

112TH CONGRESS
2D SESSION

S. 3409

To address the forest health, public safety, and wildlife habitat threat presented by the risk of wildfire, including catastrophic wildfire, on National Forest System land and public land managed by the Bureau of Land Management by requiring the Secretary of Agriculture and the Secretary of the Interior to expedite forest management projects relating to hazardous fuels reduction, forest health, and economic development, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 19, 2012

Mr. LEE introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To address the forest health, public safety, and wildlife habitat threat presented by the risk of wildfire, including catastrophic wildfire, on National Forest System land and public land managed by the Bureau of Land Management by requiring the Secretary of Agriculture and the Secretary of the Interior to expedite forest management projects relating to hazardous fuels reduction, forest health, and economic development, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Catastrophic Wildfire Prevention Act of 2012”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Authorized wildfire prevention projects.
- Sec. 5. Public review and environmental analysis.
- Sec. 6. Administrative and judicial review.
- Sec. 7. Threatened and endangered species designations.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

- 8 (1) to expedite wildfire prevention projects to
9 reduce the chances of wildfire (including cata-
10 strophic wildfire) on certain Federal land;
- 11 (2) to reduce threats to endangered species
12 from wildfires; and
- 13 (3) to provide to the Secretary of Agriculture
14 and the Secretary of the Interior tools to streamline
15 projects to reduce the potential for wildfires.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

- 18 (1) AT-RISK COMMUNITY.—The term “at-risk
19 community” has the meaning given the term in sec-
20 tion 101 of the Healthy Forests Restoration Act of
21 2003 (16 U.S.C. 6511).

1 (2) AT-RISK FOREST.—The term “at-risk for-
2 est” means—

3 (A) Federal land on which there is a high
4 risk of losing an at-risk community, key eco-
5 system, wildlife, or wildlife habitat to wildfire
6 (including catastrophic wildfire and post-fire
7 disturbances), as documented by the Secretary
8 concerned; or

9 (B) Federal land in condition class II or
10 III, as those classes were developed by the For-
11 est Service Rocky Mountain Research Station
12 in the general technical report entitled “Devel-
13 opment of Coarse-Scale Spatial Data for
14 Wildland Fire and Fuel Management” (RMRS–
15 87) and dated April 2000 (including any subse-
16 quent revision to the report).

17 (3) AUTHORIZED WILDFIRE PREVENTION
18 PROJECT.—

19 (A) IN GENERAL.—The term “authorized
20 wildfire prevention project” means the meas-
21 ures and methods developed for a project to be
22 carried out in an at-risk forest or on threatened
23 and endangered species habitat by the Sec-
24 retary concerned for the purpose of hazardous
25 fuels reduction, forest health, forest restoration,

1 watershed restoration, or threatened and endan-
2 gered species habitat protection.

3 (B) INCLUSIONS.—The term “authorized
4 wildfire prevention project” includes livestock
5 grazing and timber harvest projects carried out
6 for 1 or more of the purposes described in sub-
7 paragraph (A).

8 (4) FEDERAL LAND.—

9 (A) IN GENERAL.—The term “Federal
10 land” means—

11 (i) land of the National Forest System
12 (as defined in section 11(a) of the Forest
13 and Rangeland Renewable Resources Plan-
14 ning Act of 1974 (16 U.S.C. 1609(a))); or

15 (ii) public land.

16 (B) EXCLUSION.—The term “Federal
17 land” does not include land in which the re-
18 moval of vegetation is specifically prohibited by
19 Federal law unless the land is in an inventoried
20 roadless area or wilderness study area.

21 (5) PUBLIC LAND.—The term “public land”
22 has the meaning given the term “public lands” in
23 section 103 of the Federal Land Policy and Manage-
24 ment Act of 1976 (43 U.S.C. 1702).

1 (6) SECRETARY CONCERNED.—The term “Sec-
2 retary concerned” means—

3 (A) the Secretary of Agriculture, with re-
4 spect to land of the National Forest System de-
5 scribed in paragraph (4)(A)(i); and

6 (B) the Secretary of the Interior, with re-
7 spect to public land.

8 (7) THREATENED AND ENDANGERED SPECIES
9 HABITAT.—The term “threatened and endangered
10 species habitat” means Federal land on which nat-
11 ural fire regimes are identified as being important
12 for, or wildfire is identified as a threat to, an endan-
13 gered species, a threatened species, or habitat of an
14 endangered species or threatened species in—

15 (A) a species recovery plan prepared under
16 section 4 of the Endangered Species Act of
17 1973 (16 U.S.C. 1533); or

18 (B) a notice published in the Federal Reg-
19 ister that—

20 (i) determines a species to be an en-
21 dangered species or a threatened species;
22 or

23 (ii) designates critical habitat for an
24 endangered species or a threatened species.

