



Forestry¹

INTRODUCTION

The farm bill's Forestry Title governs the U.S. Forest Service (USFS) and the lands under its purview.² Though forest management is also overseen by other agencies, such as the Bureau of Land Management under the Department of the Interior, USFS manages 154 national forests and 20 grasslands, making up a National Forest System (NFS) covering 193 million acres of land.³ Responsible management of those lands is key to protecting wildlife habitat, maintaining sequestered carbon, preventing wildfires, and ensuring sustainable use of natural resources.

I. HISTORY

Though the USFS has existed under the USDA umbrella since its founding in 1876 (it was then known as the Office of Special Agent for Forest Research),⁴ its inclusion in the farm bill is relatively new.⁵ The 1990 Farm Bill was the first to include a Forestry Title; however, the 1996 Farm Bill dropped the title and most of the programs within it.⁶ In 2002, the Forestry Title returned to the farm bill, though disputes between the House and Senate over forest-related issues meant that few provisions were included.⁷ In 2008, the Forestry Title set national priorities for forest management and established programs for conservation and emergency reforestation.⁸ It also banned the importation of illegally felled timber.⁹

In 2014, the Forestry Title sought to improve integrated management of forests, primarily to reduce fire risk, with several major programs. Good Neighbor Authority allowed the expansion of state forestry management programs onto USFS and Bureau of Land Management (BLM) lands.¹⁰ The law also created a process for designating insect- and disease-ridden forests as priority areas for restoration projects, with input from states, and created a streamlined process for attaining National Environmental Protection Act (NEPA) approval for such projects.¹¹ Stewardship Contracting was also permanently reauthorized to allow USFS and BLM to enter into public-private agreements to raise external funding and promote collaborative stakeholder engagement in forestry projects.¹²

¹ The following people contributed to this report: Chris Mawhorter (Harvard Law School Food Law and Policy Clinic), Devin Kesner (University of Washington School of Law), and Alexandra Smith (Summer Intern, Harvard Law School Food Law and Policy Clinic).

² KATIE HOOVER, CONG. RSCH. SERV., R43431, FORESTRY PROVISIONS IN THE 2014 FARM BILL (P.L. 113-79) 2 (2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43431.pdf>; see also *Managing the Land*, U.S. FOREST SERV., <https://www.fs.fed.us/managing-land> (last visited Oct. 3, 2017).

³ *About the Agency*, U.S. FOREST SERV., <https://www.fs.fed.us/about-agency> (last visited Oct. 3, 2017).

⁴ *The U.S. Forest Service – An Overview 2*, U.S. FOREST SERV., https://www.fs.fed.us/documents/USFS_An_Overview_0106MJS.pdf (last visited Oct. 3, 2017).

⁵ HOOVER, FORESTRY PROVISIONS IN THE 2014 FARM BILL, *supra* note 2, at 8.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 9.

¹⁰ *Id.* at 4, 12; Agricultural Act of 2014, P.L. 113-79 § 8206, 128 Stat. 921.

¹¹ KATIE HOOVER, CONG. RESEARCH SERV., R45696, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS 8–10 (2019), <https://crsreports.congress.gov/product/pdf/R/R45696>; Agricultural Act of 2014, § 8204, 128 Stat. 915.

¹² HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 28; Agricultural Act of 2014, § 8205, 128 Stat. 918.



II. THE 2018 FARM BILL

The 2018 Farm Bill built upon the 2014 Bill's efforts, streamlining decision-making and expanding authorities within select programs. It also created several new programs and authorities. Several important forestry measures were also enacted in the 2018 omnibus spending bill, detailed below.

A. *Programs for Cross-jurisdictional Forest Management*

Managing forests across boundaries and at landscape scale to reduce wildfire risk is a top priority for USFS and BLM. The 2014 Farm Bill permanently authorized and extended Good Neighbor Authority (GNA) to allow collaboration on such projects with state foresters across all USFS and BLM lands in order to address the concern that “[t]reating certain [forest areas at high risk of fire] while leaving adjacent areas untreated may undermine the effectiveness of overall efforts.”¹³ Qualifying projects included hazardous fuel reduction, insect outbreak control, and improving drainage to prevent sediment erosion into watersheds.¹⁴ The program did not extend to U.S. Fish and Wildlife Service (FWS) land and did not apply to other governmental entities such as counties or tribes.¹⁵ It was also restricted from certain areas and mandated to comply with relevant environmental regulations.¹⁶ The 2018 farm bill continued to address cross-boundary and landscape-scale forest management issues, with several more modest provisions.

i. *Landscape Scale Restoration and Cross-boundary Hazardous Fuels Reduction*

The 2018 Forestry Title codifies a new Landscape Scale Restoration (LSR) program and upped funding authorization to \$20 million annually through 2023, from the \$14 million annually for a predecessor program between 2014–2018.¹⁷ Administered as a competitive grant program, it requires a 50% cost-share match, submission by state forest agencies, inclusion of private and state forest land, and accessibility for wood-processing infrastructure. Projects must also be informed by the best available science.¹⁸

The program was seen as a hollow win for the Forests in the Farm Bill Coalition, an advocacy group that includes state foresters and private landowner.¹⁹ The Coalition had sought to codify a more robust program, based on the Empowering State Forestry Act of 2018 (S. 962/H.R. 4976) that would explicitly tie LSR

¹³ HOOVER, FORESTRY PROVISIONS IN THE 2014 FARM BILL, *supra* note 2, at 4, 12; U.S. GOV'T ACCOUNTABILITY OFF., GAO-09-277, FEDERAL LAND MANAGEMENT: ADDITIONAL DOCUMENTATION OF AGENCY EXPERIENCES WITH GOOD NEIGHBOR AUTHORITY COULD ENHANCE ITS FUTURE USE 1 (2009), <http://www.gao.gov/products/GAO-09-277>.

¹⁴ GAO-09-277, *supra* note 13.

¹⁵ U.S. FOREST SERV., GOOD NEIGHBOR AGREEMENT QUESTIONS AND COMMENTS 6 (2015), <http://www.fs.fed.us/farmbill/documents/gna/GNA-FAQs20151214.pdf>.

¹⁶ HOOVER, FORESTRY PROVISIONS IN THE 2014 FARM BILL, *supra* note 2, at 9, 12; U.S. DEP'T OF AGRIC., U.S. FOREST SERV., *supra* note 15, at 1.

¹⁷ Agriculture Improvement Act of 2018, P.L. 115-334, § 8102, 132 Stat. 4837; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 47; *Family Forest Owners Benefit from the Farm Bill*, AM. FOREST FOUND., <https://www.forestfoundation.org/forests-in-the-farm-bill> (last visited Dec. 24, 2020).

¹⁸ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 47.

