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## **Healthy Forest Restoration Act of 2003: What does it do?**

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### **Introduction and Summary of Act**

The Healthy Forest Restoration Act of 2003 (HFRA) was passed by both Houses of Congress on November 21, 2003, and signed by the President on December 3, 2003.

The legislation contains a variety of provisions aimed at expediting the preparation and implementation of hazardous fuels reduction projects on federal land and assisting rural communities, States and landowners in restoring healthy forest conditions on state and private lands. It also authorizes large-scale silvicultural research, the acquisition of conservation easements and the establishment of monitoring and early warning systems for insect and disease outbreaks. The following briefly summarizes various provisions of the bill:<sup>1</sup>

#### Title I (vegetation treatments on and adjacent to federal lands):

- Authorizes the use of expedited measures for hazardous fuels treatments on up to 20 million acres of federal land.
- Encourages collaboration between federal agencies and local communities in the preparation of community-based fuels treatment plans designed to treat hazardous fuels that threaten those communities and their sensitive watersheds.
- Requires allocating at least 50 percent of federal hazardous fuels reduction funds to protect communities.
- Provides for expedited environmental analysis of hazardous fuel reduction projects on federal lands that are at-risk to catastrophic wildfire.
- Provides for expedited pre-decisional administrative review of hazardous fuels treatment projects on federal lands.
- Requires courts considering legal actions that seek to halt implementation of a hazardous fuels reduction project to balance the environmental effects of undertaking the project against those of not carrying it out.
- In carrying out hazardous fuels reduction projects in areas that may contain old growth forests, requires federal agencies to maintain or restore those forests.
- In other areas, requires agencies to maintain larger trees consistent with the objective of restoring fire resilient stands.
- Authorizes \$720 million annually for hazardous fuels reduction activities.

#### Titles II through VI

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<sup>1</sup> The full text of the Act can be found on: <http://thomas.loc.gov/>. Type in HR 1904 and then go to the enrolled bill and its supporting documents.

- Encourages research and technology transfer on biomass utilization and provides grants for removal of hazardous fuels and other biomass to encourage their utilization for energy and other products.
- Provides for assistance to private landowners and Indian Tribes in protecting and restoring healthy watershed conditions.
- Authorizes large-scale research projects designed to evaluate ways to treat forests to reduce their susceptibility to insects, diseases and fire.
- Provides for acquisition of short and long-term agreements and easements from private landowners to protect and enhance habitats for endangered and threatened species, protect biodiversity and sequester carbon.
- Encourages and directs monitoring and early warning programs for insect and disease outbreaks.

The following is a detailed description of the provisions of HFRA.

## **Title I:**

### **Hazardous Fuel Treatment Projects and Priorities**

Section 102(a) describes the types of lands on which hazardous fuel reduction projects must occur to qualify for the expedited review procedures under HFRA. These are:

1. The wildland-urban interface areas of at-risk communities (Section 102(a)(1));<sup>2</sup>
2. All condition class 3 lands, as well as condition class 2 lands within fire regimes I, II or III, that are in such proximity to a municipal watershed or its feeder streams that a significant risk exists that a wildfire event will have adverse effects on the water quality of the municipal water supply or the maintenance of the system (Sections 102(a)(2) and (3));<sup>3</sup>
3. Where windthrow or blowdown or the existence of an epidemic of disease or insects significantly threatens ecosystems or resources (Section 102(a)(4));<sup>4</sup> and
4. Areas that have threatened and endangered species habitat, where the natural fire regimes are important for (or where wildfire poses a threat to) the species or their habitat and the fuel reduction project will enhance protection from catastrophic wildfire (and complies with applicable guidelines in management or recovery plans) (Section 102(a)(5)).

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<sup>2</sup> HFRA defines wildland-urban interface (Section 101) as an area within or adjacent to an at-risk community that has been identified by a community in its wildfire protection plan or, for areas that do not have such a plan, an area extending: 1) ½ mile from the boundary of an at-risk community, or 2) 1½ miles when other criteria are met e.g. a sustained steep slope or a geographic feature aiding in creating an effective firebreak or is condition class III land, or 3) is adjacent to an evacuation route.