1 **SEC. 4. AUTHORIZED WILDFIRE PREVENTION PROJECTS.**

2 (a) PROJECTS AUTHORIZED.—As soon as practicable
3 after the date of enactment of this Act, the Secretary con-
4 cerned shall implement authorized wildfire prevention
5 projects in at-risk forests and on threatened and endan-
6 gered species habitat in a manner that focuses on surface,
7 ladder, and canopy fuels reduction activities.

8 (b) PROJECT ELEMENTS.—

9 (1) THREATENED AND ENDANGERED SPECIES
10 HABITAT.—In the case of an authorized wildfire pre-
11 vention project carried out on threatened and endan-
12 gered species habitat, the project shall be carried
13 out—

14 (A) to provide enhanced protection from
15 wildfire (including catastrophic wildfire) for the
16 endangered species, threatened species, or habi-
17 tat of the endangered species or threatened spe-
18 cies; and

19 (B) in compliance with any applicable
20 guidelines specified in the species recovery plan
21 prepared under section 4 of the Endangered
22 Species Act of 1973 (16 U.S.C. 1533).

23 (2) AT-RISK FORESTS.—In the case of an au-
24 thorized wildfire prevention project carried out in an
25 at-risk forest, the project shall be carried out so as
26 to move Federal land in condition class II or III to-

ward condition class I, as those classes were developed by the Forest Service Rocky Mountain Research Station in the general technical report entitled “Development of Coarse-Scale Spatial Data for Wildland Fire and Fuel Management” (RMRS–87) and dated April 2000 (including any subsequent revision to the report).

(c) GRAZING.—

(1) IN GENERAL.—Domestic livestock grazing may be used in an authorized wildfire prevention project—

(A) to reduce surface fuel loads; and

(B) to recover burned areas.

(2) UTILIZATION STANDARDS.—Utilization standards shall not apply in cases in which domestic livestock grazing is used in an authorized wildfire prevention project.

(d) TIMBER HARVESTING AND THINNING.—Timber harvesting and thinning may be used in an authorized wildfire prevention project to reduce ladder and canopy fuel loads to prevent wildfire (including catastrophic wildfire).

(e) RELATION TO LAND AND RESOURCE MANAGEMENT PLANS AND LAND USE PLAN.—Nothing in this section requires the Secretary concerned, as a condition of

1 conducting an authorized wildfire prevention project, to
2 revise or amend—

3 (1) the land and resource management plan ap-
4 plicable to the National Forest System land on
5 which authorized wildfire prevention project is to be
6 conducted; or

7 (2) the land use plan applicable to the public
8 land on which the authorized wildfire prevention
9 project is to be conducted.

10 (f) CONSIDERATION OF PUBLIC PETITIONS.—Not
11 later than 60 days after the date on which the Secretary
12 receives a public petition for the designation of Federal
13 land as an at-risk forest or as a threatened and endan-
14 gered species habitat, the Secretary concerned shall—

15 (1) review the petition; and

16 (2) make a determination regarding the des-
17 ignation.

18 **SEC. 5. PUBLIC REVIEW AND ENVIRONMENTAL ANALYSIS.**

19 (a) PUBLIC NOTICE AND COMMENT.—

20 (1) INITIAL NOTICE.—The Secretary concerned
21 shall publish in the Federal Register notice of a pro-
22 posed authorized wildfire prevention project.

23 (2) WRITTEN COMMENTS.—Not later than 30
24 days after the date of publication of the notice under
25 paragraph (1), any person may submit to the Sec-

retary specific written comments that relate to the proposed authorized wildfire prevention project.

(3) FINAL DESIGNATED PROJECT.—

(A) IN GENERAL.—Not later than 60 days after the date on which the notice is published under paragraph (1), after taking into account any comments received under paragraph (2), the Secretary concerned shall—

(i) designate the final authorized wildfire prevention project; and

(ii) publish in the Federal Register notice of the final authorized wildfire prevention project.

(B) WRITTEN COMMENTS.—Not later than 30 days after the date on which the notice is published under subparagraph (A)(ii), any person who submitted comments regarding the proposed authorized wildfire prevention project under paragraph (2) may submit to the Secretary specific written comments that relate to the final designated authorized wildfire prevention project.

