

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5192

To require the Secretary of Agriculture to designate national forests or portions of national forests in western States as locations for demonstration projects to prevent or mitigate the effect of pine beetle infestations and conduct forest restoration activities, to authorize the emergency removal of dead and dying trees to address public safety risks in western States, to make permanent the stewardship contracting authorities available to the Forest Service, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2010

Mrs. LUMMIS introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To require the Secretary of Agriculture to designate national forests or portions of national forests in western States as locations for demonstration projects to prevent or mitigate the effect of pine beetle infestations and conduct forest restoration activities, to authorize the emergency removal of dead and dying trees to address public safety risks in western States, to make permanent the stewardship contracting authorities available to the Forest Service, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
 5 “Forest Ecosystem Recovery and Protection Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
 7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—PINE BEETLE PREVENTION AND MITIGATION AND  
 FOREST RESTORATION

Sec. 101. Designation of demonstration project forests.

Sec. 102. Pine beetle prevention and mitigation and forest restoration dem-  
 onstration projects.

Sec. 103. Grants to support forest products industry participation in pine bee-  
 tle prevention and mitigation and forest restoration demonstra-  
 tion projects.

Sec. 104. Treatment of biomass removed from demonstration project site.

Sec. 105. Conforming changes to stewardship contracting authority.

Sec. 106. Environmental analysis and decision document.

Sec. 107. Predecisional administrative review process and judicial review.

Sec. 108. Availability of Reforestation Trust Fund.

Sec. 109. Acceptance of donations.

TITLE II—GOOD NEIGHBOR AND EMERGENCY ECOSYSTEM,  
 WATERSHED, AND HUMAN HEALTH AND SAFETY AUTHORITIES

Sec. 201. Designation of insect or disease emergency areas.

Sec. 202. Treatment of biomass removed from insect or disease emergency  
 areas.

Sec. 203. Use of State foresters to provide forest, rangeland, and watershed  
 restoration and protection services on Federal land.

Sec. 204. Removal of dead and dying trees from rights-of-way on Federal land.

8 **SEC. 2. DEFINITIONS.**

9 In this Act:

10 (1) AT-RISK COMMUNITY.—The term “at-risk  
 11 community” has the meaning given the term in sec-  
 12 tion 101 of the Healthy Forests Restoration Act of  
 13 2003 (16 U.S.C. 6511).

1           (2) COVERED STATE.—The term “covered  
2 State” means the States of Arizona, California, Col-  
3 orado, Idaho, Montana, Nevada, New Mexico, Or-  
4 egon, South Dakota, Utah, Washington, and Wyo-  
5 ming.

6           (3) DEMONSTRATION PROJECT FOREST.—The  
7 term “demonstration project forest” means a unit of  
8 the National Forest System or portion of a unit of  
9 the National Forest System in a covered State des-  
10 ignated by the Secretary under section 101 as the  
11 site for demonstration projects under section 102.  
12 The term excludes National Forest System land de-  
13 scribed in section 101(d).

14           (4) DEMONSTRATION PROJECT SITE.—The  
15 term “demonstration project site” means a site with-  
16 in a demonstration project forest at which pine bee-  
17 tle prevention and mitigation and forest restoration  
18 activities will be conducted under section 102.

19           (5) INSECT OR DISEASE EMERGENCY AREA.—  
20 The term “insect or disease emergency area” means  
21 National Forest System land or public land in a cov-  
22 ered State designated by the Secretary under section  
23 201 as the site for emergency removal of dead and  
24 dying trees under such section.

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

6           (7) PUBLIC LAND.—The term “public land”  
7           has the meaning given the term in section 103(e) of  
8           the Federal Land Policy and Management Act of  
9           1976 (43 U.S.C. 1702(e)).

10          (8) SECRETARY.—The term “Secretary” means  
11          the Secretary of Agriculture, except in title II, in  
12          which the term means—

13                 (A) the Secretary of Agriculture with re-  
14                 spect to National Forest System land; and

15                 (B) the Secretary of the Interior with re-  
16                 spect to public land.

17          (9) STATE FORESTER.—The term “State for-  
18          ester” means the head of a State agency with juris-  
19          diction over State forestry programs in a covered  
20          State.