<sup>3</sup> For a discussion of fire regimes and condition classes see: <http://fire.org/frcc/FrccDefinitionsFinal.pdf>

<sup>4</sup> This subsection gives the provisions of HFRA national scope, since it is applicable to areas not subject to wildfire risk. The old growth provisions of HFRA **do not apply** when the conditions identified in Section 102(a)(4) are determined to exist.

Section 102(c) requires that at least 50% of funds shall be allocated in the wildland urban interface (WUI), as defined by HFRA. For purposes of expenditure of funds in the first year of the bill, the federal agencies can use current definitions of WUI.

### **Treatment Area and Limitations**

Sections 102(b), (c), and (d):

- Requires projects to be planned and conducted in a manner consistent with applicable land and resource management plans; (102(b))
- Limits the acreage available for authorized hazardous fuels reduction projects to 20 million acres with no time sunset; (102(c)) and
- Prohibits authorized hazardous fuels reduction projects on: Wilderness Areas, Wilderness study areas, and federal lands where the removal of vegetation is prohibited or restricted by a Congressional or a presidential proclamation. (102(d))

### **Old Growth and Large Tree Retention**

#### *Old growth*

Section 102(e) provides direction for projects that may occur within old growth stands. This section:

- Defines projects that would be covered under Section 102(e) as all authorized hazardous fuel reduction projects except those in an area where windthrow, blowdown, ice storm damage, or the existence of insects or disease poses a significant threat to an ecosystem component (pursuant to 102(a)(4));
- Provides that old growth management direction that is contained in management plans that were established on or after December 15, 1993 is deemed to be sufficient and shall be used by the Secretary in carrying out a covered project;
- For other plans (older and newer), requires the Secretary to fully maintain, or contribute toward the restoration of the structure and composition of structurally complex old growth stands according to the pre-fire suppression old growth conditions characteristic of the forest type, while considering the contribution of the stand to landscape fire adaptation and watershed health, and retaining the large trees contributing to old growth structure;<sup>5</sup> (102(e)(2))
- Requires that any amendment or revision to management direction for which final administrative approval is granted after the date of enactment of this Act shall be consistent with the requirements of Section 102(e)(2) described above;
- Provides that old growth management direction that was established before December 15, 1993 may be used for a two-year period beginning on the date of enactment of the Act (December 3, 2003), or if in the process of revising a resource management plan, may be used for a three-year period; and

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<sup>5</sup> This would apply only to projects that are authorized under HFRA. The old growth provisions of HFRA do not apply to projects implemented under other authorities.

- Provides that older management direction shall be reviewed and revised, if necessary, to reflect relevant information not considered in formulating the resource management plan. If this review is not completed within the specified time period, and after that anyone provides substantial supporting evidence during scoping that an area within a proposed hazardous fuels treatment project is old growth, that area must be dropped from the project (or can otherwise be treated using other non-HFRA legal authorities).<sup>6</sup>

Note: Section 102(e) was specifically designed to avoid the need for rulemaking prior to implementing vegetation management projects. The two to three year period for forests to review older plans is an example. It is estimated that over 60 percent of national forest plans predate December 15, 1993. In reviewing (and, if necessarily, amending or revising) forest plans as to their treatment of old growth in relation to the requirements of Section 102(e)(2), nothing prevents the Forest Service from carrying out multi-forest development of old growth management guidelines on a forest type specific basis and amending plans to meet the new guidelines globally.

### *Large tree retention*

#### Section 102(f):

- Requires that covered projects outside of old growth stands focus largely on small diameter trees, thinning, strategic fuel breaks, and prescribed fire to modify fire behavior, as measured by the projected reduction of uncharacteristically severe wildfire effects for the forest type; and, maximize the retention of large trees, as appropriate for the forest type, to the extent that the large trees promote fire-resilient stands.
- Provides that nothing in this provision is intended to prevent achieving the purposes stated in Section 2(1) (i.e., of reducing wildfire risk to communities, municipal water supplies and at risk federal land).

