

# CRS Issue Brief for Congress

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## Wildfire Protection in the 108<sup>th</sup> Congress

Updated November 21, 2003

Ross W. Gorte  
Resources, Science, and Industry Division

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## Wildfire Protection in the 108<sup>th</sup> Congress

### SUMMARY

The 2000 and 2002 fire seasons were, by most standards, among the worst in the past 50 years. Many argue that the threat of severe wildfires has grown in recent years because of unnaturally high fuel loads (e.g., dense undergrowth and dead trees), raising concerns about damage to property and homes in the *wildland-urban interface* (WUI) — forests near or surrounding homes. Debates about fire control and protection, including funding and fuel treatments (e.g., thinning and prescribed burning), have focused on national forests and other federal lands, but nonfederal lands are also at risk.

Federal wildfire management funding rose dramatically after the severe 2000 fire season. In September 2000, President Clinton proposed a new National Fire Plan, requesting \$1.8 billion to supplement the \$1.1 billion originally requested for FY2001. Congress enacted most of this proposal and funding request, and support for expanded wildfire programs (excluding supplemental firefighting money) generally has continued.

On August 22, 2002, President Bush proposed the Healthy Forests Initiative. The initiative proposed significant changes to forest management laws designed, in part, to improve fire protection through fuel reduction. Several tools to reduce fuel loads currently exist — prescribed burning, thinning, and salvage and other timber cutting. Stewardship goods-for-services contracting has been suggested as a way to finance additional fuel reduction. Proponents of fuel reduction have expressed frustration with alleged project delays from environmental analyses of, and public participation in, federal agency deci-

sions (primarily under the National Environmental Policy Act [NEPA]) and from administrative appeals of and judicial challenges to decisions. Critics, however, dispute these assertions and are concerned that speedier action could allow environmentally damaging timber harvesting, without adequate environmental review and public oversight.

Wildfire protection bills were introduced in the 107<sup>th</sup> Congress; however, none was enacted. Issues addressed in various proposals included priorities for action (typically emphasizing the WUI, municipal watersheds, and areas with insect and disease problems and blown-down trees); the necessity of NEPA environmental analysis and other environmental protection; public involvement and collaboration in, and administrative and judicial review of, fuel reduction projects; and the magnitude and duration of the program.

Much of the attention in the 108<sup>th</sup> Congress has been on the Healthy Forests Restoration Act of 2003, H.R. 1904. This bill addresses many of the same issues addressed in the 107<sup>th</sup> Congress — priorities, NEPA analysis, and public involvement and review — but also includes titles allowing grants to use biomass, providing watershed forestry assistance, addressing insect infestations, and establishing private forest reserves. The bill passed the House on May 20, 2003, and the Senate on October 30; differences are being worked out. Other bills also have been introduced that address many of the same issues in different ways. One provision, stewardship goods-for-services contracting, was authorized for 10 years in the Consolidated Appropriations Resolution for FY2003 (P.L. 108-7).

## MOST RECENT DEVELOPMENTS

On October 30, 2003, the Senate passed a “compromise” version of H.R. 1904, the Healthy Forests Restoration Act of 2003, that differs from the version reported by the Senate Committee on Agriculture, Nutrition, and Forestry (S.Rept. 108-121). The bill had passed the House on May 20. Other bills also have been introduced, including the Collaborative Forest Health Act, S. 1314; the Community and Forest Protection Act, H.R. 2639 and S. 1352; America’s Healthy Forest Restoration and Research Act, S. 1449; and the Forestry and Community Assistance Act of 2003, S. 1453. S. 1314 was referred to the Senate Committee on Energy and Natural Resources, and the Committee held hearings on this bill and on H.R. 1904 and S. 1352 on July 22, 2003. S. 1352, S. 1449, and S. 1453 were referred to the Senate Committee on Agriculture, Nutrition, and Forestry. H.R. 2639 was referred to the House Committee on Agriculture and the House Committee on Resources.

