Order Code RS22024
January 14, 2005

Wildfire Protection in the 108th Congress

nae redacted
Specialist in Natural Resources Policy
Resources, Science, and Industry Division

Summary

Many argue that the threat of severe wildfires has grown in recent years, because of excessive forest fuels and an increasing number of homes in or near forests. In 2003, President Bush proposed a Healthy Forests Initiative, with numerous regulatory changes to expedite fuel reduction activities. The 108th Congress enacted the Healthy Forests Restoration Act of 2003 to provide an expedited process for fuel reduction activities and other related programs, and the Southwest Forest Health and Wildfire Prevention Act of 2004 to fund research and promote adaptive management in Ponderosa pine forests. This report summarizes congressional action through 2004, and will not be updated.

Introduction

Wildfires, and efforts to reduce the damage they cause, have received increased attention in recent years. The 2000 and 2002 fire seasons were, by most measures, among the worst in the past 50 years. 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). (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. (See CRS Report RS21880, *Wildfire Protection in the Wildland-Urban Interface*.) The threats have led to debates over fire protection efforts, including questions about funding levels and fuel reduction treatments (e.g., thinning and prescribed burning).

Congressional 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 these lands are managed using federal appropriations and federal land management is subject to congressional oversight. However, the threats are not limited to federal lands, and many lands in the WUI are privately owned. This report briefly summarizes federal wildfire funding, then discusses fuel reduction activities and the related Administration actions and legislation in the 108th Congress.

Wildfire Funding

The severe 2000 fire season led President Clinton to propose a new program of fire 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 additional funding was to pay for FY2000 firefighting, but more funds also were also sought to treat fuels, restore burned areas, assist affected communities, and prepare for future fire seasons. Congress largely enacted this proposal in the Interior and Related Agencies Appropriations Act for FY2001 (P.L. 106-291). President Bush's subsequent budget requests have proposed continuing most of the wildfire management programs expanded under President Clinton.

Congress appropriates funds for fire protection on federal lands, for assistance to state and local governments in protecting other lands, and for research and other programs. (See CRS Report RS21544, *Wildfire Protection Funding*.) These programs are all considered part of the National Fire Plan. **Table 1** shows National Fire Plan funding (or the equivalent accounts) since FY1991. Total annual funding has risen from about $500 million to more than $3 billion during this 15-year period. Funds generally are included in the annual Interior appropriations acts, and often in laws appropriating emergency supplemental funds. FS and BLM Wildfire Management accounts include funds for fire suppression (fighting wildfires), for preparedness (equipment, training, personnel, prevention, and detection), and for other operations (rehabilitation and fuel treatment on federal lands, as well as research and other programs). In addition, FS and BLM Wildfire Management funding supports fire research and programs to assist landowners and communities affected by wildfires. The FS also administers fire protection assistance programs (funded under the State and Private Forestry line item) that provide financial and technical help to states for preventing and controlling fires and for using prescribed fires — by state agencies, and through them, to other organizations.

Table 1. National Fire Plan (or Equivalent Account) Funding, FY1991 — FY2005

(in millions of dollars, FY2004 and FY2005 as enacted)

Fiscal Year	Funding	Fiscal Year	Funding	Fiscal Year	Funding
1991	$486.6	1996	$738.2	2001	$2,889.8
1992	$503.8	1997	$1,400.1	2002	$2,269.1
1993	$810.4	1998	$1,134.8	2003	$3,195.6
1994	$1,033.7	1999	$1,082.2	2004	$3,293.9
1995	$1,085.0	2000	$1,626.1	2005	$3,009.5

Sources: U.S. Dept. of Agriculture Forest Service and U.S. Dept. of the Interior, Bureau of Land Management, annual budget justifications.

Fuel Reduction Activities

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. 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, generally 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 commonly are used in combination to achieve the desired goals, such as lower fuel loads and better water quality. 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 in many locations.

Many interests have concluded that lowering fuel loads will reduce the extent, severity, and costs of wildfires. Critics of that conclusion contend that the recent severe fire seasons are the result of prolonged drought, combined with lightning to start fires and high winds to push them, and assert that lowering 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 and can reduce fire damages in certain ecosystems. However, research documenting the effectiveness of broad-scale fuel reduction treatments for reducing the extent, severity, and control costs of wildfires is generally lacking.