21          (10) WILDLAND-URBAN INTERFACE.—The term  
22          “wildland-urban interface” has the meaning given  
23          the term in section 101 of the Healthy Forests Res-  
24          toration Act of 2003 (16 U.S.C. 6511).

1 **TITLE I—PINE BEETLE PREVEN-**  
2 **TION AND MITIGATION AND**  
3 **FOREST RESTORATION**

4 **SEC. 101. DESIGNATION OF DEMONSTRATION PROJECT**  
5 **FORESTS.**

6 (a) DESIGNATION REQUIRED.—Using the selection  
7 criteria specified in subsection (c), the Secretary shall des-  
8 ignate 25 demonstration project forests in the covered  
9 States.

10 (b) DISTRIBUTION OF DEMONSTRATION PROJECT  
11 FORESTS.—

12 (1) IN GENERAL.—Except as provided in para-  
13 graph (2) or (3), each covered State shall contain at  
14 least two demonstration project forests.

15 (2) SPECIAL RULE FOR NEVADA.—In the case  
16 of Nevada, the Secretary shall designate all or a por-  
17 tion of the Humboldt-Toiyabe National Forest as a  
18 demonstration project forest for that State notwith-  
19 standing the selection criteria specified in subsection  
20 (c).

21 (3) SPECIAL RULE FOR SOUTH DAKOTA.—In  
22 the case of South Dakota, the Secretary shall des-  
23 ignate all or a portion of the Black Hills National  
24 Forest as a demonstration project forest for that

1 State notwithstanding the selection criteria specified  
2 in subsection (c).

3 (4) ADDITIONAL SITES.—In addition to the  
4 demonstration project forests required by para-  
5 graphs (1) through (3), the Secretary shall designate  
6 three additional demonstration project forests that  
7 the Secretary determines, using the selection criteria  
8 specified in subsection (c), has the greatest need for  
9 demonstration projects under section 102. No cov-  
10 ered State may have more than four demonstration  
11 project forests located in whole or in part within  
12 that State.

13 (c) SELECTION CRITERIA.—

14 (1) BEETLE INFESTATION.—At least one dem-  
15 onstration project forest in each covered State must  
16 have a significant beetle infestation rate, to be deter-  
17 mined using the most recent forest survey data. Pri-  
18 ority shall be given to forests located in counties  
19 that the Secretary determines have the greatest need  
20 for beetle mitigation or recovery.

21 (2) WILDLAND-URBAN INTERFACE.—To the  
22 maximum extent feasible, at least one demonstration  
23 project forest in each covered State shall include—

24 (A) a wildland-urban interface with signifi-  
25 cant beetle infestation; or

1 (B) an area covered by a Community and  
2 Wildfire Protection Plan.

3 (3) PROTECTION OF OTHER VALUABLE LAND.—

4 To the maximum extent feasible, at least one dem-  
5 onstration project forest in each covered State shall  
6 be designated based on its proximity to units of the  
7 National Park System, State park units, wilderness  
8 areas, or wilderness study areas with the potential of  
9 a future beetle infestation in the demonstration  
10 project forest spreading to the other land. Nothing  
11 in this paragraph affects the law applicable to wil-  
12 derness or wilderness study areas.

13 (4) USE OF EXISTING FOREST INFRASTRUC-  
14 TURE.—To the maximum extent feasible, the Sec-  
15 retary shall designate as demonstration project for-  
16 ests land on which demonstration project sites will  
17 be able to utilize and supply existing forest infra-  
18 structure, such as local loggers and mills.

19 (d) CERTAIN LANDS EXCLUDED.—A demonstration  
20 project forest may not include National Forest System  
21 land—

22 (1) that is designated as wilderness;

23 (2) that is recommended for wilderness designa-  
24 tion in a forest land and resource management plan;

25 or

1           (3) on which the removal of vegetation is pro-  
2           hibited or restricted by Act of Congress or Presi-  
3           dential proclamation.

4           (e) DEADLINE FOR DESIGNATION.—The Secretary  
5           shall complete the designation process within 90 days after  
6           the date of the enactment of this Act.

