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Solutions to Mitigate Economic Impact of Providing for Species Associated with Late Successional and Old Growth Forests [Report]

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SOLUTIONS TO MITIGATE ECONOMIC IMPACT OF PROVIDING FOR SPECIES ASSOCIATED WITH LATE SUCCESSIONAL AND OLD GROWTH FORESTS OF THE NORTHWEST

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Northwest Independent Forest Manufacturers, an association of mills dependent on public timber harvest in Washington state, has submitted recommendations to the Ecosystem Management Working Group and the Policy Working Group. I appreciate this opportunity to provide recommendations to the Labor and Community Assistance Working Group.

The recommendations included in this paper are confined to those that will mitigate the economic impact of reducing timber harvest from historical levels as may be necessary to provide for species associated with late successional and old growth forests in the northwest. In essence, these recommendations are primarily aimed at offsetting timber supply reductions on federal lands by closing log export substitution loopholes and eliminating export of timber from all public lands.

1) *Amendment of the Shortage Relief Act of 1990 to close substitution loopholes that allow timber companies to buy public timber to replace private logs that are exported.*

a) *Eliminate indirect substitution of federal timber in the State of Washington.*

There is a special exemption for the State of Washington in the Shortage Relief Act of 1990 that provides a company may purchase up to 15 million board feet per year of national forest logs if it qualifies on an historic basis. Only a couple of companies have so qualified and have the right to purchase about 17 million board feet per year of timber even though they export timber from their own lands. Weyerhaeuser qualifies for about 15 million board feet of this exemption. Removing the exemption could increase timber to mills dependent on national forest timber from the State of Washington by up to 17 million board feet per year. Removing the exemption would put federal lands in the State of Washington under the same rules federal lands in all other western states.

b) Eliminate special substitution rules for state timber in the State of Washington.

10 & 30 mbf

The Shortage Relief Act of 1990 provides that state timber sold by the State of Washington and its political subdivisions may be subject to special substitution rules differing from those in other western states. Current rules for the State of Washington allow the sale of 10% of logs sold on a timber sale to go to mills which are exporting timber from private lands. Applying the same substitution rules to state lands as are applied to federal lands throughout the west would require that all state timber be processed by mills that do not export logs from within the same area as they are purchasing state timber. This would likely result in from 10 to 30 million board feet more timber being processed domestically.

c) Eliminate surplus species provision.

20 mbf

Alaska yellow cedar and Port Orford cedar can currently be exported from the U.S. even though there are mills which would like to process those species. The Forest Service was required by the Shortage Relief Act to reevaluate that situation, and it has failed to do so as required. Assuming a federal timber sale program is reactivated it is conceivable that an additional 10 to 30 million board feet per year of Alaska yellow cedar and Port Orford cedar could be domestically processed by eliminating the surplus species provisions.

d) Permanently ban log exports from state lands in the State of Washington.

Revisions of the Shortage Relief Act of 1990 which required the Governor to write regulations that restricted the substitution of private for state timber was recently found unconstitutional by the Ninth Circuit Court of Appeals. Legislation is currently being written by the Washington congressional delegation to restore provisions of the Shortage Relief Act relating to the export of timber from state lands to virtually the same conditions as existed before the court decision and yet overcome the court's objections. This legislation is expected to be introduced before the end of May. The legislation will in essence simply maintain the status quo prior to the suit. We urge that the uncertainty of supply for domestic processing after calendar year 1995, as provided in the legislation, be removed by legislation which would permanently restrict state log exports in Washington state as has been done on state and federal lands throughout the rest of the west. After 1995 the Shortage Relief Act, even as would be amended, only requires that 400 million board feet of timber sold annually must be domestically processed. Historically the state has sold over 700 million board feet annually; thus over 300 million board feet annually may be sold into export unprocessed after 1995 unless legislative action is taken.

e) Eliminate loophole of selling land with timber to avoid substitution pools.

Several companies have sold land and timber into export in order to avoid substitution provisions in the Shortage Relief Act so they could continue to purchase state and federal timber. One company alone has sold over 200 million board feet of timber with the land to avoid substitution rules and thereby replaced their exported timber with timber from state and federal lands. Thus they have thwarted efforts to increase domestic processing in the U.S. by increasing the export of timber lands they owned and simply replacing that timber by purchasing more state and federal timber.

We recommend that the Shortage Relief Act regulations be amended to require companies be barred from purchase of federal or state timber if they sell timber and lands into export without placing a condition on the sale that requires any timber sold from the lands within at least seven years after the purchase to be domestically processed. If such condition were not placed on the sale it would be assumed the timber was being sold into export thereby disqualifying the seller of the land under substitution regulations from purchasing federal and state timber requiring for domestic processing.

2) *Revise the tax code for foreign sales corporations to eliminate tax subsidies for log exports and provide incentives to encourage domestic processing.*

HR 1997, sponsored by Congressman DeFazio, eliminates tax subsidies for exporting logs under foreign sales corporation rules and provides an incentive to domestically process timber by granting a tax reduction from the capital gains rate of up to 30%. The problem with this legislation has been that it is too expensive because the capital gains tax reduction applies to all private timber harvested in the United States. We urge a revenue-neutral approach that would target only those areas and grades of timber commonly being exported. We recommend amendments to limit application to areas of the country where 10% or more of the private timber has historically been exported. In addition, the tax credit would be limited to logs harvested that are eight inches or larger in diameter on the small end. We estimate these two amendments would reduce revenue impacts by 80%, see attached statement on HR 1997 before the House Ways and Means Committee.

We estimate that from ½ to 1 billion board feet annually which is now being exported from the northwest would be domestically processed if this legislation were enacted.

3) *Revise Alaska log export restrictions to be essentially the same as those for other western U.S. lands.*

Currently Alaska has a completely separate log export law which treats other states as though they were foreign countries. It provides that white wood species must be processed in Alaska and that red cedar can be exported without processing. We would urge that Alaska be treated the same as any other western state and that there be a free flow of federal timber between Alaska and other U.S. states as there is between other western states.

It is practical to process Alaska timber in northwest states, as evidenced by the fact that lower grades of western red cedar logs have been barged to western Washington mills in the past three years.

We estimate that from 50 to 100 million board feet per year of softwood timber would flow from Alaska to northwest mills if these law changes were made. Approximately half of this volume would be in western red cedar logs which are now being exported to Pacific Rim countries. Much of the rest of this would be small business sales which currently have no bidding interest in Alaska. The two independent mills in Alaska that did bid on Tongass National Forest timber have closed because of economic difficulties.

Changes have been made w/ passage of HR 2343 that are not shown

SEC. 488. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) Timber is essential to the United States.

(2) Forests, forest resources, and the forest environment are exhaustible natural resources that require efficient and effective conservation efforts.

(3) In the interest of conserving those resources, the United States has set aside millions of acres of otherwise harvestable timberlands in the western United States, representing well over 100,000,000,000 board feet of otherwise harvestable timber.

(4) In recent years, administrative, statutory, or judicial action has been taken to set aside an increased amount of otherwise harvestable timberlands for conservation purposes.

(5) In the next few months and years, additional amounts of otherwise harvestable timberlands may be set aside for conservation purposes, pursuant to the Endangered Species Act of 1973, the National Forest Management Act of 1976, or other expected statutory, administrative, and judicial actions.

(6) There is evidence of a shortfall in the supply of unprocessed timber in the western United States.

(7) There is reason to believe that any shortfall which may already exist may worsen unless action is taken.

(8) In conjunction with the broad conservation actions expected in the next few months and years, conservation action is necessary with respect to exports of unprocessed timber.

(b) PURPOSES.—The purposes of this title are—

(1) to promote the conservation of forest resources in conjunction with State and Federal resources management plans, and other actions or decisions, affecting the use of forest resources;

(2) to take action essential for the acquisition and distribution of forest resources or products in short supply in the western United States;

(3) to take action necessary, to meet the goals of Article XI 2.(a) of the General Agreement on Tariffs and Trade, to ensure sufficient supplies of certain forest resources or products which are essential to the United States;

(4) to continue and refine the existing Federal policy of restricting the export of unprocessed timber harvested from Federal lands in the western United States; and

(5) to effect measures aimed at meeting these objectives in conformity with the obligations of the United States under the General Agreement on Tariffs and Trade.

SEC. 489. RESTRICTIONS ON EXPORTS OF UNPROCESSED TIMBER ORIGINATING FROM FEDERAL LANDS.

