

NLWJC - Kagan

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**Background Materials [Timber
Litigation] [Binder]**

Background and Additional Materials Index

- 1 Timber Salvage Provisions
- 2 Legislative History
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1 NATIONAL SCIENCE FOUNDATION
2 ACADEMIC RESEARCH INFRASTRUCTURE
3 (RESCISSION)

4 Of the funds made available under this heading in
5 Public Law 103-327, \$131,867,000 are rescinded.

6 CORPORATIONS

7 FEDERAL DEPOSIT INSURANCE CORPORATION

8 FDIC AFFORDABLE HOUSING PROGRAM

9 (RESCISSION)

10 Of the funds made available under this heading in
11 Public Law 103-327, \$11,281,034 are rescinded.

12 **TITLE II—GENERAL PROVISIONS**

13 EMERGENCY SALVAGE TIMBER SALE PROGRAM

14 SEC. 2001. (a) DEFINITIONS.—For purposes of this
15 section:

16 (1) The term “appropriate committees of Con-
17 gress” means the Committee on Resources, the
18 Committee on Agriculture, and the Committee on
19 Appropriations of the House of Representatives and
20 the Committee on Energy and Natural Resources,
21 the Committee on Agriculture, Nutrition, and For-
22 estry, and the Committee on Appropriations of the
23 Senate.

24 (2) The term “emergency period” means the
25 period beginning on the date of the enactment of
26 this section and ending on September 30, 1997.

1 (3) The term "salvage timber sale" means a
2 timber sale for which an important reason for entry
3 includes the removal of disease- or insect-infested
4 trees, dead, damaged, or down trees, or trees af-
5 fected by fire or imminently susceptible to fire or in-
6 sect attack. Such term also includes the removal of
7 associated trees or trees lacking the characteristics
8 of a healthy and viable ecosystem for the purpose of
9 ecosystem improvement or rehabilitation, except that
10 any such sale must include an identifiable salvage
11 component of trees described in the first sentence.

12 (4) The term "Secretary concerned" means—

13 (A) the Secretary of Agriculture, with re-
14 spect to lands within the National Forest Sys-
15 tem; and

16 (B) the Secretary of the Interior, with re-
17 spect to Federal lands under the jurisdiction of
18 the Bureau of Land Management.

19 (b) COMPLETION OF SALVAGE TIMBER SALES.—

20 (1) SALVAGE TIMBER SALES.—Using the expe-
21 dited procedures provided in subsection (c), the Sec-
22 retary concerned shall prepare, advertise, offer, and
23 award contracts during the emergency period for sal-
24 vage timber sales from Federal lands described in
25 subsection (a)(4). During the emergency period, the

1 Secretary concerned is to achieve, to the maximum
2 extent feasible, a salvage timber sale volume level
3 above the programmed level to reduce the back-
4 logged volume of salvage timber. The preparation,
5 advertisement, offering, and awarding of such con-
6 tracts shall be performed (utilizing subsection (c)) and
7 notwithstanding any other provision of law, includ-
8 ing a law under the authority of which any judicial
9 order may be outstanding on or after the date of the
10 enactment of this Act.

11 (2) USE OF SALVAGE SALE FUNDS.—To con-
12 duct salvage timber sales under this subsection, the
13 Secretary concerned may use salvage sale funds oth-
14 erwise available to the Secretary concerned.

15 (3) SALES IN PREPARATION.—Any salvage tim-
16 ber sale in preparation on the date of the enactment
17 of this Act shall be subject to the provisions of this
18 section.

19 (c) EXPEDITED PROCEDURES FOR EMERGENCY SAL-
20 VAGE TIMBER SALES.—

21 (1) SALE DOCUMENTATION.—

22 (A) PREPARATION.—For each salvage tim-
23 ber sale conducted under subsection (b), the
24 Secretary concerned shall prepare a document
25 that combines an environmental assessment

1 under section 102(2) of the National Environ-
 2 mental Policy Act of 1969 (42 U.S.C. 4332(2))
 3 (including regulations implementing such sec-
 4 tion) and a biological evaluation under section
 5 7(a)(2) of the Endangered Species Act of 1973
 6 (16 U.S.C. 1536(a)(2)) and other applicable
 7 Federal law and implementing regulations. A
 8 document embodying decisions relating to sal-
 9 vage timber sales proposed under authority of
 10 this section shall, at the sole discretion of the
 11 Secretary concerned and to the extent the Sec-
 12 retary concerned considers appropriate and fea-
 13 sible, *(*consider the environmental effects of the
 14 salvage timber sale and the effect, if any, on
 15 threatened or endangered species, *)* and to the
 16 extent the Secretary concerned, at his sole dis-
 17 cretion, considers appropriate and feasible, be
 18 consistent with any standards and guidelines
 19 from the management plans applicable to the
 20 National Forest or Bureau of Land Manage-
 21 ment District on which the salvage timber sale
 22 occurs.

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(B) USE OF EXISTING MATERIALS.—In lieu of preparing a new document under this paragraph, the Secretary concerned may use a

1 document prepared pursuant to the National
2 Environmental Policy Act of 1969 (42 U.S.C.
3 4321 et seq.) before the date of the enactment
4 of this Act, a biological evaluation written be-
5 fore such date, or information collected for such
6 a document or evaluation if the document, eval-
7 uation, or information applies to the Federal
8 lands covered by the proposed sale.

9 (C) SCOPE AND CONTENT.—The scope and
10 content of the documentation and information
11 prepared, considered, and relied on under this
12 paragraph is at the sole discretion of the Sec-
13 retary concerned.

14 (2) REPORTING REQUIREMENTS.—Not later
15 than August 30, 1995, the Secretary concerned shall
16 submit a report to the appropriate committees of
17 Congress on the implementation of this section. The
18 report shall be updated and resubmitted to the ap-
19 propriate committees of Congress every six months
20 thereafter until the completion of all salvage timber
21 sales conducted under subsection (b). Each report
22 shall contain the following:

23 (A) The volume of salvage timber sales
24 sold and harvested, as of the date of the report,

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1 for each National Forest and each district of
2 the Bureau of Land Management.

3 (B) The available salvage volume contained
4 in each National Forest and each district of the
5 Bureau of Land Management.

6 (C) A plan and schedule for an enhanced
7 salvage timber sale program for fiscal years
8 1995, 1996, and 1997 using the authority pro-
9 vided by this section for salvage timber sales.

10 (D) A description of any needed resources
11 and personnel, including personnel
12 reassignments, required to conduct an enhanced
13 salvage timber sale program through fiscal year
14 1997.

15 (E) A statement of the intentions of the
16 Secretary concerned with respect to the salvage
17 timber sale volume levels specified in the joint
18 explanatory statement of managers accompany-
19 ing the conference report on H.R. 1158. House
20 Report 104-124.

21 (3) ADVANCEMENT OF SALES AUTHORIZED.—

22 The Secretary concerned may begin salvage timber
23 sales under subsection (b) intended for a subsequent
24 fiscal year before the start of such fiscal year if the
25 Secretary concerned determines that performance of

1 such salvage timber sales will not interfere with sal-
2 vage timber sales intended for a preceding fiscal
3 year.

4 (4) DECISIONS.—The Secretary concerned shall
5 design and select the specific salvage timber sales to
6 be offered under subsection (b) on the basis of the
7 analysis contained in the document or documents
8 prepared pursuant to paragraph (1) to achieve, to
9 the maximum extent feasible, a salvage timber sale
10 volume level above the program level.

11 (5) SALE PREPARATION.—

12 (A) USE OF AVAILABLE AUTHORITIES.—

13 The Secretary concerned shall make use of all
14 available authority, including the employment of
15 private contractors and the use of expedited fire
16 contracting procedures, to prepare and adver-
17 tise salvage timber sales under subsection (b).

18 (B) EXEMPTIONS.—The preparation, solici-
19 tation, and award of salvage timber sales under
20 subsection (b) shall be exempt from—

21 (i) the requirements of the Competi-
22 tion in Contracting Act (41 U.S.C. 253 et
23 seq.) and the implementing regulations in
24 the Federal Acquisition Regulation issued
25 pursuant to section 25(c) of the Office of

1 Federal Procurement Policy Act (41
2 U.S.C. 421(c)) and any departmental ac-
3 quisition regulations; and

4 (ii) the notice and publication require-
5 ments in section 18 of such Act (41 U.S.C.
6 416) and 8(e) of the Small Business Act
7 (15 U.S.C. 637(e)) and the implementing
8 regulations in the Federal Acquisition Reg-
9 ulations and any departmental acquisition
10 regulations.

11 (C) INCENTIVE PAYMENT RECIPIENTS; RE-
12 PORT.—The provisions of section 3(d)(1) of the
13 Federal Workforce Restructuring Act of 1994
14 (Public Law 103-226; 5 U.S.C. 5597 note)
15 shall not apply to any former employee of the
16 Secretary concerned who received a voluntary
17 separation incentive payment authorized by
18 such Act and accepts employment pursuant to
19 this paragraph. The Director of the Office of
20 Personnel Management and the Secretary con-
21 cerned shall provide a summary report to the
22 appropriate committees of Congress, the Com-
23 mittee on Government Reform and Oversight of
24 the House of Representatives, and the Commit-
25 tee on Governmental Affairs of the Senate re-

1 garding the number of incentive payment recipi-
2 ents who were rehired, their terms of reemploy-
3 ment, their job classifications, and an expla-
4 nation, in the judgment of the agencies involved
5 of how such reemployment without repayment
6 of the incentive payments received is consistent
7 with the original waiver provisions of such Act.
8 This report shall not be conducted in a manner
9 that would delay the rehiring of any former em-
10 ployees under this paragraph, or affect the nor-
11 mal confidentiality of Federal employees.

12 (6) COST CONSIDERATIONS.—Salvage timber
13 sales undertaken pursuant to this section shall not
14 be precluded because the costs of such activities are
15 likely to exceed the revenues derived from such ac-
16 tivities.

17 (7) EFFECT OF SALVAGE SALES.—The Sec-
18 retary concerned shall not substitute salvage timber
19 sales conducted under subsection (b) for planned
20 non-salvage timber sales.

21 (8) REFORESTATION OF SALVAGE TIMBER SALE
22 PARCELS.—The Secretary concerned shall plan and
23 implement reforestation of each parcel of land har-
24 vested under a salvage timber sale conducted under
25 subsection (b) as expeditiously as possible after com-

1 pletion of the harvest on the parcel, but in no case
2 later than any applicable restocking period required
3 by law or regulation.

4 (9) EFFECT ON JUDICIAL DECISIONS.—The
5 Secretary concerned may conduct salvage timber
6 sales under subsection (b) notwithstanding any deci-
7 sion, restraining order, or injunction issued by a
8 United States court before the date of the enactment
9 of this section.