On November 10, 2003, the President signed the FY2004 Interior Appropriations bill (H.R. 2691; P.L. 108-108), with \$2.72 billion for the National Fire Plan (for the Forest Service and Department of the Interior), including \$397.4 million in emergency funding to repay borrowing from other accounts for firefighting efforts. This is \$78.7 million (3%) more than the Administration requested (including the \$400.0 million supplemental requested in October), \$395.8 million (17%) more than the House passed, and \$77.4 million (3%) more than the Senate passed. In addition, \$319.0 million of additional firefighting funding was enacted in P.L. 108-83 (the FY2004 Legislative Branch Appropriations Act).

## BACKGROUND AND ANALYSIS

Wildfires and efforts to halt the damage they cause have been the center of increased attention in recent years. The 2000 and 2002 fire seasons were, by most standards, among the worst in the past 50 years, and many argue that the threat of severe wildfires has grown in recent years, because many forests have unnaturally high fuel loads (e.g., dead trees and dense undergrowth) and a historically unnatural mix of plant species (e.g., exotic invaders or an understory of trees differing from the overstory). (For more information on these “forest health” problems, see CRS Report RS20822, *Forest Ecosystem Health: An Overview*.) These higher threats have raised concerns about potential damage to homes that increasingly abut or are surrounded by forests — the *wildland-urban interface*, or WUI. The threats have led to debates over fire control and fire protection efforts, including questions about funding levels and fire protection treatments (e.g., thinning and prescribed burning).

Debates about wildfire protection have focused on federal lands — especially the national forests administered by the USDA Forest Service (FS) and the lands administered by the Bureau of Land Management (BLM) and other Department of the Interior (DOI) agencies — since federal lands are subject to congressional authority. However, the threats are not limited to federal lands, and many lands in the WUI are privately owned.

**Wildfire Funding.** The severe 2000 fire season led President Clinton to propose, in September 2000, a new program of fire control, protection, and funding — the National Fire Plan. He requested an additional \$1.8 billion to supplement the \$1.1 billion for FY2001

wildfire management requested before the fire season began. Much of the funding was to pay for FY2000 firefighting, but money also was increased for fuel treatment, burned area restoration, assistance to affected communities, and preparation for future fire seasons. Congress largely enacted this proposal in the Interior Appropriations Act for FY2001 (P.L. 106-291).

President Bush's budget requests have proposed continuing most of the wildfire management programs expanded under President Clinton. Wildfire protection appropriations in FY2003 totaled more than \$2.8 billion (including supplemental appropriations), and many observers warn that the 2003 fire season could be as bad as or worse than 2002. (For background on wildfire funding, see CRS Report RS21544, *Wildfire Protection Funding*. For current action on bills appropriating fire funds, see CRS Report RL31806, *Appropriations for FY2004: Interior and Related Agencies*.)

For FY2004, the Bush Administration requested National Fire Plan funding (for the FS and BLM) of \$2.24 billion, \$219.4 million (11%) more than the FY2003 level (\$2.02 billion), excluding \$825 million to repay amounts transferred from other accounts for firefighting during FY2002. The FS and BLM wildland-fire line items include funds for fire suppression (fighting fires), preparedness (equipment, training, baseline personnel, prevention, and detection), and other operations (rehabilitation, fuel treatment, research, and state and private assistance). In October, the President requested an additional \$400.0 million to repay money borrowed from other accounts to pay for firefighting efforts. In addition, the FS has fire protection assistance programs funded under State and Private Forestry (S&PF). These programs provide assistance to states — financial and technical help for fire prevention, fire control, and prescribed fire use by state foresters — and through them, to other agencies and organizations, and also provide direct assistance to volunteer fire departments. For FY2004, the Administration requested \$71.8 million for S&PF fire assistance, up slightly from the \$71.7 million appropriated in FY2003. Also, the 2002 farm bill (P.L. 107-171) created a community fire protection program to authorize the FS to act on nonfederal lands (with the consent of the landowner) and assist in protecting structures and communities from wildfires.

