



The Forest Emergency Recovery & Research Act (HR 4200)

Bipartisan forest health legislation sponsored by Representatives Greg Walden (R-OR) and Brian Baird (D-WA). Introduced on November 3, 2005 with 98 original bipartisan cosponsors; 147 current bipartisan cosponsors; Seven hearings held on the topic – passed House Resources Committee (25-13) and Agriculture Committee (36-3).

FACT VS. FICTION

FICTION: FERRA will promote salvage logging.

FACT: FERRA does not promote salvage logging. In fact FERRA does not mandate any logging, or any action other than a rapid, science based evaluation after a large, catastrophic event.

- Refer to FERRA Section 102 (page 15). Scientific evaluation is required for catastrophic events of over 1,000 acres and allowed for catastrophic events of over 250 acres. No specific action after the evaluation is required.

FICTION: Events such as Mt. Saint Helens and the Yellowstone fires prove that lands should recover naturally. Logging just hurts restoration.

FACT: FERRA does not require any action other than a scientific evaluation. Refer to FERRA Section 102. Evaluation is required for catastrophic events of over 1,000 acres and allowed for events of over 250 acres. Allowing severely damaged areas – areas often without tree seed sources and baked so severely by fire that they are impervious to water – to recover “naturally” is like telling a burn victim to go home without care and fight off infection and take their chances on their own.

- FERRA Section 102 (page 15) provides for prompt evaluation within 30 days after a catastrophe (and within 60 days on request of the Secretary for extremely large or complex situations).
- FERRA Section 105 (page 28) provides for prompt action within 90 days if the evaluation determines that action is needed.
- Timely action, allowed by FERRA, would result in better tree regeneration survival.
- Some areas affected by hurricanes, severe fires, floods, hurricanes, and tornadoes would be allowed to recover naturally. However, the extremely hot fires which scorch some areas of our public lands are not natural. These catastrophic fires destroy tree seed sources and make the soil resistant to water penetration (and thus starve a tree seedling of key “nutrition”), and decimate wildlife.

- The studies that claimed logging damages tree regeneration looked at salvage logging that was delayed for years by appeals and litigation after a catastrophic fire. They did not study the effects immediately after the fire so naturally, if salvage of dead and dying trees is delayed for years, some natural tree regeneration may occur, and some may be damaged by equipment.
- It does not make sense to delay forest recovery with appeals and litigation for extensive periods and then claim that the delayed action damaged tree seedlings. There wouldn't have been any damage if action had been promptly taken.

FICTION: FERRA exempts lands from the National Environmental Policy Act.

FACT: FERRA complies with NEPA requirements for analysis of environmental effects on the environment. Here's how:

- FERRA Section 105(a) (page 28) requires at least two alternatives, or plans, for forest recovery activities after a catastrophic. This is the same NEPA plan preparation requirement relied on in the overwhelmingly bipartisan 2003 Healthy Forest Restoration Act approved by sweeping margins in the House and Senate and is now a successful law.
- FERRA Section 105(d) (page 31) requires projects be consistent with the current federal forest plan. These plans are a result of extensive NEPA analysis and public involvement. FERRA requires an analysis of how any action's effects will be minimized or mitigated, consistent with the land management plan.
- FERRA Section 105(d) (page 32) requires disclosure of the federal agency's decision rationale, economic analysis, and analysis of the environmental effects of the project.
- FERRA requires consideration of forest type or plant association groups, standing and down/dead wood, water, wildlife, and soils (page 28).
- All the familiar processes of the National Environmental Policy Act are retained: public notice, public involvement, and environmental analysis and mitigation. The processes are simply streamlined.

FICTION: The public does not have opportunities to legally challenge FERRA projects.

FACT: FERRA Section 106 (c) (page 35) provides for the same judicial review process as the overwhelmingly bipartisan 2003 Healthy Forest Restoration Act approved by sweeping margins in the House and Senate and is now a successful law. Individuals and groups who provide substantive comments during the development of the plan have standing to appeal and to litigate.

- FERRA requires preliminary injunctions granted by a federal court against a project implemented under this legislation to be reevaluated every 45 days. The court may extend the injunction an unlimited number of times

- Every time a federal court extends an injunction, the Forest Service or the Department of the Interior must provide an update to the court on the status of the conditions of the forest, ensuring an evaluation of the balance of harms.
- FERRA encourages, in a non-binding manner, a federal court to decide on the merits of a legal challenge to a forest restoration project within 100 days.

