

115TH CONGRESS
1ST SESSION

S. 879

To expedite and prioritize forest management activities to achieve ecosystem restoration objectives, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, APRIL 4), 2017

Mr. BARRASSO (for himself, Mr. FLAKE, Mr. MCCAIN, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To expedite and prioritize forest management activities to achieve ecosystem restoration objectives, 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 “National Forest Ecosystem Improvement Act of 2017”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.

TITLE I—FOREST MANAGEMENT ACTIVITIES

- Sec. 101. Purposes.
- Sec. 102. Definitions.
- Sec. 103. Ecosystem restoration projects.
- Sec. 104. National restoration treatment acreage.
- Sec. 105. Environmental review for ecosystem restoration projects.
- Sec. 106. Alternative dispute resolution.
- Sec. 107. Bonding requirements for judicial review.
- Sec. 108. Performance measures; annual reports.

TITLE II—CATEGORICAL EXCLUSIONS

- Sec. 201. Definitions.
- Sec. 202. Categorical exclusion to expedite certain critical response actions.
- Sec. 203. Categorical exclusion to expedite salvage operations in response to catastrophic events.
- Sec. 204. Categorical exclusion to meet forest plan goals for early successional forests.
- Sec. 205. Alternative agency consultation procedures.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **COMMUNITY WILDFIRE PROTECTION**
 4 **PLAN.**—The term “community wildfire protection
 5 plan” has the meaning given the term in section 101
 6 of the Healthy Forests Restoration Act of 2003 (16
 7 U.S.C. 6511).

8 (2) **NATIONAL FOREST SYSTEM.**—

9 (A) **IN GENERAL.**—The term “National
 10 Forest System” has the meaning given the term
 11 in section 11(a) of the Forest and Rangeland
 12 Renewable Resources Planning Act of 1974 (16
 13 U.S.C. 1609(a)).

14 (B) **EXCLUSION.**—The term “National
 15 Forest System” does not include—

16 (i) any forest reserve not created from
 17 the public domain; or

1 (ii) any national grassland or land uti-
2 lization project administered under title III
3 of the Bankhead-Jones Farm Tenant Act
4 (7 U.S.C. 1010 et seq.).

5 **TITLE I—FOREST MANAGEMENT** 6 **ACTIVITIES**

7 **SEC. 101. PURPOSES.**

8 The purposes of this title are—

9 (1) to establish a reliable and predicable timber
10 supply from the National Forest System that can be
11 harvested, processed, and sold as wood products to
12 help fund ecosystem restoration; and

13 (2) to expedite and prioritize forest manage-
14 ment activities to achieve ecosystem restoration ob-
15 jectives.

16 **SEC. 102. DEFINITIONS.**

17 In this title:

18 (1) **RESTORATION.**—

19 (A) **IN GENERAL.**—The term “restora-
20 tion”, with respect to an ecosystem, means to
21 carry out any activity that helps to recover, es-
22 tablish, or maintain the resilience or adaptive
23 capacity of an ecosystem.

1 (B) INCLUSIONS.—The term “restoration”
2 includes any activity described in subparagraph
3 (A) relating to—
4 (i) timber harvesting;
5 (ii) thinning;
6 (iii) prescribed fire; or
7 (iv) other vegetation manipulation in
8 the National Forest System.

9 (2) SECRETARY.—The term “Secretary” means
10 the Secretary of Agriculture, acting through the
11 Chief of the Forest Service.

12 **SEC. 103. ECOSYSTEM RESTORATION PROJECTS.**

13 (a) IN GENERAL.—Subject to subsection (b), the Sec-
14 retary shall identify, prioritize, and carry out ecosystem
15 restoration projects on National Forest System land in ac-
16 cordance with applicable land and resource management
17 plans prepared by the Secretary for units of the National
18 Forest System under section 6 of the Forest and Range-
19 land Renewable Resources Planning Act of 1974 (16
20 U.S.C. 1604), if any, to accomplish 1 or more of the fol-
21 lowing objectives:

22 (1) To restore terrestrial habitat.

23 (2) To sustain water quality, water flows, or
24 watershed health and function.