¹⁹ *Family Forest Owners*, AM. FOREST FOUND., *supra* note 17.



funding to state-based forest action plans.²⁰ The 2018 farm bill reauthorized funding at current levels to fund routine updates to forest action plans.²¹

In addition, the 2018 Farm Bill increased annual spending limits to assist cross-boundary hazardous fuels reduction projects up to \$20 million,²² while reducing annual caps on federal hazardous fuels work by \$100 million to \$660 million for the years 2019 to 2023.²³

ii. Tribal Forestry

As the result of the advocacy of the Native Farm Bill Coalition (NFBC), detailed in the Key Issues Section below, the 2018 Farm Bill extends Good Neighbor Authority to Indian Tribes and to county governments.²⁴ It also allows more flexibility for use of funds attained through GNA for further GNA projects.²⁵ This increases the prospect of the use of GNA authority for cross-boundary hazardous fuels reduction and forest restoration work.²⁶

Even more significant for Tribes, though, is the authorization of the Secretaries of Agriculture or Interior “to enter into self-determination contracts, on a demonstration basis, with federally recognized tribes to perform administrative, management, and other functions of the Tribal Forest Protection Act (TFPA),” based on the Indian Self-Determination and Education Assistance Act (ISDEAA).²⁷ ISDEAA self-determination contracts are also known as ‘638’ projects because of the record number of the ISDEAA – P.L. 93-638 and include similar arrangements for other Indian-specific programs, such as Indian Health Service hospitals.

This development, which was included in the recommendations submitted by the NFBC, is crucial because TFPA is the only implementation authority for such cross-boundary management contracts “based on federal trust responsibilities and government-to-government relationships.”²⁸ This sovereignty-based feature of TFPA has made it a priority for both Native advocates like the Intertribal Timber Council and the Forest Service, and ensures further confidence in these contracts among all parties.²⁹ However TFPA has lacked implementation, as detailed in the Key Issues section on Tribal Advocacy in the 2018 Farm Bill, below. The provisions in the 2018 Farm Bill represent a step towards more fully realizing TFPA’s potential.

B. NEPA Categorical Exclusions

The 2014 Farm Bill created procedures to designate treatment areas to address the increasingly intolerable risk of wildfires posed by insect infestation and disease in forests, and the rapidly proliferating costs

²⁰ *NASF Weighs in on 2018 Forestry Title, Expresses Disappointment in LSR Language*, NAT’L ASSOC. OF STATE FORESTERS (Dec. 11, 2018), <https://www.stateforesters.org/newsroom/nasf-weighs-in-on-2018-forestry-title-expresses-disappointment-in-lsr-language/>; AM. FOREST FOUND., COSPONSOR THE EMPOWERING STATE FORESTRY ACT (2018), https://www.forestfoundation.org/stuff/contentmgr/files/1/34f99455da3a3c294777424eb511d178/miscdocs/policy_aff_issuefactsheetlandscape_scale_2018final.pdf

²¹ Agriculture Improvement Act of 2018, § 8101, 132 Stat. 4837.

²² Agriculture Improvement Act of 2018, § 8401, 132 Stat. 4840

²³ Agriculture Improvement Act of 2018, § 8402, 132 Stat. 4841; NAT’L ASSOC. OF STATE FORESTERS, *supra* note 20.

²⁴ Agriculture Improvement Act of 2018, § 8624, 132 Stat. 4857.

²⁵ *Id.*; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 27.

²⁶ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 27.

²⁷ Agriculture Improvement Act of 2018, § 8703, 132 Stat. 4877; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 37.

²⁸ INTERTRIBAL TIMBER COUNCIL & U.S. FOREST SERV., THE TRIBAL FOREST PROTECTION ACT WORKSHOPS 2014-2018 2-3 (2018), https://www.itcnet.org/issues_projects/issues_2/TFPA/TFPAreports.html.

²⁹ *Id.*



associated with suppressing such fires.³⁰ The procedures allowed USFS to designate 74.5 million acres of National Forest System lands, with input from states, as landscape-scale insect and disease (I&D) treatment areas.³¹ As of March 2019, 206 such projects had been proposed, most under a categorical exclusion (CE) to the National Environmental Policy Act (NEPA) commonly known as the Farm Bill CE. The Farm Bill CE allows a streamlined NEPA process for I&D designations under 3,000 acres, while still requiring compliance with laws such as the Endangered Species Act, Clean Air Act, and Clean Water Act, a collaborative and transparent process, and geographical limitations.³²

The 2018 Farm Bill reauthorized the I&D designation procedures through FY2023 and adds hazardous fuel reduction as a priority project category, effectively allowing hazardous fuels reduction projects to use the 2014 Farm Bill NEPA CE.³³ The Bill also directed USFS and BLM to develop a new CE for projects specifically aimed at improving habitat for greater sage grouse and/or mule deer.³⁴ The law aims to promote projects to restore sagebrush steppe ecosystem, according to the guidelines laid out by a USGS report on sage grouse habitat and a report from the Western Association of Fish and Wildlife Agencies (WAFWA) on mule deer habitat.³⁵

The sagebrush steppe ecosystem covers a broad swath of the Western U.S. and is regarded as under threat from wildfire,³⁶ invasive plants, and human encroachment, including infrastructure development and fossil fuel exploitation.³⁷ Both greater sage grouse and mule deer are understood as ecologically important species in the sagebrush steppe ecosystem, yet are recently in decline. The sage grouse narrowly avoiding being listed as an endangered species because of concerted effort from the U.S. Fish and Wildlife Service, USFS, and BLM in 2015 to implement protections.³⁸ The species also have economic and social significance, especially the mule deer, a prized hunting trophy.³⁹

For the USFS, such projects must be within I&D designated areas, but within BLM lands must simply comply with integrated rangeland fire management strategy established in 2015 under former Secretary of

³⁰ See U.S. FOREST SERV., FARM BILL INSECT AND DISEASE DESIGNATIONS: KEY MESSAGES 4 (2014), <http://forestpolicy.com/wp-content/uploads/2014/05/Insect-and-Disease-Communications-and-Rollout-Package-FINAL.docx>.

³¹ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 8.

³² HOOVER, FORESTRY PROVISIONS IN THE 2014 FARM BILL, *supra* note 2, at 4; see also U.S. FOREST SERV., FARM BILL INSECT AND DISEASE DESIGNATIONS: KEY MESSAGES, *supra* note 30, at 6; see also HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 8–10.

³³ Agriculture Improvement Act of 2018, § 8407, 132 Stat. 4845; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 10.

³⁴ Agriculture Improvement Act of 2018, § 8611, 132 Stat. 4847; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 12.

³⁵ See U.S. GEOLOGICAL SERV., RESTORATION HANDBOOK FOR SAGEBRUSH STEPPE ECOSYSTEMS WITH EMPHASIS ON GREATER SAGE-GROUSE HABITAT (2015), <https://pubs.usgs.gov/circ/1416/cir1416.pdf>; *Mule Deer Working Group Habitat Guidelines*, W. ASS'N OF FISH & WILDLIFE AGENCIES, <https://wafwa.org/publications/mdwg-habitat-guidelines/>.

³⁶ U.S. DEP'T OF INTERIOR, RANGELAND FIRE TASK FORCE, AN INTEGRATED RANGELAND FIRE MANAGEMENT STRATEGY 1 (2015) https://www.forestsandrangelands.gov/documents/rangeland/IntegratedRangelandFireManagementStrategy_FinalReportMay2015.pdf.

