United States Department of Agriculture

NORTHWEST FOREST PLAN

THE FIRST 20 YEARS (1994–2013)

*Strengthening the Federal-Tribal Relationship:*

# A Report on Monitoring Consultation under the Northwest Forest Plan


By
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for the greatest good

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Cover Photo: Figure 1: Forest Shadows. *Photo by Larry Workman.*

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

**Prepared for:**
Tribal Relations Office of the
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# I. Executive Summary:

2014 marks the 20th year since the institution of 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. Over 70 federally recognized American Indian tribes have tribal lands and/or territory within the NWFP boundary. Each tribe has a unique treaty history and relationship with the federal government, as well as unique environmental and economic needs that influence how they are affected by the implementation of the NWFP. As part of the NWFP's Standards and Guidelines, the USFS and BLM are tasked with carrying out monitoring efforts to evaluate the efficacy of the NWFP's management practices. One element of effectiveness monitoring identified in the Record of Decision (ROD) for the Plan is "American Indians and Their Culture." This 20-year monitoring report presents the findings from the third monitoring effort assessing federal-tribal relations under the NWFP.

The full report includes findings from the interviews conducted with tribes within the NWFP region to assess the federal-tribal relationship under the NWFP, as well as several case studies that provide voices from tribes about their experience and perspectives on how their rights and interests are being affected by federal policy. These case studies are intended to assist tribes and agencies in understanding local conditions and the outcomes from a given process, such as NWFP implementation. The interviews and case studies revealed a number of areas in which improvements could be made in order to make federal-tribal relations more effective and meaningful. Of particular importance is the need to align tribal and federal visions on what constitutes consultation, the need to ensure that agency staff are culturally competent and informed on treaty rights, other tribal rights, the federal trust responsibility, and the history of federal-tribal relations, and the need to ensure that tribes' needs, knowledges, and practices shape not only tribal, but also federal forest management. Based on these findings, we developed a set of recommendations, divided into three categories: consultation, tribal rights and access, and compatibility of federal and tribal forest management. These recommendations are summarized below.

## 1. Consultation Recommendations

**Learn about, recognize, and act on each tribe's unique vision for consultation.** Meeting with each tribe to learn about this vision, and then recognize and act upon it by developing customized consultation protocols that honor this vision could address many of the concerns tribes have in regards to the adequacy of consultation.

**Increase effectiveness of government-to-government consultation.** Agencies should have full knowledge of what the government-to-government relationship means, and ensure they fully and respectfully engage in consultation.

**Create more formalized, individualized agreements between tribes and agencies to clarify the relationships between them.** Formal consultation policies and other agreements such as Memoranda of Understanding and Agreement (MOUs and MOAs) can specify tribal contacts, procedures, and the topics that an agency should be notifying tribes about in regards to agency actions that affect tribal interests and rights. Defining these parameters can improve the adequacy of agency notifications, thereby reducing the burden on tribes and improving their ability to meaningfully address issues of critical importance.

**Strengthen the accountability of consultation.** Agency and tribal leadership can work together to develop accountability measures for agencies as they pursue consultation. MOUs, MOAs, and tribal consultation ordinances are among the mechanisms that can be used to make consultation a more accountable process.

**Customize tribal notifications.** Agencies, particularly those with staff partially or fully dedicated to tribal relations, could dedicate more effort to customize the content of notifications in order to reduce the burden on tribes and improve their ability to adequately respond to notifications that the tribe deems critical. In tribal notifications, agencies should aim to address the following:

1. What it is that the agency is looking to achieve?
2. How does it relate to the tribe?
3. What actions need to be taken by the tribe?

**Map and increase agency awareness of tribal lands and territories in relation to the NWFP boundary.** The USFS and BLM should develop GIS maps that clearly specify which tribes have reservations, rancherias, and/or trust lands within the NWFP boundary. Maps should also be developed indicating which tribes have ceded lands and ancestral territories within the NWFP boundary. These maps can serve to clearly identify which tribes may be affected by specific agency actions across the NWFP region, and can also serve to clarify federal-tribal contacts and relations.

**Increase agency and tribal awareness of NWFP policies and their implications.** Both tribes and agencies experience turnover in leadership and staff. Many of the staff and leadership that were a part of agencies and tribes during the development and initial implementation of the NWFP have likely changed in the last 20 years. The USFS and BLM should ensure that both agency and tribal staff and leadership are familiar with NWFP policies and their tribal implications.

**Work with tribes to develop an orientation process for new agency staff.** Staff turnover continues to be a concern. Agencies and tribes can work together to develop an orientation process that introduces new staff to the federal-tribal relationship, and how to effectively and adequately navigate this relationship.

**Increase the use of more personal forms of communication.** Increasing more personal forms of communication such as face-to-face meetings and phone calls can add legitimacy, be more culturally appropriate for tribes, and enhance camaraderie between tribes and agencies. Impersonal communication forms such as mass mailings and e-mails are off-putting to many tribes and are unlikely to lead to meaningful interactions.

**Encourage tribal participation in intergovernmental forums.** Tribes are critical contributors to intergovernmental forums and, as many respondents asserted, tribes often benefit from participating in these forums. As such, agencies should ensure that they are informing all tribes of intergovernmental forum opportunities in their region, and fully encouraging tribal participation in these forums.

**Increase opportunities for collaboration in planning and management.** Bringing tribes into planning and management processes from the start can ensure that tribal needs and traditional knowledge inform these processes. This benefits both agencies and tribes, as it results in plans and management that are informed by various ways of knowing and that address tribal needs, and reduces conflict later on in the planning and/or management process.

**Incorporate tribal comments into agency plans prior to making plans public.** Tribes are governments that hold special relationships with the federal U.S. government. As such, their comments and contributions hold a different importance than that of the general public, and should be incorporated into federal plans and documents prior to these being made public.

**Coordinate consultation policies and practices across USFS districts.** Currently, there seems to be little coordination between USFS districts in regards to federal-tribal practices, policies, and guidelines. While each district should work with regional tribes to customize consultation and communication with each tribe, there needs to be more consistency in terms of general federal-tribal practices across districts and the broader organizational structure.

**Strengthen pathways within USFS agency for tribal concerns to flow from districts to agency leadership.** There is a need for clear direction from national Forest Service leadership in regards to federal obligations towards tribes, consistency across forests in regards to federal-tribal relations, conveyance of tribal needs and concerns, and education of local and regional staff regarding federal funding opportunities and congressional programs of tribal relevance.

**Increase opportunities for inter-agency learning.** Some agencies may have more effective ways of approaching certain aspects of federal-tribal relations than

others. Federal agencies can engage in mutual learning opportunities to strengthen federal-tribal relations.

## 2. Tribal Rights and Access Recommendations

**Train agency staff across all levels to ensure strong cultural competency in tribal matters.** Agencies can develop trainings, ideally in coordination with tribes, that serve to inform agency staff on these issues. Only upon clearly understanding these topics can agency staff engage meaningfully in federal-tribal consultation, collaboration and communication. Respondents also suggested that agencies must take responsibility for past wrongdoings, and take the necessary steps to re-build a level of trust that can foster meaningful relationships with tribes.

**Review policies that severely impact tribes' rights to interact with traditional lands and resources.** Treaty rights and other tribal rights are critical to tribal cultures, lifeways, and economies and should not be infringed upon other than under extreme circumstances. Agencies have the responsibility to consult with tribes and find appropriate compromises in situations where management priorities interfere with tribal rights.

**Adopt procedural frameworks to protect sensitive tribal and traditional knowledge.** As tribes spearhead and become involved in federal-tribal collaborations related to traditional knowledge, it is critical for there to be strong procedural frameworks that protect sensitive tribal and traditional knowledge. Agencies can reference and implement the *Guidelines for Considering Traditional Knowledges in Climate Change Initiatives* to ensure protection of sensitive knowledge and meaningful, equitable collaboration with tribes.

**Develop and use effective conflict resolution processes.** Conflict resolution appears to be underutilized in federal-tribal relations, and should be more frequently incorporated into federal-tribal agreements such as MOUs and MOAs. Conflict resolution processes that were deemed effective by respondents were led by a neutral facilitator agreed upon by both the tribe and the agency, and established conversation ground rules that ensured mutual respect and equal speaking opportunities

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

**Consult and collaborate with tribes to enhance the compatibility of federal-tribal forest management practices.** Agencies have a trust responsibility to protect tribal needs, lands and resources when managing federal lands. Additionally, agencies could benefit from incorporating tribal values and knowledges in federal land management. As such, agencies should consult and collaborate with tribes to make federal and tribal forest management practices more compatible, align federal and tribal management programs, and improve time- and cost-efficiency for both agencies and tribes.

**Increase opportunities for tribal land management.** Many tribes are eager to increase their management of lands that are in their ancestral territories but are managed by federal agencies. Agencies should work with tribes to increase opportunities for such management, promoting the implementation of policies such as the Tribal Forest Protection Act. This can reduce management responsibilities for federal agencies, and restore land management to tribes.

**Increase funding and support opportunities for tribal natural resource departments.** The 2013 IFMAT Report lists steady, predictable and adequate funding, and access to technical support and research among the critical prerequisites for tribes to maximize their forestry programs. In order for tribes to be able to consult, collaborate, manage and engage fully, tribal natural resources departments (and tribes more generally) need to receive adequate and steady funding comparable to that of agencies with similar land management responsibilities.

**Increase funding and ensure adequate staffing levels for agencies working closely with tribes.** Tribes are often underfunded and understaffed themselves, and depend on the technical support and communication capacity of agencies to carry out their planning and management objectives. Agencies working with tribes must be sufficiently staffed to meet tribes' needs and fulfill federal trust responsibilities.

# II. Introduction:

## Northwest Forest Plan Background

2014 marks the 20th year since the institution of 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. First instituted in 1994, the NWFP resulted from objectives set forth by President Bill Clinton at the 1993 Forest Conference in Portland, OR, in an effort 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, particularly the Northern spotted owl and the marbled murrelet. The NWFP's aim was to balance the environmental and economic needs of the Pacific Northwest by protecting old-growth forests, while simultaneously providing continued opportunities for, and/or economic alternatives to, timber harvests.

Since 1994, the NWFP has been guiding federal land management for all USDA Forest Service (USFS) and USDI Bureau of Land Management (BLM) lands within the range of the Northern spotted owl. The 24 million acres of land subject to the NWFP have been divided up into seven land allocation categories based primarily on ecological characteristics. The categories are 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.

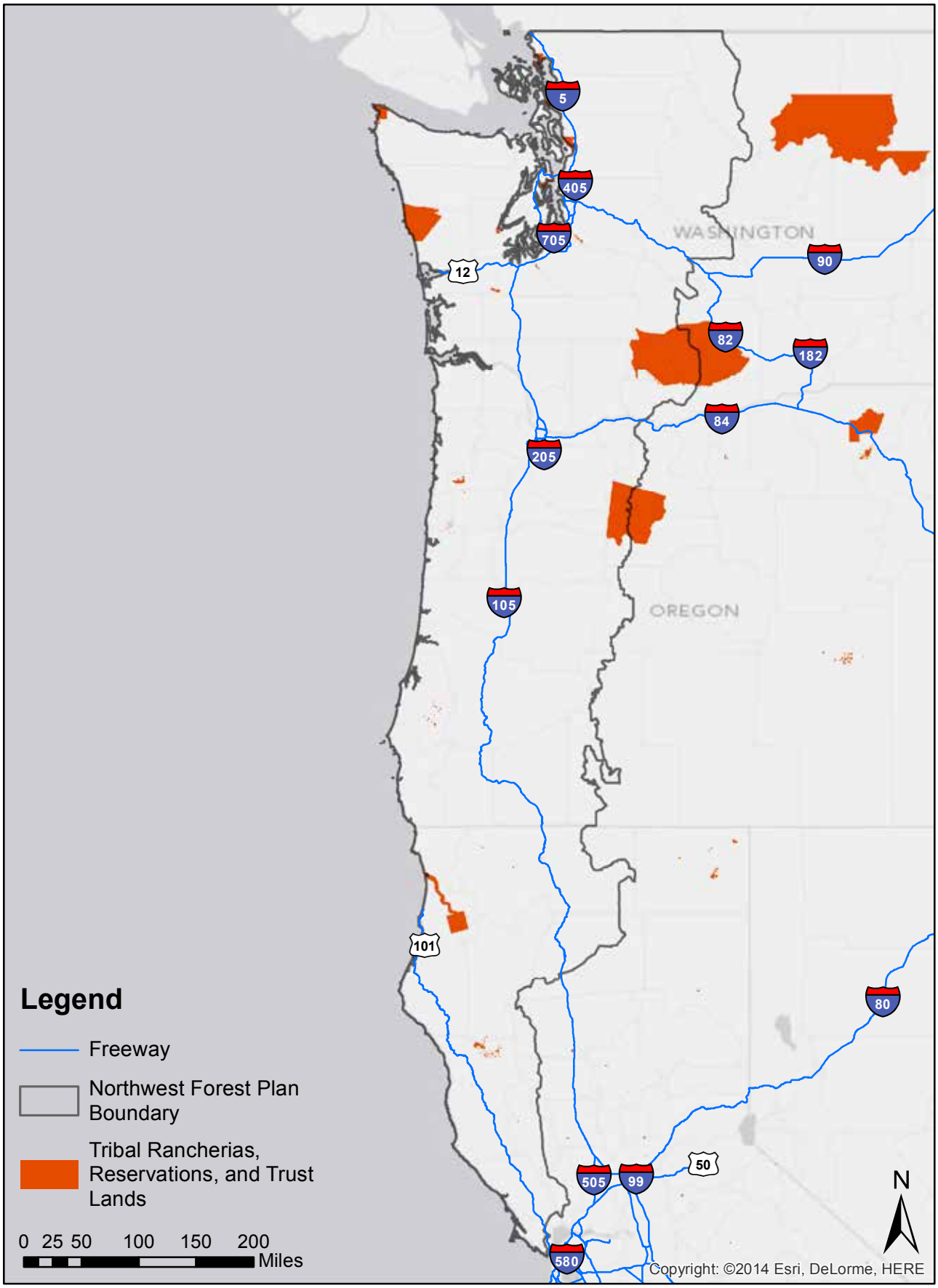
Over 70 federally recognized American Indian tribes have tribal lands and/or territory within the NWFP boundary. Each tribe has a unique treaty history and relationship with the federal government, as well as unique environmental and economic needs that influence how they are affected by the implementation of the NWFP. Many tribes signed treaties with the federal government that are intended to secure tribal rights to access ancestral lands and/or culturally vital plants and animals, in exchange for federal ownership of tribal lands. Some tribes' treaties, including many in California, were never ratified, which left these tribes without secured treaty rights despite the loss of their lands. This has been viewed as an unjust taking of lands by some tribes who have suffered wrongdoing, and they take the position that these lands are still in tribal possession. As many tribal lands and territories are occupied and controlled by the federal government, federal management actions profoundly affect these tribal lands and resources. Regardless of treaty history, federal management affects lands and resources that are critical to tribes, and the federal government has a trust responsibility to take tribal needs into consideration when managing these lands and resources.