Many fuel reduction treatments, as with many activities on federal lands, are subject to analyses of their environmental effects, public involvement in planning and decision-making, and possible 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 of the 1993 Interior Appropriations Act (P.L. 102-381; this section is commonly known as the Forest Service Appeals Reform Act) to allow administrative appeals of most plans and decisions. The DOI agencies have different administrative review processes, but their processes have not been as controversial as the FS appeals process. The agencies and certain interest groups contend that these laws delay projects that are critical to protecting both wildlands and communities from wildfire. Accordingly, they propose eliminating or streamlining environmental studies and administrative and/or judicial review. Opponents of such changes contend that the reports of delays are exaggerated and that these laws are designed to protect the environment. They are also concerned that such changes could increase timber harvest levels and road construction into roadless areas while reducing public input into decision-making.

Administration Actions

The severe 2002 fire season prompted President Bush to propose a Healthy Forests Initiative in August 2002, late in the 107th Congress. The initiative included proposed changes to federal forest management laws to accelerate procedures for reducing the fuel levels on federal lands. Because such legislation was not enacted in the 107th Congress, the Bush Administration made two administrative changes to facilitate FS and DOI fuel reduction. Both changes sought to expedite the authorized activities by reducing environmental review and/or public involvement.

One change added two new categories of actions that could be excluded from NEPA analysis and documentation: (1) fuel reduction and (2) post-fire rehabilitation activities (68 *Federal Register* 33814, June 5, 2003). Categorically excluded fuel reduction is limited to 1,000 acres if by mechanical means (e.g., thinning) and to 4,500 acres if by prescribed burning, and is limited to the WUI or to certain hazardous condition classes and historic fire regimes. The fuel reduction exclusion may be used for projects that include timber sales, if fuel reduction is the primary purpose. Post-fire rehabilitation projects are limited to 4,200 acres and must be completed within three years after the wildfire. 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. Also, fuel reduction and rehabilitation projects cannot be categorically excluded if they use herbicides or pesticides or involve new permanent road construction.

The second change revised the FS administrative appeals process (68 *Federal Register* 33582, June 4, 2003). Among the many modifications is a clarification that some emergency actions may be implemented immediately and others may be implemented after complying with notification requirements. The change 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 public 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 are best read in conjunction with other final and proposed regulatory changes to understand the potential consequences for fuel reduction, public involvement, and environmental impacts. New procedures for addressing categorical exclusions when extraordinary circumstances are present were finalized on August 23, 2002 (67 *Federal Register* 54622); new categorical exclusions for small FS timber harvesting projects were finalized on July 29, 2003 (68 *Federal Register* 44598); and new FS forest planning regulations were issued on January 5, 2005 (70 *Federal Register* 1023). The total impact of these actions seems to be greater discretion for the FS, 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.

Legislation in the 108th Congress

Many bills were introduced in the 108th Congress to enhance wildfire protection. Two that were enacted are discussed below in more detail. Most of the bills would have provided expedited procedures for fuel reduction projects on federal lands. Although they have significant differences, these bills generally would have authorized or directed categorical exclusions from NEPA for fuel reduction projects on certain lands and under certain conditions over five years, with priority generally on the WUI and forest lands supporting municipal water supply systems. Various bills also contained ancillary provisions, such as authorizing insect infestation assessments, biomass utilization grants, forest health inventory and monitoring, emergency biomass fuel reduction grants to private landowners, priority for assistance to communities with proactive steps to reduce fire risks, funding for wildfire risk reduction and burned area restoration on nonfederal lands, watershed forestry assistance, federal compensation for private forest reserves, and an economic assistance program for forest resource dependent communities.

Other wildfire bills also were introduced. Some focused on relatively narrow aspects of wildfire protection (e.g., firefighting equipment availability, firefighter compensation, landowner compensation for fire damages). One bill, the Forest Restoration and Fire Risk Reduction Act (H.R. 1042), would have authorized a cooperative program for wildfire hazard reduction and forest restoration on private and associated federal lands, with special procedures for projects meeting specific conditions. However, only the two bills discussed below were enacted.

