

115TH CONGRESS
1ST SESSION

S. 2068

To discourage litigation against the Forest Service and the Bureau of Land Management relating to land management projects, to require the Secretary of the Interior to develop a categorical exclusion for covered vegetative management activities carried out to establish or improve habitat for greater sage-grouse and mule deer, to address the forest health crisis on National Forest System land, to expedite and prioritize forest management activities to achieve ecosystem restoration objectives, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2017

Mr. BARRASSO (for himself, Mr. HATCH, Mr. THUNE, and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To discourage litigation against the Forest Service and the Bureau of Land Management relating to land management projects, to require the Secretary of the Interior to develop a categorical exclusion for covered vegetative management activities carried out to establish or improve habitat for greater sage-grouse and mule deer, to address the forest health crisis on National Forest System land, 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 “Wildfire Prevention and Mitigation Act of 2017”.

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. Definition of Secretary.

TITLE I—LITIGATION RELIEF FOR FOREST MANAGEMENT
 PROJECTS

Sec. 101. Forest and Rangeland Renewable Resources Planning Act of 1974.

Sec. 102. Federal Land Policy and Management Act of 1976.

TITLE II—SAGE-GROUSE AND MULE DEER HABITAT
 CONSERVATION AND RESTORATION

Sec. 201. Definitions.

Sec. 202. Improvement of habitat for greater sage-grouse and mule deer.

TITLE III—FOREST HABITAT AND ECOSYSTEM IMPROVEMENT

Sec. 301. Definitions.

Subtitle A—General Provisions

Sec. 311. Environmental assessments.

Sec. 312. Good neighbor authority.

Sec. 313. Stewardship end result contracting projects.

Sec. 314. Pilot alternative dispute process.

Subtitle B—Ecosystem Restoration

Sec. 321. Definitions.

Sec. 322. Ecosystem restoration projects.

Sec. 323. National restoration treatment acreage.

Sec. 324. Performance measures; annual reports.

Subtitle C—Categorical Exclusions

Sec. 331. Definitions.

Sec. 332. Categorical exclusion to expedite certain critical response actions.

Sec. 333. Categorical exclusion to meet forest plan goals for early seral and
 early successional forests.

Sec. 334. Categorical exclusion to improve wildlife habitats.

Sec. 335. Categorical exclusion to thin forests.

Sec. 336. Expansion of categorical exclusion for insect and disease infestation.

1 **SEC. 2. DEFINITION OF SECRETARY.**

2 In this Act, the term “Secretary” means the Sec-
3 retary of Agriculture, acting through the Chief of the For-
4 est Service.

5 **TITLE I—LITIGATION RELIEF**
6 **FOR FOREST MANAGEMENT**
7 **PROJECTS**

8 **SEC. 101. FOREST AND RANGELAND RENEWABLE RE-**
9 **SOURCES PLANNING ACT OF 1974.**

10 (a) CONSULTATION REGARDING LAND MANAGEMENT
11 PLANS.—Section 6(d) of the Forest and Rangeland Re-
12 newable Resources Planning Act of 1974 (16 U.S.C.
13 1604(d)) is amended—

14 (1) by striking “(d) The Secretary” and insert-
15 ing the following:

16 “(d) PUBLIC PARTICIPATION AND CONSULTATION.—

17 “(1) IN GENERAL.—The Secretary”; and

18 (2) by adding at the end the following:

19 “(2) NO ADDITIONAL CONSULTATION RE-
20 QUIRED AFTER APPROVAL OF LAND MANAGEMENT
21 PLANS.—

22 “(A) IN GENERAL.—Notwithstanding any
23 other provision of law, the Secretary shall not
24 be required to engage in consultation under this
25 subsection or any other provision of law (includ-
26 ing section 7 of Public Law 93–205 (16 U.S.C.

1 1536) and section 402.16 of title 50, Code of
2 Federal Regulations (or a successor regulation))
3 with respect to—

4 “(i) the listing of a species as threat-
5 ened or endangered, or a designation of
6 critical habitat pursuant to Public Law
7 93–205 (16 U.S.C. 1531 et seq.), if a land
8 management plan has been adopted by the
9 Secretary as of the date of listing or des-
10 ignation; or

11 “(ii) any provision of a land manage-
12 ment plan adopted as described in clause
13 (i).

14 “(B) EFFECT OF PARAGRAPH.—Nothing
15 in this paragraph affects any applicable require-
16 ment of the Secretary to consult with the head
17 of any other Federal department or agency—

18 “(i) regarding any project to imple-
19 ment a land management plan, including a
20 project carried out, or proposed to be car-
21 ried out, in an area designated as critical
22 habitat pursuant to Public Law 93–205
23 (16 U.S.C. 1531 et seq.); or

24 “(ii) with respect to the development
25 of a modification to a land management

1 plan that would result in a significant
 2 change (within the meaning of subsection
 3 (f)(4)) in the land management plan.”.