This report includes four maps that illustrate the range of the Northwest Forest Plan in relation to both tribal lands and territories, and federal 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.

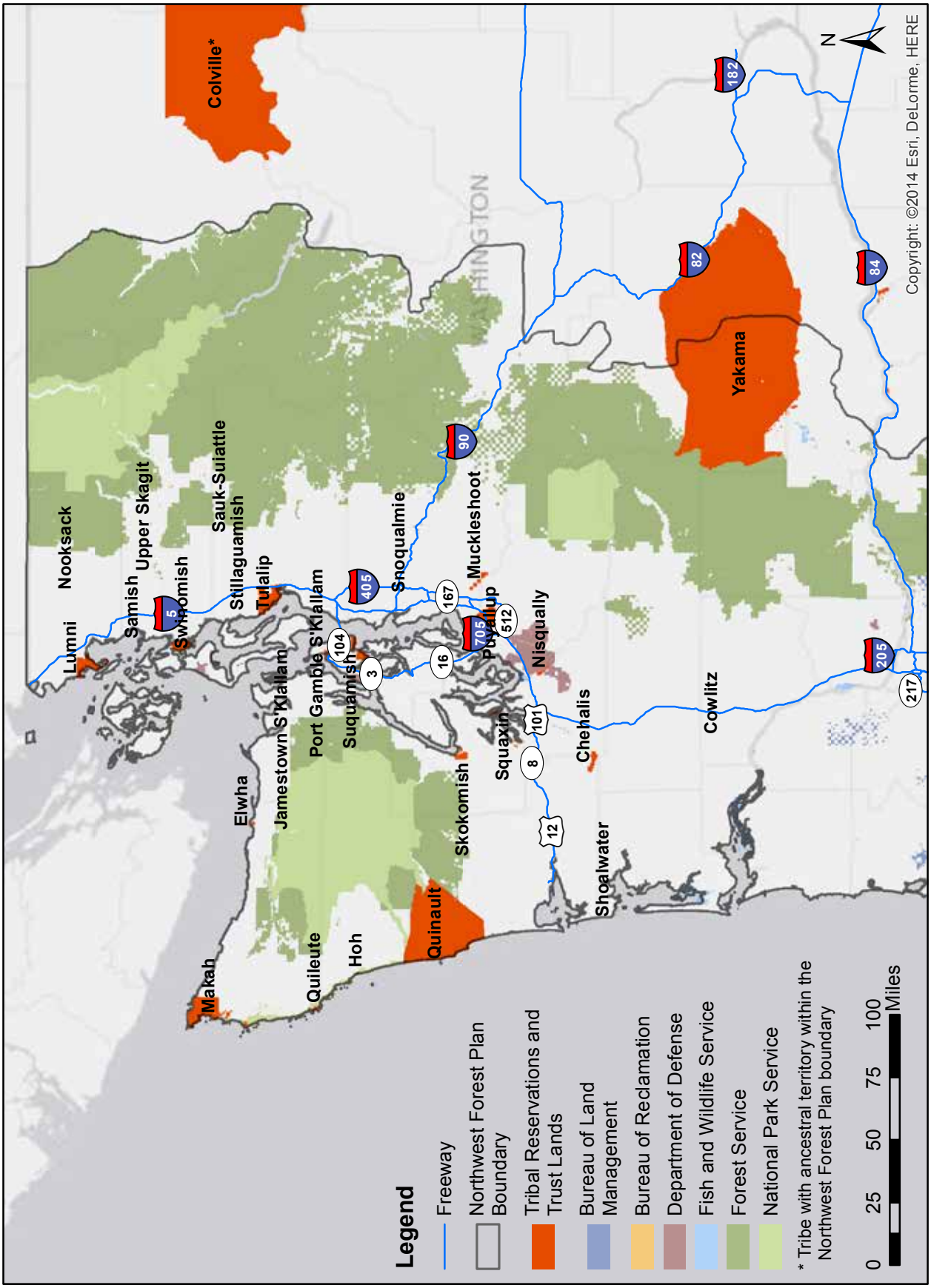
## Previous Federal-Tribal Relations Monitoring Efforts

As part of the NWFP's Standards and Guidelines, the USFS and BLM are tasked with carrying out monitoring efforts to evaluate the efficacy of the NWFP's management practices. The Standards and Guidelines prescribe three basic types of monitoring: implementation, effectiveness, and validation. One element of effectiveness monitoring identified in the Record of Decision (ROD) for the Plan is "American Indians and Their Culture." The Northwest Forest Plan

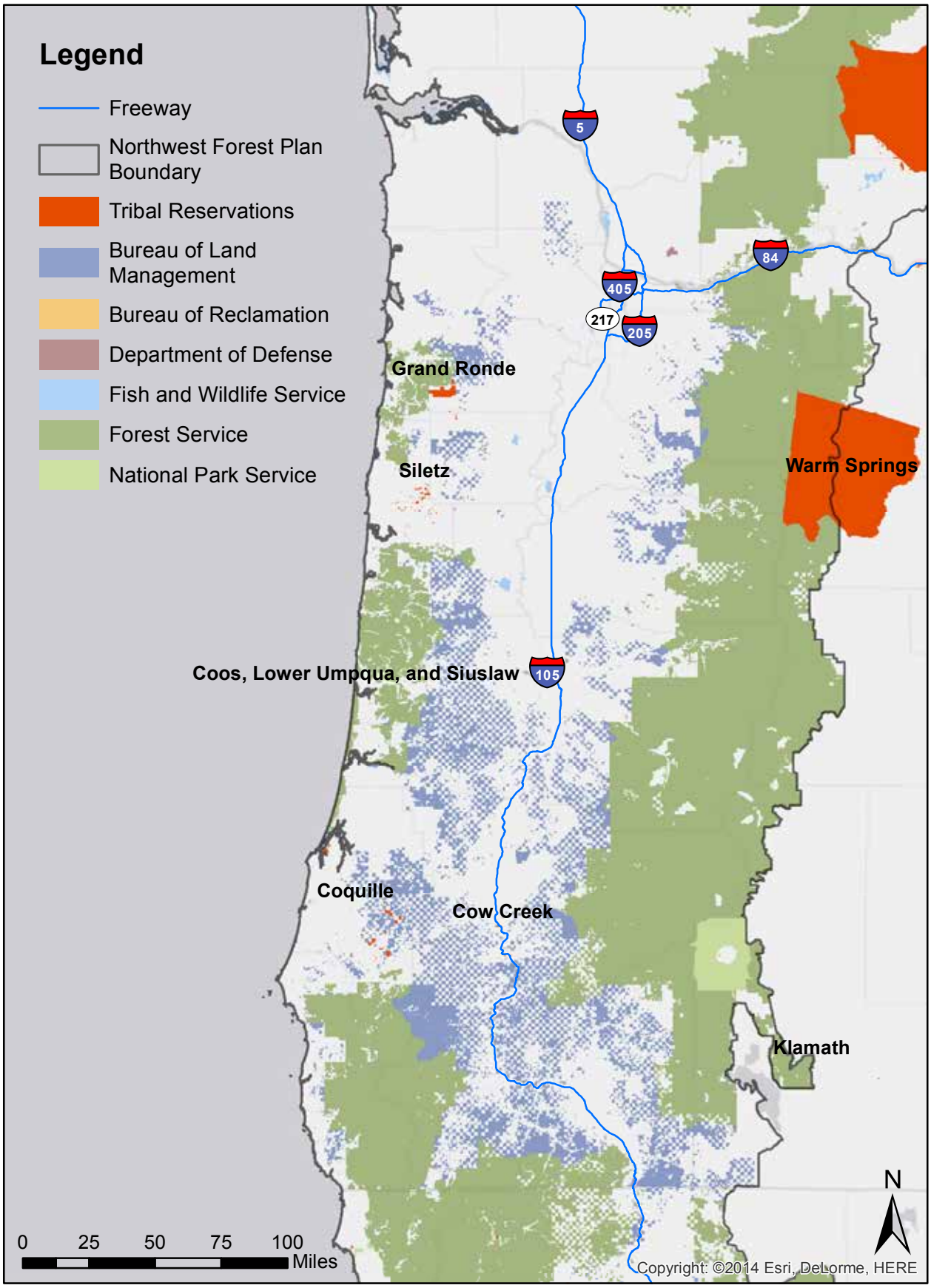
# Map 1: Range of the Northwest Forest Plan Boundary



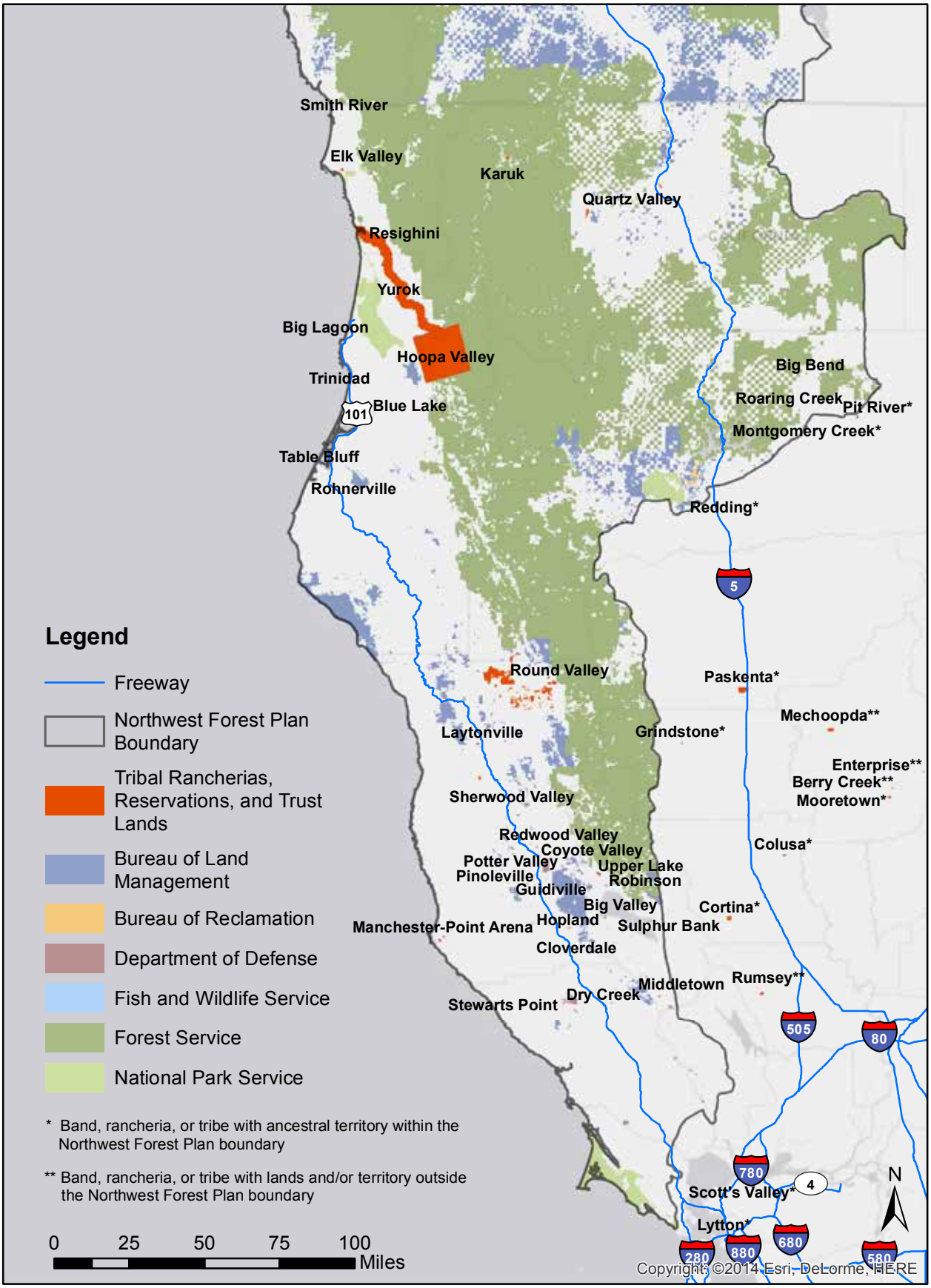
## Map 2: Tribal Reservations and Trust Lands, and Federal Lands within the Northwest Forest Plan Boundary in Washington



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



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



Record of Decision (ROD) and Standards and Guidelines address the importance of American Indians' treaty rights and trust resources when making decisions regarding NWFP implementation and enforcement. Monitoring "American Indians and Their Culture" serves to ensure that treaty rights and trust resources are being adequately addressed in the NWFP. Broadly speaking, this monitoring has served to assess the impact of the NWFP on trust resources and on tribal access to species, resources, and places of cultural and economic importance, as well as the adequacy of intergovernmental coordination and government-to-government relations between tribes and federal agencies in regards to the implementation of the Plan.

The first federal-tribal relations monitoring effort was completed in 2003, the results of which 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 initial monitoring report, the views of fifteen tribes were presented. A Tribal Monitoring Advisory Group (TMAG) was subsequently chartered 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. The TMAG worked collectively to develop 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.

Also of relevance to this report is the Indian Forest Management Assessment Team (IFMAT) report completed in 2013. The IFMAT has carried out periodic assessments every 10 years since 1993. The 2013 report represents the Team's third assessment, in which they examine the evolving state of tribal forests over the last 20 years, and in which they document some of the factors promoting or inhibiting successful tribal management of these forests. While the IFMAT report is national in scope, it serves as supporting evidence and context for our findings and recommendations related to strengthening the federal-tribal relationship under the Northwest Forest Plan.

## 20-Year Federal-Tribal Relations Monitoring Effort

This 20-year monitoring report presents the findings from the third monitoring effort assessing federal-tribal relations under the NWFP. The TMAG has continued to be instrumental in guiding the monitoring process and the approach and survey instrument used for the 20 year monitoring effort is consistent with the 15-year monitoring protocol. Findings from this monitoring effort will be used to report key aspects of federal-tribal relationships within the Northwest Forest Plan. However, findings, lessons learned, and recommendations can be shared much more broadly in a policy context to strengthen government-to-government relationships that extend well beyond the Northwest Forest Plan.

## Methods

### Contact

The U.S. Forest Service and Bureau of Land Management (BLM) sent a joint letter to the chairpersons of all tribes with tribal lands and/or territories within the Northwest Forest Plan boundary to invite them to participate in the interviews and introduce the monitoring contractor. The University of Oregon followed up with e-mails and/or phone calls to natural and/or cultural resources staff with each of the tribes to schedule interviews with willing participants. Sources used to identify the appropriate tribal contacts included

recommendations by the TMAG, the Intertribal Timber Council, the USFS Region 5 and 6 Tribal Relations Program Managers, and National Forest staff, as well as tribal staff directories on official tribal websites and the 2014 Indian Forestry & Natural Resources National Directory (published by the Bureau of Indian Affairs and the Intertribal Timber Council).

