, for three reasons:

a) We were thoroughly informed and understand that the expert marbled murrelet biologists define occupancy of an area as much broader than nesting. We have been informed that the 1994 Pacific Sealbird Group marbled murrelet protocol treats various subcanopy behaviors as evidence of occupancy even though they do not necessarily indicate nesting, and treats circling above the canopy as evidence of possible occupancy although murrelets also circle above non-nesting habitat. We discussed these matters during our negotiations with the Administration. At the conclusion of this discussion, we refused to agree that evidence of occupancy would qualify a timber sale unit as "known to be nesting" under subsection (2)(2). The legislative history is explicit on this point.

b) To the contrary, we intended the requirement that a threatened or endangered bird be "known" to be nesting to require actual direct evidence of nesting, and does not allow an inferential conclusion from possible occupancy. Actual direct evidence would be observation of an active nest, fecal ring or eggshell fragments.

c) We further intended the requirement that a threatened or endangered bird "is" known to be nesting to require information that nesting is currently occurring. Nesting in a prior year is not sufficient. Unless there is direct evidence of current nesting, the sale unit must be released.

3. In the event that subsection (2)(2) bars the release of a timber sale unit, subsection (2)(3) requires provision of an equal volume of timber, of like kind and value. The provision of alternative timber under subsection (2)(3), when required, is clearly a

component of compliance with subsection (k)(1), and therefore does not require compliance with environmental laws or other federal statutes in light of the "notwithstanding any other provision of law" language in subsection (k)(1). If your agencies were confused on this point, they should have raised it in our deliberations. Alternative volume under subsection (k)(2) must be provided promptly so that all sales requiring alternative volume can, like all the other released sales, be operated to completion in fiscal years 1995 and 1996.

4. We understand that concern has been expressed about the effect of the National Marine Fisheries Service's recent decision to propose listing the coho salmon in California and Oregon as threatened under the Endangered Species Act (ESA). The publication of such a proposal in the Federal Register may require "conferencing" of certain proposed agency actions under section 7(a)(4) of the ESA.

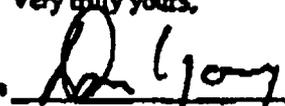
We were aware of the pendency of this listing. Nevertheless, we directed that the respective Secretaries shall act to award, release and permit to be completed in fiscal years 1995 and 1996 the sales described in subsection (k)(1) "[n]otwithstanding any other provision of law." Neither the conferencing requirements of the ESA, nor any other administrative provision of the ESA is a barrier to prompt and full compliance with subsection (k) (including subsection (k)(3)).

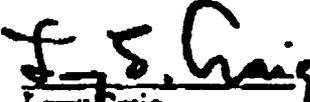
Thus, while the agencies may conduct such conferences under the ESA as they determine appropriate, the agencies may not in any way delay the award, release or completion of the sales described in subsection (k). The same would be true for consultations under section 7(a) of ESA that may otherwise be required for current or newly-listed species (for example, if the coho is listed as threatened at some time in the future).

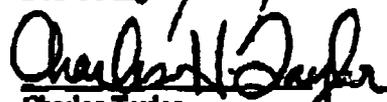
We hope that this letter provides thorough and complete direction on the issues contemplated when we negotiated and drafted the FY 1995 funding rescissions bill. We expect each of you to provide us with written assurances that your agencies intend to implement Section 2001 in accordance with the direction provided in this letter. You, in turn, can expect diligent and vigilant oversight from us beginning with hearings in early August. Please provide us with this written assurance within 10 days after enactment of the law.

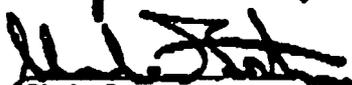
Very truly yours,


 Frank Murkowski


 Don Young


 Larry Craig


 Charles Taylor


 Slade Gorton


 Pat Roberts

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certain timber sales in the Upper Yaak Decision Area have been completed and are adequate, decision notices have been issued, no appeals have been filed, and the time period for appeals as specified in Forest Service regulations has expired: *Provided further*, That the Forest Service actions taken pursuant to this section shall comply with the Kootenai National Forest Plan: *Provided further*, That no construction of new system roads shall be permitted in the Upper Yaak River Drainage: *Provided further*, That this section does not in any manner represent a judgment upon the legal adequacy or in any way effect the final decision made in the development or implementation of the Upper Yaak Final EIS.

Sec. 317. Section 320 of Public Law 98-473 (98 Stat. 1974) as amended by section 316 of Public Law 100-446 (102 Stat. 1826) is further amended by deleting the period and inserting "*Provided*, That nothing contained herein shall prohibit an agreement between an Indian tribe or tribal organization and the Secretary of the Interior or the Secretary of Health and Human Services, pursuant to the Indian Self-Determination Act, as amended (25 U.S.C. 450 et seq.), under which such tribe or tribal organization may retain rents and charges for the operation, maintenance, and repair of such quarters."

5 USC 5911 note.

Sec. 318. (a) From funds appropriated under this Act or otherwise made available—

National Forest System.
Conservation.
Forests and forest products.
Oregon.
Washington.
Birds.

(1) The Forest Service shall offer, notwithstanding the provisions of the Federal Timber Contract Payment Modification Act of 1984 (16 U.S.C. 618(a)(5)(C)), an aggregate timber sale level of seven billion seven hundred million board feet of net merchantable timber from the national forests of Oregon and Washington for fiscal years 1989 and 1990. Such timber sales shall be consistent with existing land and resource management plans or land and resource management plans as approved except, in the case of the Mapleton Ranger District of the Siuslaw National Forest, Oregon, such sales shall be consistent with the preferred alternative of the draft land and resource management plan and accompanying draft environmental impact statement dated October 1, 1986, pending approval of a final land and resource management plan for the Siuslaw National Forest: *Provided*, That of the seven billion seven hundred million board foot aggregate timber sale level for fiscal years 1989 and 1990, timber sales offered from the thirteen national forests in Oregon and Washington known to contain northern spotted owls shall meet an aggregate timber sale level for fiscal years 1989 and 1990 of five billion eight hundred million board feet of net merchantable timber: *Provided further*, That the sales volume shall be distributed in the same proportion between Oregon and Washington national forests known to contain northern spotted owls based on the average sale volume for fiscal years 1986 through 1988.

(2) The Bureau of Land Management shall offer such volumes as are required in fiscal year 1990 to meet an aggregate timber sale level of one billion nine hundred million board feet for fiscal years 1989 and 1990 from its administrative districts in western Oregon.

(b)(1) In accordance with subsection (b)(2) of this section, all timber sales from the thirteen national forests in Oregon and Washington known to contain northern spotted owls prepared or offered pursuant to this section shall minimize fragmentation of the most eco-

Oregon.
Washington.

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logically significant old growth forest stands. "Old growth forest stands" are defined as those stands meeting the criteria according to Forest Service Research Publication Numbered PNW-447. In those instances where the Forest Service, after consultation with the advisory boards established pursuant to subsection (c) of this section, determines that the definition in Forest Service Research Publication Numbered PNW-447 is not fully applicable in national forests known to contain northern spotted owls, the Forest Service shall use old-growth definitions contained in its Pacific Northwest Regional Guide.

(2) To the extent that fragmentation of ecologically significant old growth forest stands is necessary to meet the timber sale levels directed by subsection (a)(1) of this section, the Forest Service shall minimize such fragmentation in the ecologically significant old growth forest stands on a national forest-by-national forest basis based on the Forest Service's discretion in determining the ecologically significant stands after considering input from the advisory boards created pursuant to subsection (c) of this section. The habitat of nesting pairs of spotted owls which are not in the Spotted Owl Habitat Areas (SOHAs) described in subsection (b)(3) of this section shall be considered an important factor in the identification of ecologically significant old growth forest stands.

(3) No timber sales offered pursuant to this section from the thirteen national forests in Oregon and Washington known to contain northern spotted owls may occur within SOHAs identified pursuant to the Final Supplement to the Environmental Impact Statement for an Amendment to the Pacific Northwest Regional Guide—Spotted Owl and the accompanying Record of Decision issued by the Forest Service on December 8, 1988 as adjusted by this subsection:

(A) For the Olympic Peninsula Province, which includes the Olympic National Forest, SOHA size is to be 3,200 acres;

(B) For the Washington Cascades Province, which includes the Mt. Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford-Pinchot National Forests, SOHA size is to be 2,600 acres;

(C) For the Oregon Cascades Province, which includes the Mt. Hood, Willamette, Rogue River, Deschutes, Winema, and Umpqua National Forests, SOHA size is to be 1,875 acres;

(D) For the Oregon Coast Range Province, which includes the Siuslaw National Forest, SOHA size is to be 2,500 acres; and

(E) For the Klamath Mountain Province, which includes the Siskiyou National Forest, SOHA size is to be 1,250 acres.

(F) All other standards and guidelines contained in the Chief's Record of Decision are adopted.

(4) In planning for the preparation and offer of timber sales authorized in subsection (a)(1) of this section, the Forest Service, to the extent possible in areas proximate to SOHA sites identified in subsection (b)(3) of this section, should exercise discretion in selecting sites and/or silvicultural prescriptions in order to retain spotted owl habitat characteristics in such areas. The Forest Service should consider the relative location and quality of such areas contiguous to the SOHAs and should give higher priority to preparing and offering sales in areas of lower quality and less important location than to areas of greater quality and more important location relative to the SOHAs.

(5) No timber sales offered pursuant to this section on Bureau of Land Management lands in western Oregon known to contain

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northern spotted owls shall occur within the 110 areas identified in the December 22, 1987 agreement, except sales identified in said agreement, between the Bureau of Land Management and the Oregon Department of Fish and Wildlife. Not later than thirty days after enactment of this Act, the Bureau of Land Management, after consulting with the Oregon Department of Fish and Wildlife and the United States Fish and Wildlife Service to identify high priority spotted owl area sites, shall select an additional twelve spotted owl habitat areas. No timber sales may be offered in the areas identified pursuant to this subsection during fiscal year 1990.

