Chapter 2: Tribal Rights and Interests

Introduction

The Forest Service understands the significance and interconnectedness of treaty rights and resources within American Indian tribal cultures. Many tribal members continue to foster longstanding, customary relationships with natural resources on national forests and grasslands, continuing an interdependent relationship whereby tribal practices nurture ecological systems, and those systems in turn nurture and sustain cultural identity and continuity. Laws protect American Indian rights to use and possess sacred objects; to protect their ancestral graves, archaeological, and cultural sites; to secure the freedom of worship through ceremonial and traditional practices; and to collect native plant and animal resources for traditional cultural purposes. Memoranda of understanding for collaboration, consultation, and cooperation in managing natural resources on national forests and grasslands are in effect between the Forest Service and multiple tribes within the Bioregional Assessment of Northwest Forests.

The Forest Service maintains government-to-government relationships with American Indian tribes that have sovereign governments. These relationships are important for protecting and managing ecological resources to honor, support, and respect cultural, spiritual, and community interests and to integrate these as much as possible into agency planning and project implementation. In their treaties with the United States, the tribes expressly reserved many of their aboriginal rights, including rights to harvest a range of resources both on and off reservation lands. The Forest Service has certain legal responsibilities to American Indian tribes beyond those identified in treaties; these are clarified in statutes, executive orders, and case law interpreted for the protection and benefit of federally recognized American Indian tribes. In meeting these responsibilities, the Forest Service consults with tribes whenever proposed policies or management actions may affect tribal interests.

More than 70 federally recognized American Indian tribes have tribal lands or territory within the Northwest Forest Plan area (Vinyeta and Lynn 2015), and there are additional tribes within the NWFP area that are not currently federally recognized (Long et al. 2018). A significant portion of lands ceded by tribes were established as part of the National Forest System by the Organic Administration Act of June 4, 1897. While federal law governs relations with all federally recognized American Indian tribes, each tribe is different and is recognized as a separate and unique government. While some tribes have treaties, other tribes were recognized under different authorities and have different rights.

Treaty rights and the historical relationships between tribes and the lands they aboriginally relied upon may differ greatly among tribes. Cultural differences between tribes can also be significant. In some cases, several tribes may each have legitimate interests in the same lands because they each may have occupied or otherwise used those lands during overlapping or different historical periods. These factors and others combine to make each Forest Service-tribal consultation relationship unique.

Tribal communities often rely on traditional foods, such as water, salmon, game (such as elk and deer), roots (such as cous, camas, and bitterroot), and berries (such as huckleberries and chokecherries). While these plants and animals, as well as water and other resources, have cultural significance, they also provide nutrition to many tribal people. Culturally significant foods are especially important and provide critical subsistence given the high incidence of poverty in American Indian communities.

Environmental justice policies are also relevant to American Indian populations, though some applications may not fully capture the dynamics of tribal populations particularly well. For example, American Indian population representations in the census are prone to inconsistent patterns as respondents change their self-identification of race and ethnicity.

The following section provides an overview of the relationships that the Forest Service has with tribes and offers general observations. This section outlines resource management themes that are frequent consultation topics and highlights ongoing resource concerns that will be discussed collaboratively with interested and affected tribes throughout planning processes, project implementation, research, and monitoring.

What is Working Well

What is Working Well 1—Ecosystems Support Tribal Values

Ecosystems within the BioA area provide and support a broad range of ecocultural resources important to tribes, including foods, medicine, materials, and nonmaterial values. Newer and emerging forest management concepts, including restoring frequent-fire dependent systems, align with tribal ecocultural resource perspectives, and are a central strategy for promoting and revitalizing tribal resources. Restoring fire, combined with other tending practices, perpetuates resource conditions that support tribal use. Landscape-scale restoration ensures long-term resource sustainability and availability and provides social and economic benefits, including resource security and opportunities for restoration-related work.