(a) PROHIBITION ON EXPORT OF UNPROCESSED TIMBER ORIGINATING FROM FEDERAL LANDS.—No person who acquires unprocessed timber originating from Federal lands west of the 100th meridian ~~in the contiguous 48 States~~ may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States; ~~unless such timber has been determined under subsection (b) to be surplus to the needs of timber manufacturing facilities in the United States~~.

[illegible] blocked)

or sell lands which contain merchantable [illegible]

~~(b) SURPLUSES.—~~

~~(1)~~ DETERMINATIONS BY SECRETARY CONCERNED.—*The prohibition contained in subsection (a) shall not apply to specific quantities of grades and species of unprocessed timber originating from Federal lands which the Secretary concerned determines to be surplus to domestic manufacturing needs.*

(2) PROCEDURES.—*Any determination under paragraph (1) shall be made in regulations issued in accordance with section 553 of title 5, United States Code. Any such determination shall be reviewed at least once in every 3-year period. The Secretary concerned shall publish notice of such review in the Federal Register, and shall give the public an opportunity to comment ~~on such review.~~*

SEC. 490. LIMITATIONS ON THE SUBSTITUTION OF UNPROCESSED FEDERAL TIMBER FOR UNPROCESSED TIMBER EXPORTED FROM PRIVATE LANDS.

(a) DIRECT SUBSTITUTION.—(1) Except as provided in subsection (c), no person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if—

(A) such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

(B) such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.

(2) Notwithstanding paragraph (1)—

(A) Federal timber purchased pursuant to a contract entered into between the purchaser and the Secretary concerned before the date on which regulations to carry out this subsection are issued under section 495 shall be governed by the regulations of the Secretary concerned in effect before such date that restrict the substitution of unprocessed timber originating from Federal lands for exported timber originating from private lands;

(B) in the 1-year period beginning on the effective date of this title, any person who operates under a Cooperative Sustained Yield Unit Agreement, and who has an historic export quota shall be limited to entering into contracts under such a quota to a volume equal to not more than 66 percent of the person's historic export quota used during fiscal year 1989;

(C) a person referred to in subparagraph (B) shall reduce the person's remaining substitution volume by an equal amount each year thereafter such that no volume is substituted under such a quota in fiscal year 1995 or thereafter; and

(D) the 24-month period referred to in paragraph (1)(B) shall not apply to any person who—

(i) before the enactment of this Act, has, under an historic export quota approved by the Secretary concerned, purchased unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in substitution for exported unprocessed timber originating from private lands;

(ii) certifies to the Secretary concerned, within 3 months after the date of the enactment of this Act, that the person will, within 6 months after such date of enactment, cease

exporting unprocessed timber originating from private lands; and

(iii) ceases exports in accordance with such certification.

(b) INDIRECT SUBSTITUTION.—

~~(1) IN GENERAL.—Except as provided in paragraph (2),~~ no person may, beginning 21 days after the date of the enactment of this Act, purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited from purchasing such timber directly from a department or agency of the United States. Acquisitions of western red cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from the prohibition contained in this paragraph.

~~(2) EXCEPTIONS.—(A) The Secretary of Agriculture shall, as soon as practicable but not later than 9 months after the date of the enactment of this Act, establish, by rule, a limited amount of unprocessed timber originating from Federal lands described in subparagraph (B) which may be purchased by a person otherwise covered by the prohibition contained in paragraph (1). Such limit shall equal—~~

~~(i) the amount of such timber acquired by such person, based on the higher of the applicant's actual timber purchasing receipts or the appropriate Federal agency's records, during fiscal years 1988, 1989, and 1990, divided by 3, or~~

~~(ii) 15 million board feet,~~

~~whichever is less, except that such limit shall not exceed such person's proportionate share, with respect to all persons covered under this paragraph, of 50 million board feet.~~

~~(B) The Federal lands referred to in subparagraph (A) are Federal lands administered by the United States Forest Service Region 6 that are located north of the Columbia River from its mouth and east to its first intersection with the 119th meridian, and from that point north of the 46th parallel and east.~~

~~(C) Any person may sell, trade, or otherwise exchange with any other person the rights obtained under subparagraph (A), except that such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights obtained under subparagraph (A).~~

~~(D) Federal timber purchased from Federal lands described in subparagraph (B) pursuant to a contract entered into between the purchaser and the Secretary of Agriculture before the date on which regulations to carry out this subsection are issued under section 495 shall be governed by the regulations of the Secretary of Agriculture in effect before such date that restrict the substitution of unprocessed timber originating from Federal lands for exported timber originating from private lands.~~

Federal indirect substitution

(c) APPROVAL OF SOURCING AREAS.—

(1) IN GENERAL.—The prohibitions contained in subsections (a) and (b) shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands within a sourcing area west of the 100th meridian in the contiguous 48 States approved by the Secretary concerned under this subsection by a person who—

(A) in the previous 24 months, has not exported unprocessed timber originating from private lands within the sourcing area; and

(B) during the period in which such approval is in effect, does not export unprocessed timber originating from private lands within the sourcing area.

The Secretary concerned may waive the 24-month requirement set forth in subparagraph (A) for any person who, within 3 months after the date of the enactment of this Act, certifies that, within 6 months after such date, such person will, for a period of not less than 3 years, cease exporting unprocessed timber originating from private lands within the sourcing area.

(2) Requirements for application.—The Secretaries concerned shall, not later than 3 months after the date of the enactment of this Act, prescribe procedures to be used by a person applying for approval of a sourcing area under paragraph (1). Such procedures shall require, at a minimum, the applicant to provide—

(A) information regarding the location of private lands from which such person has, within the previous year, harvested or otherwise acquired unprocessed timber which has been exported from the United States; and

(B) information regarding the location of each timber manufacturing facility owned or operated by such person within the proposed sourcing area boundaries at which the applicant proposes to process timber originating from Federal lands.

The prohibition contained in subsection (a) shall not apply to a person before the date which is 1 month after the procedures referred to in this paragraph are prescribed. With respect to any person who submits an application in accordance with such procedures by the end of the time period set forth in the preceding sentence, the prohibition contained in subsection (a) shall not apply to such person before the date on which the Secretary concerned approves or disapproves such application.

(3) Grant of approval.—For each applicant, the Secretary concerned shall, on the record and after an opportunity for a hearing, not later than 4 months after receipt of the application for a sourcing area, either approve or disapprove the application. The Secretary concerned may approve such application only if the Secretary determines that the area that is the subject of the application, in which the timber manufacturing facilities at which the applicant desires to process timber originating from Federal lands are located, is geographically and economically separate from any geographic area from which that person harvests for export any unprocessed timber originating from private lands. In making a determination referred to in this paragraph, the Secretary concerned shall consider equally the timber purchasing patterns, on private and Federal lands, of the applicant as well as other persons in the same local vicinity as the applicant, and the relative similarity of such purchasing patterns.

(4) Denial of application.—(A) Subject to subparagraph (B), and notwithstanding any other provision of law, in the 9-month

period after receiving disapproval of an application submitted pursuant to this subsection, the applicant may purchase unprocessed timber originating from Federal lands in the area which is the subject of the application in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed timber orginating from Federal lands in the same area during the 5 full fiscal years immediately prior to submission of the application. In the subsequent 6-month period, such person may purchase not more than 25 percent of such annual average, after which time the prohibitions contained in subsection (a) shall fully apply.

(B) If a person referred to in subparagraph (A) certifies to the Secretary concerned, within 90 days after receiving disapproval of such application, that such person shall, within 15 months after such disapproval, cease the export of unprocessed timber originating from private lands from the geographic area determined by the Secretary for which the application would have been approved, such person may continue to purchase unprocessed timber originating from Federal lands in the area which is the subject of the application, without being subject to the restrictions of subparagraph (A), except that such purchases during that 15-month period may not exceed 125 percent of the annual average of such person's purchases of unprocessed timber originating from Federal lands in the same area during the 5 full fiscal years immediately prior to submission of the application which was denied.

(C) Any person to whom subparagraph (B) applies may not, during the 15-month period after the person's application for sourcing area boundaries is denied, export unprocessed timber originating from private lands in the geographic area determined by the Secretary concerned for which the application would have been approved in amounts that exceed 125 percent of the annual average of such person's exports of unprocessed timber from such private lands during the 5 full fiscal years immediately prior to submission of the application.