³⁷ W. ASS'N OF FISH & WILDLIFE AGENCIES, HABITAT GUIDELINES FOR MULE DEER: INTERMOUNTAIN WEST ECOREGION 2–6 (2020), <https://wafwa.org/wpdm-package/habitat-guidelines-for-mule-deer-intermountain-west-ecoregion/>; DAVID A. PYKE ET AL., U.S. DEP'T OF THE INTERIOR, RESTORATION HANDBOOK FOR SAGEBRUSH STEPPE ECOSYSTEMS WITH EMPHASIS ON SAGE-GROUSE HABITAT 2 (2015), <https://pubs.usgs.gov/circ/1416/cir1416.pdf>.

³⁸ W. ASS'N OF FISH & WILDLIFE AGENCIES, *supra* note 37, at 2; PYKE ET AL., *supra* note 37, at 2; *Protecting the Nest: Court Upholds Protections for Sage Grouse*, NAT'L AGRIC. LAW CTR. (Oct. 24, 2019), <https://nationalaglawcenter.org/protecting-the-nest-court-upholds-protections-for-sage-grouse/>.

³⁹ W. ASS'N OF FISH & WILDLIFE AGENCIES, *supra* note 37, at 2.



the Interior Sally Jewel.⁴⁰ Projects are limited to 4,500 acres and are restricted from taking place on areas banned in other CEs, such as wilderness and wilderness study areas, roadless areas, or areas where vegetation removal is restricted. In addition to conditioning the CE on the USGS and WAFWA reports, the law describes specific activities that may be used for these projects.⁴¹ The law also requires developing long-term monitoring plans.⁴²

Projects for sagebrush-steppe conservation are not without controversy. Various Trump Administration plans for sagebrush-steppe ecosystems are the subject of a great deal of contention and litigation, including allegations by environmental advocates that plans to increase private grazing and energy exploration are undermining conservation efforts.⁴³ Research supports landscape-scale, habitat-focused conservation efforts as ecologically preferable to previous use of target numbers for species. Conservation of these iconic sentinel species is also important for species beyond the sage grouse and mule deer.⁴⁴ However, some environmental advocates have objected to using the proposed CE to manage the problem, seeing it as an effort to reduce input from the public and scientific community.⁴⁵ One of the proposed activities to restore sagebrush ecology is targeted grazing for invasive plants, a move painted as a boon to ranchers seeking expanded grazing rights on public lands.⁴⁶ Others see the initiative as a necessary step to reduce fire risk and restore habitat severely threatened by past wildfire and invasive species.⁴⁷

C. Water Quality Programs

The protection of watersheds and municipal water sources is an authorized use of the NFS. Many USFS programs contain watershed and source protection as an authorized goal or activity.⁴⁸ This arrangement underscores forests as a core component in the “multiple barrier” approach to water quality protection.⁴⁹ Forest lands in the United States provide close to two-thirds of water for fishing, swimming, drinking, and industrial, agricultural, and domestic use.

Well-managed, healthy forests are capable of buffering or transforming chemical and nutrient deposits and pathogens, providing cleaner water that costs less to purify.⁵⁰ A survey from the Trust for Public Land and the American Water Works Association in 2004 found a 20% cost reduction for water treatment for every 10% increase in forest cover in a given distribution network. As recognition increases of the growing

⁴⁰ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 13.

⁴¹ *Id.*

⁴² *Id.*

⁴³ NAT’L AGRIC. LAW CTR., *supra* note 38; *see also Trump’s Proposed NEPA Rollbacks Hand Over Control of Public Lands to Ranchers*, W. WATERSHEDS PROJECT (Jan. 9, 2020), <https://www.westernwatersheds.org/2020/01/trumps-proposed-nepa-rollbacks-hand-over-control-of-public-lands-to-ranchers/>; *Audubon Laments Shortsighted Approach to Sagebrush Management*, NAT’L AUDUBON SOC’Y (Mar. 15, 2019), <https://www.audubon.org/news/audubon-laments-shortsighted-approach-sagebrush-management>.

⁴⁴ *See* W. ASS’N OF FISH & WILDLIFE AGENCIES, *supra* note 37, at 3.

⁴⁵ PROTECT NEPA, NEPA AND FORESTS (2019), <https://protectnepa.org/wp-content/uploads/2019/03/NEPA-and-forests.pdf>.

⁴⁶ W. WATERSHEDS PROJECT, *supra* note 43.

⁴⁷ W. ASS’N OF FISH & WILDLIFE AGENCIES, *supra* note 37, at 2–6; PYKE ET AL., *supra* note 37, at 2–3; RANGELAND FIRE TASKFORCE, AN INTEGRATED RANGELAND FIRE MANAGEMENT STRATEGY (2015), https://www.forestsandrangelands.gov/documents/rangeland/IntegratedRangelandFireManagementStrategy_FinalReportMay2015.pdf

⁴⁸ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 30

⁴⁹ MARTINA C. BARNES ET AL., U.S. FOREST SERV., NA-FR-01-08, FORESTS, WATER AND PEOPLE: DRINKING WATER SUPPLY AND FOREST LANDS IN THE NORTHEAST AND MIDWEST UNITED STATES (2009), https://www.fs.usda.gov/naspf/sites/default/files/forests_water_people_watersupply.pdf.

⁵⁰ *Id.*



complexity and costs of treating the chemical and nutrient loads in the water supply, calls for source protection rather than water treatment are gaining traction.⁵¹

A 2006 OMB report found watershed protection programs at USFS lacked data and performance measures and a clear national strategy for prioritizing projects.⁵² In response to the report a Watershed Condition Framework (WCF) was developed to classify watersheds conditions across the country and to create action plans to restore priority watersheds, as well as rigorous monitoring to document watershed improvements.⁵³ However a 2017 USDA OIG report cited lack of national oversight and coordination and muddled measurement that failed to “communicate accurate data to stakeholders.”⁵⁴

The 2018 Farm Bill codifies the WCF in statute and delineates specific responsibilities for USFS.⁵⁵ The law authorizes the Secretary of Agriculture, through the Chief of the Forest Service to evaluate conditions and establish assessment criteria for a WCF for NFS land. USFS may designate five priority watersheds in each national forest and two in each national grassland in which they can develop action plans to restore those watersheds with landowners and state, country, tribal, and local governments. Emergency designations are also authorized in cases where post-wildfire recovery efforts do not properly rehabilitate a watershed.⁵⁶ This is a particular concern where large-scale wildfires consume vegetation, causing soil erosion, flooding, and sediment contamination of public water supplies, among other impacts.⁵⁷ All projects are subject to NEPA requirements before implementation.⁵⁸

For municipal water sources, Title III of the Healthy Forests Restoration Act of 2003 (HFRA) had allowed USFS to assist states and tribes to protect or restore watersheds, but the provision never received appropriations and was repealed in the 2014 Farm Bill.⁵⁹ Still, under the Omnibus Public Lands Management Act of 2009, the Secretary of Agriculture could form cooperative and cost-sharing agreements with private, public, and nonprofit groups at all levels to protect a municipal water source and the watershed containing it.⁶⁰

The 2018 Farm Bill reinstates the authority envisioned in Title III of the HFRA by creating a Water Source Protection program for NFS land.⁶¹ The program allows multi-year investment partnerships to protect watersheds within the NFS that serve as municipal water sources.⁶² USFS can develop a water source management plan with nonfederal partners for proposed restoration or protection projects to protect a municipal source and/or restore insect- and disease-damaged areas.⁶³ The law also streamlines the NEPA

⁵¹ *Forests and Drinking Water*, CTR. FOR WATERSHED PROTECTION, <https://www.cwp.org/forests-and-drinking-water/>; BARNES ET AL., *supra* note 49, at 2.

