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## NORTHWEST FOREST PLAN

THE FIRST 25 YEARS (1994–2018)

# Strengthening the Federal-Tribal Relationship: 25-Year Report on Monitoring Consultation under the Northwest Forest Plan

Haley Case-Scott and Kathy Lynn





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**Strengthening the Federal-Tribal Relationship:  
25-Year Report on Monitoring Consultation under the Northwest Forest Plan**

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## Executive Summary

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The Northwest Forest Plan (NWFP), a long-term, comprehensive ecosystem management plan encompassing over 24 million acres of public land in Washington, Oregon, and California was established in 1994. The plan directs the management of nineteen national forests and seven Bureau of Land Management districts. The NWFP directs agencies that manage federal land within the range of the northern spotted owl to monitor the effects of implementing the Northwest Forest Plan's standards and guidelines. The standards and guidelines presented in the initial monitoring report "...supersede other direction except treaties, laws, and regulations unless that direction is more restrictive or provides greater benefits to late successional forest related species." (NWFP – Standards and Guidelines)

Eighty-nine federally recognized American Indian tribes have identified tribal lands, ancestral territory, or usual and accustomed areas within the NWFP boundary. One element of monitoring, identified in the Record of Decision (ROD) for the NWFP, is "American Indians and Their Culture." The NWFP standards and guidelines task the USFS and BLM with monitoring conditions and trends of the trust resources within the NWFP boundary that are identified in treaties between the United States government and American Indians. There are two main topics for this tribal trust resources monitoring:

- Effectiveness of the coordination between federal agencies and tribes to ensure adequate protection of religious or cultural heritage sites; and
- Adequacy of access by American Indians to forest species, resources, and places important for cultural, subsistence, or economic reasons, particularly those identified in treaties.

This 25-year monitoring effort assesses the current state of federal-tribal relations under the NWFP, and identifies trends in the effectiveness of those relations. The full report includes findings from interviews conducted with 25 tribes within the NWFP boundary. Tribal representatives were asked to assess the federal-tribal relationship under the NWFP. This report also includes several case studies that provide voices from tribes about their experiences with USFS and BLM management issues, and their perspectives on how the NWFP has affected their rights and interests. The interviews and case studies revealed a number of areas where improvements could be made in order to make federal-tribal relations more effective and meaningful. They also revealed best practices for other tribes to possibly follow in terms of improving the federal-tribal relationship.

1. Consultation Recommendations
2. Tribal Rights and Access Recommendations
3. Recommendations for Improving Federal-Tribal Forest Management Compatibility

## I. Introduction

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The Northwest Forest Plan (NWFP), a long-term, comprehensive ecosystem management plan encompassing over 24 million acres of public land in Washington, Oregon, and California was established in 1994. The Northwest Forest Plan was the final product of the 1993 Forest Conference, convened by President Clinton in Portland, OR. The conference brought together diverse groups with divergent views on how federal forest lands in the Pacific Northwest should be managed. Conference organizers sought to resolve decades of conflict between the timber industry and conservationists seeking to protect old-growth forests and the endangered species that depend on them. The overall vision of the NWFP is to protect and manage impacted species and their habitats, while simultaneously providing a sustainable and predictable timber economy, or economic alternatives.

The 1994 NWFP was meant to guide federal land management for USDA Forest Service (USFS) and Bureau of Land Management (BLM) lands within the range of the Northern spotted owl. The 24 million acres of land subject to the NWFP were divided into seven land allocation categories based primarily on ecological characteristics. The categories were congressionally reserved areas, late-successional reserves, adaptive management areas, managed late-successional areas, administratively withdrawn areas, riparian reserves, and matrix. Each category dictates the types of management strategies, as well as the types of land use and extraction (if any), that are allowable on that land type. The Record of Decision (ROD) for the 1994 NWFP directs the USFS and BLM to monitor their implementation of the plan's standards and guidelines. The ROD prescribes three basic forms of monitoring: implementation, to determine if the standards and guidelines established in the plan are being met; effectiveness, to verify if the standards and guidelines are achieving the desired results; validation, to assess whether the underlying assumptions of the standards and guidelines are sound (NWFP ROD, 1994, p. E-1).

Effectiveness monitoring includes the category "American Indians and Their Culture." Broadly speaking, this monitoring serves to assess the impact of implementing the NWFP on trust resources, religious and cultural heritage sites, and access to species, resources and places of cultural and economic importance. Also covered is the effectiveness of coordination or liaison between federal land management agencies and tribal authorities, to assure protection of resources, sites, and access.

Eighty-nine federally recognized American Indian tribes have identified tribal lands, ancestral territory, or usual and accustomed areas within the NWFP boundary. Each tribe located within the NWFP, as well as those elsewhere in the United States, has a unique treaty history and relationship with the federal government and the lands that they have lived on for time immemorial. The treaties signed between the tribes and the Federal government were meant to secure tribal rights and access to ancestral lands or usual and accustomed areas in exchange for federal ownership of those lands. The treaties put tribal lands under a federal trust status which requires the Federal government to protect and manage those lands for tribal use. A few of the tribes who participated in interviews had treaties that were never ratified, subsequently, their treaty rights were not secured. Respondents from non-treaty tribes commented that this has created a separate set of issues for non-treaty tribes located within the NWFP area boundary. The majority of tribal lands located within the NWFP boundary are managed by federal agencies, and affect critical tribal cultural and natural resources in different ways.

This report includes four maps developed in 2016 for the 20-year Northwest Forest Plan Tribal Monitoring Report (see appendix E), which illustrates the range of the Northwest Forest Plan in relation to both federal and tribal lands. Map 1 illustrates the full extent of the NWFP boundary across Washington, Oregon, and California, with tribal reservations, Rancherias, and trust lands included for reference. Maps 2, 3 and 4 provide a more detailed illustration of tribal reservations, Rancherias, and



trust lands, as well as federal lands, in relation to the NWFP boundary in Washington, Oregon, and California, respectively. It is important to note that in the Washington and California maps there are tribal bands, Rancherias and/or tribes lying outside the NWFP boundary that have ancestral territory within the boundary and are therefore still affected by NWFP policy. These tribal bands, Rancherias and/or tribes are marked with a single asterisk. On the California map, tribal bands, Rancherias and/or tribes appearing on the map but whose lands and territories lie outside the NWFP boundary are marked with two asterisks. (20-year tribal monitoring report)

### **Previous Federal-Tribal Relations Monitoring Efforts**

The first federal-tribal relations monitoring effort was completed in 2003. The monitoring results were published in 2006 as: “Northwest Forest Plan- the First 10 Years (1994-2003) Effectiveness of the Federal-Tribal Relationship” (R6-RPM-TP-02-2006). In this report, the views of fifteen tribes were presented. This report also led to the chartering of a Tribal Monitoring Advisory Group (TMAG) under the proviso of the Interagency Advisory Committee to develop recommendations to improve the protocol and techniques used to monitor the federal-tribal relationship and obtain broader tribal participation.

The second round of monitoring took place in 2008 and was published in 2009 as ‘*Northwest Forest Plan – the first 15 years (1994-2008) Effectiveness of the Federal-Tribal Relationship*’ (R6-RPM-TP-01-2011). For this round, the TMAG devised an approach to provide an opportunity for all seventy-five federally recognized tribes with interests in the federally managed land within the Plan boundary to participate in an interview to provide insight and perspectives about consultation under the Northwest Forest Plan.” (20 year report, 9) The TMAG developed a survey instrument that reflected lessons learned from the initial monitoring effort and focused on the consultation process, outcomes, and recommendations from the tribes on how to strengthen government-to-government relationships. Thirty-seven tribes participated in interviews.

The third round of monitoring took place in 2014 and was published in 2015 as “*Northwest Forest Plan – The First 20 Years (1994-2013) Strengthening the Federal-Tribal Relationship: A Report on Monitoring Consultation under the Northwest Forest Plan*” (FS-R6-PNW-2015-0005). For this round of monitoring, the University of Oregon interviewed 27 natural and cultural resources staff from tribes within the Plan boundary. These interviews used the same survey instrument developed by the TMAG in the 15-year NWFP tribal monitoring report.

### **Amendments to the 1994 NWFP**

Since its implementation in 1994, the NWFP has gone through various changes in implementing the plan’s goals and the standards and guidelines. A few examples to note include the removal of the Survey and Management Guidelines, failure to implement the adaptive management concept, elimination of the Regional Ecosystem Office, the disbandment of Interagency Advisory Committees and Provincial Advisory Committees, and the 2016 Record of Decision which removed Bureau of Land Management lands from the Northwest Forest Plan.

For example, the 2004 Survey and Manage Final Supplemental Environmental Impact Statement (FSEIS) and associated Record of Decision (ROD) removed the Survey and Management Mitigation Measure Standards and Guidelines from the NWFP because it was found to be restrictive on agencies and their ability to achieve the goals outlined in the 1994 NWFP, such as conducting forest health treatments and

providing an adequate level of timber harvest. The 2004 ROD selected Alternative 2, which removed the Survey and Manage measure through the following steps:

1. "Continue to provide for diversity of plant and animal communities in accordance with the National Forest Management Act and conserve rare and little known species that may be at risk of becoming listed under the Endangered Species Act.
2. Reduce the Agencies' cost, time, and effort associated with rare and little known species conservation.
3. Restore the Agencies' ability to achieve Northwest Forest Plan resource management goals and predicted timber outputs." (2004 ROD)

After this decision was implemented, conservation groups filed a complaint in 2004 challenging the adequacy of the 2004 FSEIS and ROD. The court found that the decision to remove the Survey and Manage standards and guidelines did not comply with the National Environmental Policy Act.

## **25-Year Federal-Tribal Relations Monitoring Effort**

This 25-Year monitoring report presents the findings from the fourth monitoring effort assessing federal-tribal relations under the NWFP. The TMAG has continued to be instrumental in guiding the monitoring process. The approach and survey instrument used for the 25-year monitoring effort is consistent with the 15-year and 20-year monitoring protocols. The TMAG developed this instrument to establish a baseline and provide opportunities to monitor changes over time, and to have a consistent way to report key aspects of federal-tribal relationships within the Northwest Forest Plan.

### ***Methods***

The U.S. Forest Service and Bureau of Land Management sent a joint letter to the chairpersons of all tribes with tribal lands and/or territories within the NWFP boundary to invite them to participate in the interviews and introduce the monitoring contractor. The University of Oregon followed up with emails and/or phone calls to natural resources staff with each of the tribes to schedule interviews with willing tribes and participants. Staff members were invited to contribute an interview provided they had been authorized by the appropriate tribal chairperson or tribal council body. Of the 89 recognized tribes with lands or (ancestral?) territories within the NWFP boundary, 30 are located in Washington, nine in Oregon, 48 in California, one in Idaho, and one in Oklahoma. The University of Oregon attempted to contact staff from all 89 tribes to invite them to participate in interviews. Staff from 25 tribes -- six from Oregon, 14 from Washington, and six from California granted an interview.

One tribe declined to participate in an interview because they felt they had little to no interaction with the Northwest Forest Plan and had little to contribute to the study. Some tribes that did not participate in the interviews indicated that lack of funding and tribal staff capacity impacted their ability to participate in these kinds of processes. One tribe stated that they must be "highly selective" in allocating their time.

The views and opinions expressed by interview respondents do not necessarily represent the views of tribal council members, tribal members, or other tribal staff. The findings in this report thus provide examples of some of the concerns, successes, and challenges that tribal staff may have as they seek to protect tribal interests, rights, and resources. The results of this report should not be interpreted as the official position of tribal leadership authorities, though in some cases they may be equivalent.

### ***Interview Questions***

The TMAG developed a set of interview questions in the 15-year monitoring report to provide a baseline of issues related to the federal-tribal relationship under the Northwest Forest Plan. This baseline is the reference for subsequent monitoring of progress towards improvement in federal-tribal relations with time. The same set of interview questions has been used in the 20-year and 25-year monitoring reports. While questions in the interview guide focus on the Northwest Forest Plan, they are written broadly enough to allow for participants to discuss consultation and the government-to-government relationship more broadly. This is particularly important for tribes that have had little interaction with the NWFP. Specifically, interview questions focus on:

- consultation process, outcome, and tracking
- access and protection
- effect on tribal values of interest (cultural, social, and economic)
- strengthening federal-tribal relations

A list of the interview questions used in the monitoring can be found in Appendix A.

### ***Confidentiality and Informed Consent***

Prior to conducting interviews, the University of Oregon notified tribes and participants of confidentiality and informed consent issues of participating in the monitoring process. Every participant was informed that the information collected from the interviews would be synthesized and published into the final report. Participants were also notified that the data collected through the interviews would be separated from their identities so that all data could be kept confidential. Finally, participants were notified that raw data collected from the interviews could not be kept completely confidential because the information collected would become property of the federal government and subject to the Freedom of Information Act (FOIA). The final report does not include any information that can be attributed to a specific person or tribe.

### ***Case Studies***

As part of the effort to monitor government-to-government relationships under the Northwest Forest Plan, this report includes four case studies that expand on the information and findings from the tribal-monitoring interviews. These case studies provide voices from tribes about their experience and perspectives on how their rights and interests are being affected by federal policy. Case studies are intended to assist tribes and agencies in understanding local conditions and the outcomes from a given process, such as NWFP implementation. They can also provide best practices from which others may learn from or replicate in their communities or among their agencies. The case studies featured in this report are:

1. **Coquille Tribe.** Memorandum of Understanding with the Rogue River Siskiyou National Forest
2. **Quinault Indian Nation.** Continuing challenges with consultation and the Northwest Forest Plan's effects on the timber economy.
3. **Federal mechanisms to promote partnerships and collaboration under the Northwest Forest Plan.** Tribal Forest Protection Act, Indian Tribal Energy Development and Self-Determination Act and amendments, 2018 Farm Bill and amendments, policy and mechanisms to promote co-management of forest lands.
4. **Karuk Tribe.** Western Klamath Restoration Partnership

## Consultation Responsibility: Definitions and Protocols

### ***Tribal Consultation***

Consultation is a critical aspect of the approaches that many federal agencies take to meet their trust responsibility to federally-recognized tribes in the United States. Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” (65 FR 67429) signed in 2000, requires federal agencies to have an accountable process to ensure meaningful and timely input by tribal officials into the development of regulatory policies that have tribal implications (§ 5(a), 65 FR 67429).

On November 5, 2009, President Obama re-affirmed the importance of federal-tribal consultation by issuing a Presidential Memorandum directing each federal agency to develop a tribal consultation plan to implement Executive Order 13175. All federal tribal consultation plans issued in response to the 2009 memorandum define consultation and establish procedures and principles for consulting with tribes. For example, the Environmental Protection Agency (EPA) Policy on Consultation and Coordination with Indian Tribes defines consultation as a *“process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribe (EPA 2011).”* The US Department of Agriculture (USDA) defines consultation as *“the timely, meaningful, and substantive dialogue between USDA officials who have delegated authority to consult and the official leadership of federally recognized tribes, or their designated representative, pertaining to USDA policies that may have Tribal implications (USDA 2013: 8).”*

Many federal agencies also refer to collaboration, coordination and cooperation when working with Tribes. These processes may be used to improve tribal and federal relationships but should not be considered as adequate government-to-government consultation. Massettich, Murray-Close and Monsey offer relevant definitions in their 2001 edition of the book *“Collaboration: What Makes It Work.”*

### ***Collaboration***

*“Collaboration is a mutually beneficial and well-defined relationship entered into by two or more organizations to achieve common goals. The relationship includes a commitment to mutual relationships and goals; a jointly developed structure and shared responsibility; mutual authority and accountability for success; and sharing of resources and rewards. Communication channels are well defined and operate on many levels. Authority is determined by the collaborative structure” (Massettich, Murray-Close and Monsey 2001).*

### ***Coordination***

Coordination involves somewhat formal relationships, with some planning, division of roles, and understanding of compatible missions. Formal channels of communication are established. Individual organizations retain authority but share, to an extent, risk, resources, and rewards.

### ***Cooperation***

Cooperation is an informal relationship without a commonly defined mission, structure, or planning effort. Information is shared as needed, and authority is retained by each organization. Risks, resources, and rewards are not shared.

## **Federal Consultation Protocols**

In response to Obama’s 2009 memorandum, the U.S. Department of Interior and U.S. Department of Agriculture issued new policies guiding the agencies within them in tribal consultation. These

documents, as well as the consultation policies of individual agencies within departments, such as the USFS and BLM, provide a variety of guidelines that can be used by both tribes and agency leadership and staff to enhance the consultation process, and improve agency accountability (See the Section VI “References” of this report for web links to these various policies). Several excerpts from agency consultation policies are provided below to illustrate the policies and protocols that federal agencies have with federally-recognized tribes. In addition to departmental-level policies for tribal consultation, individual departmental agencies may have additional policies or guidance on conducting consultation for agency managers. As illustrated in the policy examples below, the Forest Service and BLM have agency guidelines that comply with but also expand upon their respective departmental guidelines.

### **Forest Service Protocol for Consultation with Tribes**

Chapter 10 of The Forest Service American Indian and Alaska Native Relations Handbook stipulates that *“Government-to-government consultation may only occur between Forest Service Line Officers and tribal leaders who have authority to consult on behalf of their Tribe.”* (FSH 1509.13, 3) However, the handbook also encourages parallel staff-to-staff communication and collaboration. *“Staff certainly can and should participate in consultation as well as in staff-to-staff and staff-to-leader discussions where it makes sense locally.”* (FSH 1509.13, 3)

Chapter 10 also outlines the different types of consultation that may take place between tribes and the USFS at different levels. *“Throughout all the types and modes of consultations, the principle of mutual concurrence (FSM 1563.03(3)(e)) applies: consultation only occurs when the office or agency and tribal officials mutually agree that consultation is taking place. Office and agency consulting officials and their staffs should be clear in identifying, in collaboration with the relevant tribal official(s), when an action or set of actions constitutes government-to-government consultation.”* (FSH 1509.13, 5)

Consultation can be carried out through multiple different types of modes, including face-to-face meetings, via telephone or video conference, written correspondence (paper or electronic), tribal resolutions, or by leveraging intertribal meetings (FSH 1509.13, 6). The handbook highlights that when using any type of consultation, *“...all consulting parties should agree that consultation is indeed taking place in such an exchange, and it should be documented as such.”* (FSH 1509.13, 6)

For USFS tribal consultation on national-level issues or other units throughout the Forest Service, the following steps should be taken when coordinating consultation with Tribes:

1. Evaluate all proposed policy, plans, projects, or actions as to whether they may affect one or more Tribes and/or ANCs.
2. Work with Tribal Relations Specialists to identify which Indian tribes or Alaska Native Corporations may be affected.
3. Collaborative processes are often desirable prior to or in the same time frame as consultation. Collaborative processes may include listening sessions, roundtables, focus groups, sessions at conferences, or even web-based forums. They help to identify issues, interests, rights, and desired outcomes and may enhance the success of consultation and decision-making.
4. Plan a consultation process that fits the proposed policy, plans, projects, or actions and the needs, schedule, and resources of the affected Indian tribes and/or ANCs and the Agency.
5. Provide notice. Invite all affected, and potentially affected, Tribes and ANCs to consult.
6. Conduct the consultation.
7. Include staff and subject matter experts from both the Forest Service and the Tribes or ANCs, when appropriate, in the consultation process.

8. Document the process and actions taken to consult with Tribes and ANCs, the results of those actions, and how the Forest Service's final decision was communicated to affected Tribes and ANCs.
9. Inform Indian tribes and ANCs how their information and recommendations were considered in Forest Service decisions, including explanations in the event that tribal input was not adopted or incorporated.
10. Report on the outcomes of the consultation to the Director of the Forest Service Office of Tribal Relations in Washington, DC and to the U.S. Department of Agriculture's Office of Tribal Relations (OTR-OSEC) (as per DR 1350-002.5b, 8e, and 9)
11. Incorporate the results of the consultation effort into the policy, plan, project, or action as appropriate. (FSH 1509.13, 9-13)

**The U.S. Department of Interior Policy on Consultation with Indian Tribes:** Secretarial Order 3317 states that *"Consultation is a process that aims to create effective collaboration with Indian tribes to inform Federal decision-makers. Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility. Communication will be open and transparent without compromising the rights of Indian tribes or the government-to-government consultation process."*

**The BLM's Manual on Tribal Consultation** specifies four essential elements of consultation:

1. Identifying appropriate tribal governing bodies and individuals from whom to seek input.
2. Conferring with appropriate tribal officials and/or individuals and asking for their views regarding land use proposals or other pending BLM actions that might affect traditional tribal activities, practices, or beliefs relating to particular locations on public lands.
3. Treating tribal information as a necessary factor in defining the range of acceptable public-land management options.
4. Creating and maintaining a permanent record to show how tribal information was obtained and used in the BLM's decision-making process. (BLM H-8120-1, 2)

### **Internal Tribal Consultation Protocols**

A few respondents mentioned that their tribe refers to internal tribal consultation protocols when interacting with federal agencies. Rather than refer to federal protocols in conducting government-to-government relations, Tribes are starting to develop consultation protocols that adequately reflect their needs and input. The University of Arizona's Indigenous Peoples Law and Policy Program has found that the United States and its agencies have not adequately implemented government-to-government consultation protocols that meets tribes' standards.

*"The lack of respectful and meaningful consultation on the part of federal agencies and departments has resulted in a myriad of adverse consequences to tribal governments and Indigenous People, including injury to their tribal resources; holy places and sacred sites; and religious, traditional and cultural life-ways." (Indigenous Peoples and Law Policy Program (IPLPP Tribal Consultation))*

The ILPP has also found that the adoption of a tribal consultation ordinance allows Tribes to assert their sovereignty by identifying what they define as adequate government-to-government consultation (IPLPP Tribal Consultation).



## II. Recommendations: Strengthening Federal-Tribal Relations

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The full report includes findings from the interviews conducted with tribes within the NWFP region to assess the federal-tribal relationship under the NWFP. This report also includes several case studies that highlight tribal experiences and perspectives on how their rights and interests are being affected by federal policy, and the measures taken in order to strengthen the federal-tribal relationship. The interviews and case studies highlighted a number of places where improvements could be made in order to make federal-tribal relations more effective and meaningful.

In the table below, we have taken the recommendations developed in the 20-year tribal monitoring report and compared them to the findings made from this round of interviews. Many of the responses made by tribal staff show that the recommendations made in the 20-year report are yet to be addressed, and still need implementation. Respondents also highlighted other areas that could be improved in order to make sure the federal-tribal relationship is meaningful and effective.

Recommendations are organized in the following three sections:

1. Consultation Recommendations
2. Tribal Rights and Access Recommendations
3. Recommendations for Improving Federal-Tribal Forest Management Compatibility

### 1. Consultation Recommendations

| 20-year Recommendations   | 25-year Recommendations  |
|---|--|
| Learn about, recognize, and act on each tribe's unique vision for consultation. | <p>Many respondents highlighted the importance of having a strong understanding of individual tribal history, rights, and lands when developing customized consultation protocols with Tribes. In order to make sure tribal expectations are met, a few respondents noted that their tribes are developing their own internal consultation protocols. These internal protocols apply to every federal agency the tribe interacts with and has created a streamlined process of consultation for the tribes that have developed them.</p> <ul style="list-style-type: none"> <li>• <b>Create strong relationships between agency staff and tribal staff at all levels in order to conduct adequate consultation.</b></li> <li>• <b>Outline tribal priorities that then get discussed in relationship to every project that the USFS proposes.</b> This would help tribes in identifying what specific actions will affect the outlined priorities or resources of concern.</li> </ul> |
| Increase effectiveness of government-to-government consultation.                | <p>Agencies should also have a full understanding of the trust responsibility to Tribes. Respondents also highlighted the need for increased implementation and enforcement of the trust responsibility.</p> <ul style="list-style-type: none"> <li>• <b>Train new all agency staff on the trust responsibility</b></li> <li>• <b>Create new onboarding process that address agency staff turnover</b></li> </ul>  |

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| <p>Create more formalized, individualized agreements between tribes and agencies to clarify the relationships between them.</p> | <p>In interviews for the 25-year monitoring report, formal consultation protocols such as MOUs and MOAs were highlighted as beneficial to the federal-tribal relationship. It's also important to note that respondents also highlighted some downfalls to using MOUs and MOAs. If the MOU was created without tribal input, tribal priorities and management goals may not be adequately reflected. Respondents also commented on the limitations and inflexibility of MOUs. MOUs can also pose limitations on tribes if they follow a bureaucratic time frame. Some MOUs may not be effective because they are not legally binding documents.</p> <ul style="list-style-type: none"> <li>• <b>Ensure that formal protocols and agreements between tribes and agencies are developed with full tribal participation ensure flexibility, identify common goals and priorities, and address how common goals will be incorporated into project planning and implementation.</b></li> </ul> |
| <p>Strengthen the accountability of consultation</p>  | <p>Although formal protocols were highlighted as a way to strengthen the accountability of consultation in this round of interviews, many respondents highlighted informal protocols as an adequate form of consultation. Strong local relationships and informal protocols such as verbal arrangements, annual meetings, quarterly meetings, face-to-face meetings, and frequent phone calls were all forms of consultation highlighted by respondents as beneficial to the federal-tribal relationship.</p> <ul style="list-style-type: none"> <li>• <b>Strengthen the accountability of consultation by using a mix of informal and formal protocols, depending on the unique needs of the tribe.</b></li> </ul>   |
| <p>Customize tribal notifications.</p>  | <p>Many respondents reported that notifications sent to the Tribes are still inadequate. Issues around agency notifications include:</p> <ul style="list-style-type: none"> <li>• The comment period does not allow enough time for tribes to submit substantive comments</li> <li>• Agency notifications usually do not specify from the Tribe should be receiving the notification and responding</li> <li>• Direct impacts to Tribe are not addressed in agency notification.</li> </ul> <p>Customization of agency notifications would allow Tribes to provide meaningful comments and input on agency management actions and planning decisions.</p>   |
| <p>Map and increase agency awareness of tribal lands and territories in relation to the NWFP boundary.</p>                      | <p>Respondents noted that agency staff still need to improve and increase their awareness and understanding of tribal lands and interests. Although respondents noted that agency staff may be aware of reservation lands and trust lands, there is still a lack of awareness and understanding around ceded and ancestral territories, and their importance to Tribes. Agency staff also need to recognize that tribes may choose not to make ancestral territories known, because there are no protocols that inform tribes of how that information will be used once made available.</p>   |