(5) REVIEW OF DETERMINATIONS.—Determinations made under paragraph (3) shall be reviewed, in accordance with the procedures prescribed in this title, not less often than every 5 years.

SEC. 491. RESTRICTIONS ON EXPORTS OF UNPROCESSED TIMBER FROM STATE AND OTHER PUBLIC LANDS.

(a) ORDER TO PROHIBIT THE EXPORT OF UNPROCESSED TIMBER ORIGINATING FROM STATE OR OTHER PUBLIC LANDS.—Except as provided in subsection (e), the Secretary of Commerce shall issue orders to prohibit the export from the United States of unprocessed timber originating from public lands, in the amounts specified in subsection (b).

(b) SCHEDULE FOR DETERMINATION TO PROHIBIT THE EXPORT OF UNPROCESSED TIMBER ORIGINATING FROM STATE OR OTHER PUBLIC LANDS.—

~~(1) STATES WITH ANNUAL SALES OF 400,000,000 BOARD FEET OR LESS.—With respect to States with annual sales volumes of 400,000,000 board feet or less,~~ the Secretary of Commerce shall

issue an order referred to in subsection (a) to prohibit the export of unprocessed timber originating from public lands not later than 21 days after the date of the enactment of this Act.

~~(2) STATES WITH ANNUAL SALES OF GREATER THAN 400,000,000~~ BOARD FEET.—*With respect to any State with an annual sales volume greater than 400,000,000 board feet, the following shall apply:*

(A) The Secretary of Commerce shall issue an order referred to in subsection (a) not later than 21 days after the date of the enactment of this Act. Such order shall cover a period beginning 120 days after the issuance of such an order, or January 1, 1991, whichever is earlier, and shall extend to December 31, 1991. Such order shall prohibit the export of 75 percent of the annual sales volume in such State of unprocessed timber from public lands.

State of WA
log export

(B) For the period beginning on January 1, 1992, and ending on December 31, 1993, the Secretary of Commerce shall, after notice and an opportunity for a hearing, issue an order referred to in subsection (a) not later than September 30, 1991. Such order shall prohibit the export of at least 75 percent of such State's annual sales volume for this 2-year period.

(C) For the period beginning on January 1, 1994, and ending on December 31, 1995, the Secretary of Commerce shall, after notice and an opportunity for a hearing, issue an order referred to in subsection (a) not later than September 30, 1993. Such order shall prohibit the export of at least 75 percent of such State's annual sales volume for this 2-year period.

(D) For all periods on or after January 1, 1996, the Secretary of Commerce shall issue an order referred to in subsection (a) not later than September 30, 1995. Such order shall prohibit the export of the lesser of 400,000,000 board feet or the total annual sales volume.

(3) REPORT TO CONGRESS.—Not later than June 1, 1995, the Secretary of Commerce, in conjunction with the Secretaries of Agriculture and Interior, shall issue a report to the Congress on the effects of the reallocation, as a result of the enactment of this title, of public lands timber resources to the domestic timber processing sector, the ability of the domestic timber processing sector to meet domestic demand for forest products, the volume of transshipment of timber originating from public lands across State borders, the effectiveness of rules issued and administered by States pursuant to this title, and trends in growth and productivity in the domestic timber processing sector.

(c) BASIS FOR INCREASE IN VOLUME PROHIBITED FROM EXPORT.—The Secretary of Commerce may increase the amount of unprocessed timber to be prohibited from export above the minimum amount specified in subsection (b)(2) (B) and (C), based on a determination that the purposes of this title have not been adequately met and that such an increase would further the purposes of this title. In making this determination, the ~~Secretary shall consider—~~

~~(1) actions or decisions taken, for the purpose of conserving or protecting exhaustible natural resources in the United States, which have affected the use or availability of forest products;~~

~~(2) whether the volume of timber from public lands that is under contract has increased or decreased by an amount greater than 20 percent within the previous 12 months; and~~

~~(3) the probable effects of unprocessed timber exports on the ability of timber mills to acquire unprocessed timber.~~

(c) ~~(d)~~ ADMINISTRATIVE PROVISIONS.—

~~(1) DELAY OF SECRETARY'S ORDER.—In the event that any order of the Secretary of Commerce under subsection (a) or its implementation is delayed for any reason, the prohibitions on exports under subsection (b) to which such order would apply shall apply in the absence of such order.~~

~~(2) ADMINISTRATION BY STATES.—Each State shall determine the species, grade, and geographic origin of unprocessed timber to be prohibited from export under subsection (b) and shall administer such prohibitions consistent with the intent of this title and ensure that the species, grades, and geographic origin of unprocessed timber prohibited from export is representative of the species, grades, and geographic origin of timber comprising such State's total timber sales program. The State is authorized to cooperate with Federal and State agencies with apropriate jurisdiction to further the intent of this title.~~

~~(3) STATE REGULATIONS.—(A) Except for States with annual sales of 400,000,000 board feet or less upon the date of the enactment of this Act, the Governor of each State to which this title applies, or such other State official as the Governor may designate, shall, within 120 days after the date of the enactment of this Act, issue regulations to carry out the purposes of this section, the promulgation of which shall be consistent with section 553 of title 5, United States Code. Such regulations in each State shall remain in effect until such time as the legislature of that State enacts such requirements as it deems appropriate to carry out this section. Before issuing such regulations, the Governor shall enter into formal consultation, concerning such regulations, with appropriate State officials and with a State Board of Natural Resources where such a board exists. When formulating regulations under this paragraph, the Governor shall take into account the intent of this title to effect a net increase in domestic processing of timber harvested from public lands consistent with all orders issued by the Secretary of Commerce under subsection (a).~~

State WA indirect substitution

(B) The Governor of each State with annual sales of 400,000,000 board feet or less upon the date of the enactment of this Act, or such other State official as the Governor may designate, shall, within 120 days after the date of enactment of this Act, issue regulations to carry out the purposes of this section. Until such regulations are issued in a State, the prohibitions contained in subsections (a) and (b) of section 490 shall apply to unprocessed timber originating from public lands in that State to the same extent as such prohibitions apply to unprocessed timber originating from Federal lands, ~~except that the provisions of subsection (c) of such section shall not apply.~~

(1) ~~(4)~~ PRIOR CONTRACTS.—*Nothing in this section shall apply to any contract for the purchase of unprocessed timber from public lands entered into before the effective date of a Secretary's order issued under subsection (a).*

(2) ~~(5)~~ WESTERN RED CEDAR.—*Nothing in this section shall be construed to supersede the provisions of section 7(i) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)).*

renumber (e) PRESIDENTIAL AUTHORITY.—*The President is authorized, after suitable notice and a public comment period of not less than 120 days, to suspend the provisions of this section if a panel of experts has reported to the Contracting Parties to the General Agreement on Tariffs and Trade, or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that the provisions of this section are in violation of, or inconsistent with, United States obligations under that trade agreement.*

(f) REMOVAL OR MODIFICATIONS OF STATE RESTRICTIONS.—Based upon a determination that it is in the national economic interest, the President may remove or modify any prohibition on exports from public lands in a State if that State petitions the President to remove or modify such prohibition.

(g) EFFECT OF PRIOR FEDERAL LAW.—No provision of Federal law which imposes requirements with respect to the generation of revenue from State timberlands and was enacted before the enactment of this Act shall be construed to invalidate, supersede, or otherwise affect any action of a State or political subdivision of a State pursuant to this title.

Surplus species

(h) SURPLUS TIMBER.—~~The prohibitions on exports contained in orders of~~ the Secretary of Commerce issued under subsection (a) shall not ~~apply to~~ specific quantities of grades and species of unprocessed timber ~~originating~~ from public lands which the Secretary concerned determines by rule to ~~be~~ surplus to the needs of timber manufacturing facilities in the United ~~States~~. Any such determination may, by rule, be withdrawn by the Secretary concerned if the Secretary determines that the affected timber is no longer surplus to the needs of timber manufacturing facilities in ~~the United~~ States.

(i) SUSPENSION OF PROHIBITIONS.—Notwithstanding any other provision of this section, beginning on January 1, 1998, and annually thereafter, if the President finds, upon review of the purposes and implementation of this title, that the prohibitions on exports required by subsection (a) no longer promote the purposes of this title, then the President may suspend such prohibitions, except that such suspension shall not take effect until 90 days after the President notifies the Congress of such finding.