⁵² HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 30.

⁵³ *Id.*; U.S. FOREST SERV., WATERSHED CONDITION FRAMEWORK (2011), https://www.fs.usda.gov/sites/default/files/Watershed_Condition_Framework.pdf.

⁵⁴ U.S. DEP'T OF AGRIC., OFFICE OF INSPECTOR GEN., AUDIT REPORT 08001-0001-21, FOREST SERVICE WATERSHED MANAGEMENT (2017), <https://www.usda.gov/oig/webdocs/08001-0001-21.pdf>.

⁵⁵ Agriculture Improvement Act of 2018, § 8405, 132 Stat. 4843.

⁵⁶ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 30.

⁵⁷ *Burned Area Emergency Response*, U.S. FOREST SERV., <https://www.fs.fed.us/naturalresources/watershed/burnedareas.shtml>.

⁵⁸ U.S. FOREST SERV., WATERSHED CONDITION FRAMEWORK https://www.fs.fed.us/naturalresources/watershed/condition_framework.shtml

⁵⁹ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 31 (footnote 125).

⁶⁰ P.L. 111-11 §3001, 16 U.S.C. §1011a

⁶¹ Agriculture Improvement Act of 2018, § 8404, 132 Stat. 4841.

⁶² *Id.*; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 31.

⁶³ *Id.*



process, allowing one environmental analysis for an entire watershed action plan, and allows USFS to accept investment and assistance from nonfederal partners. Congress authorized \$10 million annually for the Water Source Protection Fund for these partnerships through FY2023.⁶⁴

D. Timber Innovation

The use of timber and timber products resulting from forest management programs is an ongoing effort. Turning timber from hazardous fuel removed from NFS lands into marketable products or energy is seen as a way to promote sustainability, finance ongoing conservation efforts, and provide local jobs.⁶⁵ While the 2018 Farm Bill phased out or repealed several such programs, it established several new ones in their place. These “Timber Innovation” provisions were adopted from the Timber Innovation Act—introduced in Congress originally in 2016⁶⁶—and primarily respond to the rise of a potentially high value-added new wood product: cross-laminated “mass” timber.⁶⁷ The law created and funded programs designed to support implementing the provisions and the Rural Revitalization Technologies program, which was also reauthorized through FY2023.⁶⁸

Mass timber is a material formed by gluing under pressure or nailing large pieces of wood together in perpendicular layers. It is commonly described as “stronger than steel, lighter, and may be as fireproof.” It has significant construction advantages, including the possibility to build very tall buildings from over ten to even eighty stories high,⁶⁹ and is touted by some as a potential carbon sink, though that claim is strongly contested.⁷⁰

Despite the debate, Congress and many forestry advocates are convinced.⁷¹ The Forestry Title defines the terms “wood product,” “mass timber,” and “tall wood building,” and establish a “research, development, education, and technical assistance program—including a competitive grant program—to facilitate the use of innovative wood products for building and construction purposes.”⁷² It also establishes cost-sharing and financial assistance programs, the Wood Innovation Grant program and Community Wood Energy and Wood Innovation Program, respectively. These funding opportunities mainly provide assistance for retrofitting or building new sawmills and other manufacturing facilities for processing mass timber or producing wood energy.⁷³ The Community Wood Energy and Wood Innovation Program thus expands an

⁶⁴ Agriculture Improvement Act of 2018, § 8404, 132 Stat. 4841.

⁶⁵ *Wood Innovation Grants*, U.S. FOREST SERV., <https://www.fs.usda.gov/science-technology/energy-forest-products/wood-innovations-grants> (last visited February 24, 2020).

⁶⁶ Agriculture Improvement Act of 2018, § 8701, 132 Stat. 4875.

⁶⁷ *Senate, House Introduce Timber Innovation Act*, AM. FOREST FOUND. (Mar. 7, 2017), <https://www.forestfoundation.org/senate-house-introduce-timber-innovation-act>.

⁶⁸ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 54; *Wood Innovation Grants*, *supra* note 65.

⁶⁹ *Tall Timber: A Global Audit*, COUNCIL ON TALL BUILDINGS & URBAN HABITAT JOURNAL (2017), <https://global.ctbuh.org/resources/papers/3350-TBIN.pdf>.

⁷⁰ See Jim Robbins, *As Mass Timber Takes Off, How Green is this New Building Material?*, YALE ENVIRONMENT 360, <https://e360.yale.edu/features/as-mass-timber-takes-off-how-green-is-this-new-building-material>.

⁷¹ *Timber Innovation Act*, AM. FOREST FOUND., *supra* note 67.

⁷² Agriculture Improvement Act of 2018, §§ 8641, 8642, 132 Stat. 4871; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 53.

⁷³ Agriculture Improvement Act of 2018, §§ 8643, 8644, 132 Stat. 4871; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 53–54.



existing program which had never been funded and increases authorization for appropriations to \$25 million annually through FY2023.⁷⁴

E. Program Reauthorizations

Several programs were reauthorized under the 2018 Forestry Title. First, it reauthorizes appropriations for statewide forest resource assessments and strategy.⁷⁵ These assessments inform state forest action plans, which must be updated by June 2020 with the input of a number of stakeholders.⁷⁶ The plans must include an assessment of conditions and threats, a long-term plan for priority investments, and annual reporting on fund utilization. They also must, “offer practical, long-term plans for investing state, federal, and other resources where they can be most effective in achieving national conservation goals.”⁷⁷

Second, reauthorizes the Collaborative Forest Landscape Restoration Program (CFLRP), established to fund and implement restoration proposals on priority forest landscapes through collaborative processes involving diverse stakeholders.⁷⁸ In a move affirming the widespread assessment of the program as a success for achieving land management priorities⁷⁹ and for spurring collaboration and local economic development,⁸⁰ the 2018 Forestry Title doubles annual funding for the CFLRP to \$80 million per year through 2023 and authorizes the Secretary of Agriculture to extend successful projects beyond the initial 10 years.⁸¹

Third, Forestry Title reauthorizes funding for the Semi-arid Agroforestry Research Center in Lincoln, NE and the National Forest Foundation through 2023.⁸²

Finally, the 2018 Farm Bill reauthorized funding for the Healthy Forest Reserve Program, for which mandatory funding had been replaced with funding subject to appropriations in the 2014 bill.⁸³ HFRP “helps landowners restore, enhance, and protect forestland resources on private lands through easements and financial assistance.”⁸⁴ The 2018 reauthorization also added habitat conservation for endangered and threatened species as a program goal.⁸⁵

⁷⁴ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 54; *Family Forest Owners*, Am. Forest Found., *supra* note 17.

