

117TH CONGRESS
2D SESSION

S. 4837

To amend the Omnibus Public Land Management Act of 2009 to establish within the Mount Hood National Forest in the State of Oregon Indian Treaty Resources Emphasis Zones, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2022

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Omnibus Public Land Management Act of 2009 to establish within the Mount Hood National Forest in the State of Oregon Indian Treaty Resources Emphasis Zones, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INDIAN TREATY RESOURCES EMPHASIS ZONES,**
4 **MOUNT HOOD NATIONAL FOREST.**

5 (a) IN GENERAL.—Subtitle C of title I of the Omni-
6 bus Public Land Management Act of 2009 (Public Law
7 111–11; 123 Stat. 1007) is amended by adding at the end
8 the following:

1 **“SEC. 1208. INDIAN TREATY RESOURCES EMPHASIS ZONES.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) NATIONAL FOREST.—The term ‘National
4 Forest’ means the Mount Hood National Forest in
5 the State.

6 “(2) RESERVATION.—The term ‘Reservation’
7 means the reservation of the Tribe.

8 “(3) TRADITIONAL ECOLOGICAL KNOWL-
9 EDGE.—The term ‘traditional ecological knowledge’
10 means a body of observations, oral and written
11 knowledge, practices, and beliefs that promotes envi-
12 ronmental sustainability and the responsible stew-
13 ardsip of natural resources through relationships
14 between humans and environmental systems, applied
15 across biological, physical, and cultural systems.

16 “(4) TREATY.—The term ‘Treaty’ means the
17 Treaty between the United States and the confed-
18 erated tribes and bands of Indians in Middle Or-
19 egon, concluded at Wasco June 25, 1855 (12 Stat.
20 963).

21 “(5) TRIBE.—The term ‘Tribe’ means the Con-
22 federated Tribes of the Warm Springs Reservation
23 of Oregon.

24 “(6) ZONE.—The term ‘Zone’ means an Indian
25 Treaty Resources Emphasis Zone established under
26 subsection (b)(1).

1 “(b) ESTABLISHMENT.—

2 “(1) IN GENERAL.—There is established within
3 the area of the National Forest described in para-
4 graph (3) 1 or more zones, each of which shall be
5 known as an ‘Indian Treaty Resources Emphasis
6 Zone’, consisting of any area within the National
7 Forest with respect to which the Tribe and the Sec-
8 retary enter into a memorandum of understanding
9 under subsection (c)(1) to protect and enhance
10 Treaty resources or to protect the Reservation from
11 wildfire.

12 “(2) PURPOSES.—The purposes of a Zone
13 are—

14 “(A) to meet the trust responsibility of the
15 United States in protecting the exercise of off-
16 Reservation Treaty rights reserved by the Trea-
17 ty in the National Forest;

18 “(B) to ensure that land and resource
19 management priorities in the Zone maintain
20 and enhance resources, activities, and access re-
21 served by the Treaty;

22 “(C) to protect Treaty rights and re-
23 sources and the Reservation from wildfire,
24 drought, and insect and disease outbreaks in
25 the National Forest;

1 “(D) to recognize and integrate traditional
2 ecological knowledge as an important part of
3 the best available scientific information that is
4 used in forest and resource management areas
5 within the Zone;

6 “(E) to improve the technical under-
7 standing of Forest Service employees in the Na-
8 tional Forest with respect to the trust respon-
9 sibilities of the Federal Government (including
10 the application of those responsibilities to ongo-
11 ing forest management processes and prac-
12 tices); and

13 “(F) to enable a co-management strategy
14 between the Forest Service and the Tribe.

15 “(3) SCOPE.—This section shall apply to any
16 area within the boundaries of the National Forest in
17 which the Tribe retains Treaty rights.

18 “(c) MANAGEMENT STRATEGY.—

19 “(1) MEMORANDUM OF UNDERSTANDING.—Not
20 later than 60 days after the date of enactment of
21 this section, the Secretary shall seek to enter into a
22 memorandum of understanding with the Tribe—

23 “(A) to better fulfill the trust relationship
24 between the United States and the Tribe by en-
25 suring that the Forest Service includes the

1 Tribe in the land and resource management de-
2 cision-making process in a Zone to avoid ad-
3 verse effects on Treaty rights and management
4 of the resources on which the Treaty rights de-
5 pend; and

6 “(B) to cooperatively develop a manage-
7 ment strategy for the 1 or more Zones, includ-
8 ing guiding documents for the management of
9 the National Forest and ecosystems for Treaty
10 rights and resources within the Zones.