7           **SEC. 102. PINE BEETLE PREVENTION AND MITIGATION AND**  
8                           **FOREST RESTORATION DEMONSTRATION**  
9                           **PROJECTS.**

10          (a) DESIRED FUTURE CONDITIONS REPORT.—The  
11          Secretary shall complete or update the desired future con-  
12          ditions report for each demonstration project forest, with  
13          focus on beetle outbreaks and infestation, including reduc-  
14          ing fire and public health threats and preventing infesta-  
15          tion in unaffected forest stands.

16          (b) DEMONSTRATION PROJECT SITES.—The Sec-  
17          retary shall identify specific demonstration project sites  
18          within each demonstration project forest and develop pine  
19          beetle prevention, mitigation, or forest restoration projects  
20          for each demonstration project site. Such projects may in-  
21          clude projects already in the scoping, planning, or imple-  
22          mentation process.

23          (c) STEWARDSHIP CONTRACTS.—

24                  (1) IN GENERAL.—Using the authority provided  
25          by section 347 of the Department of the Interior



1 and Related Agencies Appropriations Act, 1999 (16  
2 U.S.C. 2104 note; as contained in section 101(e) of  
3 division A of Public Law 105–277), the Secretary  
4 shall enter into stewardship contracts, in consulta-  
5 tion with private industry and State forest man-  
6 agers, that meet the particular needs of each dem-  
7 onstration project site. A stewardship contract shall  
8 be no fewer than 7 years, and up to 20 years in du-  
9 ration, and encompass at least 10,000 acres, includ-  
10 ing any insect or disease emergency area also cov-  
11 ered by the contract.

12 (2) FOREST HEALTH AND RESTORATION.—At  
13 least one stewardship contract for each demonstra-  
14 tion project forest shall be developed primarily for  
15 the purpose of forest health and ecosystem restora-  
16 tion.

17 (3) PROTECTION OF OTHER VALUABLE LAND.—  
18 At least one stewardship contract for each dem-  
19 onstration project forest shall be developed primarily  
20 for the purpose of preventing future bark beetle out-  
21 breaks within that forest or preventing the potential  
22 future spread of a beetle outbreak to units of the  
23 National Park System, State park units, wilderness  
24 areas, or wilderness study areas.

1 (d) DEADLINE FOR IMPLEMENTATION.—Within 270  
2 days after the date of the enactment of this Act, the Sec-  
3 retary shall—

4 (1) complete the desired future conditions re-  
5 ports required by subsection (a);

6 (2) identify initial demonstration project sites  
7 under subsection (b); and

8 (3) begin entering into stewardship contracts  
9 under subsection (c).

10 (e) PROGRESS REPORTS.—Not later than one year  
11 after the initial identification of a demonstration project  
12 site, and every two years thereafter, the Secretary shall  
13 submit to Congress a report on the progress of meeting  
14 the desired future conditions for the demonstration project  
15 site.

16 **SEC. 103. GRANTS TO SUPPORT FOREST PRODUCTS INDUS-**  
17 **TRY PARTICIPATION IN PINE BEETLE PRE-**  
18 **VENTION AND MITIGATION AND FOREST RES-**  
19 **TORATION DEMONSTRATION PROJECTS.**

20 (a) GRANTS AUTHORIZED.—The Secretary may  
21 make competitive grants to support forest products indus-  
22 try—

23 (1) participation in pine beetle prevention and  
24 mitigation and forest restoration activities conducted

1 under section 102 at demonstration project site  
2 within a demonstration project forest; or

3 (2) use of forest materials derived from such  
4 pine beetle prevention and mitigation and forest res-  
5 toration activities.

6 (b) USE OF GRANTS.—A grant recipient shall use the  
7 grant funds only to start, restart, or support infrastruc-  
8 ture to allow for the removal and processing of trees under  
9 the terms of a stewardship contract developed under sec-  
10 tion 102.

11 (c) MAXIMUM GRANT AMOUNT.—Total grant  
12 amounts under this section for a single demonstration  
13 project site may not exceed \$3,000,000.

14 (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
15 authorized to be appropriated to the Secretary  
16 \$75,000,000 to make grants under this section.