1 (3) To create, improve, or increase early seral
2 habitat.

3 (4) To carry out a needed timber stand im-
4 provement.

5 (5) To reduce the risk or extent of insect or dis-
6 ease infestation.

7 (6) To reduce wildland fire severity potential.

8 (7) To implement a community wildfire protec-
9 tion plan.

10 (8) To establish, recover, or maintain ecosystem
11 resiliency.

12 (b) EXCLUSIONS.—The Secretary may not carry out
13 an ecosystem restoration project under this section on any
14 area of National Forest System land—

15 (1) that is a component of the National Wilder-
16 ness Preservation System; or

17 (2) on which removal of vegetation is prohibited
18 by law.

19 **SEC. 104. NATIONAL RESTORATION TREATMENT ACREAGE.**

20 (a) IN GENERAL.—For fiscal year 2018 and each fis-
21 cal year thereafter, the Secretary shall accomplish restora-
22 tion treatments, at a minimum, on the following acreage
23 throughout the National Forest System:

1 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
2 seq.) for each ecosystem restoration project that accom-
3 plishes 1 or more of the objectives identified in section
4 103(a).

5 (b) PUBLIC NOTICE AND COMMENT.—In preparing
6 an environmental assessment for an ecosystem restoration
7 project under subsection (a), the Secretary shall provide
8 public notice of, and an opportunity to comment regard-
9 ing, the applicable project.

10 (c) CONSIDERATION OF ALTERNATIVES.—The Sec-
11 retary shall study, develop, and describe in each environ-
12 mental assessment under subsection (a)—

13 (1) the ecosystem restoration project as the
14 proposed action; and

15 (2) a no-action alternative, the analysis of
16 which shall include a description of the resulting en-
17 vironmental effects of taking no action on—

18 (A) forest health;

19 (B) habitat diversity;

20 (C) wildfire potential;

21 (D) insect and disease potential;

22 (E) municipal water supplies; and

23 (F) other economic and social factors.

1 (d) LIMITATIONS.—The Secretary shall limit each en-
2 vironmental assessment under this section to a length of
3 not more than 100 pages.

4 (e) DEADLINE FOR COMPLETION.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date on which the Secretary publishes a no-
7 tice regarding an ecosystem restoration project in
8 accordance with subsection (b), the Secretary shall
9 complete the environmental assessment for the eco-
10 system restoration project.

11 (2) NO SUPPLEMENTAL ANALYSIS REQUIRED.—
12 No supplemental analysis of an ecosystem restora-
13 tion project that is the subject of an environmental
14 assessment under paragraph (1) shall be required
15 after the date on which that environmental assess-
16 ment is complete.

17 **SEC. 106. ALTERNATIVE DISPUTE RESOLUTION.**

18 (a) ARBITRATION.—

19 (1) IN GENERAL.—The Secretary shall establish
20 within the Forest Service an arbitration program as
21 an alternative dispute resolution process in lieu of
22 judicial review for the projects described in sub-
23 section (b).

24 (2) NOTIFICATION TO OBJECTORS.—On
25 issuance of an appeal response to an objection filed

1 with respect to an ecosystem restoration project sub-
2 ject to an objection at the project level under part
3 218 of title 36, Code of Federal Regulations (as in
4 effect on the date of enactment of this Act), the Sec-
5 retary shall notify each applicable individual or enti-
6 ty that submitted the objection (referred to in this
7 section as the “objector”) that any further appeal
8 may be subject to arbitration in accordance with this
9 section.

10 (b) DESCRIPTION OF PROJECTS.—The Secretary, at
11 the sole discretion of the Secretary, may designate the fol-
12 lowing types of ecosystem restoration projects for arbitra-
13 tion:

14 (1) Projects developed through a collaborative
15 process (within the meaning of section 603(b)(1)(C)
16 of the Healthy Forest Restoration Act of 2003 (16
17 U.S.C. 6591b(b)(1)(C))).

18 (2) Projects identified in a community wildfire
19 protection plan.

20 (3) For each applicable calendar year, not more
21 than 2 other types of ecosystem restoration projects
22 for each region of the Forest Service.