(6)(A) Without passing on the legal and factual adequacy of the Final Supplement to the Environmental Impact Statement for an Amendment to the Pacific Northwest Regional Guide—Spotted Owl Guidelines and the accompanying Record of Decision issued by the Forest Service on December 8, 1988 or the December 22, 1987 agreement between the Bureau of Land Management and the Oregon Department of Fish and Wildlife for management of the spotted owl, the Congress hereby determines and directs that management of areas according to subsections (b)(3) and (b)(5) of this section on the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls is adequate consideration for the purpose of meeting the statutory requirements that are the basis for the consolidated cases captioned Seattle Audubon Society et al., v. F. Dale Robertson, Civil No. 89-160 and Washington Contract Loggers Assoc. et al., v. F. Dale Robertson, Civil No. 89-99 (order granting preliminary injunction) and the case Portland Audubon Society et al., v. Manuel Lujan, Jr., Civil No. 87-1160-FR. The guidelines adopted by subsections (b)(3) and (b)(5) of this section shall not be subject to judicial review by any court of the United States.

(B) The Forest Service is directed to review and revise as appropriate the decision adopted in the December 1988 Record of Decision referenced in subsection (b)(6)(A) of this section and shall consider any new information gathered subsequent to the issuance of the Record of Decision, including the interagency guidelines for conservation of northern spotted owls developed by the Interagency Scientific Committee to address conservation of the northern spotted owl. This review, and any resulting changes to the December 1988 decision determined to be necessary by the Forest Service are to be completed and in effect not later than September 30, 1990.

(c)(1) The Secretaries of Agriculture and the Interior shall name advisory boards on a national forest-by-national forest and Bureau of Land Management district-by-district basis which shall be comprised of not more than seven individuals who, in the appropriate Secretary's judgment, represent a diversity of views. In the process of selecting individuals to serve on the advisory boards, the Secretaries shall make every effort to recognize the diversity of views and perspectives and allow parties which represent a cross-section of those views to participate in making recommendations in the selection of board members, provided, that every effort will be made to ensure the advisory boards are comprised of an equal number of representatives of environmental and business concerns. The advisory boards shall be named not later than thirty days after enactment of this Act. The advisory boards shall provide recommendations to the Forest Service and the Bureau of Land Management in reviewing prospective timber sales which shall meet the timber sale levels directed by this section prior to their offer.

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The advisory boards shall present their advice within fifteen or forty-five days after receipt of the necessary review documents. The fifteen-day period applies to single sales and the forty-five-day period applies to multiple sales. The members of the advisory boards authorized by this section shall serve without compensation or reimbursement of expenses. The Forest Service and the Bureau of Land Management are authorized to use available funds for the services of professional, independent facilitators to assist in the work of the advisory boards.

(2) The Forest Service and Bureau of Land Management shall consider the recommendations of the advisory boards once such boards are established pursuant to this section, including any suggested modifications of individual sales. The Forest Service and Bureau of Land Management shall also consider recommendations made by the United States Fish and Wildlife Service on those timber sales conferred upon under section 7(a)(4) or, if the spotted owl is listed as a threatened or endangered species, consult under section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1538(a)(2) and (a)(4)) prior to the offer of any subsequent timber sale in fiscal year 1990. These recommendations shall be considered regardless of whether the agreement provided in subsection (f)(1) of this section has been reached, entered into, and accepted by the relevant court. Adoption or rejection of such recommended modifications shall not require preparation of additional environmental documents, notwithstanding any other provision of law.

(d) Notwithstanding any other provision of law, there shall be not more than one level of administrative appeal of any decision by the Forest Service or the Bureau of Land Management to undertake any activity directed by this section for timber sales to be prepared, advertised, offered, and awarded during fiscal year 1990 from the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls. If an administrative stay is granted in any such appeal the Regional Forester or the Interior Board of Land Appeals shall issue a final decision on the merits within forty-five days of the date of issuance of such stay. Notwithstanding any other provision of law, any party seeking to challenge a decision made after the date of enactment of this Act to prepare, advertise, offer, or award a timber sale in fiscal year 1990 from the thirteen national forests and Bureau of Land Management lands in western Oregon known to contain northern spotted owls need not exhaust their administrative remedies prior to filing suit. Nothing in this subsection shall alter the administrative appeal requirements of the Forest Service or Bureau of Land Management.

(e) Nothing in this section shall affect interagency cooperation among the Forest Service, the Bureau of Land Management, and the United States Fish and Wildlife Service under sections 7(a)(2) and 7(a)(4) of the Endangered Species Act and its regulations.

(f)(1) Not later than two days after enactment of this Act, the Forest Service shall submit to plaintiffs in the captioned case Seattle Audubon Society et al., v. F. Dale Robertson, Civil No. 89-160, a list of sales which had been prepared for offer in fiscal year 1989 and which contain at least 40 acres of suitable spotted owl habitat. Not later than fourteen days after receipt of such list, plaintiffs to the suit referenced in this subsection may enter into an agreement with the Forest Service releasing for sale not less than one billion one hundred million board feet of net merchantable timber. Such sales

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INTERIOR APPROPRIATIONS

P.L. 101-121

must be available for advertisement not later than fourteen days after the agreement required by this subsection is reached. Such timber sales selected shall not be subject to further judicial review by any court of the United States.

(2) If the agreement specified in subsection (f)(1) of this section is reached, then those timber sales described in the list submitted to plaintiffs pursuant to subsection (f)(1) of this section but not contained in the agreement authorized by subsection (f)(1) of this section shall not be offered for sale in fiscal year 1990.

(3) If the agreement authorized under subsection (f)(1) of this section is not implemented within the timeframes prescribed in subsection (f)(1) of this section, one billion one hundred million board feet of net merchantable timber from such sales submitted to plaintiffs pursuant to subsection (f)(1) of this section shall be selected and modified as appropriate by the Forest Service in accordance with the provisions of this section. Selected sales shall be prepared, advertised, offered, awarded and operated notwithstanding any provision of law that is a basis for any stay, injunction or order issued in the proceeding identified in subsection (f)(1) of this section: *Provided*, That nothing in this subsection shall affect rights available under the Contract Disputes Act (41 U.S.C. 601 et seq.).

(4) The Forest Service shall, for each respective timber sale, lift its own stay or apply to the appropriate court for the lifting of the restraining order or injunction whose basis has been withdrawn by this section.

(5) Timber sales selection pursuant to subsections (f)(1) or (f)(3) of this section shall be based on the following criteria: (1) proportional distribution between Oregon and Washington national forests known to contain northern spotted owls based on the average sale volumes for fiscal years 1986 through 1988; (2) proportional distribution to the extent possible among the thirteen national forests known to contain northern spotted owls in Oregon and Washington based on the average sale volumes for fiscal years 1986 through 1988; and (3) to the extent possible, selection of sales outside the habitat of nesting pairs of spotted owls which are not in the Spotted Owl Habitat Areas described in subsection (b)(3) of this section.

(g)(1) No restraining order or preliminary injunction shall be issued by any court of the United States with respect to any decision to prepare, advertise, offer, award, or operate a timber sale or timber sales in fiscal year 1990 from the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls. The provisions of section 705 of title 5, United States Code, shall not apply to any challenge to such a timber sale: *Provided*, That the courts shall have authority to enjoin permanently, order modification of, or void an individual sale if it has been determined by a trial on the merits that the decision to prepare, advertise, offer, award, or operate such sale was arbitrary, capricious or otherwise not in accordance with law: *Provided further*, That any challenge to a timber sale must be filed in Federal District Court within fifteen days of the date of initial advertisement of the challenged timber sale: *Provided further*, That for forty-five days after the date of filing of a challenge to a timber sale the affected agency shall take no action to award a challenged timber sale. Civil actions filed under this section shall be assigned for hearing at the earliest possible date and shall take precedence over all other matters pending on the docket of the court at that time except for criminal cases: *Provided further*, That: the

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court shall render its final decision relative to any challenge within forty-five days from the date such challenge is brought, unless the court determines that a longer period of time is required to satisfy the requirements of the United States Constitution.

(2) Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding which set page limits on briefs and time limits on filing briefs and motions and other actions which are shorter than the limits specified in the Federal rules of civil or appellate procedure.

(3) In order to reach a decision within forty-five days, the Federal District Court may assign all or part of any such case or cases to one or more Special Masters, for prompt review and recommendations to the court.

Reports.

(h) The Forest Service, the Bureau of Land Management, and the United States Fish and Wildlife Service shall submit reports updating their findings and progress as determined by the process recognized under subsection (e) of this section on a monthly basis to the President of the Senate and the Speaker of the House of Representatives for appropriate referral. Such reports shall also include information on the extent to which recommendations of the advisory boards established pursuant to subsection (c) of this section were integrated into timber sale decisions as well as reasons for modifying or not adopting recommendations made by the advisory boards. Such reports shall be submitted as directed beginning on December 1, 1989, and ending on September 30, 1990.

(i) Except for provisions of subsection (a)(1) of this section, the provisions of this section apply solely to the thirteen national forests in Oregon and Washington and Bureau of Land Management districts in western Oregon known to contain northern spotted owls. Nothing contained in this section shall be construed to require the Forest Service or Bureau of Land Management to develop similar policies on any other forest or district in Oregon or Washington.

(j) The advisory boards established under this section shall not be subject to the Federal Advisory Committee Act (86 Stat. 770).