10 (d) DIRECTION TO COMPLETE TIMBER SALES ON
11 LANDS COVERED BY OPTION 9.—Notwithstanding any
12 other law (including a law under the authority of which
13 any judicial order may be outstanding on or after the date
14 of enactment of this Act), the Secretary concerned shall
15 expeditiously prepare, offer, and award timber sale con-
16 tracts on Federal lands described in the “Record of Deci-
17 sion for Amendments to Forest Service and Bureau of
18 Land Management Planning Documents Within the
19 Range of the Northern Spotted Owl”, signed by the Sec-
20 retary of the Interior and the Secretary of Agriculture on
21 April 13, 1994. The Secretary concerned may conduct
22 timber sales under this subsection notwithstanding any de-
23 cision, restraining order, or injunction issued by a United
24 States court before the date of the enactment of this sec-
25 tion. The issuance of any regulation pursuant to section

1 4(d) of the Endangered Species Act of 1973 (16 U.S.C.
2 1533(d)) to ease or reduce restrictions on non-Federal
3 lands within the range of the northern spotted owl shall
4 be deemed to satisfy the requirements of section
5 102(2)(C) of the National Environmental Policy Act of
6 1969 (42 U.S.C. 4332(2)(C)), given the analysis included
7 in the Final Supplemental Impact Statement on the Man-
8 agement of the Habitat for Late Successional and Old
9 Growth Forest Related Species Within the Range of the
10 Northern Spotted Owl, prepared by the Secretary of Agri-
11 culture and the Secretary of the Interior in 1994, which
12 is, or may be, incorporated by reference in the administra-
13 tive record of any such regulation. The issuance of any
14 such regulation pursuant to section 4(d) of the Endan-
15 gered Species Act of 1973 (16 U.S.C. 1533(d)) shall not
16 require the preparation of an environmental impact state-
17 ment under section 102(2)(C) of the National Environ-
18 mental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

19 (e) ADMINISTRATIVE REVIEW.—Salvage timber sales
20 conducted under subsection (b), timber sales conducted
21 under subsection (d), and any decision of the Secretary
22 concerned in connection with such sales, shall not be sub-
23 ject to administrative review.

24 (f) JUDICIAL REVIEW.—

1 (1) PLACE AND TIME OF FILING.—A salvage
2 timber sale to be conducted under subsection (b),
3 and a timber sale to be conducted under subsection
4 (d), shall be subject to judicial review only in the
5 United States district court for the district in which
6 the affected Federal lands are located. Any challenge
7 to such sale must be filed in such district court with-
8 in 15 days after the date of initial advertisement of
9 the challenged sale. The Secretary concerned may
10 not agree to, and a court may not grant, a waiver
11 of the requirements of this paragraph.

12 (2) EFFECT OF FILING ON AGENCY ACTION.—
13 For 45 days after the date of the filing of a chal-
14 lenge to a salvage timber sale to be conducted under
15 subsection (b) or a timber sale to be conducted
16 under subsection (d), the Secretary concerned shall
17 take no action to award the challenged sale.

18 (3) PROHIBITION ON RESTRAINING ORDERS,
19 PRELIMINARY INJUNCTIONS, AND RELIEF PENDING
20 REVIEW.—No restraining order, preliminary injunc-
21 tion, or injunction pending appeal shall be issued by
22 any court of the United States with respect to any
23 decision to prepare, advertise, offer, award, or oper-
24 ate a salvage timber sale pursuant to subsection (b)
25 or any decision to prepare, advertise, offer, award,

1 or operate a timber sale pursuant to subsection (d).
2 Section 705 of title 5, United States Code, shall not
3 apply to any challenge to such a sale.

4 (4) STANDARD OF REVIEW.—The courts shall
5 have authority to enjoin permanently, order modi-
6 fication of, or void an individual salvage timber sale
7 if it is determined by a review of the record that the
8 decision to prepare, advertise, offer, award, or oper-
9 ate such sale was arbitrary and capricious or other-
10 wise not in accordance with applicable law (other
11 than those laws specified in subsection (i)).

12 (5) TIME FOR DECISION.—Civil actions filed
13 under this subsection shall be assigned for hearing
14 at the earliest possible date. The court shall render
15 its final decision relative to any challenge within 45
16 days from the date such challenge is brought, unless
17 the court determines that a longer period of time is
18 required to satisfy the requirement of the United
19 States Constitution. In order to reach a decision
20 within 45 days, the district court may assign all or
21 part of any such case or cases to one or more Spe-
22 cial Masters, for prompt review and recommenda-
23 tions to the court.

24 (6) PROCEDURES.—Notwithstanding any other
25 provision of law, the court may set rules governing

1 the procedures of any proceeding brought under this
2 subsection which set page limits on briefs and time
3 limits on filing briefs and motions and other actions
4 which are shorter than the limits specified in the
5 Federal rules of civil or appellate procedure.

6 (7) APPEAL.—Any appeal from the final deci-
7 sion of a district court in an action brought pursu-
8 ant to this subsection shall be filed not later than 30
9 days after the date of decision.

10 (g) EXCLUSION OF CERTAIN FEDERAL LANDS.—

11 (1) EXCLUSION.—The Secretary concerned may
12 not select, authorize, or undertake any salvage tim-
13 ber sale under subsection (b) with respect to lands
14 described in paragraph (2).

15 (2) DESCRIPTION OF EXCLUDED LANDS.—The
16 lands referred to in paragraph (1) are as follows:

17 (A) Any area on Federal lands included in
18 the National Wilderness Preservation System.

19 (B) Any roadless area on Federal lands
20 designated by Congress for wilderness study in
21 Colorado or Montana.

22 (C) Any roadless area on Federal lands
23 recommended by the Forest Service or Bureau
24 of Land Management for wilderness designation

1 in its most recent land management
2 fact as of the date of the enactment of

3 (D) Any area on Federal lands on which
4 timber harvesting for any purpose is prohibited
5 by statute.

6 (h) RULEMAKING.—The Secretary concerned is not
7 required to issue formal rules under section 553 of title
8 5, United States Code, to implement this section or carry
9 out the authorities provided by this section.

10 (i) EFFECT ON OTHER LAWS.—The documents and
11 procedures required by this section for the preparation,
12 advertisement, offering, awarding, and operation of any
13 salvage timber sale subject to subsection (b) and any tim-
14 ber sale under subsection (d) shall be deemed to satisfy
15 the requirements of the following applicable Federal laws
16 (and regulations implementing such laws):

17 (1) The Forest and Rangeland Renewable Re-
18 sources Planning Act of 1974 (16 U.S.C. 1600 et
19 seq.);

20 (2) The Federal Land Policy and Management
21 Act of 1976 (43 U.S.C. 1701 et seq.);

22 (3) The National Environmental Policy Act of
23 1969 (42 U.S.C. 4321 et seq.);

24 (4) The Endangered Species Act of 1973 (16
25 U.S.C. 1531 et seq.);

(5) The National Forest Management Act of 1976 (16 U.S.C. 472a et seq.);

(6) The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.);

(7) Any compact, executive agreement, convention, treaty, and international agreement, and implementing legislation related thereto; and

(8) All other applicable Federal environmental and natural resource laws.

(j) EXPIRATION DATE.—The authority provided by subsections (b) and (d) shall expire on December 31, 1996. The terms and conditions of this section shall continue in effect with respect to salvage timber sale contracts offered under subsection (b) and timber sale contracts offered under subsection (d) until the completion of performance of the contracts.

(k) AWARD AND RELEASE OF PREVIOUSLY OFFERED AND UNAWARDED TIMBER SALE CONTRACTS.—

(1) AWARD AND RELEASE REQUIRED.—Notwithstanding any other provision of law, within 45 days after the date of the enactment of this Act, the Secretary concerned shall act to award, release, and permit to be completed in fiscal years 1995 and 1996, with no change in originally advertised terms, volumes, and bid prices, all timber sale contracts of-

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- 1 ferred or awarded before that date in any unit of the
2 National Forest System or district of the Bureau of
3 Land Management subject to section 318 of Public
4 Law 101-121 (103 Stat. 745). The return of the bid
5 bond of the high bidder shall not alter the respon-
6 sibility of the Secretary concerned to comply with
7 this paragraph.

8 (2) THREATENED OR ENDANGERED BIRD SPE-
9 CIES.—No sale unit shall be released or completed
10 under this subsection if any threatened or endan-
11 gered bird species is known to be nesting within the
12 acreage that is the subject of the sale unit.

13 (3) ALTERNATIVE OFFER IN CASE OF DELAY.—
14 If for any reason a sale cannot be released and com-
15 pleted under the terms of this subsection within 45
16 days after the date of the enactment of this Act, the
17 Secretary concerned shall provide the purchaser an
18 equal volume of timber, of like kind and value, which
19 shall be subject to the terms of the original contract
20 and shall not count against current allowable sale
21 quantities.

22 (1) EFFECT ON PLANS, POLICIES, AND ACTIVITIES.—
23 Compliance with this section shall not require or permit
24 any administrative action, including revisions, amend-
25 ment, consultation, supplementation, or other action, in

1 or for any land management plan, standard, guideline,
2 policy, regional guide, or multiforest plan because of im-
3 plementation or impacts, site-specific or cumulative, of ac-
4 tivities authorized or required by this section, except that
5 any such administrative action with respect to salvage tim-
6 ber sales is permitted to the extent necessary, at the sole
7 discretion of the Secretary concerned, to meet the salvage
8 timber sale goal specified in subsection (b)(1) of this sec-
9 tion or to reflect the effects of the salvage program. The
10 Secretary concerned shall not rely on salvage timber sales
11 as the basis for administrative action limiting other mul-
12 tiple use activities nor be required to offer a particular
13 salvage timber sale. No project decision shall be required
14 to be halted or delayed by such documents or guidance,
15 implementation, or impacts.

16 SEC. 2002. No part of any appropriation contained
17 in this Act shall remain available for obligation beyond
18 the current fiscal year unless expressly so provided herein.

19 DOWNWARD ADJUSTMENTS IN DISCRETIONARY SPENDING

20 LIMITS

21 SEC. 2003. Upon the enactment of this Act, the Di-
22 rector of the Office of Management and Budget shall
23 make downward adjustments in the discretionary spending
24 limits (new budget authority and outlays) specified in sec-
25 tion 601(a)(2) of the Congressional Budget Act of 1974
26 for each of the fiscal years 1995 through 1998 by the ag-



16TH REPORT of Level 1 printed in FULL format.

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Committee Reports

104th Congress; 1st Session

House Rept. 104-71

104 H. Rpt. 71

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

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

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

REPORT (To accompany H.R. 1159)

together with DISSENTING VIEWS

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

COMMITTEE ACTIONS

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

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

Exhibit D

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

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

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

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

Timber Salvage Sales

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

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

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

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

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

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

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

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

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

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

Each Secretary's duties include reforestation after emergency salvage sales harvested, consistent with the agencies regulations.

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

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

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

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

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

bureau of labor statistics

consumer price index

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

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

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

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

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

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

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

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

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

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

Forests across the West are in the grip of

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

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

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

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

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

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

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

So I am faced with two unacceptable choices—an extreme salvage program with no environmental safeguards or the status quo, which is simply not getting the job done.

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

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

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

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

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

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

Mr. Chairman, it is an opportunity for us. It is an opportunity for us to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Secretary's decision, based on that consolidated environmental documentation, is deemed to satisfy all applicable environmental and land management laws (subsec. (c)(6)). This means, for example, that the Secretary cannot be sued for violation of the Clean Water Act, the provisions of the National Forest Management Act concerning species' viability, unsuitability, or consistency with the resource management plans, or the jeopardy or take standards of the Endangered Species Act. Furthermore, as indicated, a sale can be offered that does not comport with a resource management plan, or interim guidelines, or management directives. This provision is both reasoned and consistent with the one-time, emergency nature of section 307. Few if any such plans, guidelines, screens, or other agency guidance contemplated the dramatic decline in forest health and consequent unprecedented wildfires. Section 307 does not excuse long-term compliance with such agency guidance; instead, it permits only a one-time divergence therefrom. Without such temporary divergence, the very wildlife and other resources that the guidance is intended to protect may be destroyed or damaged, thereby rendering the guidance ineffective for the longer term. Finally, a sale can be offered even if it would be barred under any decision, injunction, or order of any federal court (subsec. (c)(8)).