23 (c) ARBITRATORS.—

24 (1) APPOINTMENT.—The Secretary shall de-
25 velop and publish a list of not fewer than 20 individ-

1 uals eligible to serve as arbitrators for the program
2 under this section.

3 (2) QUALIFICATIONS.—In order to be eligible to
4 serve as an arbitrator under this subsection, an indi-
5 vidual shall be currently certified by the American
6 Arbitration Association.

7 (d) INITIATION OF ARBITRATION.—

8 (1) IN GENERAL.—Not later than 7 days after
9 the date of receipt of a notice of intent to file suit
10 challenging an ecosystem restoration project, the
11 Secretary shall notify each applicable objector and
12 the court of jurisdiction that the project has been
13 designated for arbitration in accordance with this
14 section.

15 (2) DEMAND FOR ARBITRATION.—

16 (A) IN GENERAL.—An objector that sought
17 judicial review of an ecosystem restoration
18 project that has been designated by the Sec-
19 retary for arbitration under this section may
20 file a demand for arbitration in accordance
21 with—

22 (i) sections 571 through 584 of title
23 5, United States Code; and

24 (ii) this paragraph.

1 (B) REQUIREMENTS.—A demand for arbi-
2 tration under subparagraph (A) shall—

3 (i) be filed not later than the date
4 that is 30 days after the date of the notifi-
5 cation by the Secretary under paragraph
6 (1); and

7 (ii) include an alternative proposal to
8 the applicable ecosystem restoration
9 project that describes each modification
10 sought by the objector with respect to the
11 ecosystem restoration project.

12 (e) SELECTION OF ARBITRATOR.—For each arbitra-
13 tion commenced under this section, the Secretary and each
14 applicable objector shall agree on a mutually acceptable
15 arbitrator from the list published under subsection (c)(1).

16 (f) RESPONSIBILITIES OF ARBITRATOR.—

17 (1) IN GENERAL.—An arbitrator selected under
18 subsection (e)—

19 (A) shall address each demand filed for ar-
20 bitration with respect to an ecosystem restora-
21 tion project under this section; but

22 (B) may consolidate into a single arbitra-
23 tion all demands for arbitration by all objectors
24 with respect to an ecosystem restoration
25 project.

1 (2) SELECTION OF PROPOSALS.—An arbitrator
2 shall make a decision regarding each applicable de-
3 mand for arbitration under this section by select-
4 ing—

5 (A) the ecosystem restoration project, as
6 approved by the Secretary; or

7 (B) an alternative proposal submitted by
8 the applicable objector.

9 (3) LIMITATIONS.—

10 (A) ADMINISTRATIVE RECORD.—A decision
11 of an arbitrator under this subsection shall be
12 based solely on the administrative record for
13 the ecosystem restoration project.

14 (B) NO MODIFICATIONS TO PROPOSALS.—
15 An arbitrator may not modify any proposal con-
16 tained in a demand for arbitration of an objec-
17 tor under this section.

18 (g) DEADLINE FOR COMPLETION OF ARBITRA-
19 TION.—Not later than 90 days after the date on which
20 a demand for arbitration is filed under subsection (d)(2),
21 the arbitration process shall be completed.

22 (h) EFFECT OF ARBITRATION DECISION.—A decision
23 of an arbitrator under this section—

24 (1) shall not be considered to be a major Fed-
25 eral action;

1 (2) shall be binding; and

2 (3) shall not be subject to judicial review, ex-
3 cept as provided in section 10(a) of title 9, United
4 States Code.

5 **SEC. 107. BONDING REQUIREMENTS FOR JUDICIAL RE-**
6 **VIEW.**

7 (a) BOND REQUIREMENT.—

8 (1) IN GENERAL.—The judicial review of an ac-
9 tion challenging an ecosystem restoration project
10 under this title (referred to in this section as an “ac-
11 tion”) shall be subject to the bonding requirements
12 of this section.

13 (2) BOND OR SECURITY.—

14 (A) IN GENERAL.—As soon as practicable
15 after the date on which a complaint or appeal
16 is filed to initiate an action, each plaintiff shall
17 post a bond or other security acceptable to the
18 court in an amount equal to the anticipated
19 costs, expenses, and attorney fees of the Sec-
20 retary as a defendant in the action, in accord-
21 ance with a reasonable estimate of the Sec-
22 retary.

