

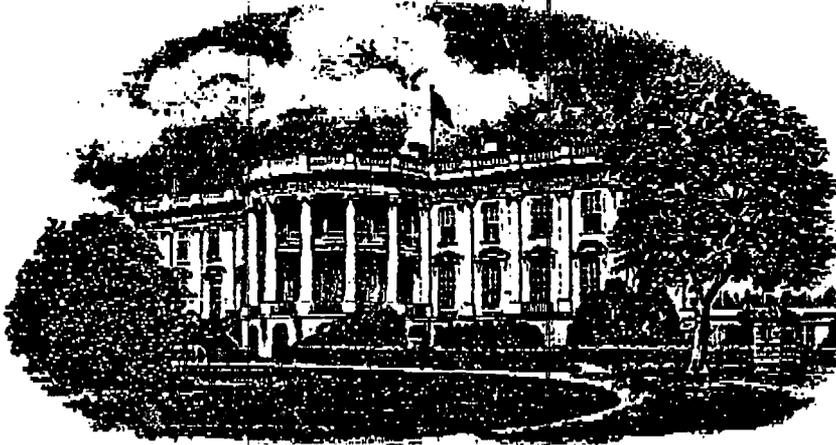
NLWJC- Kagan

Counsel - Box 010 - Folder 008

Timber - Drafts [1]

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget



Natural Resources, Agriculture Branch

Fax Transmittal Cover Sheet

Number of pages (including cover) 6

Date: 1/25

To:	<u>TJ</u>	<u>546 39</u>
	<u>ELENA</u>	<u>616 47</u>
	<u>DINAH</u>	<u>607 53</u>

Phone: _____ Fax: _____

From: CHARIS NOCIN

Comments: REVISED TIMBER FIX LANGUAGE.
CLEAN COPY COMING IN THE MAIL.

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

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

Sec. 8501. AMENDMENTS TO THE RESCISSIONS ACT

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

(b) PURPOSES.—The purposes of these

(i) clarify the intent of certain provisions of section : Act,

(ii) protect the Secreta: to implement the Record of Decis Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl

*Chris
HERE'S A CLEAR
COPY w/ the change
(bottom of p.3). Let's
see how if you have
any questions. - Allison*

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

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

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

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

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

(3) in paragraph (3)-

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

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

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

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

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

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

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

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

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

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

"OPTION 9 TIMBER SALES."; and

(2) in the first sentence by—

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

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

(f) EFFECT ON PLANS, POLICIES, AND ACTIVITIES.—Section 2001(1) is amended in the first sentence by—

(1) striking "or permit"; and

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

KEVIN
KIRSCHNER

THE WHITE HOUSE
WASHINGTON

last sentence -
Current kl - return of bid bud.

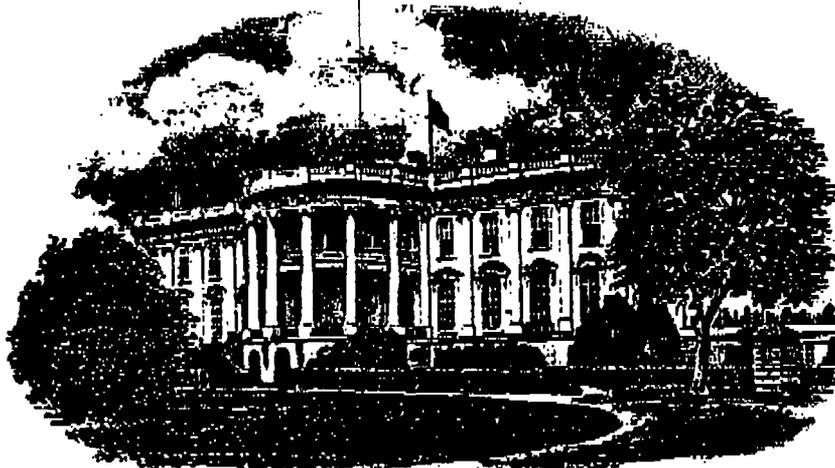
Take it out.

~~If there aren't any sales~~

If none of those sales had a bid
buds on them → then it
suggests that we must mean
something else.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget



Natural Resources, Agriculture Branch

Fax Transmittal Cover Sheet

Number of pages (including cover) 8

Date: 12/15

To: Elena Kagan, Tom Jensen, Martha Foley
Barbara Chow, Dinah Bear, Katie McIntyre

Phone: _____ Fax: _____

From: Mark Weatherly

Comments: Latest (final?) version of timber legislation and description. T.J. is sending this tonight to Hatfield and Dicks only.

Phone: (202) 395-3446

Fax: (202) 395-4941

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

Sec. 8501. AMENDMENTS TO THE RESCISSIONS ACT

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

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

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

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

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

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

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

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

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

(3) in paragraph (3) -

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

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

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

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

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

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

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

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

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

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

"OPTION 9 TIMBER SALES."; and

(2) in the first sentence by—

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

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

(f) EFFECT ON PLANS, POLICIES, AND ACTIVITIES.—Section 2001(1) is amended in the first sentence by—

(1) striking "or permit"; and

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

Description of Potential Timber Legislation

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

This subtitle would amend the 1995 Rescissions Act (P.L. 104-19) to clarify the scope of certain timber sale authorities and provide the Secretaries of Agriculture and the Interior with expanded timber contract authority. For timber sale contracts that threaten the greatest environmental harm, the appropriate Secretary would be authorized to modify, suspend, terminate, or replace the contracts in a manner that would accommodate environmental concerns. In addition, the subtitle authorizes total compensation of up to \$50 million to contract holders in settlement of contract modifications.

More specifically, the subtitle would:

Limit sales of old-growth timber to "318 sales" and ensure protection of the Northwest Forest Plan

- o The proposal would re-assert the original agreement with Congress that only sales issued under section 318 of the FY 1990 Interior appropriations act should be released. The language in section 2001(k) of P.L.104-19 that refers to geographic units would be deleted, and language inserted providing for the release of sales "that were offered or awarded in fiscal year 1990 under the authority of, and in compliance with, section 318(b)" of P.L. 101-121.
- o The integrity of the Northwest Forest Plan would be re-established by deleting language in section 2001(d) of P.L. 104-19 that refers to geographic units, and by inserting language providing that the Secretary concerned will expeditiously prepare contracts "allowed under and consistent with the standards and guidelines specified" in the Forest Plan. This would ensure that sales meeting the Forest Plan's criteria would be implemented expeditiously, and clarify that P.L. 104-19 does not override the Forest Plan by requiring timber sales to be offered without regard to environment effects.

Provide buyout and other authorities to fix environmental problems created by the Rescissions Act

- o Due to recent court rulings, timber companies have already obtained title to timber whose harvest would have adverse environmental effects. The proposal would provide the Departments of the Interior and Agriculture with needed authorities that are consistent with the standard contract provisions of the Forest Service's timber contracts: to work

with timber purchasers in order to modify or buyout problematic contracts, or provide replacement timber. Authority would be included for the Departments to reach voluntary agreements with holders of contracts, under which holders accept substitute timber or money. In addition, authority would be provided to (1) unilaterally require holders to accept substitute timber, or (2) buy back part or all of sales having significant environmental effects. Up to \$50 million in buy back compensation funds (that would be scored on a Paygo basis) are proposed in the bill.

Ensure protection for threatened or endangered bird species and appropriate compensation for purchasers

- o The proposal would provide that old-growth sales should not be required to be released where bird species listed under the Endangered Species Act are nesting or breeding. The proposal would amend section 2001(k) of P.L. 104-19 by replacing the phrase "known to be nesting" with "known to occupy for nesting or breeding purposes". The proposal would further state that "the Secretary concerned shall make this determination of occupancy in accordance with scientifically recognized principles, such as the Pacific Seabird Group protocol".
- o The Government's obligation to provide replacement timber would be clarified to limit the replacement requirement to sales that cannot be released due to threatened or endangered bird species. Section 2001(k) of P.L. 104-19 would be amended by striking "for any reason" as the basis for providing alternative timber. In addition, authority would be added to provide appropriate alternative compensation, where no replacement timber is available, for sales that could not be released due to threatened or endangered bird species.