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| <p>Increase agency and tribal awareness of NWFP policies and their implications.</p> | <p>In this round of interviews, many respondents highlighted that they do not usually refer to the Northwest Forest Plan when working with federal agencies. This finding shows that the Northwest Forest Plan may not be effective in terms of outlining the consultation requirements needed in order to meet the federal-tribal trust obligation. In many cases the NWFP is not relevant to management questions that require consultation, so its guidelines do not apply.</p>  |
| <p>Work with tribes to develop an orientation process for new agency staff.</p>      | <p>Staff turnover was highlighted multiple times throughout the interview process as an issue that still needs to be addressed. Respondents made similar suggestions in addressing staff turnover. These suggestions included creating an education or orientation process for new staff to ensure that they have an understanding of the trust responsibility, consultation requirements, and tribal history, rights, and interests.</p>   |
| <p>Increase the use of more personal forms of communication.</p>                     | <p>In this round of interviews, respondents made similar suggestions in terms of increasing the use of more personal forms of communication including face-to-face meetings and phone calls. Respondents noted that formal protocols and procedures sometimes raise consultation above the staff level, and constrain the federal-tribal relationship.</p>  |
| <p>Encourage tribal participation in intergovernmental forums.</p>                   | <p>Many respondents noted that their tribes have benefited from participating in intergovernmental forums; forest collaboratives; workgroups that focus on land management, natural resources, and stewardship; and conservation organizations and partnerships with local universities. This recommendation is still relevant to the 25-year monitoring report.</p> <ul style="list-style-type: none"> <li>• <b>Increase tribal representation in agency positions and monitor the number of tribal members who are agency staff and any relevant outcomes.</b></li> </ul> <p>One respondent noted that the strength of their government-to-government relationship is related to the fact that one of the Forest Rangers is a tribal member and is aware of and looking out for tribal interests. Many other respondents noted that having tribal members who work directly with federal agencies has benefited the overall tribal-federal relationship in terms of maintaining consistent relationships and understanding. Tribal representative can also help find agencies and tribes find common ground in meeting management goals and objectives with their local or regional forest service office. Having a dedicated staff member would also help address the lack of tribal capacity to meet all of its consultation obligations.</p> |

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| <p>Increase opportunities for collaboration in planning and management.</p>  | <p>Findings from this round of monitoring highlight that opportunities for collaboration, planning, and management is an area that still needs improvement. Many respondents noted that tribes need to be involved from the beginning of the planning process in order to make sure that tribal needs and traditional knowledge adequately inform the process.</p> <ul style="list-style-type: none"> <li>• <b>Increase agency commitment to collaboration.</b> Many respondents throughout the interview process mentioned that they have sufficient funding and staff who are ready to commit to collaborative projects, but are not met with similar energy from federal agencies. The prospective agency partners do not prioritize collaboration.</li> </ul> |
| <p>Incorporate tribal comments into agency plans prior to making plans public.</p>   | <p>This is still an issue that needs to be addressed. Many respondents noted that tribes should not be grouped together with the general public when submitting comments and there should be a longer comment period.</p> <ul style="list-style-type: none"> <li>• Create review process so Tribes know where and how their input had been incorporated into planning documents.</li> </ul>   |
| <p>Coordinate consultation policies and practices across USFS districts.</p>   | <p>Respondents noted that consultation policies and practices still differ across USFS districts and between other federal agencies including the U.S. Department of Fish and Wildlife. Respondents also noted that consultation policies and practices also differ between the national and regional level.</p> <p><b>New/Additional Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Coordinate consultation policies and practices across USFS districts, across national and regional offices, and among other federal agencies with which Tribes need to consult.</li> </ul>  |
| <p>Strengthen pathways within the USFS for tribal concerns to flow from districts to agency leadership and increase opportunities for inter-agency learning.</p> | <p>Respondents highlighted that they have better relationships with the Environmental Protection Agency and National Park Service because of their consultation policies. Agencies can learn from other models that are used in order to improve federal-tribal relationships. One model that was highlighted as very beneficial is the Region 10 Tribal Operations Committee that operates under the EPA.</p> <p><b>New/Additional Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Learn from effective models of consultation to inform USFS consultation policies and procedures</li> </ul>  |

## 2. Tribal Rights and Access Recommendations

| 20-Year Recommendations   | 25-Year Recommendations  |
|---|--|
| <p><b>Train agency staff across all levels to ensure strong cultural competency in tribal matters.</b></p>          | <p>This recommendation still stands in the 25-year report. Respondents noted that one issue affecting tribal member access to culturally important resources and lands was affected by Forest Service enforcement and monitoring of federal lands and wilderness areas that Tribal members use for gathering and hunting culturally important resources. The level of protection and understanding that is applied to protecting sensitive tribal information depends on the agency and individual staff members.</p> <p><b>New/Additional Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Train agency staff across all levels to ensure strong cultural competency in tribal matters.</li> <li>• Coordinate policies and procedures across different agencies to protect tribally sensitive information.</li> </ul>  |
| <p><b>Review policies that severely impact tribes' rights to interact with traditional lands and resources.</b></p> | <p>One difference between this recommendation and the issues highlighted by respondents is the ability of tribal members to access the land for traditional and ceremonial purposes. Road closures, Forest Service management practices, enforcement and monitoring of wilderness areas and reserves, and an increase in timberlands have negatively affected tribal member access to resources on federal lands. Bureaucratic time frames also limit tribal member access to culturally important resources. One respondent noted that the stringent requirements found in the National Environmental Policy Act may have resulted from policies such as the NWFP changing the bureaucratic landscape. Prioritization of late successional reserves was also highlighted multiple times by respondents as detrimental to culturally important resources such as ungulates. Many respondents also noted that they would like to see fire management brought back to the land.</p> <p><b>New/Additional Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Coordinate management practices and regulations to ensure Tribal member access to culturally important resources and lands.</li> <li>• Review policies and legislation such as NEPA and EIS that impact tribes' rights to interact with traditional lands and resources.</li> <li>• Review Forest Service management practices to promote culturally important resources such as ungulates.</li> <li>• Create a streamlined permitting process to ensure tribal members can access tribal lands and resources (do not treat tribal permit requests for traditional activities as equivalent to commercial harvesters or the general public).</li> <li>• Increase tribal representation in the development of policy that dictates tribal member access to resources and lands.</li> </ul> |

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|  | <ul style="list-style-type: none"> <li>• <b>Create a weighting mechanism based on project scale.</b> Plans or projects with potentially broad impacts to tribal values and treaty rights need to be weighted differently than projects with localized impacts. Tribes need to be involved in the creation of this weighting mechanism, so tribal values and priorities are appropriately accounted for and their protection better ensured.</li> </ul>   |
| <p><b>Adopt procedural frameworks to protect sensitive tribal and traditional knowledge.</b></p> | <p><b>New/Additional Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Increase communication and understanding of the procedures that are in place to protect new sensitive tribal information for planning purposes that take place between the Tribe and the Forest Service.</li> <li>• Improve implementation of management solutions that incorporate traditional knowledges and promote the health and well-being of culturally important areas</li> <li>• Create policies that protect areas of archaeological importance and natural resources, and that promote habitat maintenance. Although there is legislation and policy in place to protect areas of archaeological importance, those policies do not always apply to the protection of natural resources or habitat maintenance.</li> <li>• Increase collaboration between federal agencies and</li> <li>• Increase enforcement of the broader public on forestlands in order to protect tribal rights and access.</li> </ul>  |
| <p><b>Develop and use effective conflict resolution processes.</b></p>                           | <p>This recommendation is still stands in the 25 year report. Many respondents noted that they have not participated in a conflict resolution process for different reasons. Lack of trust was one reason highlighted by respondents as to why they do not participate in conflict resolution processes.</p> <p><b>New/Additional Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Increase agency understanding of tribal management goals and priorities.</li> <li>• Review development interests and permitting processes that have detrimental impact on tribal resources and interests.</li> <li>• Address (or review) the effects that fire suppression and Forest Service management has had on tribal lands and resources.</li> <li>• Review conflicting species management goals to identify common goals and interests.</li> <li>• Increase Agency monitoring and enforcement on tribal lands of interest.</li> <li>• Prioritize subsistence economies when developing or creating management actions.</li> <li>• Ensure that tribal and forest service management goals and priorities are understood to prevent conflicts in the future.</li> </ul> |



### 3. Recommendations for Improving Federal-Tribal Forest Management Compatibility

| 20-Year Recommendations   | 25-year Recommendations   |
|---|---|
| <p><b>Consult and collaborate with tribes to enhance the compatibility of federal-tribal forest management practices.</b></p> | <p>This recommendation is still relevant to the findings from the 25-year report. Respondents noted that treaty rights and their exercise are negatively affected by Forest Service mismanagement of tribally important resources on federal lands. Respondents highlighted that MOUs and MOAs are improving the compatibility of management strategies between their tribe and local forest service agency.</p> <p><b>New/Additional Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Use formal protocols such as MOUs or MOAs to outline tribal and agency management goals and priorities.</li> <li>• For future NWFP monitoring reports, have tribes and USFS discuss the interview questions as a working group.</li> <li>• Achieve the highest degree of compatibility through better communication between the Tribe and Federal agencies</li> </ul>   |
| <p><b>Increase opportunities for tribal land management.</b></p>  | <p>This recommendation is still relevant to the findings from the 25-year report. Tribes are very eager to pursue co-management opportunities to ensure that tribal interests and management goals are adequately reflected. A few respondents noted that they have used the TFPA to successfully pursue co-management opportunities. Respondents also noted that the 2018 Farm Bill as beneficial to pursuing tribal co-management of forestlands.</p> <p><b>New/Additional Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Increase tribal co-management opportunities and incorporation of traditional knowledge into management actions.</li> <li>• Educate agency staff and tribal staff around policies and procedures that promote co-management opportunities.</li> <li>• Increase opportunities for Tribal Monitoring Efforts. Many respondents commented on incomplete implementation, and a lack of monitoring, by USFS units, and stated their willingness to contribute to monitoring efforts if their capacity allowed. .</li> <li>• Increase the use of alternative forestry practices, early seral forest management, holistic approach, active fire management.</li> <li>• Focus on ecosystem restoration rather than timber production</li> <li>• Increase the use of cross-boundary management. National Cohesive Management Strategy brings together tribes, agencies, states, local communities, NGOs, etc.</li> <li>• Ensure that tribal youth have access to traditional landscapes and resources through the use of traditional knowledge in management actions.</li> </ul> |

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| <p><b>Increase funding and support opportunities for tribal natural resource departments.</b></p>            | <p>Respondents said that adequate and consistent funding is still a consistent need in terms of their Tribes being able to pursue co-management opportunities.</p>  |
| <p><b>Increase funding and ensure adequate staffing levels for agencies working closely with tribes.</b></p> | <p>This recommendation is still relevant to the findings from the 25-Year report. Tribes are often not in control of their own financial systems and this makes co-management and exercising or pursuing treaty rights difficult. Agency staff turnover is still an issue that negatively affects the federal-tribal relationship and co-management opportunities that Tribes are able to pursue.</p> <p><b>New/Additional Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Increase funding opportunities such as endowment building and compacting authorities that span across multiple jurisdictions.</li> <li>• Create institutionalized way of responding to staff turnover and how to rebuild federal-tribal relationships</li> </ul> |

### III. Key Findings from the Tribal Interviews

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This section of the report synthesizes interviews carried out with staff from 25 tribes. Findings are divided into 3 categories:

1. Consultation
2. Tribal Rights and Access
3. Compatibility of Federal and Tribal Forest Management

For each category, we provide a brief introduction to the topic and a summary of tribal staff responses. Appendix D includes tables summarizing direct results from all of the interview questions and compares response rates from the 15-year, 20-year and 25-year tribal monitoring reports. The following section presents the narrative results.

Many tribal staff stated that their tribe had had little or no experience with the Northwest Forest Plan and felt that they did not have much to contribute to the monitoring effort. In cases where respondents were not able to address issues related to the NWFP, they sometimes spoke more broadly about government-to-government relationships. We distinguish among responses that are specific to implementation of the NWFP, pathways to effective consultation, and general responses about government-to-government relations.

#### Section 1: Consultation

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##### 1.1. Barriers to Effective Consultation

Consultation is a process that is critical to the development and upkeep of effective government-to-government relationships. Executive Order 13175, signed in 2000 by President Clinton, sought to accomplish three objectives for such relationships:

- Establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.
- Strengthen the U.S. government-to-government relationship with Indian tribes.
- Reduce the imposition of unfunded mandates on Indian tribes.

The Executive Order states:

*“Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”*

Interviews explored the extent to which written consultation protocols exist between the tribe and federal agencies, and their effectiveness. In their comments, interview respondents talked about the nature and adequacy of consultation and collaboration under the Northwest Forest Plan and in other federal-tribal interactions. Below we summarize findings resulting from these questions.

Respondents highlighted various barriers to achieving adequate and effective consultation with the USFS, and other federal agencies. Barriers and issues with consultation between tribes and federal agencies include agencies considering notification as consultation, inconsistent consultation policies, project dependent consultation, lack of understanding about tribal lands and treaty rights, tribal and agency staff capacity, inadequate collaboration, and finally a lack of formal protocols between tribes and federal agencies.

### **Notification is not Consultation**

Many tribal staff said that federal agencies seem to consider notification as government-to-government consultation. Respondents also mentioned that sometimes their tribe receives notification of proposed actions or projects via a third party rather than directly from the agency. Many respondents noted that agency notification is not adequate government-to-government consultation, and public comment on environmental impact statements should not be considered formal consultation. The 20-year federal-tribal monitoring report recommended engaging with each tribe on an individual basis to understand their “unique vision” for effective consultation.

*“Engaging with each tribe to discuss what their vision of an effective federal-tribal relationship is, and discussing how, when, and by whom consultation should be carried out, is critical to building meaningful government-to-government consultation.” (20-Year tribal monitoring report, 15)*

Many respondents mentioned that it is important to remember that tribes are sovereign nations and what is considered adequate consultation may differ from tribe to tribe. Tribal staff mentioned that the Forest Service and their staff consider notification of projects and planning procedures as adequate consultation, but the tribe does not. Informational meetings hosted by the USFS are also often considered government-to-government consultation. When this occurs, tribal staff have to reference federal policy and make a request for formal consultation to take place between the tribe and the Forest Service. One respondent mentioned that the tribe was not notified of a project until after it was already implemented.

*“That’s not the only time, on occasion we don’t hear about something until after the fact.”*

An interviewee that discussed how their local agency unit drafted a consultation protocol in house without tribal input commented that:

*“Tribes are pretty frustrated with consultation because many agencies believe that notification is consultation and that is not how tribes do it.”*

One respondent said that although the tribe receives notice through mail or some other form of communication, that letter does not always go to the correct staff person. It often takes time for the tribe to determine who should respond and provide comments. It also takes time to identify how the proposed action will affect the Tribe. This process sometimes does not allow tribal staff to submit substantive comments within the 30-day comment period, and puts tribal staff in a position where they have to prioritize projects over others that affect tribal interests. One respondent commented that in order to address the issue of tribal staff and lack of capacity to respond to agency notification, there needs to be stronger local relationships between tribal staff and agency staff. Respondents also noted that federal agencies should consult with tribes before the comment period becomes available to the public.

*“Like yesterday I received something from USFWS with a two week response. The letter got sent to our tribal chairman, who sent it to our mail clerk, who sent to our environmental department, which then went to [my coworker], then it ended up on my desk, and the comments are now due tomorrow.”*

*“If you send a letter to the president of the United States who is to say whether that letter will end up in the right hands?”*

Although most respondents stated that they receive consistent notification, a few respondents mentioned that notifications sent to the tribe and tribal council varies in terms of how specific and relevant the information is to the tribe. For example, respondents mentioned they will receive broad agency announcements that affect multiple different stakeholders and tribes and have general impacts, while other notifications are project specific and outline specific impacts on the Tribe. One respondent described the factors that may affect the specificity of the notifications the tribe receives. These include whether the projects or initiatives are local, or the agency they are receiving notification from. This respondent also mentioned that specific and detailed notifications tend to come from agencies that the Tribe has better local relationships with.

Many respondents used the terms “*blanket notification*” and “*cookie-cutter language*” to describe the common notification they receive from the USFS. One respondent mentioned that the Forest Service and other federal agencies often get their tribe mixed up with other tribes in the area, and that adds an extra strain to conducting adequate consultation.

*“It seems like they emailed every Tribe in a 500 mile radius.”*

Another challenge that was highlighted in terms of receiving adequate notification and consultation is identifying the actual impacts on the tribe. One respondent mentioned that federal language can be challenging to read through, which makes it difficult to identify the impacts on tribal interests within the allotted comment period. One respondent mentioned that although the Forest Service does a great job of identifying the impacts that may affect the tribe, the same does not go for finding compatible solutions.

*“...they do a great job identifying the impacts, but finding solutions is debatable. They are not always able to mitigate on-the-ground impacts, this doesn’t completely protect cultural resources, when you manage natural resources you have conflicting goals and solutions. They do what they can given the constraints of natural resource management.”*

### ***Inconsistent Agency Interactions***

Many respondents highlighted inconsistent consultation policies as a barrier to effective consultation. One source of inconsistency is that tribes interact with many federal agencies, and they do not share a common consultation protocol. Tribes may have better relationships with different agencies including the Environmental Protection Agency and the National Park Service, in part because of a preference for those agencies’ consultation policies.

Some respondents have had different experiences with upper leadership and technical staff at their local Forest Service office, which is another source of inconsistency. The strength and quality of relationships between upper leadership of tribes and agencies may differ substantially from those between tribal and agency staff. Four respondents highlighted that stronger relationships may take place between their tribal council and upper leadership at their local or regional Forest Service administrative office, but this relationship may not be the same between tribal staff and lower level or project specific agency staff. Although most tribes may prefer that government-to-government consultation take place between upper leadership, respondents also noted that lower agency staff need to be aware of and have a common understanding of the consultation practices that have been agreed upon.

*“Even though we have a good relationship at the high level that doesn’t always trickle down.”*

One respondent compared the USFS to other USDA agencies and their consultation policies, and noted that the policy used by the USFS was more favorable.

*“When you compare the USFS to any other agency under the USDA, their consultation policies are better than any other USDA agency. I’ve had such frustration with a lot of their (USDA) agencies, because how could one agency be so advanced when the others are lacking?”*

Another interviewee noted that their local USFS unit established a consultation policy that was drafted in house without input from the Tribe. This respondent cautioned that consultation looks different for every tribe, and the standard consultation policy used by the Forest Service may not be considered adequate by every tribe. Rather than following the consultation policy established by the USFS, one respondent noted that:

*“Tribes are at the point where they are not accepting federal agency drafted policy; they are drafting up their own consultation policies that are more consistent across the board, putting more control in tribal hands.”*

Another issue mentioned by respondents is the inconsistent implementation of consultation policy among different federal agencies, and between various administrative units within the Forest Service, including local, regional and national, offices. Although consultation policy exists within every agency, consistent implementation of those policies does not always occur. This has a negative effect on tribes and their ability to adequately consult with the Forest Service and other agencies such as the BLM and the NPS. In order to address this issue, respondents suggested that policy implementation be equivalent across federal agencies and within agency administrative hierarchies. Respondents also made a few comments on how consultation should be conducted;

*“Consultation needs to be meaningful.”*

*“It is the difference between following the letter of the law and understanding the purpose of the law.”*

One respondent mentioned that they have interests in more than one National Forest. Although they have a strong relationship with one of the forests, they have a less collaborative relationship with the second. This respondent noted that the *“less collaborative Forest”* may send written notifications, whereas the *“collaborative forest may pick up the phone and involve the Tribe every step of the way.”*

Lack of adequate and consistent consultation has negative effects on the relationship between tribes and the Forest Service. One respondent commented that they have not had a legitimate meeting with the Forest Service in over two years. Another mentioned that the Tribe has not been consulted on NFWP matters, although they have a forest management plan that can be affected by federal decisions. Several respondents argued that federal agencies are not engaging tribes as they should. Tribes need to be prioritized when agency actions have the potential to affect tribal interests. One respondent attributed the lack of consultation to the different priorities the Tribe may have in terms of management actions.

*“It’s [consultation] just falling off, because things that are important to us are blocking the agency’s idea of progress.”*



### ***Project-Based Consultation***

Many respondents noted that the quality and frequency of consultation they receive from the Forest Service and other federal agencies is dependent on a project or proposed action. For example, one respondent mentioned that the notifications they receive are usually focused on ESA-listed species or when the proposed action may have an effect on tribal areas of interest. Rather than responding to requests for consultation, these notices mostly require tribal staff to reply, *“yes they have received the report”*.

Respondents highlighted that independent projects such as hydropower relicensing and creating or implementing Environmental Impact Statements (EIS) may require consultation to take place between tribes and the Forest Service on a more regular basis. Another respondent noted that for *“real consultation”* to take place between their tribe and the agency, it would have to be in regard to a specific project or action. This respondent also mentioned that for government-to-government consultation, they try and meet with the Forest Service once a year to discuss the tribal-federal relationship. For project-specific matters, respondent noted that they meet more frequently with agency staff.

### ***Lack of Understanding about Tribal Lands and Treaty Rights***

Another area of concern highlighted by multiple respondents is the lack of understanding of the impacts on treaty rights or tribal lands of concern. Some respondents emphasized that the definition of tribal areas of interest may differ between the USFS and the Tribe. One respondent noted that Tribal lands could extend beyond trust and reservation boundaries. It’s also important to recognize that some tribes are afraid or hesitant to consult with the USFS because of the history between tribes and the agency. Other respondents mentioned that tribal expectations and input were not being met or considered in agency drafted consultation protocols.

More than one respondent highlighted the need for agency staff to have a strong understanding of tribal history, rights, and lands in order to achieve adequate government-to-government consultation. One respondent mentioned that their tribe does not have a land base of their own, and in order for the tribe to maintain their culture through the land, there is a need for strong relationships and understanding coming from agency staff. Another respondent highlighted that there is still a lack of understanding within the USFS of what their jurisdictional authority is under their tribal constitution. This respondent mentioned that agency understanding has seen some improvements recently, and this has allowed for the tribe to enhance their role as tribal stewards.

*“As such, when public lands are being managed the Tribe wants to be engaged—it’s a big deal for the Tribe since tribal folks use public lands for their culture.”*

*“Consultation isn’t only about the protection of natural resource sites.”*

Lack of agency understanding may also come from internal USFS hiring practices. New hires may come from states and regions where tribal-federal interactions and relationships are different. Knowledge and experience working with tribes were both highlighted as necessary traits for agency staff to have in order to effectively consult and engage with Tribes. Respondents also highlighted unequal evaluation of treaty rights as a barrier to conducting adequate consultation. A few respondents were concerned that there is no solution to address this without a strong understanding of tribal ties to the land and treaty rights.

*“There is little value given to cultural or Indian rights. How much weight do they carry in the discussion? At this point it seems hardly any.”*

Other respondents mentioned that the tribe should be the entity identifying the projected impacts on tribal areas of concern.

*“I don’t want the USFS to be the determining entity in terms of what the impacts will be on the Tribe- we need to be the ones making those determinations.”*

Many respondents also mentioned that the impacts on treaty rights or tribal lands are not always clearly outlined in agency notifications, which respondents attributed to agency lack of understanding. The burden often falls on the Tribe to request additional information on proposed actions, which takes time that tribal staff may not have.

### ***Tribal Capacity***

Although Tribes may be aware of federal policy guidance, and receive consistent notification on projects or activities that may affect them, some tribes may not have the capacity to stay engaged on a meaningful level. One respondent mentioned that it is difficult for smaller tribes in particular to address every notification sent to the tribe. This respondent highlighted that if they do not have the capacity to address the notification, they often have to send it to another tribe who may have the capacity to adequately respond. This respondent noted- *“You have to pick and choose your battles.”*

A few respondents were unaware of policy guidance or resources available to Tribes when agency plans, projects, programs or activities have the potential to affect tribal resources, uses, or areas of interest. One respondent stated that they do not have a dedicated staff that is aware of all the applicable laws and policy guidance for federal procedures. Tribal staff capacity also influences whether or not tribal staff are able to reach out to agencies to request more information. This affects the number of proposals that tribal staff are able to respond to.

### ***Agency Staff Turnover and Relationships***

The quality and consistency of consultation may often depend on the relationship between tribes and their local federal agencies. Some tribal staff mentioned that although the relationship may be strong with their federal partners, reduced federal agency funding, staff capacity, and staff turnover may affect the amount and quality of consultation between agencies and tribes. One respondent noted that the strength of their government-to-government relationship is related to the fact that one of the district rangers is a tribal member and is aware of and looking out for tribal interests. Long-term agency staff are also sometimes able to help with the transition of new employees and are able to stress the importance of communication between tribes and the USFS.

Respondents stated that ensuring the correct communication procedures are in place and followed is often left to the tribes to ensure in a majority of cases. One respondent shared that their Tribe’s Memorandum of Understanding is an effective instrument for addressing agency staff turnover and ensuring that new agency staff understand the consultation process and trust responsibility. The MOU prodded agency leadership to educate new staff about tribal concerns, emphasize the importance of developing trust, and introduce them to the consultation process.

Other respondents recognized that federal budget cuts may have affected the ability of their agency partners to adequately conduct consultation. One respondent noted that when their local agency office experienced a large turnover in staff, they had to reach out to regional staff to come and bring new hires up to date on best practices for consultation and educate them on their responsibilities to the tribe. One respondent in particular mentioned how important land and water management is to the tribe, and how it is affected by staff turnover within Forest Service agencies. One respondent stated,

*“The constant turnover of administrations and staff involves a constant process of re-education.”*

### ***Inadequate Collaboration***

The USFS tribal consultation protocol states, in part: *“collaborative processes are often desirable.”* However, the protocol does not explicitly require collaboration. Several respondents noted that there was little commitment among agency staff to collaborate in the management of tribal areas of interest. Other respondents mentioned that when they reached out to their local agency for a meeting, agency staff expressed little interest or enthusiasm.

*“Staff today seem to be dedicated to the minutiae, dedicated to the bureaucracy, and not committed to public resource improvements or wildlife management.”*

Several respondents said that a lack of true collaboration meant that their tribe’s efforts to integrate natural resources management with other aspects of tribal life were incompatible with agency approaches to management. One respondent noted that consultation should apply to more than natural resource management. Respondents mentioned that it is difficult for tribes to prioritize the management of one area over the other, whereas the agencies tended to be interested in collaboration only on specific projects.

*“For example, when the Tribe requests a canoe tree, agency staff are very responsive. However, when the Tribe requests that the agency address cultural concerns on a mining permit application, the wheels of the agency start turning. If their decision-making processes were leading them in a similar direction as the Tribe, then they are very receptive. However, if their planning processes are heading somewhere contrary to what the Tribe would prefer, they seem to move ahead without really addressing tribal concerns.”*

Some tribes noted that the agencies are too often wedded to their own processes and inflexible, or may create programmatic shortcuts that have negative results for tribes. One respondent mentioned that their tribe has the funding ready to address areas of concern, but stated that they wished there was more of a commitment coming from the USFS to engage in collaborative projects.

### ***Need for Collaborative Implementation and Monitoring***

Although most respondents stated that agency consultation requests to collaborate on proposed Forest Service actions or projects were adequate, adequate implementation and monitoring were two areas highlighted as needing improvement. One respondent noted that the *“The USFS often falls short of (implementing) solid monitoring efforts...”* Many respondents noted that they would be interested increased opportunities to participate in the monitoring process.