23 (B) REQUIREMENT.—All proceedings in an
24 action shall be stayed until the bond or security
25 required under subparagraph (A) is posted.

1 (b) RECOVERY OF LITIGATION COSTS, EXPENSES,
2 AND ATTORNEY FEES.—

3 (1) MOTION FOR PAYMENT.—If the Secretary
4 prevails in an action, the Secretary shall submit to
5 the court a motion for payment from the bond or
6 other security posted under subsection (a), of the
7 reasonable costs, expenses, and attorney fees in-
8 curred by the Secretary as a defendant in the action.

9 (2) MAXIMUM RECOVERY.—The total amount of
10 costs, expenses, and attorney fees recovered by the
11 Secretary under paragraph (1) may not exceed the
12 amount of the bond or other security posted in the
13 action.

14 (3) RETURN REMAINDER.—Any funds remain-
15 ing from the bond or other security posed under
16 subsection (a) after the payment of costs, expenses,
17 and attorney fees under paragraph (1) shall be re-
18 turned to the plaintiff that posted the bond or secu-
19 rity in the action.

20 (c) RETURN OF BOND TO PREVAILING PLAINTIFF.—
21 If the applicable court rules, in a final enforcement judg-
22 ment, in favor of a plaintiff on all causes of each action
23 of the plaintiff, the court shall return to the plaintiff any
24 bond or security posted by the plaintiff under subsection

1 (a), plus any interest accruing during the period beginning
2 on the date on which the bond or security was posted.

3 (d) EFFECT OF SETTLEMENT.—

4 (1) IN GENERAL.—If an action in which a bond
5 or security was posted is resolved by settlement be-
6 tween the Secretary and the plaintiff, the settlement
7 agreement may provide for sharing of the costs, ex-
8 penses, and attorney fees incurred by the parties to
9 the action.

10 (2) DEFERRAL.—A settlement agreement under
11 paragraph (1) may defer the resolution of costs, ex-
12 penses, and attorney fees to—

13 (A) further negotiation; or

14 (B) decision by the court.

15 **SEC. 108. PERFORMANCE MEASURES; ANNUAL REPORTS.**

16 (a) PERFORMANCE MEASURES.—The Secretary shall
17 annually evaluate the degree to which the Secretary is
18 achieving—

19 (1) the purposes of this title, including—

20 (A) the number of acres covered by eco-
21 system restoration projects;

22 (B) the number of acres treated by me-
23 chanical methods under ecosystem restoration
24 projects;

1 (C) the number of acres treated using
2 stewardship contracts and stewardship agree-
3 ments under ecosystem restoration projects;

4 (D) the number of acres treated using tim-
5 ber sales under ecosystem restoration projects;

6 (E) the number of acres treated by pre-
7 scribed fire, mowing, and other noncommercial
8 product producing activities under ecosystem
9 restoration projects; and

10 (F) to the extent practicable, a summary
11 of acres receiving more than 1 type of treat-
12 ment; and

13 (2) the acreage requirements established under
14 section 104(a).

15 (b) ANNUAL REPORTS.—Not later than 1 year after
16 the date of enactment of this Act, and annually thereafter,
17 the Secretary shall submit to the Committee on Energy
18 and Natural Resources of the Senate and the Committee
19 on Natural Resources of the House of Representatives—

20 (1) a report that describes, with respect to the
21 preceding year, the results of evaluations using the
22 performance measures described in subsection (a);
23 and

24 (2) a report that describes, with respect to the
25 preceding year—

1 (A) the number and substance of eco-
 2 system restoration projects that are subject to
 3 arbitration under section 106; and

4 (B) the outcomes of the arbitrations under
 5 that section.

6 **TITLE II—CATEGORICAL** 7 **EXCLUSIONS**

8 **SEC. 201. DEFINITIONS.**

9 In this title:

10 (1) **CATASTROPHIC EVENT.**—The term “cata-
 11 strophic event” means any natural disaster (such as
 12 hurricane, tornado, windstorm, snow or ice storm,
 13 rain storm, high water, wind-driven water, tidal
 14 wave, earthquake, volcanic eruption, landslide,
 15 mudslide, drought, or insect or disease outbreak), or
 16 any fire, flood, or explosion, regardless of cause.

