

To: Interested Persons
From: Mike Anderson, The Wilderness Society
Re: Analysis of Walden Salvage Bill, H.R. 4200
Date: Nov. 3, 2005

Following is a brief analysis of H.R. 4200, the "Forest Emergency Recovery and Research Act" (bill dated November 2), proposed by Congressman Greg Walden, who chairs the House Subcommittee on Forests and Forest Health. The analysis focuses on Title I of the bill, concerning "Response to Catastrophic Events on Federal Lands," and on the funding provisions of Title IV. The bill applies to all lands administered by the Forest Service and Bureau of Land Management, except for designated wilderness areas.

Essentially, the bill provides an expedited process for implementation of salvage logging and other projects following a "catastrophic event." Catastrophic event is defined very broadly to include any fire or "natural disaster," including drought or insect outbreak, that will cause "significant" damage to federal or non-federal land. (Sec. 3(2)).

First, the bill requires the agencies to adopt a list of "pre-approved management practices" that can be implemented quickly in response to a catastrophic event. (Sec. 104(a)(1)). The list of practices would be developed through public notice and comment and peer review. (Sec. 104(a)(2)&(3)). The practices may include construction of temporary logging roads, but not permanent roads. (Sec. 104(d)(1)). The list can also include salvage logging of dead trees and trees that are very likely to die within five years after the catastrophic event. (Sec. 104(d)(2)).

Second, the bill requires the agencies to complete a "recovery evaluation" within 30 days after a catastrophic event affecting more than 1000 acres. (Sec. 102(a)(1)&(b)). For affected areas between 250 acres and 1000 acres, the agencies would have discretion to prepare a recovery evaluation, but would not be required to do so. (Sec. 102(a)(2)). As discussed below, the recovery evaluation would take the place of some or all of the environmental analysis and public involvement process normally required by National Environmental Policy Act (NEPA).

Based on the area-specific evaluation, the agencies could choose to proceed along either of two decision-making avenues. If an agency chose to use the "pre-approved management practices" for a particular project, the agency would have just 30 days to issue a decision, after which the project must be implemented immediately. (Sec. 104(f)&(g)). The bill provides minimal opportunity for public involvement on projects proposed under this option -- aside from notice and a vague requirement to "facilitate collaboration" during the recovery evaluation -- and does not require the agency to solicit or consider public comments. (Sec. 102(g)&(h)). The decision document would need to include some analysis of environmental effects (Sec. 104(f)(4)), but otherwise the project would be exempt from NEPA. (Sec. 103).

For the pre-approved management practices, Endangered Species Act consultation would occur on an “emergency” basis, thus removing key protections of the ESA. (Sec. 104(e)(1)). Most notably, the bill would bypass the ESA's central requirement for the Forest Service and BLM to consult with federal wildlife experts at the U.S. Fish and Wildlife Service and National Marine Fisheries Service regarding the potential effects of salvage logging on threatened or endangered species before salvage timber sales are undertaken. Instead, the bill allows formal consideration of endangered species to be delayed until after the logging is completed -- an analysis that will obviously be of no value to imperiled wildlife. Similarly, consultation required by the National Historic Preservation Act, Clean Water Act, and other laws could occur while the project is being implemented, potentially making the consultation process a meaningless exercise and allowing historic sites to be unknowingly destroyed. (Sec. 104(e)(2)).

Alternatively, the agency could choose to use “alternative arrangements” to implement the emergency project (Sec. 105). Under this option, the agency would have 90 days after the evaluation to issue a decision and begin implementation. (Sec. 105(d)&(e)). During this time, the agency would prepare an abbreviated NEPA analysis, considering just the agency’s proposed action along with a no-action alternative. (Sec. 105(a)). The bill is unclear about whether there would be any opportunity for public comment on the analysis. ESA and other consultation would be expedited for alternative-arrangement projects in the same ways as for pre-approved management practices. Also, the same limits on permanent road building and logging dead trees would apply to both kinds of projects.

For all Title I catastrophic-event projects, the bill utilizes the same pre-decisional objection process and limitations on judicial review provided by regulations implementing the Healthy Forests Restoration Act (Sec. 106). However, it is unclear how the HFRA objection process could be adapted to Title I projects, given the bill’s very short deadlines for decision-making and implementation of those projects. In addition, the bill limits the attorneys’ fees awarded to successful litigants to the hourly rates of public defenders in the local area. (Sec. 106(c)). These provisions will make it more difficult for the public to challenge the legality of controversial and environmentally damaging salvage logging projects.

Finally, the bill authorizes the agencies to take money appropriated for wildland fire management and spend it on salvage logging and other Title I projects. (Sec. 402(b)). This provision could significantly reduce funding for fire suppression, fire preparedness, hazardous fuels reduction, and community fire planning, effectively trading off the safety of families, their homes, and communities in order to produce more salvage timber sales to benefit the timber industry.