On July 17, 2003, the House passed the FY2004 Interior Appropriations bill (H.R. 2691) with \$2.32 billion for the National Fire Plan, \$82.9 million (4%) more than the Administration initially requested. Representative Norm Dicks offered an amendment to add \$550 million for FY2003 fire suppression, as the fire season is again expected to be severe, and not all FY2002 borrowed funds have been repaid; he withdrew the amendment on promises that the funding shortfall would be made up later. On September 23, the Senate passed the bill with \$2.24 billion for the National Fire Plan, \$1.3 million (less than 0.1%) more than the request. The Senate also added \$400.0 million in emergency contingency wildfire funding in a new Title IV, and the President subsequently requested this additional funding. The conference agreed to National Fire Plan Funding of \$2.32 billion, plus \$397.4 million of emergency funding to repay funds borrowed for fire fighting efforts.

On July 7, the Administration also requested emergency supplemental appropriations of \$289 million — \$253 million for the FS and \$36 million for the BLM — “to ensure sufficient funding for the 2003 fire season.” On July 11, the Senate passed this amount as an amendment to legislation providing FY2004 appropriations for the Legislative Branch (H.R. 2657). During floor consideration, the Senate agreed to an amendment adding \$25

million more to remove dead trees in forests devastated by insects, which would exacerbate wildfire threats. On September 30, the President signed the FY2004 Legislative Branch Appropriations (P.L. 108-83), with \$319 million for FY2003 firefighting.

**Fuel Reduction.** The severe 2002 fire season also prompted President Bush to propose a Healthy Forests Initiative, which aims to alter federal forest management laws to accelerate many of the existing procedures for reducing the fuel levels on federal lands. These proposals led to extensive discussions in the 107<sup>th</sup> Congress of the various fire protection programs, primarily fuel reduction, and of various viewpoints on limitations or difficulties in their use. As legislation was not enacted in the 107<sup>th</sup> Congress, the discussions have continued in the 108<sup>th</sup> Congress.

Several tools exist for reducing fuel loads. Prescribed burning — setting fires under prescribed weather and fuel conditions — can be effective for converting small fuels (grasses, needles or leaves, twigs) to minerals and to carbon dioxide and other gases, but prescribed fires produce large quantities of smoke and can be difficult to control. Salvage and other timber harvesting can reduce biomass from medium- and large-diameter trees, but the limbs and tree tops (*slash*) that are left after logging increase fuel loads, at least until the slash has rotted or been burned or removed. In addition, only sound trees of at least 6 inches in diameter can be sold for wood products, and thus commercial sales may be ineffective for removing small-diameter and low quality trees. Thinning, especially precommercial thinning (cutting trees with little or no commercial value), may be effective at reducing medium- and small-diameter trees, but also leaves behind slash, and is usually quite expensive.

These and other tools and techniques are commonly used in combination to achieve the desired goals (lower fuel loads, better water quality, etc.). A single tool might be sufficient for a particular site, but the variety of forest conditions suggests a coordinated program of relevant tools and techniques. The need to combine tools and the high cost of many tools has led some observers to propose a different approach: trading goods (timber) for services (other activities in the same area). This approach has been called goods-for-services contracting, land management service contracting, stewardship contracting, end-results contracting, and other terms. These contracts are largely modified timber sales, where the agency requires timber purchasers to perform other, typically related services (e.g., precommercial thinning), and in return they pay less for the timber. (See CRS Report RS20985, *Stewardship Contracting for the National Forests*.) Authority for the FS and the BLM to use goods-for-services stewardship contracting through 2013 was enacted in §323 of Division F of the Consolidated Appropriations Resolution for FY2003 (P.L. 108-7).

The presence of unnaturally high fuel loads (dense undergrowth and dead trees) in many forests is widely presumed to be a significant factor in the apparently increasing severity of recent fire seasons. This leads to the logical conclusion that lowering fuel loads will reduce the extent, severity, and costs of wildfires, and many assert that reducing fuel loads is necessary to allow control of severe wildfires and to reduce the damage done by them. Critics of that conclusion contend that these recent severe fire seasons are the result of prolonged drought, combined with lightning to start fires and high winds to push them, and argue that lower fuel loads may have little effect on the extent and severity of wildfires. Critics also question the effectiveness of fuel treatment. Research has shown that treatments (including, but not limited to, reducing fuels) can protect individual structures. Also, many individual accounts, and some case studies, have shown that fuel reduction helps in

controlling wildfires in certain situations. However, research documenting the effectiveness of broad-scale fuel reduction treatments for reducing the extent, severity, and control costs of wildfires is generally lacking.