(k) Timber sales offered to meet the requirements of subsection (a) of this section shall be subject to the terms and conditions of this section for the duration of those sale contracts. All other provisions of this section shall remain in effect until September 30, 1990.

Sec. 319. (a)(1) Subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end thereof the following new section:

Grants.
Loans.

“§ 1352. Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions

“(a)(1) None of the funds appropriated by any Act may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action described in paragraph (2) of this subsection.

“(2) The prohibition in paragraph (1) of this subsection applies with respect to the following Federal actions:

- “(A) The awarding of any Federal contract.
- “(B) The making of any Federal grant.
- “(C) The making of any Federal loan.
- “(D) The entering into of any cooperative agreement.

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List of Enclosures

1. Timber-related provisions of P.L. 104-19, July 26, 1995.
2. Directive from the President to Heads of Agencies, August 1, 1995.
3. Memorandum of Agreement between agencies related to salvage sales, August 9, 1995.
4. Guidance concerning above MOA, sent to agencies on August 18, 1995.
5. Memorandum from Jim Lyons and Mike Dombeck to Jack Ward Thomas and Elaine Zielinski regarding interpretation of "areas" versus "sales" (i.e., geographic scope of Section 318 sales.) August 22, 1995.
6. Memorandum from Jim Lyons and Mike Dombeck to Jack Ward Thomas and Elaine Zielinski on issue of "known to be nesting" for marbled murrelets, August 23, 1995.
7. Letter (March 20th, 1995) and press release (March 21, 1995) from Senator Gorton which interprets geographic scope question on 318 sales as "sales" (narrow definition).
8. Letter from Senators Murkowski, Craig, Gorton and Congressman Young, Taylor and Roberts to Secretaries Glickman and Babbitt with broad geographic definition and known to be nesting definition contrary to administration opposition, July 27, 1995.
9. Letter from scientific specialists on seabirds to Secretary Glickman and Babbitt on "known to be nesting" definition, August 14, 1995.
10. Summary of report required on salvage sales, from Secretary Glickman to Senator Hatfield, September 1, 1995.
11. Agriculture OGC list of Forest Service rescission cases, September 12, 1995.

THE WHITE HOUSE

WASHINGTON

August 1, 1995

MEMORANDUM FOR THE SECRETARY OF THE INTERIOR
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION
AGENCY

SUBJECT: Implementing Timber-Related Provisions to
Public Law 104-19

On July 27th, I signed the rescission bill (Public Law 104-19), which provides much-needed supplemental funds for disaster relief and other programs. It also makes necessary cuts in spending, important to the overall balanced budget plan, while protecting key investments in education and training, the environment, and other priorities.

While I am pleased that we were able to work with the Congress to produce this piece of legislation, I do not support every provision, most particularly the provision concerning timber salvage. In fact, I am concerned that the timber salvage provisions may even lead to litigation that could slow down our forest management program. Nonetheless, changes made prior to enactment of Public Law 104-19 preserve our ability to implement the current forest plans' standards and guidelines, and provides sufficient discretion for the Administration to protect other resources such as clean water and fisheries.

With these changes, I intend to carry out the objectives of the relevant timber-related activities authorized by Public Law 104-19. I am also firmly committed to doing so in ways that, to the maximum extent allowed, follow our current environmental laws and programs. Public Law 104-19 gives us the discretion to apply current environmental standards to the timber salvage program, and we will do so. With this in mind, I am directing each of you, and the heads of other appropriate agencies, to move forward expeditiously to implement these timber-related provisions in an environmentally sound manner, in accordance with my Pacific Northwest Forest Plan, other existing forest and land management policies and plans, and existing environmental laws, except those procedural actions expressly prohibited by Public Law 104-19.

I am optimistic that our actions will be effective, in large part, due to the progress the agencies have already made to accelerate dramatically the process for complying with our existing legal responsibilities to protect the environment. To ensure this effective coordination, I am directing that you enter into a Memorandum of Agreement by August 7, 1995, to make explicit the new streamlining procedures, coordination, and consultation actions that I have previously directed you to develop and that you have implemented under existing environmental laws. I expect that you will continue to adhere to these procedures and actions as we fulfill the objectives of Public Law 104-19.

William J. Clinton

Enclosure 3

MEMORANDUM OF AGREEMENT
ON TIMBER SALVAGE
RELATED ACTIVITIES UNDER PUBLIC LAW 104-19

between

UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)

UNITED STATES DEPARTMENT OF THE INTERIOR (DOI)

UNITED STATES DEPARTMENT OF COMMERCE (DOC)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA)

AUGUST 9, 1995

BACKGROUND

The President signed the rescission bill, Public Law 104-19, July 27, 1995, that provides supplemental funds for disaster relief and other programs, as well as making cuts to an overall balanced budget plan. The President did not support the provision concerning timber salvage. Nonetheless, the bill preserves the ability to implement current forest and land use plans and their standards and guidelines, and to protect other forest resources such as clean water and fisheries. Accordingly, the President called for carrying out the timber salvage program in ways that further our current environmental laws and programs.

PURPOSE

The President directed, in a letter signed August 1, 1995, that the Secretaries of Agriculture, the Interior and Commerce, and the heads of other cognizant agencies move forward to implement the timber related provisions of Public Law 104-19 in an expeditious and environmentally-sound manner, in accordance with the President's Pacific Northwest Forest Plan, other existing forest and land management policies and plans, and existing environmental laws, except those procedural actions expressly prohibited by Public Law 104-19.

The purpose of this MOA is to reaffirm the commitment of the signatory parties to continue their compliance with the requirements of existing environmental law while carrying out the objectives of the timber salvage related activities authorized by Public Law 104-19. In fulfilling this commitment, the parties intend to build upon on-going efforts to streamline procedures for environmental analysis and Interagency consultation and cooperation.

The USDA Forest Service and DOI's Bureau of Land Management are responsible for providing a full range of social, economic, and environmental benefits from publicly owned natural resources using an ecosystem approach. DOI's Fish and Wildlife Service, DOC's National Marine Fisheries Service and EPA are responsible for providing assistance to, and consultation and coordinating with, the Forest Service and Bureau of Land Management under the Endangered Species Act of 1973 (ESA), National Environmental Policy Act of 1969 (NEPA) and other environmental laws.

NOW, THEREFORE,

THE PARTIES AGREE TO:

1. Comply with previously existing environmental laws except where expressly prohibited by Public Law 104-19, notably in the areas of administrative appeals and judicial review. In particular, the parties agree to implement salvage sales under Public Law 104-19 with the same substantive environmental protection as provided by otherwise applicable environmental laws and in accordance with the provisions of this MOA.

2. Achieve to the maximum extent feasible a salvage timber sale volume level above the programmed level in accordance with Public Law 104-19 within a framework of maintaining forest health and ecosystem management. Adhere to the standards and guidelines in applicable Forest Plans and Land Use Plans and their amendments and related conservation strategies including, but not limited to, the Western Forest Health Initiative and those standards and guidelines adopted as part of the President's Forest Plan for the Pacific Northwest, PACFISH, INFISH, Red Cockaded Woodpecker Long-Term Strategy, as well as the goals, objectives, and guidelines contained in the NMFS biological opinion on Snake River Basin Land Resource Management Plans (LRMPs), through the interagency team approach agreed to in the May 31, 1995 agreement on streamlining consultation procedures. The agencies will direct their level one and two teams to apply the goals, objectives, and guidelines contained in the NMFS biological opinion on the Snake River Basin LRMPs as the teams deem appropriate to protect the anadromous fish habitat resource.

3. Involve the public early in the process so that there is opportunity to provide input into the development of salvage sales, particularly in recognition of the importance of public involvement given the prohibition to administrative appeals contained in Public Law 104-19. Maintain and promote collaboration with other Federal, Tribal, State and local partners.

4. Reiterate their commitments to work together from the beginning of the process, particularly in salvage sale design, building on existing joint memoranda that streamline consultation procedures under Section 7 of ESA including the following two agreements, other applicable agreements, and improvements thereon:

- o- The May 31, 1995, agreement on streamlining consultation procedures under section 7 of the ESA, between Forest Service Regional Foresters of Regions 1,4,5, and 6; Bureau of Land Management State Directors for Oregon/Washington, Idaho, and California; Fish and Wildlife Service Regional Director; and National Marine Fisheries Service Regional Directors
- o- The March 8, 1995, agreement on consultation time lines and process streamlining for Forest Health Projects, between the Chief of the Forest Service, Director of the Bureau of Land Management, Director of the National Marine Fisheries Service, and Director of the Fish and Wildlife Service.
- o- The March 8, 1995, agreement as it applies to consultation time lines and processes streamlining will be revised to apply nationwide.