⁷⁵ Agriculture Improvement Act of 2018, § 8101, 132 Stat. 4837.

⁷⁶ NAT'L ASSOC. OF STATE FORESTERS, STATE FOREST ACTION PLANS: AN OVERVIEW AND EXPLANATION OF 10-YEAR REVISIONS (2018), <https://www.stateforesters.org/wp-content/uploads/2019/11/Forest-Action-Plan-Revisions-ONE-PAGER.pdf>

⁷⁷ NAT'L ASSOC. OF STATE FORESTERS, MEMORANDUM: TEN-YEAR REVISIONS OF STATE FOREST ACTION PLANS (2017), https://www.stateforesters.org/wp-content/uploads/2018/10/Strategies-and-Assessments-10-Year-Revisions-Memo_final2.pdf

⁷⁸ Agriculture Improvement Act of 2018, § 8629, 132 Stat. 4865; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 25.

⁷⁹ U.S. FOREST SERV., FS-1047, COLLABORATIVE FOREST LANDSCAPE RESTORATION PROGRAM 5-YEAR REPORT, FY 2010-2014 (2015), https://www.fs.fed.us/restoration/documents/cflrp/CFLRP_5-YearReport.pdf.

⁸⁰ CHELSEA P. MCIVER, MEASURING THE BENEFITS OF THE COLLABORATIVE FOREST LANDSCAPE RESTORATION PROGRAM FOR LOCAL COMMUNITIES IN NORTHEAST WASHINGTON (2016), <https://www.nationalforests.org/assets/pdfs/NEWA-CFLRP-WP2-Final.pdf>.

⁸¹ Agriculture Improvement Act of 2018, § 8629, 132 Stat. 4865.

⁸² Agriculture Improvement Act of 2018, §§ 8502, 8503, 132 Stat. 4847.

⁸³ Agriculture Improvement Act of 2018, § 8407(a), 132 Stat. 4845; HOOVER, FORESTRY PROVISIONS IN THE 2014 FARM BILL, *supra* note 2, at 11.

⁸⁴ *Healthy Forests Reserve Program*, U.S. DEP'T OF AGRIC., NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/forests/> (last visited Oct. 3, 2017).

⁸⁵ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 49.



F. Repeals

The 2018 Farm Bill Forestry Title repeals numerous programs. Among those repealed includes: the Forestry Student Grant program, which had been intended to support minority and female students to receive undergraduate and graduate training in forestry;⁸⁶ the revision of USFS’s strategic plan for forest inventory and analysis required in the 2014 Forestry Title;⁸⁷ the Wood Fiber Recycling Research Program;⁸⁸ the Biomass Energy Demonstration Project;⁸⁹ the Biomass Commercial Utilization Program;⁹⁰ and the authorization for appropriations for rapid forest insect and disease assessments on federal and nonfederal lands.⁹¹

G. Miscellaneous Provisions

Many other provisions in the 2018 Forestry Title impact national forest management.

- Several provisions in the 2018 Farm Bill relate to the Forest Service’s ability to manage small parcels of land. It amended the Small Tracts Act “to provide the Forest Service with more flexibility for resolving property conflicts with private landowners and alleviate management burden and expense to the Forest Service.”⁹² The law raises the value limit for parcels conveyed outside the forest system and sets aside these funds for acquiring new NFS lands in the same state. The law also creates or edits eligibility categories to allow conveyance of certain types of parcels no more than 40 acres.⁹³
- The Bill reauthorizes the Forest Service Facility Realignment and Enhancement Act to allow conveyance of ten parcels up to 40 acres.⁹⁴
- Several sections instruct the sale or conveyance of specific parcels, sometimes to specific entities, and the designation or expansion of several wilderness areas in Tennessee’s Cherokee National Forest.⁹⁵
- Section 8705 streamlines the process for authorizing communications infrastructure use on NFS lands.⁹⁶
- Section 8630 creates a pilot program for permitting rights of way for utilities (electric and natural gas) to operate on NFS lands, specifying cost-sharing for fires started by ROW permittee operations.⁹⁷

⁸⁶ *Id.* at 48; Agriculture Improvement Act of 2018, § 8202, 132 Stat. 4839.

⁸⁷ Agriculture Improvement Act of 2018, § 8501, 132 Stat. 4847; HOOVER, FORESTRY PROVISIONS IN THE 2014 FARM BILL, *supra* note 2, at 5; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 49.

⁸⁸ Agriculture Improvement Act of 2018, § 8201, 132 Stat. 4839.

⁸⁹ Agriculture Improvement Act of 2018, § 8301, 132 Stat. 4840.

⁹⁰ Agriculture Improvement Act of 2018, § 8403, 132 Stat. 4841.

⁹¹ Agriculture Improvement Act of 2018, § 8406, 132 Stat. 4845.

⁹² Agriculture Improvement Act of 2018, § 8621, 132 Stat. 4852; Conveyance of Small Tracts, 85 Fed. Reg. 8180 (Feb 23, 2020) (to be codified at 36 C.F.R. Pt. 254), <https://www.federalregister.gov/documents/2020/02/13/2020-02299/conveyance-of-small-tracts>.

⁹³ 2018 Farm Bill, U.S. FOREST SERV., <https://www.fs.usda.gov/managing-land/farm-bill> (last visited February 24, 2020).

⁹⁴ Agriculture Improvement Act of 2018, § 8504, 132 Stat. 4847; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 50.

⁹⁵ Agriculture Improvement Act of 2018, §§ 8625–28, 8631, & 8707, 132 Stat. 4858.

⁹⁶ Agriculture Improvement Act of 2018, § 8705, 132 Stat. 4878.

⁹⁷ Agriculture Improvement Act of 2018, § 8630, 132 Stat. 4865.