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

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

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

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

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

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

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

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

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

CONGRESS OF THE UNITED STATES,
Washington, DC, March 15, 1995.

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

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

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

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

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

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

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

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

We appreciate your continuing assistance and cooperation on this matter.

Sincerely,

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

DON YOUNG,
Chairman.

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

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

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

The taxpayer loses under the Taylor Salvage Language because whatever profitable

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

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

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

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

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

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

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

Mr. HATFIELD. I will.

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

Mr. HATFIELD. I think so.

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 428 TO AMENDMENT NO. 420
(Purpose: To broaden areas in which salvage timber sales are not to be conducted)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

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

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

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

The amendment is as follows:

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

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

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

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

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

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

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

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

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

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

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

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

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

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

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 429 TO AMENDMENT NO. 420
(Purpose: To require timber sales to go forward)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

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

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

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

The amendment is as follows:

On page 68, strike line 9 and all that follows through page 79, line 5, and insert the following:

(a) DEFINITION.—In this section:

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

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

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

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

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

(b) SALVAGE TIMBER SALES.—

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

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

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

(ii) any roadless area that—

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

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

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

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

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

(2) SALE DOCUMENTATION.—

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

(B) PROCEDURES TO EXPEDITE SALVAGE TIMBER SALES.—

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

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

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

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

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

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

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

(3) STREAMLINING OF ADMINISTRATIVE APPEALS.—Administrative review of a decision of a managing agency under this subsection shall be conducted in accordance with section 322 of the Department of the Interior and Related Agencies Appropriations Act, 1993 (106 Stat. 1419), except that—

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

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

(4) STREAMLINING OF JUDICIAL REVIEW.—

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

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

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

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

taking of other actions that would otherwise apply.

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

(c) OPTION 9.—

(1) DIRECTION TO COMPLETE TIMBER SALES.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management, and the Secretary of Agriculture, acting through the Chief of the Forest Service, shall expeditiously prepare, offer, and award timber sale contracts on Federal lands in the forests specified in Option 9, as selected by the Secretary of the Interior and the Secretary of Agriculture on April 13, 1994.

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

(3) AVAILABILITY OF FUNDS.—

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

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

(d) SECTION 318.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

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

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

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

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

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

PRIVILEGE OF THE FLOOR

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

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

The Senator from Alaska.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I thank the Chair.

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

The Senator from Washington.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. President, this timber salvage language in H.R. 1158—so people understand the history, this represents the 12th time since 1984 this body would vote to exempt timber sales from environmental laws; 12 times since 1984.

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

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

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

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

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

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

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

Mr. BURNS addressed the Chair.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Six years later, however, our forest management laws are unchanged.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

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

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD], the Senator from North Dakota [Mr.

DORGAN] and the Senator from Florida [Mr. GRAHAM] are necessarily absent.

Mr. LOTT. I announce that the Senator from North Carolina [Mr. FAIRCLOTH] is necessarily absent.

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

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

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

(Rollcall Vote No. 121 Leg.)

YEAS—48

Abraham	Gorton	Markowski
Asbcraft	Gramm	Nickles
Bennett	Graessley	Packwood
Bond	Gregg	Premier
Brown	Hatch	Reid
Burns	Hatfield	Santorum
Campbell	Helms	Shelby
Coats	Hutchison	Simpson
Cochran	Inhofe	Smith
Coverdell	Kempthorne	Snowe
Craig	Kyl	Specter
D'Amato	Lott	Stevens
DeWine	Lugar	Thomas
Dole	Mack	Thompson
Domenici	McCain	Thurmond
Frist	McConnell	Warner

NAYS—46

Akaka	Feinstein	Lieberman
Baucus	Ford	Mikulski
Biden	Glenn	Mosley-Braun
Bingaman	Harkin	Moyahhan
Boyer	Heflin	Murray
Bradley	Hollings	Nunn
Breaux	Inouye	Pell
Bryan	Jeffords	Pryor
Bumpers	Johnston	Robb
Byrd	Kennedy	Rockefeller
Chafee	Kerry	Roth
Cohen	Kerry	Sarbanes
Daschle	Kohl	Simon
Dodd	Lautenberg	Wellstone
Eron	Leahy	
Feingold	Levin	

NOT VOTING—6

Conrad	Faircloth	Grams
Dorgan	Graham	Kassebaum

So the motion was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

HONORING JEREMY BULLOCK

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

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

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

School, by an emotionally troubled fourth grader.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NATIONAL SCIENCE FOUNDATION

ACADEMIC RESEARCH INFRASTRUCTURE

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

CORPORATIONS

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC AFFORDABLE HOUSING PROGRAM

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

TITLE II—GENERAL PROVISIONS

EMERGENCY TIMBER SALVAGE

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

emergency processes and procedures provided in the bill.

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

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

Forest Health

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

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

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

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

Volume Levels

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

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

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

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

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

Process

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

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

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

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

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

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

Reporting

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

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

Option 9

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

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

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

Released Timber Sales

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

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

FUNDS AVAILABILITY

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

DOWNWARD ADJUSTMENTS IN DISCRETIONARY SPENDING LIMITS

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

PROHIBITION ON USE OF SAVINGS TO OFFSET DEFICIT

INCREASES RESULTING FROM DIRECT SPENDING OR RECEIPTS LEGISLATION

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

NATIONAL KOREAN WAR VETERANS ARMISTICE DAY

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

ASSISTANCE TO ILLEGAL IMMIGRANTS

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

This provision is essentially the same provision that was included in the initial emer-

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

SENSE OF THE SENATE REGARDING TAX AVOIDANCE

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

FEDERAL ADMINISTRATIVE AND TRAVEL EXPENSES

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

IMPACT OF LEGISLATION ON CHILDREN

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

TITLE III

EMERGENCY SUPPLEMENTAL APPROPRIATIONS

ANTI-TERRORISM INITIATIVES

OKLAHOMA CITY RECOVERY

Chapter I

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

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

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

While awaiting the Administration's 1996 budget amendment, the conferees have attempted to anticipate and fully fund the requirements for enhanced counterterrorism activities in both 1995 and 1996. To the extent that the supplemental does not fully anticipate the total needs, the conferees expect

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

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

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

This impending disaster only came to light very recently. The Clinton administration had tried to sweep it under the rug. His fiscal year 1996 budget proposes no changes or solutions to Medicare's problems, and he even did not bring that up when he had the White House Conference on Aging. It was not even addressed by him.

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

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

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

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

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

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

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

TIMBER SALVAGE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

□ 1900

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

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

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

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

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

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

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

Is that your understanding?

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

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

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

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

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

[Mr. METCALF asked and was given permission to revise and extend his remarks.]

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

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

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

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

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

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

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

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

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

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

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

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

EMERGENCY SALVAGE TIMBER PROVISION

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

First, in subsection (c)(1)(A) of H.R. 1944, the change worthy of notice was included at the request of the administration. This Senator did not believe that this change was necessary because of the way that the entire provision is drafted. The fundamental concept of the timber language is that the Secretary has the discretion to put forward the salvage timber sales of which he approves. Consequently, I was baffled by the administration's demand that in this subsection language be included to give direction to the Secretary "to the extent the Secretary concerned, at his sole discretion, considers appropriate and feasible" that timber salvage sales "be consistent with any standards and guidelines from the management plans applicable to the National Forest or Bureau of Land Management District on which the salvage timber sale occurs." The administration demanded that some mention of "standards and guidelines" be included in this section. After a series of negotiations this is the compromise that the House and Senate worked out with the administration.

Subsection (c)(1)(A) gives the administration the broadest latitude to prepare the salvage timber sales that it deems appropriate. It already has the discretion to make the decision of whether or not to put forward a sale that is consistent with the standards and guidelines of a particular forest unit or BLM district. Essentially this request by the administration and the language ultimately included at its request is nothing more than redundant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBSECTION (I) OF SECTION 2001

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

FOREST HEALTH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



THE WHITE HOUSE
Washington

August 1, 1995

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

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

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

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

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

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

/s/ William J. Clinton



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

between

UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)

UNITED STATES DEPARTMENT OF THE INTERIOR (DOI)

UNITED STATES DEPARTMENT OF COMMERCE (DOC)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA)

AUGUST 9, 1995

BACKGROUND

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

PURPOSE

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

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

The USDA Forest Service and DOI's Bureau of Land Management are responsible for providing a full range of social, economic, and environmental benefits from publicly owned

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

NOW, THEREFORE,

THE PARTIES AGREE TO:

1. Comply with previously existing environmental laws, except where expressly prohibited by Public Law 104-19, notably in the areas of administrative appeals and judicial review. In particular, the parties agree to implement salvage sales under Public Law 104-19 with the same substantive environmental protection as provided by otherwise applicable environmental laws and in accordance with the provisions of this MOA.
2. Achieve to the maximum extent feasible a salvage timber sale volume level above the programmed level in accordance with Public Law 104-19 within a framework of maintaining forest health and ecosystem management. Adhere to the standards and guidelines in applicable Forest Plans and Land Use Plans and their amendments and related conservation strategies including, but not limited to, the Western Forest Health Initiative and those standards and guidelines adopted as part of the President's Forest Plan for the Pacific Northwest, PACFISH, INFISH, and Red-cockaded Woodpecker Long-Term Strategy, as well as the goals, objectives, and guidelines contained in the NMFS biological opinion on Snake River Basin Land Resource Management Plans (LRMPs), through the interagency team approach agreed to in the May 31, 1995 agreement on streamlining consultation procedures. The agencies will direct their level one and two teams to apply the goals, objectives, and guidelines contained in the NMFS biological opinion on the Snake River Basin LRMPs as the teams deem appropriate to protect the anadromous fish habitat resource.
3. Involve the public early in the process so that there is an opportunity to provide input into the development of salvage sales, particularly in recognition of the importance of public involvement given the prohibition to administrative appeals contained in Public Law 104-19. Maintain and promote collaboration with other Federal, Tribal, State and local partners.
4. Reiterate their commitments to work together from the beginning of the process, particularly in salvage sale design, building on existing joint memoranda that streamline consultation procedures under Section 7 of the ESA including the following two agreements, other applicable agreements, and improvements thereon:
 - o - The May 31, 1995, agreement on streamlining consultation procedures under section 7 of the ESA, between Forest Service Regional Foresters of Regions 1,4,5, and 6; Bureau of Land Management State Directors for

Oregon/Washington, Idaho, and California; Fish and Wildlife Service Regional Director; and National Marine Fisheries Service Regional Directors.