## Tribal Interviews

There are 75 federally recognized tribes with tribal lands and/or territories within the Northwest Forest Plan boundary. Of these 75 tribes, 27 are located in Washington, 7 are located in Oregon, and 41 are located in California. The University of Oregon contacted staff from all 75 tribes to invite them to participate in interviews. Staff from 14/27 tribes participated from Washington, staff from 7/7 tribes participated from Oregon, and staff from 6/41 tribes participated from California, for a total of 27 interviews. While no tribal staff openly declined to participate in the interview, many tribes did not participate in the study. As will be highlighted in this report, tribes are often underfunded and understaffed and must be highly selective in terms of how they allocate their time. This study is just one of many inquiries tribes likely received in a given month, and for some tribes, particularly those is California where unratified treaties and other hardships have affected tribal rights, lands, economies, and capacity (BIA I 2014), participation in this study was perhaps not most pressing at this time.

Another reason tribes may have chosen not to participate in the study is that for some tribes, the NWFP may not be the most pressing policy affecting tribal lands and resources today. As one respondent noted during the interview:

> *"I don't hear much at all about the NWFP. It's kind of forgotten about. The Tribe is meeting with the BLM on a new plan and consulting with them. And then interactions with the USFS have more to do with the Farm Bill, or the Tribal Forest Protection Act. Little is mentioned in reference to how the NWFP is affecting decisions. The Adaptive Management Committee that was once a part of the NWFP is now dissolved. There used to be monitoring teams that were on the ground monitoring timber sales and other activities and yet those are rarely heard of anymore. While there are still guidelines and the legacy of the NWFP, there is newer legislation coming through the USFS that impacts tribes much more."*

It is important to note that the views expressed by tribal staff in these interviews do not necessarily represent the views of tribal council or tribal members. The responses highlighted in this report provide a snapshot of some of the concerns, successes, and challenges that have formed part of the experiences of tribal staff as they seek to protect tribal interests, rights, and resources under the Northwest Forest Plan and more broadly.

## Interview questions

The same interview questions developed by the TMAG for the 15-Year monitoring effort were used for the 20-Year monitoring effort. The interview was comprised of eleven questions focusing on the following areas:

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

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

## Confidentiality and Informed Consent

The University of Oregon notified each tribe participating in the monitoring effort of confidentiality issues. The information collected during the interviews has been synthesized into the published report. In the report, no information from the general interviews is attributed to a specific person or tribe. However, because the interview notes and key code are part of the record of the monitoring process and will be considered property of the federal government, all interview participants were informed that confidentiality cannot be fully protected under the Freedom of Information Act (FOIA).

### 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 or replicate in their communities or among their agencies. The four case studies featured in this report are:

1. **Karuk Tribe.** The Western Klamath Restoration Partnership: a promising collaboration model.
2. **Klamath Tribes.** A memorandum of agreement with the Fremont-Winema National Forest facilitates federal-tribal relations.
3. **Quinault Indian Nation.** Continuing challenges with consultation and the Northwest Forest Plan's effects on the timber economy.
4. **Mechanisms for Strengthening Accountability in Consultation.** Memoranda of understanding and agreement, tribal consultation ordinances, and consultation policy at the national level as tools to enhance federal-tribal relations.

## Definitions

### Consultation

Executive Order 13175: *Consultation and Coordination with Indian Tribal Governments* (released in November 2000): requires federal agencies to "have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications" (§ 5(a)). The Executive Order defines such regulatory policies as those that refer to *"regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."*

President Obama's Executive Order in 2009 called for each federal department and agency to develop a tribal consultation plan, pursuant to Executive Order 13175.

> *"History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship."*

All federal tribal consultation plans define consultation and establish procedures and principles for consulting with tribes. The 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 tribes (EPA 2011*). The 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)."*

### 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. (Massettich, Murray-Close and Monsey 2001)

## 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. (Massettich, Murray-Close and Monsey 2001)

## Consultation Policy at the Federal Level

President Clinton's Executive Order 13175 in 2000, "Consultation and Coordination with Indian Tribal Governments," requires each federal agency to have an accountable process to ensure meaningful and timely input by tribal officials into the development of regulatory policies that have tribal implications.

On November 5, 2009, President Obama re-affirmed the importance of federal-tribal consultation by delivering a Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation (Presidential Memorandum 2009).

In response to President Obama's Memorandum, both the U.S. Department of Interior (DOI) and the U.S. Department of Agriculture (USDA) developed department-wide policy on tribal consultation for their respective departments. The DOI's policy was finalized in 2011, and the USDA's Departmental Regulation was finalized in January 2013. These documents, as well as the consultation policies of individual agencies 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 in the table below to illustrate the policies, protocols and the trust responsibility that federal agencies have with federally-recognized tribes.

The NWFP's Record of Decision and Standards and Guidelines documents also includes language regarding treaty rights and trust resources including the following excerpt from the NWFP Standards and Guidelines: Treaty Rights and Trust Resources:[1]

> *"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.*
>
> *The analysis and planning efforts used in implementing ecosystem management on lands administered by the BLM and Forest Service will comply with existing policies and laws relating to American Indian off-reservation trust resources. The analysis will identify Indian trust resources that would be affected, and identify potential conflicts between proposed federal actions and treaty rights or tribal plans and policies. Consultation on a government-to-government basis will be conducted early in the planning process with any affected tribes. Conflicts will be resolved consistent with the Federal Government's trust responsibilities."*

[1]Northwest Forest Plan Standards and Guidelines. (April 1994). http://www.reo.gov/library/reports/newsandga.pdf

| **Federal policy definitions of consultation and trust responsibility** | | | |
|---|---|---|---|
| Forest Service Protocol for Consultation with Tribes – FSH 1509.13 | The U.S. Department of Interior Policy on Consultation with Indian Tribes states: | The BLM's Manual on Tribal Consultation (8120) and associated BLM Handbook on Tribal Consultation (H-8120-1) | Bureau of Indian Affairs definitions of the federal Indian trust responsibility |
| • The agency contacts the Tribal Government, preferably prior to scoping and public involvement, to advise the Tribe of a proposed policy, plan, or project that may affect tribal rights or interests;<br><br>• The Tribe may respond back that this is not an issue or that this proposal is important and would like to initiate consultation;<br><br>• The Tribe may request that Federal agency technical experts meet with the Tribe's technical representatives (or the Tribe may request an official level meeting);<br><br>• Issues are discussed in order for the agency to understand why the proposal is of concern to the Tribe. This allows the respective staff to brief respective parties and to provide informed opinions and recommendations;<br><br>• Consultation steps are defined and an agreement may be reached between the Tribe and the Forest Service on the process for consultation;<br><br>• The agency makes a decision in consultation with the Tribe. | Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making. 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. Federal consultation conducted in a meaningful and good-faith manner further facilitates effective Department operations and governance practices. To that end, Bureaus and Offices will seek and promote cooperation, participation, and efficiencies between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding a Departmental Action with Tribal Implications. Efficiencies derived from the inclusion of Indian Tribes in the Department's decision-making processes through Tribal consultation will help ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of Tribal input" (USDOI 2011: 2-3). | • Identifying appropriate tribal governing bodies and individuals from whom to seek input.<br><br>• 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<br><br>• Treating tribal information as a necessary factor in defining the range of acceptable public-land management options.<br><br>• Creating and maintaining a permanent record to show how tribal information was obtained and used in the BLM's decisionmaking process." | The federal Indian trust responsibility is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (Seminole Nation v. United States, 1942). This obligation was first discussed by Chief Justice John Marshall in Cherokee Nation v. Georgia (1831). Over the years, the trust doctrine has been at the center of numerous other Supreme Court cases, thus making it one of the most important principles in federal Indian law.<br><br>The federal Indian trust responsibility is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes. (BIA II 2014). |

# III. Key Findings from the Tribal Interviews

This section of the report synthesizes interviews carried out with staff from 27 tribes. Findings are divided into 4 categories, mimicking the key topics addressed in the interviews:

1. Consultation
2. Tribal Rights and Access
3. Compatibility of Federal and Tribal Forest Management
4. Strengthening Federal-Tribal Relations.

For each category, we provide a brief introduction to the topic and a summary of tribal responses based on the interview questions. Where relevant, we have also compared the data from this report with data from the 15-year report to illustrate positive or negative developments over the last 5 years. It is important to note that the data sets from the two reports are not identical, as not all of the tribal staff that were represented in the 15-year report are represented in this report (and vice versa). Therefore, these comparisons are only provided to illustrate general trends.

Prior to the interview process, several tribal staff stated that their tribe had had little or no experience with the Northwest Forest Plan (NWFP) and, as such, had concerns about participating in the interview. In such cases, the University of Oregon encouraged tribal staff to participate in the interview, and speak about their government-to-government experiences more broadly (outside of the NWFP). Throughout this report, staff comments related to experiences with the federal-tribal relationship outside of the Northwest Forest Plan are clearly identified as such.

## Consultation

Consultation is a process that is critical to the development and upkeep of effective government-to-government relationships. In November 2000, then-President Clinton signed Executive Order 13175 to accomplish three objectives:

- 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 relationships 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."*

Numerous agencies and tribes have defined processes for consultation, and yet there is still a lack of knowledge and/or shared understanding about what constitutes meaningful consultation. Each U.S. department and agency has developed different guidelines to satisfy the tribal consultation requirements set by President Clinton's Executive Order 13175, and more recently, by President Obama's 2009 Presidential Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation. Additionally, each tribe has its own vision of what consultation means to that particular tribe, a vision that is guided by tribal values, needs, capacity, and federal-tribal history. Generally speaking, consultation entails an accountable process to ensure meaningful and timely input by tribal officials into the development of regulatory policies that have tribal implications. Consultation is one of the most critical mechanisms of the federal-tribal relationship. When

carried out meaningfully, it can strengthen federal-tribal relations and ensure the federal government is adequately carrying out its responsibilities towards tribes.

Collaboration is another process that can serve to strengthen federal-tribal relations. Collaboration entails a mutually beneficial and well-defined relationship entered into by two or more entities (in this case, governments) to achieve common goals.

Several of the interview questions in our study inquired about the nature and adequacy of consultation and collaboration efforts under the Northwest Forest Plan and beyond. Below we summarize the findings resulting from these questions.

Of the twenty-seven tribal staff interviewed, 63% indicated that written consultation protocols had been developed between their tribe and federal agencies, 30% indicated that written consultation protocols had not been developed, and 7% were not sure if written protocols were in place. Of those who stated that written protocols were in place, 53% indicated that they were adequate for both government-to-government consultation and for potential effects on tribal rights, interests, and effects on tribal lands, while 41% stated that they were not adequate, and 6% were not sure whether they were adequate. Compared to the results from the 15-year report, there was an increase in the percentage of respondents indicating that written consultation protocols have been developed with federal agencies. There was also an increase in the percentage of respondents claiming that these protocols are adequate for government-to-government consultations.

The lack of consultation protocols had concrete impacts for some tribes. One respondent stated that the lack of formal consultation protocols has especially affected the tribe's ability to adequately respond to emergency situations such as wildfire, because emergency response mechanisms and responsibilities have not been pre-established between the tribe and agencies. For others, the lack of formal protocols has not hindered the federal-tribal relationship. Of those who stated that no consultation protocols were in place, 25% felt that their relationship with federal agencies was adequate for government-to-government consultation. In these cases, the lack of formal protocols seemed to be compensated by a good working relationship with federal agencies, which depended in part on good communication with, and easy access to, agency staff. This finding highlights the fact that each tribe has a unique vision as to what constitutes 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 relations.

In many cases, tribes that had developed written consultation protocols did so using Memoranda of Understanding (MOUs) and less frequently, Memoranda of Agreement (MOAs). Some tribal staff specified the agencies with which they had developed MOUs and MOAs. These included National Forests, Bureau of Land Management (BLM) districts, Environmental Protection Agency (EPA), National Parks Service (NPS), Federal Highway Administration, and State agencies. As described by tribal staff, these MOUs and MOAs might serve a variety of purposes, including outlining consultation protocols,

| Interview Question | Yes | No | Don't Know |
|---|---|---|---|
| Have written consultation protocols been developed? | 63% | 30% | 7% |
| If "yes," are the protocols adequate for government-to-government consultation? | 53% | 41% | 6% |
| If "yes," are the protocols adequate for potential effects on tribal rights, interests, and effects on tribal lands? | 53% | 41% | 6% |

outlining the parameters of projects, specifying points of contact, listing projects of mutual interest, and specifying regular meeting intervals.

The MOUs and MOAs described by tribal staff varied in their effectiveness. According to at least two respondents, the mere act of collaborating in the development of an MOU or MOA gets the conversation started, can strengthen interpersonal relationships between federal and tribal staff, and can thereby strengthen consultation. Yet, as one respondent pointed out, developing and/or renewing MOUs and MOAs can be a time-consuming task that further strains already understaffed tribes. This can be especially cumbersome if a tribe has multiple MOUs and/or MOAs, which is often the case. One respondent explained that after renewing one of their MOUs every five years a number of times, their tribe opted to eventually let it expire because it wasn't worth the time and effort to renew. The respondent went on to say that it would be more practical if their tribe could have one all-inclusive MOU with a given agency instead of several piecemeal MOUs, the various deadlines and requirements of which consume a lot of tribal staff time.

Not all federal-tribal MOUs or MOAs addressed formal consultation protocols. MOUs and MOAs that don't specifically address consultation protocols sometimes call for the separate development of these protocols. Such was the case described by one respondent, who mentioned that while the MOA their tribe had signed called for the subsequent development of consultation protocols, these had yet to be developed. Another respondent mentioned that consultation protocols work as long as they are adhered to, stating that their tribe must interfere and comment when agency actions are lacking, in order to keep the agency accountable.

In most cases, a lack of follow-through is unlikely to lead to legal consequences, given that most MOUs and some MOAs are not legally binding. Whether they are legally binding depends on the language within, and not necessarily on the type of document. One respondent mentioned that their tribe sought to increase the accountability of their relationship with the USFS by requesting that an MOA be signed instead of an MOU, a request that the USFS denied. Legally binding documents may be useful in some situations and for some federal-tribal agreements, but they aren't always the most suitable choice. In some cases, tribes and federal agencies may seek a less formal arrangement in order to allow for flexibility in the federal-tribal relationship. Case Study # 4 examines the common structure and language of federal-tribal MOUs and MOAs, and provides an analysis of the effectiveness of these documents (as well as tribal ordinances) as tools to strengthen federal-tribal relations.