- Section 8702 allows a pilot program to relax the membership requirements of Resource Advisory Committees for the Forest Service Secure Rural Schools program, which were seen as too burdensome.⁹⁸
- Section 8706 requires the Secretaries of Agriculture and Interior to submit a joint report on wildfire, insect infestation, and disease prevention on federal land to the House Committees on Agriculture and Natural Resources and the Senate Committees on Agriculture, Nutrition, and Forestry and Energy and Natural Resources, as part of a suite of reporting requirements put in place alongside sweeping wildfire funding reforms enacted in the 2018 omnibus spending bill, discussed below.⁹⁹

H. Other Forestry Programs Addressed in the 2018 Omnibus Spending Bill

During the 115th Congress, both the 2018 Farm Bill and the 2018 omnibus spending bill substantively addressed forestry programs. Several major provisions related to wildfire suppression funding were enacted as The Stephen Sepp Wildfire Suppression Funding and Forest Management Activities Act, enacted as Division O of the Consolidated Appropriation Act of 2018 (P.L. 115-141) and signed into law on March 23, 2018.¹⁰⁰

The wildfire funding fix enacted in Section 102(a) of the 2018 spending bill represents an important change in wildland fire management, as discussed in the Key Issues section below. Before the new law, firefighting costs often outstripped appropriations for fire suppression, forcing agencies to engage in “fire borrowing” – transferring money from non-fire-related activities to cover fire suppression costs.¹⁰¹ Now, additional funding can be requested through a separate budgetary mechanism referred to as the “wildfire adjustment” or “wildfire funding fix,” which allows Congress to adjust the discretionary spending limit on wildfire suppression.¹⁰² Essentially, the fix removes budget process barriers to adequate wildfire funding by keeping increased spending at the same budget “score.”¹⁰³ The fix allows an additional \$2.25 billion for wildfire suppression in FY2020, over a baseline funding level (\$1.39 billion) based on the FY2015 10-year spending average. The limit for this mechanism will increase by \$100 million each year up to \$2.95 billion in FY2027.¹⁰⁴ The omnibus spending bill, along with the 2018 Farm Bill, also requires new reporting, no less than 90 days after the funding fix is used.

The 2018 spending bill also directs the Forest Service to refine the spatial resolution and improve accessibility of the Wildfire Hazard Potential (WHP) maps developed by the USFS Rocky Mountain Research Station, for use by local communities in risk management decision-making.¹⁰⁵ In addition, the 2018 spending bill establishes the Wildfire Resilience Categorical Exclusion to NEPA, very similar to the 2014 Farm Bill CE, but restricted to only hazardous fuels reduction projects. Priority is given to projects in Wildland-Urban Interface (WUI) and with “very high wildfire potential.” The Wildfire Resilience CE also

⁹⁸ Agriculture Improvement Act of 2018, § 8702, 132 Stat. 4875; see U.S. DEP’T OF AGRIC., OFFICE OF INSPECTOR GEN., AUDIT REPORT 08601-0006-41, FOREST SERVICE RURAL SCHOOLS PROGRAM (2017), <https://www.usda.gov/oig/webdocs/08601-0006-41.pdf>.

⁹⁹ Agriculture Improvement Act of 2018, § 8706, 132 Stat. 4880; HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 23.

¹⁰⁰ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 1.

¹⁰¹ *Id.* at 19.

¹⁰² KATIE HOOVER, CONG. RESEARCH SERV., IF11416, FOREST SERVICE: FY2019 AND FY2020 APPROPRIATIONS 1 (2020), <https://crsreports.congress.gov/product/pdf/IF/IF11416>.

¹⁰³ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 21.

¹⁰⁴ *Id.* at 20.

¹⁰⁵ *Id.* at 22.



has more direct language to ensure appropriate impact assessment than the Farm Bill CE. In effect, this CE is an extension of the Farm Bill CE, which itself was updated to include hazardous fuels reduction, as mentioned above.¹⁰⁶

Furthermore, sections 208 and 209 reduce the need to update an existing forest plan if a new species within that forest is designated under the Endangered Species Act. Only forest plans over 15 years old must be updated, but any new projects in a given forest still require a full review. While opponents claim this increases the risk of inadvertent harm to newly designated species, those in favor argue that it simply reduces paperwork and allows forest managers to avoid a cumbersome review process.¹⁰⁷

In addition to these major initiatives, the 2018 omnibus spending bill includes other forestry provisions including, among others: adding road-related activities to GNA authority,¹⁰⁸ changes to how USFS and BLM enter into and pay for stewardship contracting agreements,¹⁰⁹ reauthorizing Secure Rural Schools payments for FY2017 and FY2018,¹¹⁰ and the creation of a right of way program for electricity transmission and distribution utilities limiting permit holder wildfire liabilities.¹¹¹

III. KEY ISSUES

A. Fixing Wildfire Funding

Until passage of the wildfire funding fix in the 2018 omnibus spending bill, USFS and Department of Interior discretionary budgets entirely funded fire suppression. This stood in contrast to similar federal emergency management programs such as grants approved through the Federal Emergency Management Agency.¹¹² In practical terms, the USFS siphoned funding from other forestry programs, in a practice known as “fire borrowing.”¹¹³ For example, the repealed Forest Land Enhancement Program had half of its total funding diverted to wildfire control in 2003.¹¹⁴ In the FY2020 appropriations cycle, the wildfire adjustment kept appropriations level for all programs, while increasing the overall wildfire management budget 15%, to 58% of overall USFS funds, without changing the budget score.¹¹⁵ The “fix” was lauded as a permanent, bipartisan solution that would not only put wildfire management on parity with emergency management funding streams,¹¹⁶ but also maintain the viability of other forest restoration programs.¹¹⁷ USDA projects the cost of fighting wildfires will balloon to almost two-thirds of the Forest Service budget by FY2025, as

¹⁰⁶ *Id.* at 12.

¹⁰⁷ *Id.* at 17, 18.

¹⁰⁸ *Id.* at 27.

¹⁰⁹ *Id.* at 29.

¹¹⁰ *Id.* at 36.

¹¹¹ *Id.* at 35.

¹¹² See U.S. FOREST SERV., *supra* note 30, at 2; see also *About the Agency*, FED. EMERGENCY MGMT. AUTH., <http://www.fema.gov/about-agency> (last visited Oct. 13, 2017).

¹¹³ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 19.

¹¹⁴ Forest Land Enhancement Program, 80 Fed. Reg. 402, 403 (Jan. 6, 2015) (to be codified at 36 C.F.R. pt. 230), <https://www.federalregister.gov/documents/2015/01/06/2014-30806/forest-land-enhancement-program-flep>

¹¹⁵ HOOVER, FOREST SERVICE: FY2019 AND FY2020 APPROPRIATIONS, *supra* note 102.

¹¹⁶ RYAN RICHARDS, CTR. FOR AM. PROGRESS, DEFINING SUCCESS FOR THE WILDFIRE FUNDING FIX (2018), <https://www.americanprogress.org/issues/green/reports/2018/06/13/451901/defining-success-wildfire-funding-fix/>.

¹¹⁷ *NASF Applauds Congress' Plan to Fix Wildfire Funding, Reform Federal Forest Management*, NAT'L ASS'N OF STATE FORESTERS (Mar. 22, 2018), <https://www.stateforesters.org/newsroom/congress-reaches-resolution-nasf-applauds-plan-to-fix-wildfire-funding-reform-federal-forest-management/>; FORESTS IN THE FARM BILL COALITION, RECOMMENDATIONS FOR THE 2018 FARM BILL (2017), <http://www.nacdn.org/wp-content/uploads/2017/07/Forests-in-the-Farm-Bill-Coalition-2018-Farm-Bill-Recommendations-July-20-2017.pdf>.



climate change broadens the fire season and development continues in the wildland urban interface (WUI).¹¹⁸ The funding fix provides consistent funding that takes the pressure off of other needed forest restoration priorities and creates certainty for agency planning purposes.