5. Ensure that personnel from their respective agencies work cooperatively and professionally to implement faithfully the objectives of Public Law 104-19 and Executive Branch direction in a timely manner. In the event that disagreements cannot be resolved at the regional level (Level 3) of the process, a panel consisting of appropriate representatives of the Forest Service, Bureau of Land Management, National Marine Fisheries Service, Fish and Wildlife Service, and EPA, will review the evidence and make a binding decision within 14 days of notice of the disagreement.
6. Agree to conduct project analyses and interagency coordination consistent with NEPA and ESA (as set forth in paragraph 4 of this MOA) in a combined joint environmental assessment (EA) and biological evaluation (BE) called for in Public Law 104-19, except where it is more timely to use existing documents. There will be a scoping period, as described in agency guidelines, during the preparation of all salvage projects. Sales that would currently fall within a categorical exclusion promulgated by the Forest Service or Bureau of Land Management in their NEPA procedures will require no documentation absent extraordinary circumstances. For sales that the Secretary determines, in his discretion, ordinarily should require an EA under the land management agencies' NEPA procedures, agencies will prepare the combined EA/BE, including a determination of affect under ESA and circulate the analysis for 20 days of public review and comment. For sales that the Secretary determines, in his discretion, ordinarily should require an EIS under the land management agencies' NEPA procedures, the combined EA/BE will include analysis consistent with section 102(2)(c) of NEPA and will be circulated for 30 days of public review and comment. The decision maker will respond to substantive comments on the EA/BE, but will not be required to recirculate a final EA/BE.
7. Develop and use a process which will facilitate interagency review of proposed salvage sale programs on a regional scale, thus allowing other agencies to identify broad-scale issues and help set priorities for allocation of their resources.
8. Include mitigation needs identified in the environmental assessment in timber sale design to the extent possible within existing authority. As appropriate, funds will be used for mitigation work not included in the timber area.
9. Measure performance of all parties' and individuals' efforts involved in the development and implementation of timber sales prepared pursuant to this MOA based upon the combined achievement of the goals set forth in this MOA.
10. Monitor and evaluate timber sale objectives and mitigation requirements as an integral part of salvage sales and the salvage program as prescribed in Forest Plans, Land Use Plans and agency direction. Public and stakeholder involvement in monitoring and evaluation will be encouraged. There will be a national salvage program review involving regions and States with significant activity under this Act.
11. Recognize and use the definition of salvage timber sale as contained in Public Law 104-19, which is a timber sale "for which an important reason for entry includes the removal of disease or insect-infested trees, dead, damaged, or down trees, or trees affected by fire or imminently susceptible to fire or insect attack." This definition allows for treating associated trees or trees lacking the characteristics of a healthy and viable ecosystem for the purpose of ecosystem improvement or rehabilitation as long as a viable salvage component exists. While this definition provides necessary flexibility to meet

Enclosure 3

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salvage objectives, care must be taken to avoid abuse by including trees or areas not consistent with current environmental laws and existing standards and guidelines as set forth in this MOA.

This Memorandum of Agreement is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The undersigned Agency heads attest that they understand the direction in this Memorandum of Agreement and will fully comply with that direction.

/s/ James R. Lyons
JAMES R. LYONS
Under Secretary
Natural Resources and Environment
Department of Agriculture.

/s/ Robert P. Davison
for GEORGE T. FRAMPTON, JR.
Assistant Secretary
Fish and Wildlife and Parks
Department of the Interior

/s/ Katherine W. Kimball
for DOUGLAS K. HALL
Assistant Secretary for Oceans
and Atmosphere
Department of Commerce

/s/ Bob Armstrong
ROBERT L. ARMSTRONG
Assistant Secretary for
Land and Minerals Management
Department of the Interior

/s/ Steven A. Herman
STEVEN A. HERMAN
Assistant Administrator for
Enforcement and Compliance Assurance
Environmental Protection Agency

/s/ Jack Ward Thomas
JACK WARD THOMAS
Chief, Forest Service
Department of Agriculture

/s/ John G. Rogers
for MOLLIE BEATTIE
Director, Fish and Wildlife
Service
Department of the Interior

/s/ Rolland Schmitt
ROLLAND SCHMITT
Director, National Marine Fisheries
Service
Department of Commerce

/s/ Mike Dombeck
MIKE DOMBECK
Director, Bureau of
Land Management,
Department of the Interior

Enclosure 4

Guidance Concerning Items in the
Memorandum of Agreement on
Timber Salvage Related Activities
Under Public Law 104-19

Item 1. Comply with previously existing environmental laws, except where expressly prohibited by P.L. 104-19. The Act expressly prohibits administrative appeals (Section 2001(e)), and it limits judicial review (Section 2001(f)).

Item 2. P.L. 104-19 does not include specific volume targets for salvage timber sales. However, it does contain the following direction:

"During the emergency period, the Secretary concerned is to achieve, to the maximum extent feasible, a salvage timber sale volume level above the programmed level to reduce the backlogged volume of salvage timber." (Section 2001(b))

Section 2001(c)(2) of P.L. 104-19 is a reporting requirement. No later than August 30, 1995, the Secretary concerned is required to report to the appropriate committees of Congress on implementation of the salvage provisions of the Act, and to update and resubmit the report every six months thereafter until completion of all salvage timber sales covered by the Act. As required by Section 2001(c)(2), these reports will include a plan and schedule for an enhanced salvage timber sale program by National Forest and BLM District for fiscal years 1995, 1996, and 1997 using the authority provided by the Act.

The teams referred to in Item 2 of the MOA are the interagency teams established to implement the streamlined Section 7 consultation process in northwestern states under the Endangered Species Act, pursuant to the interagency agreements referenced in Item 4 of the MOA. The explanation of Item 4, below, describes the team process and its expansion nationwide.

The reference in Item 2 to the National Marine Fisheries Service (NMFS) biological opinion of March 1, 1995, on the Snake River Basin Land and Resource Management Plans is made specifically to clarify that the interagency consultation teams in the Snake River Basin will deal with implementation of the goals, objectives and guidelines contained in that biological opinion as related to the anadromous fish habitat resource.

Item 3. Due to the abbreviated time frames it is important to have public involvement early in the process and continuing through the review of the document developed. You should also promote collaboration with other federal, Tribal, State and local partners as appropriate. An interagency communication plan is being finalized and will be sent separately.

Item 4. Consistent with the President's direction and Items 1 and 2 of the MOA, agencies will work together to design salvage sales so as to avoid or minimize adverse effects to threatened or endangered species, and no salvage sale will be offered if it would be likely to jeopardize the continued existence of a listed or proposed species, or if it would be likely to result in the destruction or adverse modification of designated or proposed critical habitat. The March 8, 1995 interagency agreement signed by the heads of the FS, BLM, FWS and NMFS provides direction for streamlining interagency consultations under the Endangered Species Act for forest health and salvage

Enclosure 4

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timber projects on National Forest System and BLM lands in several western states. Key elements of this streamlined process are:

- o Use an interagency team approach to facilitate early input to the NEPA process concerning species proposed or listed as threatened or endangered, as well as proposed or designated critical habitat, under the Endangered Species Act.
- o Informal or formal consultation/conferencing, if needed, will occur concurrently with project development so that consultation is completed within the NEPA timeframes.

The MOA states that the consultation/conferencing timelines and processes described in the March 8 agreement will be expanded to apply nationwide. Regional and State Office agency leaders who are not covered by the agreements mentioned below should meet on a regional basis as soon as possible to implement this direction. A copy of the March 8 agreement, plus an interagency letter explaining the streamlined process in more detail, will be sent under separate cover to each Regional/State office not already covered by that agreement.

The MOA provides that the agencies will build upon existing joint memoranda, applicable agreements, and improvements thereon that streamline the consultation/conferencing process. This means:

- o The interagency agreement of April 6, 1995, between the FS and FWS for implementing the streamlined consultation process on National Forest System lands in Montana will continue to apply.
- o The interagency agreement of May 31, 1995, among the FS, BLM, FWS and NMFS for consultation/conferencing on actions involving National Forest System and BLM administrative units in Washington, Oregon, California, and portions of Idaho and Montana, as identified in that agreement, will continue to apply.

The April 6 and May 31 agreements can be used as examples, but need not be duplicated by other Regions/States if a different approach will accomplish the timelines and streamlined process called for in the March 8 agreement. You are expected to establish and use an interagency team process to facilitate information flow, emphasize early input into project design to avoid or minimize adverse effects to listed or proposed species and designated or proposed critical habitat, and ensure timely resolution of any disagreements that may arise. See the descriptions for Items 5 and 6, below, for additional clarification.

Item 5. It is imperative that the agencies work cooperatively to implement the objectives of P.L. 104-19 and the MOA in a timely manner. This includes promptly resolving any disagreements that may arise.

Interagency coordination, especially early in project planning, will be crucial to avoiding or minimizing disagreements. It is expected that most disagreements will be resolved by technical specialists at the field level. Any issues which cannot be resolved will be promptly elevated to the next

appropriate level for resolution. An interagency, tiered process will be used for resolving disagreements, beginning at the field level and moving up through decision-makers until the issue is resolved. The MOA specifies that in the event that an issue cannot be resolved at the region/state level, a national issue resolution panel consisting of appropriate representatives from the FS, BLM, FWS, NMFS, and EPA, will review information provided and make a binding decision within 14 days of a request by the interagency regional/state level.

For example, it is expected that EPA specialists will work with the National Forest or BLM interdisciplinary planning team for a project to quickly identify and resolve any issues that might arise concerning compliance with the Clean Water Act, NEPA, or other environmental laws involving EPA input. If an issue cannot be resolved at this level, it will be promptly elevated to the Forest Supervisor or District Manager and the appropriate EPA counterpart for joint resolution. If they are unable to agree, they would jointly elevate the issue to the Regional Forester or State Director and the EPA Regional Administrator for resolution. In the effort to reach agreement, it is expected that the "line officers" will seek input from regional/state technical specialists concerning the particular issue. The national issue resolution panel will address an issue if it cannot be resolved at the regional/state level.

The April 6 and May 31, 1995, interagency agreements on streamlining consultations for Forest Service and BLM projects in northwest states establish tiers of interagency teams to coordinate on projects and resolve issues involving the Endangered Species Act. These existing teams and the issue resolution process will continue to apply. If a regional/state team cannot resolve an issue, the team will elevate it to the national issue resolution panel. Although the existing team process in the northwestern states was formed to deal with consultation issues, it is expected that the "Level 2" and higher teams established through the April 6 and May 31, 1995 agreements will work with EPA to resolve issues that do not involve Endangered Species Act implementation and cannot be resolved at the interdisciplinary team level.