Council on Environmental Quality

Executive Office of the President

722 Jackson Place, NW

Washington, DC 20503

Phone: (202) 395-7421

Fax: (202) 456-0753

FAX TRANSMISSION COVER SHEET

Date: 1/2/96
To: Elena Kagan
Fax: 456-1647
Re: timber legislation
Sender: DINAH BEAR

YOU SHOULD RECEIVE 2 PAGE(S), INCLUDING THIS COVER SHEET.

Proposed changes from
USDA/OOC. 2d date etc
forward to DOS
w/ recommendation against
#1 or for #2, unless you
see a problem
with it. Please call me.



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

TELECOPIER FOR RESOURCES-DEFENSE-INTERNATIONAL BRANCH ONLY

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

VERIFICATION NUMBER: (202)395-6194

DATE: Jan 24

TIME: 4:40 PM

OF PAGES TO FOLLOW 5

FROM: Ron Peterson
LEGISLATIVE REFERENCE DIV.

TO: Elena Kagan

COMMENT: Timber language per your request.

ACTION: FYI X RESPOND BY: _____

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

Sec. 8501. AMENDMENTS TO THE RESCISSIONS ACT

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

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

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

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

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

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

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

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

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

(3) in paragraph (3)--

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

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

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

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

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

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

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

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

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

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

"OPTION 9 TIMBER SALES."; and

(2) in the first sentence by—

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

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

(f) EFFECT ON PLANS, POLICIES, AND ACTIVITIES.—Section 2001(1) is amended in the first sentence by—

(1) striking "or permit"; and

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

1

(B) by inserting “, or shall provide the purchaser appropriate compensation in accordance with paragraph (4) of this subsection. [The Secretary concerned is authorized to provide this equal volume of timber from lands covered by the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl, consistent with the applicable standard and guidelines” after “quantities”; and

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

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

“(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S. C. 472a et seq.), the Federal Land Management Policy Act (43 U.S.C. 1701 et seq.), the Oregon & California Lands Act (43 U.S.C. 1181a et seq.) or other law applicable to the award, release, completion, replacement, modification, suspension, or termination of timber sale contracts, the Secretary concerned may replace, modify, suspend, or terminate any timber sale contract affected by or released ~~by this title~~ ^{by the date of enactment} pursuant to this subsection when the Secretary concerned, in his discretion, finds that such replacement, modification, suspension, or termination is authorized pursuant to originally advertised terms of

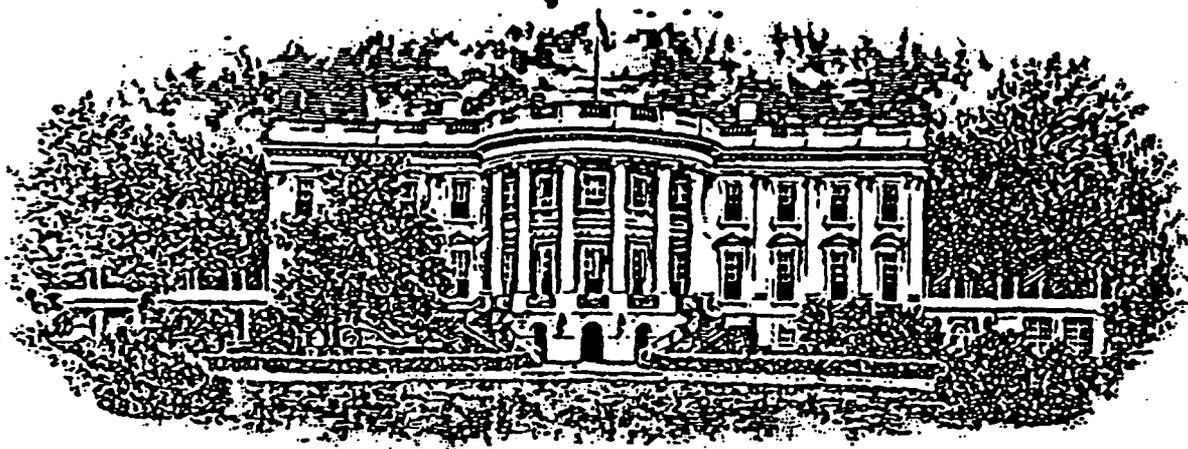
Tell OMB

2

as initially enacted or amended,

RD 104-19 after July 28, 1975

The White House



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: 12/15

TO: Mark Weatherly

FACSIMILE NUMBER: 395-4941

TELEPHONE NUMBER: 395-3446

FROM: Elena Kagan

TELEPHONE NUMBER: 456-7594

PAGES (WITH COVER): 3

COMMENTS: Please call with any
questions.

PLEASE DELIVER AS SOON AS POSSIBLE

The document(s) accompanying this facsimile transmittal sheet is intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this information in error, please immediately notify the sender at their telephone number stated above.

Description of the Administration's Timber Legislation

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

This subtitle would amend the 1995 Rescissions Act (P.L. 104-19) to clarify the scope of certain timber sale authorities and provide the Secretaries of Agriculture and the Interior with expanded timber contract authority. For timber sale contracts that threaten the greatest environmental harm, the appropriate Secretary would be authorized to modify, suspend, terminate, or replace the contracts in a manner that would accommodate environmental concerns. In addition, the subtitle authorizes total compensation of up to \$50 million to contract holders in settlement of contract modifications.

More specifically, the subtitle would:

Limit sales of old-growth timber to "318 sales" and ensure protection of the Northwest Forest Plan

- o The Administration's proposal would re-assert the original agreement with Congress that only sales issued under section 318 of the FY 1990 Interior appropriations act should be released. The language in section 2001(k) of P.L.104-19 that refers to geographic units would be deleted, and language inserted providing for the release of sales "that were offered or awarded in fiscal year 1990 under the authority of, and in compliance with, section 318(b)" of P.L. 101-121.
- o The integrity of the Northwest Forest Plan would be re-established by deleting language in section 2001(d) of P.L. 104-19 that refers to geographic units, and by inserting language providing that ~~timber sale contracts will be prepared~~ "allowed under and consistent with the standards and guidelines specified" in the Forest Plan. This would ensure that sales meeting the Forest Plan's criteria would be implemented expeditiously, and clarify that P.L. 104-19 does not override the Forest Plan by requiring timber sales to be offered without regard to environment effects.

The Secretary concerned shall expeditiously prepare contracts

Provide buyout and other authorities to fix environmental problems created by the Rescissions Act

- o Due to recent court rulings, timber companies have already obtained title to timber whose harvest would have adverse environmental effects. The Administration's proposal would provide the Departments of the Interior and Agriculture with needed authorities that are consistent with the standard contract provisions of the Forest Service's timber contracts: to work with timber purchasers in order to modify or buyout problematic contracts, or provide replacement timber.

Authority would be included for the Departments to reach voluntary agreements with holders of contracts, under which holders accept substitute timber or money. In addition, authority would be provided to (1) unilaterally require holders to accept substitute timber, or (2) buy back part or all of sales ~~that would have~~ significant environmental effects. Up to \$50 million in buy back compensation funds (that would be scored on a Paygo basis) are proposed in the Administration's bill.

~~Resolve issues left in disagreement with Congress~~

- o The Administration's proposal would ^{provide} clarify that old-growth sales should not be required to be released where bird species listed under the Endangered Species Act are ~~nesting or breeding~~. The proposal would amend section 2001(k) of P.L. 104-19 by replacing the phrase "known to be nesting" with "known to occupy for nesting or breeding purposes". The proposal would further state that "the Secretary concerned shall make this determination of occupancy in accordance with scientifically recognized principles, such as the Pacific Seabird Group protocol".
- o The Government's obligation to provide replacement timber would be clarified to limit the replacement requirement to sales that cannot be released due to threatened or endangered bird species. Section 2001(k) of P.L. 104-19 would be amended by striking "for any reason" as the basis for providing alternative timber. Authority would be added to provide ~~alternative replacement timber or buyout funds~~ where no replacement timber is available, for sales that could not be released due to threatened or endangered bird species.

occupying the area.