Call-out box 7. First foods

First foods are traditional foods that have been and remain significant in some American Indian tribal diets and cultures (Lynn et al. 2013). Culturally significant foods, including water, fish, big game, roots, and berries, are used in ceremonies as well as for sustenance and economic benefit to perpetuate American Indian sovereignty and cultures. The Forest Service understands the tribal significance of treaty rights and traditional resources, including first foods. Many tribal members have longstanding, customary relationships with natural resources on National Forest System lands. Tribal practices nurture ecological systems as part of interdependent relationships, which in turn nurture and sustain cultural continuity and identities. Ideas to promote tribal ecocultural resources, such as first foods, are consistent with emerging direction in forest management and the management options presented in the Bioregional Assessment.

What is Working Well 2—Aquatic Resource Benefits

The NWFP's Reserve and Aquatic Conservation Strategy and its four main components, the riparian reserve system, key watersheds, watershed analysis, and watershed restoration, contribute to improved watershed conditions through both passive and active management. Active management strategies, including restoration actions in key watersheds, also provide needed restoration to targeted areas within the BioA area to improve refuge habitat for at-risk fish stocks and serve as sources of high-quality water. Combined, these management approaches provide long-term resource benefits that are central to tribal well-being.

Pacific Northwest native fish, particularly salmon, steelhead, redband trout, and lamprey have been important resources for tribal communities for thousands of years. These resources are often included in their consideration of first foods and tribal treaty rights protect them. Under the NWFP, habitat restoration for these species has increased, and such restoration is increasingly important to protecting species that are at high risk from continued climate change and other stressors.

Aquatic restoration projects often require timber acquired from National Forest System lands to place in streams and floodplains to restore habitat for fish and other aquatic species. Tribes frequently finance and implement such restoration projects.

What is Working Well 3—Tribal Collaboration

The Forest Service continues fostering collaborative partnerships with tribes built upon the legal foundations and the desire to include native knowledge in forest planning, research, implementation, and monitoring. Agency collaboration and consultation with tribes have benefited from the increased role of tribal liaisons and through the increased prominence of American Indians in key leadership positions—such as forest supervisors and district rangers—within the Forest Service.

Key Change Issues

Long et al. (2018) identified key change issues in *Tribal Ecocultural Resources and Engagement*.

Key Change Issue 1—Consultation, Tribal Rights and Access, and Federal-Tribal Forest Management Compatibility

The 20-year monitoring report, *Strengthening the Federal-Tribal Relationship: A Report on Monitoring Consultation Under the Northwest Forest Plan* (Vinyeta and Lynn 2015), assessed the federal-tribal relationship through interviews with tribes within the NWFP area, and through several case studies to reveal tribal experiences and perspectives on how their rights and interests have been affected by federal policy. The three primary categories for key findings include consultation, tribal rights and access, and federal-tribal forest management compatibility.

The 20-year monitoring report provides a brief summary of these interrelated areas (Vinyeta and Lynn 2015):

> "Of particular importance is the need to align tribal and federal visions on what constitutes consultation, the need to ensure that agency staff are culturally competent and informed on treaty rights, other tribal rights, the federal trust responsibility, the history of federal-tribal relations, and the need to ensure that tribes' needs, knowledges, and practices shape not only tribal, but also federal forest management."

Planning Considerations

Planning considerations applicable to land management planning from Long et al. (2018) include the following:

- Recognize each tribes' unique vision for consultation and integrate into management actions.
- Continue government-to-government relationships.
- Some tribes may desire formalized consultation policies through memoranda of understanding or agreements that are individualized and include procedures, tribal contacts, and specifically identify issues of importance that affect tribal interests and rights.
- Customize tribal notification to allow tribes more efficiency in identifying topics they deem critical.
- Use more personal forms of communication, including face-to-face meetings and phone calls that may add legitimacy and can be more culturally appropriate for tribal members.
- The Forest Service should inform tribes of intergovernmental forum opportunities related to the planning process and encourage tribal participation.

Tribal rights and access recommendations and potential planning solutions include the following:

- Develop and adopt procedural frameworks that protect sensitive tribal and traditional knowledge.
- If needed, develop and use effective conflict resolution processes in federal-tribal agreements such as memoranda of understanding and memoranda of agreement.