*“Tribe has participated in some discussions on restoration. In regard to the monitoring side, Tribe hasn’t done much in that area but would be interested in more.”*

A few respondents noted that they have collaborated on monitoring plans for aquatic resources and habitats but would like to expand monitoring to include forest monitoring.

One respondent noted that they used to participate in a technical committee that involved the USFS, but there has not been any participation from the agency in the last six to ten years. This respondent noted- *“USFS participation is key in terms of permitting and NEPA approval, but they have shirked their responsibility and walked away.”*

### ***Lack of Formal Protocols***

Fewer than half of respondents indicated that they have formal written consultation protocols in place with the Forest Service or other federal agencies. One respondent mentioned that they could not comment on how adequate written formal protocols are because they did not know whether or not a formal protocol was in place, and if an update would be appropriate.

*“I’d hate to say that they don’t exist, if they (written protocols) happened, we need to find out when. Maybe we need to be updated on the status of that.”*

A few respondents also mentioned that although they do not currently have a written protocol in place, they are in the process of producing one with their local forest service agency.

Another respondent highlighted that the policy guidance available for federal procedures *“...has gone from completely terrible to not so terrible”*. This quote highlights that although policy guidance may have improved since the last report, it still does not meet tribal consultation expectations. Respondents also commented on the level of engagement they have experienced when responding to agency consultation requests.

*“Tribal council sometimes feels like it’s a waste of time- the agencies have often already made the decisions prior to consulting.”*

### ***Formal protocols may not always be essential to consultation***

Many respondents said that adequate consultation often occurs informally, with the Forest Service as well as other federal agencies. Strong local relationships and informal protocols can serve as an effective means of consultation. Informal protocols mentioned in the interviews included verbal arrangements, annual meetings between tribal leadership and the local Forest Service Ranger, quarterly meetings with Forest Service staff, and weekly face-to-face meetings and phone calls. One respondent mentioned that their Tribe has a fairly good relationship with the Forest Service, and the agency often takes the Tribe into consideration when a federal action has the potential to affect tribal rights, interests, or lands. Another highlighted that the use of informal policies helps address the fact that federal policies and procedures often constrain the relationship between the tribe and agencies. Formal written policies also have the ability to take consultation above the staff level, which is not always ideal for tribal or agency staff.

*“The government to government relationship between agencies and the Tribe is constrained by federal policies and procedures- these policies and procedures impede agency staff from having the flexibility to address concerns- agency staff try but are often constrained by these procedures.”*

Some respondents mentioned that they follow the consultation process outlined in the National Environmental Policy Act when interacting with federal agencies or when a project is funded by federal funds. One respondent also mentioned that they refer to Executive Order 13175 when conducting government-to-government consultation.

For one respondent whose tribe does not have a written consultation protocol in place, *“The only downfall to not having written protocols is that written consultation would allow for better tracking and planning for improvement to processes that maybe didn’t work out the first time around.”*

## **1.2 Pathways to Effective Consultation**

In order for adequate consultation to take place between federal agencies and Tribes, respondents highlighted mechanisms and pathways to improve the federal-tribal relationship and ensure effective consultation. The mechanisms and policy guidance are discussed below.

### ***Adequate Policy Guidance for Consultation***

A majority of the respondents interviewed agreed that their tribe was aware of federal policy guidance that is available for tribal consultation when agency plans or activities have the potential to affect tribal rights, lands, and resources. Over half of respondents agreed that agency notifications are specific to the tribe, and are usually addressed to their tribal council or tribal chairperson. Although most agency notifications go to tribal leadership, many respondents pointed out that the proposed management action frequently impacts a broad area, and does not specifically describe impacts to the Tribe. This causes the tribes to feel that the notification has little meaning. Multiple respondents mentioned that, although they are aware of policy guidance for tribal consultation, they do not use or refer to those policies.

A majority of respondents stated that they receive consistent notification from the Forest Service when agency plans may affect tribal interests. One staff member recounted how the Forest Service *“has always been really good about sending us notifications regarding planning processes or any projects they intend to do.”* This respondent went on to say that the consistent notification they receive stems in part from the Memorandum of Understanding they have in place. Another respondent also noted that under the Memorandum of Agreement they have with their local agency, the tribe is notified one month in advance to the general public of proposed projects.

Another respondent highlighted that their local Forest Service office is making it a point to follow up with the next line of contact after sending notification to tribal council or the tribal chairperson. Respondents offered some comments on this type of notification:

*“It’s been really nice to get that one-on-one consultation from a staff perspective.”*

*“Yes, agencies that we have more one-on-one contact with, that’s where we’re getting that one-on-one notification.”*

This type of follow up procedure may serve as a template for best practices. One respondent noted that a follow-up to agency notifications sent to the tribe would be very beneficial for tribal staff when they may be over capacity.

### ***Memorandums of Understanding and Agreement***

A little over half of respondents stated that their tribe had developed written consultation protocols using a Memorandum of Understanding (MOUs), and less frequently, Memorandum of Agreement (MOAs). Several respondents highlighted MOUs and MOAs as an effective example of how consultation should be conducted between tribes and federal agencies, including but not limited to, the USFS. Some tribal staff specified the agencies with which they had developed MOUs and MOAs. These included National Forests and the National Park Service. As described by Tribal staff, these MOUs and MOAs might serve a variety of purposes, including outlining consultation protocols and the parameters of specific projects, specifying points of contact, listing projects of mutual interest, and specifying regular meeting intervals.

Although MOUs/MOAs can serve as an effective means of conducting consultation, Tribes and agencies may not have the capacity to effectively carry out or renew the agreed upon MOU/A. A few tribal staff members mentioned that staff capacity and inconsistent funding made it difficult to update MOU/As on a regular basis. Some tribal staff also mentioned that certain MOUs/MOAs may have been drafted in house by the USFS without any consideration of tribal input. MOUs/MOAs may also be drafted using a blank national template that is not specific to individual tribal needs. Tribal staff recommended that MOUs/MOAs should allow for flexibility.

One respondent mentioned that they had suffered “*MOU Fatigue*” due to a requirement that was added on to their MOU without tribal input for a “sunset” date, meaning that the document had to be revised every five years. This respondent noted that the tribe opted not to renew the MOU because they did not have the capacity to fulfill that requirement.

One respondent mentioned that MOUs do not create effective consultation protocols because they are not legally binding documents, and highlighted that strong local relationships and understanding are two elements needed in order to conduct effective consultation.

*“In regard to effective protocols, MOUs aren’t legally binding anyway, so you don’t need them if you have a good solid understanding and relationship at the local level.”*

The comments made by respondents regarding the use of MOUs/MOAs shows that these agreements have varying outcomes. One respondent stated that tribes need to “*be careful what you ask for*” in terms of developing MOUs/MOAs. Their effectiveness depends on how they are drafted, the amount of tribal input, and level of flexibility it allows for both parties. One respondent suggested that models for effective collaboration can be found through state partnerships with tribes. Overall, MOUs/MOAs have the ability to outline best practices for consultation, and this will be demonstrated in the Case Study done on the MOU between the Coquille Tribe and the Rogue River Siskiyou National Forest. Several tribes mentioned having annual meetings with the National Forests as specified by their MOUs. They typically discuss projects of mutual interest and plans for the coming year, as well as how the relationship is going and how it can be more effective. One tribe also receives weekly letters for different projects that agencies are considering.

One respondent noted that their main concern when submitting tribal input is being involved from the beginning of the planning process. In order to ensure this, respondent highlighted the Memorandum of Understanding their Tribe has with the Forest Service.



*“We have been involved in developing the places from the start of projects, especially since the inception of the MOU in 2005.”*

One other respondent also highlighted that their tribe has a Memorandum of Agreement (MOA) with the National Park Service (NPS), which coordinates and prioritizes the importance of tribal resources including medicinal plants. This respondent noted that this MOA also shapes NPS management of nearby parklands and has served as an effective set of guidelines for other planning documents.

In one case, the terms of the MOU between one tribe and federal agency has provided an opportunity for them to be integrated in numerous efforts led by the USFS, including project planning and a Master Stewardship agreement. Annual MOU meetings were also noted as another avenue for the tribe and Forest Service to talk about priorities and what kind of projects will have the biggest impacts.

*“Yearly meetings add into a better dialogue to articulate tribal priorities so they can move tribal priorities forward.”*

### **Intergovernmental Forums**

According to the 20-year Federal Tribal Monitoring Report for the NWFP, *“As part of the Northwest Forest Plan, the Secretary of Agriculture initially established Provincial Advisory Committees (PACs), for the purpose of advising the Provincial Interagency Executive Committees (PIECs) in regards to implementation of the Northwest Forest Plan’s Record of Decision. The PACs, which were to be comprised by federal agencies, states, tribes, and other entities, were put in place to provide recommendations to promote better integration of forest management activities between federal and non-federal entities. While initially, PACs existed throughout the Northwest Forest Plan Region, 20 years later, a number of the PACs have dissolved.”* Respondents’ comments show that not much has changed in the last five years since the 20-year monitoring report was published. The comments made by respondents highlight lack of trust, the slow erosion of interests, and tribal and agency capacity as some of the reasons PACs either dissolved or became inactive.

About half of the respondents stated that there are either Provincial Advisory Committees (PACs) or other intergovernmental forums in their tribal area. A majority of the respondents also stated that they or the tribe currently participates or have participated in these forums. One respondent noted that the PAC in their area disbanded because the *“...conversation held no weight, trust was broken in the forum and it never came back together.”* Many respondents could not recall the reasons why PACs in their area ceased operation. Respondents also mentioned that the PACs in their area have not been active for the last 10-15 years.

Although a majority of respondents noted that PACs have all but been disbanded or dissolved in their area, many respondents noted that they or the tribe have been actively participating in intergovernmental forums and collaborative workgroups that focus on land management, natural resources, and stewardship. Respondents noted that these forums and workgroups include staff from National Parks; National Forests; United States Department of Fish and Wildlife Service; State Departments of Fish and Wildlife; and County Governments. A few respondents also noted that their tribe has worked with conservation organizations and local Universities to conduct restoration projects and stand management.

One tribe mentioned that the Provincial Interagency Executive Committee (PIEC) was created in relation to the PAC. The PIEC includes multiple agencies, including the USFS, BLM, FWS and Tribes. While it originated as part of the NWFP, it has now evolved to be broader than the NWFP.

Some tribal staff highlighted that tribal capacity does not always allow full participation in intergovernmental forums. For rural tribes, the nearest PAC or forum is a two-hour drive away from where the tribe is located. Another respondent mentioned that they participate in intergovernmental forums when they are aware of the meetings. One respondent highlighted that their tribe had participated in science advisory committees, where they were able to consider traditional knowledge and how it could be incorporated into management decisions and policy. Those committees are now gone. The respondent mentioned that traditional knowledge is being lost, *“and they [Forest Service staff] don’t want to hear about it.”*

### ***Increased opportunities for Agency-Tribal Collaboration***

A majority of respondents reported that agencies have consulted or collaborated with their tribe for the purpose of developing monitoring, restoration, or assessment projects, or other plans. Respondents commented on some of the types of plans and projects in which their tribes have consulted or collaborated on with agencies. These include forest management, habitat and stream restoration, monitoring activities, reintroduction efforts, field surveys, and fisheries management.

Many of the respondents commented on specific projects or management actions that they have collaborated on with the Forest Service and other federal and state agencies. Many tribal staff members highlighted that collaboration is not only taking place between their Tribes and the FS, but also with the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service, National Forests, National Parks, United States Fish and Wildlife Service, and National Wildlife Refuges.

Respondents also highlighted federal policy and legislation such as the 2018 Farm Bill as a mechanism that resulted in favorable management conditions for the Tribe. This respondent noted that the Farm Bill provided opportunities for the Tribe and the Forest Service to collaborate and discuss gathering rights.

One respondent highlighted that they have been collaborating with the Forest Service and the National Park Service on invasive species management and restoration projects. They have also done a collaborative waterfowl and seabird survey with multiple agencies including NOAA and the State Department of Fish and Wildlife. Another respondent mentioned that they are working with the U.S. Department of Fish and Wildlife Service and a nearby wildlife refuge on restoration and monitoring. This respondent noted that *“Everything we do down there is positive.”* Another respondent noted that the agencies the Tribe works with locally have been able to create opportunities for the Tribe and its members to gather resources and use the land for ceremonial purposes or other tribal activities.

*“The agencies that we work with locally, they have processes in place that allow us to work with the land.”*

A few respondents mentioned that their Tribes have benefitted from participating in Forest Collaborative Networks. These collaboratives allow multiple stakeholders to work together in finding diverse management solutions on both public and private lands. Two collaboratives that were highlighted include the Pinchot Partners and the Tapash Forest Collaborative. The Tapash Forest Collaborative aims to improve ecosystem health and natural functions of the eastern Cascades landscape through the use of the best available science, community input and adaptive management (Tapash Mission Statement). The Pinchot Partners mission is to work with interested stakeholders,

surrounding national forests, and surrounding areas to “...promote policies and projects that create quality local jobs, recreational opportunities, and benefit watershed health.” (Pinchot Partners Website)

One other model that was highlighted by respondents in terms of promoting collaboration is the Western Klamath Restoration Partnership (WKRK). Previously known as the Middle Klamath Restoration Partnership, the WKRK was created in 2007, and brings together multiple stakeholders including USFS staff, tribes, conservation organizations, and the local community to focus on fish habitat restoration on the Klamath River watershed. Using the Open Standards Process for Conservation, the WKRK partners were able to identify zones of agreement where restoration needed to occur. The WKRK was also able to create shared values that were found through the identification of six Conservation Targets. The process of identifying shared values was facilitated by the Nature Conservancy and the Fire Learning Network (<https://www.wkrp.network/mission>). Many respondents noted that the WKRK as a good model for the USFS to consider in order to promote collaboration in other areas that fall under the NWFP. The WKRK is described in more detail in the case studies section of this report.

The Regional Tribal Operations Committee for Region 10, operated through the Environmental Protection Agency, was highlighted as an effective model that could guide other federal agencies in improving the tribal-federal relationship. One respondent noted that through the RTOC, the Tribe *“has meetings on a regular basis with their top people.”*

One respondent highlighted a positive example of collaboration that took place between the Tribe and their State Department of Parks and Recreation. The Tribe and a few of its tribal members were able to work with the department in promoting the growth of traditional camas plants.

*“Some tribal members and leaders mentioned to the park folks that this plant is a traditional food, and asked if they could stop mowing entirely because this food stuff was rare on this side of the mountains. And they agreed.”*

A few respondents also highlighted the Forest Service Stewardship Program and the management opportunities that it makes available to Tribes. One respondent stated that one issue the Tribe is concerned about is that any proposal they submit for tribal lands of interest that is not in close proximity to where the tribe is located would draw criticism from agencies and not be considered in management actions. In order to address this issue, the Tribe has begun to take part in a stewardship program through the Forest Service that creates opportunities for tribes to be involved in the drafting of stewardship contracts and agreements on federal lands. Another respondent also noted that the stewardship program they are participating in allows Tribes in the area to be more involved in the planning process of management decisions that aim to address wildfire and its impacts on tribal lands.

#### ***Tribal Staff Recommendations for overcoming lack of understanding***

One recommendation made by tribal staff in terms of improving mitigation of proposed management actions is an increase in informational meetings that are specific to the Tribe in question, where USFS project staff explain the proposed project in more detail, and also describe the projected impacts. One respondent noted that agency notifications often do not have all the information the tribe needs in order to submit substantive comments or feedback on proposed actions. Another mentioned that federal procedures do not always allow for a clear delineation of effects on Tribes and tribal resources. This respondent noted that while the tribe does receive adequate notification from agencies, the impacts are not sufficiently explained so it is difficult to prepare an adequate response.

Another recommendation made by tribal staff in terms of project notification is the timing of the notification itself. Tribes should be made aware of project proposals before the public, in order to allow adequate time to submit comments. Implementation and enforcement of the trust responsibility was also highlighted as an area that needs improvement.

Two respondents highlighted one challenge in terms of drafting environmental impact statements and the policies that affect tribal interests. Respondents noted that the entities they work with are not familiar with treaty rights, and when drafting an EIS, they found that most companies or agencies do not adequately address the impacts to treaty rights.

*“In terms of NEPA...the problem is the actual policy, and the folks writing it are not familiar with treaty rights.”*

Respondents also noted that it is important to remember that project scale is not always reflective of the impacts. In order to address this lack of understanding and unequal evaluation of treaty rights, respondents suggested it would help to have *“a weighting mechanism based on project scale.”*

### ***Effective Communication***

Some respondents noted that while they didn't always agree with the decisions or actions being taken by the agencies, they are receiving clear communication and they are receiving adequate consultation. One respondent noted that the U.S. Fish and Wildlife Service underwent a major overhaul with their tribal trust policies and they now hear more frequently from them. Another tribe noted that they hear very frequently from the USFS from the regional and district level on any pending actions that require government-to-government consultation.

### ***Internal Consultation Protocols***

In order to make sure tribal expectations are met, some tribes have drafted their own internal consultation protocols. These protocols apply to every federal agency that the tribe interacts with and outlines what the tribe considers adequate government-to-government consultation. Some tribes have also reached out to federal agencies to educate agency staff on the history and culture of the tribe in order to ensure that there is a common understanding when conducting consultation. This finding highlights the fact that each tribe has a unique vision to what constitutes effective and adequate government-to-government consultation.

### **1.3 Tribal Input in Federal Planning**

Over half (64%) of respondents stated that tribal input has been incorporated into federal planning documents in a manner so that the Tribe can recognize its contributions. Although 64% of respondents stated that tribal input resulted in changes to federal plans or documents, 56% of respondents provided examples of an instance when the Tribe was dissatisfied with how agencies handled tribal input.

#### ***Tribal Input Included***

Over half of respondents stated that tribal input had been adequately incorporated and resulted in favorable changes to federal plans or actions. Respondents noted that tribal input and comments have resulted in various outcomes that have benefitted Tribes. Positive examples highlighted by respondents include increased collaboration between Tribes and their local Forest Service agency; Tribes and tribal staff being involved in the entire planning process; and increased consideration of diverse management solutions in tribal areas of interest.

One respondent noted that the tribe has recently been more engaged in the last 4-5 years in terms of submitting input on proposed actions. Many respondents noted that comments submitted by the Tribe had to do with culturally important areas and how agency actions would affect said areas.

*“From a cultural and archaeology standpoint there has been a lot more involvement and the USFS follows through pretty well with recommendations from the tribe.”*

A few respondents highlighted that they have had more success in affecting federal plans or actions through participating in multi-jurisdictional initiatives that brings together various collaborators including Tribes.

#### ***Tribal comments misinterpreted***

Although staff may have initially responded that tribal input had been incorporated adequately, many respondents noted that their comments were sometimes misinterpreted and not representative of the Tribe’s input. A few respondents also noted that agency management actions and policy do not adequately take into account tribal priorities.

When submitting comments or feedback on proposed actions, respondents noted that although agency interactions and consultation may go well, it may not result in favorable management solutions for the Tribe or the Forest Service. Another respondent noted-

*“...generally we see tribal input in federal documents when it’s positive, but not when it’s negative.”*

In planning documents such as Environmental Impact Statements, one respondent commented that the language used has “...called out certain things that the Tribe has said, but didn’t include other things we discussed.” One respondent noted that tribal input had been incorporated to a certain extent, but also highlighted that feels like agency staff have already made up their minds.

*“Face-to-face meetings feel like posturing, checking a box. I hate to say that because the relationships are really good, but communicating with the people who are actually writing the plan would be nice.”*

All of the above comments show the importance of having an equal understanding of what the Tribe’s priorities are and the potential impacts management actions may have.

Another respondent highlighted one instance when the Tribe was dissatisfied with how their input was incorporated in a fuels reduction and forest health project. This respondent mentioned that the planning process was separate from implementation because agency staff did not have a good understanding of local expectations and priorities. Although the tribe foresaw the breakdown of this management action when it came to timber contract regulations, the respondent noted that the Tribe withdrew its objection in order to get fire back on the land.

*“Implementation went wrong immediately—contract regulations are managed by contract officers in (a) somewhat distant city—these officers are not involved in planning and are not intimately aware of local expectations and planning priorities.”*

The Tribe ended up having to take this project to court because implementation of the project impacted Tribal lands. In order to make sure tribal stewardship and input is prioritized in future planning processes, the Tribe reached a settlement that included the creation of a formal stewardship agreement that *“...now enables a collaborative engagement to follow through.”*

Many respondents noted that the misinterpretation of tribal input stems from a lack of agency understanding of tribal treaty rights and tribal lands and ceded areas. For instance, one respondent stated that their Tribe is trying to make sure that agencies recognize *“tribal cultural values and material cultural values...”*, indicating that while the tribe is concerned about protecting cultural sites, they are also concerned about protecting cultural and natural resources.

*“It is not ok to assume that tribal values are only pertinent to tribal artifacts.”*

A few respondents also highlighted that the Tribe is *“looking for stricter regulations...”* in order to protect the health and well-being of cultural and natural resources. In order to do this, respondents noted that agency staff needs to understand how important natural resources are to maintaining treaty rights.

*“It is hard for people to understand how much our tribal members depend on a healthy earth and ocean.”*

In order to address the issues highlighted above, one respondent suggested that it might be helpful for tribal staff to meet face-to-face with agency staff to establish a list of key tribal priorities that then get discussed in relationship to every project that the USFS proposes. This would help tribes in identifying what specific actions will affect the outlined priorities or resources of concern.

### ***Tribal Input Not Adequately Considered***

Many respondents commented that tribal input had not been adequately considered or incorporated into planning documents. Some tribal staff stated that if tribal input had been incorporated, it was done so in a manner that the Tribe could not recognize. Respondents were also unsure of how much impact their comments may have had on the final outcomes of Forest Service management actions. One respondent stated that consultation is in name only sometimes, and the actions taken by the Forest Service do not follow through. This respondent noted- *“They have a spreadsheet with tribal comments but do nothing about it.”*

Tribal staff also indicated that they could not adequately answer the interview question in cases when it is difficult to recognize where tribal input had been incorporated into planning documents. One respondent noted, *“It may not be clear that a comment was from their Tribe but tribal perspectives are recognized in the document.”* Another respondent commented on a planning document the tribe had

provided input on- *“...it had 700,000 comments. Did the Tribe’s comment get incorporated? Hard to know, you can look at the federal register!”* Respondents commented that it might be helpful if there were a review process that would allow Tribes to see how and where their input had been incorporated into planning documents.

A few respondents noted that consultation and the incorporation of tribal comments are different at the national level and at regional or local levels. One respondent mentioned that consultation and submitting tribal input on proposed agency actions is *“...frustrating in different ways.”* At the national level, tribal staff may be invited to participate in webinars and meetings to go over proposed rule changes, but they often cannot participate because of capacity issues. At the local and regional level, one respondent noted that once tribal staff submit comments on proposed actions, agency staff often want to meet with the tribe immediately to have the tribe repeat their concerns in person. If the tribe is unable to meet, the respondent stated their comments will *“...often get tossed out.”* Another respondent noted that the consultation process and submitting input *“...feels vague, far away, and difficult to access.”* Tribal staff also highlighted that in some instances district staff are better at coordinating consultation and considering tribal input than the regional or national office.

In many other cases, respondents noted that tribal input was ignored or not prioritized by agency staff.

*“Agency may say ‘that is an interesting suggestion, I’m going to incorporate that into the plan!’ but it often isn’t. Often times tribal input is incorporated as ‘this is the Tribe’s opinion’ instead of ‘because of this input we are going to be changing this part of the plan.’”*

Respondents also highlighted specific instances where tribal comments and issues were not addressed by agency staff because of their capacity. In one instance, tribal staff mentioned that tribal members were being directly impacted by lack of agency enforcement and monitoring of a significant area of interest. After the tribe submitted a comment requesting increased monitoring over the area, the agency responded that they did not have the capacity to meet that request. Tribal staff mentioned that they also have capacity issues, but they want to make tribal members and their cultural practices a priority. One respondent felt that some agencies do not want tribal input, because agency staff may *“see it as a hindrance to their goals.”*

## Section 2: Tribal Rights and Access to Cultural Resources

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### 2.1 Changes to Tribal Rights Resulting from the Northwest Forest Plan

The NWFP's Record of Decision (ROD) and Standards and Guidelines includes language that specifically addresses treaty rights and trust resources: (ROD, p. 54-55))

*“The exercise of tribal treaty rights will not be restricted by these standards and guidelines unless the Regional Interagency Executive Committee determines that the restriction is (1) reasonable and necessary for preservation of the species at issue, (2) the conservation purpose of the restriction cannot be achieved solely by regulation of non- Indian activities, (3) the restriction is the least restrictive available to achieve the required conservation purpose, (4) the restriction does not discriminate against Indian activities either as stated or as applied, and (5) voluntary tribal conservation measures are not adequate to achieve the necessary conservation purpose (p.54).*

*“Future analysis and planning efforts to implement this decision on lands administered by the BLM and Forest Service will identify Indian trust resources that would be affected, and identify potential conflicts between proposed federal actions and Indian treaty rights or tribal trust resources. Consultation with the recognized tribal government with jurisdiction over the trust property that the proposal may affect, the Bureau of Indian Affairs, and the office of the Solicitor will be conducted early in the planning process. The consultation with the affected tribes will occur on a government-to-government basis. Conflicts will be resolved collaboratively with affected tribes involved in the planning process, consistent with the federal government’s trust responsibilities. (p. 55)”*

When asked if the ability to exercise tribal rights or access to resources of tribal interest on federal lands had changed in recent years as a result of the Northwest Forest Plan, respondents varied in their responses. 28% of respondents stated that tribal rights or access to resources had changed since the implementation of the NWFP. 36% of respondents reported that the NWFP had not affected the exercise of tribal rights, and the remainder of respondents stated other or chose not to answer.

If there had been a change to the Tribe’s ability to exercise tribal rights or access to resources, we followed up with respondents and asked whether the change was positive or negative, as indicated in table 6 in Appendix D. Some barriers to tribal member access of cultural resources on federal lands mentioned during the interview process included road closures and commercial harvesting vs. tribal member gathering of culturally important resources. Bureaucratic time frames were also highlighted as a barrier to requesting permits for tribal resources and access. A few tribal staff also commented on Forest Service management practices and stated that the agency is failing to prioritize early successional forests, which has negatively affected cultural resources and their habitats.

#### **Treaty Rights Exercised**

Over two-thirds of respondents stated that their tribe and its members have exercised treaty rights or have pursued tribal interests in National Forests or on BLM lands. Respondents described a variety of treaty rights exercised or pursued, including hunting, fishing, gathering, and ceremonial uses of forest lands. Treaty rights exercised depend on the specific Tribe, its history, and the area in which it is located. For example, respondents highlighted that their Tribe may have retained the right to hunt, gather, and fish in some areas, such as ceded and ancestral territories, but not in others.