Several respondents mentioned that more could be done to strengthen consultation protocols. One respondent mentioned that their tribe has proactively sought to improve consultation by internally developing consultation guidelines that are used to inform the development of consultation policies with agencies. However, this respondent noted that these guidelines do not take the place of consultation policy. Another respondent mentioned that MOUs are not necessarily the most adequate avenue for consultation protocols. Some respondents provided specific ways in which the development and implementation of consultation protocols are lacking and/or could be strengthened. Two of these comments had to do with better, more extensive government-to-government connectivity:

- *"There is a tendency within the Forest Service to assign certain tribes to certain ranger districts. While there is awareness in regards to the Tribe's large interest area, the Forest Service seems to want to divide responsibilities to certain ranger districts, limiting the Tribe's connection to certain parts of their ancestral territory."*
- *"The Forest Service should set up a way for regional level and federal headquarters in D.C. to be as well connected to the Tribe as local offices. The Tribe seldom hears about federal initiatives and/or opportunities in time to take advantage of them. Local offices should improve connectivity between tribes, and regional and federal offices."*

Comments were also made in regards to tribal capacity in the face of abundant consultation requests. As has already been mentioned, tribes often find themselves underfunded and understaffed, and few (if any) tribes currently have the capacity to adequately respond to all of the federal inquiries that are relevant to tribes. This is compounded by the fact that some agencies send tribes consultation requests regarding issues that are of little to no relevance to the tribe/s. Additionally, multiple collaborating federal agencies independently send consultation requests to one tribe regarding the same issue, instead of sending a single consultation request on behalf on the various collaborating agencies. These various factors result in situations where tribes must forego responding to federal inquiries, potentially leading to serious tribal implications. As one respondent noted:

> *"The Tribe gets letters and are asked to respond, but the Tribe doesn't have the capacity to respond in time, and rights are being infringed upon on a frequent basis."*

One concern articulated in response to several interview questions related to the discrepancy between what tribes and agencies consider true government-to-government consultation. During the interviews, some respondents made the distinction between what they refer to as "small-c" consultation (project-related consultation at the staff level), and consultation with a capital C (consultation between tribal council and agency leadership regarding broader decision-making). Both types of consultation are important when nurturing an effective federal-tribal relationship, but it's the degree to which consultation with a capital C is appropriately carried out that conveys to many tribes whether their sovereign status, and treaty and other tribal rights are being respected by federal agencies. While one respondent did state that the consultation protocols developed with their tribe had been fairly adequate for both types of consultation, another respondent stated:

> *"The USFS carries out consultations that are not viewed as consultations by the Tribe, because they are, in fact, listening sessions. The USFS has been slow in developing adequate consultation protocols. Technical exchange is not consultation. Government-to-government consultation calls for decision-makers from the Tribe and the agencies to sit down and work together. Tribes shouldn't be treated as the general public. The Tribe should be contacted before the public."*

One respondent stated that no federal-tribal agreement will appropriately address tribal rights until federal agencies understand what tribal rights are. Responses to the next question continue to elaborate on concerns regarding the disconnect between agency and tribal conceptions of what constitutes real government-to-government consultation.

## Frequency of Consultation

| Interview Question | Yes | No | I don't know | N/A |
|---|---|---|---|---|
| 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? | 96% | 4% | -- | -- |
| Have any of these consultations been related to the Northwest Forest Plan? | 41% | 33% | 11% | 15% |

When asked whether a federal agency had consulted with the tribe in the past 10 years, 96% of respondents responded "yes" (up from 73% in the 15-year report), and of those who responded "yes," 41% confirmed that some of these consultations were related to the Northwest Forest Plan. Several respondents had comments about the value and validity of these consultations. When asked with what frequency consultations had occurred, respondents provided a wide range of responses, in part because of different interpretations of what constitutes consultation. The table below illustrates comments from respondents about the significance and frequency of consultation.

| Value and Validity of Consultation | Frequency of Consultation |
|---|---|
| • "On many fronts, the question remains whether consultation was meaningful. The Tribe received letters asking for input but seldom does the Tribe receive notification on how that input has affected agency decisions."<br>• "One of the frustrating things for tribes is that they get lumped in as an additional special interests party instead of a sovereign Nation with unique status that is different from other special interests groups."<br>• "The Tribe has been sent letters, and has sent letters back. Some call that consultation, but to the Tribe, consultation means agency staff and leadership presenting prospective actions and plans in front of the tribal council and discussing it with them. The Forest Service considers that the letters count as consultation, but it does not meet the Tribe's expectations of consultation. If we consider letters and similar notifications consultation, then yes, the Tribe has been "consulted," and yes, some of these consultations have been in regards to the Northwest Forest Plan."<br>• "The Tribe receives notifications in regards to the Northwest Forest Plan, but not real consultation. More emphasis is needed on getting tribal staff at all levels to the table. Often times we only get briefed, and that's not enough. Better communication is needed."<br>• "Interesting question- how do you define consultation? In other forums where consultation has been requested, the voice of tribes is united in saying that information-gathering is not government-to-government consultation. This Tribe gets contacted often for what the agency calls consultation, but true government-to-government consultation has not really happened.<br>• "Sometimes the Tribe receives consultation letters that may not even be relevant to the Tribe. It seems to be a ploy by agencies to say they have consulted with tribes. The first contact should be at the leadership level, leadership-to-leadership. After that staff contact is appropriate. Tribal leadership and tribal members feel that the current form of consultation is disrespectful."<br>• "There are many opportunities for communication, but few true consultations. The Tribe has abstained from some communications that aren't true consultation. One of the problems of government-to-government consultation is that there is no obligation to take tribal suggestions into account. There is not enough accountability sometimes to make it worthwhile." | • "Roughly 200 consultation letters a year."<br>• "Weekly"<br>• "Quite frequently. We receive mail and e-mails daily in regards to projects and consultation."<br>• "Monthly meetings at the staff level, and two annual summit meetings at the leadership level"<br>• "Offers to consult reach about 100 per year, counting both technical and government-to-government consultations. On 25 of those instances, the Tribe ends up providing comments or technical input. True government-to-government consultation happens about 4 times per year."<br>• "Maybe quarterly, or less. It should be a lot more."<br>• "A minimum of three times a year. Local Forest Service office has been working more closely with the Tribe in recent years. Tribe and local Forest Service coordinate periodically, mainly at the leadership level, sometimes at the staff level."<br>• "Formal consultation typically occurs once a year with the BLM, and once a year with the National Forest."<br>• "If consultation includes a letter directed to the Tribe, then that happens quite regularly, probably 3-4 times per month. I also talk quite frequently with my MOA contact—that's been the most helpful channel."<br>• "Two or three times in the last 10 years."<br>• "Over the last 10 years, government-to-government consultation has not occurred." |

As the above responses illustrate, consultation means different things to different people. Some respondents seemed overwhelmed at the number of inquiries their tribe receives, while others mentioned they think they should be consulted more often. Responses revealed that many tribal staff members are at least partially dissatisfied with some of the types of interactions that federal agencies are counting as consultation. Various respondents explained that notifications, listening sessions, and technical meetings may be viewed as consultation by agencies, but do not constitute government-to-government consultation for their tribes. In fact, this very issue is addressed in the USDA's 2013 Tribal Consultation Policy, which states:

> *"Actions commonly confused with consultation: It is also important to distinguish between consultation and other actions. Notification – the distribution of information from a USDA office or agency to one or more tribes - is not consultation. Neither are technical communications or outreach*

> *activities, however important or influential, between staffs without leadership involvement. While notification, technical communications and outreach are all essential, and are often used as part of consultation, they alone do not constitute government-to-government consultation"* (USDA 2013: 8).

While every tribe is different in how, and under what circumstances, they want and need to consult with federal agencies, respondents noted the lack of formality and accountability in consultation processes several times. Policy language such as the language above can help clarify agency responsibilities and improve accountability, if properly disseminated to and understood by agency staff.

Several respondents described the importance of informal relationships and communication, particularly at the staff level, as a trust-building mechanism that enhances the federal-tribal relationship. In several instances, respondents described situations in which previous disagreement or distrust was at least partially mitigated by face-to-face, staff-level interactions that served to break down barriers and build camaraderie. And yet, as some of these respondents described, these types of interactions cannot take the place of formal, government-to-government consultation, in which tribal leadership (i.e. the Tribal Council) engages with federal agency leadership (i.e. the Forest Supervisor). As was described by one respondent, failing to formally consult in a manner that is meaningful and worthy of a relationship between sovereigns shows a lack of respect for tribes.

Some respondents stated that relationships seem to be improving over time with at least some of the National Forests and Ranger Districts of the USFS, and yet one respondent brought up that there can be a "night and day difference" between Forest Service districts. Some districts were described as proactive, communicative, and in good standing with tribes, while other districts were described as very difficult to work with. Given that many tribes' lands and territories span more than one district, these differences in consultation frequency and/or adequacy can be cumbersome, and can prevent tribal needs, plans and projects from being properly served.

## Tribal Notification

| Interview Question | Yes | No | Sometimes |
|---|---|---|---|
| Is notification specific to the tribe? | 74% | 4% | 22% |

When agencies notify tribes of a proposed action, it is critical that the notifying correspondence be personalized and relevant to each tribe. When asked whether agency notifications are written specifically for their tribe, 74% of respondents responded "yes," 4% responded "no," and 22% responded "sometimes."

Most respondents stated that notifications are addressed to the tribal chairperson or tribal president by name, a critical starting point. In some cases, notifications were also addressed to relevant tribal staff members, a practice that was praised, as it improves communication within the tribe and can reduce tribal response time. However, some respondents stated that sometimes correspondence is addressed to "Tribal Chair," or even more generally, "Tribes." When correspondence is directed so generally, it is unlikely that the content will be carefully crafted to address how the action at hand pertains to the specific tribe receiving the letter.

Even when the notifications are directed at specific tribal leaders and staff, seldom is the content of the notification personalized to the tribe. When the content is generic and not specific to a given tribe, that tribe must carefully review the ways in which the given action may have tribal implications, an activity that takes time that many tribes do not have due to limited funding and staff. One respondent pointed out that federal agencies with staff partially or fully dedicated to tribal relations could dedicate more effort to customize the content of notifications. Customizing the content requires having knowledge of the issues and landscapes that are of importance to a given tribe, knowledge that often depends on having good

communication and effective consultation with that tribe. According to one respondent, notifications would get a lot more responses if they were directed to the tribal chairperson and specified the following:

1. What it is that the agency is looking to achieve?
2. How does it relate to the tribe?
3. What actions need to be taken by the tribe?

Another respondent's description provides an example of what customized notification can be like:

> *"[The Tribe receives notifications] if projects or impacts are projected in the Tribe's traditional homelands, as well as if there are projected impacts upriver or downriver from the Tribe in terms of fish resources."*

Such notifications require prior knowledge of the landscapes, stretches of river, and traditional cultural resources that are critical to the tribe. The specificity of the notification helps the tribe to easily determine whether the issue at hand requires the tribe's involvement or consultation.

Formal consultation policies and other agreements such as MOUs or MOAs can specify tribal contacts, procedures, and the topics that an agency should be notifying tribes about in regards to agency actions that affect tribal interests and rights. Defining these parameters can improve the adequacy of agency notifications, thereby reducing the burden on tribes and improving their ability to meaningfully address issues of critical importance.

A majority of respondents (85%) stated that their tribe is aware of federal policy guidance that is available for tribal consultation (up from 64% in the 15-year report). Several respondents provided comments regarding their tribe's experience with federal policy guidance. One respondent stated that when federal policy guidance is utilized, federal-tribal consultation can be improved. Another respondent stated that their tribe is aware of the policy guidance and cites these documents regularly when corresponding with

## Federal Policy Guidance for Consultation

| Interview Question | Yes | No | Don't Know |
|---|---|---|---|
| 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? | 85% | 4% | 11% |

agencies. This respondent suggested that the policy guidance is only helpful sometimes, and described some of the challenges of using this guidance:

> *"The guidance is difficult because it seems like an interpretation of the law that is interpreted to maintain agency control rather than working on a true sovereign-to-sovereign basis. The guidance is a place to start, but you have to look at the executive order itself, relate it to United Nation Declaration on the Rights of Indigenous Peoples, and to congressional act language, to really interpret it for yourself and effectively put forth tribal consultation interests to the agency when these things come up."*

Another responded suggested that federal policy guidance should be made more accessible to all tribal staff, including those working in the field, stating:

> *"...sometimes leadership is too busy with other things and staff could benefit from knowing the resources available. Staff could be more familiarized with this guidance across all levels and it would help the Tribe. The staff should see and be exposed to the important stuff to be aware and be able to support tribal leadership in decision-making."*

Two respondents mentioned that while their tribes are aware of the federal policy guidance, some of the agency staff with which they have interacted fail to know their own policies. One respondent mentioned that in some

cases, their tribe has had to raise awareness among federal agency partners of the agencies' own consultation protocol documents.

The value of tribal liaisons was also brought up in regards to federal policy guidance. While one respondent mentioned that tribal liaisons are sometimes helpful, but not always, another respondent credited one of their tribal liaisons as instrumental in familiarizing regional tribes with federal policy guidance:

> *"The Forest Service tribal liaison in Region 5 was instrumental in making tribes aware of federal policy, which helped both the tribes and the agencies. This tribal liaison and the Intertribal Timber Council developed a report on stewardship contracting that involved consultation policy, and described the pluses and minuses of the policy."*

As most responses in this report illustrate, no one size fits all tribal needs, and every tribe has different preferences as to how to approach relationships with federal agencies.

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 cited the inability to move forward on disagreements, the slow erosion of interests, and difficulty scheduling meetings as some of the reasons some of the PACs disbanded.

## Tribal Involvement in Intergovernmental Forums

| Interview Question | Yes | No | Some-times | Don't Know |
|---|---|---|---|---|
| Are there Provincial Advisory Committees (PACs) or other intergovernmental forums in the area? | 78% | 7% | -- | 15% |
| If "yes", does your tribe participate in these forums? | 90% | 5% | 5% | -- |

Despite the dissolution of some of the PACs, 78% of respondents stated that there are either PACs or other intergovernmental forums in their tribal area (up from 59% in the 15-year report), and of that 78%, 90% stated that their tribe actively participates in one or more of these forums. Tribal participation in intergovernmental forums appears to have increased since the 15-year report, in which 59% of respondents indicated tribal participation in these forums (versus 90% this time around). This increase has occurred despite the dissolution of some of the PACs, which may indicate that new intergovernmental forums (other than PACs) are forming and/or that tribes are broadening the intergovernmental forums in which they participate.

Three respondents mentioned that after the disbanding of the PACs in their region, their tribes were encouraged to participate directly in the PIEC that the PAC had once advised. All three respondents remarked that participating in the PIEC had been useful for their tribe, in some ways even more effective than the PACs, particularly in regards to communicating tribal interests to upper level agency staff. One of these three respondents mentioned that the PIEC in their area had disbanded, but that the tribe has been involved in correspondence to attempt to revive it.

At the regional level, the Interagency Advisory Committee (IAC), the Regional Interagency Executive Committee (RIEC) and the Regional Ecosystem Office (REO) were established to develop policies and protocols for implementation of the Northwest Forest Plan and to address issues surfaced from field organizations. Tribal representatives participated in each of these regional entities. Like some of the PACs and PIECs, these regional

interagency entities were dissolved a number of years ago. The REO was assigned the role to determine if restriction of tribal treaty rights would be necessary to implement the standards and guidelines of the Northwest Forest Plan. With the closure of the REO, there is no longer an assigned entity to perform this role.

In addition to PACs, PIECs, REO and regional committees, respondents listed a broad range of intergovernmental forums in which tribal participation and leadership is prominent, including Resource Advisory Committees (RACs), and regional partnerships, cooperatives, coalitions, and councils related to resources, lands, and management issues of tribal importance. Each forum varies in what governments and other entities it brings to the table. In addition to federal agencies, states, and tribes, some of these forums engage county and city governments, conservation districts, non-profit organizations, private landowners, and community members, among others.