Item 6. The action agency is responsible for completing the combined environmental assessment (EA) and biological evaluation (BE) for each salvage timber sale, as required by Section 2001(c)(1) of P.L. 104-19. The combined EA/BE will indicate that the project is being carried out under a different authority than a normal salvage sale. The only exception to preparing a combined EA/BE will be for those situations in which using existing documents will be more timely (e.g. an EIS is almost final).

The MOA provides clarification regarding scoping and other public involvement. Public and agency comments received on the combined EA/BE will be evaluated and a response to substantive comments will be provided in an appendix to the EA/BE. The decision document will reflect the public and agency input as appropriate.

The normal agency procedure for documenting a decision (e.g. preparation of a Decision Notice by the Forest Service and a Record of Decision for the Bureau of Land Management) will be used and the public will be informed of the decision following normal agency procedures. The decision document will include:

- o A statement explaining that pursuant to Subsection 2001(e), the salvage sale is not subject to administrative review.
- o A statement indicating that under the provisions of Subsection 2001(i) of P.L. 104-19, the documents and procedures required for preparation, advertisement, offering, awarding, and operation of the salvage timber sale are deemed to satisfy the requirements of applicable environmental laws as listed in 2001(i).
- o An explanation of the expedited judicial review process provided for in Subsection 2001(f) of P.L. 104-19.

All anticipated environmental effects and mitigation and monitoring requirements will be disclosed in the EA. This includes an analysis of effects on listed, proposed and sensitive species, and proposed or designated critical habitat, for all alternatives analyzed. The EA/BE should be no longer than necessary to adequately address the issues. A Finding of No Significant Impact (FONSI) will not be required.

To implement the MOA direction for interagency coordination and compliance with the Endangered Species Act, all of the required elements of a biological assessment (BA), as described in 50 CFR Part 402, must be included in the appropriate section of the combined EA/BE for the preferred or selected alternative. These elements can be included in appropriate sections of the EA/BE or can be attached as a separate section. For the purposes of Public Law 104-14, the BE shall meet the requirements of a BA. The action agency and the consulting agency will mutually agree on the BE prior to the EA/BE being issued for public comment.

- o If the project is determined to have no effect on listed or proposed species or designated or proposed critical habitat, consultation or conferencing is not required and the EA/BE should so indicate.
- o If the interagency consultation team agrees with the determination that the project may affect but is not likely to adversely affect listed species, or is not likely to result in destruction or adverse modification of designated or proposed critical habitat, informal consultation will occur using the streamlined process per Item 4 of the MOA. The letter of concurrence from the consulting agency will be discussed and incorporated by reference in the decision document for the project.
- o If the project is determined to be likely to adversely affect listed species, or likely to jeopardize a species proposed for listing, or likely to result in destruction or adverse modification of designated or proposed critical habitat, the consulting agency will provide a biological opinion or conference report using the streamlined consultation process. The results of the biological opinion or conference report will be discussed and incorporated by reference in the decision document.

To summarize the process:

1. Scoping and interdisciplinary and interagency teams teams will determine the issues to be addressed in the combined EA/BE.
2. The completed EA/BE will be sent to the public for review. The action agency and the consulting agency will mutually agree on the BE prior to the EA/BE being issued for public comment.
3. Public comments received will be analyzed and the response documented in an appendix to the EA/BE prior to completion of the decision document.
4. The decision document will reflect public input as appropriate. In those instances when a letter of concurrence, a biological opinion, or a conference report is needed from a consulting agency, it will be discussed and incorporated by reference in the decision document.

Item 7. Region/State agency heads will work together to develop a process to facilitate interagency review of the proposed salvage sale program on a regional or state scale, as appropriate. This process will provide an opportunity for identification of broad issues. It should include an understanding of priorities in relation to projects other than salvage timber sales (e.g. grazing permits, green timber sales) which involve interagency action. This is intended to allow interagency coordination to occur on highest priorities first and to facilitate allocations of staff and time accordingly.

Item 8. Self-explanatory

Item 9. Self-explanatory

Item 10. In addition to the requirements of the Act, it is important for us to monitor our actions to ensure ourselves and the public that we are carrying out the salvage program in an environmentally sound manner and that the requirements identified in the decision document are being met. Monitoring guidance has been developed for your use (see Enclosure 5).

Item 11. Self-explanatory

Enclosure 5

Monitoring

In addition to the requirements of P.L.104-19, it is important for us to monitor our actions to assure ourselves and the public that we are doing the right things for the right reasons, that we are doing what we said we would do, and that the effects are what we predicted. Below are some thoughts and actions that each Forest Service Region/BLM State should consider in developing a monitoring plan that is responsive to your sales and situation.

- o **Public Trust and Involvement**
 - There will be lots of scrutiny and interest;
 - We need to build trust and credibility;
 - Do the right thing for the right reason;
 - If we say we will do it, do it;
 - Involve other Agencies, states, Tribes, the public and interest groups.

- o **Key Agency Messages**
 - Monitoring AND Evaluation are key and vital aspects in implementing a successful stewardship salvage program.
 - Monitoring and Evaluation are central to an adaptive management approach which is a cornerstone for ecosystem management.

- o **Existing Direction**
 - There is existing direction on monitoring in the agencies directive system which identify and explain the three types of monitoring and requirements for monitoring.
 - Follow Standards and Guidelines in existing Forest Plans and Resource Management Plans, as amended, and including any biological opinions issued on such plans or amendments.

- o **Other Considerations**
 - A key for success is monitoring what is appropriate and feasible, not the world. Monitoring programs must be designed to address specific questions, and clearly identify who is responsible for implementation.
 - Monitoring should be hierarchical:
 - every project will have implementation monitoring;
 - Forests and BLM Districts will develop a well designed sampling scheme for effectiveness monitoring;
 - Observation and documentation by anyone in the sale area is helpful for implementing the monitoring. A key person will be the Sale Administrator who will likely be the first to observe problems.
 - any problems should be immediately documented, activities suspended (if needed) and appropriate changes made to the sale contract.
 - monitor and document successes as well as problems and areas needing improvement.
 - There must be a clear focus on oversight and accountability.
 - Line Officers will be held accountable.
 - Regions/BLM States and Forests/BLM Districts should schedule project reviews to sample the activities of salvage sales and their effects; encourage public involvement.
 - The WO will conduct salvage program reviews of every Region/BLM State having significant activity under P.L 104-19.

U.S. Department of Agriculture
Natural Resources & Environment

U.S. Department of the Interior
Land and Minerals Management

August 22, 1995

MEMORANDUM

TO: Jack Ward Thomas
Chief
Forest Service

Elaine Zielinski
Oregon State Director
Bureau of Land Management

FROM: *for* James R. Lyons *Mark Goede*
Under Secretary of Agriculture
Natural Resources and Environment

for Mike Dombeck *Nancy K. Hays*
Director
Bureau of Land Management

SUBJECT: Section 2001(k) of the 1995 Rescission Act

Section 2001(k) of the 1995 Rescissions Act (Public Law 101-121) directs the Secretaries to award, release, and permit to be completed the remaining section 318 timber sales. Several parties have urged us to interpret section 2001(k) as applying to all timber contracts offered in the geographic area described in section 318 of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act, in addition to the few remaining timber sales that were offered subject to section 318. The language of section 2001(k) is clear on its face, and applies only to the remaining section 318 timber sales.

The section 318 sales have a turbulent history, having been fiercely debated by Congress, by the press, by public advisory boards, and before the Supreme Court. It is this well-known and discrete set of sales, the sales offered in Fiscal Year 1990 under the procedures established in section 318(b)-(j) of Public Law 101-121, which Congress refers to in section 2001(k) of the 1995 Rescissions Act as "subject to section 318."

We have been involved in the debate over the federal forests in the Pacific Northwest for a long time, as have members of Congress. Our understanding of the section 2001(k) release of timber

sales "subject to section 318" is informed by that experience. Unlike timber sales before or after, the section 318 sales were developed based on specific ecological criteria developed by Congress and were provided limited judicial review. The Supreme Court approved section 318's limitation of judicial review, and about 4 billion board feet of timber was sold subject to section 318. The award or release of the few remaining 318 sales, totaling approximately 300 million board feet, has been delayed due to litigation, consultation based on the listing of the marbled murrelet, and other events. Congress used section 318 as its model in drafting section 2001 of the 1995 Rescissions Act, and included the provisions of section 2001(k) to require resolution of the few remaining section 318 sales.

The Executive Branch, particularly the Forest Service, was involved in all stages of the development of section 2001, providing technical information and, later, in the negotiation of changes to provisions that concerned the Administration. It was the remaining section 318 sales that the Administration viewed as being affected by section 2001(k) at the time the bill was signed by the President. It was the remaining section 318 sales that were the basis of the April 27, 1995, Forest Service effects statement on the proposed legislation that was transmitted to Congress and was then used by members of Congress in their floor statements and debates. The specific sale contracts that section 2001(k) addresses are only the sales offered under the unique procedures of section 318(b)-(j). The interpretation of section 2001(k) as applying to timber sales throughout Washington and Oregon, and to timber sales that were not developed subject to the ecological and procedural criteria provided in section 318(b)-(j), is wholly inconsistent with the history of the section 318 sales issue.

In the 1995 Rescissions Act, Congress seeks to end the delays in the remaining section 318 sales and to expedite implementation of the President's Northwest Forest Plan which was designed with the section 318 sale program in mind. We must read the law in a manner that makes sense of the entire Act, including direction to expeditiously implement the President's Northwest Forest Plan, and in a manner that avoids reading section 2001(k) so expansively as to generate windfall profits at the expense of the public and the environment. We must faithfully implement the law as enacted by Congress while acting with full consideration for the environmental significance of the remaining section 318 timber sales and the fact that section 2001 reduces the usual public policy protections that would otherwise guide our implementation. For these reasons, any ambiguities in the language of section 2001(k) or its legislative history must be resolved in favor of an interpretation that section 2001(k) is intended to apply only to those remaining timber sales developed and offered subject to section 318(b)-(j) of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act, as directly addressed in section 2001(k)(1).