It's also important to highlight that quite a few tribes throughout the Northwest are not treaty tribes, or never had their treaty ratified. One respondent mentioned that *"in the tribal world view, the Tribe has a treaty that wasn't ratified, as with most in California, so they view most of what they do in their territory as 'rights retained, not 'rights reserved'".* One other respondent commented that *"...some tribal members look at it as the retention of aboriginal rights, given the lack of a legally binding treaty."*

One respondent highlighted the difference between adjudicated treaty rights and treaty rights that are asserted by the Tribe. Although their tribe may have adjudicated fishing and shell fishing rights, this respondent noted that the tribe does not have the same protections in place for gathering and hunting rights, and the process to obtain gathering or hunting permits from their local Forest Service agency is sometimes arduous and can make it difficult for tribal members to exercise their rights to the full extent.

Some respondents described the ways in which they pursue, protect, and exercise treaty rights. One respondent mentioned that they are in the process of developing a Memorandum of Understanding with the USFS for gathering purposes. Another respondent noted that they have a Memorandum of Agreement with the USFS that guarantees tribal member access to important landscapes and resources. One Tribe has worked with a nearby National Forest to obtain some cultural resources from the forest, and the ranger district has been very open to tribal requests. This respondent also reported that there has been a lot of progress in requesting resources using the Farm Bill.

A few respondents also mentioned that they reference the gathering and hunting policies set forth by their local or regional forest service agency. Tribal members have obtained permits for the gathering of materials such as cedar, bear grass, basketry materials, berries, and grazing leases in order to exercise gathering rights. Another respondent highlighted that each year their Tribe will send its hunting regulations to the Forest Service, so their tribal members can hunt and gather on Forest Lands. This respondent noted that the Tribe's treaty language specifies that USFS lands are "open and unclaimed" and thus open for the exercise of treaty rights. If there are any issues with these regulations, respondent stated that the Forest ranger has to bring the issue to tribal enforcement.

Two respondents highlighted that they are collaborating with state and federal agencies to increase tribal member access to culturally important resources. One tribe mentioned that they are working with the BLM to improve hunting opportunities for tribal members by restoring meadows, an important habitat for game species. The Tribe has also done trail clearing to improve tribal member access to a summit of cultural importance on National Forest lands. Another tribe is working with a state agency to establish a salmon fishery in the nearby National Forest. The Tribe was able to release salmon in a nearby river, and also able to secure the right to use traditional fishing methods. This respondent stated that the Tribe is exercising its rights by bringing salmon back into the region after a 100-year absence. Respondents also noted that they have started having conversations with their local forest service agency staff around huckleberry management.

Three respondents mentioned that their tribe has not pursued treaty rights on FS or BLM lands. One of the main reasons is because their tribes do not have any treaty rights to exercise. One respondent also mentioned that they do not exercise treaty rights because the tribe does not have a land base. Another respondent noted that larger Tribes nearby have Usual and Accustomed lands secured through their treaties, but the respondent's Tribe does not. This respondent stated that the Tribe's smaller size affects how many people they can send to lobby for treaty rights, and tribal interests.

*“All of these legal discrepancies make exercising tribal rights complicated given every Tribe’s difference legal standing, needs, and rights.”*

### **Non-Treaty Tribes v Treaty Tribes**

One issue that was highlighted by multiple respondents in terms of tribal members and their ability to exercise treaty rights is the lack of understanding and equal evaluation of treaty rights by the Forest Service. One respondent suggested that sensitivity training is necessary for federal agencies and their staff to understand what is meant by “treaty” and “sovereign nation status”. Forest Service staff also need to have a strong understanding of consultation requirements and the trust responsibility.

One respondent highlighted that their treaty rights are not prioritized by state or federal agencies. The state in which the tribe is located allows for open hunting season, and this creates conflicts for tribal members and impacts their ability to hunt. This respondent believes that the State and Forest service are prioritizing multiple use privileges over tribal treaty rights.

Another primary barrier highlighted, is that non-treaty tribes tend to have a more difficult time in exercising tribal rights and treaty rights on National Forest Lands and BLM lands.

*“The barrier would be that any time the Tribe wants to do something on public lands, they have to work collaboratively to make that happen, they have to make the case for why they have a place at the table, and it seems there is always a level of pushback.”*

This respondent described the different consultation process that non-treaty tribes have to work with in order to exercise their tribal rights. Treaty tribes in the Northwest have a somewhat more streamlined process, whereas Executive Order Tribes have a more unconsolidated approach when pursuing treaty rights. This respondent noted that the tribe has to work on a case-by-case basis, which takes more time and work.

One other respondent also mentioned that as a non-treaty tribe, the lack of a signed treaty means that in a court of law the Tribe may not be able to make a case to protect treaty rights, despite the argument one could make that the unratified treaty implies the retention of aboriginal rights.

One respondent noted that the ability to gather, hunt, or fish on federal lands also depends on the agency and its staff.

*“It all has to with who the personnel is at any given time.”*

This respondent mentioned that one of the National Forests they work with has always had a culture of openness toward the Tribe. The other forest the Tribe is near has changed for the better over time in part due to a shift in staff. Another challenge highlighted by respondents is a general lack of understanding among the public of tribal usual and accustomed lands. One respondent mentioned that *“...people think treaty rights were given up by Tribes.”*, and this has negatively affected tribal member access to culturally important resources.

## **2.2 Barriers to Tribal Access to Cultural Resources**

Although a majority of respondents stated that they have exercised treaty rights on federal lands, two-thirds of respondents also stated that there are various barriers to exercising tribal treaty rights and access to cultural resources. In terms of tribal member access to tribally valued resources, respondents highlighted many different examples of how access has been limited. A few respondents reported that

road closures and lack of maintenance negatively affected tribal member access to cultural sites and resources, especially for tribal elders. Other direct and indirect barriers highlighted by respondents include Forest Service riparian management practices and a lack of silvicultural management; enforcement and monitoring of wilderness areas and reserves; an increase in timber land designation and fee-access policies that decrease tribal member access; permitting processes; bureaucratic timeframes; and diminishing cultural and natural resources caused by non-tribal use of USFS lands and illegal and legal commercial harvesting. It's important to note that many of the barriers highlighted by respondents were not specific to the NWFP, but important to discuss nonetheless.

### ***Gated and Decommissioned Roads***

Poorly maintained roads were also highlighted as a barrier to tribal access to cultural resources on Forest Service lands and other federal lands. Gated and decommissioned roads are preventing tribal members from hunting or gathering in culturally important areas. Respondents recognize that gated and decommissioned roads are enacted in order to protect resources and forestlands, but they also recognize that these closures simultaneously reduce tribal member access. One respondent suggested that there is a need for increased enforcement of the broader public on forestlands, while also protecting tribal rights to these resources.

### ***Inconsistent Harvesting and Gathering Policies between Agencies/ National Forests***

Another barrier to exercising treaty rights on forestlands are the inconsistent gathering and harvesting policies used by different National Forests, and other state and federal agencies. One respondent mentioned that although they may have an MOU/MOA in place with one National Forest, they might not have the same relationship with a neighboring forest. When asked what contributes to those different relationships between different forests, one respondent stated that part of the problem is individual personalities. The other part is agency staff turnover, which has been highlighted multiple times throughout the report as a barrier to maintaining effective tribal-federal relationships. Proximity to different National Forest lands and Ranger stations was also highlighted as part of the problem. This respondent noted that the relationship between the Tribe and the Forest Service also depends “...on the Forest Supervisor’s level of risk aversion. Some are hesitant to interact or collaborate with this Tribe if it means it might upset another Tribe.”

### ***Wilderness Areas, Enforcement, and Monitoring***

One respondent brought up the issue of Forest Service regulation of wilderness areas that Tribal members use for gathering and hunting culturally important resources. In this case, there seems to be a lack of agency understanding about who the tribal members are. For example, tribal members are sometimes mistaken for commercial pickers and have been harassed by Forest Service employees.

*“To place the Tribe on equal footing with the public is a mischaracterization.”*

One respondent’s tribe is surrounded by Forest Service lands, National Park Service Lands, and industrial timber lands. There are different regulations within those jurisdictions, and this respondent noted that the NPS has stricter regulations than the USFS. This respondent stated:

*“Park rangers have held tribal members at gun point for harvesting mushrooms. Not too much conflict with USFS, but because of adjacency with NPS land people are scared to harvest in case they unknowingly trespass onto NPS land.”*

In another case, one respondent noted that the only conflict that their Tribe is currently facing is the poaching of cedar trees on ceded lands that are under Forest Service management. This respondent highlighted the lack of Forest Service enforcement as a key contributor to the high number of cedar trees that are poached on Forest Service land. They felt that the response from the Forest Service needs to be more thorough to ensure increased enforcement and monitoring of culturally important resources.

*"I don't know how many cedar trees have been stolen off of Forest Service lands in recent years."*

### **Commercial Harvesting of Cultural Resources**

Conflict with commercial picking is another important issue that was brought up by respondents. Commercial picking may leave insufficient resources for Tribal members to hunt and gather. As a result, Tribes are not able to adequately exercise their treaty rights. One respondent noted that *"The pie is just getting smaller and smaller and smaller,"* and the small amount of resources is affecting relationships between tribes and the states, and also between multiple tribes that share areas of interest. In another case, one respondent noted that their Tribe is still facing significant access problems to huckleberry sites. This respondent noted that there is an informal agreement in place between the Tribe and the Forest Service that reserves specific areas for tribal access. Although the tribe has an informal agreement in place, the influx of commercial pickers on the reserved site is decreasing the amount of resources available to tribal members. This respondent noted-

*"We can't arrest them or tell them not to go, we can just inform them that the areas have been reserved... That's a case of where the Forest Service say they are giving deference to tribes, but they aren't really."*

It has become very competitive for tribal members to pick huckleberries and harvest other important resources such as bear grass on Forest Service land. This respondent was not sure if the USFS was the agency permitting the harvesting of huckleberries, but they noted that the USFS has started to permit mushroom harvesting on tribal lands, and that is concerning for the Tribe.

Special forest products harvesting, and commercial harvesting of medicinal plants are also negatively affecting tribal member access to culturally important resources such as mushrooms and cedar. Non-tribal members are coming in with or without a permit, and they are harvesting unsustainably.

*"Some of these folks are coming in, perhaps with or without a permit, and they are harvesting unsustainably without consideration that local tribal folks have been using these species for food, fiber and medicine for millennia"*

*"People come in for a permit, and the USFS gives them a permit and takes their money. These processes do not take impacts to traditional cultural uses into account."*

### **Timber Economies and Development on Federal Lands**

The prioritization of timber as the primary economic driver for achieving landscape resilience is another issue that affects tribal member access to culturally important forest resources. This type of economy and action conflicts with the management and use of other forest resources. One tribal staff member noted that their tribe is receiving a lot of pressure from industrial timber companies who are starting to adopt fee-access rules, which requires tribal members to pay in order to hunt or gather on the land. The conversation has started to change with some recent tribal collaboration, in which subsistence

economies are a major driver, and timber is a bi-product of the restoration action, not the primary driver for all management activities.

Another respondent noted that their tribe is concerned about the conflicting development interests that are supported by their local forest service agency. Developers who are able to obtain permits from the Forest Service do not benefit all stakeholders, including the tribe. This respondent stated that *“The conversation becomes about bringing jobs into the area when in reality a few rich white men on corporate boards are generally the only ones making money.”*

One respondent discussed the effects of development and pollution on culturally important resources. Shellfish in this respondent’s area are extremely contaminated by pollution, which has adverse health effects on tribal members. Though consumption of these shellfish has been proven to cause negative health effects, respondent noted that *“Tribes are going to eat this fish, it is part of who they are”*. Another respondent stated that fish runs are decreasing due to dams and wildfire upstream, which has had negative effects on water quality and fish habitats. Treaty rights are compromised if there is not enough fish to catch.

*“Years and years of mismanagement of traditional cultural resources on federal lands also pose a barrier, as the availability of certain species is compromised. It’s not a forest; it’s a Douglas fir garden.”*

### **Non-tribal use of Forest Lands**

Multiple respondents highlighted general use of forest lands including recreation, public hunting, and permitting of public harvesting of traditional materials as negatively affecting treaty rights and tribal member access to federal forest lands. One respondent mentioned that public use has affected historical sites that are of importance to the Tribe. Petroglyphs along the Columbia River have been damaged, reducing the historical significance of the site. Trash left behind has also negatively affected cultural and historical sites. General use of culturally important sites was also highlighted as a conflict because of how it affects tribal member use and access on forest lands.

Respondents also highlighted public hunting in winter elk ranges as negatively affecting tribal member access to deer and elk because it affects the migration patterns of elk species. Another respondent noted that *“Tribes have different rights and it is hard for people to understand the difference between tribal subsistence hunting and recreational hunting.”*

One suggestion that was made in terms of decreasing competition over cultural resources is an increase in tribal management. Multiple respondents stated that the USFS commercial permitting process needs to be revised to reflect tribal concerns. Increased enforcement and monitoring were also highlighted as a necessary response to guarantee tribal resources are protected.

### **Permitting and Bureaucratic Timeframes**

Another issue raised by respondents is the permitting process and bureaucratic time frames that tribes have to go through in order to harvest or gather. Two respondents noted that the National Environmental Policy Act is burdensome on tribes and may have an indirect impact on tribal members’ ability to gather resources such as cedar. One respondent believes that the stringent requirements found in NEPA may have resulted from policies such as the NWFP changing the bureaucratic landscape. A few respondents also highlighted that the USFS does not recognize that their Tribe often has a narrow time frame to do repair work. One respondent noted- *“...the USFS never hurries or takes that into*

*account when addressing permit requests from the Tribe.” Another respondent stated that the process of requesting resources or access is a “Torturous route of permit compliance and bureaucratic process.”*

One respondent reported that when the Northwest Forest Plan was first released, the Tribe attempted to harvest cedar in order to build a dance house. The nearby National Forest did not allow the Tribe to harvest cedar citing the NWFP as a rationale for the decision. This respondent went on to say that the Tribe went to another National Forest, and staff “*seemed to bend over backwards to help us get what we needed*”, despite being further away from the Tribe.

Requesting cultural resources and being able to harvest materials was another conflict that respondents mentioned. One respondent noted that the Tribe “*...had to jump through some hoops to facilitate gathering for tribal members. Part of it had to do with the USFS not knowing exactly how to handle the rules within a ‘Research Area’. Eventually it was resolved.*” Another respondent commented on the difficult process of requesting cedar trees for cultural use.

*“The processes to secure these resources are a little laborious and not the way we would like to see them.”*

Tribal member access to the forest for traditional plant harvesting and prayer is also limited by required fees or permits that tribal members have to obtain before they can use the forest.

*“The tribe’s ability to exercise historical cultural practices is compromised.”*

### ***Lack of Active Forest Management and Regulation***

A few respondents reported that Forest Service management practices have direct and indirect effects on tribal member access to resources and areas of tribal interest on federal lands. Their responses are expanded upon here. Forest Service mismanagement is a primary barrier in exercising treaty rights because of the impacts it has on traditional cultural resources.

Although tribes may be able to exercise their treaty rights on federal lands, the decline in culturally important species has compromised tribal members and their ability to exercise treaty rights to their full extent. One respondent mentioned that the “*Quality and abundance of plants and animals that make up food, fiber, and medicinal resources have been in decline since contact, and the root of that can be tied to fire exclusion and the suppression of the Tribe’s indigenous management practices.*”

One respondent asserted that the Forest Service needs to prioritize early successional forest management, because of the effects that their current management practices have on forest resources including flora and fauna, which is vital to promoting other tribal resources such as ungulates. This respondent noted that “*Deer are in such low densities that it’s not worth the gas money to go there for tribal hunters.*”

Respondents also highlighted wilderness areas as a barrier to tribal member access to important resources. One respondent noted that there is a proposed wilderness area adjacent to the Tribe’s reservation, which means that this area may be subject to decreased management in the future. The respondent was especially concerned to what this entails for wildfire management, because it will limit the Tribe’s ability to prevent forest disease or insect predation on tribal forest lands. Other management concerns that were voiced by respondents include lack of silvicultural treatment for forest canopies; lack

of early successional forest management, and the need for disturbances such as prescribed burning and thinning; and the detrimental effects that clearcutting has on tribal resources.

One tribe indicated that their tribe had been very vocal in seeking to exercise treaty rights. Another respondent indicated that current management strategies are concerning to some tribal members who are used to thick dense forest stands having grown up in unmanaged forest stands, are sometimes concerned when thinning is proposed to restore to historical conditions. Finally, one respondent reported that the Tribe and its members have continued to prune, burn, and coppice on small scales, but the Tribe is still suppressed by the dominant governance systems in their ability to exercise their tribal and treaty rights in a way that is meaningful and that perpetuates the Tribe's cultural identity. Fire ceremonies that are of vital cultural importance are still considered illegal on Forest Service Land, and if the Tribe were to engage in these practices, tribal members would be punished. This respondent noted that the restrictions on forest lands render everything the tribe wants to do somewhat meaningless given that there is not a holistic approach to management.

### **2.3 Increased Tribal Access to Cultural Resources**

Some positive changes reported by respondents included increased accessibility to cultural resources and better relationships between local agencies and tribes. Although some respondents reported positive changes since the implementation of the NWFP, it is important to note that these changes were not directly related to the Northwest Forest Plan.

One respondent mentioned that the exercise of tribal rights has improved as a result of tribal initiatives and structural changes within the Forest Service. In this case, respondent noted that in response to the Tribe's initiative to improve tribal member access to resources, a new position was created within the tribe that focused on developing policy between the tribe and the USFS to better coordinate tribal member access to cultural and natural resources on USFS lands. These initiatives and implementation of the liaison position have improved relationships between respondent's Tribe and the surrounding National Forests. This respondent also noted that permitting requests have become more streamlined for tribal members. The liaison has also caused an increase in the overall amount of tribal member access.

Similarly, other respondents mentioned that positive change was caused in part by tribal members being employed within local forest service offices. One respondent mentioned that they have been able to send out tribal crews to clean trails and improve access on federal forestlands.

Three respondents noted that there had been small-scale improvements that were made either indirectly or directly by the NWFP. One respondent stated that their Tribe has increased opportunity to conduct traditional burning in nearby forests to promote materials for basketry and traditional food sources. Another respondent noted that the federal-tribal relationship has improved over the last few years because there are individual agency staff working to ensure that the lands are managed for the Tribes. This respondent stated-

*"We have people saying of course you can gather it's your land; we are just managing it for you."*

The positive changes identified by respondents were primarily attributable to tribal initiatives, individual USFS staff members with tribal interests in mind, and the implementation of streamlined permitting processes. The NWFP was specifically cited as improving resource access by only one respondent. This

respondent noted that the NWFP made *“an improvement upon previous management strategies in terms of riparian habitat for salmon and steelhead.”*

## 2.4 Measures to Protect Tribal Culture and Traditional Knowledge

### ***Protocols to Protect Tribal Information***

About two thirds of respondents indicated that they are aware of procedures that have been put in place to provide for protecting sensitive tribal information from unauthorized access or release. However, although many respondents stated that they are aware of federal policy and procedures to protect tribal information, only three out of 25 stated that those procedures were adequate.

Lack of trust is a key reason why Tribes and tribal staff choose not to share sensitive information with federal agencies. One respondent noted that their tribe usually *“errs on the side of caution”* when discussing culturally important resources or areas of concern with agency staff. Another respondent noted that they try and keep tribal information confidential because it is difficult to track where it goes once given to agency staff. Although tribal staff may be aware of procedures in place, one respondent mentioned that *“...the cultural resources department still doesn’t trust it!”*

*“Usually we don’t provide sensitive information in the first place, that’s our procedure!”*

Another contentious point raised by one respondent is the level of protection and understanding that is applied to protecting sensitive tribal information, and how it often depends on the agency and individual staff members. *“If you have a liaison who understands how sensitive a given piece of information is to the Tribe, they will treat it with sensitivity, but other staff may not understand the ethics of the situation.”*

One respondent noted that they have formal policies or procedures outlined in a Memorandum of Understanding and other agreements that protects sensitive information. A few respondents, who identified as natural resources staff, stated that their cultural resource department or staff person is most likely aware of policies to protect sensitive tribal information.

Respondents also highlighted that these policies are more relevant to the *“archaeological side of things”*, and that the Tribe needs more communication about the procedures that are in place to protect sensitive tribal information for planning purposes that take place between the Tribe and the Forest Service.

*“They are doing a good job protecting heritage and archaeological sites. Artifacts.”*

Another respondent noted that they have been able to maintain some components of what they are analyzing confidential, such as cultural vegetation characteristics surveys. In order to keep locations confidential, the Tribe uses the National Environmental Protection Act and the coverage it outlines for tribally sensitive information. One other respondent stated that they were aware of procedures to protect tribally sensitive information that are specifically related to the distribution of culturally important plant species.

A few respondents noted that in terms of promoting and protecting Traditional Knowledge in the development of management documents, they do not refer to the NWFP or any policies that may be outlined in the plan. Respondents noted that they commonly refer to the National Historic Preservation



Act (NHPA) and the Native American Graves Protection Act (NAGPRA) in order to maintain the confidentiality of tribally sensitive information.

Respondents also indicated that Section 106 of the NHPA is a policy they often refer to in order to guide protection of cultural resources.

*“Section 106 of the National Historic Preservation Act of 1966 requires federal agencies to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve throughout the country.” (Advisory Council on Historic Preservation) Its regulations place particular emphasis on consultation with Tribal Historic Preservation Offices (THPOs), Tribes, and Native Hawaiian Organizations. (Section 106 Fact Sheet)*

### **Barriers to ensuring tribal information is protected**

Agency staff turnover was also highlighted as a key concern to maintaining trust and understanding. One respondent mentioned that they have held cultural history training for USFS staff, but due to the number of interns and staff turnover that takes place within the Forest Service, it is difficult to keep up.

*“I’ve done cultural history training for USFS staff, but there is so many interns, turnover, etc. it really needs to be an internal training process.”*

Another noted that the ranger station in their area is not consulting with the Tribe when the field season starts, and the respondent was not sure if agency staff understood the trust responsibility and consultation requirements. Different agencies also use inconsistent policies to protect tribally sensitive information, and one respondent noted that this makes it unclear as to how agencies protect sensitive information.

Some of the active culture, root digging, berries, is not being protected. One respondent noted *“That’s where the people go. The tribe doesn’t want this information on a map. They aren’t restricting access by non-tribal members. The districts know about this but they don’t have tools to protect cultural resources. They can’t prohibit people.”*

### **Traditional Knowledge and Management Actions**

When asked if their tribe was aware of procedures that are in place to incorporate traditional knowledges into the development of management actions, about half of respondents stated yes.

Though procedures to protect traditional knowledge may be understood by agency and tribal staff, implementation of management solutions that incorporate traditional knowledge and promote the health and well-being of culturally important areas and information could be improved.

Three respondents recounted how their tribes are currently in the process of incorporating traditional knowledge into management actions. One of the respondents mentioned that their tribe is helping to form part of a climate adaptation initiative that will include traditional knowledge, but also noted that the initiative still needs more development. The second respondent stated that *“the Tribe is a generation or two away from putting this into practice.”* The third respondent noted that their tribe is in the process of incorporating TK to promote traditional fire use and the management of traditional foods.

Some respondents indicated that traditional knowledge has been incorporated into the development of Forest Service management actions. One respondent noted that their tribe has been able to share TK and discuss culturally significant species with their local USFS agency staff. Meetings focused on TK are happening more frequently. Another respondent shared that their tribe has worked with the Forest Service to incorporate tribal knowledge into the management of ancestral territories.

Consultation with other agencies has also been a means that some tribes have used to incorporate TK into federal land management projects. One interviewee documented how they have been able to incorporate Traditional Knowledge in projects they are working on with the Environmental Protection Agency, but the projects they currently have in place are now “going backwards”, due to the current administration and its leadership.

*“Agency leadership at the federal level is countering all previous efforts. Regional staff are in an awkward situation where they are being pushed to do the opposite of what they had been doing.”*

Another tribe has worked with the National Oceanic and Atmospheric Administration to incorporate traditional knowledge into the management of nearby fisheries. Other respondents mentioned that they have incorporated TK into management of BLM and NPS lands.

Several respondents cautioned that although they are aware of policies or procedures to incorporate TK, they also had concerns about shortcomings in this process. One commented that the Tribe’s history or cultural history is sometimes included in planning documents. A second step would be for the plan to say- “...that in order for this area to be healthy the following needs to be implemented because the Tribes have the knowledge. That second step isn’t happening.” Another interviewee stated that their tribe is interested in promoting landscape level protections in addition to archaeological resource protection. Although there is legislation and policy in place to protect areas of archaeological importance, those policies do not always apply to the protection of natural resources or habitat maintenance.

### ***Protection of Cultural Sites***

A majority of respondents stated that their tribes are aware of procedures to protect cultural sites on federal lands. Respondents highlighted policies and legislation that their tribes were aware of including Section 106 of the National Historic Preservation Act, the Native American Graves Protection Act, and the National Environmental Policy Act.

Respondents frequently cited Section 106 and the National Environmental Protection Act as the policies they reference when protecting cultural sites on federal lands. One respondent noted that the Section 106 process works pretty well: agencies reach out to the Tribe early on and adequately mitigate the impacts outlined by the Tribe. One respondent noted that while policies to protect cultural sites on federal lands are already in place in the National Historic Preservation Act, “we like to chase and go after the unknown resources and that is where the tribal monitoring comes into account.” Another respondent noted that their Tribe has been working closely with the National Park Service and the Tribal Historic Preservation Office in order to protect and manage cultural sites on federal lands.

One respondent noted that the location of culturally significant sites is not widespread information, and that their Tribe’s cultural resources department has taken measures to educate and train their local agency staff on tribal areas of interest and sensitive information. This process has helped the tribe create stronger relationships with agency staff. Another participant affirmed this approach, mentioning

that the Tribe's cultural resources staff has been diligent in reaching out to federal partners to provide for an introduction to the Tribe, *"so that those federal partners know who the Tribe and its staff are as well, and they can have that direct connection to tribal cultural resources staff."* Another Tribe has shared a GIS staff person that is a part of Tribal staff with the USFS; that person is authorized to share some information with the USFS. This arrangement has helped with protecting cultural sites on federal lands.

Although respondents are aware of policies and procedures to protect cultural sites, most respondents did not mention that they use the NWFP to do so. One respondent noted- *"Archaeological site protection is one of the primary constraints on land management- divine features are excluded from entry, foot travel etc. during management actions."* Responses to these questions show that although tribal staff may be aware of policies and procedures to protect tribally sensitive information, incorporate traditional knowledges into management plans, and protect cultural sites, these policies are not adequate or widely known. Many of the respondents mentioned that these questions could be better answered by the Tribe's cultural resource department or staff.