17 **SEC. 104. TREATMENT OF BIOMASS REMOVED FROM DEM-**  
18 **ONSTRATION PROJECT SITE.**

19 Any biomass removed from a demonstration project  
20 site shall be deemed to be renewable biomass for purposes  
21 of the renewable fuel program under section 211(o) of the  
22 Clean Air Act (42 U.S.C. 7545(o)).

1 **SEC. 105. CONFORMING CHANGES TO STEWARDSHIP CON-**  
2 **TRACTING AUTHORITY.**

3 (a) PERMANENT STEWARDSHIP CONTRACTING AU-  
4 THORITY.—Section 347(a) of the Department of the Inte-  
5 rior and Related Agencies Appropriations Act, 1999 (16  
6 U.S.C. 2104 note; as contained in section 101(e) of divi-  
7 sion A of Public Law 105–277) is amended by striking  
8 “Until September 30, 2013, the” and inserting “The”.

9 (b) TREATMENT OF CANCELLATION COSTS.—Section  
10 347 of the Department of the Interior and Related Agen-  
11 cies Appropriations Act, 1999 (16 U.S.C. 2104 note; as  
12 contained in section 101(e) of division A of Public Law  
13 105–277) is amended by adding at the end the following  
14 new subsection:

15 “(h) TREATMENT OF CANCELLATION COSTS.—

16 “(1) LIMITATION ON OBLIGATION.—Notwith-  
17 standing any other provision of law, including sec-  
18 tion 304B of the Federal Property and Administra-  
19 tive Services Act of 1949 (41 U.S.C. 254c), the For-  
20 est Service may not obligate funds to cover the cost  
21 of canceling a Forest Service multiyear stewardship  
22 contract under subsection (a) until the date on  
23 which the multiyear stewardship contract is can-  
24 celled.

25 “(2) COSTS OF CANCELLATION OR TERMI-  
26 NATION.—The costs of any cancellation or termi-

1 nation of a multiyear stewardship contract described  
2 in paragraph (1) may be paid from any appropria-  
3 tions available to the Forest Service. In the event  
4 such appropriations are exhausted—

5 “(A) the exhaustion of such appropriations  
6 shall not be considered to be a violation of sec-  
7 tion 1341 of title 31, United States Code; and

8 “(B) the Secretary of Agriculture shall  
9 seek a supplemental appropriation.”.

10 **SEC. 106. ENVIRONMENTAL ANALYSIS AND DECISION DOC-**  
11 **UMENT.**

12 (a) REQUIREMENTS.—

13 (1) APPLICABLE LAW.—Except as otherwise  
14 provided in this section, the Secretary shall comply  
15 with the National Environmental Policy Act of 1969  
16 (42 U.S.C. 4331 et seq.), any regulations promul-  
17 gated to carry out that Act, and other applicable  
18 laws in designing and conducting pine beetle preven-  
19 tion and mitigation and forest restoration projects  
20 for a demonstration project site.

21 (2) SINGLE EA OR EIS.—The Secretary shall  
22 prepare a single environmental assessment or envi-  
23 ronmental impact statement pursuant to section  
24 102(2) of the National Environmental Policy Act of

1 1969 (42 U.S.C. 4332(2)) for an entire demonstra-  
2 tion project site.

3 (3) LIMITED CONSIDERATION OF ALTER-  
4 NATIVES.—The Secretary is not required to study,  
5 develop, or analyze any alternatives in the environ-  
6 mental assessment or environmental impact state-  
7 ment other than the proposed agency action and the  
8 alternative of no action in designing pine beetle pre-  
9 vention and mitigation and forest restoration  
10 projects for a demonstration project site.

11 (4) PUBLIC COMMENT.—In accordance with  
12 section 102(2) of the National Environmental Policy  
13 Act of 1969 (42 U.S.C. 4332(2)) and the applicable  
14 regulations and administrative guidelines, the Sec-  
15 retary shall provide an opportunity for public com-  
16 ment during the preparation of the environmental  
17 assessment or environmental impact statement for  
18 pine beetle prevention and mitigation and forest res-  
19 toration projects for a demonstration project site.

20 (b) REQUIRED CONSULTATION.—

21 (1) COMPLIANCE WITH ENDANGERED SPECIES  
22 ACT OF 1973.—

23 (A) IN GENERAL.—Except as otherwise  
24 provided in this section, the Secretary shall  
25 comply with section 7 of the Endangered Spe-

1           cies Act of 1973 (16 U.S.C. 1536) in designing  
2           and conducting pine beetle prevention and miti-  
3           gation and forest restoration projects for a  
4           demonstration project site.