17 (2) **CATEGORICAL EXCLUSION.**—The term “cat-
 18 egorical exclusion” means an exception to the re-
 19 quirements of the National Environmental Policy
 20 Act of 1969 (42 U.S.C. 4321 et seq.) for a project
 21 or activity relating to the management of National
 22 Forest System land.

23 (3) **COLLABORATIVE PROCESS.**—The term “col-
 24 laborative process” means a process relating to the
 25 management of National Forest System land by

1 which a project or activity is developed and imple-
2 mented by the Secretary through collaboration with
3 interested persons, as described in section
4 603(b)(1)(C) of the Healthy Forests Restoration Act
5 of 2003 (16 U.S.C. 6591b(b)(1)(C)).

6 (4) FOREST MANAGEMENT ACTIVITY.—The
7 term “forest management activity” means a project
8 or activity carried out by the Secretary on National
9 Forest System land, consistent with the forest plan
10 covering that land.

11 (5) FOREST PLAN.—The term “forest plan”
12 means a land and resource management plan pre-
13 pared by the Forest Service for a unit of the Na-
14 tional Forest System pursuant to section 6 of the
15 Forest and Rangeland Renewable Resources Plan-
16 ning Act of 1974 (16 U.S.C. 1604).

17 (6) SALVAGE OPERATION.—The term “salvage
18 operation” means a forest management activity car-
19 ried out in response to a catastrophic event, the pri-
20 mary purpose of which is—

21 (A) to prevent wildfire as a result of the
22 catastrophic event, or, if the catastrophic event
23 was wildfire, to prevent a reburn of the fire-im-
24 pacted area;

1 (B) to provide an opportunity for use of
 2 forest materials damaged as a result of the cat-
 3 astrophic event; or

4 (C) to provide a funding source for refor-
 5 estation and other restoration activities for the
 6 National Forest System land impacted by the
 7 catastrophic event.

8 (7) SECRETARY.—The term “Secretary” means
 9 the Secretary of Agriculture (acting through the
 10 Chief of the Forest Service).

11 **SEC. 202. CATEGORICAL EXCLUSION TO EXPEDITE CER-**
 12 **TAIN CRITICAL RESPONSE ACTIONS.**

13 (a) AVAILABILITY OF CATEGORICAL EXCLUSION.—A
 14 categorical exclusion is available to the Secretary to de-
 15 velop and carry out a forest management activity on Na-
 16 tional Forest System land in any case in which the pri-
 17 mary purpose of the forest management activity is—

18 (1) to address an insect or disease infestation;

19 (2) to treat land at risk of insect or disease in-
 20 festation;

21 (3) to reduce hazardous fuel loads;

22 (4) to protect a municipal water source;

23 (5) to maintain, enhance, or modify critical
 24 habitat to protect the habitat from catastrophic dis-
 25 turbances;

1 (6) to increase water yield; or

2 (7) any combination of the purposes specified in
3 paragraphs (1) through (6).

4 (b) ACREAGE LIMITATIONS.—

5 (1) IN GENERAL.—Except in the case of a for-
6 est management activity described in paragraph (2),
7 a forest management activity covered by the categor-
8 ical exclusion granted by subsection (a) may not
9 contain harvest units exceeding a total of 5,000
10 acres.

11 (2) LARGER AREAS AUTHORIZED.—A forest
12 management activity covered by the categorical ex-
13 clusion granted by subsection (a) may not contain
14 harvest units exceeding a total of 15,000 acres if the
15 forest management activity is—

16 (A) developed through a collaborative proc-
17 ess;

18 (B) proposed by a resource advisory com-
19 mittee (as defined in section 201 of the Secure
20 Rural Schools and Community Self-Determina-
21 tion Act of 2000 (16 U.S.C. 7121)); or

22 (C) covered by a community wildfire pro-
23 tection plan.