Consult with tribes to find appropriate solutions in situations where management priorities and actions (such as permitting, road access, and interactions with commercial and noncommercial harvesters for nontimber forest products) interfere with tribal rights and access (Vinyeta and Lynn 2015). Improving federal-tribal management compatibility recommendations and planning solutions include the following:

- Consult and collaborate with tribes to (1) make federal and tribal forest management practices more compatible, (2) align federal and tribal management programs, and (3) improve time and cost efficiency for both agencies and tribes.

- Compatible management approaches include a focus on ecosystem management rather than single species management; holistic forest conservation of forest resources, including riparian areas, water quality, and fish and wildlife habitat; and management practices that include prescribed fire.

Look for opportunities for tribal land management on ancestral lands and promote policies like the Tribal Forest Protection Act that fosters tribal management. Tribal communities maintain widespread interest in forest ecosystems. Tribal engagement, consultation, and partnerships are important to achieving land management objectives as prescribed in the Forest Service 2012 Planning Rule. Engagement also upholds tribal rights and federal responsibilities and recognizes the importance of tribal ecocultural resources on ancestral lands. Recommendations and potential planning solutions associated with engaging tribes in forest planning and management include the following:

- Designate special tribal stewardship areas to achieve both social and ecocultural objectives for tribes and the Forest Service.
- Coordinate land management planning with related planning efforts of federally recognized American Indian tribes and consider the policies of approved tribal land resource management programs. Coordination is an important element in land management planning and is required under agency regulation and policy as well as regulations outlined in the Federal Land Policy Management Act of 1976.

Key Change Issue 2—Availability of Ecocultural Resources

Both social and biophysical factors reduce the ability of tribes to obtain ecocultural resources from public lands in the desired quality and quantity. Important tribal resources considered “first foods” can be degraded by multiple factors, including changes in fire regimes, invasive species, altered hydrologic systems, species extirpation, and other historical legacies, including reduced or omitted tribal landscape practices and influence. The inability of the tribes to readily obtain ecocultural resources from national forests and grasslands is due to the following:

- Reduced fire frequency in drier, inland areas, and locations near historic tribal settlements, trade and travel routes, and harvesting and hunting areas have reduced the production of ecocultural resources unique to such areas. This includes areas representative of unique ecological transition zones, including areas defined by the edges between forests and grasslands or wetlands.
- Additional Endangered Species Act listings of fish species and distinct population segments, especially salmonids and other anadromous fish, have occurred even after the NWFP and other aquatic strategies in the BioA area, such as PacFish and InFish, were developed and adopted.
- Barriers to fish passage from forest roads continue to affect aquatic system connectivity and productivity, where road-stream crossings are not passable to native fish, and a large percentage of these locations have not been sufficiently evaluated.

- Hydrologic systems, instream flows, and water quality sustain important fishery, aquatic, and riparian resources for tribes. Existing impacts to these systems include irrigation, mining operations, and water diversions for illicit marijuana-based operations, and may be further impacted by population growth and climate change.

Planning Considerations

Management recommendations for forest plan revision consideration were presented by Long et al. (2018) and include the following:

- Improved productivity and availability of tribal ecocultural resources is needed, and results from increased active forest management, including understory and variable overstory thinning and increased use of fire. Activities can focus on conserving large old trees, cultural sites, and other resources vulnerable to severe disturbances.
- Habitat maintenance and restoration for species reintroductions should be consistent with promoting direct tribal needs, providing for species' habitat needs, and working with conservation partners to achieve multiple benefits.
- Address aquatic organism passage and habitat restoration projects on National Forest System lands and work cooperatively with tribes to accelerate the program.
- Tribal ecocultural resources are associated with diverse vegetation communities, including hardwood-dominated forests and woodlands (including "old growth"), and non-forest communities such as bogs, prairies, wetlands, and meadows. Classifications and management goals that focus on vegetation type and seral stage should capture these diverse and unique conditions desired by tribes.
- Continue and improve resource monitoring that is relevant to promoting tribal ecocultural resources.