(j) EXISTING AUTHORITY NOT AFFECTED.—Nothing in this title shall be construed to limit the authority of the President or the United States Trade Representative to take action authorized by law to respond appropriately to any measures taken by a foreign government in connection with this title.

SEC. 492. MONITORING AND ENFORCEMENT.

(a) MONITORING AND REPORTS.—In accordance with regulations issued under this section—

(1) each person who acquires, either directly or indirectly, unprocessed timber originating from Federal lands west of the

100th meridian in the contiguous 48 States shall report the receipt and disposition of such timber to the Secretary concerned, in such form as such Secretary may by rule prescribe; except that nothing in this paragraph shall be construed to hold any person responsible for the reporting of the disposition of any such timber held by subsequent persons; and

(2) each person who transfers to another person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall, before completing such transfer—

(A) provide to such other person a written notice, in such form as the Secretary concerned may prescribe, which shall identify the Federal origin of such timber;

(B) receive from such other person a written acknowledgment of such notice and a written agreement that such other person will comply with the requirements of this title, in such form as the Secretary concerned may prescribe; and

(C) provide to the Secretary concerned copies of all notices, acknowledgments, and agreements referred to in subparagraphs (A) and (B).

~~(b) REPORT TO CONGRESS.—Using the information gathered under~~ subsection (a), the Secretaries of Agriculture and Interior shall, not later than June 1, 1995, submit to the Congress a report on the disposition of unprocessed timber harvested from Federal lands west of the 100th meridian in the contiguous 48 States, and recommendations concerning the practice of indirect substitution of such timber for exported timber harvested from private lands. Specifically, such report shall—

(1) analyze the effects of indirect substitution on market efficiency;

(2) analyze the effects of indirect substitution on domestic log supply;

(3) offer any recommendations that the Secretaries consider necessary for specific statutory or regulatory changes regarding indirect substitution;

(4) provide summaries of the data collected;

(5) analyze the effects of the provisions of section 490(b)(2)(C); and

(6) provide such other information as the Secretaries consider ~~appropriate.~~

(b) ~~(c)~~ CIVIL PENALTIES FOR VIOLATION.—

(1) EXPORTS.—If the Secretary concerned finds, on the record and after an opportunity for a hearing, that a person, with willful disregard for the prohibition contained in this title against exporting Federal timber, exported or caused to be exported unprocessed timber originating from Federal lands in violation of this title, such Secretary may assess against such person a civil penalty of not more than $500,000 of each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(2) OTHER VIOLATIONS.—If the Secretary concerned finds, on the record and after an opportunity for a hearing, that a person has violated any provision of this title or any regulation issued under this title relating to lands which they administer (not-

withstanding that such violation may not have caused the export of unprocessed Federal timber in violation of this title), such Secretary may—

(A) assess against such person a civil penalty of not more than $75,000 for each violation if the Secretary determines that the person committed such violation in disregard of such provision or regulation;

(B) assess against such person a civil penalty of not more than $50,000 for each violation if the Secretary determines that the person should have known that the action constituted a violation; or

(C) assess against such person a civil penalty of not more than $500,000 if the Secretary determines that the person committed such violation willfully.

(3) PENALTIES NOT EXCLUSIVE; JUDICIAL REVIEW.—A penalty assessed under this subsection shall not be exclusive of any other penalty provided by law and shall be subject to review in an appropriate United States district court.

(d) ADMINISTRATIVE REMEDIES.—

(1) DEBARMENT.—The head of the appropriate Federal department or agency under this title may debar any person who violates this title, or any regulation or contract issued under this title, from entering into any contract for the purchase of unprocessed timber from Federal lands for a period of not more than 5 years. Such person shall also be precluded from taking delivery of Federal timber purchased by another party for the period of debarment.

(2) CANCELLATION OF CONTRACTS.—The head of the appropriate Federal department or agency under this title may cancel any contract entered into with a person found to have violated this title or regulations issued under this title.

(e) EXCEPTION.—Subsections (c) and (d) do not apply to violations of section 498.

SEC. 493. DEFINITIONS.

For purposes of this title:

(1) The term "acquire" means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction, and the term "acquisition" means the act of acquiring.

(2) The term "Federal lands" means lands that are owned by the United States, but does not include any lands the title to which is—

(A) held in trust by the United States for the benefit of any Indian tribe or individual,

(B) held by any Indian Tribe or individual subject to a restriction by the United States against alienation, or

(C) held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(3) The term "person" means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, or parent company, and business affiliates where 1 affiliate controls or has the power to control the

other or when both are controlled directly or indirectly by a third person.

(4) The term "private lands" means lands held or owned by a person. Such term does not include Federal lands or public lands, or any lands the title to which is—

(A) held in trust by the United States for the benefit of any Indian tribe or individual,

(B) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(C) held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(5) The term "public lands" means lands west of the 100th meridian in the contiguous 48 States, that are held or owned by a State or political subdivision thereof, or any other public agency. Such term does not include any lands the title to which is:

(A) held by the United States;

(B) held in trust by the United States for the benefit of any Indian tribe or individual,

(C) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(D) held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(6) The term "Secretary concerned" means—

(A) the Secretary of Agriculture, with respect to Federal lands administered by that Secretary; and

(B) the Secretary of the Interior with respect to Federal lands administered by that Secretary;

(7)(A) The term "unprocessed timber" means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use.

(B) The term "unprocessed timber" does not include timber processed into any one of the following:

(i) Lumber or construction timbers, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture.

(ii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, meeting current American Lumber Standards Grade or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches in thickness.

(iii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in clause (ii) and are sawn on 4 sides, with wane less than ¼ of any face, not exceeding 8¾ inches in thickness.

(Change is want to eliminate Cowney [illegible])

(iv) Chips, pulp, or pulp products.

(v) Veneer or plywood.

(vi) Poles, posts, or piling cut or treated with preservatives for use as such.

5111.90.40, 5111.90.50, 5112.11.10, 5112.20.10, 5112.20.20, 5112.30.10, 5112.30.20, 5112.90.40, 5112.90.50, and 5803.90.11 (relating to certain woven fabrics and gauze) of such Schedule (as added by section 472).

(2) Any staged rate reduction proclaimed by the President before October 1, 1990, that—

(A) would take effect on or after October 1, 1990; and

(B) would, but for any amendment made by section 472 (relating to certain woven fabrics) or 475 (relating to chipper knife steel), apply to a special rate of duty set forth in any subheading of the Harmonized Tariff Schedule of the United States that is listed in Column A;

applies to the corresponding special rate of duty set forth in the subheading of such Schedule that is listed in column B opposite such column A subheading:

Column A	Column B
5111.11.10	5111.11.30
5111.11.60	5111.11.70
5111.90.60	5111.90.70
5112.11.00	5112.11.20
5112.20.00	5112.20.30
5112.30.00	5112.30.30
5803.90.10	5803.90.12
7226.91.10	7226.91.15
7226.91.30	7336.92.25

(3) The amendments made by section 472 shall not affect any staged reductions of a rate of duty set forth in subheadings 5112.19.10, 5112.19.60, 5112.90.30, 5112.90.60 of the Harmonized Tariff Schedule of the United States that were proclaimed by the President before October 1, 1990, and are scheduled to take effect on or after October 1, 1990.

(4)(A) Any staged reductions of a special rate of duty set forth in subheading 6810.19.10 of the Harmonized Tariff Schedule of the United States that were proclaimed by the President before October 1, 1990, and are scheduled to take effect on or after October 1, 1990, shall apply to the corresponding special rate of duty in subheading 6810.19.14.

(B) Any staged reductions of a special rate of duty set forth in subheading 3926.90.90 of the Harmonized Tariff Schedule of the United States that were proclaimed by the President before October 1, 1990, and are scheduled to take effect on or after October 1, 1990, shall apply to the corresponding special rate of duty in subheading 6810.19.12.

(5) Any staged reductions of a special rate of duty set forth in subheading 9022.29.40 of the Harmonized Tariff Schedule of the United States that was proclaimed by the President before October 1, 1990, and are scheduled to take effect on or after October 1, 1990, also apply to the corresponding special rate of duty set forth in subheading 9022.90.70.

TITLE IV—EXPORTS OF UNPROCESSED TIMBER

SEC. 487. SHORT TITLE.