In addition,

appropriate alternative compensation,

Ensure protection for threatened or endangered bird species and appropriate compensation for purchasers.

Tai
Elena Kagum
61647
RMS

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

Sec. 8501. AMENDMENTS TO THE RESCISSIONS ACT

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

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

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

(ii) protect the Secretaries' authority to implement the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning

Documents Within the Range of the Northern Spotted Owl,
and

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

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

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

(1) in paragraph (1) by striking "offered or awarded
before that date in any unit of the National Forest System
or district of the Bureau of Land Management subject to
section 318" and inserting "^{Suspended as of 7/27/95,} currently suspended, that were
offered or awarded in fiscal year 1990 under the authority
of, and in compliance with, section 318(b)";

(2) in paragraph (2) by striking "be nesting within the
acreage that is the subject of the sale unit." and inserting
"occupy for nesting or breeding purposes the sale unit or a
stand overlapping the sale unit. The Secretary concerned

for nesting or breeding purposes

shall make this determination of occupancy in accordance with scientifically recognized principles, such as the Pacific Seabird Group protocol.",

(3) in paragraph (3)-

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

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

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

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

"(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), the Federal Land Management Policy Act (43 U.S.C. 1701 et seq.), the Oregon & California Lands Act (43 U.S.C. 1181a et seq.) or other law applicable to the award, release, completion, replacement, modification, suspension, or termination of timber

sale contracts, the Secretary concerned may replace, modify, suspend, or terminate any timber sale contract affected by or released pursuant to this subsection when the Secretary concerned, in his discretion, finds that such replacement, modification, suspension, or termination is authorized pursuant to originally advertised terms of the contract or that release or completion of the contract may have an adverse effect on the environment or natural resources. Any replacement, modification, suspension, or termination shall be effective immediately upon issuance of the Secretary's finding.

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

"(C) All claims by a contractor against the government relating to a contract replaced, modified, suspended, or terminated pursuant to

subparagraph (A) are subject to the Contract Disputes Act."

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

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

"OPTION 9 TIMBER SALES."; and

(2) in the first sentence by—

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

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

(f) EFFECT ON PLANS, POLICIES, AND ACTIVITIES.—Section 2001(1) is amended in the first sentence by—

(1) striking "or permit"; and

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

Drop
all
section
(1)

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

Section _____. Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby 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 herein 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) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

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

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

(3) in paragraph (3) by striking "If for any reason a sale cannot be released and completed under the terms of this subsection," and inserting "If a sale unit cannot be released and completed under paragraph (2) of this subsection,"; and by striking "quantities." and inserting "quantities, or shall provide the purchaser appropriate compensation in accordance with paragraph (4) of this subsection."

(4) by adding at the end thereof the following new paragraph:

(4) Replacement, Modification, Suspension or Termination of Timber Sale Contracts.

(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), the Federal Land Management Policy Act (43 U.S.C. 1701 et seq.), the Oregon & California Lands Act (43 U.S.C. 1181a et seq.) or other law applicable to the award, release, completion, replacement, modification suspension or termination of timber sale contracts, the Secretary concerned is hereby authorized to replace, modify, suspend or terminate any timber sale contract affected by or 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 may¹ 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 Secretaries concerned are hereby authorized to expend, without further appropriation action, from sums otherwise available in the Treasury, up to \$100 million in compensation to contract holders for changes made pursuant to the authority provided in subparagraph (A) of this paragraph.

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

(d) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by striking "Timber Sales on Lands Covered by Option 9" and inserting "Option 9 Timber Sales"; and by striking "on Federal lands described in" and inserting "allowed under and consistent with the standards and guidelines specified in" and by striking "1994." and inserting "1994, or as may be amended."

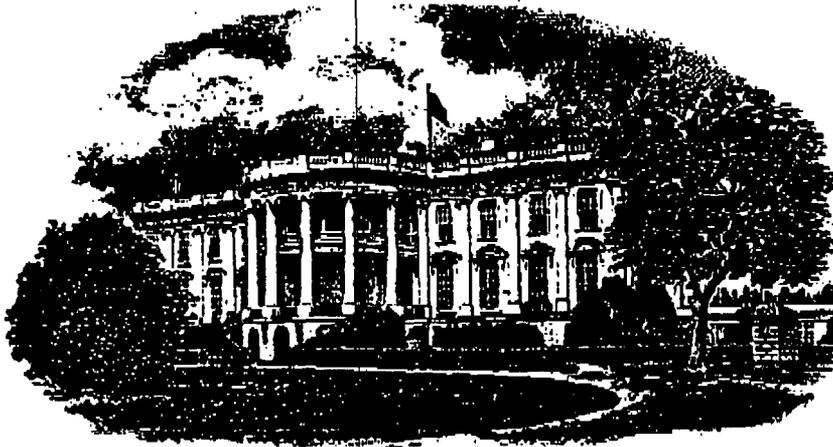
*OPTION 9
Timber
sales*

(e) Effect on Plans, Policies and Activities -- Subsection 2001(l) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) (1) of this section or to reflect the effects of the salvage program".

¹ Environmental laws commonly use "may" as the threshold level of the probability of harm because damage to environmental resources often cannot be determined with certainty at the time a decision must be made. Alternative terms that could be used in this subsection, which would be more difficult to satisfy, are "likely would" or "would."

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget



Natural Resources, Agriculture Branch

Fax Transmittal Cover Sheet

Number of pages (including cover) 3

Date: 12/15

To: Elena Kagan, Martha Foley, Dinah Bear, Tom Jensen,
Katie McGinty, Barbara Chow

Phone: 5-3446 Fax: 5-4941

From: Mark Weatherly

Comments: Draft description of Administration's timber legislation,
to be sent to Hill today. Comments to me ASAP please.

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

Description of the Administration's Timber Legislation

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

This subtitle would amend the 1995 Rescissions Act (P.L. 104-19) to clarify the scope of certain timber sale authorities and provide the Secretaries of Agriculture and the Interior with expanded timber contract authority. For timber sale contracts that threaten the greatest environmental harm, the appropriate Secretary would be authorized to modify, suspend, terminate, or replace the contracts in a manner that would accommodate environmental concerns. In addition, the subtitle authorizes total compensation of up to \$50 million to contract holders in settlement of contract modifications.

More specifically, the subtitle would:

Limit sales of old-growth timber to "318 sales" and ensure protection of the Northwest Forest Plan

- o The Administration's proposal would re-assert the original agreement with Congress that only sales issued under section 318 of the FY 1990 Interior appropriations act should be released. The language in section 2001(k) of P.L.104-19 that refers to geographic units would be deleted, and language inserted providing for the release of sales "that were offered or awarded in fiscal year 1990 under the authority of, and in compliance with, section 318(b)" of P.L. 101-121.
- o The integrity of the Northwest Forest Plan would be re-established by deleting language in section 2001(d) of P.L. 104-19 that refers to geographic units, and by inserting language providing that timber sale contracts will be prepared as "allowed under and consistent with the standards and guidelines specified" in the Forest Plan. This would ensure that sales meeting the Forest Plan's criteria would be implemented expeditiously, and clarify that P.L. 104-19 does not override the Forest Plan by requiring timber sales to be offered without regard to environment effects.

Provide buyout and other authorities to fix environmental problems created by the Rescissions Act

- o Due to recent court rulings, timber companies have already obtained title to timber whose harvest would have adverse environmental effects. The Administration's proposal would provide the Departments of the Interior and Agriculture with needed authorities that are consistent with the standard contract provisions of the Forest Service's timber contracts: to work with timber purchasers in order to modify or buyout problematic contracts, or provide replacement timber.

Authority would be included for the Departments to reach voluntary agreements with holders of contracts, under which holders accept substitute timber or money. In addition, authority would be provided to (1) unilaterally require holders to accept substitute timber, or (2) buy back part or all of sales that would have significant environmental effects. Up to \$50 million in buy back compensation funds (that would be scored on a Paygo basis) are proposed in the Administration's bill.

