

Testimony of
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Before the United States Senate
Committee on Indian Affairs
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S. 4370, “Tribal Forest Protection Act Amendments Act of 2024”

Chairman Schatz, Vice Chairman Murkowski, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the views of the U.S. Department of Agriculture (USDA).

Federally recognized Indian Tribes are sovereign nations with long-standing government-to-government relationships with the Federal Government. We acknowledge that many of the Federal lands and waters managed by the USDA and the Department of the Interior are the traditional territories of American Indians and Alaska Natives. These lands are home to sacred sites and burial sites, wildlife, and other sources of indigenous foods and medicines. Many of these lands are in areas where Tribes have reserved rights to hunt, fish, gather, and practice their traditional ceremonies pursuant to statutes and ratified treaties and agreements with the Federal Government.

Forest Service policy honors the Federal trust relationship with Tribes, promotes protection of these ancestral lands and waters, and enhances co-stewardship opportunities with Tribes based on a suite of treaties, Federal laws and regulations, court decisions, executive orders and memorandums, interagency agreements, and agency-specific direction. These include but are not limited to the Tribal Forest Protection Act, Good Neighbor Authority, Stewardship Contracting Authority, Wyden Amendment, Service First, Executive Order 14096 on Revitalizing Our Nation’s Commitment to Environmental Justice for All, and the Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships.

The Forest Service’s recent expansion of work is consistent with our general trust responsibility and honors Tribal sovereignty. It has taken many forms:

- Tribal co-stewardship agreements developed in response to Joint Secretarial Order 3403 promote an approach to managing national forests and grasslands that seeks to protect the treaty, religious, subsistence and cultural interests of federally recognized Indian Tribes. In Fiscal Year (FY) 2023, the Forest Service and Tribes executed more than 120 agreements, representing a total investment of approximately \$68 million, more than triple the \$19.8 million invested in FY 2022. These agreements implement vegetation management projects to protect Tribal land and communities and reduce hazardous fuels in critical and cultural landscapes while strengthening our government-to-

government relationships with Tribal nations.

- The 2018 Farm Bill also expanded the Good Neighbor Authority (GNA) to Tribes. GNA allows the Forest Service to enter into cooperative agreements and contracts with Indian Tribes, States, and counties to perform forest, rangeland, and watershed restoration services on the National Forest System. Since FY 2018, Tribes have entered 30 GNA agreements, totaling \$7.3 million, to accomplish a variety of restoration work, including addressing wildfires, pest control, climate change vulnerability assessments, and cultural resource protection.
- In FY 2021, the Infrastructure Investment and Jobs Act (IIJA) made additional funds available for Indian Tribes and states to implement forest management and wildfire mitigation projects on Federal lands pursuant to the GNA or the Tribal Forest Protection Act (TFPA). The IIJA provided the Forest Service with \$5.5 billion to reduce wildfire risk and create healthy and resilient ecosystems across Tribal, Federal, State, and private lands. This included the first-ever Tribal program appropriations for the Forest Service, increased eligibility for Tribes, and opportunity for priority allocations for Tribes.

Several statutes and implementing regulations authorize the Forest Service to enter into agreements and contracts with and/or provide grants to Indian Tribes to protect Tribal land, communities, and resources. The Tribal Forest Protection Act of 2004 (TFPA) provides authority for the Forest Service to enter into agreements or contracts to carry out projects on the National Forest System that protect bordering or adjacent Indian forest land and rangeland from threats such as fire, insects, and disease while being informed by Tribal knowledge. Tribes may submit requests to the Secretary of Agriculture to enter into agreements or contracts. The 2018 Farm Bill provided additional opportunity, with a new Tribal forestry self-determination demonstration authority, for increased Tribal participation in the co-stewardship of the National Forest System.

TFPA has been a key authority available to the Forest Service to collaborate with Tribes to protect Tribal forest lands, rangelands, and communities from threats that originate from the National Forest System and to restore National Forest System lands that encompass treaty rights, traditional use, and other areas of Tribal significance. Notwithstanding the import of the TFPA in bringing Indigenous Knowledge and Tribal voices to Federal management of the National Forest System, some have observed that there are aspects of the authority that limit its application.

Some have argued that TFPA's structure has limited the program's utilization and ability to meet Congress' intent of protecting and restoring Tribal lands. S. 4370, the *Tribal Forest Protection Act Amendments Act of 2024*, would amend existing law to:

1. **Expand the definition of "Indian forest land or rangeland" to include lands held by Alaska Native Corporations.** Under the Alaska Native Claims Settlement Act (ANCSA), Congress did not place Native land in Alaska into trust or restricted status. Instead, land was conveyed to Alaska Native Corporations (ANCs) to manage for their shareholders. TFPA's current definition of "Indian forest land and rangeland" prevents nearly 44 million acres of ANCSA

land and resources from being protected from threats from Federal lands under the jurisdiction of the Forest Service and Bureau of Land Management. In addition, the TFPA requires that the land be “under the jurisdiction” of a Tribe, which further prevents ANSCA lands from qualifying.