4 (b) DEFINITION OF SECRETARY; CONFORMING
 5 AMENDMENTS.—

6 (1) DEFINITION OF SECRETARY.—Section 3(a)
 7 of the Forest and Rangeland Renewable Resources
 8 Planning Act of 1974 (16 U.S.C. 1601(a)) is
 9 amended, in the first sentence of the matter pre-
 10 ceeding paragraph (1), by inserting “(referred to in
 11 this Act as the ‘Secretary’)” after “Secretary of Ag-
 12 riculture”.

13 (2) CONFORMING AMENDMENTS.—The Forest
 14 and Rangeland Renewable Resources Planning Act
 15 of 1974 (16 U.S.C. 1600 et seq.) is amended, in sec-
 16 tions 4 through 9, 12, 13, and 15, by striking “Sec-
 17 retary of Agriculture” each place it appears and in-
 18 serting “Secretary”.

19 **SEC. 102. FEDERAL LAND POLICY AND MANAGEMENT ACT**
 20 **OF 1976.**

21 Section 202(f) of the Federal Land Policy and Man-
 22 agement Act of 1976 (43 U.S.C. 1712(f)) is amended—

23 (1) by striking “(f) The Secretary” and insert-
 24 ing the following:

25 “(f) PUBLIC INVOLVEMENT.—

1 “(1) IN GENERAL.—The Secretary”; and

2 (2) by adding at the end the following:

3 “(2) NO ADDITIONAL CONSULTATION RE-
4 QUIRED AFTER APPROVAL OF LAND USE PLANS.—

5 “(A) IN GENERAL.—Notwithstanding any
6 other provision of law, the Secretary shall not
7 be required to engage in consultation under this
8 subsection or any other provision of law (includ-
9 ing section 7 of Public Law 93–205 (16 U.S.C.
10 1536) and section 402.16 of title 50, Code of
11 Federal Regulations (or a successor regula-
12 tion)), with respect to—

13 “(i) the listing of a species as threat-
14 ened or endangered, or a designation of
15 critical habitat, pursuant to Public Law
16 93–205 (16 U.S.C. 1531 et seq.), if a land
17 use plan has been adopted by the Sec-
18 retary as of the date of listing or designa-
19 tion; or

20 “(ii) any provision of a land use plan
21 adopted as described in clause (i).

22 “(B) EFFECT OF PARAGRAPH.—

23 “(i) DEFINITION OF SIGNIFICANT
24 CHANGE.—In this subparagraph, the term
25 ‘significant change’ means a significant

1 change within the meaning of section
2 219.13(b)(3) of title 36, Code of Federal
3 Regulations (as in effect on the date of en-
4 actment of this subparagraph), except
5 that—

6 “(I) any reference contained in
7 that section to a land management
8 plan shall be deemed to be a reference
9 to a land use plan;

10 “(II) any reference contained in
11 that section to the Forest Service
12 shall be deemed to be a reference to
13 the Bureau of Land Management; and

14 “(III) any reference contained in
15 that section to the National Forest
16 Management Act of 1976 (Public Law
17 94–588; 90 Stat. 2949) shall be
18 deemed to be a reference to this Act.

19 “(ii) EFFECT.—Nothing in this para-
20 graph affects any applicable requirement of
21 the Secretary to consult with the head of
22 any other Federal department or agency—

23 “(I) regarding a project carried
24 out, or proposed to be carried out,
25 with respect to a species listed as

1 threatened or endangered, or in an
 2 area designated as critical habitat,
 3 pursuant to Public Law 93–205 (16
 4 U.S.C. 1531 et seq.); or

5 “(II) with respect to the develop-
 6 ment of a new land use plan or the re-
 7 vision of or other significant change to
 8 an existing land use plan.”.

9 **TITLE II—SAGE-GROUSE AND**
 10 **MULE DEER HABITAT CON-**
 11 **SERVATION AND RESTORA-**
 12 **TION**

13 **SEC. 201. DEFINITIONS.**

14 In this title:

15 (1) COVERED VEGETATION MANAGEMENT AC-
 16 TIVITY.—

17 (A) IN GENERAL.—The term “covered
 18 vegetation management activity” means any ac-
 19 tivity described in subparagraph (B) that—

20 (i) meets the objectives of the order of
 21 the Secretary numbered 3336 and dated
 22 January 5, 2015;

23 (ii) conforms to an applicable land use
 24 plan;