- o - The March 8, 1995, agreement on consultation time lines and process streamlining for Forest Health Projects, between the Chief of the Forest Service, Director of the Bureau of Land Management, Director of the National Marine Fisheries Service, and Director of the Fish and Wildlife Service.
 - o - The March 8, 1995, agreement as it applies to consultation timelines and process streamlining will be revised to apply nationwide.
5. Ensure that personnel from their respective agencies work cooperatively and professionally to implement faithfully the objectives of Public Law 104-19 and Executive Branch direction in a timely manner. In the event that disagreements cannot be resolved at the regional level (Level 3) of the process, a panel consisting of appropriate representatives of the Forest Service, Bureau of Land Management, National Marine Fisheries Service, Fish and Wildlife Service, and EPA, will review the evidence and make a binding decision within 14 days of notice of the disagreement.
 6. Agree to conduct project analyses and interagency coordination consistent with NEPA and ESA (as set forth in paragraph 4 of this MOA) in a combined joint environmental assessment (EA) and biological evaluation (BE) called for in Public Law 104-19, except where it is more timely to use existing documents. There will be a scoping period, as described in agency guidelines, during the preparation of all salvage projects. Sales that would currently fall within a categorical exclusion promulgated by the Forest Service or Bureau of Land Management in their NEPA procedures will require no documentation absent extraordinary circumstances. For sales that the Secretary determines, in his discretion, ordinarily should require an EA under the land management agencies' NEPA procedures, agencies will prepare the combined EA/BE, including a determination of affect under ESA and circulate the analysis for 20 days of public review and comment. For sales that the Secretary determines, in his discretion, ordinarily should require an EIS under the land management agencies' NEPA procedures, the combined EA/BE will include an analysis consistent with section 102(2)(c) of NEPA and will be circulated for 30 days of public review and comment. The decisionmaker will respond to substantive comments on the EA/BE, but will not be required to recirculate a final EA/BE.
 7. Develop and use a process which will facilitate interagency review of proposed salvage sale programs on a regional scale, thus allowing other agencies to identify broad-scale issues and help set priorities for allocation of their resources.
 8. Include mitigation needs identified in the environmental assessment in timber sale design to the extent possible within existing authority. As appropriate, funds will be used for mitigation work not included in the timber sale area.

9. Measure performance of all parties' and individuals' efforts involved in the development and implementation of timber sales prepared pursuant to this MOA based upon the combined achievement of the goals set forth in this MOA.
10. Monitor and evaluate timber sale objectives and mitigation requirements as an integral part of salvage sales and the salvage program as prescribed in Forest Plans, Land Use Plans and agency direction. Public and stakeholder involvement in monitoring and evaluation will be encouraged. There will be a national salvage program review involving regions and States with significant activity under this Act.
11. Recognize and use the definition of salvage timber sale as contained in Public Law 104-19, which is a timber sale "for which an important reason for entry includes the removal of disease or insect-infested trees, dead, damaged, or down trees, or trees affected by fire or imminently susceptible to fire or insect attack." This definition allows for treating associated trees or trees lacking the characteristics of a healthy and viable ecosystem for the purpose of ecosystem improvement or rehabilitation as long as a viable salvage component exists. While this definition provides necessary flexibility to meet salvage objectives, care must be taken to avoid abuse by including trees or areas not consistent with current environmental laws and existing standards and guidelines as set forth in this MOA.

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

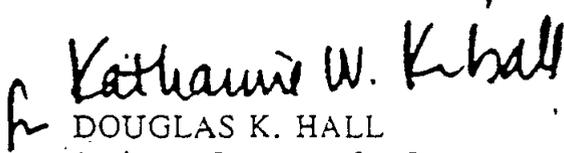
The undersigned Agency heads attest that they understand the direction in this Memorandum of Agreement and will fully comply with that direction.



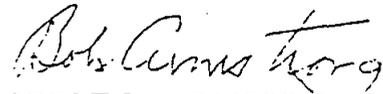
JAMES R. LYONS
Under Secretary
Natural Resources and Environment
Department of Agriculture



GEORGE T. FRAMPTON, JR.
Assistant Secretary
Fish and Wildlife and
Parks, Department of
the Interior



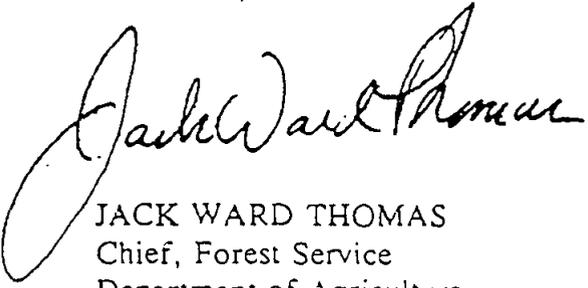
DOUGLAS K. HALL
Assistant Secretary for Oceans
and Atmosphere
Department of Commerce



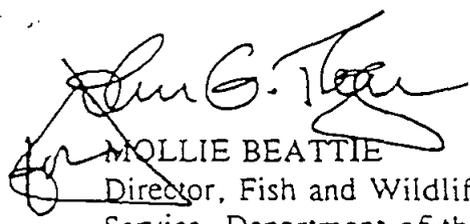
ROBERT L. ARMSTRONG
Assistant Secretary for
Land and Minerals
Management, Department of
the Interior



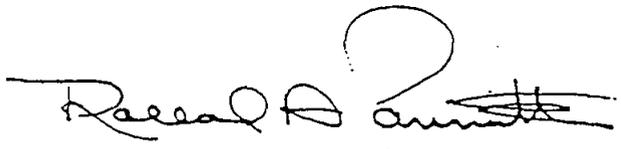
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Service
Department of Commerce



MIKE DOMBECK
Director, Bureau of
Land Management,
Department of the Interior

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

To summarize the process:

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

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

Item 8. Self-explanatory

Item 9. Self-explanatory

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

Item 11. Self-explanatory

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7 Attorneys for Plaintiffs

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON

10 PILCHUCK AUDUBON SOCIETY;)
11 OREGON NATURAL RESOURCES COUNCIL;)
12 PORTLAND AUDUBON SOCIETY;)
13 BLACK HILLS AUDUBON SOCIETY; and)
14 COAST RANGE ASSOCIATION)

15 Plaintiffs,)

16 v.)

17 DAN GLICKMAN, in his official)
18 capacity as Secretary of the)
19 United States Department of)
20 Agriculture; and UNITED STATES)
21 FOREST SERVICE)

22 Defendants.)

No. **C95-1234** *WJD*
COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

HAND DELIVERED

MSGR: ABC REC'D BY: CEP
COPY RECEIVED

AUG 10 1995

TIME: 4:30

UNITED STATES ATTORNEY
Seattle, WA

23 INTRODUCTION

24 1. By this action, plaintiffs Pilchuck Audubon Society, et
25 al. (collectively, "Audubon") seek to protect the threatened
26 marbled murrelet from risk of extinction caused by logging of its
27 old-growth and mature coastal forest habitat. Specifically,
Audubon seeks a declaration that logging of national forest
timber sale units occupied by marbled murrelets is arbitrary and
capricious and violates the logging rider to the Fiscal Year 1995
Emergency Supplemental Appropriations and Rescissions Act, Public

1 Law 104-19 (109 Stat. 194). Audubon also seeks an injunction to
2 prevent logging of these units and avoid jeopardy to the
3 continued existence of the threatened marbled murrelet.

4 JURISDICTION

5 2. This Court has jurisdiction over this action under 28
6 U.S.C. § 1331 (federal question).

7 3. Venue is proper in this district under 28 U.S.C. §
8 1391(e) because a substantial number of the timber sale units in
9 controversy are located in this district and one or more of the
10 plaintiffs resides in this district.

11 PARTIES

12 4. The plaintiffs in this action are:

13 A. Pilchuck Audubon Society, a registered Washington
14 non-profit corporation dedicated to protecting, conserving, and
15 enjoying the State of Washington's wildlife and other natural
16 resources. Pilchuck Audubon Society's principal place of
17 business is in Everett, Washington and its approximately 800
18 members live in and around Everett, Washington.

19 B. Portland Audubon Society, a registered Oregon non-
20 profit corporation dedicated to protecting and conserving the
21 wildlife, lands, waters, and natural resources of the Pacific
22 Northwest. Portland Audubon Society's approximately 5,000
23 members live in and around Portland, Oregon.

24 C. Black Hills Audubon Society, a registered
25 Washington non-profit corporation dedicated to protecting,
26 conserving, and enjoying the State of Washington's wildlife and
27 other natural resources. Black Hills Audubon Society's principal

1 place of business is in Olympia, Washington and its approximately
2 750 members live in and around Olympia, Washington.

3 D. Oregon Natural Resources Council ("ONRC"), a
4 registered Oregon non-profit corporation with its principal place
5 of business in Portland, Oregon and 6,000 members throughout the
6 State of Oregon and the Pacific Northwest. ONRC and its members
7 are dedicated to protecting and conserving Oregon's wildlife,
8 lands, waters, and natural resources, including the marbled
9 murrelet and the coastal old-growth forests.

10 E. Coast Range Association ("CRA"), a non-profit
11 organization formed under the laws of the State of Oregon with
12 its primary place of business in Newport, Oregon. CRA is
13 dedicated to the goals of protecting the forests of the Oregon
14 Coast Range from unwise use and fostering new visions of
15 environmental stewardship, long-term sustainability, and
16 biological diversity that include healthy populations of the
17 animals that occur naturally throughout the Coast Range. CRA
18 represents hundreds of members who enjoy the birdwatching and
19 other recreation that marbled murrelets provide, as well as
20 business members and individuals whose livelihood depends on the
21 Coast Range tourist industry, which is in turn dependent on the
22 healthy forests and bird populations of the Oregon Coast Range.

23 5. Plaintiffs and their members use coastal old-growth
24 forests, the habitat of the marbled murrelet, for birding,
25 wildlife observation, nature photography, aesthetic enjoyment,
26 and other recreational and educational activities. Plaintiffs'
27 members derive scientific, recreational, aesthetic, and

1 conservational benefit and enjoyment from the existence of the
2 marbled murrelet in the wild. These interests will be
3 irreparably damaged if defendants disregard their statutory
4 duties, as described below, and permit the destruction of the
5 marbled murrelet's occupied nesting habitat.

6 6. The aesthetic, conservational, recreational, and
7 scientific interests of plaintiffs and their members have been,
8 are being, and, unless the relief prayed for herein is granted,
9 will continue to be adversely affected and irreparably injured by
10 logging of the murrelet's occupied old-growth nesting habitat on
11 national forest lands. Plaintiffs have no adequate remedy at
12 law.

13 7. Defendants in this action are:

14 A. Dan Glickman, in his official capacity as
15 Secretary of United States Department of Agriculture.

16 B. The United States Forest Service, an agency of the
17 Department of Agriculture charged with management of the national
18 forest system.

19 FACTUAL BACKGROUND

20 8. The marbled murrelet is a shy, robin-sized seabird that
21 spends most of its time feeding at sea and comes inland in order
22 to nest. In the Washington, Oregon, and California portion of
23 its range, the murrelet nests exclusively in old-growth and
24 mature forest habitat primarily within 50 miles of the coast.

25 9. The marbled murrelet does not construct nests, but uses
26 large limbs, natural deformations, and other structures
27 characteristic of old-growth trees as nesting platforms. The

1 murrelet relies on stealth, speed, and the concealment provided
2 by a closed forest canopy to protect its nests from avian
3 predators. For these reasons, it is also extremely difficult for
4 human researchers and observers to locate actual murrelet nests.

5 10. In response to this difficulty, the Pacific Seabird
6 Group ("PSG"), the professional scientific organization that has
7 taken the lead in coordinating and promoting marbled murrelet
8 research, has developed and periodically refined a survey
9 protocol to detect the presence or probable absence of murrelets
10 in a forest stand. This protocol has been universally accepted
11 by the scientific community and federal and state wildlife and
12 land management agencies as the best available scientific method
13 to determine when marbled murrelets are making use of a
14 particular forest stand for nesting purposes. The protocol has
15 been adopted for use by both the United States Fish and Wildlife
16 Service ("FWS") and the United States Forest Service ("USFS").