Resolve issues left in disagreement with Congress

- o The Administration's proposal would clarify that old-growth sales should not be required to be released where bird species listed under the Endangered Species Act are nesting or breeding. The proposal would amend section 2001(k) of P.L. 104-19 by replacing the phrase "known to be nesting" with "known to occupy for nesting or breeding purposes". The proposal would further state that "the Secretary concerned shall make this determination of occupancy in accordance with scientifically recognized principles, such as the Pacific Seabird Group protocol".
- o The Government's obligation to provide replacement timber would be clarified to limit the replacement requirement to sales that cannot be released due to threatened or endangered bird species. Section 2001(k) of P.L. 104-19 would be amended by striking "for any reason" as the basis for providing alternative timber. Authority would be added to provide alternative replacement timber or buyout funds, where no replacement timber is available, for sales that could not be released due to threatened or endangered bird species.

Replacement,

**Subtitle F--Timber Contract [^]Modification,
Suspension, or Termination**

Sec. 8501. AMENDMENTS TO THE RESCISSIONS ACT

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

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

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

(ii) protect the Secretaries' authority to implement the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning

Documents Within the Range of the Northern Spotted Owl,
and

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

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

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

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

(2) in paragraph (2) by striking "be nesting within the acreage that is the subject of the sale unit." and inserting "occupy for nesting or breeding purposes the sale unit or a stand overlapping the sale unit. The Secretary concerned

or section? (inconsistent - see last page)

shall make this determination of occupancy in accordance with scientifically recognized principles, such as the Pacific Seabird Group protocol.";

(3) in paragraph (3)–

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

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

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

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

"(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.), the Federal Land Management Policy Act (43 U.S.C. 1701 et seq.), the Oregon & California Lands Act (43 U.S.C. 1181a et seq.) or other law applicable to the award, release, completion, replacement, modification, suspension, or termination of timber

sale contracts, the Secretary concerned may replace, modify, suspend, or terminate any timber sale contract affected by or released pursuant to this subsection when the Secretary concerned, in his discretion, finds that such replacement, modification, suspension, or termination is authorized pursuant to originally advertised terms of the contract or that release or completion of the contract may have an adverse effect on the environment or natural resources. Any replacement, modification, suspension, or termination shall be effective immediately upon issuance of the Secretary's finding.

"(B) The Secretary concerned may expend, without further appropriation action, from sums otherwise available in the Treasury, up to \$100 million in compensation to contract holders for changes made pursuant to the authority provided in subparagraph (A) of this paragraph.

"(C) All claims by a contractor against the government relating to a contract replaced, modified, suspended, or terminated pursuant to

subparagraph (A) are subject to the Contract

Disputes Act."

OPTION 9 TIMBER SALES

(e) ~~TIMBER SALES ON LANDS SUBJECT TO OPTION 9~~ -Section

Subsection?

2001(d) is amended by

(1) amending the subsection heading to read as

follows-

DIRECTION TO COMPLETE

OPTION 9 TIMBER SALES."; and

(2) in the first sentence by-

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

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

(f) EFFECT ON PLANS, POLICIES, AND ACTIVITIES.-Section

Subsection?

2001(l) is amended in the first sentence by-

(1) striking "or permit"; and

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

Chris - This is very important. I do not want to recreate our current problem on 2001(d).

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

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

DATE: November 17, 1995

FROM: Edward A. Boling

PHONE NUMBER: 202-514-2715

NUMBER OF PAGES TO BE TRANSMITTED (including cover): 5 - (revision w/ bold changes)

TO: Chris Nolin
 Elena Kagan
 Dinah Bear

PHONE NUMBER: 395-3040 456-7594 395-7421

MESSAGE: Draft language attached. This responds to USDA comments and most of BLM's comments (they have not reviewed this most recent draft, but it is substantially similar to the one they reviewed)

JUSTICE STRONGLY ADVISES THAT THIS LANGUAGE NOT BE MADE PUBLIC UNLESS AND UNTIL IT IS GUARANTEED TO BE ENACTED. ^{Any} ~~OTHERWISE, PUBLIC~~ RELEASE OF THIS LANGUAGE WILL JEOPARDIZE AGENCY POSITIONS IN PENDING AND ANTICIPATED LITIGATION. WE RECOMMEND PLACEHOLDER LANGUAGE (e.g., repeal of 2001(d), (k) and (l)) BE USED. } 7

Other Policy Issues:

- Should Forest Plan timber be available for replacement sales? ~0
- Should the termination, exchange or modification of contracts occur within a specific timeframe? ~0
- Definition of "substantial" damage to the environment (left to agency interpretation and litigation).

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

11/16 4pm

NOTE TO TED BOLING

FROM NANCY HAYES, KRIS CLARK, KAREN MOURITSEN

RE: COMMENTS ON 11/16 3PM DRAFT LEGISLATIVE LANGUAGE

Generally this draft looks to be in pretty good shape; thanks for incorporating our earlier comments. Just a few others:

1. In paragraph (b), we suggest changing "Administration" to "Secretaries" or "Agencies" (less partisan and more legislative).
2. In paragraph (c)(1), at the end of the bolded phrase add "but not awarded, or awarded and suspended, as of the date of enactment of Public Law 104-19" (otherwise plaintiffs might think that "offered" includes "awarded").
3. In paragraph (c)(4)(A), re: "serious damage", do we need to define "serious" to reduce litigation exposure? And likewise the term "exchange" -- do we need to define (it could imply a land exchange, which is a FLPMA term, or baffle the reader).

Also, we should limit this section to existing timber sale contracts; as it reads currently, it applies to future timber sale contracts.

4. Would you want to consider adding to section (a) something that would require the Government to initiate the burden of the compensation process, giving some assurance to the contractor that he will be fairly and swiftly compensated? Maybe this won't work if we want to be able to take advantage of judgment fund monies?

Thanks for considering these.

OPTIONAL FORM 90 (7 80) *Deliver ASAP*

FAX TRANSMITTAL # of pages *1*

To <i>Ted Boling</i>	From <i>Nancy Hayes</i>
Dept./Agency <i>DJS</i>	Phone # <i>208-3800</i>
Fax # <i>314-4231</i>	Fax # <i>208-5242</i>

NSN 7540-01-317-7366 5099 101 GENERAL SERVICES ADMINISTRATION

**Amendment to Provide Additional Authority
to Modify or Suspend Certain Timber Contracts**

Justification:

Section 2001(k) of the Rescissions Act required the Forest Service and the Bureau of Land Management to release certain timber sales in the states of Oregon and Washington. Existing and expected court rulings will significantly expand the volume of old-growth timber required to be released for logging under the Rescissions Act. This expanded volume would require logging in areas with significant environmental concerns.

This language would provide additional authority to be used at the discretion of the Secretary of Agriculture and the Secretary of the Interior, to require that the most environmentally sensitive of these logging contracts be modified, suspended, terminated or replaced to accommodate environmental concerns.

The language authorizes the expenditure of up to \$50 million to pay for claims resulting from the contract changes made pursuant to this additional authority. These funds would be offset by increases in receipts resulting from timber sales under the Rescissions Act.

Bill language:

Section _____. Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby finds and declares that it is in the national interest to assure 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 herein with discretion, and in conjunction with a continuation of agency efforts to reach mutually agreeable accommodations with timber purchasers to protect these resources.

(b) Purpose. -- The purpose of this amendment is to provide the Secretaries concerned with additional authority to modify, replace, suspend, or terminate certain timber contracts.

(c) Award and Release of timber Sale Contracts Subject to Section 318 of Public Law 101-121
Subsection 2001(k) is amended by adding at the end thereof the following new paragraph:

(4) Suspension, Termination, Replacement or Modification

(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S.C. 101 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, modification, replacement, suspension or termination of timber sale contracts, the Secretary concerned is hereby authorized to modify, replace, suspend or terminate any timber sale contract affected by or released pursuant to this subsection where the Secretary concerned in his discretion finds that such modification, replacement, suspension, or termination is authorized.

pursuant to originally advertised terms or necessary to avoid substantial damage to the environment or natural resources. Any suspension, termination, replacement or modification shall be effective immediately upon issuance of the Secretary's finding.