- 1 (iii) protects, restores, or improves
2 greater sage-grouse or mule deer habitat;
- 3 (iv) will not permanently impair—
- 4 (I) the natural state of the treat-
5 ed area;
- 6 (II) outstanding opportunities for
7 solitude;
- 8 (III) outstanding opportunities
9 for primitive, unconfined recreation;
- 10 (IV) economic opportunities con-
11 sistent with multiple-use management;
- 12 or
- 13 (V) the identified values of a unit
14 of the National Landscape Conserva-
15 tion System; and
- 16 (v)(I) restores native vegetation fol-
17 lowing a natural disturbance;
- 18 (II) prevents the expansion into great-
19 er sage-grouse or mule deer habitat of—
- 20 (aa) juniper, piñon pine, or any
21 other conifer; or
- 22 (bb) nonnative or invasive vegeta-
23 tion;
- 24 (III) reduces the risk of loss of great-
25 er sage-grouse or mule deer habitat from

1 wildfire or any other natural disturbance;
2 or

3 (IV) provides emergency stabilization
4 of soil resources after a natural disturb-
5 ance.

6 (B) DESCRIPTION OF ACTIVITIES.—An ac-
7 tivity referred to in subparagraph (A) is—

8 (i) manual cutting and removal of ju-
9 niper trees, piñon pine trees, other conif-
10 ers, or other nonnative or invasive vegeta-
11 tion;

12 (ii) mechanical mastication, cutting,
13 or mowing, mechanical piling and burning,
14 chaining, broadcast burning, or yarding;

15 (iii) removal of cheat grass, medusa
16 head rye, other nonnative vegetation, or an
17 invasive species;

18 (iv) collection and seeding or planting
19 of native vegetation using a manual, me-
20 chanical, or aerial method;

21 (v) seeding of nonnative vegetation
22 only for the purpose of emergency sta-
23 bilization;

24 (vi) use of an herbicide, pesticide, or
25 biological control agent, subject to the con-

1 dition that the use shall be in accordance
2 with applicable legal requirements, Federal
3 agency procedures, and land use plans;

4 (vii) targeted livestock grazing to
5 mitigate hazardous fuels and control nox-
6 ious and invasive weeds;

7 (viii) temporary removal of wild
8 horses or burros in the area in which the
9 activity is being carried out to ensure
10 treatment objectives are met;

11 (ix) modification or adjustment of
12 permissible usage under an annual plan of
13 use of a grazing permit issued by the Sec-
14 retary, in coordination with the affected
15 permit holder, to achieve restoration treat-
16 ment objectives;

17 (x) installation of new, or modification
18 of existing, fencing or water sources in-
19 tended to control use or improve wildlife
20 habitat; or

21 (xi) construction of temporary roads.

22 (C) EXCLUSIONS.—The term “covered
23 vegetation management activity” does not in-
24 clude—

1 (i) any activity conducted in a wilder-
2 ness area or wilderness study area; or

3 (ii) any activity for the construction of
4 a permanent road or permanent trail.

5 (2) SECRETARY.—The term “Secretary” means
6 the Secretary of the Interior.

7 (3) TEMPORARY ROAD.—The term “temporary
8 road” means a road that is—

9 (A) authorized—

10 (i) by a contract, permit, lease, other
11 written authorization; or

12 (ii) pursuant to an emergency oper-
13 ation;

14 (B) not intended to be part of the perma-
15 nent transportation system of a Federal depart-
16 ment or agency;

17 (C) not necessary for long-term resource
18 management; and

19 (D) designed in accordance with standards
20 appropriate for the intended use of the road,
21 taking into consideration—

22 (i) safety;

23 (ii) the cost of transportation; and

24 (iii) impacts to land and resources.

1 **SEC. 202. IMPROVEMENT OF HABITAT FOR GREATER SAGE-**
2 **GROUSE AND MULE DEER.**

3 (a) CATEGORICAL EXCLUSION.—

4 (1) IN GENERAL.—Not later than 1 year after
5 the date of the enactment of this Act, the Secretary
6 shall develop one or more categorical exclusions (as
7 defined in section 1508.4 of title 40, Code of Fed-
8 eral Regulations (or a successor regulation)) for cov-
9 ered vegetative management activities carried out to
10 establish or improve habitat for greater sage-grouse
11 and mule deer.

12 (2) ADMINISTRATION.—In developing and ad-
13 ministering a categorical exclusion under paragraph
14 (1), the Secretary shall—

15 (A) be consistent with the National Envi-
16 ronmental Policy Act of 1969 (42 U.S.C. 4321
17 et seq.);

18 (B) apply the extraordinary circumstances
19 procedures under section 220.6 of title 36, Code
20 of Federal Regulations (or a successor regula-
21 tion), in determining whether to use the cat-
22 egorical exclusion; and

23 (C) consider—

24 (i) the relative efficacy of landscape-
25 scale habitat projects;

1 (ii) the likelihood of continued de-
2 clines in the populations of greater sage-
3 grouse and mule deer in the absence of
4 landscape-scale vegetation management;
5 and

6 (iii) the need for habitat restoration
7 activities after wildfire or other natural
8 disturbances.