17 11. The PSG protocol classifies certain types of behavior
18 as evidence of occupancy of a forest stand by marbled murrelets.
19 Studies have linked these occupied behaviors to nesting in a
20 forest stand. Occupied behavior, as defined in the PSG protocol,
21 is generally accepted as an indication of birds making use of a
22 suitable forest stand for nesting purposes. Based on these
23 factors and the extreme difficulty in locating specific murrelet
24 nests, murrelet researchers and agency land managers consider a
25 forest stand to contain a nesting site when surveyors have
26 detected occupied behavior in the stand.

1 12. On September 28, 1992, the FWS listed the Washington,
2 Oregon, and California populations of the marbled murrelet as a
3 threatened species under the Endangered Species Act ("ESA"), 16
4 U.S.C. § 1531 et seq. Murrelet populations within the three
5 states have declined dramatically during historic times and
6 continue to fall at present. The primary threat to the
7 murrelet's continued existence is destruction and fragmentation
8 of its old-growth nesting habitat and associated problems
9 including increased nest predation.

10 13. Following the listing of the marbled murrelet, the USFS
11 consulted with the FWS pursuant to ESA § 7(a)(2), 16 U.S.C. §
12 1536(a)(2), on the effects of existing timber sale activities on
13 the threatened seabird. On May 11, 1994, the FWS issued a
14 biological opinion to the USFS regarding 88 timber sales awarded
15 under Section 318 of the Department of Interior and Related
16 Agencies Appropriations Act for Fiscal Year 1990, Public Law 101-
17 121 (103 Stat. 745). Most of the sales already had been
18 partially logged. The biological opinion concluded that further
19 logging of 76 of the sales would be likely to jeopardize the
20 continued existence of the marbled murrelet. On June 15, 1994,
21 the FWS amended the biological opinion to add an additional sale
22 to the jeopardy list.

23 14. The biological opinion, as amended, found that 43 of
24 the 77 sales contained sale units occupied by marbled murrelets
25 as determined by surveys in accordance with the PSG protocol.
26 The biological opinion concluded that there was no reasonable and
27 prudent alternative to suspension of logging on these sales. The

1 remaining 34 sales had not been surveyed to the PSG protocol.
2 The biological opinion concluded that logging of these sales had
3 to be suspended until proper surveys could be completed.
4 Following proper surveys, unoccupied sales could be released
5 while occupied sales could not be logged.

6 15. On June 12, 1995, the FWS released an updated
7 biological opinion regarding the § 318 sales. The opinion
8 reports that 17 of the previously unsurveyed sales have been
9 released as unoccupied. The opinion further authorizes the
10 logging of three sales that have been modified to exclude
11 occupied sale units. Of the remaining 57 sales, 46 contain
12 occupied units and 11 have not been surveyed to protocol. The
13 biological opinion concludes that unoccupied units in the 57
14 sales can be logged after completion of proper surveys. On
15 information and belief, all logging operations are currently
16 suspended on all units of the 57 sales.

17 16. On July 27, 1995, the President signed into law Public
18 Law 104-19 (109 Stat. 194), the Fiscal Year 1995 Emergency
19 Supplemental Appropriations and Rescissions Act. Section
20 2001(k)(1) of the Act requires the Forest Service to release most
21 § 318 sales for logging within 45 days of the law's enactment
22 "[n]otwithstanding any other provision of law." The Forest
23 Service is not permitted to change the original terms or volumes
24 of the sales for environmental or other reasons. Id. However,
25 the Act also provides that "[n]o sale unit shall be released or
26 completed under this subsection if any threatened or endangered
27 bird species is known to be nesting within the acreage that is

1 the subject of the sale unit." § 2001(k)(2). The Act requires
2 the Forest Service to provide the purchaser an equal volume of
3 replacement timber for any sale units that cannot be released for
4 logging within 45 days. § 2001(k)(3).

5 17. Subparagraph (k)(1) of the Rescissions Act threatens
6 imminent release and logging of the 60 occupied and potentially
7 occupied § 318 sales encompassed by the FWS's jeopardy biological
8 opinions. Logging of these sales will harm individual marbled
9 murrelets and substantially reduce the likelihood of survival of
10 the threatened species in the wild.

11 18. On July 27, 1995, Audubon sent a letter to the USFS and
12 the FWS asserting that logging of the occupied § 318 sale units
13 would destroy known murrelet nesting areas, jeopardize the
14 continued existence of the species, and violate the Rescissions
15 Act and ESA §§ 7(a)(2) and 9, 16 U.S.C. §§ 1536(a)(2) & 1538.
16 The letter requested the agencies to respond to Audubon's
17 assertions and notified the agencies of Audubon's intent to sue
18 if the jeopardy sales are released for logging. Neither the USFS
19 nor the FWS has responded to Audubon's letter or provided any
20 assurance that the occupied § 318 sales will not be imminently
21 released and logged.

22 FIRST CLAIM FOR RELIEF
23 VIOLATION OF THE FY 1995 RESCISSIONS ACT
24 AND THE ADMINISTRATIVE PROCEDURE ACT

25 19. Plaintiffs incorporate by reference all preceding
26 paragraphs.

27 20. Section 2001(k)(2) of the FY 1995 Rescissions Act
prohibits release and logging of national forest timber sale

1 units that are being used for nesting by threatened bird species,
2 including the marbled murrelet.

3 21. According to the best scientific information available,
4 murrelet-occupied sites, as determined in accordance with the
5 Pacific Seabird Group protocol, are known nesting areas for the
6 threatened marbled murrelet.

7 22. Logging of § 318 timber sale units found to be occupied
8 by marbled murrelets violates § 2001(k)(2) of the FY 1995
9 Rescissions Act and is not in accordance with law, in violation
10 of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

11 SECOND CLAIM FOR RELIEF
12 VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

13 23. Plaintiffs incorporate by reference all preceding
14 paragraphs.

15 24. According to established practice of the USFS and other
16 federal and state agencies and established usage in the
17 scientific community, marbled murrelets are "known to be nesting"
18 in occupied forest stands.

19 25. Any interpretation or implementation of § 2001(k)(2) of
20 the FY 1995 Rescissions Act that allows occupied § 318 timber
21 sale units to be released for logging is contrary to this
22 established practice and usage and is arbitrary and capricious,
23 in violation of the Administrative Procedure Act, 5 U.S.C. §
24 706(2)(A).

25 PRAYER FOR RELIEF

26 WHEREFORE, plaintiffs respectfully petition the Court for
27 the following relief:

A. A declaration that release and logging of § 318 timber

1 sale units found to be occupied by the threatened marbled
2 murrelet is arbitrary and capricious and violates § 2001(k)(2) of
3 the FY 1995 Emergency Supplemental Appropriations and Rescissions
4 Act.

5 B. An injunction prohibiting release and logging of § 318
6 timber sale units found to be occupied by the threatened marbled
7 murrelet.

8 C. A temporary restraining order or preliminary injunction
9 as necessary to preserve the status quo and prevent irreparable
10 harm to the threatened marbled murrelet.

11 D. An award of reasonable attorney fees and costs incurred
12 in this action.

13 E. Such other relief as the Court deems reasonable and
14 necessary.

15 Respectfully submitted this 10th day of August, 1995.

16
17
18 
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Submission Pursuant to Article 14 of the
North American Agreement on Environmental Cooperation
on the U.S. Logging Rider

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On Behalf of:

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Hells Canyon Preservation Council, Idaho Conservation League,
Inland Empire Public Lands Council,
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National Audubon Society, Natural Resources Defense Council,
Northcoast Environmental Center,
Northwest Ecosystem Alliance, Oregon Natural Resources Council,
Pacific Coast Federation of Fishermen's Associations,
Pacific Rivers Council, Pilchuck Audubon Society,
Portland Audubon Society, Seattle Audubon Society,
Southern Rockies Ecosystem Project,
Western Ancient Forest Campaign, The Wilderness Society,
Earthlife Canada Foundation *operating as* BC Wild,
Environmental Resource Centre of Alberta,
Centro Mexicano de Derecho Ambiental, Grupo de Los Cien,
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August 30, 1995

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INTRODUCTION

This submission, filed pursuant to Article 14 of the North American Agreement on Environmental Cooperation ("NAAEC" or the "Agreement"), raises serious concerns about an egregious failure by the U.S. Government to effectively enforce its environmental laws governing logging on federal lands. Specifically, the U.S. Congress has passed, and the President has signed into law, the Fiscal Year 1995 Supplemental Appropriations, Disaster Assistance and Rescissions Act ("Rescissions Act"), Pub. L. No. 104-19, 109 Stat. 194 (July 27, 1995) (Exhibit 1), which contains a rider suspending enforcement of U.S. environmental laws for a massive logging program on U.S. public lands. U.S. environmental laws governing logging remain on the books and even remain applicable to logging on these federal forests. The rider, however, erects what may be insurmountable obstacles to citizen enforcement of these environmental laws for the expansive logging mandated or permitted by the rider.

The sponsor of the logging rider in the House of Representatives summed up the stark impact of the rider on enforcement of U.S. environmental statutes:

This means, for example, that the Secretary cannot be sued for violation of the Clean Water Act, the provisions of the National Forest Management Act concerning species' viability, unsuitability, or consistency with the resource management plans, or the jeopardy or take standards of the Endangered Species Act. Furthermore, as indicated, a [timber] sale can be offered that does not comport with a resource management plan, or interim guidelines, or management directives. ... Finally, a sale can be offered even if it would be barred under any decision, injunction, or order of any federal court.

141 Cong. Rec. H3233 (daily ed. March 14, 1995) (statement of Rep. Taylor). True to its design, the logging rider obstructs public participation and citizen enforcement of U.S. environmental laws. While the undersigned will seek to mitigate the rider's harsh effects, such efforts are sure to be costly, difficult, and less effective than direct citizen enforcement of U.S. environmental laws.

This submission seeks preparation by the Secretariat of a factual record pursuant to Article 15 of the Agreement (or, in the alternative, under Article 13). In addition, this submission raises the prospect that the U.S. Congress is embarking on a race to the bottom by attempting to suspend enforcement, funding, and implementation of a vast array of environmental laws and programs. This development threatens the fundamental underpinnings of the NAAEC — that environmental protection and economic development may go hand in hand. Before this race to the bottom propels North American countries on a downward spiral, the Secretariat should facilitate a dialogue and thorough analysis of the current move to suspend and defund environmental enforcement and implementation. The Secretariat has the power to retain experts, facilitate consultations, and sponsor conferences, seminars, symposia, and the like. Article 13. The Secretariat should use these powers to assess, and to ensure that the parties assess, the full implications of short-sighted and widespread circumvention of environmental laws.

I. THE LOGGING RIDER

The logging rider to the Rescissions Act is a far-reaching assault on U.S. public forests and environmental laws. To promote a cheap supply of timber from federal lands for timber industries,

the logging rider suspends enforcement of most U.S. environmental laws with respect to logging for so-called "salvage" purposes and also for non-salvage logging in the Western Ancient Forests.

It is important to recognize that the logging rider did not emerge as free-standing legislation. If it had, it would have been referred to congressional committees with jurisdiction to hold hearings, analyses, committee votes, and public reports. It also would have been more visible to the public, U.S. trading partners, and Members of Congress.