FICTION: The public will be cut out of the process.

FACT: The public, States, tribes, universities, and local communities would be involved in developing any activity planned under FERRA. Claims that the public would be excluded are indisputably wrong.

- FERRA Section 101(f) (page 14) requires public collaboration with State and local governments, Indian tribes, land-grant colleges and universities, and interested persons during preparation of the evaluations and catastrophic event recovery proposals.
- FERRA Section 102(i)(1) (page 22) requires public notice of the evaluation and any proposal.
- FERRA Section 101(i)(2) (page 23) requires notice of public meetings.
- FERRA Section 102(g)(2) (page 22) requires consideration of recommendations of community wildfire protection plans.
- FERRA Section 105(d) (page 32) requires projects be consistent with the forest plans developed under the National Forest Management Act which requires extensive public involvement, including public notice, public comment, and an opportunity for people to protest the plans.
- FERRA Section 106(b) (page 33) requires development of a pre-decisional public notice, comment, and review process.

FICTION: FERRA isn't needed. The Healthy Forest Restoration Act (HFRA) has all the tools land managers need.

FACT: HFRA focuses on protecting rural communities, watersheds and wildlife habitat by reducing hazardous fuels in our forests before catastrophic wildfires strike (A recent GAO report (GAO-05-147) confirmed to the Congress that this law is working to better prevent catastrophic wildfire and the destruction it brings to our environment, communities and property). FERRA, on the other hand, is focused on recovery after a catastrophic event. It provides for more efficient time frames for evaluation and action, which is especially needed with salvage of dead and dying trees, to capture economic value before it is lost and maximize tree replanting.

FICTION: FERRA allows logging and road construction in “old growth,” roadless, and wilderness areas.

FACT: FERRA Section 105(d) (page 32) requires projects be consistent with the forest plans. Areas managed for old growth, as roadless areas, or wilderness will continue to be managed according to their current status.

- FERRA Section 105(b) (page 29) specifically prohibits permanent road construction and harvest of live trees.
- FERRA Section 3(10) (page 9) prohibits entry into wilderness or national monuments.
- FERRA Section 109 (page 38) provides standards for tree retention; specifically, dead and downed trees for wildlife habitat.

FICTION: Salvage is not economical and takes away money from fuels treatments.

FACT: Salvage isn't economical when time consuming bureaucratic processes, unsubstantive appeals, and frivolous litigation delay forest restoration projects until all value is lost. However, FERRA authorities are written to reduce these delays, require substantive comment to appeal, and litigation must balance the harm of action versus no action. By streamlining these processes, the Congressional Budget Office reported that FERRA will reduce direct spending by the government by \$23 million between 2007 and 2016. FERRA allows dead and dying tree salvage projects to help pay for live green tree reforestation and recovery of damaged lands. If anything, these FERRA savings help provide substantially more money for fuels reduction.

FICTION: FERRA will lead to unnatural plantation forests.

FACT: FERRA Section 3(C) (page 7) specifically requires the avoidance of creation of plantation forests. FERRA Section 105(d) (page 32) requires projects be consistent with the federal forest plans.

- This bill clearly states that in response to the catastrophic event, reforestation of damaged federal lands would be conducted, to the extent practical, with native or beneficial plants to avoid creation of plantation forests. (Section 3)
- Restoration and recovery activities are prohibited in Wilderness, National Monuments, National Parks, and other areas excluded by approved federal forest plans. (Section 3)
- The bill clearly states in numerous locations that the underlying land management or federal forest plan must be followed when conducting forest recovery activities. (Section 3)
- Habitat snags would be required to remain as would other material to diminish erosion and restore habitat. (Title 1, Sec. 105)

FICTION: FERRA will increase fire danger.

FACT: FERRA would decrease fire danger. FERRA will use federal government standard “slash”**(the term used for flammable tree brush material like branches, bark, etc.)** treatment and disposal requirements. Prior to advertising a forest recovery project, the Forest Service prepares a “slash treatment plan” which identifies the work to be done by the purchaser and by the agency. Stewardship authorities allow the Forest Service to require a purchaser to also treat hazardous fuels that were not directly attributed to the harvest activities. This can include the required removal of biomass as well as on-site disposal methods such as piling and burning. Removal of merchantable material, and treatment and disposal of slash, would decrease fire danger.