There are four ANCs that hold lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that border or are adjacent to the Chugach and Tongass National Forests and/or may be proximate to potential threats from those National Forests. Expansion of TFPA to those lands under ANC oversight would create opportunity for Sealaska and Chugach Alaska Corporations, and potentially Ahtna, Inc. and Cook Inlet Region, Inc. The Forest Service does not have a presence outside of southeast Alaska.

2. **Strike the requirement that Indian lands “border on or be adjacent to Forest Service or Bureau of Land Management lands.”** The bill instead requires the Forest Service or Bureau of Land Management land to have a special geographic, historical, or cultural significance to an Indian Tribe. Tribes have sacred sites, cultural landscapes, and other resources on federal lands that they want to protect or restore, but the lands on which those resources exist are not always bordering on or adjacent to Indian lands.

Some have observed that a limitation of TFPA is the requirement that the Indian forest land or rangeland border or be adjacent to lands in the National Forest System. This reduces participation for Tribes without an existing, or no, land base that meets these criteria.

The TFPA currently includes the following Tribally-related factors in evaluating the proposal of the Indian Tribe:

- the status of the Indian Tribe as an Indian Tribe;
- the trust status of the Indian forest land or rangeland of the Indian Tribe;
- the cultural, traditional, and historical affiliation of the Indian Tribe with the land subject to the proposal;
- the treaty rights or other reserved rights of the Indian Tribe relating to the land subject to the proposal;
- the Indigenous Knowledge and skills of members of the Indian Tribe;
- the features of the landscape subject to the proposal, including watersheds and vegetation types;
- the working relationships between the Indian Tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and the access by members of the Indian tribe to the land subject to the proposal.

Amending the bordering or adjacency criteria to include Indian forest land or rangeland and Tribal communities that are reasonably proximate to a threat from the National Forest System may be a more effective framework to expand eligibility and to implement, as it can include factors such as the type and extent of the risk to Tribal lands, resources, and communities. For example, wildland fire travels over many acres; disease can flow downstream over many miles; insects can pervade over great distances. Therefore, the

scope of reasonable proximity to the threat will expand the range of eligible Indian forest land or rangelands so that more Tribes will be able to submit TFPA proposals for work on National Forest System land.

Amending the bordering or adjacency requirement to instead allow for proximity, amending the definition of Indian forest land and rangeland to include ANCSA lands, and clarifying when Tribes must exercise jurisdiction over the lands, may achieve the desired goals of establishing Tribal relationships to the landscapes of interest and allow ANCs to participate. If the Committee would like to discuss additional/different criteria to establish “special geographic, historical, and cultural relationships” or other approaches to define the Tribal relationship to the lands within the National Forest System, the Forest Service would welcome that conversation.

3. **Expand program eligibility to allow for work on Indian forest land or rangelands.**

The current program only applies to work conducted on Federal lands under the jurisdiction of the Forest Service or Bureau of Land Management. The TFPA came into being after the fire season of 2003 when 18 reservations were affected by wildfire from federal lands. To help reduce the threat of future tragedies, the Tribal Forest Protection Act of 2004 established a process to allow Tribes to perform hazardous fuels reduction operations and other forest health projects on U.S. Forest Service and Bureau of Land Management lands bordering or adjacent to their own.

The Bureau of Indian Affairs has authority and responsibilities as trustee to manage Tribal forest lands pursuant to the National Indian Forest Resources Management Act (25 U.S.C. Chapter 33). Given this, the Forest Service would like to work with the Committee to discuss the legal and administrative impacts of changing the scope of the TFPA, including how such changes may benefit by clarifying the role for each of the Bureau of Indian Affairs, Forest Service, and Bureau of Land Management as agencies with the different missions, obligations, and equities regarding work on the same Tribal landscapes.

4. **Add/update reporting on the program.**

Although the TFPA is a process authority and not a program, the Forest Service takes no issue with instituting a reporting regime to monitor and assess the performance outcomes of work performed under the TFPA.

5. **Add a five-year authorization of appropriations of \$15 million per year.**

The Forest Service received its first-ever TFPA appropriations in the Infrastructure Investment and Jobs Act, of up to \$8 million per year for TFPA (Division J) and \$32 million per year (40804(b)(2)) for both States and Tribes to implement TFPA and Good Neighbor Authority. In FY 2024, more than \$185 million was requested by Forest Service field units to execute these authorities with Tribes on the National Forest System.