9-13-95 10:55
U.S. Department of Agriculture
Natural Resources & Environment

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U.S. Department of the Interior
Land and Minerals Management

August 23, 1995

MEMORANDUM

TO: Jack Ward Thomas
Chief
Forest Service

Elaine Zielinski
Oregon State Director
Bureau of Land Management

FROM: *for* James R. Lyons *Mark Soede*
Under Secretary of Agriculture
Natural Resources and Environment

for Mike Dornbeck *Nancy K. Hays*
Acting Director
Bureau of Land Management

SUBJECT: Additional Direction on Section 2001(k) of the 1995 Rescission Act

Yesterday we issued direction relating to section 318 sales which are affected by section 2001(k)(1) of the 1995 Rescission Act (P.L. 104-19). The purpose of this memorandum is to set forth the administration's interpretation of the other subsections of 2001(k).

As we stated yesterday, "We must read the law in a manner that makes sense of the entire Act, including direction to expeditiously implement the President's Northwest Forest Plan, and in a manner that avoids reading section 2001(k) so expansively as to generate windfall profits at the expense of the public and the environment." In support of these principles, we will act to award, release, and permit to be completed, subject to the exclusionary provisions of 2001(k), all remaining section 318 timber sale contracts which are currently being delayed. Those sales are:

1. Sales for which apparent high bidders have been identified, but the sales have not yet been awarded to the high bidder, except that these sales will contain all previously mutually agreed upon changes to the original terms;

2. Sales for which apparent high bidders have been identified and the sale awarded, but where the contract has not yet been executed by the high bidder, except that these sales will contain all previously mutually agreed upon changes to the original terms;

3. Sales for which the apparent high bidder has been identified, but the bid bond was returned before award of the contract.

Sales which have been awarded and executed will not be modified or altered to the originally advertised terms, volumes, and bid prices.

Section 2001(k)(2) provides that sales subject to section 2001(k)(1) shall not be released or completed "if any threatened or endangered bird species is known to be nesting" within the sale unit. Although the phrase "threatened or endangered bird species" certainly includes northern spotted owls, Congress' primary attention was focused on the impact of the remaining Section 318 sales on the marbled murrelet. This direction will outline the criteria used to determine whether any marbled murrelets are "known to be nesting" within the remaining section 318 sale units that are subject to section 2001(k).

Congress did not define the phrase "any threatened or endangered bird species is known to be nesting." Therefore, the implementing agencies must interpret this phrase in accordance with general principles of law. In interpreting this phrase, we choose to be guided by the best scientific information available. We have consulted with agency experts and they have provided us with the following information. The marbled murrelet is a rapidly-disappearing sea bird that uses old-growth forest areas only for nesting and breeding, or for activities that are in support of nesting and breeding. The remainder of its life is spent on the ocean. Murrelets are believed to have a high nesting site fidelity, that is, adult murrelets return to the same tree stands year after year to nest. Therefore, if a stand of forest that murrelets use for nesting is cut, they probably will not continue to reproduce. Murrelets do not construct typical bird nests (they lay their eggs on broad branches of older trees or in trees with deformations) and they hide from predators during nesting, which makes detection of nesting activity difficult. Indeed, the first marbled murrelet nest was not discovered until 1974, and there are very few identified nests to this day.

The consequence of adopting an interpretation of "known to be nesting" that requires "physical" detection of nesting activity is potentially quite dire for the entire marbled murrelet population and for related conservation efforts, including the President's Forest Plan. The remaining Forest Service Section 318 sales encompass ten to twenty percent of the known nesting sites for the marbled murrelet.

We believe that there is a more rational interpretation of the phrase "known to be nesting" that is based upon the best scientific information available about the murrelets. Because of its highly secretive behavior and lack of typical nesting behavior, our agency experts inform us that actual detection of a nest is not the only, or the exclusive, reliable indicator of nesting. The Pacific Seabird Group -- a group composed of federal, state, private and academic biologists --

developed a reliable scientific protocol for determining the existence of murrelet nesting activities. This protocol is designed to determine more than mere "presence" of murrelets. Surveys based on this protocol provide the best scientifically valid information, available within the 45 days provided by Congress, on whether murrelets are known to be nesting in these units. Based on the protocol's scientific analysis, we conclude that the protocol's criteria should be utilized in evaluating whether Section 318 sales are subject to section 2001(k)(2).

Application of the protocol's criteria to determine whether murrelets are "known to be nesting" in a particular area is the way to provide for meaningful implementation of subsection 2001(k)(2) given the needs of this species. Again, agency experts inform us that murrelets do not "nest" or "reside," that is, nest or breed, in a way that permits of typical nest detection, yet their nesting and breeding behavior is just as critically dependent on availability of nesting habitat as any other species. In order to comply with the directive to withhold sales where the murrelet is nesting, the scientifically valid approach is to utilize the criteria in the protocol. There simply is no other practical or biologically justifiable method for identifying murrelet nesting, or for insuring that our actions will not be likely to jeopardize the continued existence of the murrelet.

We are informed that within the 45 days allowed by Congress, the Forest Service is completing a second year of surveys for murrelets. Sale purchasers are being provided with the survey data sheets and asked for their comments. As an example of how the process has been used on a particular forest, purchasers questioned the validity of 12 of the units in the Siuslaw National Forest. Forest Service biologists reviewed all applicant comments, conducted additional surveys of 4 of the sales and determined that the data was sufficient for another 4 sales. A purchaser hired a surveyor for the remaining 4 sales, which confirmed the Forest Service's findings. Additionally, government agencies are reviewing all survey data, verifying all "questionable" determinations and continue to confirm the strength of all survey determinations.

In subsection 2001(k)(3), Congress included a provision for alternative timber for the remaining Section 318 sales that are not released within the 45-day timeframe specified in Subsection (k)(1). This provision applies to any sale which "for any reason" cannot be released within the 45-day period. This provision is therefore applicable to sales or units of sales that are not released under Subsection (k)(2).

In accordance with the standards and guidelines for the President's Northwest Plan, and within the limits of available personnel and appropriated funds, we will assess the availability of alternative volume.

SLAQE GORTON
WASHINGTON

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United States Senate

WASHINGTON, DC 20510-4701

March 20, 1995

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I am writing to inform you of several important provisions that will be included in the Chairman's mark of the FY 1995 Rescission Package. In keeping with past custom, staff will provide mark up notes to your office prior to the scheduled Full Committee mark up.

Included in the Chairman's mark will be the following three amendments: emergency salvage timber sales, "318 sales", and sufficiency language for "Option 9." I will briefly outline the purpose of, and the need for, each amendment in this letter, and I would appreciate learning of any comments or concerns you might have on these amendments prior to mark up.

Emergency Salvage Timber Sale amendment: My amendment addresses an emergency situation in forests across the United States. Summer 1994 wildfires highlighted the need for active management -- thinning and salvaging operations -- in our federal forests to avoid catastrophic wildfires and to promote forest health. My amendment provides the Forest Service and Bureau of Land Management with the necessary authority to conduct timber "salvage" sales to remove dead, dying, bug infested, and burned timber on federal lands nationwide.

The window of opportunity that the agencies have to conduct these forest health and salvaging operations gets smaller with each passing day, and if we do not act soon it will set the stage for another devastating wildfire season this summer.

My amendment is different from the House approved Emergency Salvage provision. My amendment provides the authority to the Forest Service to complete the salvage sales it has programmed for FY 95 and 96 of 1.5 billion board feet, and sets a goal for the Forest Service to work toward a target of 2.885 bbf in each of the two fiscal years. BLM is directed to complete its programmed salvage program for FY 95 of 64 million board feet and FY 96 of 45 mbf, and sets a goal of 115 mbf for the agency to work toward in each of the two fiscal years. The Administration recently stated that it wants to "expand and increase the volume of its salvage activities," and my amendment gives it the authority to do just that.

Because of the emergency nature of these sales, my amendment

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802 4082
402 EAST VANISH AVENUE
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1330 GRANDDAM BLVD.
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23 SOUTH WASHINGTON AVENUE
WENATCHEE, WA 98801
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waives specific environmental regulations, allows for an environmental assessment and biological evaluation of each sale, provides for an expedited process for legal challenges to any such timber sale, and limits administrative review of the sales.

I want to emphasize that my amendment only allows the Administration to implement a timber salvage program that it has already publicly supported.

Option 9 amendment: I have also included language to provide the Forest Service and Bureau of Land Management the authority to expedite timber sales allowed for under the President's Forest Plan for the Pacific Northwest, commonly known as Option 9. Option 9 promised the people of the region (Washington, Oregon and California) an annual harvest of roughly 1.1 billion board feet. I am greatly concerned that the Administration has not taken the steps necessary to fulfill the commitment it made to the people of the region to achieve this annual harvest level, as illustrated by the fact that only 247 mbf was offered from the region of Option 9 in FY 94.

My amendment gives the Administration the ability to keep its promise to the region, by granting it the authority to expedite the preparation and award of the timber sale volumes included in Option 9. Again, I want to emphasize that my amendment only allows the Administration to move forward on the timber sales allowed for under its plan.

318 Sales amendment: I have also included language to release a group of timber sales that have already been sold under the provisions of Section 318 of the Fiscal Year 1990 Interior and Related Agencies Appropriations Act. The harvest of these sales was assumed under the President's Pacific Northwest Forest Plan, but their release has been held up due to extended subsequent review by the U.S. Fish and Wildlife Service. Release of these sales will remove tens of millions of dollars of liability from the government for contract cancellation.