### ***Unaware of Policy/ Procedures***

Nearly half of respondents were either unsure what policies and procedures were in place to incorporate TK into federal lands management, or were certain they did not know of any. Several tribal natural resource staff stated that while they were either unsure or unaware of policies or procedures to incorporate traditional knowledge into management actions, they believed their cultural resource department may have a stronger understanding. One respondent was not aware of formal procedures. They mentioned that the Forest Service will contact the Tribe informally if they are working with fire management. One respondent distinguished between policies for incorporating TK into specific projects, versus those with broad applicability, *"...as that would be hard to accomplish, though it may happen on an individual project basis."* One interviewee summarized the importance of the topic, noting that this is a question that the Tribe is frequently asked, and *"...everybody wants that!"*

## **2.5 Conflicts under the NWFP and Conflict Resolution**

When asked if there are conflicts over how resources or areas of tribal interest are managed or used, 76% respondents indicated that there are conflicts over the use or management of resources and/ or areas of tribal interest. The remaining 24% responded no, other, or did not provide an answer. The responses below are not all specific to the NWFP, but give a general overview of respondents' experiences when working with the USFS and other federal agencies.

One barrier to achieving compatible forest management between tribes and agencies under the NWFP, are the limitations that the NWFP places on tribes. Overall, respondents highlighted a few different sources of conflict that they either have had to address in the past or are preparing to address in the future. Respondents mentioned the ESA listings of the marbled murrelet and Northern spotted owl, which has impeded tribes' advocacy for holistic forest management. Respondents pointed out that focusing on the protection of one species is detrimental for other species and the habitats that they depend on. The NWFP has also affected tribes and their ability to promote fire resilient forests.

Another source of conflict highlighted by multiple tribal staff members are the incompatible management goals and the lack of understanding coming from agency staff. Many respondents noted

that tribal staff and agency staff have a different idea of what “protection” truly means. This has made it difficult for tribes to reach compatible management goals with their local Forest Service agencies.

A few tribal staff also noted that the development interests and permitting process that the USFS allows has had detrimental impacts on cultural resources and the habitats in which they depend on. One respondent discussed how the introduction of cedar trees in their area has also brought cedar root rot and has affected the forest materials that the tribe harvests. Commercial harvesting has also affected tribal members and their ability to exercise their treaty rights.

### ***Conflicting Management Goals under the NWFP***

For one tribe, management restrictions put in place by the NWFP have negated the original purpose of a special management area that the tribe intended to harvest timber from to fund future land acquisition. The tribe is able to do some commercial thinning, but very little revenue is generated. This has affected the tribe’s ability to acquire more land, thus further limiting access to and management of lands and resources of tribal importance.

### ***Wildfires and Fire Resilient Forests***

Maintaining and promoting fire resilient forests was raised by multiple respondents as a critical subject of concern. Respondents asserted that federal forest land management and fire management is not compatible with tribal forest management goals.

Respondents offered several examples of how federal fire management was incompatible with tribal priorities in terms of forest management and wildfire prevention. One tribe is considering using prescribed burns to maintain tribal forest lands, but understand that this may be a source of conflict. Tribal management goals may not align with the management goals of neighboring landowners including the Forest Service. This respondent noted that *“A more holistic approach is desired by the Tribe and can be a source of conflict. Ultimately, the Tribe wants to be proactive, not reactive.”* Another tribal representative discussed how federal fire management and the clearing of dead forest materials are affecting culturally important species that the tribe depends on. In order to address 100 years of fire suppression, one respondent noted that the local forest service agency is removing dead forest material that serves as an important habitat for woodpeckers and other snag-dependent species. Finally, wildfires were highlighted as a threat to traditional resources. One respondent noted that *“In the last 20 years there have been multiple major fires in the area that have put traditional cultural resources at risk.”*

### ***Conflicts with Federal Forest Management***

One respondent discussed the impacts that federal road maintenance has on the Tribe and its resources. This respondent noted that operating USFS roads impact important habitats and water quality for salmon populations.

*“By keeping those roads operational, they are sort of perpetuating impacts on important habitat areas.”*

Department of Defense activities were also highlighted as negatively affecting tribal resources and lands. These activities include growler overflights, detonating explosives, disrupting marine life, excluding people from treaty protected gathering areas, and enabling microwave emitters on culturally important lands.

Another source conflict highlighted by one respondent are the incompatible species management goals conducted by federal agencies. One respondent mentioned that their tribe has had conflicts with the National Park System on sockeye recovery efforts in a lake that is within NPS jurisdiction but is of interest to the tribe.

One respondent noted that there has been conflict, but it tends to be on a site-specific basis. For example, respondent highlighted National Monument designations and increased recreation opportunities as a potential source of conflict in the future. Increased foot traffic could have negative impacts for culturally important sites and resources if they are not adequately protected.

### ***Have not participated in a formal resolution process***

When asked if conflict resolution processes were adequate, only 16% of respondents stated that conflict resolution processes were adequate. 32% of respondents noted that conflict resolution processes were not adequate. The remaining 52% did not know if conflict resolution processes were adequate or if they had participated in such a process.

Most respondents stated that they have not participated in a formal conflict resolution process or were unaware if there was a formal process in place, and because of this felt that they could not adequately answer the question. One respondent mentioned that their Tribe used to have a clause regarding conflict resolution in one of their earlier protocol agreements, but it has since expired. Another respondent mentioned an incident where the Tribe sent a request to the USFS to build a gate and close the road to one of the Tribe's fish acclamation sites after it was vandalized. This respondent noted that the request made by the Tribe did not involve a formal conflict resolution process and after many phone calls and meetings, the Tribe was finally able to get it approved.

One respondent stated that if the Tribe has concerns over Forest Service management actions or proposals, they will submit comments or input on the issues that they are opposed to. This respondent also mentioned that although the Forest Service keeps the Tribe well informed as to what actions might affect tribal interests, there are still conflicting interests between Forest Service management goals and Tribal goals. Another respondent highlighted that most conflicts the Tribe has experienced unfold at the local level. The Tribe often chooses to resolve these issues by going higher up to the Regional Office. This respondent noted- *"This strategy of resolving local conflicts has worked well for the Tribe."*

Although only 16% of respondents stated that they had participated in a formal conflict resolution process specific to the NWFP, a few respondents stated that they were aware of conflict resolution policy elsewhere, or have participated in informal conflict resolution processes. Two respondents commented that whenever a conflict arises, they are able to work with their local agency staff to share information and find common ground they can all agree on. One of the respondents mentioned that they have exercised the "tribal objection" component of the National Environmental Policy Act in order to find an agreeable solution with their local forest service personnel.

One respondent highlighted the Sequoia Mediated Settlement as a good model to use for conflict resolution between multiple stakeholders. *"The Mediated Settlement Agreement covers a wide range of topics including giant sequoia grove management, riparian area management, timber management, and wildlife species, as well as such procedural matters as the content of project analyses, monitoring, and annual progress reports."* (SNF, Mediated Settlement Agreement Review) Another respondent recalled working through a conflict resolution process with the National Marine Fisheries Service (NMFS). This respondent commented that the process was adequate, but also *"long and painful"*. It is important to

note that this conflict resolution process was facilitated by the Bureau of Indian Affairs (BIA). Instead of taking the conflict to the NMFS, the Tribe contacted their BIA representatives and they were able to bring the Tribe and the NMFS together to find an agreeable solution. Overall, the conflict resolution processes identified by respondents were not specific to the NWFP.

One respondent could not identify any conflicts that may have taken place between the Tribe and the Forest Service, but highlighted tribal capacity as a concern.

*“There are a lot of things that we aren’t aware of and we should be but we have to prioritize. There may be management conflicts the Tribe isn’t even aware of because of capacity issues. A lot of those forests have to interact with our cultural resource department. There is a significant gap, funding and staffing levels are not there to be able to consult and participate how the Tribe would like to.”*

This comment shows that the Tribe and its staff may not be aware of management issues that may exist between the Tribe and the Forest Service, or other agencies. It’s also important to note the complexities of managing ceded lands, trust lands, and traditional lands, all of which Tribes are concerned about.

Another respondent mentioned that they were not aware of what the formal conflict resolution process was in their region. They discussed one case in which the Tribe and their local agency office just went back and forth until the Tribe got what they needed. One respondent commented that the *“Tribe hasn’t taken the initiative to fight many of these issues because it doesn’t feel it will be heard.”*

### ***Inadequate Policy***

Over 30% of respondents stated that conflict resolution processes were inadequate. One respondent noted that, *“Nobody is ever happy with how these things play out.”*

Another respondent mentioned that the entities their tribe works with have their own mitigation policies in place, and those policies do not always include tribes or cultural resource protection.

One respondent discussed the importance of having the trust of both parties when working through a conflict resolution process, and that is often the missing component. A few other respondents also noted that the conflict resolution could be a good model of finding agreeable management solutions, but it never gets to that point.

*“Generally, somebody is always unhappy, unhappy enough to raise a big stink about the outcome.”*

*“Conflict Resolution could be a good model, but it never gets to that place. Agencies don’t have enough respect for Tribal interests to even get to conflict resolution, and they simply blow Tribes off. Conflict resolution processes involves the trust of both parties but that is missing. It would be great to reach that point.”*

## **Section 3: Compatibility of Federal and Tribal Forest Management**

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### **3.1 Compatible Management Practices**

A little less than half of the respondents stated that FS/BLM Forest management was compatible with what their tribe values about tribal lands of interest. Respondents highlighted varying levels of compatibility between USFS forest management and Tribal forest management.

A few respondents noted that the designation of wilderness areas is beneficial in terms of protecting the natural environment and promoting the sustainability of wildlife. Restoration practices taken on by the FS/BLM under the NWFP were also highlighted as beneficial to important fish species and maintaining water quality.

One respondent highlighted the benefits of riparian protection on FS/BLM lands. Riparian protections not only benefit fish, but also ungulates that are of importance to tribes.

A few respondents said that Memorandums of Understanding and Agreements are improving the compatibility of management strategies between their tribe and local forest service agency. MOUs/MOAs can serve as a means to identify shared interests and goals, and was also noted to improve communication between agency staff and tribal staff. One respondent said that tribal and Forest service management is the most compatible it has been in the last 15 years because of the MOA that they have with the Forest Service. This respondent also noted that the MOA exists into perpetuity until one party or another wants it to dissolve, and it has currently been in place for almost 20 years.

Another respondent reported that one area of Forest Service management that has improved is the decrease in harmful logging practices. This respondent noted that the FS has a longer rotation period than some of the private timber companies in the area, which is a positive because they are allowing the forest to recover. Alternative forestry practices are also being incorporated into Forest Service management and that could lead to benefits in the future for the Tribe. These practices include thinning of overstock stands and increased conservation measures for important species. Thinning is beneficial for creating forest openings that improve critical wildlife habitat. Past agency management involved clear-cutting and mono-agrarian management policy. This Tribe is trying to encourage a more diverse timber canopy through a collaborative project with the USFS and other partners. The tribe is also pursuing tribal restoration and regeneration projects, which are designed to improve stand diversity and forest health.

One other respondent noted that federal management of forestlands in their area has started to make a transition from focusing on timber production to ecosystem restoration. This respondent mentioned that water quality, fish, endangered species are now being considered more in depth by the Forest Service. The Forest Service is also starting to take a more holistic approach to forest management in the Tribe's area.

One document that was highlighted in terms of the increased alignment with Federal and Tribal forest management is the National Cohesive Wildland Fire Management Strategy which encourages a cross-boundary approach that brings together tribes, agencies, states, local communities, NGOs, etc.

### 3.2 Incompatible Management Practices

A significant source of incompatibility that was highlighted by multiple respondents is the promotion of late successional reserves. Although respondents commented that the Forest Service's conservation ethic is compatible with Tribal management goals, the management ethic is not. One respondent mentioned that their local FS agency considers early seral forest management as a disturbance rather than a conservation action. A few respondents also noted that early seral forest management is needed to promote culturally important resources and their habitats.

Many respondents highlighted a need for holistic and active management of forestlands. One respondent noted that the tribe is interested in more than protecting listed species; they are interested in protecting all species.

*"We want healthy forests that have good habitat that include diversity for different species."*

*"What the Tribe values are not only listed species. The Tribe values plants from bear grass to cedar, they value lamprey, which is not a listed species, which makes it tough to get funding to safeguard lamprey, and the Tribe also values deer and elk, woodpeckers, and other species. Under the NWFP, it may seem like a broad stroke management of multiple species, but this Tribe knows it's not. And that made it very challenging to manage."*

A few respondents also highlighted that there is need to return active fire management to forestlands in order to promote biodiversity in tribal areas of interest. One respondent noted that Forest Service management "...doesn't align with our tribal policy, in which people seek to actively manage the land to promote species of cultural importance, and in which there has been active fire use for thousands of years. The USFS doesn't do enough active management, such as prescribed fire under the right conditions to prevent the catastrophic wildfires that we see these days." The destruction caused by intense wildfires was one concern voiced by many respondents. One respondent felt that without active management of late successional reserves that are in place now, you could not protect important habitats or the communities that depend on them from intense wildfires. One respondent also highlighted the need for consistent wildfire protections of forestlands.

Another respondent noted that their Tribe agrees with the Forest Service's goal of returning forest lands to historic conditions, but they indicated that the some of the thinning activities the Forest Service conducts does not meet the goals outlined in the NWFP. The implementation and management of late successional reserves are also not as effective as the Tribe would like to see. This respondent reported that culturally important species that the Tribe depends on are being impacted because there isn't any additional adaptive management happening on the land.

Some respondents indicated that timber harvests and logging on Forest Service/BLM lands are incompatible with tribal management objectives. One respondent noted, "*Not very [compatible]. It is just logging, logging, logging.*" This respondent went on to say that logging companies have a lot of freedom in regard to where and how often they are able to log timber on FS/BLM lands. One other respondent mentioned that their tribe is concerned with changing timber stand age, and aggressive harvest rotations.

In contrast, another respondent commented on the declining timber market in their area. This respondent noted that the tribe has a working forest, and it is important that there be a functioning



timber market structure. A large number of mills in the Tribe's area have shut down leaving little competition and a small market that is difficult to maintain. This respondent suggested that in order to restore mills and secure a stronger timber industry, the Forest Service and BLM should allow for the extraction of timber and other forest materials. This would lead to a restoration of a healthy timber market and create the incentive for mills to return.

Two respondents noted that treaty rights are not being equally evaluated when it comes to management actions taken by the FS. One respondent highlighted that Tribes and the USFS need to find a way to guarantee that tribal treaty rights are equally represented and evaluated in planning and management actions.

*"If you're going to flood 6 miles of cultural sites, how much is that worth? You can't put a dollar figure on it but that's what the federal government wants to do."*

One respondent highlighted that the BLM and Forest Service have to manage forestlands for the public as well as for the Tribes, and tribal values are being pushed out. In order to make sure that agency staff are considering treaty rights, several respondents suggested that staff go through training in order to increase their understanding of treaty rights. Several respondents also suggested an increase in Tribal oversight on federal plans to increase compatibility between Tribal and Federal management.

Respondents also highlighted the need for increased tribal forest management. One respondent noted- *"We would like to have more say in how it is managed but that [is not] ever going to be the case!"* Another respondent commented that most tribal areas of interest are managed by the [agency], and the Tribe has little say over how the land is managed.

### ***Lack of Agency Capacity***

A few respondents mentioned that one barrier to achieving compatible management priorities and goals, is the lack of agency funding and staff capacity. FS/BLM agencies often do not have enough funding or capacity in order to meet tribal management goals or priorities. Respondents noted that management proposals and projects are often left up to the Tribes to create and carry out. Respondents also noted that FS/BLM agencies might not have the capacity to effectively implement management actions or conduct sufficient monitoring.

One respondent noted that their Tribe values watershed protection, open space, and resource protection. These priorities can be achieved, but the respondent noted that they are difficult to uphold because the Forest Service is not conducting management projects with any regularity. This respondent went on to say that the NWFP is partly responsible for the reduction of logging on federal land, which has led to agency budget and staff cuts.

### ***NWFP and Bureaucracy***

Another barrier that was highlighted in achieving compatible tribal-federal management, are the layers of bureaucracy that tribes have to go through in order to actively participate in forest management. One respondent noted that, *"The NWFP adds a lot of layers and enables a lot more people to be able to put a stop on things."* This respondent also highlighted that the National Environmental Policy Act and the permitting process limits project feasibility and success because of the limited lifespan of tribal funding sources. Agency capacity also places a limit on tribal management in terms of how willing Forest Service staff are to face the repercussions of potential third-party lawsuits.

One respondent also commented on the fact that their Tribe has no control over their own financial systems, and this makes co-management and exercising or pursuing treaty rights very difficult.

*“Knowledge holders are either left to do nothing, or engage in endless funding bureaucracies and grant management, leaving them unable to pass knowledge on to the next generations.”*

A few ways that this tribe is addressing this issue is through endowment building and pursuing compacting authorities that span across multiple jurisdictions. This respondent noted that this type of funding mechanism *“...allows for more flexibility and less bureaucratic hoops in terms of how to spend the money [as compared to grants].”*

### **3.3 Strengthening Federal Tribal Relations**

The last question in the interview process asked respondents how the federal-tribal relationship can be improved and strengthened. Respondents highlighted that consistent communication and strong relationships as one way to improve the federal-tribal relationship. They also noted how important continued access to the land and its resources are when engaging tribal youth and expanding traditional knowledge.

#### ***Consistent Communication/ Strong Relationships***

Multiple respondents stressed that consistent communication is key to maintaining strong tribal-federal relationships. One Tribe has had success in creating strong and meaningful relationships with agencies that they hold quarterly meetings with. This respondent noted, *“Even if we [don’t] have any issues, we still have a meeting to talk.”* Communication between tribal government and USFS leadership was highlighted as a necessary component to creating strong federal-tribal relationships. One respondent noted that USFS agency leadership or staff rarely come to the Tribe and ask their elected leaders what their goals and priorities are; usually the agency is requesting a tribal response on agency actions. In addition to more communication between tribal and agency leadership, strong relationships on the ground are also important in achieving strong federal-tribal relationships.

*“It all comes down to periodically meeting face-to-face...you can send letters back and forth all you want but until you sit down with the folks doing stuff on the ground it doesn’t make much of a difference.”*

One barrier many respondents identified that inhibits building strong and meaningful relationships is agency staff turnover. One tribe has been able to improve the federal-tribal relationship in recent years due in part to tribal council and USFS staff building strong connections between individuals. However, this progress could be hindered with turnover on either side. One respondent also highlighted that building strong relationships that last is also negatively affected by lack of tribal funding and staff capacity. A few respondents noted that their tribe does not have the staff capacity to meet all of its consultation obligations. There is a need for policy or procedure that addresses these barriers to building strong federal-tribal relationships. One respondent asked if *“Is there an institutionalized way of responding to staff turnover and how we rebuild those relationships?”*

*“The players change, and the regulations change.”*

One respondent referenced Executive Order 13175 that called for federal agencies to develop an Indian Policy when conducting consultation as an improvement to the federal-tribal relationship.

One respondent stressed the importance of remembering that *“Every tribe has their own form of consultation.”* In order to build strong and meaningful relationships, agencies need to understand that each tribe has a unique vision regarding what constitutes effective consultation. Each tribe also has their own unique history and treaty rights that need to be understood in order to conduct adequate and meaningful consultation. Many respondents also highlighted that there needs to be trust in order to make relationships stronger.

*“Trust is the core and central thing to making relationships stronger, and trust doesn’t happen without history.”*

One respondent suggested that in order to strengthen federal-tribal relationships, it would be beneficial to change or strengthen some of the regulations that are unclear to federal agency staff around conducting consultation with Tribes and pursuing co-management opportunities. This respondent also mentioned that there a lot of benefits to involving the tribes in more agency planning decisions or management actions. A few respondents discussed the benefits of having tribal representation in federal agency offices. One respondent noted that having tribal members who worked directly with federal agencies has benefited the overall tribal-federal relationship in terms of maintaining consistent relationships and understanding. Another respondent discussed the need for a tribal representative among Forest Service leadership to adequately facilitate government-to-government consultation and also engage in finding common ground in meeting management goals and objectives with their local or regional forest service agency.

#### ***Increased Collaboration/ Co-management***

Some respondents suggested that it would be important to increase opportunities for federal-tribal collaboration in planning and managing forest lands. A few respondents noted that tribes are often grouped together with the general public when it comes to management actions on forest lands and are not able to guarantee that Tribal rights are prioritized, or that planning documents adequately reflect the Tribe’s interests. One respondent noted that federal agencies and their staff often advocate for the words “shared stewardship” rather than “co-management”. This respondent said that using this type of phrasing minimizes the tribal role in making management decisions and lumps the Tribe in with the general public.

*“Government-to-government consultation goes above the public.”*

Respondents also mentioned that having an understanding of tribal interests and commitment to tribal priorities from agency staff would strengthen the federal-tribal relationship. One respondent described that their Tribe has been pushing to protect and restore conditions for resident killer whales, who primarily feed on Chinook salmon. In order to do this, the Tribe is interested in enhancing Chinook habitat. This respondent noted that one problem the Tribe has faced in their attempts to improve salmon habitat, is that there is often no one to turn to get the federal permits and approval necessary to carry out resource enhancements projects.

Respondents highlighted the Tribal Forest Protection Act and the Good Neighbor Authority as two forms of legislation that have increased co-management opportunities for Tribes and federal agencies. The TFPA will be expanded upon in case study at the end of the report.

*“A major tenet of sovereignty is the ability to co-manage fish and wildlife resources and land with federal agencies.”*

### **Youth, Traditional Knowledges and Cultural Practices**

Throughout the interview process, multiple respondents highlighted the importance of engaging tribal youth and why it is vital for Tribes to have access to traditional landscapes and resources. One respondent commented on the positive changes around exercising treaty rights and applying traditional knowledge to the management of forest lands. The protection of tribal rights and treaty rights has benefited tribal youth in terms of exercising their rights and learning about traditional knowledge. This respondent commented that it is exciting to see new generations excited about the Tribe's culture, and why it is important to make sure that the youth will continue to have access to the land and its resources.

*"Seeing young people doing traditional activities without any knowledge of the shame, illegality, or negative connotation that used to be associated with these activities is a huge deal. Just being able to do it! For example, a tribal member is out gathering materials for baskets, their kids are hanging out and just playing. They are singing songs and gathering materials— that to me is just so amazing to have that young person share that song with the forest while they are gathering. They don't really know what they are doing, it's just happening. It's a way of feeding the forest. That's getting back to why this work is so important."*

*"It's a win when our kids are playing their traditional games on traditional lands. Naturally building that relationship with the land again, talking to their ancestors."*

*"We are hard stewards of our forests, our waters, our landscapes...why is that? Not only because we believe these things are deserving of respect but also because we want these things to be there for our kids and their kids, and their kids...as we say, for seven generations."*

*"It is very scary to me, the Tribe wants us to manage for seven generations and beyond, and when I look at some of the tribal kids I wonder if there will even be fish or other resources a few generations from now."*

## IV. Case Studies

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### 1. Coquille Indian Tribe

#### Abstract

The Coquille Indian Tribe was highlighted in a case study in the 15-year Northwest Forest Plan tribal monitoring report because of the tribe's historical experience and its assertiveness and interest in working collaboratively with public agencies including the Bureau of Land Management (BLM) Coos Bay District. The Coquille Tribe's unique approach to consultation illustrated best practices for consultation. This case study seeks to demonstrate the benefits of using a formal MOU to establish policies and procedures for effective consultation, building partnerships and enhancing Federal-Tribal relations. The case study highlights the 2017 Memorandum of Understanding between the Coquille Indian Tribe with Rogue River- Siskiyou National Forest (RRSNF).

#### Purpose of the Case Study for the 25-Year Northwest Forest Plan Report

The 25-year report will follow up on how the Coquille Indian Tribe has continued to work with their federal partners on managing tribally owned forest lands and increased Tribal involvement in management of Federal lands within the Tribe's ancestral homelands. Before the Western Oregon Tribal Fairness Act was passed in January 2018, the Coquille Forest was the only tribal forest managed under the Northwest Forest Plan. The Western Oregon Tribal Fairness Act *"...amends the Coquille Restoration Act to remove the requirement that the Bureau of Indian Affairs (BIA) and Tribe manage the Coquille Forest"* subject to the standards and guidelines of federal forest plans on nearby or adjacent federal lands. Since the decoupling of the management of the Tribal forest from federal land management, the BIA and Tribe are now the sole managers of the Coquille Forest without the additional federal land management overlay. There is now the single requirement that the Coquille Forest shall be managed in accordance with laws pertaining to management of Indian trust land. From the perspective of the Coquille Indian tribe, this is ideal as it places management under the [National Indian Forest Resources Management Act](#) (NIFRMA) just like all other Tribes in the nation.

The Coquille Tribe's prior experiences with consultation related to NWFP land management guidelines and subsequent experiences since decoupling offer insights from which other tribes may learn and draw on to strengthen their own consultation process. The following sections focus on:

- Consultation between federal agencies and the Coquille Indian Tribe;
- The Tribe's experience with the Northwest Forest Plan and other land management activities;
- Building of new consultation and partnership relationships since decoupling; and
- Use of formal MOU to establish policies and procedures for effective consultation, building partnerships and enhancing Federal-Tribal relations.

#### [Western Oregon Tribal Fairness Act](#)

The Oregon Conservation Resource Act of 1996 created the Coquille Forest (Section 501, Title V), an area of roughly 5,400 acres within the historic territory of the Coquille Indian Tribe (the Tribe). This act initiated a relationship between the Coquille Tribe and the U.S. Bureau of Land Management. The legislation instructs that the Tribe manages the Coquille Forest *"...under applicable forestry laws and in a manner consistent with the standards and guidelines of federal forest plans on adjacent lands."* The Coquille Indian Tribe and BIA determined that this unique statutory requirement could be met by an approach that connected management of the Coquille Forest to management of the BLM federal lands under the Coos Bay District. These BLM lands were being managed under the newly implemented

Northwest Forest Plan. After the [Western Oregon Tribal Fairness Act](#) was passed in January 2018, the Coquille Tribe was decoupled from the adjacent or nearby federal land management requirement. The Coquille Forest is now solely under the management of the Coquille Tribe. The Tribe manages the Tribal forest under an Indian Self-Governance Compact with the BIA.

In 2015, 3,200 acres of the Coquille people's ancestral homeland in Curry County was acquired by the Tribe, through a partnership with Ecotrust Forest Management. This forestland, held in fee status, is known as the Sek-wet-se Forest. ([Click here](#)) While the Sek-wet-se Forest does not have the same federal nexus as the trust lands of the Coquille Forest, management of these lands have benefitted from the partnership relationship established under a MOU with the Forest Service. The Oregon Conservation Resource Act and the Western Oregon Tribal Fairness Act puts the Coquille in a unique position of forest management. Collaboration, consistency, and meaningful conversations are all important factors in maintaining favorable situations for both the Tribe and local agencies. However, including these factors in a Memorandum of Understanding provides a formal and structured framework for consultation between the Tribe and the federal agencies.

