The Honorable John Boozman
Chairman, Senate Committee on
Agriculture, Nutrition, and Forestry
United States Senate
Washington, DC 20510

The Honorable Amy Klobuchar
Ranking Member, Senate Committee on
Agriculture, Nutrition, and Forestry
United States Senate
Washington, DC 20510

Dear Chairman Boozman, Ranking Member Klobuchar, and Members of the Senate Agriculture Committee:

On behalf of our millions of members and supporters, our organizations write to express our strong opposition to S. 1462, the “Fix Our Forests Act” (FOFA) as introduced by Senators Curtis, Hickenlooper, Padilla, and Sheehy.

Crucial problems remain in the bill that have not been corrected from the House version. Many of the forest management provisions eliminate science from decision-making and undermine environmental and public engagement laws. These provisions of the bill represent the antithesis of effective, science-based wildfire mitigation and offer false solutions that would harm communities, ecosystems, and biodiversity. At best this bill would do little to reduce wildfire threats, and at worst could actually increase wildfire risk. Newly added sections to the Senate version do not mitigate the significant concerns we have with this bill.

This bill is premised on the flawed assumption that indiscriminate logging across millions of acres of forests would serve to reduce or eliminate wildfire risk and protect communities. Like President Trump’s recent Executive Order (EO) 14225, “Immediate Expansion of American Timber Production,” the bill would promote widespread resource extraction by eliminating or limiting public engagement and public disclosure of environmental effects that ensure accountability. The legislation would also do nothing to blunt the harmful impacts of the EO. Most often, sound wildfire mitigation strategies conflict with—and are undermined by—large-scale commercial logging activities. We appreciate the bill drafters’ attempt to add sideboards to constrain abuse of these provisions. Unfortunately, the added text will not provide meaningful safeguards, as we detail below.

Instead of focusing on funding proven ways to protect communities such as home hardening and science-based forest restoration projects in appropriate forest types, this legislation will open millions of acres of federal land to logging without scientific review and community input. This bill also paves the way for magnifying the already-expansive system of logging roads and removing large, old trees that naturally confer fire resilience. Road density has been linked with an increase in human-caused wildfires—as the density of roads increases, so do wildfire ignitions. Logging roads also fragment forest habitat and are sources of chronic sediment that harm water quality in rivers and streams. Older trees store a disproportionately high amount of carbon, mitigating against climate change patterns that exacerbate fires. Furthermore, during a time of mass extinction, the bill also removes Endangered Species Act (ESA) formal consultation requirements at the landscape level that are designed to prevent harm to imperiled species. These landscape-level consultations are necessary to address the cumulative impacts

that individual projects have on threatened and endangered species. Finally, compounding these harms, the legislation makes it harder to hold agencies accountable by curtailing judicial review and limiting community access to the courts.

Our organizations recognize the challenge in addressing threats posed by climate change, including increased risks from wildfire. Unfortunately, the majority of this bill would harm forests, the climate, water, and biodiversity, and would not protect communities. Over the past two decades, Congress has legislated numerous waivers of the National Environmental Policy Act (NEPA), including through the 2003 Healthy Forest Restoration Act (HFRA), new emergency NEPA authorities under Infrastructure Investment and Jobs Act and by legislating numerous categorical exclusions (CEs) through appropriations and Farm Bills and excluding the requirement to re-initiate consultation under the ESA for forest plans. FOFA doubles down on this failed deregulatory approach.

Our organizations welcome the chance to be part of this critical discussion, and we detail our concerns with specific sections of the legislation below.

Section 2: Definitions

Sec. 2(5) (C), (E), and (H) eliminates science-based decisions. These provisions give Forest Service staff carte blanche authority (“as determined by the responsible official”) to determine logging intensity—how many and what trees to log—instead of using scientific standards for ecological integrity, as well as determine what trees are “dying”. These determinations are to be made by the same staff whose performance reviews are already based on meeting mandatory timber targets, and who are now under pressure to meet increased targets under Trump Administration’s timber production EO. Larger, older trees produce more board feet and are generally more commercially valuable. Yet, these same trees are generally the most fire resistant; logging them makes forests less resilient. Also, provision (H) fails to limit “forest stand improvements” “necessary to protect life and property” to areas immediately adjacent to structures in accordance with science about the most effective ways to protect structures through defensible space and home hardening.

Sec. 2(9) defines “hazardous fuels management activities” in a way that does not require that the activity be intended for the purpose of reducing hazardous fuels, nor is it limited to appropriate forest types. Instead, it encompasses any vegetation management activities (or combination thereof) that “reduce the risk of wildfire....” This leaves room to justify any mechanical thinning or other vegetation management activity (such as clear-cut logging) as risk reduction, which could therefore fall within the definition of “hazardous fuels management activities.” Our organizations **oppose the use of this broad definition**, because it invites confusion and potential abuse.