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

(C) The Secretaries are hereby authorized to expend, from sums otherwise available in the Treasury, up to \$50 million for payment of claims arising under this section.

100

WO-C8.2

C8.2 - TERMINATION. (12/89) The Chief, Forest Service, by written notice, may terminate this contract, in whole or in part, (1) to comply with a court order, regardless of whether this sale is named in such an order, upon determination that the order would be applicable to the conditions existing on this sale; or (2) upon a determination that the continuation of all or part of this contract would:

- (a) cause serious environmental degradation or resource damage;
- (b) be significantly inconsistent with land management plans adopted or revised in accordance with Section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended;
- (c) cause serious damage to cultural resources pursuant to C6.24#;
- (d) jeopardize the continued existence of Federally listed threatened and endangered species or, cause unacceptable adverse impacts on sensitive species, identified by the appropriate Regional Forester.

Compensation for termination under this provision shall be calculated pursuant to C9.5, except; compensation for termination under (1) shall be calculated pursuant to C9.51 when included in this contract and compensation for termination under (2) (d) shall be calculated pursuant to C9.52 when included in this contract.

Instructions: Include in all new contracts, in existing contracts at time of contract extension or upon mutual agreement.

Include C9.5 as a companion provision. Include C9.51 and/or C9.52 as a companion provision(s) only with approval of the Regional Forester or Chief as appropriate.

Do not list B8.2 as inapplicable.

REVISED. REPLACES C8.2 - TERMINATION, dated 5/84.

WO-C9.5

C9.5 - SETTLEMENT. (10/77) If this contract is terminated by Forest Service under GS.2, Purchaser agrees that the liability of the United States shall be limited to the sum of (1) the value of unused Purchaser Credit; (2) the estimated expenditures for felling, bucking, lopping, skidding, and decking any products so processed, but not removed from Sale Area because of the termination action; (3) out-of-pocket expenses involved in acquiring and holding the contract such as maintaining performance bonds and cash deposits; and (4) the difference between (a) Current Contract Rates for the remaining uncut volume, and (b) the rates paid for comparable timber on the same National Forest during the preceding 6-month period multiplied times the remaining uncut volume. Comparable timber is timber of similar size and quality with similar topography and access. Cost estimates for items listed in (2) shall be based upon Forest Service appraisal methods in use on the date contract is terminated.

INSTRUCTIONS: Include in all new contracts and also in existing contracts, at time of scheduled rate redetermination upon mutual agreement or at contract extension.

Include CS.2 as a companion provision.

Do not list B9.5 as inapplicable.

For use with 7/70 and 9/73 contract revisions.

WO-C9.52

C9.52 - SETTLEMENT FOR T&E SPECIES. (12/89) In the event the Regional Forester determines that this contract may jeopardize the continued existence of a species presently, or subsequently, listed as threatened or endangered pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1536, 1538-1540), the Chief, Forest Service, may terminate this contract in whole or in part.

In the event of termination or partial termination, Purchaser agrees that its sole and exclusive remedy shall be the sum of (1) the value of unused Effective Purchaser Credit earned on this sale; (2) the estimated expenditures for felling, bucking, lopping, skidding, and decking any products so processed, but not removed from Sale Area; and (3) the out-of-pocket expenses involved in acquiring and holding this contract. Cost estimates for items listed in (2) shall be based upon Forest Service appraisal methods in use on the date contract is terminated. Out-of-pocket expenses in (3) do not include lost profits, replacement cost of timber or any other anticipatory losses suffered by Purchaser. Purchaser agrees to provide receipts or other documentation to the Contracting Officer which clearly identify and verify actual expenditures.

In the event of termination of this contract, in whole or in part, by Forest Service, Purchaser agrees that the liability of the United States shall be limited to the express remedies contained within this provision.

INSTRUCTIONS: For use in sales on National Forests in Regions 5 and 6 containing northern spotted owl habitat. Other use requires Chief's approval.

Use of this provision must be noted in the prospectus.

NEW PROVISION (12/89).

Section ____ Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

2001

(a) Finding. -- The Congress hereby finds and declares that it is in the national interest to (i) clarify the intent of Congress with regard to certain provisions of Section 2001 of the Rescissions Act, (ii) protect the Administration's discretion 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, (iii) provide the Secretaries concerned with authority necessary to suspend, terminate, purchase, modify or exchange certain timber contracts in order to assure that valuable public resources in Oregon and Washington are protected and wisely managed and 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 public resources.

authority

~~sub~~
~~staff~~

(b) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

(1) in paragraph (1) by striking "or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to" and inserting "~~subject to and consistent with~~"; *of a in 1989 + 1990 were the auth of*

*See
1989 MT.*

(2) in paragraph (2) by striking "be nesting within" and inserting "occupy for nesting or breeding purposes the stand or unit"; *in compliance w/ Section 318*

(3) in paragraph (3) by striking "for any reason a sale cannot be released and completed under the terms of this subsection within 45 days after the date of the enactment of this Act, the Secretary concerned shall" and inserting "a sale cannot be released and completed at any time under paragraph (2) of this subsection, the Secretary concerned may";

*mm -
1) don't have
to just
"may"*

(4) by adding at the end thereof the following new paragraph:

(4) Suspension, Termination or Modification

(A) Notwithstanding the National Forest

*more
specific*

Management Act of 1976 (16 U.S.C. 472a et seq.) and any other provision of law applicable to the award, release, completion, suspension, termination or modification of timber sale contracts, the Secretary concerned is hereby authorized to suspend, terminate or modify any timber sale contract affected by or released pursuant to this subsection where the Secretary concerned in his discretion finds that such suspension, termination or modification is ~~necessary~~ authorized pursuant to originally advertised terms or agency regulations *or necessary to avoid damage to the environment or public resources.* Except as provided in this paragraph, the Secretary concerned shall allow

2)

*Talk to
Joe*

*rec - in the role discretion of
the decy, to avoid subst.*

*Substantial
better than
serious.*

*Do not
want to be
in the
line*

poss for
new

contracts to be completed according to originally advertised terms notwithstanding any law, other than paragraph (2) of this subsection, or contract term authorizing the ~~suspension~~ of the contract to protect endangered, threatened, and sensitive species. Any suspension, termination or modification shall be effective immediately upon issuance of the Secretary's finding.

(B) All claims by a contractor against the government relating to a contract suspended, terminated or modified pursuant to subparagraph (A) shall be subject to the Contract Disputes Act.

(C) The Secretary concerned, with the consent of the Attorney General, is hereby authorized to settle any claim by a contractor against the government relating to a contract suspended, terminated or modified pursuant to subparagraph (A), including by exchange of any timber sale contracts.

(D) The United States shall pay such just compensation as is required, consistent with contract terms, for contract suspension, termination or modification pursuant to subparagraph (A), and the full faith and credit of the United States is hereby pledged to the payment of any judgment entered against the United States with respect to such suspension, termination or modification.

(c) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by striking "on Federal lands described in" and inserting "subject to and consistent with".

(d) Effect on Plans, Policies and Activities -- Subsection 2001(l) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) (1) of this section or to reflect the effects of the salvage program".

we've argued about
this.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages > 2

To <i>Eileen Kagan</i>	From <i>[Signature]</i>
Dept./Agency	Phone #
Fax # <i>456-1647</i>	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Section . Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby finds and declares that it is in the national interest to (i) clarify the intent of Congress with regard to certain provisions of Section 2001 of the Rescissions Act, (ii) protect the Administration's discretion 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, (iii) provide the Secretaries concerned with authority necessary to suspend, terminate, purchase, modify or exchange certain timber contracts in order to assure that valuable public resources in Oregon and Washington are protected and wisely managed and 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 public resources.