A majority of respondents reported that participation in intergovernmental forums can be beneficial to their tribes. However, not all respondents had favorable remarks in regard to the current status of intergovernmental forums. One respondent mentioned that their tribe has limited its participation in intergovernmental forums because federal agencies have sometimes justified denying tribal access to lands and/or funds by claiming that the tribe already has a say in regional land management through its participation in these forums. Intergovernmental forums are intended to serve as platforms for discussion regarding regional land management concerns and suggestions, but the existence of these forums does not replace the need for formal federal-tribal consultation.

There are some tribes that may have an interest in participating in intergovernmental forums but are unaware of forums in their region. One of the respondents mentioned that their tribe could benefit from better awareness of existing forums, stating that it would be helpful if the federal agencies involved in these forums reached out to tribes, informed them on the nature of the forum, and encouraged tribes to participate.

## Tribal Input in Federal Planning

| Interview Question | Yes | No | Don't Know | N/A |
|---|---|---|---|---|
| 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? | 78% | 11% | 11% | -- |
| If "yes," have any of these tribal contributions been related to the Northwest Forest Plan? | 38% | 33% | 19% | 10% |
| Did tribal contributions result in any changes to federal actions or considerations for resources of interest? | 59% | 26% | 15% | -- |

Over three quarters (78%) of tribal staff reported that tribal information has been incorporated into federal planning documents in a manner so that tribe/s can recognize their contributions (up from 59% in the 15-year report). Of the 78% who answered "yes," 38% reported that tribal contributions have been made in relation to the Northwest Forest Plan, while 33% reported that to their knowledge, none of these contributions were related to the Northwest Forest Plan, and 19% were unsure.

At least seven of the 27 respondents described specific instances in which their tribe made contributions that were noticeably incorporated into federal documents, and/or affected federal policy. Tribal contributions were made in a variety of ways and via a variety of platforms, be it as technical data uploads to a federal agency's web page that served to inform policy, as comments made during a Provincial Advisory Committee meeting that affected federal decisions, as a result of active participation and/or leadership in regional restoration or land management initiatives, as part of consultation processes, or as written tribal contributions submitted for the agency's consideration.

Two respondents mentioned that it is often hard to parse out whether tribal comments have been incorporated or taken into account in federal documents or policy. One of these respondents went on to describe that one of their tribal departments has requested multiple times that it be identified where tribal input is (or will be) reflected in agency documents, a request that, according to the respondent, has never been properly met.

While there was a clear desire, as expressed by most respondents, to be able to identify where (and to what extent) tribal input has been considered or incorporated, some respondents expressed that there is not necessarily a need, nor in some cases a desire, to have tribal contributions credited publicly to the tribe.

> *"Sometimes the Tribe doesn't want its contributions to be immediately visible because that is used against the Tribe or against the Federal rule making. That does not mean that the Tribe does not want confirmation that their concerns have been addressed."*

A comment was also made about the timing of incorporating tribal comments, something that, according to one respondent, should ideally be done before federal information gets distributed to the public.

One respondent described that their tribe is small and at the moment doesn't have enough research staff to provide data that the Forest Service or other agencies don't already have. The respondent stated that one arena in which they can provide input is in regards to archaeology. At least two respondents expressed frustration in regards to how little authority and credibility their tribes receive when it comes to valuable contributions and decision-making:

> *"Currently, there is no real teeth in the consultation process. The Tribe has science behind its recommendations and they do not always get taken into account. Sometimes the Tribe is offered a number of alternatives to choose from, alternatives that were developed without tribal input. That is not the appropriate way to go about receiving tribal input."*

> *"As far as decision-making goes, the Forest Service reminds the Tribe that we are not decision-makers. A recent MOU has a provision stating that tribal council and forest supervisors are the decision-makers of their respective entities. The agency's interpretation is that the Forest Service is the decision-maker when it comes National Forest lands, and that the Tribe is the decision-maker for tribal trust lands."*

At least one respondent mentioned that it took a lawsuit for a federal agency to take tribal concerns seriously. Another respondent described a scenario in which a federal agency and their tribe each did a watershed analysis for the same watershed. The tribe's analysis was never incorporated into the federal report; instead, the tribe and the agency each developed separate reports that sat side by side on one shelf. These kinds of scenarios, in which federal and tribal efforts could have been integrated, had cooperation been more successful, lead to unnecessary time and money expenditures spent on legal procedures.

Concerns were also brought up regarding proper and timely agency communication regarding agency actions and/or decisions that merit tribal attention and input. One respondent mentioned that their tribe is often unaware of projects that are culminating after years of planning, stating that agencies could be more persistent in notifying and informing tribes to ensure tribes have a chance to contribute.

It is also important to note that among some tribes, there continues to be a lack of trust in federal agencies. One respondent stated that their Tribal Council is typically a little hesitant to share information about tribal lands and resources because there are doubts about the agencies' intent. Breaches of trust are difficult to overcome, and can (and have) profoundly affected some tribes' ability and willingness to interact closely with agencies. Respondents suggested that

agencies must take responsibility for past wrongdoings, and take the necessary steps to re-build a level of trust that can foster meaningful relationships with tribes.

Respondents provided numerous examples of instances in which tribes had been dissatisfied with federal actions proposed. At least two respondents stated that their tribes are generally dissatisfied with consultation as a whole. Additionally, many of the dissatisfactions described by respondents had occurred, at least in part, due to agencies' lack of consultation and communication with tribes, or as a result of agencies disregarding tribal input.

Four respondents brought up issues related to USFS road infrastructure and slope restoration projects that impacted (or could have impacted) water quality and/or the health and mobility of fish. In all four cases, the tribes felt that consultation had been inadequate and/or that tribal input had been disregarded by the agency. If the projects weren't brought to completion, it was because of funding barriers and not because of tribal opposition.

One respondent described a situation in which disregard of tribal ancestral lands across State borders, lack of internal agency communication across state lines, and poor federal-tribal communication, led to a mining proposal that could have devastating consequences for tribal lands and waters:

> *"There has been a contentious mining project proposed on the other side of the State border that is within the Tribe's ancestral lands and watershed that the Tribe is very dissatisfied with. The USFS on the other side of the border (the one proposing the mining projects) failed to consult with the Tribe because it followed State lines instead of watershed and ancestral land boundaries. Additionally, USFS on either side of the State border don't coordinate their projects and have poor communication, further challenging things for the Tribe. The Tribe has also had a shaky relationship with the National Forest within their state. The Tribe has met with the USFS to stand in opposition to the mining project, as it could have serious impacts on their pristine watershed. The USFS listened and has now put the project on hold while they decide how to proceed."*

Several respondents brought up dissatisfaction regarding their tribes' inability or reduced ability to access lands and resources of tribal importance. Gated up public lands that make transporting big game difficult, inability to harvest culturally critical forest products, and attempts by the USFS to sell public lands that are critical to tribes were among the specific concerns mentioned. Additionally, one respondent described concerns regarding disturbance to tribal sites resulting from agency actions, which the respondent described as unintentional, but of concern nonetheless.

Unfavorable changes in federal rules, regulations, and policies were brought up by two respondents. One respondent described a change in policy that has reduced tribal ability to acquire surplus federal land and infrastructure:

> *"The Tribe has also been dissatisfied with the change in policy that allows for the sale of surplus administrative services that were previously attainable by tribes through a federal process. Now the Tribe must bid alongside all other bidders to have access to surplus land and buildings that the government is looking to discard."*

The other respondent described a change in the federal funding process that has posed challenges for some tribes:

> *"Rules and regulations related to the federal funding have been frustrating. For example, the new rule for grants submissions on grants.gov requires applicants to submit online through the grants.gov website, which is not very user friendly and not always functioning properly, and which assumes that applicants have a strong internet connection, which is not always the case for rural tribal communities. You used to be able to submit*

*grant applications view e-mail or as mailed hard-copies, but now it can only be done through the website."*

In some cases, it was the lack of necessary revisions to federal policies and procedures that was the source of dissatisfaction. One respondent stated:

*"In the development process of the NWFP's Western Oregon Plan Revision, the BLM did not manage their trust responsibility properly and did not take tribal input into account. In terms of being able to implement the NWFP as it is currently written, the Tribe describes that there are administrative barriers to the implementation of adaptive management provisions. The Plan allows for adaptive management but requires that any proposed management changes be reviewed by special agency committees that have now dissolved, which places significant hurdles when seeking to change management approaches based on on-the-ground findings. The Tribe is somewhat limited in how much they can adapt management plans because of this agency discrepancy that remains unresolved."*

Two respondents brought up the downsizing and redistribution of National Forest staff as a concern that leads to tribes being underserved. One of these respondents described the incompatibility between unchanged rules and regulations and the reduced number of USFS staff:

*"The Tribe is being proactive while the USFS is apathetic and uncooperative. USFS presence in the region has diminished greatly and yet rules and regulations haven't changed, so there is not the administrative capacity to carry out the same goals as before."*

At least four respondents brought up agency inaction and the lack of land management, resulting from NWFP and other USFS policy, as a major concern for their tribes, stating that this has led to reduced forest health as well as the deterioration of important tribal cultural resources and activities. One respondent stated:

*"[In a restoration project] there was disproportionate concern given to unmapped roadless values and spotted owl values. Those issues seemed to take precedence over agency responsibility to tribes to maintain access to critical cultural areas. Lack of management on federal land is causing deterioration to important cultural resources, and is contributing to unhealthy forest conditions that threaten tribal lands. More commonly, it's not the action under the NWFP that retards the interests of tribes, it's the lack of action under the NWFP that threaten the tribes' interests."*

One respondent described a situation in which proposed management actions that were culturally favorable for the tribe and the surrounding community and had already been written into a NEPA document were never brought to term as a result of inadequate consultation between two federal agencies. The actions proposed involved 2000 acres of follow-up burning that were subsequently reduced to 300 acres after consultation between the agencies. The tribe had spent three years developing the management document and going through procedures to facilitate the 2000 acre burn. Follow-up burning has yet to take place, even on the 300 acres.

One respondent brought up the federal government's inability to recognize treaty rights and ceded lands as a key dissatisfaction among their tribe, while another respondent described that their tribe has been dissatisfied with how the U.S. government has dealt with unratified treaties, stating that land-based and/or monetary compensation is due to tribes.

When asked whether tribal contributions have resulted in changes to federal actions, a number of respondents provided concrete examples of cases in which agencies changed their course of action or their policies as a result of tribal input.

## Examples in which tribal input affected agency actions and policies

- "Sometimes, like for example when the Tribe stood against a proposed BLM land sale and the BLM canceled the sale."
- "In one instance, in which the Tribe took the lead role in a pilot project involving a Northwest Forest Plan timber sale that sought to test new forest management standards. The Tribe was able to incorporate tribal goals and objectives like, for example, managing for bear grass, which would not have been a part of the plan had the Tribe not been involved."
- "The Tribe has succeeded in pushing for dam removal in river restoration project effort involving a National Park."
- "A few years ago the agency redid their policy around gathering of forest products beyond just commercial timber and the Tribe feels they influenced the outcome in this case."
- "The Tribe's input regarding fire affected Forest Service fire management."
- "When the Forest Service first started gearing up for commercial thinning in the area, even-spacing type thinning was proposed. The tribal wildlife department wanted more gaps for large game, which the Forest Service wasn't going to do. The Tribe provided research documentation to support their stance, and finally the Forest Service accepted it and incorporated it to their plan."
- "The Tribe contributes site identification, traditional fire management techniques, provides tribal perspectives on what the landscape is supposed to look like, contributes to traditional plant and animal inventory…The Tribe has opened up the lines of communication so that the agency doesn't feel it needs to walk on eggshells. The Tribe welcomes agency officials to ceremonies, and works against government/Indian stereotypes to make for a transparent, open relationship. The Tribe initiated this open relationship, and the agency has been very responsive. The relationship has improved as a result."
- "One good example is the Traditional Gathering Policy with the Forest Service Region 5 and the California BLM for special forest products. This was a collaborative effort between Region 5 folks and various tribes. The Policy was developed and approved, and it is a great thing to have that in place. It was developed in close coordination with tribes throughout the State over a period of time, and by looking at the policy it's clear that tribal voices were heard and that some contributions were included (verbatim even!). It was meaningful consultation and collaboration."

While tribal input has shaped some agency action, the communication and processes that foster tribal input and lead to these changes aren't always ideal. One respondent stated that their tribe had to provide input regarding a road repair that might affect cultural resources during the permitting phase of the process, because the USFS had failed to consult during the planning phase. The agency did end up moving the road location to accommodate the tribe's cultural needs, but could have saved time and resources had they adequately consulted in the first place. Another respondent described that it took a lawsuit to have the tribe's input seriously considered:

> *"In relation to grazing practices, and specifically in riparian areas with fish habitat and cultural resources, the Tribe threatened with a lawsuit and the agency had a wakeup call. After that, a better relationship and better communication ensued."*

Additionally, some respondents reported that their tribes often struggle to sway agency decisions and actions. Issues were raised regarding the adequacy of communication in regards to how tribal input might change the course of agency actions:

> *"The Forest Service came to present proposed actions and they proposed the Wilderness north of tribal boundary. The Tribe wanted a buffer strip to allow for management, but the Tribe never received response on how the agency will proceed. The Tribe will likely be notified along with the public in September, and it's unlikely that there will be formal consultation."*

In some cases, tribes are being asked to be active participants in regional planning and coordination but are lacking the funds to do so. Such was the case described by one participant:

> *"The Tribe was asked to help with the regional Watershed Action Plan. The Forest Service looks for an outside coordinator to engage local governments, NGOs and local groups with resource*

> *interests, and the Tribe was asked to serve as this coordinating entity. The Tribe is looking for funding to be able to serve in this capacity."*

The lack of adequate and steady funding is brought up as a barrier to tribal involvement in consultation and collaboration throughout this report, as well as in the 2013 IFMAT report, and is an issue that needs to be addressed at the federal level.

## Tribal Consultation and Collaboration in Federal Planning

| Interview Question | Yes | No | Don't Know | N/A |
|---|---|---|---|---|
| Have agencies consulted or collaborated with tribal governments to develop plans for future monitoring, restoration, or assessment projects, or for other planning efforts? | 85% | 11% | 4% | -- |

In addition to consultation and requests for tribal input, collaboration is an important activity that can strengthen the federal-tribal relationship. A majority of respondents (85%) reported that agencies have consulted or collaborated with their tribe for the purpose of developing monitoring, restoration, or assessment projects, or other plans (up from 64% in the 15-year report). Respondents commented on some of the types of plans and projects on which their tribes have consulted or collaborated with agencies. These include forest management plans, fish hatchery operations, habitat restoration projects, fisheries management, O&C lands management, National Registry of Historic Places nominations, invasive species management, wildland fire management, monitoring plans, and environmental impacts assessments.

At least two respondents mentioned that the fact that their tribes are underfunded and understaffed limits their ability to consult and collaborate with agencies as much as they would like. One respondent stated that while there is outreach of behalf of agencies, the tribe is often limited in its involvement because of lack of funds. These concerns are reflected in the 2013 IFMAT Report, which states:

> *"The 2011 Funding and Position Analysis indicates that at minimum, an additional 792 professional and technical staff are needed to support Indian forestry, an increase of 65 percent above the current level."*

Additionally, the 2013 IFMAT Report lists steady, predictable and adequate funding, and access to technical support and research among the critical prerequisites for tribes to maximize their forestry programs.