Instead, the logging rider was tacked onto a popular budget-cutting and disaster-assistance measure that few Members of Congress wanted to vote against. The rider was not the subject of full congressional scrutiny, which normally includes public hearings, committee review, and committee and floor votes on substantive legislation. Even the committees with jurisdiction over forestry and forest reserves were denied the opportunity to review fully and comment on the rider in violation of congressional rules. See House Rules X.1 (a)(15), (1)(2); Senate Rules XXV(1)(a)(1)(10). This circumvention of ordinary rules of congressional process stifled fully informed consideration of the important policy and ecological questions raised by the rider. Folding the rider into a popular fast-moving piece of legislation is the type of political logrolling that prevents a publicly-accountable vote and forces Members of Congress to accept undesirable legislation as part of a larger package.

The logging rider effectively suspends enforcement of environmental laws for two logging programs: (1) logging in the old-growth forests under Option 9 -- the plan adopted by federal agencies to balance timber harvest against protecting old-growth dependent species like the northern spotted owl, salmon, and other aquatic species; and (2) so-called salvage logging. For both logging programs, the rider provides that whatever environmental analysis is produced and whatever procedures are followed by federal agencies for such timber sales "shall be deemed to satisfy the requirements" of several specifically listed and "[a]ll other applicable Federal environmental and natural resource laws." Rescissions Act, § 2001(i)(1)-(7) & (8). Accordingly, the logging rider provides that such timber sales are specifically not subject to challenge for violations of such laws. Id. § 2001(f)(4).

As Senator Slade Gorton, the principal sponsor of the rider in the Senate, explained, the rider contains "what is commonly known as 'sufficiency language' -- language insulating timber sales from frivolous legal challenges filed under various environmental statutes." 141 Cong. Rec. at S10,463 (daily ed., July 21, 1995). While Senator Gorton referred to "frivolous" legal challenges, sufficiency provisions are not so discriminating, but instead close the door to all legal actions to enforce the specified environmental laws.

With respect to the old-growth forests, the logging rider directs the Secretary of Agriculture expeditiously to prepare, offer, and award timber contracts on these forests. It then provides that any such timber sales are deemed to satisfy all federal environmental laws, Rescissions Act, § 2001(i), and specifically are not subject to administrative appeals or challenge for violations of such laws. Id. §§ 2001(e) & (f)(4).

The rider's definition of "salvage timber sale" is incredibly broad encompassing any timber sale:

for which an important reason for entry includes the removal of disease- or insect-infested trees, dead, damaged, or down trees, or trees affected by fire or imminently susceptible to fire or insect attack. Such term also includes the removal of associated trees or trees lacking the characteristics of a healthy and viable ecosystem for the purpose of ecosystem improvement or rehabilitation, except that any such sale must include an identifiable salvage component of trees described in the first sentence.

Rescissions Act, § 2001(a)(3).

The rider directs the Secretaries of Agriculture and Interior to increase the volume of salvage timber sales "to the maximum extent feasible" between July 27, 1995, when the rider became law, to December 31, 1996, when it expires. Under the rider, the Secretaries need only prepare one document combining an environmental assessment under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332(2)(E), and a biological evaluation under the Endangered Species Act, 16 U.S.C. § 1536(a)(2). Rescissions Act, § 2001(c)(1)(A).

As with Option 9 timber sales, the rider provides that salvage timber sales "shall not be subject to administrative review," Rescissions Act, § 2001(e), and that the sales "shall be deemed to satisfy all federal environmental and natural resource laws." *Id.* § 2001(i). No claims alleging violations of federal environmental laws may be heard, *id.*, § 2001(f)(4) & (i), and the relief and procedures for other, limited claims that may be brought are sharply curtailed. *Id.* § 2001(f).

The logging rider leaves federal environmental laws in place. It simply eviscerates effective enforcement of those laws. In addition, it eliminates opportunities for the public to participate in and comment on the sales and their environmental effects. Through administrative appeals and court challenges, the public can ameliorate harmful environmental effects of specific timber sales and ensure compliance with environmental laws. The rider effectively suspends these avenues for public participation.^{1/}

II. THE ROLE OF CITIZEN ENFORCEMENT IN ENSURING LOGGING ON FEDERAL LANDS COMPLIES WITH FEDERAL ENVIRONMENTAL LAWS

One of the cornerstones of our democracy is that government agencies are not above the law. As Chief Justice Marshall stated so eloquently in Marbury v. Madison, the right of individuals

^{1/} The rider even seeks to foreclose any proceedings under the NAAEC. Thus, it deems the timber sales to satisfy any "executive agreement, convention, treaty, and international agreement...." *Id.*, § 2001(i)(7). Although Senator Hatfield and Representative Taylor stated that this provision was added to foreclose any claim that the rider violated the North American Free Trade Agreement ("NAFTA"), 141 Cong. Rec. H6638 (daily ed. June 29, 1995); 141 Cong. Rec. S10,465 (daily ed. July 21, 1995), they were most likely referring to this submission and thus to the NAAEC, not NAFTA. The United States cannot selectively exempt itself from the NAAEC (or from NAFTA for that matter). The NAAEC entered into force, *i.e.*, became a binding international obligation, on January 1, 1994. NAAEC Article 51. The United States, like any other party, may withdraw after providing six months notice, *id.* Article 54, but there is no provision for the United States to opt out of the Agreement on a case-by-case basis.

to challenge government violations of the law is "the very essence of civil liberty." It is inimical to both this fundamental tenet of democracy and to the design and effectiveness of our environmental laws to suspend citizen enforcement of them.

A. Administrative Appeals Enable Citizens To Enforce Environmental Laws.

The administrative appeal process resolves disputes, modifies environmentally unsound decisions, and shapes future of land management actions without litigation. Administrative appeals are not a new idea; the United States Forest Service has conducted administrative appeals since 1906. As a Forest Service employee observed:

What have we learned from appeals? The biggest lesson is that we don't always follow our own rules. We have been inconsistent in how we apply them, seemingly doing what is right and proper when it is convenient and doing something else when it is not. We haven't always given people notice of proposed actions so they view some actions as end runs to avoid involving them in planning. Our documentation is often incomplete. Our written decisions are often unclear, and our writing too often fuzzy and obtuse. We've relied on after-the-fact explanations to satisfy NEPA obligations instead of doing NEPA correctly in the first place. Often, Deciding Officers make decisions that are reserved to Reviewing Officers. Lastly, and as GAO [General Accounting Office] reported, we seldom meet required timelines. In summary, our record hasn't been good.

Larry Hill, Staff Assistant to the Deputy Chief, National Forest System, USDA Forest Service, A Glimpse of the USDA Forest Service Administrative Appeals Process, Cong. Research Serv. Symposium on Appeals, at 6-7 (Nov. 17, 1989).

Administrative appeals provide the public an opportunity for input into timber sale decisions and give the agency a chance to correct its own mistakes. In a review of 100 timber appeals, the Forest Service found that it lost on review 90% of the time because of failure to comply with NEPA. *Id.* at 7. And yet the Forest Service believed that "[l]egislative attempts to modify agency NEPA, planning, or appeal procedures simply puts attention in the wrong place and postpones the inevitable." *Id.* at 4.

In fact, in 1992, Congress passed the Craig/DeConcini Forest Service appeals amendment to the Fiscal Year 1993 Interior Appropriations Bill. Section 322 of the 1993 Interior Appropriations Act, Pub. L. No. 102-381, 106 Stat. 1419 (1992). This amendment statutorily mandates the Forest Service's administrative appeals process. As Senator Leahy said in support of the Craig/DeConcini amendment: "we have now preserved an appeals process that gives the citizens of this county an opportunity to participate in the management of their National Forests." 138 Cong. Rec. S15848 (1992) (statement of Sen. Leahy).

B. Citizen Suits Provide Effective Enforcement of Environmental Laws Against the Government.

Private enforcement actions are the most effective, indeed, often the only, means of enforcing environmental laws against the federal agencies managing public forests. By way of example, litigation brought by several environmental organizations, including several of the

undersigned, uncovered what a federal judge called "a remarkable series of violations of the environmental laws" in the Forest Service's logging activities in the threatened spotted owl's habitat. Seattle Audubon Society v. Evans, 771 F. Supp. 1081 (W.D. Wash.), aff'd, 952 F.2d 297 (9th Cir. 1991).

The northern spotted owl lives in the old-growth forests of the Pacific Northwest. As explained by one of the courts addressing illegalities in management of those forests:

Why all the fuss about the status and welfare of this particular bird? The numbers, distribution, and welfare of spotted owls are widely believed to be inextricably tied to mature and old-growth forests.

771 F. Supp. at 1088 (quoting Interagency Scientific Committee, A Conservation Strategy for the Northern Spotted Owl 7 (1990)). Similarly, "[t]he owl is considered an 'indicator species' for old-growth forest, meaning that the presence and number of northern spotted owls give an accurate indication of the health of the old-growth forest and the presence of other old-growth dependent species. As go the owls, naturalists say, so go the other species." Portland Audubon Soc'y v. Lujan, 884 F.2d 1233, 1235 (9th Cir. 1989), cert. denied, 494 U.S. 1026 (1990).

Prior to citizen enforcement of U.S. environmental laws, the Pacific Northwest forests were managed with little regard for the owl, the health of the forest ecosystem, and the law. Federal agencies sought to ensure logging of the old-growth forests at record levels throughout the 1980s at great, indeed tragic, costs to this treasured ecosystem.

- A citizen suit compelled the U.S. Fish and Wildlife Service to list the northern spotted owl under the Endangered Species Act with a federal judge ruling that:

[T]he Service disregarded all the expert opinion on population viability, including that of its own expert, that the owl is facing extinction, and instead merely asserted its expertise in support of its conclusions. The Service has failed to provide its own or other expert analysis supporting its conclusions. . . . Accordingly, the [FWS'] decision not to list at this time the northern spotted owl as endangered or threatened under the Endangered Species Act was arbitrary and capricious and contrary to law.

Northern Spotted Owl v. Hodel, 716 F. Supp. 479, 483 (W.D. Wash. 1988).

- Litigation forced the Fish and Wildlife Service to designate critical habitat for the northern spotted owl under the Endangered Species Act. Again, a federal district court harshly criticized the agency's failure to act:

The federal defendants fail to direct this Court to any portion of the administrative record which adequately explains or justifies the decision not to designate critical habitat for the northern spotted owl. . . . Whatever the precise contours of the Service's obligations under the ESA, clearly the law does not approve such conduct.

Northern Spotted Owl v. Lujan, 758 F. Supp. 621, 627-28 (W.D. Wash. 1991).

- Another citizen suit compelled the Bureau of Land Management to consult with the Fish and Wildlife Service on the effects of logging under its management guidelines on the northern spotted owl, as required by the Endangered Species Act. Lane County Audubon Society v. Jamison, 958 F.2d 290, 294 (9th Cir. 1992).
- When the Bureau of Land Management refused to analyze new, significant information about the risk of extinction facing the owl, a district court held that the agency acted arbitrarily, capriciously, and in violation of the National Environmental Policy Act:

It is the duty of the BLM [under NEPA] to identify, evaluate and address the new information, allow public comment, and formulate its plans accordingly. The only credible conclusion to be reached in this controversy, regardless of which "responsible experts" the court chooses to believe, is that NEPA requires the public to be involved, and the BLM has not followed procedures to allow the public to be involved.

Portland Audubon Society v. Lujan, 795 F. Supp. 1489, 1502 (D.Or. 1992), aff'd, 998 F.2d 705 (9th Cir. 1993).