(b) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

(1) in paragraph (1) by striking "or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to" and inserting "subject to and consistent with";

(2) in paragraph (2) by striking "be nesting within" and inserting "occupy for nesting or breeding purposes the stand that contains"; [~~drop "acreage" - is this as protective? Does this prohibit any harvest w/in an owl circle (1/2 mile radius)?~~]

(3) in paragraph (3) by striking "for any reason a sale cannot be released and completed under the terms of this subsection within 45 days after the date of the enactment of this Act, the Secretary concerned shall" and inserting "a sale cannot be released and completed at any time under paragraph (2) of this subsection, the Secretary concerned may";

(4) by adding at the end thereof the following new paragraph:

(4) Suspension, Termination or Modification

(A) Notwithstanding the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.) and any other provision of law applicable to the award, release, completion, suspension, termination or modification of timber sale contracts, the Secretary concerned is hereby authorized to suspend, terminate or modify any timber sale contract affected by or released pursuant to this subsection where the Secretary concerned in his discretion finds that such suspension, termination or modification is necessary authorized pursuant to originally advertised terms or agency regulations or necessary to avoid damage to the environment or public resources. [~~Except as provided~~

lll)
relating
any reason

in this subsection, the Secretary concerned shall allow contracts to be completed notwithstanding any law, other than subsection k(2) of this Act, or contract term that is preventing or prevents the completion of the contract for environmental reasons. - does this resolve the issue of what's meant by "originally advertised terms"?] Any suspension, termination or modification shall be effective immediately upon issuance of the Secretary's finding.

(B) All claims by a contractor against the government relating to a contract suspended, terminated or modified pursuant to subparagraph (A) shall be subject to the Contract Disputes Act.

(C) The Secretary concerned, with the consent of the Attorney General, is hereby authorized to settle any claim by a contractor against the government relating to a contract suspended, terminated or modified pursuant to subparagraph (A), including by exchange of any timber sale contracts.

(D) Measure of damages provision - a statutory incorporation of contract provision

(c) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by striking "on Federal lands described in" and inserting "subject to and consistent with".

(d) Effect on Plans, Policies and Activities -- Subsection 2001(1) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) (1) of this section or to reflect the effects of the salvage program".

2001(d)
2001(1)
?

What about buy-back
+
exchange?

if any Threatened or endangered bird species is known to occupy, for nesting or breeding purposes, the sale unit or the stand that is the subject of the sale unit.

as determined by scientifically recognized ~~protocols~~ ^{principles}, including in the case of the marbled murrelet, the Pacific Seacolor Group Protocol.

The secretary shall ^{make this} ~~determine~~ ^{determination} ~~the~~ ~~whether~~ ~~the~~ ~~bird~~ ~~species~~ ~~occupies~~ ~~the~~ ~~unit~~ ~~or~~ ~~stand~~ ~~of~~ ~~occupancy~~ in accordance w/ scientifically recognized ~~protocols~~ ^{principles}.

Date: Thursday, November 16, 1995 4:14 pm
 From: SS13 (COHENDA)
 Subject: Redraft pursuant to comments -Reply -Forw

Forest Service contracts impose a number of obligations upon purchasers, such as the requirement to build roads and the requirement to cut only timber marked by the Forest Service.

Section 2000(k)(1) provides, "notwithstanding any other provision of law", the Secretary is required to proceed with contracts in accordance with "originally advertised terms". A question arises as follows: The Secretary proceeds with a contract as required by section 2000(k)(1). The purchaser cuts timber which has not been marked by the Forest Service. Can the Forest Service exercise the rights granted to it under the contract when the purchaser cuts unmarked timber or is this one of the "originally advertised terms" which is overridden by the "notwithstanding any other provision of law" language also contained in section 2000(k)(1)?

The purpose of the proposed language is to make it clear that if the Secretary proceeds with a contract as required by section 2000(1) all terms of the contract remain in force and effect except the environmental clauses (except as permitted by section 2000(k)(2)).

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages ▶ 2

To <i>Elena Kagan</i>	From <i>Red</i>
Dept./Agency <i>WHC</i>	Phone #
Fax # <i>456-1647</i>	Fax #
NSN 7540-01-317-7388	5099-101 GENERAL SERVICES ADMINISTRATION

page 1, Civil Division explanation of the bolded (4)(B) sentence
page 2, DOI comments

To: Elena Kagan - 456-1647
 From: Ted Boling 514-2715

Alternative draft, 11/20 - 8 pm

Section ____ Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby 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 herein 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) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

(1) in paragraph (1) by striking "offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318" and inserting "that [are currently suspended and] were offered or awarded in fiscal year 1990 under the authority of, and in compliance with, section 318(b)".; *c.s., that*

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

(3) in paragraph (3) by striking "If for any reason a sale cannot be released and completed under the terms of this subsection," and inserting "If a sale unit cannot be released and completed under paragraph (2) of this subsection,"; and by striking "quantities." and inserting "quantities, or shall provide appropriate compensation in accordance with paragraph (4) of this subsection."

(4) by adding at the end thereof the following new paragraph:

(4) Replacement, Modification, Suspension or Termination of Timber Sale Contracts.

("currently suspended" description tomorrow!)

the purchaser

performance
release or completion
that (execution) of
the timber sale contract

(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 is hereby authorized to replace, modify, suspend or terminate any timber sale contract affected by or 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 or may¹ 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.

of the timber sale contract

(B) 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.

(d) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by striking "Timber Sales on Lands Covered by Option 9" and inserting "Option 9 Timber Sales"; and by striking "on Federal lands described in" and inserting "allowed under and consistent with the standards and guidelines specified in" and by striking "1994." and inserting "1994, or as may be amended."

(e) Effect on Plans, Policies and Activities -- Subsection 2001(1) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) (1) of this section or to reflect the effects of the salvage program".

¹ Environmental laws commonly uses "may" as the threshold level of the probability of harm because the damage to environmental resources that environmental laws seek to avoid often cannot be determined with greater certainty at the time that a decision must be made without further study. See ESA § 7.

Alternative standards terms that could

be used in this subsection, are "likely would" or "would," which would be more difficult to satisfy,

Alternative draft, 11/20

Section _____. Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby 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 herein 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 suspend, terminate, replace or modify certain timber contracts.

(c) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

(1) in paragraph (1) by striking "offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318" and inserting "that are suspended and were offered or awarded in ~~fiscal year 1989~~ or fiscal year 1990 under the authority of, and in compliance with, section 318(b)".;

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

(3) in paragraph (3) by striking "If for any reason a sale cannot be released and completed under the terms of this subsection," and inserting "If a sale unit cannot be released or completed under paragraph (2),"; by striking "shall provide" and inserting "may provide"; and by striking "quantities." and inserting "quantities, or compensation."

(4) by adding at the end thereof the following new paragraph:

(4) Suspension, Termination, Replacement or Modification

(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, suspension, termination, replacement or modification of timber sale contracts, the Secretary concerned is hereby authorized to suspend, terminate, replace or modify any timber sale contract affected by or released pursuant to this subsection where the Secretary concerned in his discretion finds that such suspension, termination, replacement or modification is authorized pursuant to originally advertised terms or may **significantly affect** the environment or natural resources. Any suspension, termination, replacement or modification shall be effective immediately upon issuance of the Secretary's finding.

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

(d) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by striking "Timber Sales on Lands Covered by Option 9" and inserting "Option 9 Timber Sales"; and by striking "on Federal lands described in" and inserting "allowed under and consistent with the standards and guidelines specified in" and by striking "1994." and inserting "1994, or as may be amended."

(e) Effect on Plans, Policies and Activities -- Subsection 2001(l) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) (1) of this section or to reflect the effects of the salvage program".