#### **Memorandum of Understanding between the Coquille Tribe and the RRSNF**

In March 2017, the Coquille Tribe and the Rogue River-Siskiyou National Forest (RRSNF) entered into a Memorandum of Understanding (MOU) that outlines consultation practices and legal responsibilities agreed upon by both parties. *"The purpose of executing this MOU is to strengthen and affirm the government-to-government working relationship between the RRSNF and Tribe; to outline the principles to be followed by the RRSNF in its interaction with the Tribe in coordinating/implementing RRSNF land and resource management plans and actions that may have tribal implications."* (MOU I.). The MOU highlights the objectives of both parties, coordination of policy, programs, and actions, opportunities for cooperation, and the mutual agreements and understandings by both parties. This MOU is a non-binding agreement, but it has allowed the Tribe and the RRSNF to build a stronger relationship. Figure 1 illustrates the components of the 2017 MOU between the Coquille Indian Tribe and the RRSNF.

| <b>Figure 1. Outline: 2017 MOU between the Coquille Indian Tribe and the RRSNF</b> |   |
|--|---|
| I.   | Purpose   |
| II.  | Objectives of Both Parties  |
| III.   | Coordination of Policy, Programs and Action   |
| III.A.   | Government-to-Government Consultation   |
| III.B.   | Forest Planning Policy  |
| III.C.   | Out-Year Planning Process   |
| III.D.   | National Environmental Policy Act (NEPA) Process  |
| III.E.   | Time of Meeting to Accomplish C and D   |
| IV.  | Cooperative Opportunities   |
| IV.A.  | Public Interpretation and Education, and Employee Training  |
| IV.B.  | Land Tenure   |
| IV.C.  | Resource Management and Coordination  |
| IV.D.  | General   |
| V.   | Agreements  |
| Attachment 1   | Undertakings excluded from tribal consultation as not having the potential to affect properties and places of cultural and traditional importance to the Coquille Indian Tribe. |
| Appendix A   | Authority   |
| Appendix B   | Contacts  |
| Appendix C   | Area of Interest identified by the Coquille Indian Tribe  |

### **Outcomes from Government-to-Government interactions**

As a result of the Coquille Forest Legislation and the Western Oregon Tribal Fairness Act, the Tribe has built relationships over the years with neighboring federal agencies including the BLM Coos Bay District, the United States Fish and Wildlife Department, NOAA Fisheries and more recently the U.S. Forest Service. As a result of the MOU with the Rogue River Siskiyou National Forest (RRSNF) in 2017, the Tribe has seen several successes:

- The Tribe has obtained cedar trees from National Forest lands (at no cost to the Tribe for the timber) for Tribal cultural uses, including canoe building and repair of Tribe's plankhouse. (*MOU --IV.C.10*).
- The Forest Service has provided employment to Tribal members by hiring forestry crew (Sek-wet-se forest crew) to perform a variety of work on both Forest Service and Tribal lands. Projects have involved both labor intensive work (invasive species eradication, trail maintenance, etc.) and technical forestry work (timber sale layout, timber marking, stream fish surveys and habitat surveys.) *MOU --IV.A.*
- The MOU has provided education and training to Tribal members in natural resources management (fish survey training, timber sale layout and marking training, fire suppression and prescribe fire training, etc.) *MOU--IV.A.*
- There are quarterly and annual meetings with RRSNF supervisor and the Tribe to discuss the upcoming year's RRSNF program of work and determine which projects are within the Tribe's area of interest and are in need of formal consultation. *MOU III.A ,D. and E.*
- Opportunities have been provided for the Tribe to be involved in Forest Service planning processes. *MOU III.B and C.*
- There has been meaningful consideration of the Tribe's interests in providing opportunities for reacquiring Coquille ancestral homelands. *MOU II.E.* Preliminary discussions have occurred

concerning opportunity for the Tribe to acquire a Forest Service land in-holding within the Sek-wet-se Tribal forest.

In the 15 year report, one of the lessons learned is the importance of having federal agency staff understand the trust responsibility and the Tribe's unique ties to the land. One issue that was highlighted by many tribal staff members in achieving this understanding was agency staff turnover. Having an MOU can serve as an effective means of bringing new staff members up to date on how consultation should be conducted with the Tribe. Merv George Jr., the Forest Supervisor for the RRSNF noted that MOUs have the ability to serve as instruments that can outlive the personnel that approve them.

*"Tribal chairs come and go, and forest supervisors and rangers come and go. Which means that you always have to start over; having an MOU allows continuity and the relationships to continue on. A living document allows it to be tweaked and changed to fit the times. Because people change doesn't mean the relationship has to change."*

MOUs can provide a great base and reason to study up on these issues, which has been beneficial for both tribal staff and agency staff.

Another need highlighted by respondents throughout the interview process is to make sure Tribes are involved from the beginning of Forest Service planning processes. The MOU between the Coquille Tribe and the RRSNF provides for an annual meeting for the Tribe to discuss and provide input on the Forest Service's Schedule of Proposed Actions (SOPA). The SOPA is published in January, April, July, and October, and *"It contains a list of proposed actions that will soon begin or are currently undergoing environmental analysis and documentation. It provides information so that you can become more aware of and indicate your interest in specific proposals."* Using this provision of the MOU on a broader scale between Tribes and the Forest Service may benefit advancing proposals under partnership authorities.

### **Challenges related to Forest and Species Management**

The Coquille Tribe is unique in successfully managing forestlands under the Northwest Forest Plan for 20 years through the special relationship the Tribe has to the land, as well as through the different legal framework the BIA and Tribes operate under in managing trust forestlands. Tribal staff mentioned that Tribal values do not always align with the management direction and standards and guidelines set forth in the Northwest Forest Plan. The Northwest Forest Plan has a focus of single species management (primarily Northern Spotted Owl and Marbled Murrelet) and created a system of reserves where little to no management was allowed in an attempt to protect habitat and promote species recovery. For the most part, this approach has not achieved the desired outcomes.

The Tribe values culturally important plants and animals from bear grass to cedar, lamprey, deer and elk, woodpeckers, etc. The overarching direction of the Northwest Forest Plan is to protect the Marbled Murrelet, Spotted Owl, and certain fish species and their habitats by establishing reserves, which do not allow for a holistic approach to species management. The Tribe recognizes the interconnectivity of all life and seeks balance in achieving desired forest management outcomes through active management across the landscape.

While the Coquille Forest is no longer coupled to management of federal lands, the Tribe continues to recognize the importance of relationships with neighboring federal land managers. As a result of recently acquiring the Sek-wet-se forestlands, which border the RRSNF and has a Forest Service land in-holding, the Tribe has had a heightened interest in developing a working relationship and exploring



partnership opportunities with the Forest Service. Both the Tribe and Forest Service recognized that entering into a MOU would be beneficial to strengthening the government-to-government working relationship between the RRSNF and Tribe and provide a framework to achieve mutual objectives of both parties.

The MOU between the Tribe and the RRSNF outlines the planning process and implementation of projects that take place on forestlands of interest to the Tribe. This offers opportunities for consideration of more holistic approaches and active management across the landscape.

One way the Tribe and the RRSNF have worked together on forest management is through a partnership sponsored by the Coquille Tribe. When the Tribe acquired the Sek-wet-se forest, a work crew was created to address forestry work needs on these newly acquired lands and the Coquille forest. Through the partnership developed under the MOU, this crew has been hired to perform a wide variety of work on Forest Service lands. This allows for tribal members to gain experience and exposure in both Tribal and Forest Service forest management practices.

### **Lessons Learned and Recommendations**

#### **1. Understand Tribal History and Values in Order to Maintain Meaningful Relationships**

In order to make sure tribal values and interests are understood, the Tribal Cultural Resource Department staff has been diligent in reaching out to federal partners to provide an introduction to the Tribe. This has allowed for meaningful relationship building between the Tribe and Federal Partners. The Coquille Tribe has also recently held meetings with USFS upper management around traditional knowledge sharing and culturally significant species.

#### **2. Strengthen Mechanisms for Accountability and Use Federal Law to Improve Government-to-Government Relationships**

MOUs can serve to formalize relationships, clarify mutual interests and obligations, improve communication, and save tribes and agency time and resources. The MOU between the Tribe and the RRSNF outlines that both parties will use applicable federal law to conduct best consultation practices and advance mutual interests. These laws include the [2018 Farm Bill](#) and the Healthy Forests Act.

The 2018 Farm Bill contains provisions for Tribal participation in federal land management. Under Title VIII, Subsection F, it outlines that the “Chief of the Forest Service, the Chief of the Natural Resources Conservation Service, and relevant stakeholders shall collaborate and consult on an ongoing basis regarding-

- (1) Administration of the program established under this section; and
- (2) Identification of other applicable resources for landscape-scale restoration.” (672-673)

The Healthy Forest Act also outlines that *“the Secretary may enter into water source investment partnership agreements with end water users to protect and restore the condition of National Forest watersheds that provide to end water users.”* These partnership agreements may take the form of a MOU, cost share or collection agreement, or a long term funding matching commitment. (682)

The Tribe has also used the partnership principles set forth in the [Tribal Forest Protection Act](#) and the [Good Neighbor Authority](#) to promote beneficial co-management in the past. Employing these laws has

allowed the tribe to strengthen its relationships with federal partners, and has also allowed for meaningful relationship building.

**Resources:**

- Coquille Tribal Website: Our Lands Today: [https://www.coquilletribe.org/?page\\_id=37](https://www.coquilletribe.org/?page_id=37)
- Sek-wet-se: Our Home. Our Heritage: [https://www.novoco.com/sites/default/files/atoms/files/sekwetse\\_brochure.pdf](https://www.novoco.com/sites/default/files/atoms/files/sekwetse_brochure.pdf)
- Rebuilding Home: A Story Map of Sek-west-se Forest: <https://ecotrust.org/rebuilding-home/>
- The Coquille Indian Tribe considers nature, culture and community along with profit to manage its internationally recognized forest: <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/or/newsroom/stories/?cid=nrcseprd1341480>
- 2018 Farm Bill, Title VIII, Subsection F: <https://www.agriculture.senate.gov/imo/media/doc/Agriculture%20Improvement%20Act%20of%202018.pdf>
- Tribal Forest Protection Act in Brief: <https://www.fs.usda.gov/detail/r5/workingtogether/tribalrelations?cid=stelprdb5351850>
- Good Neighbor Authority: <https://www.fs.fed.us/managing-land/farm-bill/gna>
- National Indian Forest Resources Management (PL. 101-630): <https://www.fs.fed.us/managing-land/farm-bill/gna>
- Working for Sek-wet-se Corp.: [https://www.coquilletribe.org/?page\\_id=781](https://www.coquilletribe.org/?page_id=781)

## **2. Quinault Indian Nation**

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The 15-year and 20-year federal-tribal monitoring reports for the Northwest Forest Plan included case studies on the Quinault Indian Reservation and the Quinault Special Management Area. The 25-year will build on these case studies to examine how the NWFP has impacted the Quinault Indian Nation over time and specifically examine consultation challenges and protocols, as well as impacts of the NWFP on tribal economy and access to tribal cultural resources.

### **Introduction**

The Quinault Indian Nation (QIN) is a federally-recognized tribe and consists of the Quinault and Queets tribes and descendants of five other coastal tribes – Quileute, Hoh, Chehalis, Chinook, and Cowlitz – and is located on the southwestern corner of the Olympic Peninsula in Washington State. The Quinault Indian Reservation (QIR) currently includes twenty-five miles of Pacific coastline, and its boundaries enclose more than 208,150 acres, the majority of which are conifer forests. This includes the entirety of Lake Quinault and the underlying basin.

The Quinault Indian Nation (QIN) was highlighted in case studies in the 15-year and 20-year Northwest Forest Plan (NWFP) Federal Tribal Relations Monitoring reports in which QIN staff discussed their experiences with consultation and the effects of the NWFP on tribal resources and land management, among other topics. The 25-year report builds on past experiences and perspectives and provides an update on the federal-tribal relationship in regards to the Northwest Forest Plan. Although consultation between QIN leadership and Forest Service leadership has improved since the 20- year report, there are still issues that need to be addressed.

### **Consultation Challenges and Successes**

In the 20-year report, Quinault Indian Nation staff stated that consultation was not occurring at the leadership level. Since that time, the Quinault Indian Nation has developed its own internal consultation protocol that guides interactions with federal agencies such as the Forest Service and the Bureau of Indian Affairs. The Quinault Indian Nation consultation protocol dictates, for example, that government-to-government consultation involves decision-makers, not technical staff. And it is a one-on-one event rather than a “listening session” with multiple tribes.

Although the Quinault Indian Nation consultation protocol indicates that tribal staff cannot conduct consultation without leadership unless approved, tribal staff builds on their informal relationships with Forest Service technical staff through quarterly meetings. These informal meetings allow the Tribe and its staff to maintain good working relationships both at the leadership level and the staff level. Informal relationships also allows for more collaboration between the Tribe and the local Forest Service staff.

Quinault Indian Nation staff also mentioned that the public comment period related to Environmental Impact Statement (EIS) processes is often inadequate for the tribe to review and respond. Tribal staff also stressed that the public comment period does not constitute adequate government-to-government consultation.)

### **Northwest Forest Plan Impacts on the Quinault Indian Nation Timber Economy**

In the 15- and 20-year federal tribal monitoring reports, QIN staff described how timber harvest reductions caused by the NWFP had affected the QIN’s timber economy. Tribal staff mentioned that these challenges still continue. The QSMA is a 5,460 acre area of forestland adjacent and to the east of the Quinault Indian Reservation that is administered by the USFS, but to which the QIN has a right to

45% of the revenue generated. This arrangement resulted as part of a deal to remedy the loss of 15,000 acres of Quinault Indian Reservation Land in the late 1800s as a result of a surveying error. Another issue is that the USFS was allowed only 10% administration overhead in management of the QSMA from gross proceeds as mentioned in Section 4 of Public Law 100-638. There has never been an accounting of the administration costs subtracted from the gross proceeds and it is suspected that greater than 10% is being deducted, thus reducing potential revenues for the QIN.

When the QSMA was designated in 1988, the use of its revenues was restricted to four purposes, including land acquisition within the reservation boundaries. By buying certain parcels of land, the QIN hoped they could consolidate the current fractionated ownership and increase the size and connectivity of tribal ownership. In 1990, the spotted owl was listed as an endangered species, a fact that began to affect timber production in the QSMA. By 1994, the NWFP was enacted and timber production in the QSMA, as well as throughout the Olympic Forest, ceased almost entirely as a result. This downfall of available timber volume impacted logging infrastructure (loggers, truckers, fallers, etc.) and saw mills.

*“There are minimal loggers, saw mills; it’s hard to get back to what it was before the owl and murrelets were classified as endangered species, nothing has changed since the last report.”*

This shortage of infrastructure has caused higher competitive costs to attract and keep busy limited resources and has created longer haul of logs to mills further away.

### **Forest Management**

In terms of forest management, one issue highlighted by QIN tribal staff was the prioritization of invasive species. The Quinault Indian Nation, the USFS, and the National Park Service, each have different ways of identifying and prioritizing invasive species. Tribal staff highlighted that the USFS does not always have adequate funds to address all of the invasive species that are occurring on their lands that are affecting tribally managed resources and areas of concern.

*“They are managing, but they don’t have the funds to manage everything.”*

In the 20-year report, QIN staff also mentioned the need to improve tribal funding for forest management and the reservation. QIN staff highlighted that availability of tribal funding for forest management is not always readily available or consistent or sustainable. This makes it difficult to manage reservation forestland. QIN staff also highlighted that there are conflicting management goals between QIN and the USFS because of the NWFP. The QSMA is being managed very similar to the late successional reserves, the management prescriptions are virtually the same even though there are some differences in the age of timber that can be harvested as well as the diameter. The QSMA is an adaptive management area that is used to apply various silvicultural prescriptions that can be used to monitor and apply to the LSR’s. The QSMA should be managed differently than the LSR’s and have a separate management plan for a sustained reliable yield that would generate funds for the purpose and intent of the congressional act and still have benefits for wildlife, fish and other natural resources. If the QSMA is treated similarly to the LSR areas, the trees will eventually be too large to be harvested with modern machinery and the mills will not be able to process the larger logs.

### **Challenges to Tribal Cultural Resources Access**

The Quinault Indian Nation is a self-governing tribe that is responsible for the maintenance of trust land and protections within the usual and accustomed areas. When federal agencies are drafting policy, tribal

staff mentioned that treaty rights are not always taken into full consideration. This has affected QIN's access to and protection of culturally important resources.

*"Entities are often not aware of how extensive treaty rights are."*

The Northwest Forest Plan has also affected QIN tribal members and their ability to access resources of tribal interest on federal lands. Road closures that were implemented under the Northwest Forest Plan have affected tribal member access to resources such as berries and traditional wildlife. Although road closures affect tribal members in a negative way, QIN understands that there are benefits of road closures on certain species such as the spotted owl, big game and fish habitat.

### 3. Federal mechanisms to promote partnerships and collaboration under the Northwest Forest Plan

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Many of the interviews for the 25-Year Update to the Northwest Forest Plan Tribal Monitoring Report illustrated the challenges of reaching opportunities for co-management between tribes and federal agencies, including the Forest Service and the Oregon/Washington Bureau of Land Management. Specifically, tribes discussed the extent to which they may or may not have influence on management decisions for tribal areas of interest. Many respondents said that tribes should be involved from the beginning of agency planning processes. Several respondents suggested that tribes who are interested in pursuing co-management opportunities need to be aware of legislation and federal programs that allow tribes to work towards holistic and collaborative management of tribal lands (on and off-reservation). Respondents also noted that agency staff should be aware of administrative and legislative strategies that promote co-management and strengthen the federal-tribal relationship. One barrier that was highlighted in terms of tribes and agencies successfully pursuing co-management opportunities is the lack of agency staff capacity to uphold their commitment to collaboration. Tribal respondents highlighted decreased agency funding and staff turnover as two reasons agency staff may not be able to pursue or effectively participate in co-management opportunities with tribes. Tribes can facilitate projects by providing capacity (staff resources) to prepare, submit and implement projects that are well planned and fully developed.

This case study provides an overview of the federal laws and authorities available for tribes to use in terms of promoting collaboration and partnerships with agencies, including the Forest Service and the BLM. Throughout the interviews and case studies, tribal staff highlighted the lack of knowledge around which laws and authorities were available to tribes to use in order to promote and strengthen tribal forest land management. Specific legislation, policy and programs that will be highlighted include the Tribal Forest Protection Act, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, and the 2018 Farm Bill and amendments. These federal policies and authorities can serve to remove barriers, resolve issues and lead to an increase in the overall amount of projects that are approved and implemented between Tribes and the Forest Service.

#### **Tribal Forest Protection Act**

Several respondents suggested that to improve and strengthen federal-tribal relationships, there needs to be an increase in opportunities for co-management. Early communication, consistent policies, and improved funding were also mentioned as key factors to improving co-management. A specific authority that was mentioned by many respondents, and throughout the case study process, is the Tribal Forest Protection Act (TFPA).

Public Law 108-278, or the TFPA, was passed in 2004 by the 108<sup>th</sup> congress, and authorizes the Secretaries of Agriculture and the Interior to give *“special consideration to tribally-proposed Stewardship Contracting or other projects on Forest Service or BLM land bordering or adjacent to Indian trust land to protect the Indian trust resources from fire, disease, or other threat coming off of that Forest Service or BLM Land.”*<sup>1</sup>

Tribes interested in developing contracts or agreements through the Tribal Forest Protection Act to reduce threats from off-reservation, ceded and ancestral lands must have land that is in trust or has

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<sup>1</sup> P.L. 108-278, Tribal Forest Protection Act in Brief.

restricted status<sup>2</sup>. These lands must also be forested or have grass, brush, or other vegetative cover. Proposals must be submitted by the Tribe and work must take place on National Forest System or BLM land which borders or is adjacent to Indian trust land or an Indian community. The 2014 Farm Bill grants the Forest Service and BLM authority to enter into stewardship contracts for up to 10 years to perform services to achieve land management goals for national forests or public lands.

The Intertribal Timber Council (ITC) has been actively providing support to tribes interested in utilizing the Tribal Forest Protection Act since the TFPA was passed in 2004. For Tribes who are interested in utilizing the TFPA for co-management opportunities, the ITC has facilitated informational webinars that have been archived on their website:

[https://www.itcnet.org/issues\\_projects/issues\\_2/TFPA/TFPAreports.html](https://www.itcnet.org/issues_projects/issues_2/TFPA/TFPAreports.html). This page includes reports on TFPA projects, workshop resources including tips and templates, and a YouTube channel with educational and informational videos on TFPA Collaborative Planning, and Contracts and Agreements. The ITC is also currently working on a Challenge Cost-Share Agreement with the Forest Service to provide assistance via workshops, webinars, conference calls, etc., to familiarize Tribes with new and amended partnership authorities in the 2018 Farm Bill<sup>3</sup> and the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017<sup>4</sup> and work collaboratively to develop successful proposals.

In December 2018, the ITC published a report titled *“Cross Boundary Collaboration Between Tribes and the United States Forest Service”* that highlights a few examples of Tribes using the TFPA authority to pursue co-management and collaboration with Forest Service Agencies and Ranger Districts in their areas. One example of collaboration that was initiated using the TFPA is the Dry Restoration Stewardship Project. This project was started in 2013 between the Yakama Indian Nation and the Okanogan-Wenatchee National Forest, Naches Ranger District. The Yakama Nation and the Okanogan-Wenatchee National Forest entered into an *“Integrated Resource Stewardship contract that includes 548 acres of commercial thinning to improve forest health and reduce mega-fire risk across the landscape where Forest Service lands are adjacent to or border Indian Trust lands near Naches, WA.”*<sup>5</sup> The Dry Restoration Stewardship Project was completed in 2016 and *“...accomplished the intended objectives of reducing hazardous fuels, restoring forest health, and reducing the risk of catastrophic wild fire impacting tribal trust resources.”*<sup>6</sup>

The Kalispel Tribe of Indians in Northeastern Washington in partnership with the Washington State Department of Natural Resources (WA DNR), and the Colville National Forest launched the SX<sup>W</sup>UYTN (Trail) Project, also referred to as Kaniksu Connections using the TFPA. This project aims to “address water quality, improve recreation and human connections to landscapes, address local economics, reduce risk of wildfire, improve natural variability, and restore fish passage.”<sup>7</sup> Rather than deploying scattered land treatments on forest lands, the SX<sup>W</sup>UYTN Project applies an “all lands approach” that is

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<sup>2</sup> Restricted status refers to, “restricted fee, where title to the land is held by an individual Indian person or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary of Interior because of limitations contained in the conveyance instrument pursuant to federal law.” (Bureau of Indian Affairs)

<sup>3</sup> P.L. 115-334, Agriculture Improvement Act of 2018.

<sup>4</sup> P.L. 115-325, Section 202.

<sup>5</sup> “Cross Boundary Collaboration between Tribes and the United States Forest Service”. Intertribal Timber Council. December 2018. Pg. 6. [https://www.itcnet.org/file\\_download/a2cbf7b1-f135-4f7b-a121-75689c2f2858](https://www.itcnet.org/file_download/a2cbf7b1-f135-4f7b-a121-75689c2f2858)

<sup>6</sup> Ibid, 7.

<sup>7</sup> SX<sup>W</sup>UYTN (Trail) – Kaniksu Connections; A Tribal Forest Protection Act Partnership Project.

consistent with the WA DNR's 20-Year Forest health Strategic Plan.<sup>8</sup> This allows for the Tribe and partners to treat the land in Pend Oreille County in ways that benefits multiple different stakeholders.

#### *TFPA Links and Resources*

- Tribal Forest Protection Act in Brief: <https://www.fs.usda.gov/detail/r5/workingtogether/tribalrelations?cid=stelprdb5351850>
- More information on Stewardship Contracting, Reporting, Guidance, and Directives can be found at: [https://www.fs.fed.us/restoration/Stewardship\\_Contracting/guidance.shtml](https://www.fs.fed.us/restoration/Stewardship_Contracting/guidance.shtml)
- "Cross Boundary Collaboration Between Tribes and the United States Forest Service": <https://www.itcnet.org/>
- Dry Restoration Stewardship Project: [http://www.tapash.org/okawen/wp-content/uploads/2017/07/Tapash\\_DryStewardship\\_FactSheet\\_final-print.pdf](http://www.tapash.org/okawen/wp-content/uploads/2017/07/Tapash_DryStewardship_FactSheet_final-print.pdf)
- SX<sup>w</sup>UYTN (TRAIL) – Tribal Forest Protection Act: <https://www.kalispeltribe.com/kalispel-natural-resources-department/sxwuytn-trail-tribal-forest-protection-act>
- 20-Year Forest Health Strategic Plan: Eastern Washington: <https://www.dnr.wa.gov/ForestHealthPlan>
- Intertribal Timber Council TFPA Resources: [https://www.itcnet.org/issues\\_projects/issues\\_2/tfpa/tfporeports.html](https://www.itcnet.org/issues_projects/issues_2/tfpa/tfporeports.html)

#### **Indian Tribal Energy Development and Self-Determination Act Amendments of 2017**

Senate Bill 245 was passed in 2018 during the 115<sup>th</sup> Congress and "...amends the Energy Policy Act of 1992 to direct the Department of the Interior to provide Indian tribes with technical assistance in planning their energy resource development programs."<sup>9</sup> This bill allows the U.S. Department of Energy (DOE) Office of Indian Energy education planning and technical assistance programs to be expanded to include intertribal organizations as eligible applicants for grants. These grants also allow for capacity building and energy development and efficiency program support.

This bill also amends the TFPA to "...direct Interior, for land under BLM Management Jurisdiction, and the USDA, for land under Forest Service Jurisdiction, to enter into agreements with tribes to carry out demonstration projects to promote biomass energy production on Indian Forest land and in nearby communities by providing them with reliable supplies of woody biomass from federal lands." Title II, Section 202 also outlines that for each fiscal year that projects are authorized, at least four new demonstration projects that meet the eligibility criteria shall be carried out under Stewardship Contracts or similar agreements, and one project per year in Alaska.