This title may be cited as the "Forest Resources Conservation and Shortage Relief Act of 1990".

SOLUTIONS TO MITIGATE ECONOMIC IMPACT OF PROVIDING FOR SPECIES ASSOCIATED WITH LATE SUCCESSIONAL AND OLD GROWTH FORESTS OF THE NORTHWEST

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June 28, 1993

Northwest Independent Forest Manufacturers, an association of mills dependent on public timber harvest in Washington state, has submitted recommendations to the Ecosystem Management Working Group and the Policy Working Group. I appreciate this opportunity to provide recommendations to the Labor and Community Assistance Working Group.

The recommendations included in this paper are confined to those that will mitigate the economic impact of reducing timber harvest from historical levels as may be necessary to provide for species associated with late successional and old growth forests in the northwest. In essence, these recommendations are primarily aimed at offsetting timber supply reductions on federal lands by closing log export substitution loopholes and eliminating export of timber from all public lands.

1) *Amendment of the Shortage Relief Act of 1990 to close substitution loopholes that allow timber companies to buy public timber to replace private logs that are exported.*

a) *Eliminate indirect substitution of federal timber in the State of Washington.*

There is a special exemption for the State of Washington in the Shortage Relief Act of 1990 that provides a company may purchase up to 15 million board feet per year of national forest logs if it qualifies on an historic basis. Only a couple of companies have so qualified and have the right to purchase about 17 million board feet per year of timber even though they export timber from their own lands. Weyerhaeuser qualifies for about 15 million board feet of this exemption. Removing the exemption could increase timber to mills dependent on national forest timber from the State of Washington by up to 17 million board feet per year. Removing the exemption would put federal lands in the State of Washington under the same rules federal lands in all other western states.

b) Eliminate special substitution rules for state timber in the State of Washington.

10 & 30 mbf

The Shortage Relief Act of 1990 provides that state timber sold by the State of Washington and its political subdivisions may be subject to special substitution rules differing from those in other western states. Current rules for the State of Washington allow the sale of 10% of logs sold on a timber sale to go to mills which are exporting timber from private lands. Applying the same substitution rules to state lands as are applied to federal lands throughout the west would require that all state timber be processed by mills that do not export logs from within the same area as they are purchasing state timber. This would likely result in from 10 to 30 million board feet more timber being processed domestically.

c) Eliminate surplus species provision.

20 mbf

Alaska yellow cedar and Port Orford cedar can currently be exported from the U.S. even though there are mills which would like to process those species. The Forest Service was required by the Shortage Relief Act to reevaluate that situation, and it has failed to do so as required. Assuming a federal timber sale program is reactivated it is conceivable that an additional 10 to 30 million board feet per year of Alaska yellow cedar and Port Orford cedar could be domestically processed by eliminating the surplus species provisions.

d) Permanently ban log exports from state lands in the State of Washington.

Revisions of the Shortage Relief Act of 1990 which required the Governor to write regulations that restricted the substitution of private for state timber was recently found unconstitutional by the Ninth Circuit Court of Appeals. Legislation is currently being written by the Washington congressional delegation to restore provisions of the Shortage Relief Act relating to the export of timber from state lands to virtually the same conditions as existed before the court decision and yet overcome the court's objections. This legislation is expected to be introduced before the end of May. The legislation will in essence simply maintain the status quo prior to the suit. We urge that the uncertainty of supply for domestic processing after calendar year 1995, as provided in the legislation, be removed by legislation which would permanently restrict state log exports in Washington state as has been done on state and federal lands throughout the rest of the west. After 1995 the Shortage Relief Act, even as would be amended, only requires that 400 million board feet of timber sold annually must be domestically processed. Historically the state has sold over 700 million board feet annually; thus over 300 million board feet annually may be sold into export unprocessed after 1995 unless legislative action is taken.

e) Eliminate loophole of selling land with timber to avoid substitution pools.

Several companies have sold land and timber into export in order to avoid substitution provisions in the Shortage Relief Act so they could continue to purchase state and federal timber. One company alone has sold over 200 million board feet of timber with the land to avoid substitution rules and thereby replaced their exported timber with timber from state and federal lands. Thus they have thwarted efforts to increase domestic processing in the U.S. by increasing the export of timber lands they owned and simply replacing that timber by purchasing more state and federal timber.

We recommend that the Shortage Relief Act regulations be amended to require companies be barred from purchase of federal or state timber if they sell timber and lands into export without placing a condition on the sale that requires any timber sold from the lands within at least seven years after the purchase to be domestically processed. If such condition were not placed on the sale it would be assumed the timber was being sold into export thereby disqualifying the seller of the land under substitution regulations from purchasing federal and state timber requiring for domestic processing.

2) Revise the tax code for foreign sales corporations to eliminate tax subsidies for log exports and provide incentives to encourage domestic processing.

HR 1997, sponsored by Congressman DeFazio, eliminates tax subsidies for exporting logs under foreign sales corporation rules and provides an incentive to domestically process timber by granting a tax reduction from the capital gains rate of up to 30%. The problem with this legislation has been that it is too expensive because the capital gains tax reduction applies to all private timber harvested in the United States. We urge a revenue-neutral approach that would target only those areas and grades of timber commonly being exported. We recommend amendments to limit application to areas of the country where 10% or more of the private timber has historically been exported. In addition, the tax credit would be limited to logs harvested that are eight inches or larger in diameter on the small end. We estimate these two amendments would reduce revenue impacts by 80%, see attached statement on HR 1997 before the House Ways and Means Committee.

We estimate that from ½ to 1 billion board feet annually which is now being exported from the northwest would be domestically processed if this legislation were enacted.

3) Revise Alaska log export restrictions to be essentially the same as those for other western U.S. lands.

Currently Alaska has a completely separate log export law which treats other states as though they were foreign countries. It provides that white wood species must be processed in Alaska and that red cedar can be exported without processing. We would urge that Alaska be treated the same as any other western state and that there be a free flow of federal timber between Alaska and other U.S. states as there is between other western states.

It is practical to process Alaska timber in northwest states, as evidenced by the fact that lower grades of western red cedar logs have been barged to western Washington mills in the past three years.

We estimate that from 50 to 100 million board feet per year of softwood timber would flow from Alaska to northwest mills if these law changes were made. Approximately half of this volume would be in western red cedar logs which are now being exported to Pacific Rim countries. Much of the rest of this would be small business sales which currently have no bidding interest in Alaska. The two independent mills in Alaska that did bid on Tongass National Forest timber have closed because of economic difficulties.

Changes have been made w/ passage of HR 2343 that are not shown

SEC. 488. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) Timber is essential to the United States.

(2) Forests, forest resources, and the forest environment are exhaustible natural resources that require efficient and effective conservation efforts.

(3) In the interest of conserving those resources, the United States has set aside millions of acres of otherwise harvestable timberlands in the western United States, representing well over 100,000,000,000 board feet of otherwise harvestable timber.

(4) In recent years, administrative, statutory, or judicial action has been taken to set aside an increased amount of otherwise harvestable timberlands for conservation purposes.

(5) In the next few months and years, additional amounts of otherwise harvestable timberlands may be set aside for conservation purposes, pursuant to the Endangered Species Act of 1973, the National Forest Management Act of 1976, or other expected statutory, administrative, and judicial actions.

(6) There is evidence of a shortfall in the supply of unprocessed timber in the western United States.

(7) There is reason to believe that any shortfall which may already exist may worsen unless action is taken.

(8) In conjunction with the broad conservation actions expected in the next few months and years, conservation action is necessary with respect to exports of unprocessed timber.

(b) PURPOSES.—The purposes of this title are—

(1) to promote the conservation of forest resources in conjunction with State and Federal resources management plans, and other actions or decisions, affecting the use of forest resources;

(2) to take action essential for the acquisition and distribution of forest resources or products in short supply in the western United States;

(3) to take action necessary, to meet the goals of Article XI 2.(a) of the General Agreement on Tariffs and Trade, to ensure sufficient supplies of certain forest resources or products which are essential to the United States;

(4) to continue and refine the existing Federal policy of restricting the export of unprocessed timber harvested from Federal lands in the western United States; and

(5) to effect measures aimed at meeting these objectives in conformity with the obligations of the United States under the General Agreement on Tariffs and Trade.

SEC. 489. RESTRICTIONS ON EXPORTS OF UNPROCESSED TIMBER ORIGINATING FROM FEDERAL LANDS.