11 “(2) REQUIREMENTS.—A memorandum of un-
12 derstanding entered into under paragraph (1)
13 shall—

14 “(A) include an assessment of wildfire risk
15 to—

16 “(i) the Reservation from the Na-
17 tional Forest; and

18 “(ii) Treaty and cultural resources
19 within the National Forest;

20 “(B) provide that forest restoration and
21 management planning within a Zone includes,
22 and is guided by, reserved Treaty rights, and
23 the resources on which the Treaty rights de-
24 pend;

“(C) include requirements that no temporary or permanent road shall be constructed within a Zone, except as necessary—

“(i) to meet the requirements for the administration of a Zone;

“(ii) to protect public health and safety;

“(iii) to respond to an emergency; or

“(iv) for the control of fire, insects, or diseases, subject to such terms and conditions as the Secretary determines to be appropriate; and

“(D) to the maximum extent practicable, to meet the purposes of this section, provide for—

“(i) the retention of large trees, as appropriate for the historic forest structure or promotion of fire-resilient stands; and

“(ii) the retention of any commercial revenue generated from activities in a Zone for restoration planning and implementation authorized by this section.

“(3) ROAD MAINTENANCE.—

“(A) IN GENERAL.—Subject to appropriations, the Secretary shall maintain existing

1 roads determined by the Secretary, in consulta-
2 tion with the Tribe, to be necessary for author-
3 ized existing uses and the administration of a
4 Zone.

5 “(B) INCLUSION IN MEMORANDUM OF UN-
6 DERSTANDING.—The requirement under this
7 paragraph shall—

8 “(i) not expire; and

9 “(ii) be included in any memorandum
10 of understanding entered into under para-
11 graph (1).

12 “(4) VALID EXISTING RIGHTS.—The designa-
13 tion of a Zone shall be subject to valid existing
14 rights.

15 “(5) WITHDRAWAL.—Subject to valid existing
16 rights, all public land within a Zone, and all land
17 and interests in land acquired by the United States
18 within a Zone, shall be withdrawn from—

19 “(A) all forms of entry, appropriation, or
20 disposal under the public land laws;

21 “(B) location, entry, and patent under the
22 mining laws; and

23 “(C) operation of the mineral leasing, min-
24 eral materials, and geothermal leasing laws.

1 “(6) DEADLINES.—To the maximum extent
2 practicable, the Secretary shall—

3 “(A) not later than the date that is 180
4 days after the date of enactment of this section,
5 ratify a memorandum of understanding under
6 paragraph (1); and

7 “(B) not later than the date that is 2
8 years and 180 days after the date of enactment
9 of this section, complete a management strategy
10 for the 1 or more Zones.

11 “(d) REQUIREMENTS FOR IMPLEMENTATION.—In
12 carrying out this section, the Secretary shall, to the max-
13 imum extent practicable—

14 “(1) use all existing authorities available to the
15 Secretary, including, as applicable—

16 “(A) the Tribal Forest Protection Act of
17 2004 (Public Law 108–278; 118 Stat. 868);

18 “(B) the good neighbor authority under
19 section 8206 of the Agricultural Act of 2014
20 (16 U.S.C. 2113a);

21 “(C) title XXVI of the Energy Policy Act
22 of 1992 (25 U.S.C. 3501 et seq.);

23 “(D) the stewardship end result con-
24 tracting authority under section 604 of the

1 Healthy Forests Restoration Act of 2003 (16
2 U.S.C. 6591c);

3 “(E) section 102 of the Indian Self-Deter-
4 mination and Education Assistance Act (25
5 U.S.C. 5321); and

6 “(F) the authority to enter into contracts
7 with the Tribe to expedite projects, on request
8 by the Tribe, under section 8703 of the Agri-
9 culture Improvement Act of 2018 (25 U.S.C.
10 3115b);

11 “(2) develop a programmatic analysis for inte-
12 grating the management strategy for the 1 or more
13 Zones under the National Environmental Policy Act
14 of 1969 (42 U.S.C. 4321 et seq.); and

15 “(3) pursue a programmatic biological assess-
16 ment to implement the actions analyzed under para-
17 graph (2) under section 7 of the Endangered Species
18 Act of 1973 (16 U.S.C. 1536).