### **Collaboration with Local Communities**

#### Section 103:

- Directs the Secretary (in accordance with the Implementation Plan)<sup>7</sup> to develop an annual program of work for federal land that gives priority to authorized hazardous fuel reduction projects that provide for protection of at-risk communities or watersheds or that implement community wildfire protection plans;

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<sup>6</sup> HFRA provides that nothing requires resource management plans to be revised or amended to make the old growth project requirements applicable to any other than a HFRA authorized project (Section 102(e)(5)).

<sup>7</sup> This refers to the “Implementation Plan for the Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment,” dated May 2002, developed pursuant to the conference report to accompany the Department of the Interior and Related Agencies Appropriations Act, 2001 (House Report No. 106-64).

- Makes the Federal Advisory Committee Act and National Environmental Policy Act inapplicable to Federal involvement in the planning and development of community wildfire protection plans;
- Directs that not less than 50 percent of the funds allocated for authorized hazardous fuel reduction projects shall be used in the wildland-urban interface. Such allocation shall apply at the national level. However, funds may be allocated differently within individual management units as appropriate, in particular to conduct authorized hazardous fuel reduction projects in areas with insects, disease, windthrow, blowdown or ice storm damage on land described in Section 102(a)(4); (103(d)(1))
- For authorized hazardous fuel reduction projects for which a decision notice is issued within one year of date of enactment of this Act, existing definitions of wildland-urban interface will be used.
- In providing financial assistance for authorized hazardous fuel reduction projects on non-federal land, the Secretary shall: 1) consider recommendations made by at-risk communities that have developed community wildfire protection plans, and 2) give priority in allocating funding to communities that have adopted wildfire protection plans. (103(d)(2))

### **Environmental Analysis Requirements**

#### Section 104:

- Requires the Secretary to prepare an environmental assessment (EA) or an environmental impact statement (EIS) for any authorized hazardous fuel reduction project; (104(b))
- Gives the Secretary discretionary authority to limit the analysis ordinarily required under the National Environmental Policy Act (NEPA) to the proposed agency action, meaning the agencies would not be required to analyze and describe a number of different alternatives to the preferred course (see details below); (104(c) and (d))
- Requires the Secretary to provide notice of authorized hazardous fuel reduction projects and conduct a public meeting during the preparation stage; (104(e))
- Requires the Secretary to collaborate among governments and interested persons during the formulation of each authorized fuels reduction project; (104(f))
- Requires the Secretary to allow public input in accordance with NEPA during the preparation of an EA or EIS for an authorized hazardous fuel reduction project; (104(g)), and
- Requires the Secretary to sign a decision document for each authorized hazardous fuels reduction project and provide notice of that document. (104(h))

Note: Except for the authorization for fewer NEPA alternatives contained in Section 104(c) and (d) and discussed below, most of the requirements of Section 104 are normal agency NEPA practices.

#### Limitations on Required Alternatives (Sections 104(c) and (d))

Several situations can apply:

1. Within 1½ miles of an at-risk community:<sup>8</sup>

Federal agencies are not required to analyze any alternative other than the proposed action unless it is different than that contained in the applicable community wildfire protection plan (if one exists), in which case both alternatives must be described (Section 104(d)(2)).

2. Within the WUI (as described in community fire protection plans):

Federal agencies are not required analyze more than the proposed agency action and one additional action alternative (104(d)(1)).<sup>9</sup>

3. Generally in areas outside the WUI (as defined by HFRA):

Analysis must describe the proposed action, a no action alternative, and an additional action alternative, if one is proposed during scoping or the collaborative process that meets the purpose and need of the project. If more than one additional alternative is proposed, the Secretary shall select (at her sole discretion and not subject to judicial review) which additional alternative to consider and will provide a written record describing the reasons for the selection. (104(c))

Note: Under either of the situations described in items 1 or 2 above, HFRA does not prevent the federal agency from analyzing additional alternatives. It is just not required to do so.