5           (B) DEADLINE FOR COMPLETION.—If the  
6           consultation required under this paragraph is  
7           not completed by the date on which the decision  
8           document is issued under subsection (c), the ap-  
9           plicable biological assessment from the land  
10          management agency shall be considered to be  
11          sufficient for the purposes of section 7 of the  
12          Endangered Species Act of 1973 (16 U.S.C.  
13          1536).

14          (2) OTHER REQUIRED CONSULTATION.—

15           (A) IN GENERAL.—Any consultation re-  
16           quired under any other laws, such as the Na-  
17           tional Historic Preservation Act (16 U.S.C. 470  
18           et seq.), may proceed simultaneously with the  
19           design of the pine beetle prevention and mitiga-  
20           tion and forest restoration project.

21           (B) INCORPORATION.—To the extent fea-  
22           sible, practicable, and consistent with the objec-  
23           tives of the pine beetle prevention and mitiga-  
24           tion and forest restoration project, the results  
25           of any consultation required under subpara-

1 graph (A) shall be immediately incorporated  
2 into the project.

3 (c) PUBLIC NOTICE AND MEETING.—

4 (1) PUBLIC NOTICE.—The Secretary shall pro-  
5 vide notice of each pine beetle prevention and miti-  
6 gation and forest restoration project in accordance  
7 with applicable regulations and administrative guide-  
8 lines.

9 (2) PUBLIC MEETING.—During the preparation  
10 stage of the pine beetle prevention and mitigation  
11 and forest restoration project, the Secretary shall—

12 (A) conduct a public meeting at an appro-  
13 priate location in the demonstration project for-  
14 est in which the project will be conducted; and

15 (B) provide advance notice of the location,  
16 date, and time of the meeting.

17 (d) PUBLIC COLLABORATION.—In order to encourage  
18 meaningful public participation during preparation of pine  
19 beetle prevention and mitigation and forest restoration  
20 projects, the Secretary shall facilitate collaboration among  
21 State and local governments and Indian tribes, and par-  
22 ticipation of interested persons, during the preparation of  
23 the projects.

24 (e) DECISION DOCUMENT.—The Secretary shall sign  
25 a decision document for a pine beetle prevention and miti-



1 gation and forest restoration project and provide notice  
2 of the final agency actions.

3 (f) IMPLEMENTATION.—The Secretary shall imple-  
4 ment the pine beetle prevention and mitigation and forest  
5 restoration project as soon as practicable after the  
6 issuance of the decision document, subject only to the  
7 availability of funds for the project.

8 **SEC. 107. PREDECISIONAL ADMINISTRATIVE REVIEW PROC-**  
9 **ESS AND JUDICIAL REVIEW.**

10 Sections 105 and 106 of the Healthy Forests Res-  
11 toration Act of 2003 (16 U.S.C. 6515, 6516) shall apply  
12 to pine beetle prevention and mitigation and forest res-  
13 toration projects for a demonstration project site.

14 **SEC. 108. AVAILABILITY OF REFORESTATION TRUST FUND.**

15 (a) INAPPLICABILITY OF LIMITATION ON TRANS-  
16 FERS.—Section 303(b)(2) of Public Law 96–451 (16  
17 U.S.C. 1606a(b)(2)) shall not apply to limit the transfer  
18 of amounts to the Reforestation Trust Fund until such  
19 date as the Secretary notifies the Secretary of the Treas-  
20 ury that funds are no longer needed to design and conduct  
21 pine beetle prevention and mitigation and forest restora-  
22 tion projects at demonstration project sites.

23 (b) AVAILABILITY OF REFORESTATION TRUST  
24 FUND.—Amounts transferred to the Reforestation Trust

1 Fund for a fiscal year in excess of \$30,000,000 shall be  
2 available to the Secretary to carry out this title.

3 **SEC. 109. ACCEPTANCE OF DONATIONS.**

4 (a) **AUTHORITY TO ACCEPT GIFTS AND DONA-**  
5 **TIONS.**—Subject to subsection (b), the Secretary may ac-  
6 cept gifts and donations for purposes of defraying the  
7 costs of carrying out this title. The Secretary may solicit  
8 donations—

9 (1) at National Forest System visitor centers;

10 and

11 (2) in connection with the issuance of hunting  
12 and fishing licenses or campground reservations.