9 (b) LONG-TERM MONITORING AND MAINTENANCE.—
10 Before commencing any covered vegetative management
11 activity that is covered by a categorical exclusion under
12 subsection (a), the Secretary shall develop a long-term
13 monitoring and maintenance plan, covering at least the
14 20-year period beginning on the date of commencement,
15 to ensure that management of the treated area does not
16 degrade the habitat gains secured by the covered vegeta-
17 tive management activity.

18 (c) DISPOSAL OF VEGETATIVE MATERIAL.—Subject
19 to applicable local restrictions, any vegetative material re-
20 sulting from a covered vegetation management activity
21 that is covered by a categorical exclusion under subsection
22 (a) may be—

23 (1) used for—

24 (A) fuel wood; or

25 (B) other products; or

1 (2) piled or burned, or both.

2 (d) TREATMENT FOR TEMPORARY ROADS.—

3 (1) IN GENERAL.—A temporary road con-
 4 structed in connection with a covered vegetation
 5 management activity that is a categorical exclusion
 6 under subsection (a) shall be treated to ensure the
 7 reestablishment of native vegetative cover by artifi-
 8 cial or natural means, as necessary to minimize ero-
 9 sion from any area disturbed by the construction or
 10 use of the temporary road.

11 (2) REQUIREMENT.—A treatment under para-
 12 graph (1) shall be designed to reestablish vegetative
 13 cover—

14 (A) as soon as practicable; but

15 (B) not later than 10 years after the date
 16 of completion of the applicable covered vegeta-
 17 tion management activity.

18 **TITLE III—FOREST HABITAT**
 19 **AND ECOSYSTEM IMPROVEMENT**

20 **SEC. 301. DEFINITIONS.**

21 In this title:

22 (1) FOREST PLAN.—The term “forest plan”
 23 means a land and resource management plan pre-
 24 pared by the Forest Service in accordance with sec-

1 tion 6 of the Forest and Rangeland Renewable Re-
 2 sources Planning Act of 1974 (16 U.S.C. 1604).

3 (2) NATIONAL FOREST SYSTEM.—

4 (A) IN GENERAL.—The term “National
 5 Forest System” has the meaning given the term
 6 in section 11(a) of the Forest and Rangeland
 7 Renewable Resources Planning Act of 1974 (16
 8 U.S.C. 1609(a)).

9 (B) EXCLUSION.—The term “National
 10 Forest System” does not include—

11 (i) any forest reserve not created from
 12 the public domain; or

13 (ii) any national grassland or land uti-
 14 lization project administered under title III
 15 of the Bankhead-Jones Farm Tenant Act
 16 (7 U.S.C. 1010 et seq.).

17 **Subtitle A—General Provisions**

18 **SEC. 311. ENVIRONMENTAL ASSESSMENTS.**

19 (a) APPLICABILITY OF NATIONAL ENVIRONMENTAL
 20 POLICY ACT OF 1969.—The Secretary shall prepare an
 21 environmental assessment in accordance with the National
 22 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
 23 seq.) for each project under this title.

24 (b) PUBLIC NOTICE AND COMMENT.—In preparing
 25 an environmental assessment for a project under sub-

1 section (a), the Secretary shall provide public notice of,
2 and an opportunity to comment regarding, the applicable
3 project.

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

7 (1) the project as the proposed action; and

8 (2) a no-action alternative, the analysis of
9 which shall include a description of the resulting en-
10 vironmental effects of taking no action on—

11 (A) forest health;

12 (B) habitat diversity;

13 (C) wildfire potential;

14 (D) insect and disease potential;

15 (E) municipal water supplies; and

16 (F) other economic and social factors.

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

20 (e) DEADLINE FOR COMPLETION.—

21 (1) IN GENERAL.—Not later than 180 days
22 after the date on which the Secretary publishes a no-
23 tice regarding an ecosystem restoration project in
24 accordance with subsection (b), the Secretary shall

1 complete the environmental assessment for the
2 project.

3 (2) NO SUPPLEMENTAL ANALYSIS REQUIRED.—
4 No supplemental analysis of an ecosystem restora-
5 tion project that is the subject of an environmental
6 assessment under paragraph (1) shall be required
7 after the date on which that environmental assess-
8 ment is complete.