Title I: Landscape Scale Restoration

Subtitle A - Addressing Emergency Wildfire Risks in High-Priority Firesheds

Section 101 waives the designation of fireshed management areas from the requirements of NEPA. A fireshed, as delineated by the Forest Service, is a very large area, typically 250,000 acres (i.e., 390 square miles), and fireshed management areas can comprise multiple firesheds. Changes to fireshed boundaries that identify where fireshed management projects will apply are also waived from NEPA review. Doing so cuts critical scientific and public input from the process and risks inaccurate assessments and designation.

Section 106 directs fireshed management projects to be carried out using authorities in this bill for logging and other activities across designated firesheds. Fireshed management projects are any projects defined in Section 2, including as noted above, authorizing Forest Service staff to determine logging intensity without clear scientific standards.

Section 106 (a)(2)(A)-(C) codifies emergency provisions that allow agencies to log first, look later. These exceptions were never intended to apply across thousands of acres or to be used for these types of projects. Given the scope and range of activity contemplated by the bill, these authorities are at risk of abuse that fireshed projects can use the emergency authorities under NEPA, ESA, and the National Historic Preservation Act (NHPA) if an administration follows the emergency procedures and publishes a notice on a Department of Agriculture or Department of the Interior website. Emergency authorities allow an agency to take reckless action and conduct NEPA or formal consultation under the ESA after the harm is done.

The attempted constraints that were added are, unfortunately, not meaningful and will be ineffective. For example, proponents claim that requiring use of emergency exceptions to comply with Healthy Forest Restoration Act goals will act as a constraint because the primary purpose of these goals is not commercial logging or economic benefit. **However, timber production is rarely ever the stated primary purpose of a project, but economic purposes are described as secondary or tertiary, even though they drive decisions to meet mandatory timber targets in a manner that most often undermines resiliency and ecological integrity.** Additionally, HFRA land management goals, such as "removing vegetation or other activities to promote healthy forest stands" or to "reduce hazardous fuels", are extremely broad and allow for any type of logging activity including clearcutting and post disturbance logging (salvage).

Section 106(b) amends the Healthy Forests Restoration Act to triple the size of multiple CEs to 7,500 or 10,000 acres (i.e., 15.5 square miles) and mandates their use. President Trump's EO to increase timber production included the development of new legislative CEs precisely because this form of environmental review affords agencies more discretion and limits oversight–CEs can be easily exploited in favor of industry. Categorical exclusions are intended for actions with inconsequential and predictable effects—large CEs are inherently prone to significant effects to habitat and watersheds, have very limited opportunity for public engagement, and eliminate consideration of alternative actions that could reduce environmental damage.

The Forest Service has testified that CEs of this size may have significant effects. Logging and other treatments across so many acres is most likely to have significant effects on habitats, watersheds, and ecosystems. Authorizing huge logging projects without objective and detailed environmental and administrative review limits public engagement, truncates the use of best available science, and fails to facilitate appropriate projects for our forests and community safety.

The bill includes new text that fireshed management projects that use CEs should comply with the applicable forest plan or resource management plan. But this is not a meaningful constraint for the following reasons. First, compliance with forest plans is already required by law. Second, forest plans in general do not offer adequate safeguards for mature and old growth forests, riparian areas, limitations on logging road density, etc. And lastly, forest plans can be easily amended to accommodate projects even if those projects originally violate the Forest Plan.

Our organizations oppose Section 106 of the bill.

Subtitle C - Litigation Reform

Section 121 of the bill contains several provisions that inappropriately and severely limit long standing judicial review standards for certain Forest Service and Bureau of Land Management (BLM) actions. This section makes changes to standards for injunctive relief which are not within the Agriculture Committee's jurisdiction. Most notably, it departs from existing law by altering a court's equitable discretion regarding the "public interest" element by adding factors the court must consider and assigning specific weight to afford this element. It goes even further in altering the settled understanding of how courts analyze injunctive relief on Endangered Species Act claims.

Section 121 also dramatically limits the time to seek judicial review to 150 days after the date of publication of a notice in the Federal Register. This abbreviated timeframe places an undue burden on interested parties and communities with limited resources. This is especially true if a claim requires a pre-suit notice period, such as the 60-day notice period required by the Endangered Species Act. The statute of limitations also begins to run based on notice of agency intent to carry out a fireshed management project instead of being based on notice of an agency's final decision to carry out such project, which could be interpreted to begin before a final agency action.