1 **SEC. 203. CATEGORICAL EXCLUSION TO EXPEDITE SAL-**
2 **VAGE OPERATIONS IN RESPONSE TO CATA-**
3 **STROPHIC EVENTS.**

4 (a) AVAILABILITY OF CATEGORICAL EXCLUSION.—A
5 categorical exclusion is available to the Secretary to de-
6 velop and carry out a salvage operation as part of the res-
7 toration of National Forest System land following a cata-
8 strophic event.

9 (b) ACREAGE LIMITATIONS.—A salvage operation
10 covered by the categorical exclusion granted by subsection
11 (a) may not contain harvest units exceeding a total of
12 5,000 acres.

13 (c) ADDITIONAL REQUIREMENTS.—

14 (1) ROAD CONSTRUCTION.—A salvage operation
15 covered by the categorical exclusion granted by sub-
16 section (a) may not include any permanent road con-
17 struction.

18 (2) STREAM BUFFERS.—A salvage operation
19 covered by the categorical exclusion granted by sub-
20 section (a) shall comply with the standards and
21 guidelines for stream buffers contained in the appli-
22 cable forest plan, unless the standards and guide-
23 lines are modified for a specific salvage operation as
24 part of a categorical exclusion by the Regional For-
25 ester.

1 (3) REFORESTATION PLAN.—A reforestation
2 plan shall be developed under section 3 of the Act
3 of June 9, 1930 (commonly known as the “Knutson-
4 Vandenberg Act”) (16 U.S.C. 576b), as part of a
5 salvage operation covered by the categorical exclu-
6 sion granted by subsection (a).

7 **SEC. 204. CATEGORICAL EXCLUSION TO MEET FOREST**
8 **PLAN GOALS FOR EARLY SUCCESSIONAL**
9 **FORESTS.**

10 (a) AVAILABILITY OF CATEGORICAL EXCLUSION.—A
11 categorical exclusion is available to the Secretary to de-
12 velop and carry out a forest management activity on Na-
13 tional Forest System land in any case in which the pri-
14 mary purpose of the forest management activity is to mod-
15 ify, improve, enhance, or create early successional forests
16 for wildlife habitat improvement and other purposes, in
17 accordance with the applicable forest plan.

18 (b) ACREAGE LIMITATIONS.—A forest management
19 activity covered by the categorical exclusion granted by
20 subsection (a) may not contain harvest units exceeding a
21 total of 5,000 acres.

22 **SEC. 205. ALTERNATIVE AGENCY CONSULTATION PROCE-**
23 **DURES.**

24 (a) FOREST MANAGEMENT ACTIVITIES.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 for each forest management activity covered by a
3 categorical exclusion granted by this title, the Sec-
4 retary shall satisfy the applicable interagency con-
5 sultation obligations under section 7 of the Endan-
6 gered Species Act of 1973 (16 U.S.C. 1536) by
7 achieving compliance with the alternative consulta-
8 tion procedures established in subpart D of part 402
9 of title 50, Code of Federal Regulations (or suc-
10 cessor regulations).

11 (2) REFERENCES.—For purposes of this sub-
12 section, all references contained in subpart D of part
13 402 of title 50, Code of Federal Regulations (or suc-
14 cessor regulations)—

15 (A) to the term “U.S. Environmental Pro-
16 tection Agency” or “EPA” shall be considered
17 to be a reference to the Secretary; and

18 (B) to the term “FIFRA action” shall be
19 considered to be a reference to a forest manage-
20 ment activity covered by a categorical exclusion
21 granted by this title.

22 (b) INTERIM TIMELINES.—Until the date on which
23 an alternative consultation agreement under subpart D of
24 part 402 of title 50, Code of Federal Regulations (or suc-

1 cessor regulations), is entered into with respect to a forest
2 management activity under subsection (a)—

3 (1) any formal or informal interagency con-
4 sultation regarding the forest management activity
5 shall be completed by not later than the date that
6 is 30 days after the date on which the Secretary
7 submits a written request for consultation; and

8 (2) a biological opinion or letter of concurrence,
9 as appropriate, shall be issued by not later than the
10 date that is 10 days after the date of completion of
11 that consultation.

○