9 **SEC. 312. GOOD NEIGHBOR AUTHORITY.**

10 (a) IN GENERAL.—Section 8206 of the Agricultural
11 Act of 2014 (16 U.S.C. 2113a) is amended—

12 (1) in subsection (a)(3)—

13 (A) by redesignating subparagraph (B) as
14 subparagraph (C);

15 (B) by inserting after subparagraph (A)
16 the following:

17 “(B) INCLUSION.—The term ‘forest,
18 rangeland, and watershed restoration services’
19 includes construction, reconstruction, repair, or
20 restoration of permanent roads.”; and

21 (C) in subparagraph (C)(i) (as redesign-
22 ated by subparagraph (A)), by striking “or
23 permanent”; and

24 (2) in subsection (b)—

1 (A) by redesignating paragraph (3) as
2 paragraph (4); and

3 (B) by inserting after paragraph (2) the
4 following:

5 “(3) PERMANENT ROAD CLOSURE.—

6 “(A) IN GENERAL.—The Secretary may
7 close a permanent road under a good neighbor
8 agreement without carrying out with respect to
9 the permanent road authorized restoration serv-
10 ices if the permanent road would allow future
11 access for firefighting or other appropriate
12 agency use, as determined by the applicable for-
13 est supervisor.

14 “(B) INTACTNESS.—If a permanent road
15 is closed under subparagraph (A), the perma-
16 nent road shall be closed to the public according
17 to the applicable forest plan, but shall remain
18 intact.”.

19 (b) REPEAL.—Section 331 of the Department of the
20 Interior and Related Agencies Appropriations Act, 2001
21 (16 U.S.C. 1011 note) is repealed.

1 **SEC. 313. STEWARDSHIP END RESULT CONTRACTING**
2 **PROJECTS.**

3 (a) **HEALTHY FORESTS RESTORATION.**—Section 604
4 of the Healthy Forests Restoration Act of 2003 (16
5 U.S.C. 6591c) is amended—

6 (1) in subsection (c), by adding at the end the
7 following:

8 “(8) Retention of existing wood products infra-
9 structure.”;

10 (2) in subsection (d)—

11 (A) in paragraph (1), by inserting “, or
12 lowest-cost-technically-acceptable,” after “best-
13 value”; and

14 (B) by adding at the end the following:

15 “(8) **PERMANENT ROAD CLOSURE.**—

16 “(A) **IN GENERAL.**—The Secretary of Ag-
17 riculture may close a permanent road under a
18 contract entered into under this section without
19 achieving with respect to the permanent road
20 the restoration activities included in the land
21 management goals described in subsection (c) if
22 the permanent road would allow future access
23 for firefighting or other appropriate agency use,
24 as determined by the applicable forest super-
25 visor.

1 “(B) INTACTNESS.—If a permanent road
2 is closed under subparagraph (A), the perma-
3 nent road shall be closed to the public according
4 to the applicable forest plan, but shall remain
5 intact.”; and

6 (3) in subsection (e)(2)(A), by inserting “, sub-
7 ject to the condition that 25 percent of the gross re-
8 ceipts shall be disbursed to the county in which the
9 project site is located” before “; and”.

10 **SEC. 314. PILOT ALTERNATIVE DISPUTE PROCESS.**

11 (a) ARBITRATION.—

12 (1) IN GENERAL.—The Secretary shall establish
13 within the Forest Service a 5-year arbitration pilot
14 program as an alternative dispute resolution process
15 in lieu of judicial review for the projects described
16 in subsection (b).

17 (2) NOTIFICATION TO OBJECTORS.—On
18 issuance of an appeal response to an objection filed
19 with respect to a project subject to an objection at
20 the project level under part 218 of title 36, Code of
21 Federal Regulations (as in effect on the date of en-
22 actment of this Act), the Secretary shall notify each
23 applicable individual or entity that submitted the ob-
24 jection (referred to in this section as the “objector”)

1 that any further appeal may be subject to arbitra-
2 tion in accordance with this section.

3 (b) DESCRIPTION OF PROJECTS.—The Secretary, in
4 coordination with the head of the applicable Region of the
5 Forest Service, may designate any type of project under
6 this title for arbitration under this section.

7 (c) ARBITRATORS.—

8 (1) APPOINTMENT.—The Secretary shall de-
9 velop and publish a list of not fewer than 20 individ-
10 uals eligible to serve as arbitrators for the pilot pro-
11 gram under this section.

12 (2) QUALIFICATIONS.—In order to be eligible to
13 serve as an arbitrator under this subsection, an indi-
14 vidual shall be currently certified by the American
15 Arbitration Association.

16 (d) INITIATION OF ARBITRATION.—

17 (1) IN GENERAL.—Not later than 7 days after
18 the date of receipt of a notice of intent to file suit
19 challenging a project, the Secretary shall notify each
20 applicable objector and the court of jurisdiction that
21 the project has been designated for arbitration in ac-
22 cordance with this section.

23 (2) DEMAND FOR ARBITRATION.—

24 (A) IN GENERAL.—An objector that sought
25 judicial review of a project that has been des-

1 ignated by the Secretary for arbitration under
2 this section may file a demand for arbitration
3 in accordance with—

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

6 (ii) this paragraph.