(b) ENVIRONMENTAL ANALYSIS GENERALLY.—Except as otherwise provided in this Act, the Secretary concerned shall comply with the National Environmental Pol-

1 icy Act of 1969 (42 U.S.C. 4321 et seq.) and other appli-
 2 cable laws in planning and conducting an authorized wild-
 3 fire prevention project.

4 (c) INTERAGENCY COOPERATION.—The informal
 5 consultation requirements in section 402.05 of title 50,
 6 Code of Federal Regulations (or a successor regulation),
 7 shall apply to an authorized wildfire prevention project.

8 (d) SPECIAL RULES FOR CERTAIN PROJECTS.—

9 (1) COVERED PROJECTS; DEADLINE.—If an au-
 10 thorized wildfire prevention project includes timber
 11 harvesting or grazing, the Secretary concerned shall
 12 prepare an environmental assessment not later than
 13 30 days after the date on which the notice is pub-
 14 lished under subsection (a)(1) for the proposed
 15 agency action under section 102(2) of the National
 16 Environmental Policy Act of 1969 (42 U.S.C.
 17 4332(2)).

18 (2) EFFECT OF FAILURE TO MEET DEAD-
 19 LINE.—The authorized wildfire prevention project
 20 shall be considered to be compliant with all require-
 21 ments of the National Environmental Policy Act of
 22 1969 (42 U.S.C. 4321 et seq.) if the Secretary con-
 23 cerned fails to meet the deadline specified in para-
 24 graph (1).

25 (3) PROJECT LENGTHS.—

1 (A) LIVESTOCK GRAZING PROJECTS.—In
2 the case of a livestock grazing project, an envi-
3 ronmental assessment conducted under para-
4 graph (1) shall be considered to be sufficient
5 for a minimum of 10 years.

6 (B) TIMBER HARVEST PROJECTS.—In the
7 case of a timber harvest project, an environ-
8 mental assessment conducted under paragraph
9 (1) shall be considered to be sufficient for a
10 minimum of 20 years.

11 (4) ALTERNATIVES.—Nothing in this section
12 requires the Secretary concerned to study, develop,
13 or describe any alternative to the proposed agency
14 action in the environmental assessment conducted
15 under paragraph (1).

16 (e) EFFECT OF COMPLIANCE.—Compliance with this
17 section shall be considered to satisfy the requirements of—

18 (1) the National Environmental Policy Act of
19 1969 (42 U.S.C. 4321 et seq.);

20 (2) section 14 of the National Forest Manage-
21 ment Act of 1976 (16 U.S.C. 472a);

22 (3) the Endangered Species Act of 1973 (16
23 U.S.C. 1531 et seq.); and

24 (4) the Multiple-Use Sustained-Yield Act of
25 1960 (16 U.S.C. 528 et seq.).

1 **SEC. 6. ADMINISTRATIVE AND JUDICIAL REVIEW.**

2 (a) ADMINISTRATIVE REVIEW.—The special adminis-
 3 trative review process established under section 105 of the
 4 Healthy Forests Restoration Act of 2003 (16 U.S.C.
 5 6515) shall apply to any administrative review of an au-
 6 thorized wildfire prevention project.

7 (b) JUDICIAL REVIEW.—Any judicial proceeding re-
 8 lating to an authorized wildfire prevention project shall be
 9 conducted in accordance with section 106 of the Healthy
 10 Forests Restoration Act of 2003 (16 U.S.C. 6516).

11 **SEC. 7. THREATENED AND ENDANGERED SPECIES DES-**
 12 **IGNATIONS.**

13 (a) IN GENERAL.—Before a species may be listed as
 14 an endangered species or a threatened species under sec-
 15 tion 4(c) of the Endangered Species Act of 1973 (16
 16 U.S.C. 1533(c)), the Secretary concerned shall conduct re-
 17 search to determine the impact that the listing would have
 18 on forest fuel loads, including forage and timber.

19 (b) WILDFIRE RISK ASSESSMENT ANALYSIS.—Re-
 20 covery plans for threatened species and endangered spe-
 21 cies under section 4(f) of the Endangered Species Act of
 22 1973 (16 U.S.C. 1533(f)) and critical habitat determina-
 23 tions under the Endangered Species Act of 1973 (16
 24 U.S.C. 1531 et seq.) shall include wildfire risk assessment
 25 analysis.