Comments on Rescissions Act amendments

(c)(1) This attempts to limit the scope of the § 2001(k)(1) release of timber contracts by releasing contracts "that were offered in fiscal year 1989 or fiscal year 1990 under the authority of, and in compliance with, section 318(b)" but excepting contracts that were "modified, completed, or the purchaser is not qualified." Because approximately 5.8 billion board feet of timber was offered pursuant to subsection 318(b), it is critical that this release language be drafted to apply to the narrow group of timber sales that were still waiting for approval when Congress passed this release provision. Exemption of modified and completed sales will avoid claims for timber contracts based on timber that has already been cut or excluded from the original timber contract. Excluding purchasers who are "not qualified" is designed to exclude bidders who provided information that it cannot meet the requirements of a responsible bidder pursuant to Forest Service regulation 36 CFR 223.101. This exclusion does not necessarily cover bidders who were similarly situated under BLM regulations. Also, this exclusion does not cover timber contracts that simply went unawarded by informal agreement or for other reasons. This also does not exclude timber contracts that the BLM terminated and bought back. BLM and Forest Service use the term "terminate" very differently. BLM treats a timber contract, once awarded, as a vested right that is compensated when it is terminated. Forest Service terminates contracts according to contract terms, and is in litigation over the compensation required.

suspended

ask

For these reasons, I recommend that the release language not apply to all 318(b) sales, with some categories that we happen to think of exempted. Instead, the release should apply only to 318(b) sales that are "suspended." The Forest Service and BLM should be consulted regarding any expansion of the release beyond suspended. Forest Service has "terminated" some of the marbled murrelet sales, but needs to find a description of those sales that does not implicate terminated BLM contracts. ("or awarded" has been added to include those 318(b) sales that were not offered under 318, but were converted to 318 sales and awarded under that authority)

should we include Res? then put in.

but was inherently suspended.

So - what does suspended mean??

(?) all suspended, ~~currently suspended~~, SET?

Ask for separate note: why this is necessary - what set of cases this takes out.

~~the sale unit~~
the sale unit
a stand overlapping the sale unit.

shall the purchaser with
or provide appropriate ~~compensation~~ compensation,
in accordance with paragraph 4 of this
subsection.

all timber sale Ks, currently suspended,

11/20 DRAFT

Section ____ Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby 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 herein 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 [suspend, terminate, replace or modify] certain timber contracts.

(c) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

(1) in paragraph (1) by striking ", all timber sale contracts offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318" and inserting "(unless modified, completed, or the purchaser is not qualified), that were offered in fiscal year 1989 or fiscal year 1990 under the authority of, and in compliance with, section 318(b)".;

technical: makes no sense - need "all timber sale Ks" -- a don't strike this.

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

Ask about this

(3) in paragraph (3) by striking "If for any reason a sale cannot be released and completed under the terms of this subsection," and inserting "If a (sale unit) cannot be released or completed under paragraph (2),"; by striking "shall provide" and inserting "may provide"; and by striking "quantities." and inserting "quantities, [or compensation.]"

~~no-keep~~ shall

(4) by adding at the end thereof the following new paragraph:

Is this emb? approp monetary comp??

(4) Suspension, Termination, Replacement or Modification

(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, suspension, termination, replacement or modification of timber sale contracts, the Secretary concerned is hereby authorized to [suspend, terminate, replace or modify] any timber sale contract affected by or released pursuant to this subsection where the Secretary concerned in his discretion finds that such [suspension, termination, replacement or modification] is authorized pursuant to originally advertised terms or [may] have an adverse effect on the environment or natural resources. Any [suspension, termination, replacement or modification] shall be effective immediately upon issuance of the Secretary's finding.

change order

change order

of the K??

timber sale

would -
Pu-OK

change order

(B) All claims by a contractor against the government relating to a contract [suspended, terminated, replaced or modified] pursuant to subparagraph (A) shall be subject to the Contract Disputes Act.

ditto

what is effect of this?

(d) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by striking "Timber Sales on Lands Covered by Option 9" and inserting "Option 9 Timber Sales"; and by striking "on Federal lands described in" and inserting "allowed under and consistent with the standards and guidelines specified in" and by striking "1994." and inserting "1994, or as may be amended."

(e) Effect on Plans, Policies and Activities -- Subsection 2001(1) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) (1) of this section or to reflect the effects of the salvage program".

Ruth Sanders print

507d - may

507d - suspended

¹ "may significantly affect" has been proposed as an alternative, but may be too closely tied to NEPA (EIS threshold).

delete

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL		# of pages ▶ 2
To <i>Elena Kagan</i>	From <i>Ted Poling</i>	
Dept./Agency	Phone # <i>514-2715</i>	
Fax # <i>456-1647</i>	Fax #	
NSN 7540-01-317-736R 5099-101		GENERAL SERVICES ADMINISTRATION

Section Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby 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 herein 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 suspend, terminate, replace or modify certain timber contracts.

(c) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

(1) in paragraph (1) by striking ", all timber sale contracts offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318" and inserting "(unless modified, completed, or the purchaser is not qualified), that were offered in fiscal year 1989 or fiscal year 1990 under the authority of, and in compliance with, section 318(b)".;

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

(3) in paragraph (3) by striking "shall provide" and inserting "may provide" and adding the following sentence: "If a sale unit cannot be released or completed under paragraph (2), the Secretary concerned shall provide the purchaser an equal volume of timber, of like kind and value, which shall be subject to the terms of the original contract and shall not count against current allowable sale quantities.";

(4) by adding at the end thereof the following new paragraph:

(4) Suspension, Termination, Replacement or Modification

*No-
clerking*

*Doesn't
go
in
right
place??*

? such as

*NO -
NOT
WHAT I ASKED
FOR,
TALIC
OVER*

*Why need -
I'm trying to page 318*

(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, suspension, termination, replacement or modification of timber sale contracts, the Secretary concerned is hereby authorized to suspend, terminate, replace or modify any timber sale contract affected by or released pursuant to this subsection where the Secretary concerned in his discretion finds that such suspension, termination, replacement or modification is authorized pursuant to originally advertised terms or may have an adverse effect on the environment or natural resources. Any suspension, termination, replacement or modification shall be effective immediately upon issuance of the Secretary's finding.

*The supervisor has an adverse effect??
EIP*

Not what we agreed on.

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

(d) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by striking "Timber Sales on Lands Covered by" and by striking "on Federal lands described in" and inserting "allowed under and consistent with the standards and guidelines specified in" and by striking "1994." and inserting "1994, or as may be amended."

*under
still
no
insert*

(e) Effect on Plans, Policies and Activities -- Subsection 2001(l) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) (1) of this section or to reflect the effects of the salvage program".

** This is closer to NEPA
We suggest "adversely affect" is synonymous with
Endangered Species Act - and will be boot'd for
that reason
Phone (514-2715) w/ language you want*

Section ____ Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby finds and declares that it is in the national interest to assure 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 herein 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 suspend, terminate, replace or modify certain timber contracts.

(c) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

(1) in paragraph (1) by striking "offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318" and inserting "that, as of the date of enactment of this Act, were offered, but not awarded, or awarded, but terminated or suspended, under the authority of, and in compliance with, section 318(b)".;

NO-MINE

(2) in paragraph (2) by striking "be nesting within the" and inserting "occupy for nesting or breeding purposes the sale unit or the stand" and adding "The Secretary concerned shall make this determination of occupancy in accordance with scientifically recognized principles, and in particular, with respect to the marbled murrelet, including the Pacific Seabird Group protocol";

such as for including the

(3) in paragraph (3) by striking "shall provide" and inserting "may provide";

Change - see over.

(4) by adding at the end thereof the following new paragraph:

(4) Suspension, Termination, Replacement or Modification

(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,

with respect to

why known to? why not just occupying?

shall make this determination of occupancy

~~except that if the sale cannot~~
must provide timber or to it m.m.
no need, it for any other reason.
to do anything.

release, completion, suspension, termination, **replacement** or modification of timber sale contracts, the Secretary concerned is hereby authorized to suspend, terminate, **replace** or modify any timber sale contract affected by or released pursuant to this subsection where the Secretary concerned in his discretion finds that such suspension, termination, **replacement** or modification is authorized pursuant to originally advertised terms or ~~necessary to avoid~~ **substantial damage to the environment or natural resources.** Any suspension, termination, **replacement** or modification shall be effective immediately upon issuance of the Secretary's finding.

would adversely affect

would damage

use F.S. language
Very imp.