7 (B) REQUIREMENTS.—A demand for arbi-
8 tration under subparagraph (A) shall—

9 (i) be filed not later than the date
10 that is 30 days after the date of the notifi-
11 cation by the Secretary under paragraph
12 (1); and

13 (ii) include an alternative proposal to
14 the applicable project that describes each
15 modification sought by the objector with
16 respect to the project.

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

21 (f) RESPONSIBILITIES OF ARBITRATOR.—

22 (1) IN GENERAL.—An arbitrator selected under
23 subsection (e)—

1 (A) shall address each demand filed for ar-
2 bitration with respect to a project under this
3 section; but

4 (B) may consolidate into a single arbitra-
5 tion all demands for arbitration by all objectors
6 with respect to a project.

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

11 (A) the project, as approved by the Sec-
12 retary;

13 (B) an alternative proposal submitted by
14 the applicable objector; or

15 (C) neither proposal.

16 (3) LIMITATIONS.—

17 (A) ADMINISTRATIVE RECORD.—A decision
18 of an arbitrator under this subsection shall be
19 based solely on the administrative record for
20 the project.

21 (B) NO MODIFICATIONS TO PROPOSALS.—
22 An arbitrator may not modify any proposal con-
23 tained in a demand for arbitration of an objec-
24 tor under this section.

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

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

7 (1) shall not be considered to be a major Fed-
 8 eral action;

9 (2) shall be binding; and

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

13 (i) TERMINATION OF EFFECTIVENESS.—The author-
 14 ity provided by this section terminates effective January
 15 1, 2023.

16 **Subtitle B—Ecosystem Restoration**

17 **SEC. 321. DEFINITIONS.**

18 In this subtitle:

19 (1) COMMUNITY WILDFIRE PROTECTION
 20 PLAN.—The term “community wildfire protection
 21 plan” has the meaning given the term in section 101
 22 of the Healthy Forests Restoration Act of 2003 (16
 23 U.S.C. 6511).

24 (2) RESTORATION.—

1 (A) IN GENERAL.—The term “restora-
2 tion”, with respect to an ecosystem, means to
3 carry out any activity that helps to recover, es-
4 tablish, or maintain the resilience or adaptive
5 capacity of an ecosystem.

6 (B) INCLUSIONS.—The term “restoration”
7 includes any activity described in subsection (a)
8 relating to—

- 9 (i) timber harvesting;
- 10 (ii) thinning;
- 11 (iii) prescribed fire; or
- 12 (iv) other vegetation manipulation in
13 the National Forest System.

14 **SEC. 322. ECOSYSTEM RESTORATION PROJECTS.**

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

- 24 (1) To restore terrestrial habitat.

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

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

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

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

9 (6) To reduce wildland fire severity potential.

10 (7) To implement a community wildfire protec-
11 tion plan.

12 (8) To establish, recover, or maintain ecosystem
13 resiliency.

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

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

19 (2) on which removal of vegetation is prohibited
20 by law.

21 **SEC. 323. NATIONAL RESTORATION TREATMENT ACREAGE.**

22 (a) IN GENERAL.—For fiscal year 2018 and each fis-
23 cal year thereafter, the Secretary shall establish a 5-year
24 schedule to achieve the ecosystem restoration objectives
25 described in section 322(a).

1 (b) SCHEDULE GOALS.—The schedule established
2 under subsection (a) shall—

3 (1) by the end of the first 5-year period, result
4 in at least a doubling of the acres subject to an eco-
5 system restoration project under this subtitle, as
6 compared to the number of acres subject to an eco-
7 system restoration project in fiscal year 2017; and

8 (2) be consistent with any applicable forest
9 plan.

10 (c) ASSIGNMENT.—Not later than 90 days after the
11 date of enactment of this Act, and annually thereafter,
12 the Secretary shall assign the annual acreage for restora-
13 tion treatments, by National Forest System region, de-
14 scribed in subsection (a).

15 (d) PUBLICATION.—As soon as practicable after the
16 date of each assignment of acreage for restoration treat-
17 ments under subsection (c), the Secretary shall publish the
18 acreage that will apply, by National Forest System region,
19 on the Internet website of the Forest Service.

20 **SEC. 324. PERFORMANCE MEASURES; ANNUAL REPORTS.**

21 (a) PERFORMANCE MEASURES.—The Secretary shall
22 annually evaluate the degree to which the Secretary is
23 achieving—

24 (1) the purposes of this subtitle, including—

1 (A) the number of acres covered by eco-
2 system restoration projects;

3 (B) the number of acres treated by me-
4 chanical methods under ecosystem restoration
5 projects;

6 (C) the number of acres treated using
7 stewardship contracts and stewardship agree-
8 ments under ecosystem restoration projects;

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

11 (E) the number of acres treated by pre-
12 scribed fire, mowing, and other noncommercial
13 product producing activities under ecosystem
14 restoration projects; and

15 (F) to the extent practicable, a summary
16 of acres receiving more than 1 type of treat-
17 ment; and

18 (2) the acreage requirements established under
19 section 323(b)(1).