19 “(e) REVIEW OF MOU.—Not later than 5 years after
20 the date on which a memorandum of understanding is en-
21 tered into under subsection (c)(1), and not less frequently
22 than once every 5 years thereafter, the Secretary shall,
23 in coordination with the Tribe, review the accomplish-
24 ments of the memorandum of understanding to determine

1 if the memorandum of understanding shall be extended
2 or modified.

3 “(f) FUNDING AGREEMENT.—The Secretary shall de-
4 velop a funding agreement with the Tribe, including the
5 use of appropriated funding, to ensure that the Tribe, in
6 partnership with the Forest Service, has the capacity to
7 participate in designing, implementing, and monitoring
8 projects within a Zone.

9 “(g) MONITORING.—

10 “(1) IN GENERAL.—The Secretary shall enter
11 into an agreement with the Tribe under which the
12 Tribe may, at the discretion of the Tribe—

13 “(A) review and provide comments on any
14 land management prescriptions developed by
15 the Secretary for a Zone;

16 “(B) monitor—

17 “(i) the long-term effectiveness of res-
18 toration and management treatments of
19 actions carried out in a Zone; and

20 “(ii) any other action or lack of action
21 that is detrimental to the purposes of a
22 Zone; and

23 “(C) share any other information with the
24 Forest Service that the Tribe determines to be
25 necessary to further the purposes of a Zone.

1 “(h) MANAGEMENT OF CULTURAL FOODS OBLIGA-
2 TIONS.—

3 “(1) IN GENERAL.—If the management plan
4 described in section 1207(c) has not been developed
5 and implemented as of the date of enactment of this
6 section, the Secretary shall—

7 “(A) develop and implement a manage-
8 ment plan in accordance with that section not
9 later than 180 days after the date of enactment
10 of this section; or

11 “(B) enter into a contract with the Tribe
12 to draft a management plan described in that
13 section pursuant to the authority of the Sec-
14 retary under the Indian Self-Determination and
15 Education Assistance Act (25 U.S.C. 5301 et
16 seq.).

17 “(2) DEFINITION OF CULTURAL FOODS.—For
18 purposes of the management plan described in para-
19 graph (1), the Secretary shall ensure that the term
20 ‘cultural foods’ shall be defined by the Tribe.

21 “(3) INCLUSION.—The management plan de-
22 scribed in paragraph (1) may be included in the
23 management strategy for the 1 or more Zones devel-
24 oped under subsection (c).

1 “(i) LAND AND RESOURCE MANAGEMENT PLAN.—
 2 To the maximum extent practicable, any revisions to the
 3 land and resource management plan applicable to the Na-
 4 tional Forest under the Forest and Rangeland Renewable
 5 Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.)
 6 shall—

7 “(1) be made in consultation with the Tribe
 8 and other Indian Tribes with historical or legal in-
 9 terests;

10 “(2) be consistent with the management strat-
 11 egy for the 1 or more Zones; and

12 “(3) protect Treaty rights, and allow manage-
 13 ment of the resources on which the Treaty rights de-
 14 pend, for purposes of considering any changes to the
 15 applicable land and resource management plan or
 16 land allocation under the applicable land and re-
 17 source management plan.

18 “(j) EFFECT.—Nothing in this section—

19 “(1) enlarges, establishes, or diminishes the
 20 rights of any Indian Tribe, including—

21 “(A) the exercise of hunting, fishing, gath-
 22 ering, and pasturing of livestock rights in usual
 23 and accustomed areas; and

1 “(B) Indian hunting, fishing, or gathering
2 activities conducted under an agreement with
3 the State;

4 “(2) provides any Indian Tribe with exclusive
5 use of any area within the National Forest; or

6 “(3) limits the authority of the Secretary to
7 enter into a separate agreement with any other In-
8 dian Tribe with a treaty right or recognized legal in-
9 terest in the National Forest.

10 “(k) FUNDING.—

11 “(1) AUTHORIZATION OF APPROPRIATIONS.—

12 There is authorized to be appropriated to carry out
13 this section \$3,500,000 for each of fiscal years 2023
14 through 2027.

15 “(2) AUTHORITY TO USE OTHER FUNDS.—The
16 Secretary may use existing funds of the Forest Serv-
17 ice and Forest Service program revenue generated
18 from forest restoration activities to carry out the
19 management strategy for the 1 or more Zones.”.

20 (b) CLERICAL AMENDMENT.—The table of contents
21 of the Omnibus Public Land Management Act of 2009
22 (Public Law 111–11; 123 Stat. 991) is amended by insert-
23 ing after the item relating to section 1207 the following:

“Sec. 1208. Indian Treaty Resources Emphasis Zones.”.