(including Alaska)

(a) PROHIBITION ON EXPORT OF UNPROCESSED TIMBER ORIGINATING FROM FEDERAL LANDS.—No person who acquires unprocessed timber originating from Federal lands west of the 100th meridian ~~in the contiguous 48 States~~ may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States~~, unless such timber has been determined under subsection (b) to be surplus to the needs of timber manufacturing facilities in the United States~~.

or sell lands which contain merchantable

[illegible]

~~*(b) SURPLUSES.—*~~

~~(1)~~ DETERMINATIONS BY SECRETARY CONCERNED.—The prohibition contained in subsection (a) shall not apply to specific quantities of grades and species of unprocessed timber originating from Federal lands which the Secretary concerned determines to be surplus to domestic manufacturing needs.

(2) PROCEDURES.—Any determination under paragraph (1) shall be made in regulations issued in accordance with section 553 of title 5, United States Code. Any such determination shall be reviewed at least once in every 3-year period. The Secretary concerned shall publish notice of such review in the Federal Register, and shall give the public an opportunity to comment ~~on such review.~~

SEC. 490. LIMITATIONS ON THE SUBSTITUTION OF UNPROCESSED FEDERAL TIMBER FOR UNPROCESSED TIMBER EXPORTED FROM PRIVATE LANDS.

(a) DIRECT SUBSTITUTION.—(1) Except as provided in subsection (c), no person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if—

(A) such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

(B) such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.

(2) Notwithstanding paragraph (1)—

(A) Federal timber purchased pursuant to a contract entered into between the purchaser and the Secretary concerned before the date on which regulations to carry out this subsection are issued under section 495 shall be governed by the regulations of the Secretary concerned in effect before such date that restrict the substitution of unprocessed timber originating from Federal lands for exported timber originating from private lands;

(B) in the 1-year period beginning on the effective date of this title, any person who operates under a Cooperative Sustained Yield Unit Agreement, and who has an historic export quota shall be limited to entering into contracts under such a quota to a volume equal to not more than 66 percent of the person's historic export quota used during fiscal year 1989;

(C) a person referred to in subparagraph (B) shall reduce the person's remaining substitution volume by an equal amount each year thereafter such that no volume is substituted under such a quota in fiscal year 1995 or thereafter; and

(D) the 24-month period referred to in paragraph (1)(B) shall not apply to any person who—

(i) before the enactment of this Act, has, under an historic export quota approved by the Secretary concerned, purchased unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in substitution for exported unprocessed timber originating from private lands;

(ii) certifies to the Secretary concerned, within 3 months after the date of the enactment of this Act, that the person will, within 6 months after such date of enactment, cease

exporting unprocessed timber originating from private lands; and

(iii) ceases exports in accordance with such certification.

(b) INDIRECT SUBSTITUTION.—

~~(1) IN GENERAL.—Except as provided in paragraph (2),~~ *no person may, beginning 21 days after the date of the enactment of this Act, purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited from purchasing such timber directly from a department or agency of the United States. Acquisitions of western red cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from the prohibition contained in this paragraph.*

~~(2) EXCEPTIONS.—(A) The Secretary of Agriculture shall, as~~ *soon as practicable but not later than 9 months after the date of the enactment of this Act, establish, by rule, a limited amount of unprocessed timber originating from Federal lands described in subparagraph (B) which may be purchased by a person otherwise covered by the prohibition contained in paragraph (1). Such limit shall equal—*

(i) the amount of such timber acquired by such person, based on the higher of the applicant's actual timber purchasing receipts or the appropriate Federal agency's records, during fiscal years 1988, 1989, and 1990, divided by 3, or

(ii) 15 million board feet,

whichever is less, except that such limit shall not exceed such person's proportionate share, with respect to all persons covered under this paragraph, of 50 million board feet.

(B) The Federal lands referred to in subparagraph (A) are Federal lands administered by the United States Forest Service Region 6 that are located north of the Columbia River from its mouth and east to its first intersection with the 119th meridian, and from that point north of the 46th parallel and east.

(C) Any person may sell, trade, or otherwise exchange with any other person the rights obtained under subparagraph (A), except that such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights obtained under subparagraph (A).

(D) Federal timber purchased from Federal lands described in subparagraph (B) pursuant to a contract entered into between the purchaser and the Secretary of Agriculture before the date on which regulations to carry out this subsection are issued under section 495 shall be governed by the regulations of the Secretary of Agriculture in effect before such date that restrict the substitution of unprocessed timber originating from Federal ~~lands for exported timber originating from private lands.~~

Federal indirect substitution

(c) APPROVAL OF SOURCING AREAS.—

(1) IN GENERAL.—*The prohibitions contained in subsections (a) and (b) shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands within a sourcing area west of the 100th meridian in the contiguous 48 States approved by the Secretary concerned under this subsection by a person who—*

(A) in the previous 24 months, has not exported unprocessed timber originating from private lands within the sourcing area; and

(B) during the period in which such approval is in effect, does not export unprocessed timber originating from private lands within the sourcing area.

The Secretary concerned may waive the 24-month requirement set forth in subparagraph (A) for any person who, within 3 months after the date of the enactment of this Act, certifies that, within 6 months after such date, such person will, for a period of not less than 3 years, cease exporting unprocessed timber originating from private lands within the sourcing area.

(2) REQUIREMENTS FOR APPLICATION.—The Secretaries concerned shall, not later than 3 months after the date of the enactment of this Act, prescribe procedures to be used by a person applying for approval of a sourcing area under paragraph (1). Such procedures shall require, at a minimum, the applicant to provide—

(A) information regarding the location of private lands from which such person has, within the previous year, harvested or otherwise acquired unprocessed timber which has been exported from the United States; and

(B) information regarding the location of each timber manufacturing facility owned or operated by such person within the proposed sourcing area boundaries at which the applicant proposes to process timber originating from Federal lands.

The prohibition contained in subsection (a) shall not apply to a person before the date which is 1 month after the procedures referred to in this paragraph are prescribed. With respect to any person who submits an application in accordance with such procedures by the end of the time period set forth in the preceding sentence, the prohibition contained in subsection (a) shall not apply to such person before the date on which the Secretary concerned approves or disapproves such application.

(3) GRANT OF APPROVAL.—For each applicant, the Secretary concerned shall, on the record and after an opportunity for a hearing, not later than 4 months after receipt of the application for a sourcing area, either approve or disapprove the application. The Secretary concerned may approve such application only if the Secretary determines that the area that is the subject of the application, in which the timber manufacturing facilities at which the applicant desires to process timber originating from Federal lands are located, is geographically and economically separate from any geographic area from which that person harvests for export any unprocessed timber originating from private lands. In making a determination referred to in this paragraph, the Secretary concerned shall consider equally the timber purchasing patterns, on private and Federal lands, of the applicant as well as other persons in the same local vicinity as the applicant, and the relative similarity of such purchasing patterns.

(4) DENIAL OF APPLICATION.—(A) Subject to subparagraph (B), and notwithstanding any other provision of law, in the 9-month

period after receiving disapproval of an application submitted pursuant to this subsection, the applicant may purchase unprocessed timber originating from Federal lands in the area which is the subject of the application in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed timber orginating from Federal lands in the same area during the 5 full fiscal years immediately prior to submission of the application. In the subsequent 6-month period, such person may purchase not more than 25 percent of such annual average, after which time the prohibitions contained in subsection (a) shall fully apply.

(B) If a person referred to in subparagraph (A) certifies to the Secretary concerned, within 90 days after receiving disapproval of such application, that such person shall, within 15 months after such disapproval, cease the export of unprocessed timber originating from private lands from the geographic area determined by the Secretary for which the application would have been approved, such person may continue to purchase unprocessed timber originating from Federal lands in the area which is the subject of the application, without being subject to the restrictions of subparagraph (A), except that such purchases during that 15-month period may not exceed 125 percent of the annual average of such person's purchases of unprocessed timber originating from Federal lands in the same area during the 5 full fiscal years immediately prior to submission of the application which was denied.

(C) Any person to whom subparagraph (B) applies may not, during the 15-month period after the person's application for sourcing area boundaries is denied, export unprocessed timber originating from private lands in the geographic area determined by the Secretary concerned for which the application would have been approved in amounts that exceed 125 percent of the annual average of such person's exports of unprocessed timber from such private lands during the 5 full fiscal years immediately prior to submission of the application.