(B) All claims by a contractor against the government relating to a contract suspended, terminated, **replaced** or modified pursuant to subparagraph (A) shall be subject to the Contract Disputes Act.

(d) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by **striking "Timber Sales on Lands Covered by"** and by striking "on Federal lands described in" and inserting "allowed under and consistent with the standards and guidelines specified in" and by striking "1994." and inserting "1994, or as may be amended."

] not clear where this should be inserted. Also need to do something to Title of Section.

(e) Effect on Plans, Policies and Activities -- Subsection 2001(l) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b)(1) of this section or to reflect the effects of the salvage program".

NEPA - may adversely affect
Endangered Species Act

Section _____. Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby finds and declares that it is in the national interest to assure 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 herein 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 suspend, terminate, replace or modify certain timber contracts.

(c) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

(1) in paragraph (1) by striking "offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318" and inserting "that, as of the date of enactment of this Act, were offered, but not awarded, or awarded, but terminated or suspended, under the authority of, and in compliance with, section 318(b)".;

(2) in paragraph (2) by striking "be nesting within the" and inserting "occupy for nesting or breeding purposes the sale unit or the stand" and adding "The Secretary concerned shall make this determination of occupancy in accordance with scientifically recognized principles, and in particular with respect to the marbled murrelet including the Pacific Seabird Group protocol.";

(3) in paragraph (3) by striking "shall provide" and inserting "may provide";

(4) by adding at the end thereof the following new paragraph:

(4) Suspension, Termination, Replacement or Modification

(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, suspension, termination, replacement or modification of timber sale contracts, the Secretary concerned is hereby authorized to suspend, terminate, replace or modify any timber sale contract affected by or released pursuant to this subsection where the Secretary concerned in his discretion finds that such suspension, termination, replacement or modification is authorized pursuant to originally advertised terms or necessary to avoid substantial damage to the environment or natural resources. Any suspension, termination, replacement or modification shall be effective immediately upon issuance of the Secretary's finding.

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

(d) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by striking "Timber Sales on Lands Covered by" and by striking "on Federal lands described in" and inserting "allowed under and consistent with the standards and guidelines specified in" and by striking "1994." and inserting "1994, or as may be amended."

(e) Effect on Plans, Policies and Activities -- Subsection 2001(l) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) (1) of this section or to reflect the effects of the salvage program".

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages > 2

To <i>Edna Ragan</i>	From <i>[Signature]</i>
Dept./Agency	Phone #
Fax # <i>456-1647</i>	Fax #
NSN 7540-01-317-7388 5099-101 GENERAL SERVICES ADMINISTRATION	

Section . Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby finds and declares that it is in the national interest to assure that valuable natural resources in Oregon and Washington are protected and wisely managed and 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, notwithstanding agency efforts to reach mutual accommodations with timber purchasers to protect these resources, additional authority is necessary to protect these resources, to be used in the agency's sound discretion.

Delite

(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 Administration's 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, (iii) provide the Secretaries concerned with authority to suspend, terminate, **exchange** or modify certain timber contracts in order to assure that valuable public resources in Oregon and Washington are protected and wisely managed and 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.

(c) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

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

(2) in paragraph (2) by striking "be nesting within the" and inserting "occupy for nesting or breeding purposes the sale unit or the stand" and adding "The Secretary concerned shall make this determination of occupancy in accordance with scientifically recognized principles, including the Pacific Seabird Group protocol regarding the marbled murrelet."; *with respect to the m. m.,*

(3) in paragraph (3) by striking "shall" and inserting "may";

(4) by adding at the end thereof the following new paragraph: *and in particular w/ respect to in accordance w/ Pub 956 ?*

(4) Suspension, Termination or Modification
 (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.

why not just occupancy

1181a et seq.) or other law or regulation pursuant thereto applicable to the award, release, completion, suspension, termination, **exchange** or modification of timber sale contracts, the Secretary concerned is hereby authorized to suspend, terminate, **exchange** or modify any timber sale contract affected by or released pursuant to this subsection where the Secretary concerned in his discretion finds that such suspension, termination, **exchange** or modification is authorized pursuant to originally advertised terms or agency regulations or necessary to avoid ~~serious~~ ^{substantial} damage to the environment or natural resources. **Except as provided in this paragraph, the Secretary concerned shall allow contracts to be completed according to originally advertised terms notwithstanding any law, other than paragraph (2) of this subsection, or contract term authorizing the termination of the contract to protect endangered, threatened, and sensitive species.** Any suspension, termination, **exchange** or modification shall be effective immediately upon issuance of the Secretary's finding.

substantial

What does this do?

exchanged?

(B) All claims by a contractor against the government relating to a contract suspended, terminated or modified pursuant to subparagraph (A) shall be subject to the Contract Disputes Act. **The United States shall pay such compensation as is required, consistent with contract terms, for contract suspension, termination or modification pursuant to subparagraph (A), and the full faith and credit of the United States is hereby pledged to the payment of any judgment entered against the United States with respect to such suspension, termination, exchange or modification.**

exchange

Thought out

(d) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by striking "on Federal lands described in" and inserting "allowed under and consistent with the standards and guidelines specified in" and by striking "1994." and inserting "1994, or as may be amended."

(e) Effect on Plans, Policies and Activities -- Subsection 2001(l) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) (1) of this section or to reflect the effects of the salvage program".

Section _____. Amendment to Section 2001 of the Rescissions Act of 1995, Public Law 104-19.

(a) Finding. -- The Congress hereby finds and declares that it is in the national interest to assure 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 herein 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 suspend, terminate, **replace** or modify certain timber contracts.

(c) Award and Release of Timber Sale Contracts Subject to Section 318 of Public Law 101-121 -- Subsection 2001(k) is amended --

(1) in paragraph (1) by striking "offered or awarded before that date in any unit of the National Forest System or district of the Bureau of Land Management subject to section 318" and inserting "**that, as of the date of enactment of this Act, were offered, but not awarded, or awarded, but terminated or suspended, under the authority of, and in compliance with, section 318(b)**".;

(2) in paragraph (2) by striking "be nesting within the" and inserting "occupy for nesting or breeding purposes the sale unit or the stand" and adding "**The Secretary concerned shall make this determination of occupancy in accordance with scientifically recognized principles, and in particular with respect to the marbled murrelet including the Pacific Seabird Group protocol.**";

(3) in paragraph (3) by striking "shall provide" and inserting "may provide";

(4) by adding at the end thereof the following new paragraph:

(4) Suspension, Termination, **Replacement** or Modification

(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, suspension, termination, **replacement** or modification of timber sale contracts, the Secretary concerned is hereby authorized to suspend, terminate, **replace** or modify any timber sale contract affected by or released pursuant to this subsection where the Secretary concerned in his discretion finds that such suspension, termination, **replacement** or modification is authorized pursuant to originally advertised terms or necessary to avoid **substantial** damage to the environment or natural resources. Any suspension, termination, **replacement** or modification shall be effective immediately upon issuance of the Secretary's finding.

(B) All claims by a contractor against the government relating to a contract suspended, terminated, **replaced** or modified pursuant to subparagraph (A) shall be subject to the Contract Disputes Act.

(d) Timber Sales on Lands Subject to Option 9 -- Subsection 2001(d) is amended by striking "**Timber Sales on Lands Covered by**" and by striking "on Federal lands described in" and inserting "allowed under and consistent with the standards and guidelines specified in" and by striking "1994." and inserting "1994, or as may be amended."

(e) Effect on Plans, Policies and Activities -- Subsection 2001(l) is amended by striking "or permit" and ", except that such administrative action with respect to salvage timber sales is permitted to the extent necessary, and the sole discretion of the Secretary concerned, to meet the salvage timber sale goal specified in subsection (b) (1) of this section or to reflect the effects of the salvage program".

OR

(3) in paragraph (3) by striking "shall provide" and inserting "may provide" and by adding at the end of paragraph (3): "If a sale unit cannot be released or completed under paragraph (2), the Secretary concerned shall provide the purchaser timber of equal value."