20 (b) ANNUAL REPORTS.—Not later than 1 year after
21 the date of enactment of this Act, and annually thereafter,
22 the Secretary shall submit to the Committee on Energy
23 and Natural Resources and the Committee on Environ-
24 ment and Public Works of the Senate and the Committee
25 on Natural Resources of the House of Representatives—

1 (1) a report that describes, with respect to the
2 preceding year, the results of evaluations using the
3 performance measures described in subsection (a);
4 and

5 (2) a report that describes, with respect to the
6 preceding year—

7 (A) the number and substance of projects
8 that are subject to arbitration under section
9 314; and

10 (B) the outcomes of the arbitrations under
11 that section.

12 **Subtitle C—Categorical Exclusions**

13 **SEC. 331. DEFINITIONS.**

14 In this subtitle:

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

22 (2) CATEGORICAL EXCLUSION.—The term “cat-
23 egorical exclusion” means an exclusion from the re-
24 quirement to prepare an environmental assessment
25 or an environmental impact statement under section

1 102 of the National Environmental Policy Act of
2 1969 (42 U.S.C. 4332) for a category of forest man-
3 agement activities.

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

9 (4) SALVAGE OPERATION.—The term “salvage
10 operation” means a forest management activity car-
11 ried out in response to a catastrophic event, the pri-
12 mary purpose of which is—

13 (A) to prevent wildfire as a result of the
14 catastrophic event, or, if the catastrophic event
15 was wildfire, to prevent a reburn of the fire-im-
16 pacted area;

17 (B) to provide an opportunity for use of
18 forest materials damaged as a result of the cat-
19 astrophic event; or

20 (C) to provide a funding source for refor-
21 estation and other restoration activities for the
22 National Forest System land impacted by the
23 catastrophic event.

1 **SEC. 332. CATEGORICAL EXCLUSION TO EXPEDITE CER-**
2 **TAIN CRITICAL RESPONSE ACTIONS.**

3 (a) IN GENERAL.—Not later than 1 year after the
4 date of enactment of this Act, the Secretary shall develop
5 a categorical exclusion (as defined in section 1508.4 of
6 title 40, Code of Federal Regulations (or a successor regu-
7 lation)) to carry out a forest management activity on Na-
8 tional Forest System land in any case in which at least
9 2 of the primary purposes of the forest management activ-
10 ity are—

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

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

14 (3) to reduce hazardous fuel loads;

15 (4) to protect a municipal water source;

16 (5) to maintain, enhance, or modify critical
17 habitat to protect the habitat from catastrophic dis-
18 turbances;

19 (6) to increase water yield;

20 (7) to achieve salvage operation objectives; or

21 (8) any combination of the purposes specified in
22 paragraphs (1) through (7).

23 (b) ADMINISTRATION.—In developing and admin-
24 istering a categorical exclusion under subsection (a), the
25 Secretary shall—

1 (1) be consistent with the National Environ-
2 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
3 and

4 (2) apply the extraordinary circumstances pro-
5 cedures under section 220.6 of title 36, Code of Fed-
6 eral Regulations (or a successor regulation), in de-
7 termining whether to use the categorical exclusion.

8 **SEC. 333. CATEGORICAL EXCLUSION TO MEET FOREST**
9 **PLAN GOALS FOR EARLY SERAL AND EARLY**
10 **SUCCESSIONAL FORESTS.**

11 (a) AVAILABILITY OF CATEGORICAL EXCLUSION.—A
12 categorical exclusion is available to the Secretary to de-
13 velop and carry out a forest management activity on Na-
14 tional Forest System land in any case in which the pri-
15 mary purpose of the forest management activity is modi-
16 fying, improving, enhancing, or creating an early seral or
17 early successional forest, in accordance with the applicable
18 forest plan.

19 (b) ACREAGE LIMITATIONS.—A forest management
20 activity covered by the categorical exclusion granted by
21 subsection (a) may not contain harvest units exceeding a
22 total of 6,000 acres.

23 (c) EXTRAORDINARY CIRCUMSTANCES.—The Sec-
24 retary may apply the extraordinary circumstances proce-
25 dures under section 220.6 of title 36, Code of Federal

1 Regulations (or a successor regulation), in determining
2 whether to use a categorical exclusion under subsection
3 (a).

4 (d) **CONSISTENCY.**—In carrying out forest manage-
5 ment activities using the categorical exclusions under sub-
6 section (a), the Secretary shall ensure that the forest man-
7 agement activities are consistent with the applicable forest
8 plans.