While most respondents had positive remarks in regards to the collaborative efforts their tribes have been involved in, one account provides an example of how collaboration can end poorly without adequate communication and mutual respect. The respondent described a case in which a National Forest submitted a collaborative proposal for funding in which their tribe was listed as a key collaborator, despite not having been officially involved in any of the planning. The tribe had to prepare and present a letter at the national level to address this problem, which led to the proposal not being funded. Collaborations can be important tools to strengthen federal-tribal relations, but they must be based on effective communication, transparency, and respect.

## Tribal Rights and Access

Indigenous peoples and tribes possess a number of rights that affect how they govern themselves, how they interact with the land, and how they interact with other governments. Treaty rights are rights that were secured by some tribes during the treaty-signing era with the United States, in which treaty tribes ceded large tracts of tribal land in exchange for the right to continue to carry out traditional activities, and/or have access to traditional resources and/or lands into perpetuity. Some tribes' treaties were never ratified, which left these tribes without secured treaty rights despite the loss of their lands. Many of these lost lands became federal lands, and continue to be managed by federal agencies today.

This has been viewed as an unjust taking of lands by some tribes who have suffered wrongdoing, and they take the position that these lands are still in tribal possession.

Some tribes have secured rights through litigation, and through the development of federal policies aimed at restoring tribal autonomy and protecting tribal cultures, landscapes and economies (e.g. BIA 1996, MacManamon 2003, NCAI 2014, USFS 2014). Additionally, while not legally enforceable, the United Nations Declaration on the Rights of Indigenous Peoples list a set of rights inherently possessed by indigenous peoples internationally (UN 2008). This long list of rights includes the right to transmit culture, language, and knowledge to future generations, the right to have treaties recognized, observed, and enforced, and the right to consultation and cooperation that involves free, prior, and informed consent, among many others. President Obama provided U.S. endorsement of this Declaration in 2010, yet it remains to be seen if this will affect U.S. policy.

The United States has a trust responsibility to protect the lands and resources that are critical to tribes, particularly treaty resources. Whenever proposing a federal action, it is the trust responsibility of the government to consider in what ways the action at hand may affect the best interests of tribes, as well as to minimize impacts to these interests whenever possible. And yet, these trust responsibilities are rarely clear or fully understood among federal agencies. The 2013 IFMAT Report describes the ambiguity and lack of understanding surrounding the trust responsibilities of agencies such as the Forest Service:

> *"Agencies such as the Forest Service and the Natural Resources Conservation Service (both in the U.S. Department of Agriculture) are engaging increasingly with tribes. For example, we observed woodland management activities supported mainly by NRCS. Project partnerships like these can be beneficial, but such engagement is not always coordinated with tribal objectives. The trust obligations of non-BIA agencies to tribes remain ambiguous. The trust duty could be clarified through adoption of interagency agreements with the BIA. There appears to be inconsistent understanding of tribal status and trust responsibility within the host of federal agencies that work with or manage lands adjacent to tribes."*

The impacts of the Northwest Forest Plan (NWFP) on treaty rights and trust resources are addressed in the NWFP Record of Decision (ROD). It states:

> *"This [record of] decision provides a higher level of protection for American Indian trust resources on public lands than the plans that it amends and does not impair or restrict the treaties or rights of tribes. However, subsequent implementation of standards and guidelines could directly affect American Indian practices and activities, e.g., a prohibition against the collection of certain plant material or trees in late successional reserves that are subject to tribal treaty off-reservation gathering rights. Under such circumstances, the exercise of these tribal treaty rights will not be restricted unless the Regional Interagency Ecosystem Office 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 alternative 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. 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 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 affected tribes will occur on a government-to-government basis. Conflicts will be resolved collaboratively, and affected tribes will be involved in the planning process, consistent with the federal government's trust responsibilities."*

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

| Interview Question | Yes | No | Don't Know | N/A |
|---|---|---|---|---|
| Have the exercise of tribal rights or access to resources and/or areas of tribal interest on federal lands changed? | 27% | 50% | 19% | 4% |

When asked whether the Northwest Forest Plan (NWFP) had affected the exercise of tribal rights, and/or access to resources or areas of tribal interest, 50% of respondents stated "no," 27% of respondents stated "yes," 19% of respondents were unsure, and 4% of respondents chose not to answer.

One respondent commented that while access to tribal resources and areas of interest has evolved over the years, the changes are not specific to the NWFP. Two respondents mentioned that the NWFP had been beneficial to their tribes:

*"The Tribe feels that the Northwest Forest Plan has benefitted more than restricted tribal rights and access to tribal resources by protecting species that are important to tribal members from damaging logging practices."*

*"[The Northwest Forest Plan] has created another forum for the Tribe to better voice and educate others about what tribal rights and interests are."*

A number of those who responded that tribal rights and access have changed in relation to the NWFP provided examples of such changes. Road closure, decreased ability to harvest traditional cultural resources, reduced economic opportunities, and limitations on land management were among the changes described. The table below illustrates these changes in more detail.

## Changes observed by respondents in tribal rights and access in relation to the NWFP

- "The Forest Plan has reduced logging, and as a result there are a lot of forest roads that have been closed, which has reduced tribal access to forests."
- "The NWFP calls for a level of resource protection that makes access to cultural resources difficult. In addition, rigid rules in regards to use of forest products has impoverished local communities and reduced employment opportunities, forcing tribal members to seek employment in regions outside their ancestral territory."
- "While there have been some benefits with the NWFP, the issue of access to treaty resources, as well as the ability to manipulate the landscape to encourage plant and fauna diversity have been curtailed by NWFP. The Plan has called for more rigidity, which has not served tribal needs."
- "One issue in forestry is that tribal members are supposed to have access to canoe trees. Tribal members should be able to contact the USFS to ask about tree availability. That hasn't been very successful in recent years. USFS would contact Tribe about downed cedar trees across roads in the past, but they have not done that much. It seems the USFS does not have an inventory of where large logs are located, and it would be helpful to know where and what species the logs are and what the procedure would be if they fell. It takes a process to get access to a cedar tree."
- "It has affected management practices that have excluded fire and subsequently affected the quality and abundance of traditional cultural resources."

## Barriers to Exercising Treaty Rights

| Interview Question | Yes | No | Don't Know | N/A |
|---|---|---|---|---|
| Has the tribe exercised treaty rights, other rights, or pursued tribal interests associated with National Forests and BLM public lands and resources in the past five years? | 73% | 15% | 8% | 4% |
| Are there barriers to exercising these rights in relationship to the NWFP? | 34% | 31% | 27% | 8% |

The majority of respondents (73%) stated that their tribes have exercised treaty or tribal rights and/or pursued tribal interests in National Forests and BLM public lands and resources in the past five years. Only 31% of respondents stated that they did not face barriers to exercising these rights in relationship to the Northwest Forest Plan, while 34% of respondents stated "yes," and 27% were unsure.

Respondents described a variety of tribal rights exercised and interests pursued, including hunting, fishing, gathering, and spiritual or ceremonial uses of the forest. At least two respondents mentioned that gathering rights are not as easily exercised as other rights on Forest Service (USFS) lands. Tribes have also spearheaded or been involved in projects to protect traditional cultural resources, including fish and lamprey restoration projects, cultural site protection, restoration of traditional gathering sites, salmon recovery plans, habitat restoration, and restoration of fire regimes.

Some respondents described mechanisms that their tribes are using to ensure protection of their rights and interests. Two respondents mentioned that their tribes have gone through permitting processes, obtaining Special Forest Products and other permits in order to retain access to cultural resources. One respondent mentioned that their tribe had to resort to litigation to protect their rights.

Some respondents indicated that their tribes are finding ways to increase their ability to shape the management of critical tribal resources. One respondent mentioned that their tribe has drafted a proposal with the USFS that includes treatments to enhance forest health. Another respondent stated that their tribe has been working with the USFS to potentially take over the lease of a USFS administrative site. A third respondent described how their tribe uses legislation, and federal funding and programs to protect their rights and interests and to participate in federal land management:

> *"The Tribe partakes in an annual funding agreement though the Indian Self-Determination Act. The Tribe also pursues pilot projects on adjacent federal lands, and uses legislation to exercise tribal rights and interests."*

In addition, one respondent described how their tribe has sought to protect tribal rights and interests by ensuring that key federal agencies form a vital part of collaborations and are brought in early on in the process. Knowing that many of their tribal rights and interests are heavily affected by the actions of the Fish and Wildlife Service (FWS), this tribe ensured that the FWS would be involved in an upcoming collaboration with other federal agencies from the very beginning, and play a key role.

Another noteworthy case described by a respondent illustrated a relationship with the USFS that had once been less than desirable, but was later improved by opening up the lines of communication between the tribe and the agency. The respondent stated how after years of struggling to work with the USFS, the Tribal Council approved for cultural resources staff to share tribal narratives and traditional knowledge with agency staff, in order to inform agency scientists and shape regional land management. These narratives and knowledge came with stipulations— Tribal Council instructed the agency on how to respectfully and sensitively receive the information. Since then, the National Forest has opened up tribal access to forest resources, and traditional knowledge has influenced land management and the science process not just for the agency, but also for other shareholders in the region. This has benefitted the tribe's inter-cultural relationships, as well as the health of tribal landscapes and cultural resources the management of which is now being at least partially influenced by traditional knowledge.

For tribes whose treaties were never ratified, the question of whether treaty and other tribal rights are being exercised on "federal" land is one that brings about frustration. One respondent stated that because their tribe's treaties were never ratified, the tribe believes the lands on which they carry out tribal activities are still tribal lands, not federal lands.

A number of the respondents who stated that there were barriers imposed by the Northwest Forest Plan on tribal rights and interests provided comments on the nature

of those barriers. These comments focused on reduction of access due to road closures, lack of management opportunities, rigidity in land management, lack of privacy around tribal cultural activities, and limitations on harvesting. At least three respondents brought up the limitations placed on the harvest of cedar as a significant cultural barrier. Responses included:

> *"Ceremonial burning practices are limited. These practices are central to everything the Tribe is and to the things the Tribe needs to be who they are."*

> *"[Barriers include] potential access limitations prescribed by the Northwest Forest Plan, and potential restrictions on the ability to manage for more diverse flora and fauna due to Late Successional Reserve[2] designation."*

> *"Rigid resource use policy affects the ability of the Tribe to access cultural resources, a very critical one of which is cedar, for which the Tribe needs to harvest from large cedar trees for cultural purposes."*

One respondent brought up the unique challenges that come with managing a tribal forest under the Northwest Forest Plan. The respondent described the barriers the tribe experiences operating under the Plan's federal structure:

> *"The challenge is in the federal structure that is set up under the Plan. The Tribe feels it doesn't have the same authority as other federal land managers under the plan so they are often left in the dark. The Plan was written with federal agencies in mind, not tribes."*

The 2013 IFMAT Report mirrors these concerns, and adds that they are compounded when tribes are expected to meet federal forest requirements while underfunded:

> *"Goals for and laws granting sovereignty and enabling self-determination are often made difficult to achieve by requiring tribes to adhere to federal forest and environmental laws and policies, especially when not adequately funded."*

## Measures to Protect Tribal Culture and Traditional Knowledge

| Interview Question | Yes | No | Don't Know |
|---|---|---|---|
| Is the tribe aware of procedures that have been put in place to protect sensitive tribal information from unauthorized access or release? | 39% | 23% | 38% |
| Is the tribe aware of procedures that have been put in place to incorporate tribal traditional knowledge into the development of management actions? | 54% | 31% | 15% |
| Is the tribe aware of procedures that have been put in place to protect cultural sites on federal land? | 85% | 11% | 4% |

Among respondents, awareness of federal procedures put in place to protect tribal culture and traditional knowledge varied. A number of respondents who identified as natural resources staff, stated that they were unsure, but that the tribe's cultural resources staff may have a stronger understanding. There was often little awareness in regards to the existence of these procedures in relation to the Northwest Forest Plan.

Awareness was lowest (39%) in regards to procedures put in place to protect tribal sensitive information from unauthorized access or release (down from 68% in the

[3]According to the Northwest Forest Plan: Late-successional reserves are to be managed to protect and enhance old-growth forest conditions. For each late-successional reserve (or group of small reserves) managers should prepare an assessment of existing conditions and appropriate activities. No programmed timber harvest is allowed inside the reserves. However, thinning or other silvicultural treatments inside these reserves may occur in stands up to 80 years of age if the treatments are beneficial to the creation and maintenance of late-successional forest conditions. In the reserves east of the Cascades and in Oregon and California Klamath Provinces, additional management activities are allowed to reduce risks of largescale disturbance. Salvage guidelines are intended to prevent negative effects on late successional habitat. Non-silvicultural activities within late-successional reserves are allowed where such activities are neutral or beneficial to the creation and maintenance of late-successional habitat. Thinning or other silvicultural activities must be reviewed by the Regional Ecosystem Office and the Regional Interagency Executive Committee.

15-year report). At least four respondents stated that they were unaware of such procedures forming part of the Northwest Forest Plan. In regards to procedures to incorporate traditional knowledge into the development actions, awareness was slightly higher (54%, down from 55% in the 15-year report). And yet, at least five respondents stated that while they have heard agencies express interest in traditional knowledge, they are unaware of specific policies or procedures for incorporating traditional knowledge into federal planning or management. One respondent suggested there aren't procedures inclusive of traditional knowledge, and another respondent suggested that while the tribe is aware that agencies are interested in traditional knowledge, they cannot speak to the existence of specific procedures.

> *"It seems traditional knowledge is the next big buzz word, but I'm not sure how much it's actually being incorporated."*

One respondent stated that regardless of whether or not there are procedures, agencies aren't bringing tribes into planning processes early enough for traditional knowledge to shape the discussion:

> *"There may be policies in place but when the Tribe connects with federal agencies it's often as agencies are about implement a plan or initiative, not in the planning phase, which limits opportunities for tribal contributions when it really matters."*

A majority (85%) of respondents were aware of procedures put in place to protect cultural sites on federal land (up from 59% in the 15-year report). However, one respondent suggested that information about these procedures should be available more widely online so that all staff levels can have access and become (and stay) familiar with these procedures.

One respondent recalled that a National Forest consulted with the tribe once regarding a sacred site, but that overall, the USFS has not been very interactive regarding these matters. Another respondent described some of the shortfalls of sacred sites procedures, particularly when agencies fail to understand the cultural value of the site and its immediate surroundings:

> *"In the agency's eyes, avoiding a site is the same as protecting a site, but the Tribe doesn't view that as a protection measure. The Tribe seeks to protect sites themselves, but they run into cultural barriers when they seek to protect a place because [the site and its surroundings] holds key indicators for the type of use or management that should be taking place there, things that require traditional knowledge to interpret. At that point, the USFS fails to understand its value and its associated features, and creates a small boundary of exclusion that compromises the connectivity of the site. This doesn't allow for the dots to be connected between people and place."*

Responses to these questions made it clear that, regardless of the existence of these procedures, many tribal staff are unfamiliar with them, and even fewer have applied these procedures effectively to protect tribal culture and traditional knowledge, particularly as it relates to the Northwest Forest Plan. The 2013 IFMAT Report suggests that tribal management strategies based on bridging traditional knowledge and western science are gaining recognition, and that there is evidence that tribes are engaging more frequently in collaborative processes. As tribes spearhead and become involved in federal-tribal collaborations related to traditional knowledge, it is critical for there to be strong procedural frameworks that protect sensitive tribal and traditional knowledge.