These amendments are extremely important to people who live and work in the timber communities of my state, the Pacific Northwest, and the nation. I hope that you will give my amendments your careful consideration. Please do not hesitate to contact me directly if you have any questions or concerns on this or any other issue before the Subcommittee.

Sincerely,



SLADE GORTON
Chairman, Interior
Appropriations Subcommittee

SG/jak

Slade Gorton

UNITED STATES SENATOR FOR WASHINGTON



N E W S R E L E A S E

FOR IMMEDIATE RELEASE
March 21, 1995

Contact: Heidi Kelly
202-224-6209

GORTON MOVES LEGISLATION TO GET TIMBER TO NORTHWEST MILLS

Washington, D.C. -- U.S. Senator Slade Gorton (R-WA) said the Administration can carry out modest salvage operations, 318 sales, and Option 9 under the amendment he will place in the Senate rescissions bill.

The Administration claims it is unable to take prompt action on any of these issues largely due to duplicative environmental laws and the filing of frivolous lawsuits. Gorton said after his amendment becomes law, the administration will have to "put up or shut up" on the timber issue.

"Two years ago the Northwest was promised a sustainable harvest, but so far, Option 9 has been nothing more than talk. We've just taken away the administration's last excuse. Now it's up to them to get timber flowing to our mills," Gorton said.

"Don't get me wrong. Option 9 is totally inadequate. It means for timber communities what shutting down 90 percent of the airline industry would mean to Boeing," Gorton said. "Option 9 epitomizes the Administration's total disregard for people and communities that depend on America's natural resources. Until we amend the ESA to strike a stronger balance between people and the environment, the Northwest deserves at least what it was promised."

The amendment also provides for emergency salvage operations. Wildfires raged across the west last summer. Unless salvage operations are carried out soon, the dead and dying timber will serve as fuel for another round of devastating fires in 1995.

The amendment provides for the release of previously awarded section 318 sales. It will relieve the federal government of tens of millions of dollars of liability for contract cancellation, and it will free up roughly 300 million board feet of timber for the Oregon and Washington region.

"As each mill closes and each small business shuts down, the unemployment lines swell and food banks become the lifeblood of the community. For the first time in a long time, Congress is taking action to end the misguided interpretation of a failing statute that has devastated Northwest communities," Gorton said. "Last year, the Democrats said no to relief for our communities, and they said yes to more devastation. What a difference a year makes."

07/28/95 FRI 13:12 FAX

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FRANK H. MURKOWSKI, ARIZONA, Chairman

MARK O. MATFIELD, Oregon
PETE V. DOMENICI, New Mexico
DON NICKLES, Oklahoma
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BENJAMIN S. COOPER, STAFF DIRECTOR FOR THE MINORITY

United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6160

July 27, 1995

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages **3**

To Tom Jensen	From MARK Weatherly
Dept./Agency	Phone # 395 3446
Fax #	Fax #

NSN 7540-01-317-7388

5089-101

GENERAL SERVICES ADMINISTRATION

The Honorable Dan Glickman
Secretary of Agriculture
U.S. Department of Agriculture
14th Street and Independence Ave., S.W.
Washington, D.C. 20250

The Honorable Bruce Babbitt
Secretary of the Interior
U.S. Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Dear Secretary Glickman and Secretary Babbitt:

As responsible committee chairmen and other interested Members of Congress who will oversee the Administration's compliance with the salvage timber program enacted by Congress in Section 2001 of H.R. 1944, we are delighted the President has given his commitment to carry out this vital program with the full resources of his Administration, and we want to assist your departments in their efforts to fulfill the congressional policies expressed in this program. To that end, you can expect our active oversight of your implementation of the measure.

The salvage legislation will require prompt and effective actions by the Forest Service and the Bureau of Land Management, in some cases within 45 days of enactment of the law. Because time is so critical, and because the need to restore timber supply to dependent communities is so urgent, we are writing this letter to assure that your departments embark from the outset on the path intended by Congress in enacting this legislation. Other letters may follow as we review implementation of various elements of the program.

We are concerned at preliminary reports that the Office of Forestry and Economic Development in Portland, Oregon may be operating under some vital misunderstandings about this legislation, and we want to ensure that any such misunderstandings are corrected before we are unnecessarily in conflict with the Administration. The interpretation of the Office of Forestry and Economic Development is, in several important respects, at odds with the results of Administration-Congressional agreements and the terms of the legislation.

1. We want to make it clear that subsection (k) of the salvage legislation applies within the geographic area of National Forest units and BLM districts that were subject to Section 318 of the Department of Interior and Related Agencies Appropriations Act, Fiscal Year 1990, Pub. L. 101-121, and within that geographic area requires the release of all previously offered or awarded timber sales, including Section 318 sales as well as all sales offered or awarded in other years (such as Fiscal Years 1991-95) that are not subject to Section 318. The reference to Section 318 in subsection (k)(1) defines the geographic area that is subject to subsection (k).

This interpretation is vital to the policies intended in Section 2001. The legislation directs all sales referenced in subsection (k) to be released promptly to local mills to avoid further economic dislocation in rural timber-dependent communities.

2. We have been informed that the Office of Forestry and Economic Development has suggested that subsection (k)(2) bars the release of any timber sale unit that has previously been determined to be "occupied" by a marbled murrelet. This interpretation of the law (1) directly contradicts the agreement reached between Congress and the Administration; (2) imposes language which we explicitly rejected; and (3) is flatly illegal.

Subsection (k)(2) bars the release of a timber sale unit only if a threatened or endangered bird species "is known to be nesting" within the unit. This approach is much narrower than all "occupied" units, for three reasons:

a) We were thoroughly informed and understand that the expert marbled murrelet biologists define occupancy of an area as much broader than nesting. We have been informed that the 1994 Pacific Seabird Group marbled murrelet protocol treats various subcanopy behaviors as evidence of occupancy even though they do not necessarily indicate nesting, and treats circling above the canopy as evidence of possible occupancy although murrelets also circle above non-nesting habitat. We discussed these matters during our negotiations with the Administration. At the conclusion of this discussion, we refused to agree that evidence of occupancy would qualify a timber sale unit as "known to be nesting" under subsection (k)(2). The legislative history is explicit on this point.

b) To the contrary, we intended the requirement that a threatened or endangered bird be "known" to be nesting to require actual direct evidence of nesting, and does not allow an inferential conclusion from possible occupancy. Actual direct evidence would be observation of an active nest, fecal ring or eggshell fragments.

c) We further intended the requirement that a threatened or endangered bird "is" known to be nesting to require information that nesting is currently occurring. Nesting in a prior year is not sufficient. Unless there is direct evidence of current nesting, the sale unit must be released.

3. In the event that subsection (k)(2) bars the release of a timber sale unit, subsection (k)(3) requires provision of an equal volume of timber, of like kind and value. The provision of alternative timber under subsection (k)(3), when required, is clearly a

component of compliance with subsection (k)(1), and therefore does not require compliance with environmental laws or other federal statutes in light of the "notwithstanding any other provision of law" language in subsection (k)(1). If your agencies were confused on this point, they should have raised it in our deliberations. Alternative volume under subsection (k)(3) must be provided promptly so that all sales requiring alternative volume can, like all the other released sales, be operated to completion in fiscal years 1995 and 1996.

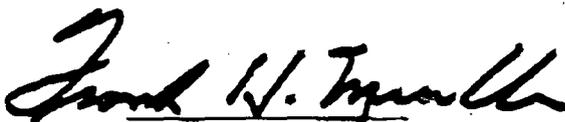
4. We understand that concern has been expressed about the effect of the National Marine Fisheries Service's recent decision to propose listing the coho salmon in California and Oregon as threatened under the Endangered Species Act (ESA). The publication of such a proposal in the Federal Register may require "conferencing" of certain proposed agency actions under section (7)(a)(4) of the ESA.

We were aware of the pendency of this listing. Nevertheless, we directed that the respective Secretaries shall act to award, release and permit to be completed in fiscal years 1995 and 1996 the sales described in subsection (k)(1) "[n]otwithstanding any other provision of law." Neither the conferencing requirements of the ESA, nor any other administrative provision of the ESA is a barrier to prompt and full compliance with subsection (k) (including subsection (k)(3)).

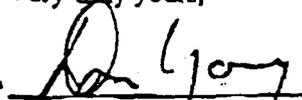
Thus, while the agencies may conduct such conferences under the ESA as they determine appropriate, the agencies may not in any way delay the award, release or completion of the sales described in subsection (k). The same would be true for consultations under section 7(a) of ESA that may otherwise be required for current or newly-listed species (for example, if the coho is listed as threatened at some time in the future).

We hope that this letter provides thorough and complete direction on the issues contemplated when we negotiated and drafted the FY 1995 funding rescissions bill. We expect each of you to provide us with written assurances that your agencies intend to implement Section 2001 in accordance with the direction provided in this letter. You, in turn, can expect diligent and vigilant oversight from us beginning with hearings in early August. Please provide us with this written assurance within 10 days after enactment of the law.

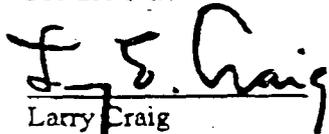
Very truly yours,



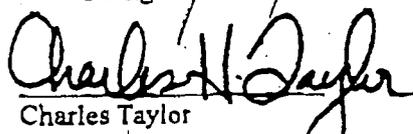
Frank Murkowski



Don Young



Larry Craig



Charles Taylor



Slade Gorton



Pat Roberts

August 14, 1995

The Honorable Dan Glickman
Secretary of Agriculture
U.S. Department of Agriculture
14th Street and Independence Avenue, SW
Washington, D.C. 20250

The Honorable Bruce Babbitt
Secretary of the Interior
U.S. Department of the Interior
18th and C Streets, NW
Washington, D.C. 20240

Dear Secretary Glickman and Secretary Babbitt:

As research scientists and specialists on the ecology and status of the Marbled Murrelet, we are very concerned about the effects of the salvage legislation (HR 1944) on the survival and recovery of this threatened seabird. We are specifically concerned about the 318 rider and subsequent interpretations of the law by Senator Gorton and others. The implementation of this legislation must be considered carefully due to the extreme difficulty of finding murrelet nests and the fact so little effort has been expended to locate nests within the 318 areas and other sales.