Section 122 of this bill overturns legal precedent set in the "*Cottonwood*" decision, which would weaken the Endangered Species Act by broadly exempting the Forest Service and the BLM from the regulatory requirement under Section 7 of the Endangered Species Act to reinitiate formal consultation when new species are listed, new critical habitat is designated, or new information indicates that implementation of land management plans may be harming threatened or endangered species in a manner that was not previously anticipated. Reinitiation of consultation at the forest plan level is rare, but imperative because it provides the only mechanism to change management practices and apply them uniformly at the landscape scale, avoiding extinction-by-a-thousand-cuts from consultation that occurs solely at the project level.

Based on information obtained through the Freedom of Information Act, data indicates that reinitiation of consultation at the forest plan level for either new information, newly listed species, or designation of critical habitat has only occurred 6 times from 2017-2020 and even then the process was completed relatively quickly.[1] Exempting the Forest Service and BLM from the requirement to reinitiate consultation would harm listed species and, by virtue of prohibiting "new information" as a qualifying condition, functionally codify climate denial and the extinction crisis.

Altogether, this Subtitle of the bill undermines the integrity of the courts. We strongly caution Congress against such measures in this or any other legislation, for it is surely not a means to achieving improved forest management nor a means for preserving an independent system of justice.

Our organizations oppose Sections 121 and 122 of the bill.

Title III: Transparency, Technology, and Partnerships

Section 305 provides that failure to update a forest plan every 15 years as required by the Forest and Rangeland Renewable Resources Planning Act of 1974 will not be considered a violation of that Act. Particularly in conjunction with Section 122, this would significantly undermine science-based forest planning. Although this provision includes a caveat for the agency not working expeditiously in good faith to use its available resources to update forest plans, that caveat would prove challenging to enforce in practice. This effectively insulates the agency from accountability for failing to align its plans with current information. We therefore **oppose this section**.

In conclusion, our organizations recognize the need for science-based policies to help protect communities from wildfire, such as the various community defense and home hardening recommendations put forth by the 2023 Wildland Fire Mitigation and Management Commission Report. We appreciate the sections of Title II, Subtitle A which promote research and grant opportunities for community defense measures and home hardening projects, but note that without appropriated funding, the positive impacts of these provisions will be minimal. We welcome the opportunity to work with members of Congress to advance legislation that prioritizes, incentivizes, and funds those solutions, and follows the best scientific guidance and durable decision-making. Unfortunately, however, the poison pill provisions which we highlight in this letter are notably not part of the Commission Report recommendations, and will exacerbate harm to forest ecosystems while also increasing the threat of wildfire. Therefore, we ask you to **oppose the harmful provisions in the "Fix Our Forests" Act**.

Sincerely,

American Bird Conservancy
Animal Welfare Institute

[1] Data available at FOIA Public Document Search (biologicaldiversity.org).

Archaeology Southwest
Atowi Project
Battle Creek Alliance & Defiance Canyon Raptor Rescue
California Chaparral Institute
California Native Plant Society
Californians for Western Wilderness
CalWild
Cascade Forest Conservancy
Cascadia Climate Action Now
Center for Biological Diversity
Central Oregon LandWatch
Chattooga Conservancy
Climate Communications Coalition
Climate Writers
Colorado Wild Public Lands
Creation Justice Ministries
Defenders of Wildlife
Dogwood Alliance
Eagle Summit Wilderness Alliance
Earth Neighborhood Productions
Earthjustice
Endangered Species Coalition
Environment America
Environmental Law & Policy Center
Forests Forever
FOUR PAWS USA
Friends of Blackwater, Inc.
Friends of the Bitterroot
Friends of the Clearwater
Friends of the Inyo
Friends of the Kalmiopsis
Gallatin Wildlife Association
Great Old Broads for Wilderness, Cascade Volcano Chapter
Green Cove Defense Committee
Green Snohomish
Heart of the Gila
Heartwood
John Muir Project
Klamath-Siskiyou Wildlands Center
Kucinich Institute for Human and Ecological Security
Los Padres ForestWatch
Massachusetts Forest Watch
Mount Shasta Bioregional Ecology Center
Natural Resources Law

NJ Forest Watch
Oil & Gas Action Network
Oregon Wild
Policy Action Team
Protect Our Woods
RESTORE: The North Woods
Restoring Earth Connection
Salem Audubon Society
San Luis Valley Ecosystem Council
Save Our Sky Blue Waters
Sierra Club
Sierra Foothills Audubon Society
Silvix Resources
Soda Mountain Wilderness Council
Southeast Alaska Conservation Council
Southern Environmental Law Center
Southern Utah Wilderness Alliance
Speak For The Trees Too, WV
Standing Trees
Streptanthus Working Group
Terrahana
The Enviro Show
The Fire Restoration Group
The Ocean Project
The Wilderness Society
Trust for Public Land
Umpqua Valley Audubon Society
Umpqua Watersheds
Utah Physicians for a Healthy Environment
Western Watersheds Project
Winter Wildlands Alliance
Yaak Valley Forest Council