(5) REVIEW OF DETERMINATIONS.—Determinations made under paragraph (3) shall be reviewed, in accordance with the procedures prescribed in this title, not less often than every 5 years.

SEC. 491. RESTRICTIONS ON EXPORTS OF UNPROCESSED TIMBER FROM STATE AND OTHER PUBLIC LANDS.

(a) ORDER TO PROHIBIT THE EXPORT OF UNPROCESSED TIMBER ORIGINATING FROM STATE OR OTHER PUBLIC LANDS.—Except as provided in subsection (e), the Secretary of Commerce shall issue orders to prohibit the export from the United States of unprocessed timber originating from public lands, in the amounts specified in subsection (b).

(b) SCHEDULE FOR DETERMINATION TO PROHIBIT THE EXPORT OF UNPROCESSED TIMBER ORIGINATING FROM STATE OR OTHER PUBLIC LANDS.—

~~(1) STATES WITH ANNUAL SALES OF 400,000,000 BOARD FEET OR LESS.—With respect to States with annual sales volumes of 400,000,000 board feet or less,~~ the Secretary of Commerce shall

issue an order referred to in subsection (a) to prohibit the export of unprocessed timber originating from public lands not later than 21 days after the date of the enactment of this Act.

(2) STATES WITH ANNUAL SALES OF GREATER THAN 400,000,000 BOARD FEET.—*With respect to any State with an annual sales volume greater than 400,000,000 board feet, the following shall apply:*

(A) The Secretary of Commerce shall issue an order referred to in subsection (a) not later than 21 days after the date of the enactment of this Act. Such order shall cover a period beginning 120 days after the issuance of such an order, or January 1, 1991, whichever is earlier, and shall extend to December 31, 1991. Such order shall prohibit the export of 75 percent of the annual sales volume in such State of unprocessed timber from public lands.

State of WA log exports

(B) For the period beginning on January 1, 1992, and ending on December 31, 1993, the Secretary of Commerce shall, after notice and an opportunity for a hearing, issue an order referred to in subsection (a) not later than September 30, 1991. Such order shall prohibit the export of at least 75 percent of such State's annual sales volume for this 2-year period.

(C) For the period beginning on January 1, 1994, and ending on December 31, 1995, the Secretary of Commerce shall, after notice and an opportunity for a hearing, issue an order referred to in subsection (a) not later than September 30, 1993. Such order shall prohibit the export of at least 75 percent of such State's annual sales volume for this 2-year period.

(D) For all periods on or after January 1, 1996, the Secretary of Commerce shall issue an order referred to in subsection (a) not later than September 30, 1995. Such order shall prohibit the export of the lesser of 400,000,000 board feet or the total annual sales volume.

(3) REPORT TO CONGRESS.—*Not later than June 1, 1995, the Secretary of Commerce, in conjunction with the Secretaries of Agriculture and Interior, shall issue a report to the Congress on the effects of the reallocation, as a result of the enactment of this title, of public lands timber resources to the domestic timber processing sector, the ability of the domestic timber processing sector to meet domestic demand for forest products, the volume of transshipment of timber originating from public lands across State borders, the effectiveness of rules issued and administered by States pursuant to this title, and trends in growth and productivity in the domestic timber processing sector.*

(c) BASIS FOR INCREASE IN VOLUME PROHIBITED FROM EXPORT.—*The Secretary of Commerce may increase the amount of unprocessed timber to be prohibited from export above the minimum amount specified in subsection (b)(2) (B) and (C), based on a determination that the purposes of this title have not been adequately met and that such an increase would further the purposes of this title. In making this determination, the Secretary shall consider—*

~~(1) actions or decisions taken, for the purpose of~~ conserving or protecting exhaustible natural resources in the United States, which have affected the use or availability of forest products;

(2) whether the volume of timber from public lands that is under contract has increased or decreased by an amount greater than 20 percent within the previous 12 months; and

(3) the probable effects of unprocessed timber exports on the ~~ability of timber mills to acquire unprocessed timber.~~

(c) ~~(d)~~ ADMINISTRATIVE PROVISIONS.—

(1) DELAY OF SECRETARY'S ORDER.—~~In the event that any~~ order of the Secretary of Commerce under subsection (a) or its implementation is delayed for any reason, the prohibitions on exports under subsection (b) to which such order would apply shall apply in the absence of such order.

(2) ADMINISTRATION BY STATES.—Each State shall determine the species, grade, and geographic origin of unprocessed timber to be prohibited from export under subsection (b) and shall administer such prohibitions consistent with the intent of this title and ensure that the species, grades, and geographic origin of unprocessed timber prohibited from export is representative of the species, grades, and geographic origin of timber comprising such State's total timber sales program. The State is authorized to cooperate with Federal and State agencies with apropriate jurisdiction to further the intent of this title.

(3) STATE REGULATIONS.—(A) Except for States with annual sales of 400,000,000 board feet or less upon the date of the enactment of this Act, the Governor of each State to which this title applies, or such other State official as the Governor may designate, shall, within 120 days after the date of the enactment of this Act, issue regulations to carry out the purposes of this section, the promulgation of which shall be consistent with section 553 of title 5, United States Code. Such regulations in each State shall remain in effect until such time as the legislature of that State enacts such requirements as it deems appropriate to carry out this section. Before issuing such regulations, the Governor shall enter into formal consultation, concerning such regulations, with appropriate State officials and with a State Board of Natural Resources where such a board exists. When formulating regulations under this paragraph, the Governor shall take into account the intent of this title to effect a net increase in domestic processing of timber harvested from public lands consistent with all orders issued by the Secretary of Commerce under subsection (a).

State WA
indirect
substitution

(B) The Governor of each State with annual sales of 400,000,000 board feet or less upon the date of the enactment of this Act, or such other State official as the Governor may designate, shall, within 120 days after the date of enactment of this Act, issue regulations to carry out the purposes of this section. Until such regulations are issued in a State, the prohibitions contained in subsections (a) and (b) of section 490 shall apply to unprocessed timber originating from public lands in that State to the same extent as such prohibitions apply to unprocessed timber originating from Federal lands, ~~except that the provisions of subsection (c) of such section shall not apply.~~

(1) ~~(4)~~ *PRIOR CONTRACTS.—Nothing in this section shall apply to any contract for the purchase of unprocessed timber from public lands entered into before the effective date of a Secretary's order issued under subsection (a).*

(2) ~~(5)~~ *WESTERN RED CEDAR.—Nothing in this section shall be construed to supersede the provisions of section 7(i) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)).*

remember

(e) PRESIDENTIAL AUTHORITY.—The President is authorized, after suitable notice and a public comment period of not less than 120 days, to suspend the provisions of this section if a panel of experts has reported to the Contracting Parties to the General Agreement on Tariffs and Trade, or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that the provisions of this section are in violation of, or inconsistent with, United States obligations under that trade agreement.

(f) REMOVAL OR MODIFICATIONS OF STATE RESTRICTIONS.—Based upon a determination that it is in the national economic interest, the President may remove or modify any prohibition on exports from public lands in a State if that State petitions the President to remove or modify such prohibition.

(g) EFFECT OF PRIOR FEDERAL LAW.—No provision of Federal law which imposes requirements with respect to the generation of revenue from State timberlands and was enacted before the enactment of this Act shall be construed to invalidate, supersede, or otherwise affect any action of a State or political subdivision of a State pursuant to this title.

Surplus species

(h) SURPLUS TIMBER.—~~The prohibitions on exports contained in orders of~~ the Secretary of Commerce issued under subsection (a) shall not apply to specific quantities of grades and species of unprocessed timber originating from public lands which the Secretary concerned determines by rule to be surplus to the needs of timber manufacturing facilities in the United States. Any such determination may, by rule, be withdrawn by the Secretary concerned if the Secretary determines that the affected timber is no longer surplus to the needs of timber manufacturing facilities in the United States.

(i) SUSPENSION OF PROHIBITIONS.—Notwithstanding any other provision of this section, beginning on January 1, 1998, and annually thereafter, if the President finds, upon review of the purposes and implementation of this title, that the prohibitions on exports required by subsection (a) no longer promote the purposes of this title, then the President may suspend such prohibitions, except that such suspension shall not take effect until 90 days after the President notifies the Congress of such finding.