## **Administrative Appeals**

Section 105:

- Directs the Secretary of Agriculture to establish, within 30 days of the date of enactment (December 3, 2003), interim final regulations (that go into effect when issued) to establish a pre-decisional administrative review process that will serve as the sole means by which a person can seek administrative review regarding an authorized hazardous fuel reduction project on National Forest System land; (105(a))

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<sup>8</sup> HFRA defines an at-risk community as one:

(A) That is comprised of: (i) an interface community as defined in the notice entitled 'Wildland Urban Interface Communities Within the Vicinity of Federal Lands That Are at High Risk From Wildfire' issued by the Secretary of Agriculture and the Secretary of the Interior in accordance with title IV of the Department of the Interior and Related Agencies Appropriations Act, 2001 (114 Stat. 1009) (66 Fed. Reg. 753, January 4, 2001); or (ii) a group of homes and other structures with basic infrastructure and services (such as utilities and collectively maintained transportation routes) within or adjacent to Federal land;

(B) In which conditions are conducive to a large-scale wildland fire disturbance event; and

(C) For which a significant threat to human life or property exists as a result of a wildland fire disturbance event.

<sup>9</sup> The Conference Managers' Report states that "for projects described in section 104(d)(1) of the Conference substitute, the Managers expect the Secretary to concisely analyze the likely environmental outcomes if the proposed treatment is not implemented."

- Indicates that the period for the predecisional review process begins after the completion of the EA or EIS and ends no later than the date of issuance of the final decision (105(a)(2)).
- Requires persons who participate in a predecisional review process to have submitted specific written comments related to the proposed action during the scoping or public comment period (105(a)(3));
- Requires the Secretary to establish final regulations after a time period for public comment; (105(b))
- Provides that a person may bring a civil action challenging an authorized hazardous fuel reduction project in a Federal district court only if the issue was raised during the administrative process and the person has exhausted the administrative review process established by the respective Secretary, with exceptions for futility or inadequacy claims; and (105(c))<sup>10</sup>
- Clarifies that, with respect to projects and activities of the National Forest System other than authorized hazardous fuel reduction projects, nothing affects, or otherwise biases, the notice, comment, and appeal procedures for projects and activities of the National Forest System contained in part 215 of title 36, Code of Federal Regulations (including related legal actions). (107(b))

## **Monitoring**

Sections 102(g)(1), (2), (3) and (4):

- Directs each Forest Service region and BLM State Office to monitor the results of a representative sample of authorized hazardous fuels reduction projects, and submit a report every 5 years that includes an evaluation of the progress towards project goals and recommendations for modifications to the projects and management treatments.
- Requires that, following issuance of a monitoring report, hazardous fuels reduction projects be consistent with the report's recommendations and that the results be made available for use in similar vegetation types;
- Requires monitoring and assessment to include a description of the changes in condition class, comparing end results to pretreatment conditions, historical fire regimes and watershed or landscapes goals in the relevant resource management plan.

Section 102(g)(5):

Instructs the Secretary to establish (where significant interest is expressed) a collaborative multi-party monitoring, evaluation, and accountability process in order to assess the positive or negative ecological and social effects of authorized fuels reduction projects, as well as those established pursuant to Section 404.<sup>11</sup> This process

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<sup>10</sup> The Conference Manager's Report states that: "The Managers do not expect the provisions in section 105(c)(3)(B) of the Conference substitute to be applicable to information which has not been brought to the attention of the Secretary."

<sup>11</sup> Collaborative, multi-party monitoring associated with Forest Service research projects may well be a new experience for the Forest Service Research community.

will include diverse stakeholders, including interested citizens and Indian tribes, in the monitoring and evaluation process.<sup>12</sup>

Sections 102(g)(6), (7) and (8):

- In collecting monitoring data, authorizes the use of cooperative agreements or contracts with, or providing grants to, NGOs or State, local, and other non-Federal entities; (102(g)(6))
- Requires the Secretary to track acres burned, by the degree of severity, by large wildfires (as defined by the Secretary); (102(g)(7)) and
- Requires the Secretary to develop a process for monitoring the need for maintenance of treated areas over time, in order to preserve the forest health benefits achieved. (102(g)(8))

Note: other provisions of HFRA require tracking of federal acres treated (Section 102) and funds spent in the WUI (Section 103).