## Conflict and Conflict Resolution

| Interview Question | Yes | No | Sometimes | Don't Know |
|---|---|---|---|---|
| Are there conflicts over the use or management of resources or areas of tribal interest? | 54% | 23% | -- | 23% |
| Are conflict resolution processes adequate? | 38% | 23% | 4% | 35% |

Fifty-four percent of respondents indicated that there are conflicts over the use or management of resources and/or areas of tribal interest in relation to the Northwest Forest Plan (up from 36% in the 15-year report). Of those who had engaged in conflict resolution processes with federal agencies, only 38% found them to be adequate.

One respondent stated that there is conflict over who gets priority in regards to gathering of forest products. Four respondents described conflicts related to resource access. They explained that tribal access to resources and/or traditional sites has been limited by road closures or lack of road maintenance resulting from the reduction of logging operations in forests. One respondent also described how winter recreation affects tribal access to resources of interests:

> *"There are access issues in relation to fish acclimation ponds. In winter, recreation interests (snowmobilers, x-country skiing, etc.) interfere with the snowplowing that is required to have access to the acclimation ponds."*

While one respondent commented that their tribe was generally satisfied with the level of protection afforded to riparian and buffer zones by the Northwest Forest Plan, other respondents expressed major concern regarding some of the Plan's land designations. At least three respondents described the conflicts that have arisen as a result of Northwest Forest Plan land designations, particularly Late Successional Reserves (LSRs). LSRs heavily restrict management, thereby compromising traditional cultural species, the abundance and health of which depends on continued tribal management:

> *"Land designations have curtailed the Tribe's ability to collaborate with the Forest Service in managing for diversity of habitat types that support treaty reserved resources."*

> *"The lack of forest management under the Northwest Forest Plan has altered the condition of those forests so that they no longer provide the beneficial needs that the Tribe depended on for thousands of years. The reserve system is in deep contradiction to the Tribe's values. LSRs, riparian reserves, and unmapped roadless areas, are all categories that exclude management of those lands or develop ecological conditions that are not consisted with historical conditions. They elevate the needs of the spotted owl over the needs of indigenous peoples."*

> *"The Forest Plan was negotiated and wasn't fully informed as to the actual landscapes on the ground. If you have an area that was traditionally huckleberry fields and is now designated LSR, there is a problem."*

For one tribe, management restrictions put in place by the Northwest Forest Plan have negated the original purpose of a special management area that the tribe intended to harvest timber from to fund future land acquisition. Since the inception of the Plan, all the tribe has been able to do is thinning, hardly producing the income the area was intended to produce. 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.

One respondent described their tribe's strategies to overcome the conflict that exists over lack of management opportunities and lack of tribal authority over ancestral lands:

> *"The Tribe is interested in reestablishing some of their ancestral lands and if that means managing BLM lands to do it, they are willing to do so. There are three ways in which the Tribe asserts its role over land management: by providing input into BLM planning, by using public law 638 (The Indian Self-determination Act) to take over management of public lands of interest, and also by using legislation to have lands returned to the Tribe."*

In addition, two respondents mentioned the Tribal Forest Protection Act (TFPA) as a potential avenue for tribes seeking to increase their land management opportunities. The 2013 IFMAT Report describes (and advocates for) the TFPA as follows:

> *"TFPA was intended to protect tribal assets by allowing tribes to contract with federal agencies to carry out hazardous fuel and forest health treatments on adjacent federal lands. TFPA represents an underutilized opportunity to work with state and federal agencies to increase jobs and economic stability in tribal communities, protect tribal resources and treaty rights on and off the reservation, and implement needed fuel hazard reductions that otherwise might not be accomplished. TFPA partnerships should be aggressively expanded, as 80 million acres of national forest land are in need of treatment."*

For two respondents, the conflicts that arise as part of the Northwest Forest Plan are simply an extension of the long-standing conflicts that form part of the broader federal land system:

> *"The Tribe has had long-standing conflicts in regards to the fact that the Tribe's treaties were never ratified and the Tribe was never compensated with money or with tribal lands. These conflicts are compounded when the Northwest Forest Plan challenges access to cultural resources on Federal land."*

> *"The NWFP is just an expansion of the limitations placed on the Tribe by the USFS and other agencies. The vast majority of the Tribe's territory is under occupation by the USFS. These are tribal lands, where the Tribe has been since time immemorial. We are still trying to live in the way that we were supposed to live in this place. We still conduct ceremonies and carry out those ways of life that are important to the Tribe. The gathering of cultural resources, for food, for medicine, for shelter...our tribal lifeways are closely connected to the land. The Tribe depends upon and holds responsibilities to those resources. As such, every USFS action that limits those activities is in direct conflict with tribal uses and management."*

Another significant conflict discussed was the impact of the Northwest Forest Plan on the ability to foster "anchor forests." The 2013 IFMAT Report describes the concept of anchor forests as follows:

> *"Another opportunity for tribal forestry to play a pivotal role in efforts to achieve crossboundary, landscape-level resource management is through anchor forests. An initiative of the Intertribal Timber Council, the anchor forest concept centers on the idea of tribal forest managers collaborating with neighboring ownerships to collectively ensure the long-term flow of harvested timber sufficient to sustain wood processing facilities within feasible transportation ranges. Key to these collaborations is recognizing that forest management must be both ecologically sustainable and economically viable."*

One respondent discussed how anchor forests have been hard to maintain in their tribal area because of the impacts of the Northwest Forest Plan on the logging industry. This has severely impacted the tribe's economy:

> *"Another conflict has to do with the concept of anchor forests. In a particular area, in order to maintain an industrial forest, you need logging infrastructure. When the logging industry declines because of a lack of timber harvesting abilities, logging infrastructure and staff decline, and the Tribe struggles to carry out timber harvests because of this shortage in infrastructure and staff. Tribes don't have the mobility of other logging operations. There will probably be no sustainable work in logging in the next decade or two. Lack of timber has reduced the sector. The Tribe had*

*a timber sale not so long ago during which there weren't enough logging operators to even make it happen."*

A few respondents commented on the adequacy of conflict resolution processes. One respondent stated that conflict resolutions processes are often inadequate because they are antiquated and are often not vetted with new staff. Another respondent mentioned that there is little opportunity for true resolution in conflict resolution given that the tribe is limited in their ability to "put their teeth into consultation."

At least two respondents saw conflict resolution as a viable alternative to litigation, even if to date none of the conflict resolution processes they have been involved in have been ideal. One of these respondents elaborated on the limited choices tribes have in the face of resource management conflict:

*"Conflict resolution is seldom brought up in MOU language and other agreements. I wish this was an avenue that could be pursued more often. Our Tribe deals with three National Forests. The number of projects and activities taking place is tremendous. We don't have the human resources to respond and so we have to prioritize, and be judicious about how we respond to what we respond to. We prioritize based on the highest potential for conflict, and that's where we invest our time and consult. Our options are therefore limited...we try to alter projects to reduce or eliminate impacts to tribal interests. But at the end of the day, if you are not satisfied or are able to make the necessary changes, it comes down to two options: you either file an order with intent to sue, or you don't. There are few options other than that. Then, if you sue, you have to figure out how to pay for it, and you have to find the appropriate attorney."*

Making conflict resolution processes viable and effective mechanisms forming part of federal-tribal agreements such as MOUs and MOAs could provide an alternative to litigation that is less costly and less contentious for tribes, while potentially strengthening federal-tribal communication and resulting in improved outcomes for all involved.

## Compatibility of Federal and Tribal Forest Management

Respondents were asked to describe the ways in which federal forest management (as carried out by the U.S. Forest Service and Bureau of Land Management) is compatible with what their tribe values about forestlands. Responses were diverse and often complex; several respondents described compatibilities in some arenas, while describing incompatibilities in other arenas. One respondent suggested that tribal values are very broad, making it challenging to respond to this question.

Fourteen of the 27 respondents stated that federal forest management is at least partially compatible with tribal values. Some of the federal forest management practices that respondents described as aligning with tribal values included:

- Management that focuses on ecosystems rather than single species
- Holistic conservation of the forest
- Protection of riparian areas and prioritization on water quality
- Restoration and/or protection of fish and wildlife habitat
- Incorporation of tribal forest management practices, including prescribed fire
- Considerations of tribal needs and values when managing forests
- Multiple-use management orientation
- Shift from clear-cuts to regeneration harvests with partial stand retention
- Management of noxious weeds

It is important to keep in mind that while tribes may share some values in common, each tribe has a different vision of what constitutes ideal forest management. It is also important to note that management practices are not consistent across federal lands, and as such, not all forests are managed in the ways described above.

A number of respondents described how some of the management practices that are compatible in principle become incompatible in practice. The ways in which federal agencies and tribes may go about implementing a similar goal is often quite different. One respondent stated that federal forest management is often reactive, while tribal forest management is proactive. Particularly troublesome for tribes, as has been highlighted throughout this report, is the reserve approach implemented by federal agencies when seeking to protect lands and resources, an example of which includes the Northwest Forest Plan (NWFP). As one respondent described:

> *"When something is important to the Tribe, then the Tribe will tend to manage to promote the species and resources that are special and important. The NWFP does the opposite; when something is deemed important it restricts management around those resources. Whether it's old-growth or a sensitive plant, the NWFP restricts management around it, whereas the Tribe would manage for those values. The reserve system is an entirely European concept where we keep people out of an area to protect resources. Tribes protect resources via interaction and use. It's in sharp contrast to the NWFP."*

Another respondent described it as federal agencies' "risk-averse" management tendencies:

> *"Federal forest management is now caught up in being risk-averse, and that is to the detriment of tribes who feel they must be on the land interacting with and managing the landscapes to properly care for and interact with critical cultural resources. The risk-averse approach leads to a lack of management, which often leads to a lack of resources that are culturally important to the Tribe."*

Twelve respondents described a range of management practices that are at least partially incompatible with tribal values. Incompatibilities included:

- Exclusion of management as a conservation mechanism
- Aversion to fire as a natural process and as a management practice
- Prioritization of timber over other forest resources
- Prioritization of industry needs over tribal needs
- Lack of incorporation of traditional knowledge and tribal values into management
- All-or-nothing approaches that either deplete ecosystems or shut down economies
- Lack of true multiple-use considerations

A number of respondents suggested that forest management compatibility between federal agencies and tribes has improved over the years. And yet for many tribes, there is room for significant improvement. Tribes continue to pursue communication and collaboration opportunities in order to close the gap between federal and tribal forest management. One respondent described the need for more tribal liaisons, as well as better training for federal staff particularly in the face of turnover, in order to enhance agencies' understanding of tribal needs, rights, management priorities, and communication preferences. This can be a starting point for discussions that can lead to the eventual resolution of management incompatibilities.

## Strengthening Federal Tribal Relations

The last question in the interview asked respondents to describe how the federal-tribal relationship can be strengthened. Responses here were so thorough and rich that we divide them up into categories.

## Recognition and Adequate Understanding of Treaty Rights, Other Rights, and Federal Trust Responsibilities

At least four respondents discussed the importance of proper recognition and adequate understanding of treaty rights, other rights, and federal trust responsibilities, on behalf of both agency staff and the broader U.S. public.

> *"At the policy level, the relationship could be strengthened by sitting down with tribal governments and determining what interests the tribes have, how these interests relate to the trust responsibilities, and what role the USFS has in protecting treaty rights and access to tribal resources, as well as determining how the USFS can manage these resources so that both the Tribe and the USFS are achieving their objectives."*

> *"[Federal-tribal relations could be improved via] fuller awareness across USFS staff levels regarding tribal treaty rights. The USFS could do a better job of educating the public about Indian treaty rights so that when tribes go to do something, public backlash due to ignorance doesn't occur. This could entail interpretive sites, and other collaborative efforts to share tribal history. Recovering indigenous geographic names could be another strategy. Also, shedding some light on how tribes stewarded those lands."*

For at least one respondent, it was not just about recognizing treaty rights and trust responsibilities, but acknowledging historical injustices and initiating a retribution process:

> *"[Federal-tribal relations] can be improved by having the U.S. recognize the injustices that it has brought upon tribes, by having the U.S return a significant amount (both in terms of acreage and resources) of land to its lawful owners (the tribes), and by having the U.S. approach consultation with tribes as seriously—and then some— as it approaches consultation with states."*

This response also suggests the need for a more formal and meaningful approach to consultation between tribes and federal agencies.

## Adequate Consultation Mechanisms

Consultation is the foundation upon which many federal-tribal relations are built. As such, it is no surprise that at least ten respondents included adequate and meaningful consultation among the strategies to improve federal-tribal relations. It is important to note that each tribe has a unique vision regarding what constitutes effective consultation. As one respondent stated:

> *"In order for the federal government to truly hit meaningful consultation with each tribe, they have to understand what each individual tribe considers meaningful consultation"*

Respondents provided a variety of suggestions for how to strengthen consultation. Among these suggestions was the need for federal agencies to take consultation seriously, approach it with due respect and formality, and have government-to-government consultation be between tribal and agency leadership.

> *"The Tribe is not a citizen, it is not a stakeholder, the Tribe is a government. The Forest Service must understand that, and what consultation entails."*

> *"There is a distinct emphasis lately on the federal side on "collaboration" and "consultation". The emphasis is always on "consultation." And while that may give some people a nice warm fuzzy feeling, that doesn't mean anything beyond what that word implies. It doesn't imply or direct federal agencies to conduct any differently, other than to make sure they consult with tribes. Every federal agency has a consultation policy, each is a bit different, but they're all pretty much cut from the same mold, with the same meaning and*

*implications. It's rare that relationships between the federal government and the Tribe produces something that goes beyond simple consultation. The word consultation is not the problem, as much as the interpretation of the word and the lack of respect and acknowledgement it is given. To consult is not to confer, it is to consult, with full free, prior, and informed consent."*

*"Often, Consultation with a capital C is done at the highest level on behalf of the Tribe, but not on behalf of the agency; agencies often send staff that are not at the highest levels to meet with tribal council."*

*"Defining the terms of consultation and approaching it different from the start: starting at the highest level of leadership and working down. That would do wonders."*

Formal, government-to-government consultation was not the only type of consultation mentioned; informal consultation between tribal and agency staff, or consultation with a little "c," was also brought up as important in building better federal-tribal relations. Technical staff members are often the ones making on-the-ground decisions, and can benefit from consultation.

Suggestions were also made in regards to strengthening the accountability of consultation processes.