(j) EXISTING AUTHORITY NOT AFFECTED.—Nothing in this title shall be construed to limit the authority of the President or the United States Trade Representative to take action authorized by law to respond appropriately to any measures taken by a foreign government in connection with this title.

SEC. 492. MONITORING AND ENFORCEMENT.

(a) MONITORING AND REPORTS.—In accordance with regulations issued under this section—

(1) each person who acquires, either directly or indirectly, unprocessed timber originating from Federal lands west of the

100th meridian in the contiguous 48 States shall report the receipt and disposition of such timber to the Secretary concerned, in such form as such Secretary may by rule prescribe; except that nothing in this paragraph shall be construed to hold any person responsible for the reporting of the disposition of any such timber held by subsequent persons; and

(2) each person who transfers to another person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall, before completing such transfer—

(A) provide to such other person a written notice, in such form as the Secretary concerned may prescribe, which shall identify the Federal origin of such timber;

(B) receive from such other person a written acknowledgment of such notice and a written agreement that such other person will comply with the requirements of this title, in such form as the Secretary concerned may prescribe; and

(C) provide to the Secretary concerned copies of all notices, acknowledgments, and agreements referred to in subparagraphs (A) and (B).

~~*(b) REPORT TO CONGRESS.—Using the information gathered under subsection (a), the Secretaries of Agriculture and Interior shall, not later than June 1, 1995, submit to the Congress a report on the disposition of unprocessed timber harvested from Federal lands west of the 100th meridian in the contiguous 48 States, and recommendations concerning the practice of indirect substitution of such timber for exported timber harvested from private lands. Specifically, such report shall—*~~

~~*(1) analyze the effects of indirect substitution on market efficiency;*~~

~~*(2) analyze the effects of indirect substitution on domestic log supply;*~~

~~*(3) offer any recommendations that the Secretaries consider necessary for specific statutory or regulatory changes regarding indirect substitution;*~~

~~*(4) provide summaries of the data collected;*~~

~~*(5) analyze the effects of the provisions of section 490(b)(2)(C); and*~~

~~*(6) provide such other information as the Secretaries consider appropriate.*~~

(b) ~~*(c)*~~ *CIVIL PENALTIES FOR VIOLATION.—*

(1) EXPORTS.—If the Secretary concerned finds, on the record and after an opportunity for a hearing, that a person, with willful disregard for the prohibition contained in this title against exporting Federal timber, exported or caused to be exported unprocessed timber originating from Federal lands in violation of this title, such Secretary may assess against such person a civil penalty of not more than $500,000 of each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(2) OTHER VIOLATIONS.—If the Secretary concerned finds, on the record and after an opportunity for a hearing, that a person has violated any provision of this title or any regulation issued under this title relating to lands which they administer (not-

withstanding that such violation may not have caused the export of unprocessed Federal timber in violation of this title), such Secretary may—

(A) assess against such person a civil penalty of not more than $75,000 for each violation if the Secretary determines that the person committed such violation in disregard of such provision or regulation;

(B) assess against such person a civil penalty of not more than $50,000 for each violation if the Secretary determines that the person should have known that the action constituted a violation; or

(C) assess against such person a civil penalty of not more than $500,000 if the Secretary determines that the person committed such violation willfully.

(3) PENALTIES NOT EXCLUSIVE; JUDICIAL REVIEW.—A penalty assessed under this subsection shall not be exclusive of any other penalty provided by law and shall be subject to review in an appropriate United States district court.

(d) ADMINISTRATIVE REMEDIES.—

(1) DEBARMENT.—The head of the appropriate Federal department or agency under this title may debar any person who violates this title, or any regulation or contract issued under this title, from entering into any contract for the purchase of unprocessed timber from Federal lands for a period of not more than 5 years. Such person shall also be precluded from taking delivery of Federal timber purchased by another party for the period of debarment.

(2) CANCELLATION OF CONTRACTS.—The head of the appropriate Federal department or agency under this title may cancel any contract entered into with a person found to have violated this title or regulations issued under this title.

(e) EXCEPTION.—Subsections (c) and (d) do not apply to violations of section 498.

SEC. 493. DEFINITIONS.

For purposes of this title:

(1) The term "acquire" means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction, and the term "acquisition" means the act of acquiring.

(2) The term "Federal lands" means lands that are owned by the United States, but does not include any lands the title to which is—

(A) held in trust by the United States for the benefit of any Indian tribe or individual,

(B) held by any Indian Tribe or individual subject to a restriction by the United States against alienation, or

(C) held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(3) The term "person" means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, or parent company, and business affiliates where 1 affiliate controls or has the power to control the

other or when both are controlled directly or indirectly by a third person.

(4) The term "private lands" means lands held or owned by a person. Such term does not include Federal lands or public lands, or any lands the title to which is—

(A) held in trust by the United States for the benefit of any Indian tribe or individual,

(B) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(C) held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(5) The term "public lands" means lands west of the 100th meridian in the contiguous 48 States, that are held or owned by a State or political subdivision thereof, or any other public agency. Such term does not include any lands the title to which is:

(A) held by the United States;

(B) held in trust by the United States for the benefit of any Indian tribe or individual,

(C) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(D) held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(6) The term "Secretary concerned" means—

(A) the Secretary of Agriculture, with respect to Federal lands administered by that Secretary; and

(B) the Secretary of the Interior with respect to Federal lands administered by that Secretary;

(7)(A) The term "unprocessed timber" means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use.

(B) The term "unprocessed timber" does not include timber processed into any one of the following:

(i) Lumber or construction timbers, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture.

(ii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, meeting current American Lumber Standards Grade or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches in thickness.

(iii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in clause (ii) and are sawn on 4 sides, with wane less than ¼ of any face, not exceeding 8¾ inches in thickness.

(Change if want to eliminate Tongass Cants)

(iv) Chips, pulp, or pulp products.

(v) Veneer or plywood.

(vi) Poles, posts, or piling cut or treated with preservatives for use as such.

5111.90.40, 5111.90.50, 5112.11.10, 5112.20.10, 5112.20.20, 5112.30.10, 5112.30.20, 5112.90.40, 5112.90.50, and 5803.90.11 (relating to certain woven fabrics and gauze) of such Schedule (as added by section 472).

(2) Any staged rate reduction proclaimed by the President before October 1, 1990, that—

(A) would take effect on or after October 1, 1990; and

(B) would, but for any amendment made by section 472 (relating to certain woven fabrics) or 475 (relating to chipper knife steel), apply to a special rate of duty set forth in any subheading of the Harmonized Tariff Schedule of the United States that is listed in Column A;

applies to the corresponding special rate of duty set forth in the subheading of such Schedule that is listed in column B opposite such column A subheading:

Column A	Column B
5111.11.10	5111.11.30
5111.11.60	5111.11.70
5111.90.60	5111.90.70
5112.11.00	5112.11.20
5112.20.00	5112.20.30
5112.30.00	5112.30.30
5803.90.10	5803.90.12
7226.91.10	7226.91.15
7226.91.30	7336.92.25

(3) The amendments made by section 472 shall not affect any staged reductions of a rate of duty set forth in subheadings 5112.19.10, 5112.19.60, 5112.90.30, 5112.90.60 of the Harmonized Tariff Schedule of the United States that were proclaimed by the President before October 1, 1990, and are scheduled to take effect on or after October 1, 1990.

(4)(A) Any staged reductions of a special rate of duty set forth in subheading 6810.19.10 of the Harmonized Tariff Schedule of the United States that were proclaimed by the President before October 1, 1990, and are scheduled to take effect on or after October 1, 1990, shall apply to the corresponding special rate of duty in subheading 6810.19.14.

(B) Any staged reductions of a special rate of duty set forth in subheading 3926.90.90 of the Harmonized Tariff Schedule of the United States that were proclaimed by the President before October 1, 1990, and are scheduled to take effect on or after October 1, 1990, shall apply to the corresponding special rate of duty in subheading 6810.19.12.

(5) Any staged reductions of a special rate of duty set forth in subheading 9022.29.40 of the Harmonized Tariff Schedule of the United States that was proclaimed by the President before October 1, 1990, and are scheduled to take effect on or after October 1, 1990, also apply to the corresponding special rate of duty set forth in subheading 9022.90.70.

TITLE IV—EXPORTS OF UNPROCESSED TIMBER

SEC. 487. SHORT TITLE.

This title may be cited as the "Forest Resources Conservation and Shortage Relief Act of 1990".