The Marbled Murrelet is a small, uncommon seabird that nests in older-aged forests from southeast Alaska to central California. Marbled Murrelets are extremely difficult to study because of their secretive behavior at nest sites and small size. They fly inland to nesting sites at speeds up to 60 MPH primarily during dawn and dusk when light levels are low. Their plumage is very cryptic and their nests are usually located above 90 feet on large tree limbs. Therefore, locating nests is very difficult and takes a great deal of effort and time. The Marbled Murrelet was the last bird species in North America to have its nest found. The first murrelet tree nest was finally found in 1974 and to date only 75 nests have been located. This small number of known nests is a direct result of their secretive nature and a lack of adequate search efforts.

Because Marbled Murrelet nests are difficult to find, the Pacific Seabird Group (PSG), an international scientific organization, developed a survey protocol that is used for determining murrelet presence, occupancy, and probable absence in forest stands. If murrelets are seen flying into, out of, or through the forest, or landing in trees, then these stands are considered "occupied" by murrelets and to have a very high likelihood of containing a nest. This established protocol, however, does not include a protocol for finding nests because of the difficulty in doing so. Therefore, many occupied stands do not include known nest sites because no one has searched for nests or physical evidence of nesting in these areas.

Within HR 1944 there is a paragraph that states "No sale unit shall be released or completed under this subsection if any threatened or endangered bird species is known to be nesting within the

acreage....” However, the only credible, scientific way to verify nesting in stands occupied by Marbled Murrelets would be to implement very time intensive and expensive nest searches. One cannot say birds are not nesting there if they have not even searched for actual nests. Based on the biology of the bird and the fact that all nest stands have included occupied behaviors, we (as do many scientists and land managers) consider occupied sites to be nesting areas. There are no data to demonstrate otherwise. Therefore, we believe that if enough effort was expended in these areas (e.g., intensive searches over 2-3 years) that nests would be found in almost every site deemed occupied following the PSG protocol.

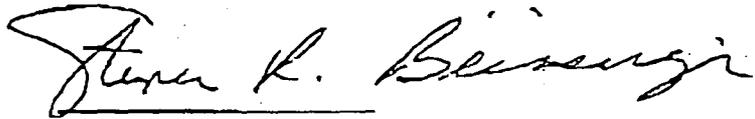
The harvest of stands occupied by murrelets could greatly affect their chances of survival and recovery. Murrelets often return to the same forest stands year after year and may not be able to move to new stands when nesting sites are harvested. Populations of murrelets seem to be in decline throughout their range despite current levels of available habitat. Further removal of habitat, especially habitat that has a very high likelihood of nesting birds, will ensure continued decline and increase the chances of regional extinction. The recently released draft of the Marbled Murrelet Recovery Plan by the U.S. Fish and Wildlife Service explicitly directs that every occupied site or stand should be protected.

We urge you to classify occupied Marbled Murrelet stands as nesting areas. Thank you for your attention and consideration of this matter.

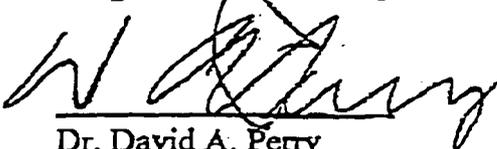
Sincerely,



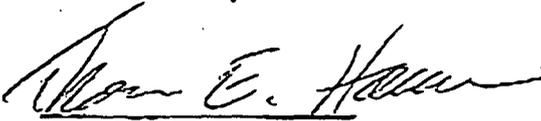
S. Kim Nelson
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Dr. Steven R. Beissinger
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Dr. David A. Perry
Professor, Ecosystem Studies
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Thomas E. Hamer
Research Wildlife Biologist
Hamer Environmental



Harry R. Carter
Contract Wildlife Biologist
National Biological Service

cc: President Clinton Vice President Al Gore Tom Tuckman
Jack Ward Thomas, Chief, U.S. Forest Service
Mollie Beattie, Director, U.S. Fish and Wildlife Service



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

September 1 1995

Honorable Mark O. Hatfield
Chairman, Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed is the first of a series of reports required by the fiscal year 1995 rescissions Act (P.L. 104-19) regarding implementation of Section 2001 of the Act.

This report responds directly to the requirements of Section 2001(c)(2) of the Act for information regarding the volume of salvage sales sold and harvested, available salvage volume, a plan for an enhanced salvage timber sale program, and description of any needed resources and personnel to aid in implementation.

Should you require additional information, or have any questions regarding the contents of this report, please do not hesitate to contact me or Under Secretary Lyons.

This letter is being sent to the Committee on Appropriations, U.S. Senate; the Committee on Energy and Natural Resources, U.S. Senate; the Committee on Agriculture, Nutrition, and Forestry, U.S. Senate; the Committee on Appropriations, U.S. House of Representatives; the Committee on Agriculture; and the Committee on Resources, U.S. House of Representatives.

Sincerely,

A handwritten signature in black ink that reads "Dan Glickman".

DAN GLICKMAN
Secretary

**REPORT TO THE CONGRESS
REGARDING
IMPLEMENTATION OF SECTION 2001
OF THE FISCAL YEAR 1995 RESCISSIONS ACT**

Background

The fiscal year (FY) 1995 Rescissions Act (P.L. 104-19) requires the Secretary of Agriculture to report on the implementation of the Act. Specifically, section 2001(c)(2) requires a report by August 30, 1995, that includes:

A. "The volume of salvage timber sales sold and harvested, as of the date of the report for each national forest";

B. "The available salvage volume contained in each national forest";

C. "A plan and schedule for an enhanced salvage timber sale program for fiscal years 1995, 1996, and 1997 using the authority provided by this section for salvage timber sales";

D. "A description of any needed resources and personnel, including personnel reassignments, required to conduct an enhance salvage timber sale program through fiscal year 1997"; and

E. "A statement of the intention of the Secretary concerned with respect to salvage timber sale volume levels specified in the joint explanatory statement of managers accompanying the conference report on H.R. 1158, House Report 104-124."

Status

A. Salvage Timber Sales Sold and Harvested. To date, the national forests have sold .8 billion board feet (bbf) of salvage timber and harvested 1.4 bbf in FY 1995. In addition to the salvage sold, the national forests have offered .25 bbf which is currently pending sale. Details for this item are included in attachment A.

B. Available Salvage Volume on Each National Forest. Based on our most recent assessments, there are 4.0 bbf of volume available on national forest for salvage under the emergency salvage program. Again, this is an estimate that could vary as much as 25 percent. We are defining "available" as the volume of salvage which can be produced, in an environmentally sound manner, under the expedited provisions of the emergency salvage program. Details for this item are included in attachment B.

C. Plan and Schedule for Enhanced Salvage Timber Sale Program. We are continuing to base our planned salvage on the estimate of 4.5 bbf, which was projected in Secretary Glickman's June 29, 1995 letter to Speaker Newt Gingrich. Attachment C details our rationale with regard to this plan.

A number of things have happened since then that influence this estimate. Although the original volume estimates developed last spring assumed the expedited provisions of the Act would be available through the full 1995 field season, they were not. In addition, the demand for timber has been affected by changes in market conditions and stumpage values. Volumes available for harvest are affected by delays in awarding and harvesting sales based on changing market conditions and the time required to prepare timber for sale. With regard to timber sale preparation, new procedures for coordination and collaboration among the agencies involved in preparing and awarding salvage sales, as outlined in the interagency MOA, are now being implemented and should help reduce delays in preparing and offering salvage timber sales. We intend to meet our programmed salvage volumes for FY 1995 within the range of the original estimate cited in the June 29 letter sent to Speaker Gingrich.

D. Description of Needed Resources and Personnel. To implement the emergency salvage provisions of the FY 1995 Rescissions Act, the Forest Service anticipates that approximately 200 additional personnel years will be needed for the emergency period (FY's 1996 and 1997). The positions will cover a variety of resource specialist and technical skills with an emphasis on forestry related skill. The agency will use a combination of temporary positions, rehires of buyout recipients, and contracting to fill these needs.

E. Statement of Intentions of the Secretary. House Report 104-124 describes an additional increment of salvage volume. As discussed in Secretary Glickman's June 29, 1995, letter to Speaker Newt Gingrich, we projected a program of 4.5 billion board feet (plus or minus 25 percent) of salvage volume for the period of FY 1995 through the first quarter of FY 1997.

The Act (sec. 2001 (c)(1)A)), provides the Secretary with the discretion to assure that these sales are "consistent with any standards and guideline from the management plans applicable to the National Forest." The Secretary, under direction from the President and consistent with the Secretary's June 29 letter to Speaker Gingrich, has decided that salvage timber sales be implemented in a manner that protects natural resources as required by existing laws and forest plan standards and guidelines. The Forest Service plan is still based on producing 4.5 bbf of salvage for the period of FY 1995 through the first quarter of FY 1997. The salvage program is dynamic and we intend to track our progress closely. We will update our plan as needed when more site-specific information is available. Our execution of this emergency salvage plan will fully meet the intent of section 2001 (c).

Name	Date
<i>Steven Reich</i>	<i>6/4/99</i>

Counsel