### **Judicial Review**

Section 106:

- Requires lawsuits to be filed in the U.S. District Court where the project is located; (106(a))
- Encourages expeditious judicial review authorized fuels treatment projects; (106(b))
- Limits temporary injunctions to 60 days, subject to renewal. At each renewal, parties to the action must provide the court with updated information on the project; (106(c)(1), (2)) and
- Directs Courts, as part of their weighing of the equities in considering any request for an injunction of an authorized hazardous fuels reduction project, to balance the impact to the ecosystem likely affected by the project of the short- and long-term term effects of undertaking the project vs. not undertaking it. (106(c)(3))

### **Effects on Other Authorities**

Section 107 provides that nothing in Title I affects or biases the use by the federal agencies of other statutory or administrative authorities (including categorical exclusions adopted to implement the NEPA) to conduct a hazardous fuel reduction project on federal land (Section 107(a)). Neither does it affect the notice, comment, appeals or legal actions related to projects undertaken using these other authorities (Section 107(b)).

### **Authorization of Appropriations**

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<sup>12</sup> The requirement for multiparty monitoring is not directly connected to requirements for monitoring a representative sample of projects.

Section 108 authorizes \$760 million for each fiscal year to carry out activities authorized by Title I and other hazardous fuel reduction activities of the Secretary, including making grants to States.

## **Titles II-VI**

### **Biomass**

Section 201 amends the Biomass Research and Development Act to authorize biomass research on forestry issues and increases the authorization by \$5 million annually.

Section 202 creates a “Rural Revitalization Through Forestry” program in cooperation with the Forest Products Lab to accelerate adoption of biomass technologies and market activities, with a \$5 million annual authorization through 2008.

Section 203 authorizes the Secretary of Agriculture to make grants to persons operating a facility that uses biomass for wood-based products or other commercial purposes to help offset the cost of biomass and authorizes \$5 million annually through 2008.

### **Watershed Forestry Assistance**

Section 302 amends the Cooperative Forestry Assistance Act of 1978 to authorize the Secretary, acting through the Forest Service, to provide technical, financial and related assistance to private forest landowners through the State foresters and equivalent state officials. Focuses assistance on expanding forest stewardship capacities to improve municipal drinking water supplies and to address the threats to forest health, including wildfire, on non-Federal lands through technical assistance.

Section 302 also directs the Secretary to make awards under the cost-share program to communities, non-profit groups and non-industrial private forest landowners for watershed forestry projects, authorizes \$15 million for each of the fiscal years 2004 through 2008, and directs the Secretary to devote at least 75 percent of the funds appropriated in a fiscal year to the cost-share component.

Section 303 directs the Secretary of Agriculture to provide assistance to Indian tribes for expanding forestry projects and to address watershed issues on tribal lands and provides the same basic authorities for Indian tribes as are provided in Section 302, with authorization of \$2.5 million annually through 2008.

Note: This is the first time that State and Private Forestry will have a direct relationship with the Tribes, instead of working through the state foresters or DOI.

### **Insects Infestation and Related Diseases**

Section 403, among other things, directs the Department of Agriculture, acting through the Forest Service and U.S. Geological Survey, to: 1) conduct an accelerated program to plan, conduct, and promote systematic information gathering on a variety of insect pests,

and the diseases associated with them, that have caused large-scale damage to forest ecosystems; 2) assist land managers in the development of treatments and strategies to improve forest health and reduce the susceptibility of forest ecosystems to future infestations; 3) disseminate the results of such information gathering, treatments and strategies, and 4) establish and carry out the program in cooperation with scientists from universities and forestry schools, state agencies and private and industrial landowners.