Proponents of fuel reduction have expressed frustration with alleged project delays resulting from analyses of the environmental effects of proposed projects, from public involvement in agency planning and decision-making, and from administrative and judicial challenges to agency decisions. The National Environmental Policy Act of 1969 (NEPA; P.L. 91-190, 42 U.S.C. §§4321-4347) requires federal agencies to assess the possible environmental effects of their actions and to involve the public in their decisions. The FS is also required by §322 (commonly known as the Forest Service Appeals Reform Act) of the 1993 Interior Appropriations Act (P.L. 102-381) to allow administrative appeals of most plans and decisions. (The DOI has different administrative review processes, but the processes have not been as controversial as the FS appeals process.) The agencies and certain interest groups see these laws as causing lengthy delays for projects seen as critical to protecting both wildlands and communities from wildfire, and propose eliminating or streamlining environmental studies, administrative reviews, and judicial review. Opponents contend that the reports of delays are exaggerated and that these laws are designed to protect the environment. They are also suspicious of Administration plans that could increase timber harvests for the industry and road construction into roadless areas while, they assert, reducing public input into decision-making.

**Administrative Action.** Because wildfire protection legislation was not enacted in the 107<sup>th</sup> Congress, the Bush Administration has made two administrative changes to facilitate fuel reduction by the FS and by DOI. The effect of both changes would be to expedite the authorized activities by reducing environmental review and/or public involvement.

One change is the addition of two new categories of actions to be excluded from NEPA analysis and documentation: fuel reduction and post-fire rehabilitation activities (68 *Federal Register* 33814, June 5, 2003). Categorically excluded mechanical fuel reduction (e.g., thinning) is limited to 1,000 acres and prescribed burning to 4,500 acres, and both are limited to the WUI or to certain hazardous condition classes and historic fire regimes. These categorical exclusions cannot be used in wilderness, or in wilderness study areas if doing so would impair the suitability of those areas for preservation as wilderness, or if “extraordinary circumstances” exist and the managers determine that the effects might be significant. Post-fire rehabilitation projects are limited to 4,200 acres and must be completed within 3 years after the wildfire. Fuel reduction and rehabilitation projects using herbicides or pesticides or involving new permanent road construction may not be categorically excluded, but the exclusions may be used for projects that include timber sales if fuel reduction is the primary purpose.

The second change is the revision of the FS administrative appeals process (68 *Federal Register* 33582, June 4, 2003). Among the many changes is a clarification that some emergency actions may be implemented immediately and others may be implemented after complying with publication requirements. The proposal expands emergency situations to include those “that would result in substantial loss of economic value to the Government if implementation of the proposed action were delayed,” while deleting examples of emergency situations. It also would exclude notice and opportunity for the public to comment on or to

appeal actions categorically excluded from NEPA, such as the fuel reduction activities discussed above.

These changes must be read in conjunction with other final and proposed regulatory changes to understand the potential consequences for fuel reduction, public involvement, and environmental impacts. New FS forest planning regulations were proposed on December 6, 2002 (67 *Federal Register* 72770), new procedures for the effect of extraordinary circumstances on categorical exclusions were finalized on August 23, 2002 (67 *Federal Register* 54622), and new categorical exclusions for small FS timber harvesting projects were finalized on July 29, 2003 (68 *Federal Register* 44598). The total impact of these proposals seems to be greater discretion for the Forest Service, and to a lesser extent for the BLM, to act without environmental studies and with fewer opportunities for the public to comment on or to administratively appeal those actions.

**Legislative Activity in the 108<sup>th</sup> Congress.** Most of the congressional attention on wildfire protection in the 108<sup>th</sup> Congress has been on the Healthy Forests Restoration Act of 2003, H.R. 1904. The bill, as passed by the House, contains many provisions to expedite authorized fuel reduction projects on FS and BLM lands. It would allow analysis of only the action proposed, rather than the broad array of alternatives required by NEPA, although it would also require an environmental assessment or impact statement for each project. (Under NEPA, some projects might not require the preparation of such documents.) The bill would require public collaboration, provide an expedited public input process, and require a new review process to replace FS administrative appeals for the authorized projects; the new process would require appellants to have previously provided substantive written comments on the project during the public comment/input period. The bill also would establish time limits (15 days) for filing lawsuits and would encourage expeditious judicial review, while limiting preliminary injunctions to 45 days (which could be renewed) and directing courts to balance short-term and long-term ecological impacts of the action, and of not acting, in deciding on injunctive relief, and to give weight to Secretarial findings on the balance unless the court finds them to be arbitrary and capricious. It would also direct priority for action to the WUI, to certain lands near municipal water supplies or perennial feeder streams, to certain lands with blown-down trees or insect or disease infestations or threats, and to certain endangered or threatened species habitats.