- Another federal judge ordered the Forest Service to adhere to the public process for revising land management plans prescribed in the National Forest Management Act. See 36 C.F.R. § 210.6(a)(1),(2). Seattle Audubon Society v. Robertson, No. C89-160WD, 1991 WL 180099 (W.D. Wash. Mar. 7, 1991). Noting express directions of the Secretaries of Interior and Agriculture to abandon efforts to prepare an environmental impact statement and considerable political pressure on agency scientists to create a plan which had a minimal impact on logging but little probability of protecting the owls, the district judge further observed:

More is involved here than a simple failure by an agency to comply with its governing statute. The most recent violation of NFMA exemplifies a deliberate and systematic refusal by the Forest Service and the FWS to comply with the laws protecting wildlife. This is not the doing of the scientists, foresters, rangers, and others at the working levels of these agencies. It reflects decisions made by higher authorities in the executive branch of government.

Seattle Audubon Soc'y v. Evans, 771 F. Supp. 1081, 1090 (W.D.Wash.), aff'd, 952 F.2d 297 (9th Cir. 1991).

- Another citizen suit uncovered that the Forest Service's environmental impact statement on its 1992 timber management plan still failed to address "[a] chief concern of scientists of all persuasions . . . whether the owl can survive the near-term loss of another half-million acres of its habitat." Seattle Audubon Soc'y v. Moseley, 798 F. Supp. 1473, 1478 (W.D. Wash. 1992), aff'd, 998 F.2d 699 (9th Cir. 1993). The Court also held that the Forest Service had failed to assess whether its plan would maintain viable populations of other species that depend on old-growth forests:

The FEIS has thus mentioned what appears to be a major consequence of the

plan -- jeopardy to other species that live in the old-growth forests -- without explaining the magnitude of the risk or attempting to justify a potential abandonment of conservation duties imposed by law. An EIS devoid of this information does not meet the requirements of NEPA.

Id. at 1483.

This series of enforcement actions ultimately forced the federal agencies to devise a plan that took into account the needs of the northern spotted owls, salmon, and other old-growth dependent species while allowing some logging in old-growth forests. That plan is known as Option 9 because it was the ninth of ten alternatives considered by the government in its planning process. Although many of the undersigned organizations challenged that plan, as did the timber industry (for different reasons), a U.S. district court upheld the plan. The court noted that "the order now entered, if upheld on appeal, will mark the first time in several years that the owl-habitat forests will be managed by the responsible agencies under a plan found lawful by the courts." Seattle Audubon Society v. Lyons, 871 F.Supp. 1291, 1300 (W.D. Wash. 1994), appeal pending, 9th Cir. Nos. 95-35052, 95-35214, 95-35215.

C. Citizen Enforcement Is Critical To Ensuring Enforcement Of Option 9.

The Clinton Administration adopted Option 9 to allow some logging to go forward in the old-growth forests, subject to a set of environmental safeguards for streams, rivers, and salmon. Option 9 also set aside reserves of old-growth forests to be safe harbors for old-growth dependent species like the northern spotted owl. Option 9 subjects all logging to a series of environmental analyses, starting with a large-scale snapshot of ecosystem conditions in a watershed analysis, and ending with site-specific consideration of environmental impacts for particular timber sales, road building, and other activities.

In a legal challenge to Option 9, environmental groups argued that Option 9 relied too heavily on untested environmental planning processes and future monitoring. Although the district court upheld the plan, it cautioned that:

[A]ny more logging sales than the plan contemplates would probably violate the laws. Whether the plan and its implementation will remain legal will depend on future events and conditions. . . . Careful monitoring will be needed to assure that the plan, as implemented, maintains owl viability. New information may require that timber sales be ended or curtailed. . . . The effectiveness of the [Aquatic Conservation Strategy] is still subject to debate among scientists. If the plan as implemented is to remain lawful the monitoring, watershed analysis, and mitigating steps called for by [Option 9] will have to be faithfully carried out, and adjustments made if necessary.

Seattle Audubon Society v. Lyons, 871 F. Supp. 1291, 1300, 1321-22 (W.D. Wash. 1994). In addition, the court observed that:

The plan includes monitoring for implementation, verification as to results, and validation as to the underlying assumptions. . . . As written it is legally sufficient. It remains, of

course, to be carried out. Monitoring is central to the plan's validity. If it is not funded, or not done for any reason, the plan will have to be reconsidered.

Id. at 1324.

The court's conclusion is significant because rather than impose prescriptions and limits on all logging, Option 9 leaves some of the most critical decisions, particularly with respect to protecting aquatic species, to future assessments and decisionmaking processes. Without the kind of active citizen oversight that led to the production of Option 9, the monitoring and on-going assessment that is essential to the plan's effectiveness is unlikely to take place.

D. Citizens Suits Are Vital To Ensuring Salvage Sales Comply With U.S. Environmental Laws.

Citizen enforcement is equally important for salvage sales. Prominent scientists believe that "salvage logging and the accompanying roadbuilding is one of the most damaging management practices that could be proposed for burned areas." Letter to President Clinton from G. Wayne Minshall, et al. (Sept. 19, 1994) (Exhibit 2).

First, salvage logging and its associated sediment impacts often degrade watersheds so that they can no longer sustain viable populations of salmon and bull trout, both of which are in dire straits in the Pacific Northwest and Upper Columbia River Basin.

Second, salvage logging is occurring in roadless areas which provide the last undisturbed habitat for many forest species, including grizzly bears, gray wolves, lynx, and elk. These areas are often off-limits to green tree logging and associated road-building, although this is not the case under the logging rider. Salvage logging also removes downed trees (or snags) that are home to numerous birds and forest dwellers, such as woodpeckers and bats.

Third, low-burn fires cause many forest areas to be in better ecological health than they have been since European settlement. The Forest Service's own environmental impact statements for two recent fire sales have reached this conclusion.

The Forest Service found that the Copper Butte fire on the Colville National Forest in Washington provided ecological benefits:

The Copper Butte fire has done an excellent job of providing sites for the establishment of young, seral stands of trees. In the process, the fire often killed stands of overcrowded trees, over mature trees, or diseased trees. ... Overall, the fire had a positive effect on forest health and we can anticipate large areas regenerated to young healthy trees that can be managed (or not) to meet a variety of resource objectives.

Copper Butte Fire Salvage Sale Final Environmental Impact Statement at III-17. Indeed, the Forest Service stated that "[f]rom a silvicultural standpoint, salvage of dead trees does little to improve stand health and vigor." Id.

In the Boise River salvage sale, the largest timber sale ever offered on the Boise National Forest in Idaho, over half of the Boise River sale area -- about 40,000 acres -- burned at low intensity during the 1994 wildfires. The Forest Service found that:

Many of the lightly burned landscapes are probably the closest they have been to their historic range of variability [in] the past 100 years.

Boise River Wildfire Recovery Project Final Environmental Impact Statement at III-57. In areas of low burn,

there is little change to the important watershed conditions and associated resources. Oftentimes, there is a benefit to soil nutrient recycling, increased riparian vegetative growth, and reduction in risk from future catastrophic wildfires.

Id. at III-29.

As with Option 9, the courts have recognized the importance of judicial oversight of salvage logging. Indeed, in denying a request for an injunction with respect to the Boise River salvage sale, a district court expressly reserved jurisdiction over the case to ensure that the "specific mitigation measures, Project prescriptions, and Timber Sale Contract requirements will be strictly monitored to ensure the Project's credibility and to exact strict compliance from the timber sale purchasers." Idaho Conservation League, et al. v. Forest Service, No. CV 95-0257-S-EJL (D. Idaho July 21, 1995).

The potential for significant adverse environmental effects from salvage logging is heightened by the sheer magnitude of the rider's salvage program and by the broad definition of "salvage timber sales" to include many green or live tree timber sales.

By effectively cutting off citizen enforcement of federal environmental statutes, federal agencies are elevated above the law. President Clinton indicated his satisfaction with the final version of the rider because it permits the agencies to follow the law. This "largess" of Congress provides little solace to those who have witnessed "a remarkable series of violations of the environmental laws" by these same agencies. Moreover, the logging rider does not permit compliance with many administrative and judicial review provisions, thereby obstructing citizens' ability to have input in shaping timber sales and to hold the government accountable to the law.

III. THE LOGGING RIDER CONSTITUTES A FAILURE TO EFFECTIVELY ENFORCE U.S. ENVIRONMENTAL LAWS WITH RESPECT TO LOGGING.

During the negotiations leading to NAFTA, the public expressed grave concerns that a country might weaken or deliberately fail to enforce its environmental laws in order to lure foreign investment and otherwise obtain an unfair advantage. Many feared that NAFTA would fuel a race to the bottom, creating incentives for the three NAFTA countries to lower their environmental standards to increase their competitive position within North America.

To address concerns that NAFTA would fuel a race to the bottom, the three NAFTA countries negotiated the NAAEC to further "enhance compliance with, and enforcement of,

environmental laws and regulations." NAAEC Article 1(g). Under the NAAEC, each country "shall effectively enforce its environmental laws and regulations." Id., Article 5(1).

To ensure that countries abide by this obligation, citizens may file submissions asserting that a party is failing to effectively enforce its environment laws. NAAEC, Article 14. The Secretariat has the power to investigate such matters and to develop a factual record. Id., Article 15. This submission warrants an investigation because it raises (1) a failure to effectively enforce (2) U.S. environmental law.

A. Suspending Citizen and Judicial Enforcement Is A Failure to Effectively Enforce.

The logging rider eliminates the most effective (and often only) mechanism for enforcing U.S. environmental statutes against federal agencies managing public forests. The spotted owl controversy reveals the prolonged recalcitrance of these agencies to abide by such laws until the courts ordered them to do so. Suspending citizen enforcement of federal environmental laws constitutes a failure to effectively enforce such laws.

The NAAEC itself elaborates on what constitutes effective enforcement of environmental laws. Thus, it obligates countries:

To "ensure that judicial, quasi-judicial or administrative enforcement proceedings are available under its law to sanction or remedy violations of its environmental laws and regulations," Article 5(2), and

To "ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial or judicial proceedings for the enforcement of the Party's environmental laws and regulations." Article 6(2).

More specifically, interested persons must have the ability "to seek . . . orders to mitigate the consequences of violations of its [a Party's] environmental laws and regulations" and "to seek injunctions where a person suffers, or may suffer, loss, damage or injury as a result of conduct by another person under that Party's jurisdiction contrary to that Party's environmental laws and regulations . . ." Article 6(3)(b) and (d).

In addition, NAAEC Article 6(1) provides that "[e]ach Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and regulations and shall give such requests due consideration in accordance with law." Under the NAAEC, the Parties must also preserve the right "to request competent authorities to take appropriate action to enforce that Party's environmental laws and regulations in order to protect the environment or to avoid environmental harm." Article 6(3)(c); see also Principle 10 of the Rio Declaration on Environment and Development ("Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided").

The undersigned have legally recognized interests under U.S. law to protect endangered species and natural areas from which their members obtain aesthetic, recreational, and avocational

benefit. Sierra Club v. Morton, 405 U.S. 727 (1972). To protect those interests, they have the right under U.S. law to file administrative appeals seeking changes to timber sales to comply with environmental laws and to challenge timber sales in federal court for violating federal environmental laws.

Administrative appeals enable the public to request modifications in timber sales to comply with U.S. environmental laws. The logging rider short-circuits this avenue of appeal in violation of NAAEC Article 6(1) and (3)(c).