13 (b) **LIMITATION.**—The Secretary may not accept a  
14 gift or donation under subsection (a) if acceptance of the  
15 gift or donation would compromise or appear to com-  
16 promise—

17 (1) the ability of the Forest Service or any em-  
18 ployee of the Forest Service to carry out the respon-  
19 sibility or duty of the Forest Service in a fair and  
20 objective manner; or

21 (2) the integrity of any program of the Forest  
22 Service or of any person involved in such a program.

23 (c) **CRITERIA FOR ACCEPTANCE.**—The Secretary  
24 shall prescribe written guidance setting forth the criteria  
25 to be used in determining whether the acceptance of a gift

1 or donation would have a result described in subsection  
2 (b).

3 (d) CREDITING OF DONATIONS.—Funds accepted by  
4 the Secretary under section (a) shall be credited to appro-  
5 priations available to carry out this title.

6 **TITLE II—GOOD NEIGHBOR AND**  
7 **EMERGENCY ECOSYSTEM,**  
8 **WATERSHED, AND HUMAN**  
9 **HEALTH AND SAFETY AU-**  
10 **THORITIES**

11 **SEC. 201. DESIGNATION OF INSECT OR DISEASE EMER-**  
12 **GENCY AREAS.**

13 (a) DESIGNATION AUTHORIZED.—Using the selection  
14 criteria specified in subsection (c), the Secretary may des-  
15 ignate National Forest System land or public land in a  
16 covered State as an insect or disease emergency area from  
17 which dead and dying trees may be removed in response  
18 to threats to human health and safety.

19 (b) CONSIDERATION OF DESIGNATION PROPOSALS.—  
20 The Secretary concerned shall accept and consider pro-  
21 posals for the designation of insect or disease emergency  
22 areas submitted by—

- 23 (1) the Governor of a covered State;  
24 (2) a State forester;  
25 (3) a Water Conservation District; or

1 (4) an at-risk community.

2 (c) SELECTION CRITERIA.—The Secretary may des-  
3 ignate an insect or disease emergency area if the Secretary  
4 determines that an excessive number of dead and dying  
5 trees on the National Forest System land or public land  
6 to be designated has resulted in an unacceptable threat  
7 of fire or falling trees on campgrounds, roadways, power  
8 lines, watersheds, at-risk communities, or wildland-urban  
9 interface areas or other unacceptable threats to human  
10 health and safety.

11 (d) CERTAIN LANDS EXCLUDED.—An insect or dis-  
12 ease emergency area may not include National Forest Sys-  
13 tem land or public land—

14 (1) that is designated as wilderness;

15 (2) that is recommended for wilderness designa-  
16 tion in a forest land and resource management plan;  
17 or

18 (3) on which the removal of vegetation is pro-  
19 hibited or restricted by Act of Congress or Presi-  
20 dential proclamation.

21 (e) EFFECT OF DESIGNATION.—For the one-year pe-  
22 riod beginning on the date of the designation of an insect  
23 or disease emergency area, projects for the removal of  
24 dead and dying trees in the insect or disease emergency  
25 area shall be categorically excluded from documentation

1 in an environmental impact statement and environmental  
2 assessment under the National Environmental Policy Act  
3 of 1969 (42 U.S.C. 4321 et seq.) if the decision to cat-  
4 egorically exclude the project is made in accordance with  
5 applicable extraordinary circumstances procedures estab-  
6 lished pursuant to section 1508.4 of title 40, Code of Fed-  
7 eral Regulations.

8 **SEC. 202. TREATMENT OF BIOMASS REMOVED FROM IN-**  
9 **SECT OR DISEASE EMERGENCY AREAS.**

10 Any biomass removed from an insect or disease emer-  
11 gency area shall be deemed to be renewable biomass for  
12 purposes of the renewable fuel program under section  
13 211(o) of the Clean Air Act (42 U.S.C. 7545(o)).