The version of H.R. 1904 reported by the Senate Committee on Agriculture, Nutrition, and Forestry was quite similar, but modified many of the details. After the bill was reported, the Committee developed a compromise version that was offered as a substitute on the Senate floor; this new version passed the Senate on October 30, 2003, also quite similar, but with many differences in the details.

H.R. 1904 contains several other titles on other programs. The House-passed version includes titles: to authorize a biomass-utilization fuel-reduction grant program to produce energy or value-added wood products; to establish a watershed forestry assistance program; to authorize an insect infestation assessment and treatment program; to authorize federal compensation for private forest reserves; and to authorize a program of monitoring environmental degradation of forests. The Senate-passed version includes most of these titles, but with many modifications and with additional program authorizations.



H.R. 1904 was introduced on May 1, 2003. It was reported by the Committee on Agriculture (H.Rept. 108-96, Part I) and discharged from the Committee on Resources on May 9, 2003; the Resources Committee had marked up a committee print, similar to H.R. 1904, on April 30. After initial referral to the Agriculture and Resources Committees, the bill was referred to the Committee on the Judiciary for consideration of provisions relating to expedited judicial reviews of fuel reduction projects. The Committee reported the bill on May 16, 2003 (H.Rept. 108-96, Part II). The bill was approved on a party-line vote. Republicans supported the bill on the grounds that it would significantly reduce the risk of catastrophic wildfire by expediting removal of underbrush. Many Democrats opposed the bill, asserting that it would allow widespread clearing of mature forests and that they had too little time to consider it. The House passed H.R. 1904 by a vote of 256-170 on May 20, 2003. The bill was referred to the Committee on Agriculture, Nutrition, and Forestry in the Senate, and the Committee held hearings on the bill on June 26, 2003. The Committee reported the bill, with an amendment in the nature of a substitute, on July 31 (S.Rept. 108-121). The Senate Committee on Energy and Natural Resources held a hearing on this bill and related bills (S. 1314 and S. 1352) on July 22, 2003. The Committee on Agriculture developed a bipartisan compromise to the reported version, and this version passed the Senate on October 30. Differences between the House and Senate versions are being resolved.

Other wildfire protection legislation has been introduced in the 108<sup>th</sup> Congress. Some of these measures (e.g., H.R. 387) are substantially the same as 107<sup>th</sup> Congress bills. (See CRS Report RL31679, *Wildfire Protection: Legislation in the 107<sup>th</sup> Congress and Issues in the 108<sup>th</sup> Congress*.) Still others focus on narrow aspects of fire protection (e.g., firefighting equipment availability) or on protecting private lands (e.g., H.R. 1042).

Other comprehensive bills also have been introduced, notably H.R. 1621, S. 1314, H.R. 2639/S. 1352, S. 1449, and S. 1453. S. 1449 is similar to H.R. 1904. The others, although they have significant differences, would authorize or direct categorical exclusions from NEPA for fuel reduction projects on certain lands and under certain conditions over the next 5 years, with priority on the WUI and municipal water supply systems. S. 1314 also would authorize assessments of insect infestations, borrowing for fire suppression, and funding for wildfire risk reduction and burned area restoration on nonfederal lands, while limiting application of the competitive sourcing initiative. H.R. 2639/S. 1352 also would authorize biomass utilization grants, forest health inventory and monitoring, emergency fuel reduction grants to private landowners, and priority for assistance to communities with proactive steps to reduce fire risks. S. 1453 also would authorize specific forestry research, watershed forestry assistance, federal compensation for private forest reserves, and an economic assistance program for forest resource dependent communities.