Litigation provides those harmed by environmentally destructive logging "to seek injunctions," "to seek . . . orders mitigating the consequences," and to otherwise "remedy violations of [a country's] environmental laws and regulations." By eliminating the most effective (and often only) judicial remedies for violations of environmental laws, the logging rider violates NAAEC Articles 5(2) and 6(3)(b), (d).

B. The Rider Targets Enforcement of Environmental Laws.

While the NAAEC specifies that the term "environmental law" excludes laws whose primary purpose is to manage the commercial harvest of natural resources, Article 45(2)(b), that exclusion is inapplicable to the core purpose of the rider's sufficiency provision. The NAAEC applies to any provision of law, "the primary purpose of which is the protection of the environment," including "wild flora or fauna, endangered species, their habitat, and specially protected natural areas." Article 45(2)(a) & (iii). The primary purpose is determined by reference to each statutory or regulatory provision, rather than to the law as a whole. Article 45(2)(c).

The principal target of the logging rider's sufficiency provision is environmental mandates, not other laws governing commercial harvest. While some of the federal statutes named in the rider's sufficiency language have provisions governing the management of commercial harvest of natural resources for reasons other than protecting the environment, those provisions are not the primary focus of the logging rider, nor are they the focus of this submission.

Indeed, the rider's sufficiency provision names the National Environmental Policy Act and the Endangered Species Act, both of which have environmental protection as their sole purpose. Rescissions Act, § 2001(i). Moreover, the specific legal controversies targeted by the rider imposed environmental safeguards on logging in old-growth habitat in order to protect threatened species, namely the northern spotted owl and the marbled murrelet. Id. §§ 2001(d) & (k).

Not only are many of the listed statutes designed exclusively to protect the environment, even those dealing with various aspects of logging have specific provisions mandating protection of wildlife viability, water quality, and soil productivity. See, e.g., National Forest Management Act, 16 U.S.C. § 1604(g)(3)(E)(i), (iii); 36 C.F.R. §§ 219.19, 219.27(a). The rider itself acknowledges that it is designed to and, in fact, does reach environmental laws in its catch-all suspension of enforcement of "[a]ll other applicable Federal environmental" laws. Rescissions Act, § 2001(i)(8).

IV. THIS SUBMISSION RAISES MATTERS WHOSE FURTHER STUDY WOULD ADVANCE THE GOALS OF THE NAAEC.

This submission raises important issues whose further study would advance the goals of the NAAEC.

A. Failure To Effectively Enforce Environmental Laws and Denial of Private Remedies.

Of course, by cutting off effective citizen and judicial enforcement of U.S. environmental laws, the logging rider blatantly violates the core principles of the NAAEC. In this particular context, suspending enforcement is synonymous with eviscerating important private remedies, in violation of another overriding NAAEC objective.

B. Transparency And Fair Process.

The rider collides with the transparency and fair process principles that permeate the entire Agreement. One of the Agreement's objectives is to "promote transparency and public participation in the development of environmental laws, regulations and policies." Article 1(h). This is in keeping with Principle 10 of the Rio Declaration on Environment and Development, which provides: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level."

To achieve this objective, the NAAEC requires the Parties to publish advance notice of proposed laws of general application and to afford interested persons a reasonable opportunity to comment on them. Article 4(2). For more specific government actions, the Parties must ensure that interested persons have access to "fair, open and equitable" administrative and judicial enforcement proceedings at which they may present information, support their positions, and seek review and correction of final decisions, in accordance with the country's law. Article 5(2), 6(1), 7(1), (1)(c), (3), (4).

In contravention of these principles, timber sales may be developed under the logging rider without administrative appeal rights. Eliminating such public input denies the agencies information that may be useful in shaping the project and may be essential to preventing long-term environmental harm.

Not only does the rider clash with the openness and fairness principles embodied in the NAAEC, but the process by which this rider became law also contravenes those principles. Incorporating the logging rider into the popular rescissions legislation denied this measure a full and fair hearing on its own merits, and ensured its passage even though it is doubtful that Congress would have adopted it as stand-alone legislation. Neither the public nor our trading partners had notice that a significant environmental (or more correctly, an anti-environmental) initiative was buried in that bill. No public hearings were held on the rider, and the final vote in the House took place before Members (or the public) had access to an agreement on the particular reach of the rider. 141 Cong. Rec. H6637-38 (daily ed., June 29, 1995) (Rep. DeFazio). The NAAEC recognizes the importance of open and fair processes to adoption of strong environmental protection. The logging rider is proof positive of that link.

C. Environmental Assessments.

The NAAEC requires the countries to "assess, as appropriate, environmental impacts." Article 2(c). The logging rider severely truncates the environmental assessment process for timber sales.

D. Avoidance Of Trade Distortions And Economically Inefficient Environmental Measures.

The NAAEC seeks to "avoid creating trade distortions" and to "promote economically efficient and effective environmental measures." Article 1(e), (i). The logging rider violates these principles because it mandates a massive salvage logging program, regardless of economic and environmental costs. Indeed, it provides that "[s]alvage timber sales undertaken pursuant to this section shall not be precluded because the costs of such activities are likely to exceed the revenues derived from such activities." Rescissions Act, § 2001(c)(6).

Timber sales, particularly salvage timber sales, often are loss leaders. Particularly, outside the old-growth forests, below-cost sales are commonplace. The costs of preparing and administering the sales, environmental documentation, reforestation, and payments made to counties from the proceeds of the sales often exceed the sale revenues. Especially when environmental costs of unsound logging are considered, the moneys generated by timber sales are inadequate to cover the taxpayers' costs of the sales. This phenomenon has been exacerbated in recent months; for many recent timber sales east of the Cascade crest, including portions of the Copper Butte Fire Salvage, the Boise Fire Sale, and green tree sales on the Okanogan and Idaho Panhandle National Forests, there have been no original bidders and the asking price has been greatly reduced to attract bids in second offerings. Seattle Times, Aug. 17, 1995.

Not only will the logging rider lead to economically inefficient logging, but it may also provide a subsidy to timber companies logging on public lands and otherwise distort softwood lumber trade. For over a decade, the United States and Canada have been embroiled in heated disputes over Canadian subsidies of softwood lumber products through below-market stumpage rates for timber from provincial lands. The two countries are engaged in consultations to try to resolve this longstanding dispute. The logging rider threatens to upset those consultations. By increasing the supply of timber from U.S. forests, it will drive down the price of timber, which will, in turn, reduce the price commanded by Canadian timber exported to the United States. See Congressional Research Service Memorandum on Stumpage Price Change Associated with Changing Forest Service Timber Salvage Sales (March 7, 1995) (Exhibit 3) (projecting 13-16% price decline for softwood lumber under House version of logging rider). In this way, the logging rider threatens to upset consultations that may resolve a trade controversy that has plagued the United States and Canada for years. By pursuing this submission, the Secretariat may be able to play a useful role in forestalling further trade distortions and controversies in this area.

E. Diminishing Environmental Protection.

By eliminating effective enforcement of environmental standards, the logging rider has the effect of lowering environmental protection. It does this not by actually changing the controlling environmental standards, but by essentially rendering them unenforceable.

In this respect, the logging rider is distinct from a change in the underlying environmental standards. The U.S. Congress did not make a reasoned decision that the normative environmental standards should be changed. Thus, it did not change the level of environmental protection afforded under its laws, something it has the right to do. NAAEC, Article 3. If Congress had squarely addressed the environmental standards, the public and U.S. trading partners could have provided their views and held elected officials accountable for their decisions. Instead, Congress sidestepped full, public deliberations about the level of environmental protection afforded under U.S. law, while ensuring that existing environmental protections would be almost impossible to attain.^{2/}

In sum, this submission raises important concerns that fall squarely within the purposes and safeguards of the NAAEC. Further study by the Secretariat would further the purposes of the Agreement.

V. THE CONDITIONS FOR ARTICLE 14 SUBMISSIONS ARE MET.

Article 14 of the NAAEC sets forth several conditions that must be met for the Secretariat to consider and request a response to a submission. These conditions are met here.

A. Harm to the Submitters

The U.S. submitters, who are identified on the cover page, have utilized administrative and judicial proceedings to ensure adequate enforcement of environmental laws applying to logging on federal forests. The logging rider precludes them from effectively using administrative appeals and the courts to facilitate or compel compliance with U.S. environmental laws. As a result, many environmental violations will be left unredressed and a great deal of on-the-ground environmental harm will occur. Members of the undersigned U.S. organizations are harmed because they use public lands and resources for recreation, aesthetic enjoyment, and their livelihoods and avocations, particularly in the case of the commercial fishing groups joining the submission. The organizations themselves are harmed because they promote the interests of their members and achieve their organizational missions through the administrative and judicial avenues foreclosed by the logging rider. See NAAEC, Article 14(2)(a). The Mexican and Canadian submitters have an interest in ensuring that the U.S. does not suspend enforcement of its environmental laws and thereby initiate a race to the bottom.

^{2/} The logging rider offends the spirit of the NAFTA admonition to avoid waiving or derogating from environmental measures to attract or retain investment. NAFTA, Article 1114. However, the undersigned do not contend that the rider violates the letter of these commands because the sponsors of the rider sought the measure to protect domestic jobs, rather than to lure foreign investment. Moreover, while the logging rider contravenes the NAAEC direction to each country to "ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations," Article 3, this submission does not involve a change in the level of environmental protection, as discussed in the text.

B. Communication to U.S. Authorities

Many of the undersigned organizations have communicated their views to Members of Congress, the President, the Vice President, the U.S. Representative to the CEC, and the agencies that manage federal forest lands, among others. See NAAEC, Article 14(1)(e). A copy of a letter sent to the above-named Executive Branch officials urging defeat of the rider is attached (Exhibit 4). Carol Browner, U.S. Representative to the North American Council on Environmental Cooperation, indicated that she "fully supports the CEC serving as a forum for these issues . . ." and that she believes "the CEC is an important tool to use in pursuing [these] concerns. . . ." Letter from William Pistor, NAFTA Coordinator (June 23, 1995) (Exhibit 5).

C. No Private Remedies Need Be Pursued

Since the logging rider eliminates critical private remedies for salvage timber sales and Option 9 timber sales, the undersigned can no longer pursue those remedies. NAAEC, Article 14(2)(c). While the undersigned will continue to pursue remedies that remain, the focus of this submission is the vast range of remedies eliminated by the rider.

The precise reach of another provision of the rider mandating certain other logging of old-growth forests is in litigation, and thus is not being pursued in this submission. See Pilchuck Audubon Society v. Glickman, No. 95-1234 (W.D. Wash. filed Aug. 15, 1995); NFRC v. Glickman, No. 95-6244 (D. Ore. filed Aug. 8, 1995). The extent to which that provision cuts off citizen enforcement of environmental laws depends on the outcome of the pending litigation.

D. This Submission is Aimed at Promoting Enforcement.

The undersigned seek to promote effective enforcement of U.S. environmental laws related to logging on public lands. This submission is aimed at holding the government accountable for its actions; it is not an attempt to harass industry. NAAEC, Article 14(1)(d).

CONCLUSION

This submission seeks preparation of a factual record on the logging rider's suspension of effective enforcement of environmental laws. The submitters also ask the Secretariat to facilitate a dialogue and thorough analysis of the current move to suspend and defund environmental enforcement and implementation.

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Name	Date
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Counsel (entire binder)