A demonstration project that was authorized under the Energy Policy Act of 1992 (prior to Senate Bill 245) is the Memorandum of Understanding that was signed between the Confederated Tribes of Warm Springs, the Forest Service, and the BLM in 2006. "The agreement, which spans 20 years, creates a commitment to a long-term fuel supply for the Tribes' biomass project which has been several years in the planning stages. Specifically, the agreement calls for the BLM and the Forest Service to do forest thinning and management that would provide biomass fuel for a biomass plant on 8,000 acres annually near or adjacent to the Warm Springs Reservation."<sup>10</sup>

<sup>8</sup> SX<sup>w</sup>UYTN (Trail) Tribal Forest Protection Act, Introduction to TFPA Letter, <https://www.kalispeltribe.com/kalispel-natural-resources-department/sxwuytn-trail-tribal-forest-protection-act>

<sup>9</sup> P.L. 115-325, Indian Tribal Energy Development and Self-Determination Act Amendments, <https://www.congress.gov/bill/115th-congress/senate-bill/245>

<sup>10</sup> Woody Biomass Energy, Bureau of Land Management, <https://www.blm.gov/or/resources/forests/biomass.php>



The MOU between the tribe, Forest Service, and BLM serves as an agreement which outlines that the Forest Service and BLM will commit to providing a long-term fuel supply for the Tribes' biomass project *"...as a component of all applicable contracts or agreements offered under this MOU. Such contracts and agreements would contain an optional provision that would allow the contractor to remove woody biomass for utilization."*<sup>11</sup>

S. 245 link and other resources:

- S. 245: <https://www.congress.gov/bill/115th-congress/senate-bill/245>
- Bureau of Land Management Woody Biomass Energy: <https://www.blm.gov/or/resources/forests/biomass.php>
- Memorandum of Understanding between the Confederated Tribes of the Warm Springs Reservation of Oregon and USDA Forest Service: Pacific Northwest Region/ Bureau of Land Management: Oregon State Office: <https://www.blm.gov/or/resources/forests/files/MOU-OR-930-0602.pdf>

### **2018 Farm Bill – Title VIII-Forestry**

The 2018 Farm Bill was passed in the 115<sup>th</sup> Congress "To provide for the reform and continuation of agricultural and other programs of the Department of Agriculture through fiscal year 2023..." Title VIII-Forestry of the Bill amends the Cooperative Forestry Assistance Act of 1978 to establish a competitive grant program that supports collaborative, science-based restoration of priority landscapes, which includes tribally-owned forests. Plans that are eligible for the grant program include plans to reduce the risk of wildfires, improve fish and wildlife habitats, to maintain or improve water quality and watersheds, mitigate invasive species, and improve forest ecosystems.

There are many organizations and tribes working towards making the 2018 Farm Bill more accessible to Tribes and Native communities including the Native Farm Bill Coalition. The Native Farm Bill Coalition was created in 2017 and is a joint project of the Shakopee Mdewankton Sioux Community's Seeds of Native Health Campaign, the Intertribal Agriculture Council, the National Congress of American Indians, and the Indigenous Food and Agriculture Initiative to improve Native dietary health and food access. In 2018, the Coalition published an extensive report titled "Regaining our Future" that analyzes the risks and opportunities for Indian Country in the 2018 Farm Bill. It provided title summaries, key points, and recommendations.

One provision that is highlighted by the Native Farm Bill Coalition and expanded upon here is *Forestry: Self-Governance and Parity for Health Forestry Management*. This provision can be found under Section 8703-Tribal Forest Management Demonstration Project of the 2018 Farm Bill. The provision authorizes the Secretaries of Interior and Agriculture to make use of P.L. 93-638 self-determination demonstration project agreements with Tribes under the Tribal Forest Protection Act.

The Native Farm Bill Coalition also highlighted key points and recommendations for the 2018 Farm Bill Title VIII: Forestry. These key points and recommendations are included below:

- *"Tribal forests and woodlands make up one third of all tribal lands held in trust, and provide resources, jobs, and economic development opportunities for many tribal governments.*
- *Many tribal forests and adjacent federal forests contain sacred places and important trust and treaty-protected resources.*

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<sup>11</sup> MOU-BLM-OR-930-0602, pg. 6, <https://www.blm.gov/or/resources/forests/files/MOU-OR-930-0602.pdf>

- *Tribes must be provided parity throughout the Forestry Title to better access, manage and develop tribal and federal forests and woodlands to protect tribal resources while providing jobs and economic development.*<sup>12</sup>

In order to familiarize Tribes with the partnership authorities and identify opportunities to collaborate on the development of successful proposals under the 2018 Farm Bill, the Intertribal Timber Council and the Forest Service are partnering together to provide assistance to Tribes via workshops, webinars, conference calls, and other media.

*Farm Bill link and other resources:*

- 2018 Farm Bill: <https://www.agriculture.senate.gov/imo/media/doc/Agriculture%20Improvement%20Act%20of%202018.pdf>
- Native Farm Bill Coalition: <https://seedsofnativehealth.org/native-farm-bill-coalition/>
- 2018 Farm Bill Tribal Specific Provisions: <https://seedsofnativehealth.org/webinars/>.
- Indian Country Priorities and Opportunities for the 2018 Farm Bill *Title VIII: Forestry*: <https://seedsofnativehealth.org/wp-content/uploads/2017/09/Title-VIII-Forestry.pdf>

#### 2018 Farm Bill Section 8624-Good Neighbor Authority

Respondents also noted the Good Neighbor Authority (GNA) outlined in the Farm Bill, as a resource for co-management. *“The Good Neighbor Authority allows the Forest Service to enter into cooperative agreements or contracts with States and Puerto Rico to allow the States to perform watershed restoration and forest management services on National Forest System (NFS) lands.”*<sup>13</sup> Title VIII of the 2018 Farm Bill expands the GNA to include tribes as eligible applicants for forest and rangeland restoration activities on National Forest System lands. GNA agreements also call for frequent and consistent collaboration between and within agencies from the development phase throughout the life of the agreement.<sup>14</sup>

It is important to highlight what management actions are not eligible under the GNA. *“It excludes construction, reconstruction, repair, or restoration of paved or permanent roads or parking areas and construction, alteration, repair, or replacement of public buildings or works; as well as projects in wilderness areas, wilderness study areas, and lands where removal of vegetation is prohibited or restricted.”*

#### **Public Law 93-638 Contracting and Compacting**

Congress passed the Indian Self-Determination and Education Assistance Act (ISDEAA) in 1975, or Public Law 93-638, to allow Indian Tribes to *“...have greater autonomy and to have the opportunity to assume the responsibility for programs and administered to them on behalf of the Secretary of the Interior through contractual agreements.”* In 1994, P.L. 93-638 was modified to include Self-Governance amendments. *“The Self-Governance amendments provide for the transfer of Federal authority toward Indian authority over programs and services including forestry.”*

<sup>12</sup> “Indian Country Priorities and Opportunities for the 2018 Farm Bill *Title VIII: Forestry*”. Native Farm Bill Coalition. <https://seedsofnativehealth.org/wp-content/uploads/2017/09/Title-VIII-Forestry.pdf>

<sup>13</sup> U.S. Forest Service. Good Neighbor Authority. <https://www.fs.fed.us/managing-land/farm-bill/gna>

<sup>14</sup> Forest Management: Listening session with Office of Tribal Relations on 2018 Farm Bill Implementation. <https://www.fs.fed.us/inside-fs/forest-management-listening-session-office-tribal-relations-2018-farm-bill-implementation>

Since the passage of ISDEAA in 1975, Public Law 93-638 has been expanded and amended to include additional DOI and HHS agencies. With the passage of the 2018 Farm Bill, the 638 contracting authority is now expanded to include the first ever authorization of a self-determination program at the USDA.

ISDEAA also created the Division of Indian Self-Determination (ISD), which provides training and technical assistance to BIA regional and agency employees, tribal officials, and tribal staff. ISDEAA also oversees the procedures for the delegation of authority for Self-Determination Contracts and grants to the regional and agency levels of the BIA. ISD's website also has training documents and videos, self-determination information, and various other resources for tribes to use.

*P.L. 93-638 and other resources:*

- Public Law 93-638 Contracting and Compacting: [https://www.doi.gov/ost/tribal\\_beneficiaries/contracting](https://www.doi.gov/ost/tribal_beneficiaries/contracting)
- Division for Indian Self-Determination: <https://www.bia.gov/bia/ois/dsd>

### **Toward Shared Stewardship Across Landscapes: Outcome-based Investment Strategy**

In order to improve the wildland fire system and fire resilient communities, the Forest Service published "*Toward Shared Stewardship Across Landscapes: An Outcome-Based Investment Strategy*." This publication outlines the ways in which the Forest Service can promote collaboration among partners and affected stakeholders, including tribes. The strategy is predicated on seven types of activities:

1. Working with States to co-manage risk across broad landscapes;
2. Using new scenario investment planning tools for targeted investments;
3. Focusing our work on broad outcomes;
4. Capitalizing on the authorizing environment created by recent legislation;
5. Changing the Forest Service's own internal processes to get more work done on the ground;
6. Using a full suite of active management tools, including the right kind of fire at the right times in the right places; and
7. Applying a risk-based response to wildfire.

The publication outlines how affected stakeholders and partners such as Tribes can prioritize which areas to manage. One of the planning tools highlighted is "Scenario Investment Planning." In order to assist stakeholders in prioritizing activities to achieve desired outcomes on National Forest land and adjacent lands in each State, the Forest Service has developed "...*science-based decision support framework to simulate specific investment strategies over the short term (3 to 5 years)*."<sup>15</sup> Scenario Investment Planning can help promote cross-boundary collaboration between Tribes and the Forest Service.

*Links:*

- Toward Shared Stewardship Across Landscapes: Outcome-based Investment Strategy: <https://www.fs.fed.us/sites/default/files/toward-shared-stewardship.pdf>

### **USDA Forest Service/ BLM Schedule of Proposed Actions**

The Forest Service Schedule of Proposed Actions (SOPA) is an important resource to keep up to date on because it lists the projects and management actions that will be carried out throughout the year. Using

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<sup>15</sup> United States Department of Agriculture. *Toward Shared Stewardship Across Landscapes: Outcome-based Investment Strategy*. U.S. Forest Service. August 2018. Pg. 17

the authorities outlined above also requires frequent and consistent communication and collaboration between Tribes and agencies to ensure that co-management projects result in the greatest benefit for both entities. The Forest Service encourages early and ongoing involvement in any proposals of interest to tribes and other entities by using the USFS Schedule of Proposed Actions (SOPA), which is published in January, April, July, and October. The SOPA “...contains a list of proposed actions that will soon begin or are currently undergoing environmental analysis and documentation. It provides information so that you can become aware of and indicate your interest in specific proposals.”<sup>16</sup> Proposals that are submitted early on have a better chance of being identified by the Forest Service and will have priority for NEPA and ESA compliance.

## **Conclusion**

Throughout the interview process, many respondents highlighted that there needs to be more co-management opportunities for tribes to pursue not only on tribal lands, but also federal forestlands. Federal authorities such as the recently passed 2018 Farm Bill and amendments, the Tribal Forest Protection Act, and the Indian Tribal Energy Development and Self-Determination Act and amendments provide the legal framework for tribes to successfully pursue large scale and cross-boundary management opportunities. Key recommendations to keep in mind when pursuing co-management opportunities is to make sure project proposals are co-developed early on between tribes and the Forest Service or BLM.

There are many ways that Tribes and agencies can pursue co-management opportunities. Legislation and policies such as the Tribal Forest Protection Act, the Inter Tribal Energy Development and Self-Determination Act Amendments, 2018 Farm Bill and amendments, and the 638 contracting authority provide avenues for Tribes to develop or propose co-management actions not only on tribal lands, but National Forest Lands with the potential to impact tribal lands and communities. In order to make sure projects are effective and pursue the greatest benefit for both Tribes and agencies, it would be beneficial to propose large scale and cross boundary projects. Finally, using the federal authorities described in this case study can provide the legal framework to promote co-management, and bring tribal management back to the land.

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<sup>16</sup> U.S. Forest Service. Forest Service Schedule of Proposed Actions. <https://www.fs.fed.us/sopa/>

## 4. Karuk Indian Tribe

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### **Abstract**

The 20-year report included a case study of the Western Klamath Restoration Partnership (WGRP), in which the Karuk Tribe was an essential participant. The WGRP is an innovative experiment in true collaboration among multiple parties seeking forest restoration objectives on federal forest lands. The WGRP had only recently formed when the 20-year report was researched in 2014. This case study reports on the collaborative's progress since 2014, and identifies key aspects of its success. These may guide other tribes seeking equal footing with federal forest managers in the stewardship of national forest lands that affect tribal rights and are essential to the preservation of traditional tribal culture. The information in this case study is drawn from interviews conducted in Orleans, CA, in November 2018.

### **Purpose of the Case Study for the 25-Year Northwest Forest Plan Report**

The record of decision (ROD) for the Northwest Forest Plan specified that *effectiveness monitoring* should include tracking of the relationship between plan implementation and impacts to native Tribes in the plan area. Evaluation questions include the condition and trend of Indian Trust resources, access by tribal peoples to forest resources for important cultural, subsistence, and economic uses (ROD E-9, E-10). This case study references tribal resources condition and access. However, its primary focus is on situating the relationship between the WGRP collaborative and federal forest managers in the context of government-to-government consultation between federal agency and Tribal representatives.

### **Background**

The ancestral territory of the Karuk Tribe comprises approximately 1.05 million acres in the watershed of the middle reach of the Klamath River in western Siskiyou County and parts of neighboring Humboldt County, CA. Today, nearly 98% of this territory lies within one of three national forests – Klamath, Six Rivers, and Rogue River-Siskiyou. Hence, virtually all Karuk ancestral lands are administered by the U.S. Forest Service within the U.S. Department of Agriculture. Unlike tribes with large forested reservations, who may be able to exercise autonomy to manage their forests according to tribal values under the National Indian Forest Resources Management Act, the Karuk Tribe seeks to achieve its forest management goals by engaging in collaborative partnerships, building strong working relationships, and influencing local national forest system managers.

### **Fire**

Fire is an essential element of Karuk culture and features prominently in the daily lives of Karuk people. Periodic burning of ancestral lands is a traditional Tribal practice from the beginning of time until the second decade of the twentieth century, when Euro-American beliefs that fire threatened the economic value of forest timber and adjacent private property began dominating forest management thinking. After a century of aggressive fire exclusion practiced by the U.S. Forest Service and the state of California, the forests of the Karuk homeland are severely overstocked, with unnaturally high fuel loads. Forest stands are denser, more homogeneous, have much more closed canopies, and are now dominated by species that are not fire-adapted. The continued survival of many species of trees, plants and animals with traditional importance to the tribe have been seriously compromised by this dramatic change in forest structure. These changes have upended the traditional role of fire in the Karuk homeland: now, when unintentionally ignited fires burn, they are typically much more intense and potentially destructive of tribal values than when fire was constantly present in the landscape.

### ***The Western Klamath Restoration Partnership (WKRP)***

The Western Klamath Restoration Partnership (WKRP) was formed in 2014 by the Karuk Tribe and two local non-governmental organizations engaged in ecological restoration, the mid-Klamath Watershed Council and the Salmon River Restoration Council. These latter organizations generally shared forest management objectives with the Karuk Tribe, but had not always worked closely with them. The partnership formed as a result of a shift in the national perception of the role of wildfire in the maintenance of healthy forest ecosystems. Congressional legislation passed in 2009 created the National Cohesive Wildland Fire Management Strategy. The tribe's natural resources department participated actively in the development of the new national strategy, and ultimately became a national model for the fire-adapted community program of the Cohesive Strategy. The Tribe's leadership in the program attracted financial and advisory support from the Nature Conservancy, which facilitated the formation of the WKRP. The 20-year report highlighted what tribal natural resources staff called a "game-changing" moment: when the WKRP was approached by leadership of the local national forest unit with a proposal to collaborate on a funding proposal for a restoration project. This case study documents the progress that the WKRP has made toward true collaborative management of national forest lands since that "game-changing" moment in 2014.

### ***Collaboration in Action: the Somes Bar Integrated Management Plan***

Over the past several years, WKRP members have planned and begun implementing the Somes Bar Integrated Management Plan (the IMP). The IMP process was initiated by that game-changing moment of outreach from the local national forest line officer. Representatives of the WKRP and the national forest formed an IMP working group that scoped forest restoration needs and feasibility on approximately 75,000 acres of national forest lands in the vicinity of Orleans and Somes Bar, CA -- two communities on the Klamath River where many Karuk people reside. The first phase of the IMP called for forest restoration activities on 5,500 acres of national forest lands in the immediate vicinity of the communities, including prescribed fire, thinning, and mastication treatments. In addition, the IMP specifies that wildland fire use (allowing wildfires to burn when they may advance restoration goals) should be practiced whenever possible in the remaining project area acreage.

Karuk staff describe the collaboration with national forest staff in the context of the WKRP as resulting in the best working relationship they have had with a Forest Service unit -- a "genuine breakthrough" in collaborative management. Tribal and non-tribal partners in the WKRP identified five principal characteristics of the WKRP process that were crucial to successful collaboration:

- Desire of USFS managers to act to protect tribal values at risk
- USFS managers' agreement to determine a collective purpose and need, rather than accommodating tribal values ad-hoc in projects defined by USFS objectives alone
- Strong leadership personalities in the USFS leading a cultural shift in attitudes towards collaboration with external partners among their staff
- USFS managers adopting a supporting collaborator role, and inviting partners to lead
- Success of the WKRP in obtaining external funding

### ***Tribal values at risk***

WKRP partners agreed on a critical point: that without active and thorough restoration efforts, tribal values on national forest lands were seriously compromised and at risk of local extirpation. Historically important tree, plant, and animal species in Karuk culture were growing scarce and difficult to access. This legacy of fire suppression was compounded by standards and guides in the NWFP that call for high degrees of canopy closure to provide northern spotted owl habitat, though closed canopy structure is a

significant deviation from the historical character of most of the forest on Karuk ancestral lands. In addition, fire, and the practice of wielding fire, is a central element of Karuk culture, so its long-term absence also represents a tribal cultural practice at risk. The IMP team adopted two essential goals in response: pursuing forest restoration that would significantly open the forest canopy and reduce understory vegetation, which are conditions traditionally important species require; and targeting landscapes that could readily participate in the WKRP's "TRES" initiative: a program that reconnects both Karuk residents and their non-tribal neighbors to the practice of wielding beneficial fire. National Forest lands surrounding the communities were essential to meeting these goals. One national forest officer's reflection on protecting tribal values is telling: *"It is home, and fire is part of them; they cannot be truly at home without fire."*

#### *Collective purpose and need*

Local USFS leadership took the position that in joining the WKRP collaborative, the orientation of national forest management activities to traditional agency priorities and incentives would have to change. Both the local line officer and the forest supervisor stated firmly that objectives for the IMP would not be developed conventionally, where the Forest Service invited cooperators to comment on proposed actions within pre-ordained limits. A national forest officer recalled that

*"We developed a purpose and need as a collective. There was a demonstrable bar we had to clear: prescribed fire creates resilient communities, economics, and landscapes. [We spent] hard weeks in the office hashing it out"*

A crucial step in the collective strategy was holding meetings in the field, rather than within the confines of USFS offices. This approach helped to legitimize the USFS's commitment to collaboration in the eyes of the partners. A Karuk staff member commented that,

*"One thing I've seen a lot of improvement on -- it wasn't we're going to have this talk -- then having that conversation over there [at the USFS office]. We were in the field together -- what are the true needs here, what is impacting them -- and consultation happened all at once."*

#### *A change of agency culture*

Both USFS and non-USFS participants on the IMP team acknowledged that the local USFS unit's staff was not unanimously inclined to pursue a collaborative approach at first. They credited agency leadership at both the local and supervisory level with standing firm in advocating the collaborative partnership approach. One Karuk tribal staffer recalled that,

*"I've seen genuine change-- there are not reluctant participants any longer. That to me is unexpected -- I would say transformational...The direction of leadership at the forest was compelling. It changed people's perspective -- [they] may not have liked it [collaborating with the tribe], but they did it...some people left...people who remained are engaged."*

#### *Ceding leadership to the collective*

Conventionally, a national forest unit evaluates objectives and implementation strategies for a project like the IMP by creating an interdisciplinary team (IDT) from among its own staff. The IDT conducts NEPA analysis and handles outreach, objections, and revisions. Instead, the USFS IDT included Karuk Tribal staff as full partners. The national forest unit also provided funding so that representatives of other WKRP partner organizations could participate in the IDT as well. Decisions about alternatives, prescriptions, and methods to carry out the prescriptions were developed with Forest Service and Tribal employees and other partners achieving consensus. There was broad agreement among the non-USFS partners that an essential element of success was the way that USFS managers elevated the partners in the IMP.

The collaborative IDT transformed the process of analyzing a proposed Forest Service action. An example is the archaeological resources survey that is a mandatory component of NEPA procedure. To conduct the survey, USFS staff were joined by tribal cultural resource technicians in the field, the joint survey team developed a unique inventory informed by tribal members' traditional ecological and cultural knowledge. A Karuk staff member that participated in the survey recalled:

*"Part of the inventory was more traditional cultural resources -- village residents would visit these areas for various gathering tasks – are we near old village sites? Are we near old trails? Are we near evidence of previously abundant valued resources like basketry materials? But you can't really record cultural resources separately from ecological resources. We were also thinking about focal species: white willow, elk, fisher, and tanoak. We took a holistic perspective on impacts – how quality of habitat for northern spotted owls affects other key species.*

### **Funding**

The Karuk Tribe and WKRP partners successfully applied for a grant from CalFire, and received \$5 million. The grant allowed the Tribe to add fire management staff, and permitted the collaborative to keep receipts from timber harvest to put back into the project, an important detail that avoids past problems the collaborative experienced with timber harvest contracting. Combined with supplemental funding from the USFS, the grant dollars made it possible to fund other WKRP partners to devote staff time to the process. This funding was critical to the successful IMP process. A Karuk staff member commented that

*"...We could not have done this without the [external] funding to be that engaged. It was absolutely critical – you can't engage in consultation without the means to do it – engaging in partnership is much more time intensive. If nobody gets paid...if some of the partners don't have resources, they are not partners.*

### **Challenges ahead**

Though WKRP and USFS participants in the Somes Bar IMP process are enthusiastic about what they have been able to accomplish, they also acknowledge they face difficulties in sustaining the high level of collaborative engagement while broadening its scope to encompass much more Karuk ancestral land.

Karuk staff and WKRP partners have plans to explore major funding proposals to charitable foundations as a means to sustain their efforts for the longer term. Such a strategy will be especially vital if the staff capacity of the USFS declines in the future. All parties agree that relying solely on appropriated funds to the USFS, and to the Tribe via the Bureau of Indian Affairs, with supplemental sources such as stewardship contracts, will cause the partnership to collapse. Indefinite reliance on external funding will be a challenging course to follow, however.

A holistic view of restoring tribal resources at risk, and adherence to federal legal requirements for managing marbled murrelets and northern spotted owls remain in tension. Tribal staff and partners view ESA requirements and the standards and guides for maintaining northern spotted owl habitat in the NWFP as promoting "single species management," which directly contradicts their vision for restoring optimal conditions for tribal cultural and ecological resources on national forest lands. Efforts to scale up the successes of the IMP to the broader Karuk ancestral landscape will likely have to negotiate a tricky path between protecting tribal resources at risk and complying with federal species protection regulations.



Though it is currently robust, by nature the collaborative process is potentially ephemeral. Though tribal staff enthused that the participation of the local national forest unit in the IMP “goes way beyond [government-to-government] consultation,” the values and leadership direction of individual USFS officers was key to the process. Other than executing approved and funded projects within the IMP, the national forest is not legally bound to continue collaborating in the WKRP indefinitely, especially since its current role considerably exceeds standards for consultation established in USDA tribal consultation policy and Executive Order 13175. Future management direction led by different agency personalities could theoretically result in a withdrawal from the collaborative.

In addition, the Karuk Tribe is still seeking to strengthen government-to-government relationships and improve consultation with other national forest units that manage vital cultural and ecological resources in the ancestral Karuk Territory outside the scope of the IMP. The Tribe has achieved some success in this effort, such as an MOU with the Klamath National Forest that specifies a tribal observer will be included in fire incident management teams, to guide fire response in ways that minimize damage to tribal values. However, they continue to seek similarly effective consultation on many other management activities.

### ***Conclusion***

From the Karuk Tribe’s point of view, an effective consultation process is necessary, but much Tribal staff energy can be lost in defining consultation and attempting to get agency representatives to adhere to tribally-defined consultation standards. The Tribe believes that real achievements in managing national forest lands to preserve tribal values have come by building comprehensively on consultation with federal agencies to achieve a robust Government-to-Government relationship in which Tribe and Agency view one another as partners. The WKRP shows that it is possible, though difficult, to raise the bar beyond consultation between Tribe and agency. It represents a rare example of true collaborative management of federal forest lands, albeit one that may be a challenge to sustain.

## Appendix A. Interview Questions

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- 1) Have written consultation protocols been developed?
  - a. Are they adequate for government-to-government consultation?
  - b. Are they adequate for potential effects on tribal rights, interests, and effects on tribal lands?
  
- 2) Is the tribe aware of federal policy guidance that is available for tribal consultation when agency plans, projects, programs or activities have the potential to affect resources, uses, or areas of interest to tribes, including tribal lands? Are federal procedures adequate to identify direct and indirect effects to activities on tribal lands?
  - a. Is notification specific to the tribe?
  
- 3) Over the past ten years, has the tribe been consulted on federal agency plans, projects, programs, or activities that might affect tribal rights or interests? Have any of these consultations been related to the Northwest Forest Plan (NWFP)?
  - a. How frequently and over what time period?
  - b. Are there Provincial Advisory Committees or other intergovernmental forums in the area?
  - c. Do tribes participate in these forums?
  
- 4) Has tribal information been incorporated into federal planning documents (including watershed analysis and decision-making processes, in a manner so that tribes can recognize their contributions? Are any of these specific to the NWFP?
  - a. Can you provide any examples of when the tribes were dissatisfied?
  - b. Did tribal contributions result in any changes to federal actions or considerations for resources of interest? If so, please explain.
  
- 5) Have agencies consulted or collaborated with tribal governments to develop plans for future monitoring, restoration, or assessment projects, or for other planning efforts?
  
- 6) Have the exercise of tribal rights or access to resources and/or areas of tribal interest on federal lands been changed in relation to the NWFP?? If so, how?
  
- 7) Is the tribe aware of procedures that have been put in place to provide for:
  - a. protecting sensitive tribal information from unauthorized access or release in relation to the NWFP?
  - b. incorporating tribal traditional knowledge into the development of management actions?
  - c. protecting cultural sites on federal land?
  
- 8) Are there conflicts over the use or management of resources or areas of tribal interest in relation to the NWFP? What are the sources of the conflict? Are conflict resolution processes adequate?
  
- 9) Has the tribe exercised treaty rights, other rights, or pursued tribal interests associated with national forests and BLM public lands and resources? Please provide examples, if you wish.
  - a. Any barriers to exercising rights?
  
- 10) How is federal (USFS/BLM) forest management compatible with what the tribe values about those lands?
  
- 11) How can the tribal-federal relationship be strengthened?