14 **SEC. 203. USE OF STATE FORESTERS TO PROVIDE FOREST,**  
15 **RANGELAND, AND WATERSHED RESTORA-**  
16 **TION AND PROTECTION SERVICES ON FED-**  
17 **ERAL LAND.**

18 (a) COOPERATIVE AGREEMENTS AND CONTRACTS  
19 AUTHORIZED.—The Secretary may enter into a coopera-  
20 tive agreement or contract (including a sole source con-  
21 tract) with the State forester of a covered State to author-  
22 ize the State forester to provide forest, rangeland, and wa-  
23 tershed restoration and protection services described in  
24 subsection (b) on the National Forest System land or pub-  
25 lic land covered by the agreement or contract.

1 (b) AUTHORIZED SERVICES.—Forest, rangeland, and  
2 watershed restoration and protection services authorized  
3 by subsection (a) include the conduct of—

- 4 (1) activities to treat insect infected trees;
- 5 (2) activities to reduce hazardous fuels; and
- 6 (3) any other activities to restore or improve  
7 forest, rangeland, and watershed health, including  
8 fish and wildlife habitat.

9 (c) STATE AS AGENT.—Except as provided in sub-  
10 section (f), a cooperative agreement or contract entered  
11 into under subsection (a) may authorize the State forester  
12 to serve as the agent for the Secretary in providing the  
13 restoration and protection services authorized under the  
14 agreement or contract.

15 (d) SUBCONTRACTS.—In accordance with applicable  
16 contract procedures for the covered State, a State forester  
17 may enter into subcontracts to provide the restoration and  
18 protection services authorized under a cooperative agree-  
19 ment or contract entered into under subsection (a).

20 (e) TIMBER SALES.—Subsections (d) and (g) of sec-  
21 tion 14 of the National Forest Management Act of 1976  
22 (16 U.S.C. 472a) shall not apply to services performed  
23 under a cooperative agreement or contract entered into  
24 under subsection (a).

1           (f) RETENTION OF NEPA RESPONSIBILITIES.—Any  
2 decision required to be made under the National Environ-  
3 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with  
4 respect to any restoration and protection services to be  
5 provided by a State forester under a cooperative agree-  
6 ment or contract entered into under subsection (a) on Na-  
7 tional Forest System land or public land shall not be dele-  
8 gated to a State forester or any other officer or employee  
9 of the covered State.

10          (g) APPLICABLE LAW.—The restoration and protec-  
11 tion services to be provided under this section shall be car-  
12 ried out on a project-to-project basis under existing au-  
13 thorities of the Forest Service or Bureau of Land Manage-  
14 ment, as applicable.

15          (h) TERMINATION.—

16           (1) TERMINATION OF AUTHORITY.—The au-  
17 thority of the Secretary to enter into cooperative  
18 agreements and contracts under this section termi-  
19 nates on September 30, 2018.

20           (2) CONTRACT TERMINATION DATE.—The ter-  
21 mination date of a cooperative agreement or contract  
22 entered into under this section shall not extend be-  
23 yond September 30, 2019.

1 **SEC. 204. REMOVAL OF DEAD AND DYING TREES FROM**  
2 **RIGHTS-OF-WAY ON FEDERAL LAND.**

3 (a) **COOPERATIVE AGREEMENTS AND CONTRACTS**  
4 **AUTHORIZED.**—The Secretary may enter into a coopera-  
5 tive agreement, memorandum of understanding, or con-  
6 tract (including a sole source contract) with a State de-  
7 partment of transportation, State or Federal public utility  
8 commission, or private utility company to authorize the  
9 removal of dead and dying trees from a right-of-way held  
10 by the department, commission, or company on National  
11 Forest System land or public land in a covered State.

12 (b) **HOLD HARMLESS.**—Until a cooperative agree-  
13 ment, memorandum of understanding, or contract is en-  
14 tered into with a private utility company for the removal  
15 of dead and dying trees from rights-of-way held by the  
16 company on National Forest System land or public land  
17 in a covered State, the company shall not be liable for  
18 damages resulting from fallen dead or dying trees on any  
19 right-of-way held by the company on National Forest Sys-  
20 tem land or public land within any beetle infested area.

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