However, the fix is not a panacea. While the adjustment is available through FY2027, it is contingent on statutory limits on discretionary spending that expire in FY2021. Without renewal of these limits, the adjustment would no longer apply, causing funding to evaporate.¹¹⁹ Also, if suppression costs exceed the adjusted amount, Congress must then act (on 30 days' notice from USDA) to approve additional funds or to allow fire borrowing. FY2020 is the first year under this new arrangement, so will provide a test case.¹²⁰ Tying funds to the FY2015 10-year suppression obligation also creates problems. The FS did not report its FY2020 10-year obligation (DOI did) because of the benchmark to FY2015, raising oversight concerns.¹²¹ The baseline and adjustment limits are also not tied to inflation and do nothing to improve forecasting future suppression costs, evaluating current suppression techniques, or addressing the underlying causes of increased suppression costs.¹²² Thus, even before the next farm bill, Congress may be called upon to extend discretionary caps, quickly approve extraordinary requests, and improve accountability.

B. Carbon Sequestration Potential of Forests.

Forests have the potential to serve as an important tool for reducing carbon emissions. With improved management, forests could sequester up to 20% of U.S. carbon emissions.¹²³ However, a predicted 57 million acres of private forests will be converted into commercial and residential development by 2030.¹²⁴ This loss of forestland will not only decrease sequestration potential but will also release previously sequestered carbon into the atmosphere. Stopping development would mean economic losses and increased regulation. Some argue that the Farm Bill should recognize the power of forest carbon sequestration as a tool against climate change,¹²⁵ perhaps even incorporating forestry sector sequestration as an offset in proposals for cap-and-trade markets.¹²⁶ This would incentivize landowners to preserve forest resources instead of developing their land. However, such proposals are likely to face opposition from legislators who favor economic development over environmental preservation or from those who oppose that cap-and-trade model.

The 2018 Farm Bill did not directly or substantively address carbon sequestration. Still, one place this debate played out is in the bipartisan sponsorship of mass timber development. Mass timber is feted by industry and design groups as a potential silver bullet to turn construction and urban development from a major source of carbon emissions, particularly through concrete and steel production, to a carbon sink, with the woody biomass of mass timber sequestering carbon in wood-framed skyscrapers. However, critics say

¹¹⁸ U.S. FOREST SERV., THE RISING COST OF FIRE OPERATIONS: EFFECTS ON THE FOREST SERVICE'S NON-FIRE WORK (2015), <https://www.fs.usda.gov/sites/default/files/2015-Fire-Budget-Report.pdf>.

¹¹⁹ HOOVER, FOREST MANAGEMENT PROVISIONS ENACTED IN THE 115TH CONGRESS, *supra* note 11, at 21.

¹²⁰ *Id.* at 21.

¹²¹ *Id.*

¹²² *Id.*

¹²³ FORESTS IN THE FARM BILL COALITION, *supra* note 117, at 4.

¹²⁴ *Id.* at 5.

¹²⁵ See ROSS W. GORTE, CONG. RESEARCH SERV., R41213, FORESTRY IN THE NEXT FARM BILL 3 (2010), <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1014&context=crsdocs>.

¹²⁶ *Id.*



that carbon budgeting for mass timber is uncertain at best, and at worst, obscures an industry that poses a threat to true carbon sequestration in old-growth forests.¹²⁷

Adjacent to this debate is the carbon sequestration implications of hazardous fuels reduction and insect and disease treatment projects. Mass timber projects are intended as destinations for the biomass removed via hazardous fuels reduction efforts facilitated by the Farm Bill and Wildfire Resilience CEs. While removing trees may release stored carbon, wildfires and decay following infestation, disease, or blowdown cause significant emissions as well.¹²⁸ Especially in the West, where fire is a regular part of the forest ecosystem, overcrowding of trees due to fire suppression tactics makes these problems more likely, carrying huge carbon pollution risks. Almost counterintuitively, studies find that prescribed burns result in slightly less carbon release than mechanical cutting.¹²⁹ Still, the risks of allowing forests to accumulate biomass that fuels massive wildfires makes hazardous fuels reduction by either method far preferable to inaction.¹³⁰ In any case balancing forest health, fire prevention, and carbon sequestration is a delicate task for forest managers.¹³¹

C. Tribal Advocacy in the 2018 Farm Bill

Among the more significant advances in the 2018 Forestry Title were two provisions advocated by the Native Farm Bill Coalition (NFBC), a “joint project of the Shakopee Mdewakanton Sioux Community’s Seeds of Native Health campaign to improve Native dietary health and food access; the Intertribal Agriculture Council; the National Congress of American Indians; and the Indigenous Food and Agriculture Initiative.” NFBC represents over 170 member tribes, Native organizations, and non-Native allies to form a “strong, united voice” for the needs of Native nations and producers in the Farm Bill.¹³² The NFBC was formed in 2017 to combat historical marginalization of Tribes in the farm bill process and succeeded in enacting a “record 63 Tribal-specific provisions” in the final bill.¹³³

The NFBC authored a report entitled *Regaining Our Future*¹³⁴ to develop priorities for each title of the farm bill. It is important to note that tribal forests “comprise 18.6 million acres, or one third, of the total 57 million acres of Indian land held and managed in trust by the federal government.”¹³⁵ These forests are important sources of tribal revenue, jobs, wildlife habitat, food, and medicines. They also carry deep

¹²⁷ See Robbins, *supra* note 70.

¹²⁸ FED. FOREST RES. COAL., POLICY POSITION: MANAGING NATIONAL FORESTS TO SEQUESTER AND STORE CARBON, <https://fedforestcoalition.org/wp-content/uploads/ffrc-policy-position-sequester-and-store-carbon.pdf> (accessed June 22, 2020).

¹²⁹ Scott Stephens et al., *The Effects of Forest Fuel-Reduction Treatments in the United States*, 62 *BIOSCIENCE* 549, 550, 556 (2012), [https://www.fs.fed.us/psw/publications/fettig/psw_2012_fettig001\(stephens\).pdf](https://www.fs.fed.us/psw/publications/fettig/psw_2012_fettig001(stephens).pdf).

¹³⁰ *Id.* at 549.

¹³¹ Elizabeth M. Powers et al., *Post-fire Management Regimes Affect Carbon Sequestration & Storage in a Sierra Nevada Mixed Conifer Forest*, 291 *FOREST ECOLOGY AND MGMT.* 268 (2013), https://www.fs.fed.us/psw/publications/zhang/psw_2013_zhang003_powers.pdf.

¹³² *Native Farm Bill Coalition*, SEEDS OF NATIVE HEALTH, <https://seedsofnativehealth.org/native-farm-bill-coalition/> (last visited June 22, 2020); RENÉE JOHNSON & TADLOCK COWAN, CONG. RSCH. SERV., IF11827, 2018 FARM BILL PRIMER: SUPPORT FOR INDIAN TRIBES, <https://fas.org/sgp/crs/misc/IF11287.pdf>.