## Appendix B. Glossary of Acronyms

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|       |  |
|-------|--|
| BIA   | Bureau of Indian Affairs                   |
| BLM   | Bureau of Land Management                  |
| EPA   | Environmental Protection Agency            |
| FOIA  | Freedom of Information Act                 |
| GIS   | Geographic Information Systems             |
| IAC   | Interagency Advisory Committee             |
| IFMAT | Indian Forest Management Assessment Team   |
| KIGC  | Klamath Indian Game Commission             |
| MOA   | Memorandum of Agreement                    |
| MOU   | Memorandum of Understanding                |
| NEPA  | National Environmental Policy Act          |
| NPS   | National Park Service                      |
| NWFP  | Northwest Forest Plan                      |
| ODFW  | Oregon Department of Fish and Wildlife     |
| PAC   | Provincial Advisory Committee              |
| PIEC  | Provincial Interagency Executive Committee |
| QIN   | Quinault Indian Nation                     |
| REO   | Regional Ecosystem Office                  |
| RIEC  | Regional Interagency Executive Committee   |
| ROD   | Record of Decision                         |
| TFPA  | Tribal Forest Protection Act               |
| TMAG  | Tribal Monitoring Advisory Committee       |
| USDA  | United States Department of Agriculture    |
| USDOI | United States Department of Interior       |
| USFS  | United States Forest Service               |

## Appendix C. References

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- Bureau of Indian Affairs [BIA]. 2019. Frequently Asked Questions: What is the federal Indian Trust Responsibility? <https://www.bia.gov/frequently-asked-questions> (June 10, 2019)
- Exec. Order No. 13175, 65 FR 67429, November 9, 2000. <https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>
- Massettich, Paul W., Marty-Murray-Close, and Barbara Monsey. 2001. Collaboration – what makes it work. 2d ed. St. Paul, MN: Amherst H. Wilder Foundation.
- Northwest Forest Plan Standards and Guidelines. <https://www.fs.fed.us/r6/reo/standards/>
- Pinchot Partners Website, <https://pinchotpartners.org/about/>
- Presidential Memorandum. 2009. Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation. <https://obamawhitehouse.archives.gov/the-press-office/memorandum-tribal-consultation-signed-president>
- Stuart, C.; Martine, K. 2006. Northwest Forest Plan—The First 10 Years (1994-2003): Effectiveness of the Federal-Tribal Relationship. Tech. Paper R6-RPM-TP-02-2006. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Region.
- Tapash Mission Statement, <http://www.tapash.org/>
- United States Forest Service. Forest Service Handbook 1509.13, Chapter 10. (2016)
- U.S. Department of Agriculture Northwest Forest Plan Record of Decision; Amending Resource Management Plans for Seven Bureau of Land Management Districts and Land and Resource Management Plans for Nineteen National Forests Within the Range of the Northern Spotted Owl. (2004)
- United States DOI Bureau of Land Management. *General Procedural Guidance for Native American Consultation*. BLM H-8120-1 (2004)
- U.S. Department of the Interior. Secretarial Order 3317. (2011). <https://www.doi.gov/sites/doi.gov/files/migrated/tribes/upload/SO-3317-Tribal-Consultation-Policy.pdf>
- United States Environmental Protection Agency. (2011). *EPA Policy on Consultation and Coordination with Indian Tribes*. <https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>
- Vinyeta, K.; Lynn, K. 2015. Strengthening the Federal-Tribal Relationship: A Report on Monitoring Consultation under the Northwest Forest Plan. Report FS/R6/PNW/2015/0005. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Region. Region.
- Western Klamath Restoration Partnership: <https://www.wkrp.network/mission>

## Appendix D. Data Results

**Table 1. Adequacy of Consultation Protocols**

| Question |   | Yes   |       |       | No    |       |       | Don't Know/Other |       |       |
|----------|---|-------|-------|-------|-------|-------|-------|------------------|-------|-------|
|          |   | 15-Yr | 20-Yr | 25-Yr | 15-Yr | 20-Yr | 25-Yr | 15-Yr            | 20-Yr | 25-Yr |
| 1.1      | Have written consultation protocols been developed?   | 32%   | 63%   | 40%   | 50%   | 30%   | 40%   | 18%              | 7%    | 20%   |
| 1.2      | Are [written consultation protocols] adequate for government-to-government consultation?          | 32%   | 53%   | 56%   | 45%   | 41%   | 16%   | 23%              | 6%    | 28%   |
| 1.3      | Are they adequate for potential effects on tribal rights, interests, and effects on tribal lands? | NA*   | 53%   | 40%   | NA*   | 41%   | 28%   | NA*              | 6%    | 32%   |

**Table 2. Policy Guidance for Consultation**

| Question |   | Yes   |       |       | No    |       |       | Don't Know/Other |       |       |
|----------|---|-------|-------|-------|-------|-------|-------|------------------|-------|-------|
|          |   | 15-Yr | 20-Yr | 25-Yr | 15-Yr | 20-Yr | 25-Yr | 15-Yr            | 20-Yr | 25-Yr |
| 2.1      | Is the tribe aware of federal policy guidance that is available for tribal consultation when agency plans, projects, programs or activities have the potential to affect resources, uses, or areas of interest to tribes, including tribal lands? | 64%   | 85%   | 84%   | 32%   | 4%    | 8%    | 4%               | 11%   | 8%    |
| 2.2      | Are federal consultation procedures adequate to identify direct and indirect effects to activities on tribal lands?   | 54%   | NA    | 32%   | 23%   | NA    | 36%   | 23%              | NA    | 32%   |
| 2.3      | Is notification [regarding consultation] specific to the tribe?   | NA    | 74%   | 56%   | NA    | 4%    | 20%   | NA               | 22%   | 24%   |

**Table 3. Federal-Tribal Consultation and Intergovernmental Forums**

| Question |  | Yes   |       |       | No    |       |       | Don't Know/Other |       |       |
|----------|--|-------|-------|-------|-------|-------|-------|------------------|-------|-------|
|          |  | 15-Yr | 20-Yr | 25-Yr | 15-Yr | 20-Yr | 25-Yr | 15-Yr            | 20-Yr | 25-Yr |
| 3.1      | Over the past ten years, has the tribe been consulted on federal agency plans, projects, programs, or activities that might affect tribal rights or interests? | 73%   | 96%   | 92%   | 27%   | 4%    | 0%    | 0%               | 0%    | 8%    |
| 3.2      | Are there PACs or other intergovernmental forums in the area?  | 59%   | 78%   | 48%   | 14%   | 7%    | 16%   | 27%              | 15%   | 36%   |
| 3.3      | Do tribes participate in these forums?   | 59%   | 90%   | 64%   | 32%   | 5%    | 24%   | 9%               | 5%    | 12%   |

**Table 4. Tribal Input**

| Question |   | Yes   |       |       | No    |       |       | Don't Know/Other |       |       |
|----------|---|-------|-------|-------|-------|-------|-------|------------------|-------|-------|
|          |   | 15-Yr | 20-Yr | 25-Yr | 15-Yr | 20-Yr | 25-Yr | 15-Yr            | 20-Yr | 25-Yr |
| 4.1      | Has tribal information been incorporated into federal planning documents (including watershed analysis and decision-making processes, in a manner so that tribes can recognize their contributions? | 59%   | 78%   | 64%   | 10%   | 11%   | 12%   | 23%              | 11%   | 20%   |
| 4.3      | Did tribal contributions result in any changes to federal actions or considerations for resources of interest?  | 32%   | 59%   | 64%   | 36%   | 26%   | 20%   | 32%              | 15%   | 16%   |

**Table 5. Collaboration**

| Question |   | Yes   |       |       | No    |       |       | Don't Know/Other |       |       |
|----------|---|-------|-------|-------|-------|-------|-------|------------------|-------|-------|
|          |   | 15-Yr | 20-Yr | 25-Yr | 15-Yr | 20-Yr | 25-Yr | 15-Yr            | 20-Yr | 25-Yr |
| 5.1      | Have agencies consulted or collaborated with tribal governments to develop plans for future monitoring, restoration, or assessment projects, or for other planning efforts? | 64%   | 85%   | 92%   | 32%   | 11%   | 4%    | 4%               | 4%    | 4%    |

**Table 6. Exercising Tribal Rights and Accessing Resources under the NWFP**

| Question |  | Yes   |       |       | No    |       |       | Don't Know/Other |       |       |
|----------|--|-------|-------|-------|-------|-------|-------|------------------|-------|-------|
|          |  | 15-Yr | 20-Yr | 25-Yr | 15-Yr | 20-Yr | 25-Yr | 15-Yr            | 20-Yr | 25-Yr |
| 6.1      | Have the exercise of tribal rights or access to resources and/or areas of tribal interest on federal lands been changed? | 45%   | 27%   | 28%   | 36%   | 50%   | 36%   | 19%              | 23%   | 36%   |

**Table 7. Protection of Cultural Resources, Sites and Traditional Knowledges**

| Question |  | Yes   |       |       | No    |       |       | Don't Know/Other |       |       |
|----------|--|-------|-------|-------|-------|-------|-------|------------------|-------|-------|
|          |  | 15-Yr | 20-Yr | 25-Yr | 15-Yr | 20-Yr | 25-Yr | 15-Yr            | 20-Yr | 25-Yr |
| 7.1      | Is the tribe aware of procedures that have been put in place to provide for protecting sensitive tribal information from unauthorized access or release?           | 68%   | 39%   | 64%   | 27%   | 23%   | 12%   | 5%               | 38%   | 24%   |
| 7.2      | Is the tribe aware of procedures that have been put in place to provide for Incorporating tribal traditional knowledge into the development of management actions? | 55%   | 54%   | 52%   | 41%   | 31%   | 24%   | 4%               | 15%   | 24%   |
| 7.3      | Is the tribe aware of procedures that have been put in place to provide for Protecting cultural sites on federal land?   | 59%   | 85%   | 84%   | 23%   | 11%   | 8%    | 18%              | 4%    | 8%    |

**Table 8. Conflict Resolution**

| Question |  | Yes   |       |       | No    |       |       | Don't Know/Other |       |       |
|----------|--|-------|-------|-------|-------|-------|-------|------------------|-------|-------|
|          |  | 15-Yr | 20-Yr | 25-Yr | 15-Yr | 20-Yr | 25-Yr | 15-Yr            | 20-Yr | 25-Yr |
| 8.1      | Are there conflicts over the use or management of resources or areas of tribal interest? | 36%   | 54%   | 76%   | 55%   | 23%   | 12%   | 9%               | 23%   | 12%   |
| 8.2      | Are conflict resolution processes adequate?  | NA    | 38%   | 16%   | NA    | 23%   | 32%   | NA               | 39%   | 52%   |

**Table 9. Treaty Rights**

| Question |   | Yes   |       |       | No    |       |       | Don't Know/Other |       |       |
|----------|---|-------|-------|-------|-------|-------|-------|------------------|-------|-------|
|          |   | 15-Yr | 20-Yr | 25-Yr | 15-Yr | 20-Yr | 25-Yr | 15-Yr            | 20-Yr | 25-Yr |
| 9.1      | Has the tribe exercised treaty rights, other rights, or pursued tribal interests associated with national forests and BLM public lands and resources? | NA    | 73%   | 68%   | NA    | 15%   | 12%   | NA               | 12%   | 20%   |
| 9.2      | Any barriers to exercising rights?  | NA    | 34%   | 72%   | NA    | 31%   | 20%   | NA               | 35%   | 8%    |

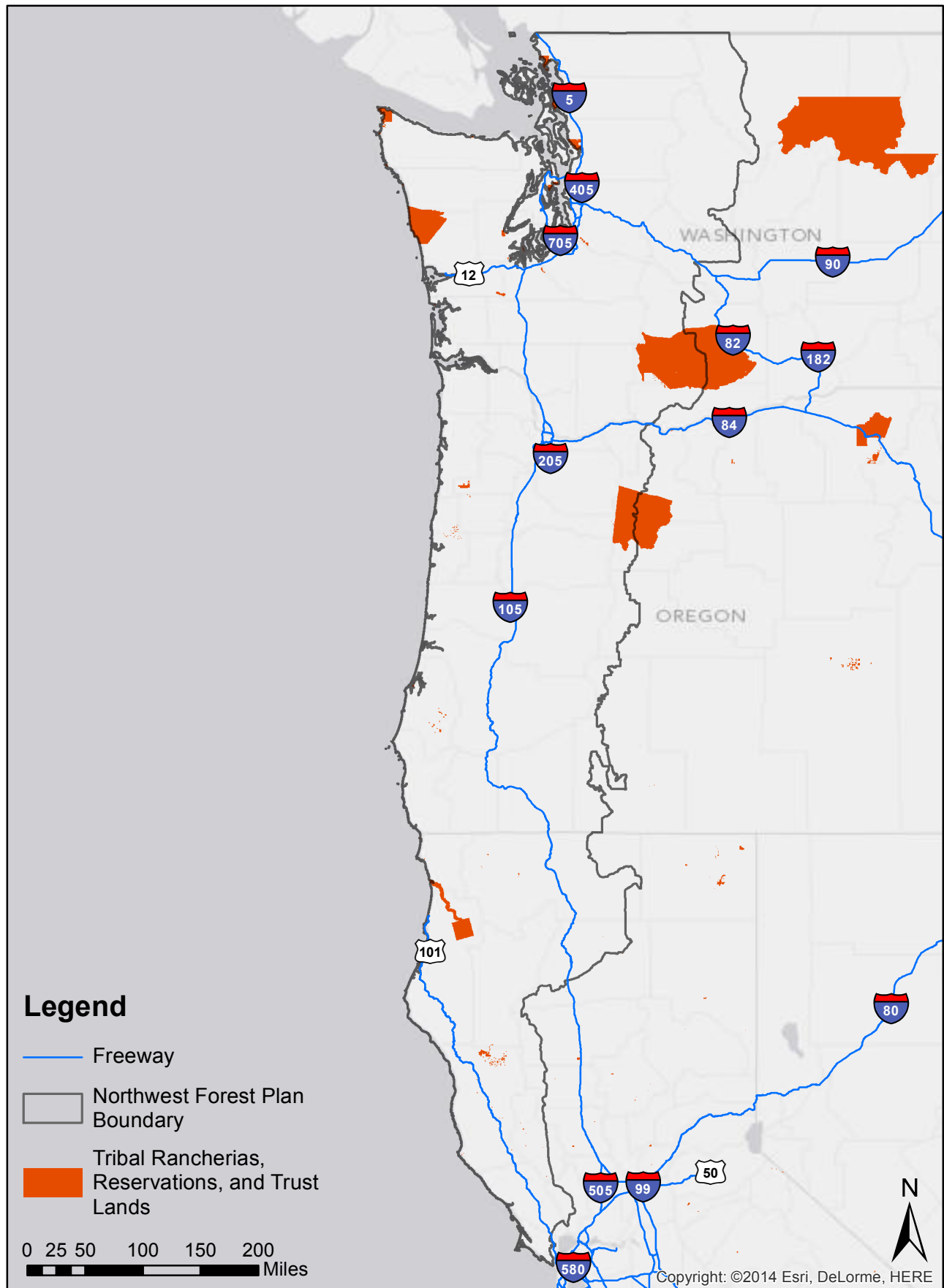


## Appendix E. Maps

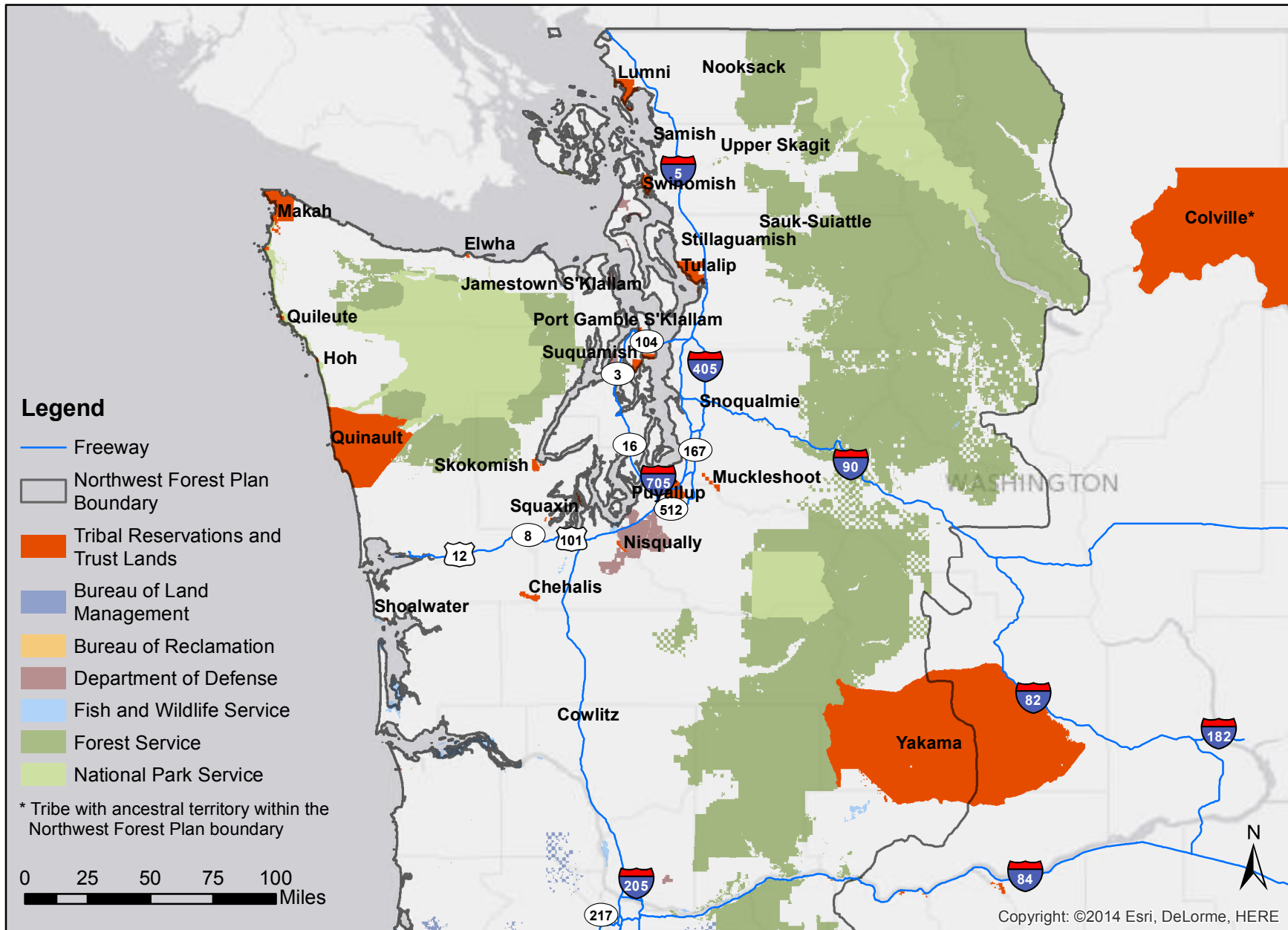
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This report includes four maps developed in 2016 for the 20-year Northwest Forest Plan Tribal Monitoring Report, which illustrates the range of the Northwest Forest Plan in relation to both federal and tribal lands. Map 1 illustrates the full extent of the NWFP boundary across Washington, Oregon, and California, with tribal reservations, Rancherias, and trust lands included for reference. Maps 2, 3 and 4 provide a more detailed illustration of tribal reservations, Rancherias, and trust lands, as well as federal lands, in relation to the NWFP boundary in Washington, Oregon, and California, respectively. It is important to note that in the Washington and California maps there are tribal bands, Rancherias and/or tribes lying outside the NWFP boundary that have ancestral territory within the boundary and are therefore still affected by NWFP policy. These tribal bands, Rancherias and/or tribes are marked with a single asterisk. On the California map, tribal bands, Rancherias and/or tribes appearing on the map but whose lands and territories lie outside the NWFP boundary are marked with two asterisks. (20-year tribal monitoring report)

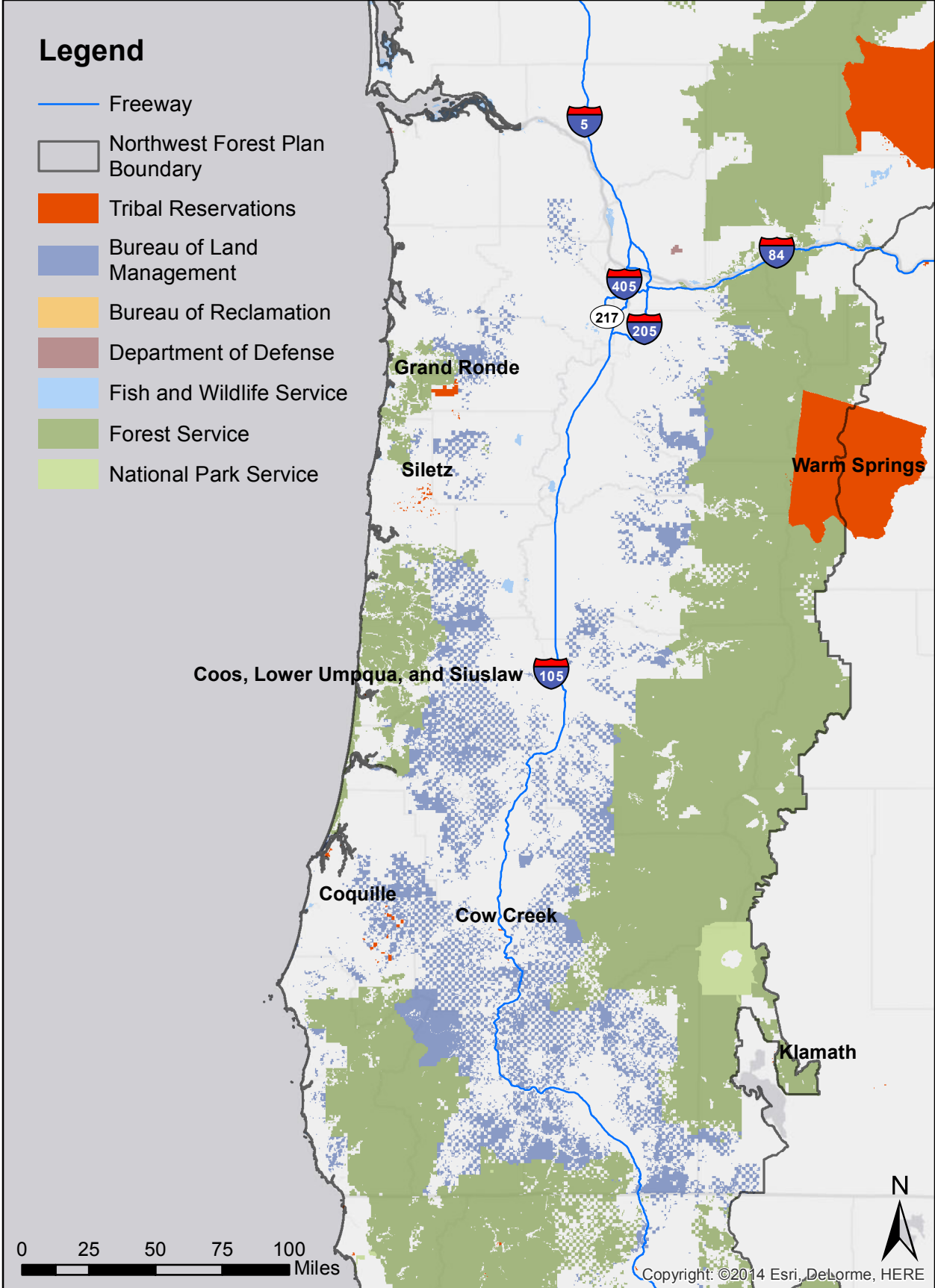
# Map 1: Range of the Northwest Forest Plan Boundary



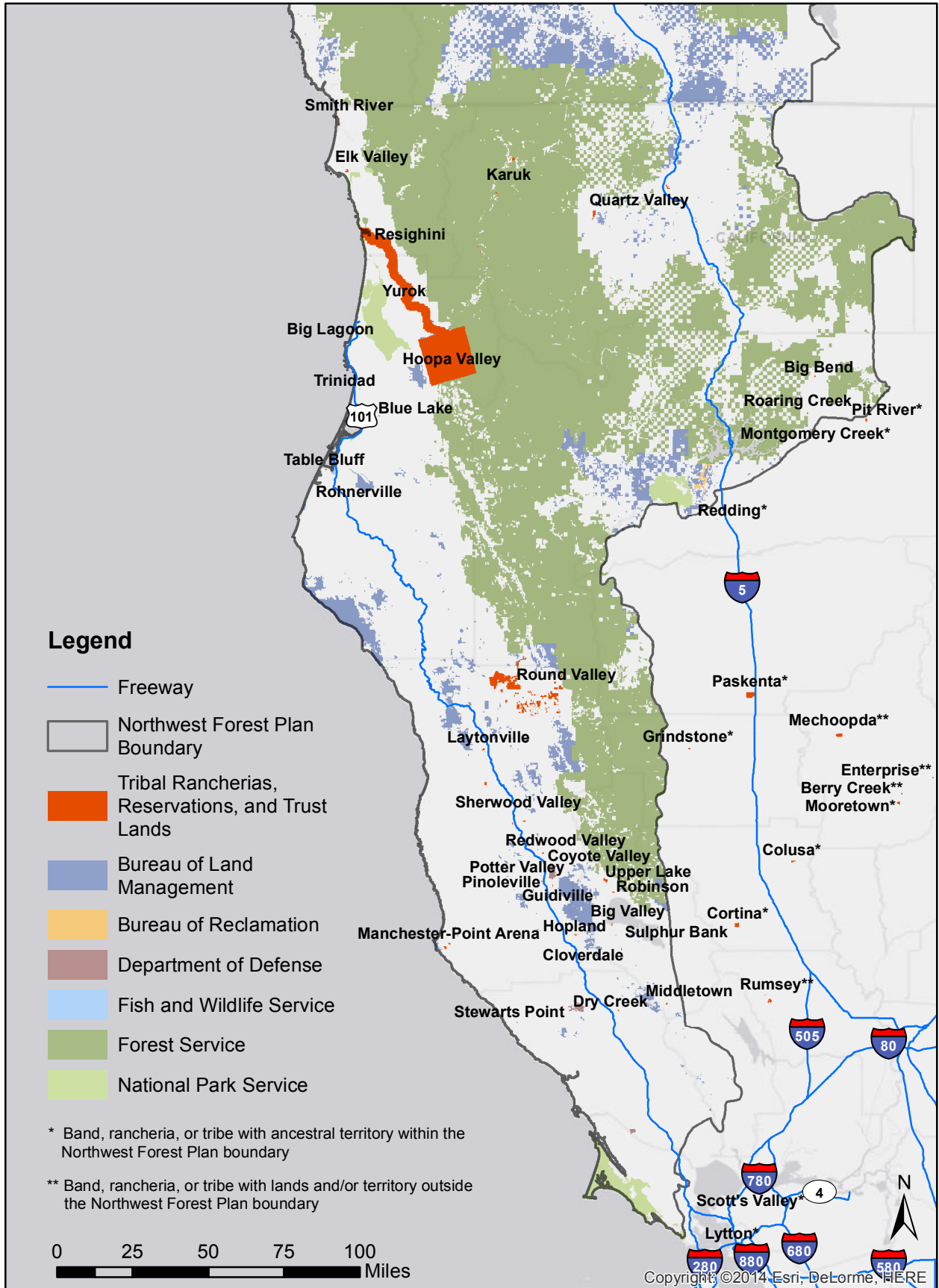
## Map 2: Tribal Reservations and Trust Lands, and Federal Lands within the Northwest Forest Plan Boundary in Washington



# Map 3: Tribal Reservations and Federal Lands within the Northwest Forest Plan Boundary in Oregon



**Map 4: Tribal Rancherías, Reservations, and Trust Lands, and Federal Lands within the Northwest Forest Plan Boundary in California**





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