- The purchaser is required to deposit money into the Brush Disposal account to cover the cost of any work to be done by the Forest Service.
- Provision C6.7 defines “slash, requires burning obligations, and defines how agreements on operations are reached and funded.
- In some cases, the timber purchaser is required to do all the slash clean up: Standard contract provision C6.74 states, “Purchaser shall pile, burn, yard, construct fire lines or otherwise treat slash...when included timber is removed during Normal Operating Season, required slash work shall be completed within 30 days of removal of approximately three-quarters of the volume in the unit. When included timber is removed outside Normal Operating Season, required work will be completed within 30 days of the beginning of the next Normal Operating Season.”
- In other cases (due to the need for federal oversight and expertise), the timber purchaser is required to assist in burning, control, mop-up, and patrol of units identified in the slash plan. Contract provision 6.74 Option 1 is used in these circumstances. These obligations are for a period of 2 years.
- Forest Service Standard Contract provision B6.7 states that specific slash disposal measures to be employed by the purchaser are stated in C6.7
- Each Region of the Forest Service has developed one or more special contract provisions under C6.7 to better account for different climatic, topographic and other environmental factors.

FICTION: FERRA would be used to justify cutting trees after just about any weather even – rain, snow, or drought. FERRA will be used after a heavy frost!

FACT: This is demonstrably false. FERRA Section 3(2) (page 6) defines a catastrophic event as any natural disaster the Secretary determines has caused or will cause damage of significant severity and magnitude to federal land. FERRA may be used for any weather event that causes heavy and extensive live tree damage, **but this provision is clearly defined and clearly for only true natural catastrophes.**

- Declarations of significant live tree damage are consistent with the Robert T. Stafford Disaster Relief and Emergency Assistance Act. A severe ice storm in New England, five inches of rain in Colorado on steep erosive soils, a wildfire in tinder dry overstocked trees in Montana, or a hurricane in the gulf coast might all cause enough live tree damage or mortality to qualify.

- Claims that FERRA will be invoked after any weather event are simply irresponsible. FERRA will be applied dutifully and consistent with other federal laws.

FICTION: FERRA will short cut the Endangered Species Act (ESA).

FACT: FERRA uses existing and established procedures to comply with ESA.

- FERRA Section 104(e)(1) (page 26) and 105(c) (page 30) allows the Secretaries to use the existing emergency procedures of 402.05, title 50, CFR for compliance with ESA section 7 consultation. These existing procedures were developed specifically to deal with emergencies. These existing procedures were used successfully to respond to Hurricane Katrina forest restoration. Allowing the routine use of existing ESA procedures for other catastrophes has made **very good sense in prior times and this would remain the case as it applies to FERRA.**

FICTION: FERRA ignores independent science.

FACT: This claim is entirely false. FERRA not only has extensive requirements for independent science, it provides a major new funding source for research.

- FERRA Section 2(8) (page 5) recognizes the need for additional scientific and monitoring information to improve forest recovery.
- FERRA Section 3(7) (page 8) defines catastrophic event research.
- FERRA Section 101(a)(1) and (2) (page 13) requires development of pre-approved practices as a research approach specifically designed to improve knowledge, understanding and predictive capabilities to increase benefits and decrease forest impacts, and as an appropriate and scientifically-sound experimental design or set of sampling procedures and accompanying methods of data analysis and interpretation.
- FERRA Section 101(b) (page 13) requires peer review of research protocols.
- FERRA Section 101(d) (page 14) includes procedures for catastrophic event research projects.
- FERRA Section 101(e) (page 14) includes procedures for public access to research protocols.
- FERRA Section 104(b) (page 24) requires peer review of pre-approved management practices.
- FERRA Section 109(a) (page 38) provides requirements for standing tree retention and section (b) provides for modification of those requirements if science determines there is a more appropriate guideline.
- FERRA Section 402(b) (page 49) requires that ten percent of the gross proceeds from catastrophic event recovery projects and research projects be applied to catastrophic event research.
- Science is woven into every part of FERRA, and FERRA provides a significant new source of funding for research on catastrophes.

For additional information, please contact the Subcommittee on Forests & Forest Health (202.225.0691) or Congressman Greg Walden's office (202.225.6730).