¹³³ *2018 Farm Bill is Historic for Indian Country*, HOLLAND & KNIGHT NATIVE AMERICAN LAW BLOG (Dec. 20, 2018), <https://www.hklaw.com/en/insights/publications/2018/12/2018-farm-bill-is-historic-for-indian-country>; UNIV. OF ARK., INDIGENOUS FOOD & AGRIC. INITIATIVE, TRIBAL PROVISIONS IN THE 2018 FARM BILL 1–2 (2019), <https://seedsofnativehealth.org/wp-content/uploads/2019/02/NFBC-IFAI-Farm-Bill-One-Page.pdf>.

¹³⁴ JAIME SIMMS HIPP & COLBY D. DUREN, *REGAINING OUR FUTURE: AN ASSESSMENT OF RISKS AND OPPORTUNITIES IN THE 2018 FARM BILL* (2017), https://seedsofnativehealth.org/wp-content/uploads/2017/06/Farm-Bill-Report_WEB.pdf.

¹³⁵ COLBY D. DUREN, NATIVE FARM BILL COALITION, *INDIAN COUNTRY PRIORITIES AND OPPORTUNITIES FOR THE 2018 FARM BILL – TITLE VIII: FORESTRY* (2017), <https://seedsofnativehealth.org/wp-content/uploads/2017/09/Title-VIII-Forestry.pdf>.



cultural and spiritual significance. Much of these land rights fall within the jurisdiction of the Forest Service on national forest land, amounting to some 3,000 miles of border lands and hundreds of thousands of acres of watersheds.¹³⁶

As part of a longer history of federal management of tribal forest lands, ranging from outright expropriation and unapproved exploitation to efforts to affirm tribal sovereignty, the Tribal Forest Protection Act (TFPA) was passed in 2004 to allow for tribal management of federal lands adjacent to their treaty rights holdings.¹³⁷ However, a 2013 report from the Intertribal Timber Council, USFS, and Bureau of Indian Affairs (BIA) found that only six TFPA projects had been completed nationwide as of that year, and so embarked on a five-year process to improve implementation, recognizing immense potential for shared forest stewardship in the provision.¹³⁸ These efforts increased commitments and demonstrated the effectiveness of the TFPA for shared stewardship on tribal and adjacent federal lands.¹³⁹ This track record and goodwill ultimately contributed to the expansion of GNA and ISDEAA contracts for TFPA in the 2018 Farm Bill, detailed in the section above on Tribal Forestry.

D. Chipping Away at NEPA

The National Environmental Policy Act of 1970 is an essential component of environmental law and rulemaking in the United States, requiring a critical review process of any proposed action by the federal government. At its core, the law enshrines a process that tries to ensure that agencies consider all potential effects on the environment, viable alternatives including doing nothing, and the input of key stakeholders and the public for any projects or policies. This procedural focus is credited with preventing a great deal of harm to the nation's environment.¹⁴⁰

As detailed in a public comment submitted by the Food Law and Policy Clinic at Harvard Law School, new proposed rulemaking from the Trump Administration's Council for Environmental Quality severely threatens the integrity of NEPA's procedural requirements.¹⁴¹ In the name of streamlining what the Administration characterizes as an unduly burdensome process, the proposed changes weaken almost every piece of NEPA's processes. It alters which actions must be considered under NEPA, weakens the required analysis, curtails public participation, and even purports to alter the judicial review of final decisions.¹⁴²

As noted in the above section on NEPA Categorical Exclusions, CEs enacted in 2014 and 2018 for specialized habitat management, insect and disease management, and hazardous fuels reduction are a second arena of contention around the scope, effectiveness, and future of NEPA. These battles over Forestry Title provisions belie an increasingly polarized discourse around this portion of agriculture policy, once viewed largely as a sideshow.

¹³⁶ Duren, *supra* note 135, at 1–3; INTERTRIBAL TIMBER COUNCIL & U.S. FOREST SERV., *supra* note 28, at 1.

¹³⁷ JIM DURGLO, INTERTRIBAL TIMBER COUNCIL, CROSS BOUNDARY COLLABORATION BETWEEN TRIBES AND THE UNITED STATES FOREST SERVICE 1 (2018), https://www.itcnet.org/issues_projects/issues_2/tfpa/tfpareports.html; INTERTRIBAL TIMBER COUNCIL & U.S. FOREST SERV., *supra* note 28, at 1.

¹³⁸ INTERTRIBAL TIMBER COUNCIL & U.S. FOREST SERV., *supra* note 28, at 1.

¹³⁹ DURGLO, *supra* note 137; INTERTRIBAL TIMBER COUNCIL & U.S. FOREST SERV., *supra* note 28, at 2, 3, 16.

¹⁴⁰ Richard Lazarus, *The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains*, 100 Geo. L.J. 1507, 1509 (2012).

¹⁴¹ Emma Scott, Harvard Law School Food Law and Policy Clinic, Public Comment on the Council on Environmental Quality Proposed Rule: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (March 11, 2020), <https://www.regulations.gov/document?D=CEQ-2019-0003-172474>.

¹⁴² Scott, *supra* note 141, at 4.



E. Politicization of the Forestry Title

During the negotiation of the 2018 Farm Bill, a surprising dynamic emerged with the forestry title gaining media attention due to political controversies over its content.¹⁴³ At the heart of the issue was a dispute over the House version of the bill, which would have allowed aggressive logging of NFS lands in the name of hazardous fuels reduction, which Democrats in Congress fiercely opposed. This dispute demonstrates a larger trend, captured in the above discussion of carbon sequestration and NEPA-mandated review. Disagreements about the appearance and substance of environmental policy are becoming more and more politically salient. As the devastating effects of climate change, biodiversity loss, and environmental injustices come into sharper view, heated political rhetoric may continue to surround future iterations of the Forestry Title.

CONCLUSION

Though the Forestry Title often receives less attention than its more expensive and contentious farm bill counterparts, careful management of federal lands is crucial for fire prevention, carbon sequestration, and conservation. Between the 2018 Farm Bill and omnibus spending bill, several significant achievements were made, including on funding wildland firefighting, working with nonfederal partners for forest restoration, and protecting water sources. Disastrous consequences for forestry were largely avoided in 2018, particularly efforts to prioritize logging interests. However, significant struggles remain. The bill elides longer term issues such as outmoded and costly wildfire suppression tactics, development in the wildland urban interface, managing forests at landscape-scale, and carbon sequestration, as well as eroding environmental protection regulations and public oversight. If these issues are not addressed, U.S. resilience to climate change, biodiversity loss, and environmental degradation, as well as public confidence in the forest system are likely to suffer.

¹⁴³ See Ryan McCrimmon, *Forestry Dispute Still Slowing Farm Bill Talks*, POLITICO MORNING AGRIC. (Nov 27, 2018), <https://www.politico.com/newsletters/morning-agriculture/2018/11/27/forestry-dispute-still-slowing-farm-bill-talks-430445>