To respond to the extreme fire hazard and unsafe conditions resulting from pine beetle infestation, drought, disease, or storm damage by declaring a state of emergency and directing the Secretary of Agriculture to immediately implement hazardous fuels reduction projects in the manner provided in title I of the Healthy Forests Restoration Act of 2003, and for other purposes.

IN THE SENATE OF THE UNITED STATES

March 29, 2012

Mr. Thune introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To respond to the extreme fire hazard and unsafe conditions resulting from pine beetle infestation, drought, disease, or storm damage by declaring a state of emergency and directing the Secretary of Agriculture to immediately implement hazardous fuels reduction projects in the manner provided in title I of the Healthy Forests Restoration Act of 2003, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “National Forest Emergency Response Act”.

SEC. 2. FINDINGS.

Congress finds that—

(1) forest health and human safety in certain national forests have deteriorated dangerously due to pine beetle infestation, disease, storm damage, and drought; and

(2) the resulting fire hazard in those national forests endangers adjacent communities, ranches, State parks, and several units of the National Park System and poses a significant threat to the economic stability of surrounding areas and the health, safety, and well-being of residents and visitors to those areas.

SEC. 3. DEFINITIONS.

In this Act:

(1) Designated National Forest.—The term “designated national forest” means a national forest designated by the Secretary under section 4(b).

(2) Emergency Circumstances.—The term “emergency circumstances” has the meaning given the term in section 1506.11 of title 40, Code of Federal Regulations (or a successor regulation).
(3) Secretary.—The term “Secretary” means the Secretary of Agriculture.

SEC. 4. DECLARATION OF EMERGENCY AND SELECTION OF PILOT PROJECT NATIONAL FORESTS.

(a) In General.—In recognition of deteriorating forest health conditions, extreme fire hazard, and the significant number of dead and dying trees in certain national forests due to pine beetle infestation, drought, disease, or storm damage, and the resulting imminent risk of devastating wildfire that poses a significant threat to the economic stability of surrounding areas and the health, safety, and well-being of residents, firefighters, and visitors to the areas, Congress declares that the fire hazard and human endangerment in those national forests designated by the Secretary under subsection (b) constitute emergency circumstances.

(b) Designations.—

(1) In General.—Not later than 60 days after the date of enactment of this Act, the Secretary shall designate not less than 1 national forest in each applicable State that is experiencing conditions that constitute emergency circumstances due to pine beetle infestation, drought, disease, or storm damage and the resulting imminent risk of devastating wildfire that poses significant threat to the economic
stability of surrounding areas and the health, safety, and well-being of residents, firefighters, and visitors to the areas.

(2) LIMITATION.—A designation under paragraph (1) shall be for a period not to exceed 10 years.

SEC. 5. APPLICATION OF EXPEDITED PROCEDURES AND ACTIVITIES OF THE HEALTHY FORESTS RESTORATION ACT OF 2003 TO DESIGNATED FOREST SERVICE PILOT PROJECTS.

(a) APPLICABILITY.—Subject to subsections (b) through (e), title I of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511 et seq.) (including the environmental analysis requirements of section 104 of that Act (16 U.S.C. 6514), the special administrative review process under section 105 of that Act (16 U.S.C. 6515), and the judicial review process under section 106 of that Act (16 U.S.C. 6516)), shall apply to all Forest Service projects and activities implementing the land and resource management plan developed for the designated national forests during the term of the emergency circumstance declared under section 4.

(b) APPLICATION OF OTHER LAW.—Section 322 of Public Law 102–381 (16 U.S.C. 1612 note; 106 Stat.
shall not apply to projects conducted in accordance with this section.

(c) REQUIRED MODIFICATIONS.—In applying title I of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6511 et seq.) to Forest Service projects and activities in designated national forests, the Secretary shall make the following modifications:

1. The authority shall apply to the entire designated national forest, including land that is outside of a wildland-urban interface area or that does not satisfy any of the other eligibility criteria specified in section 102(a) of that Act (16 U.S.C. 6512(a)).

2. All projects and activities of the Forest Service, including necessary connected actions (as described in section 1508.25(a)(1) of title 40, Code of Federal Regulations (or a successor regulation)), shall be considered to be authorized hazardous fuel reduction projects for purposes of applying the title.

3. In the case of a project intended to address the existence of an infestation of disease or insects, or the presence of such an infestation on immediately adjacent land, the Secretary may proceed with the project if there is any risk the infestation
will spread, not just in the event of an imminent risk of the spread of the infestation.

(4) Forest Service projects and activities in the designated national forest conducted under title I of that Act shall not be counted toward the limitation in section 102(c) of that Act (16 U.S.C. 6512(c)) on the total quantity of acreage that may be treated under that title.

(d) Smaller Projects.—

(1) In general.—Except as provided in paragraph (2), a project conducted in a designated national forest in accordance with this section that comprises less than 10,000 acres shall be considered an action categorically excluded from the requirements for an environmental assessment or an environmental impact statement under section 1508.4 of title 40, Code of Federal Regulations (or a successor regulation).

(2) Exclusion of certain areas.—Paragraph (1) does not apply to—

(A) a component of the National Wilderness Preservation System;

(B) any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;
(C) a congressionally designated wilderness study area; or

(D) an area in which activities under paragraph (1) would be inconsistent with the applicable land and resource management plan.

(e) Prohibition on Restraining Orders, Preliminary Injunctions, and Other Relief Pending Judicial Review.—

(1) In general.—No restraining order, preliminary injunction, or injunction pending appeal shall be issued by any court of the United States with respect to any decision to engage in any remedial action or to prepare, advertise, offer, award, or operate a timber sale under this section in a designated national forest.

(2) Applicability of other law.—Section 705 of title 5, United States Code, shall not apply to any challenge to a sale described in paragraph (1).

**SEC. 6. GOOD NEIGHBOR AUTHORITY.**

(a) Definitions.—In this section:

(1) Eligible State.—The term “eligible State” means a State that contains National Forest System land.
(2) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(3) STATE FORESTER.—The term “State forester” means the head of a State agency with jurisdiction over State forestry programs in an eligible State.

(b) COOPERATIVE AGREEMENTS AND CONTRACTS.—

(1) IN GENERAL.—The Secretary may enter into a cooperative agreement or contract (including a sole source contract) with a State forester to authorize the State forester to provide the forest, rangeland, and watershed restoration and protection services described in paragraph (2) on National Forest System land in the eligible State.

(2) AUTHORIZED SERVICES.—The forest, rangeland, and watershed restoration and protection services referred to in paragraph (1) include the conduct of—

(A) activities to treat insect infected trees;

(B) activities to reduce hazardous fuels;

and

(C) any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.
(3) STATE AS AGENT.—Except as provided in paragraph (6), a cooperative agreement or contract entered into under paragraph (1) may authorize the State forester to serve as the agent for the Secretary in providing the restoration and protection services authorized under that paragraph.

(4) SUBCONTRACTS.—In accordance with applicable contract procedures for the eligible State, a State forester may enter into subcontracts to provide the restoration and protection services authorized under a cooperative agreement or contract entered into under paragraph (1).

(5) TIMBER SALES.—Subsections (d) and (g) of section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a) shall not apply to services performed under a cooperative agreement or contract entered into under paragraph (1).

(6) RETENTION OF NEPA RESPONSIBILITIES.—Any decision required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any restoration and protection services to be provided under this section by a State forester on National Forest System land shall not be delegated to a State forester or any other officer or employee of the eligible State.
(7) APPLICABLE LAW.—The restoration and protection services to be provided under this section shall be carried out on a project-to-project basis under existing authorities of the Forest Service.