Section 404: 1) authorizes the Secretary concerned to conduct “applied silvicultural assessments”<sup>13</sup> on federal lands that the Secretary determines are at risk;<sup>14</sup> 2) requires the Secretary to provide a scientific peer review of each silvicultural assessment (proposed scientific treatment) before being carried out; 3) requires public notice and comment on proposed activities; and 4) creates a categorical exclusion for areas 1000 acres or less from further analysis under NEPA, which eliminates the Secretary’s responsibility to make any findings as to whether the project has a significant effect on the environment. Projects categorically excluded cannot be immediately adjacent to each other and would be subject to the agency rules on extraordinary circumstances. A maximum of 250,000 acres can be categorically excluded under this title.

Section 405, states that the authorities provided in this title are supplemental to authorities provided in other laws. Section 406 authorizes the appropriation of such sums as may be necessary to carry out this title in fiscal years 2004 through 2008.

Note: Section 402 expands definition of eligible colleges and universities to insure eligibility of forestry schools funded under McIntire-Stennis.

### **Healthy Forest Reserve Program**

Section 501 directs the Secretary of Agriculture to establish a Healthy Forests Reserve Program to promote the recovery of endangered species, improve biodiversity and enhance carbon sequestration.

Section 502: 1) directs the Secretary of Agriculture, in consultation with the Secretaries of the Interior and Commerce, to designate rare forest ecosystems to be eligible for the reserve program; 2) specifies lands eligible for enrollment and lists eligibility and enrollment requirements for program participants, including enrollment priorities for land with threatened and endangered species; 3) allows lands to be enrolled pursuant to a 10-year cost-share agreement, a 30-year easement or other easement of not more than 99 years; 4) specifies a maximum enrollment of 2 million acres; and 5) requires the Secretary to consider the cost effectiveness of each agreement and its restoration plans to maximize the benefits per dollar expended.

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<sup>13</sup> Title IV of HFRA does not use the term “assessment” in the normally understood way. Section 404 defines “applied silvicultural assessment” as **any vegetative or other treatment** carried out for information gathering and research purposes.

<sup>14</sup> Excluded federal lands are: 1) Wilderness areas, 2) federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited; 3) congressionally-designated wilderness study areas; and 4) areas in which proposed treatment activities would be inconsistent with the applicable land and resource management plan.

Section 503 requires participating landowners to develop a restoration plan with the USDA describing the land use activities to be permitted on enrolled lands.

Section 504 sets forth the payment structure for 10-year, 30-year and up to 99 year enrollment options.

Section 505 directs the Secretary of Agriculture to provide landowners with the technical assistance necessary to comply with the terms of agreements and easements created in this program. This includes entering into agreements with certified technical service providers.

Section 506 directs the Secretary of Agriculture to make available safe harbor assurances under Section 7 of the Endangered Species Act to participating landowners when such enrollment will result in a net conservation benefit for listed species. The cost of any additional measures taken besides those covered in the restoration plan can be considered part of the restoration plan for financial assistance purposes under Section 504.

Section 507 enables the Secretary of Agriculture to consult with other individuals and entities regarding the development and implementation of the healthy forest reserve program.

Section 508 authorizes \$15 million for each of the fiscal years 2004 through 2008.

Note: Title V does not designate an implementing agency. The Secretary is free to determine whether it will be the Forest Service, NRCS, or another USDA agency.

### **Forest Inventory and Monitoring**

Section 601 instructs the Secretary of Agriculture to carry out a program to monitor forest stands on National Forest System lands and private lands; lists issues to be addressed; establishes an early warning system; and authorizes \$5,000,000 for each of the fiscal years 2004 through 2008 for such activities.<sup>15</sup>

Note: this section deals with responsibilities that seem to cross-cut those of both Forest Service Research (FIA/Forest Health Monitoring) and State and Private Forestry (Forest Health Protection).

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<sup>15</sup> The Conference Managers' Report states "The managers expect the Secretary to consult and collaborate with the National Aeronautics and Space Administration, Stennis Space Center in carrying out this title."