## LEGISLATION

### **H.R. 387 (Shadegg)**

The Wildfire Prevention and Forest Health Protection Act authorizes FS Regional Foresters to exempt tree-thinning projects from any provision of law, and from

administrative appeals and judicial review. Introduced January 27, 2003; referred to Committee on Agriculture and Committee on Resources.

**H.R. 1042 (Udall, M.)**

The Forest Restoration and Fire Risk Reduction Act authorizes a cooperative program for wildland fire hazard reduction and forest restoration on federal and other lands, with special procedures for projects meeting the specified conditions. Introduced February 27, 2003; referred to Committee on Agriculture and Committee on Resources.

**H.R. 1621 (Miller, G.)**

The Federal Lands Hazardous Fuels Reduction Act of 2003 authorizes expedited procedures for fuel reduction projects on certain federal lands over the next five years. Introduced April 3, 2003; referred to Committee on Agriculture and Committee on Resources.

**H.R. 1904 (McInnis)**

The Healthy Forests Restoration Act of 2003 authorizes expedited planning and review procedures for fuel reduction projects on federal lands, grants for biomass utilization, watershed forestry assistance, assessment and treatment of insect infestations, federal payments for a private forests reserve system, and monitoring of environmental threats to forests. Passed by the House (256-170) on May 20, 2003, and by the Senate, amended, on October 31, 2003.

**H.R. 2639 (Hooley)/S. 1352 (Wyden)**

The Community and Forest Protection Act authorizes expedited procedures for fuel reduction projects on certain federal lands over the next 5 years, biomass utilization grants, forest health inventory and monitoring, emergency fuel reduction grants, and assistance to communities with proactive steps for fire protection. Both introduced June 26, 2003; H.R. 2639 referred to House Committee on Agriculture and House Committee on Resources, and S. 1352 referred to Senate Committee on Agriculture, Nutrition, and Forestry. Senate Committee on Energy and Natural Resources held hearings on S. 1352 on July 22, 2003.

**S. 1314 (Bingaman)**

The Collaborative Forest Health Act authorizes expedited procedures for certain fuel reduction projects over the next 5 years, assessment of insect infestations, borrowing for fire suppression, limits on competitive sourcing, and funding for wildfire protection and rehabilitation of nonfederal lands. Introduced on June 23, 2003. Senate Committee on Energy and Natural Resources held hearings on July 22, 2003.

**S. 1449 (Crapo)**

America's Healthy Forest Restoration and Research Act authorizes expedited planning and review procedures for fuel reduction projects on federal lands; grants for biomass use; watershed forestry assistance; research on insect infestations, forest threats, biomass use, and economic development and treatment of insect infestations; federal payments for private forest reserves; and a program for controlling invasive plants. Introduced July 23, 2003; referred to Committee on Agriculture, Nutrition, and Forestry.

**S. 1453 (Leahy)**

Forestry and Community Assistance Act of 2003 authorizes expedited procedures for certain fuel reduction projects over 5 years, research on forest health protection, watershed forestry assistance, federal payments for private forest reserves, and assistance for rural communities dependent on natural resources. Introduced July 23, 2003; referred to Committee on Agriculture, Nutrition, and Forestry.

**FOR ADDITIONAL READING**

CRS Report RL30755. *Forest Fire/Wildfire Protection*, by Ross W. Gorte.

CRS Report RS21544. *Wildfire Protection Funding*, by Ross W. Gorte.

CRS Report RS20822. *Forest Ecosystem Health: An Overview*, by Ross W. Gorte.

CRS Report RL31806. *Appropriations for FY2004: Interior and Related Agencies*, coordinated by Carol Hardy Vincent and Susan Boren.

CRS Issue Brief IB10076. *Public (BLM) Lands and National Forests*, coordinated by Ross W. Gorte and Carol Hardy Vincent.

CRS Report RL31679. *Wildfire Protection: Legislation in the 107<sup>th</sup> Congress and Issues in the 108<sup>th</sup> Congress*, by Ross W. Gorte.

CRS Congressional Distribution Memorandum. *Side-By-Side of Wildfire Legislation in the 108<sup>th</sup> Congress*, by Ross W. Gorte (November 14, 2003).