The Healthy Forests Restoration Act of 2003. Attention on wildfire protection in the 108th Congress focused mostly on the Healthy Forests Restoration Act of 2003 (H.R. 1904). The bill, as passed by the House, contained many provisions to expedite authorized fuel reduction projects on FS and BLM lands, as well as several other titles for related programs. The version of H.R. 1904 reported by the Senate Committee on Agriculture, Nutrition, and Forestry (S.Rept.108-121) was quite similar, but with modifications in 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; the new version passed the Senate on October 30, 2003. It also was generally similar to the House-passed bill, but with many differences in the details and with many additional sections. An agreement was reached resolving differences between the House- and Senate-passed versions, and the conference report (H.Rept. 108-386) was agreed to in the House and the Senate on November 21. The President signed P.L. 108-148 on December 3, 2003.

Title I of the law addresses hazardous fuel reduction on federal lands. It does not authorize any fuel reduction activities not previously authorized. Instead, it authorizes a new alternative *process* for reducing fuels on up to 20 million acres of national forests or BLM lands in or near the WUI and municipal water supply systems, as well as certain endangered species habitats and areas affected by wind or ice storms or by insect or disease epidemics that threaten ecological health or natural resources. Priority is directed to protecting "at-risk communities" and municipal watersheds. Authorized projects must be consistent with land management plans. They generally are to focus on small trees, thinning, fuel breaks, and prescribed burning while retaining large trees and maintaining old growth stands, but are prohibited on certain lands, such as wilderness areas. The law authorizes $760 million annually for fuel reduction on federal lands, including projects

authorized under the new law, any other fuel reduction activities, and grants to states. The law does not allocate funds among authorized projects, other projects, and grants to states, or among the agencies. Previously, the authorization for fuel reduction projects was not specified in law.

For authorized projects, the FS or BLM must prepare NEPA documents, but are allowed to analyze a very limited number of alternatives. The public can be involved through scoping, collaboration, and multi-party monitoring of project impacts; the public also must be given a chance to comment on proposed projects. For FS projects, the agency is to develop a new pre-decisional review process to supplant the existing administrative appeals process, and administrative reviews must be "exhausted" before litigation is allowed. Lawsuits must be filed in the district court for the area where the project is proposed, and courts are encouraged to review cases expeditiously. Preliminary injunctions are limited to 60 days, but can be renewed, and courts are directed to balance short- and long-term impacts of action and of inaction.

P.L. 104-148 contains five other titles as well. Title II expands biomass research, authorizes a new biomass rural revitalization program, and authorizes grants for biomass use. Title III establishes a watershed forestry assistance program with cost-sharing assistance to landowners and financial and technical assistance to states and tribal governments to protect water quality through forestry practices. Title IV authorizes data collection on forest-damaging insects and "applied silvicultural assessments" (treatments for research purposes) of up to 1,000 acres each (250,000 acres total) which are categorically excluded from NEPA, but with peer review and public notice and comment on each project. Title V authorizes a program to pay willing private landowners to protect or restore their lands as habitat for endangered species using 10-year agreements or 30-year or long-term (up to 99-year) easements. Finally, Title VI authorizes an "early warning system" for environmental threats primarily to eastern U.S. forests.

The Southwest Forest Health and Wildfire Prevention Act of 2004. The 108th Congress also enacted the Southwest Forest Health and Wildfire Prevention Act of 2004 (P.L. 108-317) almost a year later, on October 5, 2004. The act directs the Secretary of Agriculture to establish three "Institutes to promote the use of adaptive ecosystem management to reduce the risk of wildfires, and restore the health of forest and woodland ecosystems, in the interior West," defined as Arizona, Colorado, Idaho, Nevada, New Mexico, and Utah. The institutes are to be located at Northern Arizona University, at New Mexico Highlands University, and in the state of Colorado. Each institute is to cooperate with federal land management agencies in researching, promoting, and monitoring "fuel reduction treatments to reduce the risk of severe wildfires and improve the health of dry forest and woodland ecosystems in the interior West," defined as ponderosa pine and associated ecological types. Each institute is also to produce a "peer-reviewed" annual report. The act authorizes annual appropriations of $15 million for the institutes, which may not be used for constructing facilities.