9 (e) **CUMULATIVE IMPACTS.**—The Secretary shall not
10 be required to conduct a cumulative impact analysis in an
11 environmental document prepared under the National En-
12 vironmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
13 for a forest management activity carried out using a cat-
14 egorical exclusion made available to the Secretary under
15 subsection (a) or any other provision of law (including reg-
16 ulations).

17 **SEC. 334. CATEGORICAL EXCLUSION TO IMPROVE WILD-
18 LIFE HABITATS.**

19 (a) **AVAILABILITY OF CATEGORICAL EXCLUSION.**—A
20 categorical exclusion is available to the Secretary to con-
21 duct a forest management activity the purpose of which
22 is the improvement of wildlife habitat.

23 (b) **ACREAGE LIMITATIONS.**—A forest management
24 activity covered by the categorical exclusion granted by

1 subsection (a) may not contain harvest units exceeding a
2 total of 6,000 acres.

3 (c) EXTRAORDINARY CIRCUMSTANCES.—The Sec-
4 retary may apply the extraordinary circumstances proce-
5 dures under section 220.6 of title 36, Code of Federal
6 Regulations (or a successor regulation), in determining
7 whether to use a categorical exclusion under subsection
8 (a).

9 (d) CONSISTENCY.—In carrying out forest manage-
10 ment activities using the categorical exclusions under sub-
11 section (a), the Secretary shall ensure that the forest man-
12 agement activities are consistent with the applicable forest
13 plans.

14 (e) CUMULATIVE IMPACTS.—The Secretary shall not
15 be required to conduct a cumulative impact analysis in an
16 environmental document prepared under the National En-
17 vironmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
18 for a forest management activity carried out using a cat-
19 egorical exclusion made available to the Secretary under
20 subsection (a) or any other provision of law (including reg-
21 ulations).

22 **SEC. 335. CATEGORICAL EXCLUSION TO THIN FORESTS.**

23 (a) AVAILABILITY OF CATEGORICAL EXCLUSION.—A
24 categorical exclusion is available to the Secretary to con-
25 duct a forest management activity the purpose of which

1 is commercial thinning of forest stands on suited
2 timberland, including—

3 (1) the incidental removal of trees for landings,
4 skid trails, and road clearing; and

5 (2) the construction of a temporary road that
6 is not longer than 1 mile to carry out that commer-
7 cial thinning.

8 (b) ACREAGE LIMITATIONS.—A forest management
9 activity covered by the categorical exclusion granted by
10 subsection (a) may not contain harvest units exceeding a
11 total of 6,000 acres.

12 (c) EXTRAORDINARY CIRCUMSTANCES.—The Sec-
13 retary may apply the extraordinary circumstances proce-
14 dures under section 220.6 of title 36, Code of Federal
15 Regulations (or a successor regulation), in determining
16 whether to use a categorical exclusion under subsection
17 (a).

18 (d) CONSISTENCY.—In carrying out forest manage-
19 ment activities using the categorical exclusions under sub-
20 section (a), the Secretary shall ensure that the forest man-
21 agement activities are consistent with the applicable forest
22 plans.

23 (e) CUMULATIVE IMPACTS.—The Secretary shall not
24 be required to conduct a cumulative impact analysis in an
25 environmental document prepared under the National En-

1 vironmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
2 for a forest management activity carried out using a cat-
3 egorical exclusion made available to the Secretary under
4 subsection (a) or any other provision of law (including reg-
5 ulations).

6 **SEC. 336. EXPANSION OF CATEGORICAL EXCLUSION FOR**
7 **INSECT AND DISEASE INFESTATION.**

8 (a) PERMANENT AUTHORITY.—Section 602(f) of the
9 Healthy Forests Restoration Act of 2003 (16 U.S.C.
10 6591a(f)) is amended by striking “each of fiscal years
11 2014 through 2024.” and inserting “each fiscal year.”.

12 (b) ADMINISTRATIVE REVIEW.—Section 603 of the
13 Healthy Forests Restoration Act of 2003 (16 U.S.C.
14 6591b) is amended—

15 (1) in subsection (a), in the matter preceding
16 paragraph (1), by striking “described in subsection
17 (b)”;

18 (2) by striking subsection (b);

19 (3) by redesignating subsections (c) through (g)
20 as subsections (b) through (f), respectively; and

21 (4) in subsection (b) (as so redesignated)—

22 (A) in paragraph (1), by striking “3000”
23 and inserting “6,000”; and

24 (B) in paragraph (2), by striking “shall
25 be” in the matter preceding subparagraph (A)

1 and all that follows through the period at the
2 end of subparagraph (B) and inserting “may be
3 carried out in any area designated under sec-
4 tion 602(b), including areas in Fire Regime
5 Groups IV and V.”.

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