*"There is really no teeth in the consultation process, if there was more accountability, it would make consultation more worthwhile. It's often just lip service."*

*"Consultation that recognizes that actions speak louder than words."*

One respondent mentioned that it is important for agencies to identify how information exchanged during consultation affects agency decisions. Without this, tribes have little way of knowing whether their input has been incorporated, and therefore have little incentive to consult in the first place:

*"Sometimes the Tribe feels...what's the point of going to consultation meetings if our input is not identified in final outcome?"*

Suggestions were also made in regards to the efficiency of consultation, and the potential for agencies with overlapping consultation objectives to form inter-agency committees that consult with a tribe all at once. This saves the agencies and the tribes time and money, a fact that is especially critical for tribes that often have to compromise on consultation due to being understaffed and underfunded.

### Effective and Frequent Communication Between Tribes and Agencies

Numerous respondents brought up effective (and frequent) communication as a key strategy to improving federal-tribal relations. Respondents mentioned a variety of communication mechanisms:

*"More face-to-face meetings."*

*"Communication!!! Both formal and informal. Phone calls. E-mails. Letters of notification, and have at least one annual meeting with agency."*

*"Continued development of personal relationships between agency staff and tribal staff."*

*"Communication is key. The Tribe's best relationship with the USFS involves talking to each other. A combination of formal and informal communication has been useful."*

*"By federal representatives doing more one-on-one meetings with the tribal council.*
*Meeting as often as possible to stress the fact that the Tribe needs to be involved. Stressing that agency staff communicate closely with tribal staff.*

*When meetings take place, especially related to forestry, it would be beneficial if the tribal leadership AND staff (including field staff) were present. Involving more than one person takes pressure off one person to decide important things. Communication beyond e-mail or mail, picking up the phone and following up."*

*"More interaction with federal managers. Former forest ranger never visited tribal council and he was in the position for 10 years. The new ranger has also not yet visited the Tribe. There is a better relationship between the Tribe and the USFS at a staff level, but at the leadership level there are weaknesses."*

As these responses indicate, communication is desired both formally and informally, at both the staff and leadership level, and via a variety of communication methods, with particular emphasis on face-to-face meetings.

Two additional communication mechanisms that were described as effective were the development of tribal consortiums and the presence of tribal liaisons:

*"What has worked is using a tribal consortium like the NW Indian Fisheries Commission through which agency information is funneled and disseminated to the various tribes. Agencies have also improved by creating tribal liaisons who are familiar with tribal issues and can relate what agencies are doing to what matters to the tribes."*

## Improved Communication Within Agencies

Several respondents described the disconnect that exists between the various levels of the Forest Service. This disconnect affects tribes' awareness of federal funding opportunities, as well as the consistency and adequacy with which federal policy is implemented, the effectiveness with which projects occur on the ground, and the ability of tribal concerns to reach the national office. Responses included:

*"The relationship the Tribe has with the USFS isn't perfect, but it is quite strong, and the Tribe has made good strides with the USFS. The USFS is very genuine, particularly at the management level. That doesn't always translate down to the on-the-ground project planners, but the Tribe is working on that."*

*"There are a lot of opportunities for projects, funding and collaborations, and yet USFS personnel often resist tribal projects and opportunities. Local managers just don't support congressional programs. Maybe there needs to be better education of agency staff about congressional programs. Back when USFS had more staff, Tribe would go to them for technical help. Now there is not enough USFS staff to support tribal needs."*

*"People in DC in upper management are more out of contact than the local districts. And yet the local districts are affected by the rules and regulations in DC. If upper management had a better understanding on tribal needs and better connection with tribes, the relationship could improve."*

As the above responses begin to describe, suggestions included more clear direction from national Forest Service leadership in regards to federal obligations towards tribes, consistency across forests in regards to federal-tribal relations, proper conveyance of tribal needs and concerns all the way to D.C., and better education of local and regional staff regarding federal funding opportunities and congressional programs of tribal relevance.

## Agency Staff Training

In order to consult and collaborate with tribes in culturally sensitive and competent ways, agency staff have to have an adequate understanding of treaty rights, other tribal rights, and trust responsibilities. Ideally staff that interact closely with tribes should also have a sense of tribal history,

and tribal land management priorities. As such, several respondents brought up agency staff trainings as critical to improving federal-tribal relations.

This is a particularly pressing matter as a result of frequent staff turnover. One respondent stated that turnover occurs almost every year. This means that by the time a staff member may have had the chance to familiarize him/herself with the regional tribe/s, a new staff member comes in to take his/her place.

> *"Turnover in agency leadership leads to changes in values and knowledge in regards to tribal rights and needs. This is the biggest factor, the lack of continuity in agency staff. By the time a staff member understands tribal needs and rights, a new staff person may come in and the process begins anew. USFS culture is very isolated in many ways and doesn't get involved in greater conversations over natural resources. The USFS approach is "We'll fix things for you," instead of listening to local folks and realizing the enormous value that tribes can bring to the table."*

Staff training is also a pressing matter as a result of downsizing of Forest Service staff, a situation which has sometimes resulted in the loss of staff members who had long-term experience interacting with tribes, and a sense of the history of federal-tribal relations.

> *"Now that the USFS is focusing on maintaining old-growth and thinning, and not doing timber harvests, they have gotten rid of a lot of staff that knew the history of regional land management. They have also consolidated forests, making it long-distance management. They haven't trained young people or hired young people to replace lost staff. There would be a big learning curve for new staff. Few foresters are left filling more generic positions. Specialists work out of the regional office, which requires a lot of travel to get to district forests. Too many managers, and not enough staff."*

Some respondents think the greater challenge lies in preventing older Forest Service staff from negatively influencing new staff.

> *"There may be long-time employees that are used to doing things a certain way and have no plans to modernize or adjust their management strategy based on new and better understanding. Newer employees may come in more culturally and scientifically sensitive and yet may be limited by the long-time employees' way of doing things."*

Respondents suggested staff trainings and workshops, and staff engagement with local tribes to counteract these challenges and to inform old and new staff about tribal rights, needs, histories and abilities.

## Increased Opportunities for Collaboration in Planning and Management

Another action that respondents felt was critical in order to strengthen federal-tribal relations is increased opportunities for federal-tribal collaboration in planning and management.

> *"Federal agencies can do better at consulting and involving the Tribe in implementation and developing alternatives to proposed actions. The Tribe can also involve federal agencies in their decisions so management occurs not within boundaries but across boundaries. Coordinating treatment for forest health issues across political boundaries. But this relies upon the agency building better communication in the first place."*

> *"There needs to be a process where tribes can become more involved one-on-one in agency planning. Right now the federal government does what it's going to do instead of including tribes in the planning process. If tribes could be represented in planning processes agency-wide the relationship would be way more meaningful."*

One respondent stated that it is time to move beyond

consultation and into a new era in which tribes are given their rightful place as land managers:

> *"While there has been an effort on this consultation push, it's time to push beyond this era and into one where the new paradigm is respecting tribes' legitimate jurisdictional authorities and tribes' rightful role in co-managing resources that are just as much the tribes' as they are the public's. There needs to be respect and recognition over the rightful role of tribes as a whole, equal participant in conducting those management actions as a sovereign, along with another sovereign (the federal government)."*

Having the opportunity to participate in planning and management would give tribes the opportunity to apply their values to federal land management decisions. As one respondent noted:

> *"More generally, in western cultures, there has been a dichotomy of man-nature. That is not how tribes see it. It is this dichotomous view that swung the pendulum toward the rapid decline of species and thus the development of policies like the NWFP to counteract that decline, which then swung the pendulum in another direction toward the decline of cultures that depend on close interaction with the land both culturally and economically. There needs to be a development of sustainable forestry that is a compromise between these two extremes."*

The Tribal Forest Protection Act (TFPA) was brought up as a potential avenue to increase collaborative management opportunities. For more on the TFPA, refer to the Intertribal Timber Council TFPA analysis reports: http://www.itcnet.org/issues_projects/issues_2/tfpa/tfpareports.html.

## Increased Opportunities for Inter-Agency Learning

According to some respondents, some agencies have more effective ways of approaching federal-tribal relations than others. As such, two respondents suggested that federal agencies could engage in mutual learning opportunities to strengthen federal-tribal relations across the board. The EPA was praised as one of the agencies best dealing with tribes, particularly the agency's Tribal Operations Committees and National Tribal Water Council.

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# IV. 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. There is a need to hear from tribes about their experience and perspectives on how their rights and interests are being affected by federal policy.

These case studies are snapshots of key issues identified throughout this report and are only a start to exploring the diverse historical perspectives and experiences of these tribes, and examining the complex social, economic, and legal histories and present-day situations of the tribes highlighted.

The case studies highlight positive developments in the federal-tribal relationship, as well as mechanisms for consultation and collaboration that are proving effective. They also highlight the challenges some tribes continue to face as a result of NWFP policy, other policies, and agency inaction. Case studies can 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 or replicate in their tribal communities or among their agencies. The four case studies featured in this report are:

1. **Karuk Tribe**. The Western Klamath Restoration Partnership: a promising collaboration model.
2. **Klamath Tribes**. A memorandum of agreement with the Fremont-Winema National Forest facilitates federal-tribal relations.
3. **Quinault Indian Nation**. Continuing challenges with consultation and the Northwest Forest Plan's effects on the timber economy.
4. **Mechanisms for Strengthening Accountability in Consultation**. Memoranda of understanding and agreement, tribal consultation ordinances, and consultation policy at the national level as tools to enhance federal-tribal relations.

## Case Study #1: Karuk Tribe

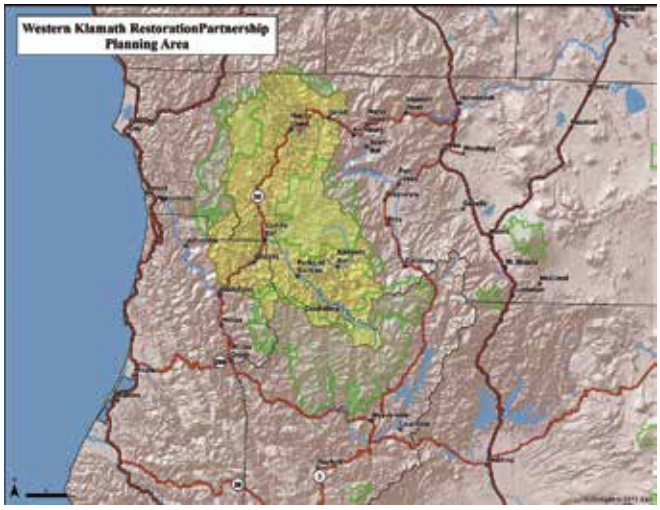
### *The Western Klamath Restoration Partnership: a promising collaboration model*

### Introduction

The Karuk Tribe of California occupies aboriginal land along the middle course of the Klamath and Salmon Rivers in Northern California. The Tribe's aboriginal territory includes an estimated 1.38 million acres within the Klamath River Basin. Nearly all Karuk aboriginal territory is located concurrent to lands administered by the USDA Forest Service's Klamath and Six Rivers National Forests.

Traditional burning practices have been critical to the Karuk since time immemorial. For the Tribe, fire serves as a critical land management tool as well as a spiritual practice. These burning practices have been severely impacted by Euro-American perceptions of fire in the landscape. Decades of USFS management emphasizing fire suppression have affected aboriginal landscapes that depend on fire, and have led to forest fuel accumulations that could worsen the impact of wildfire.

This case study highlights the Western Klamath Restoration Partnership (WKRP), a promising collaboration co-led by the Karuk Tribe and the Mid Klamath Watershed




Planning Area of the Western Klamath Restoration Partnership (tan area, surrounding wilderness areas in green).

Council (MKWC). This partnership, which also involves USFS staff, local NGO's, and local community members and technical experts, aims to *"establish and maintain resilient ecosystems, communities, and economies guided by cultural and contemporary knowledge through a truly collaborative process that effectuates the revitalization of continual human relationships with our dynamic landscape"* (Harling and Tripp 2014: 12). Critical components of this vision include the restoration of fire regimes and the development of fire-adapted communities, goals that could prepare the region for the projected increase in wildfire occurrence while simultaneously creating opportunities for the restoration of traditional Karuk burning practices and the revitalization of the regional economy.

## The Genesis of the Western Klamath Restoration Partnership

Prior to the development of the WKRP, the Karuk were involved in the Mid Klamath Restoration Partnership. This Partnership, which started in 2007, involved tribal and federal agency staff, and NGOs, but was lacking participation by community members. Additionally, while this Partnership managed to reach agreement regarding fisheries management and stream restoration strategies, the conversation would always come to a screeching halt when it came time to discuss restoration strategies for upslope areas. Some of the Partnership participants suggested focusing on the arenas that were working, but for the Tribe, upslope restoration was too critical to put aside.

At the time, Karuk tribal staff was participating in the development of the National Cohesive Wildland Fire Management Strategy (Cohesive Strategy), a policy that establishes a national vision for wildland fire management (USDOI 2014). The development of this policy involved the participation of various governments and organizations. In the process, the Watershed Research and Training Center (WRTC) of Hayfork, CA, and the Nature Conservancy expressed interest in the future of fire management in Karuk territory. The Karuk agreed to work with the two organizations, and soon after the California Klamath-Siskiyou Fire Learning Network (FLN) was developed in Karuk territory.

The WRTC soon became a national hub for the Fire Adapted Communities program, through which 8 communities were selected as examples of communities with progressive fire management in relation to the Cohesive Strategy. Orleans/ Somes Bar (in Karuk territory) was selected among the communities. The WRKP Plan explains:

> *"At the 2014 national meeting of the Fire Learning Network and Fire Adapted Communities program, it was recognized that nowhere else in the country are all the components of the Cohesive Strategy being as actively developed as they are in this region" (Harling and Tripp 2014: 34).*

The Karuk Tribe was selected as the leading entity of the Orleans/Somes Bar Fire Adapted Communtiy. The Tribe then chose the Mid Klamath Watershed Council as a co-leader. Together they have co-led the development of the Western Klamath Restoration Partnership, a "game-changing partnership," as Karuk staff put it.

## A "Game-Changing" Partnership

Karuk staff explains that a number of factors have made this a partnership unlike others the Tribe has previously been involved in. The factors that have made this partnership possible and successful to date are outlined below.

### *Strategic Synergy*

The WKRP has been possible, in part, because the national conversation on fire management has evolved. The Karuk have been eager to return traditional burning practices to their territory ever since these practices were challenged, and often illegalized, by federal agencies. Yet many other land managers have taken decades to realize that managing wildfire only via suppression is an ineffective approach. Now, decades of fire suppression combined with the impacts of advancing climate change are creating conditions that are leading to some of the worst wildfire seasons in history.

Severe losses caused by wildfire have led to a national reconsideration of fire management strategies, a key result of which has been the National Cohesive Strategy. Federal and other land managers are now looking to prescribed burning, thinning, and related strategies to increase the fire-resilience of forests and grasslands across the country. Karuk and other tribal land management techniques are sought after as practices that can mitigate or reverse the damage done by years of fire suppression-based management. Federal policies and strategies are aligning with Karuk and other tribal fire management strategies, a fact that has led to programmatic and funding opportunities for partnerships such as the WKRP.

### *Funding*

Being a part of a Fire Learning Network and a Fire Adapted Community gave the Tribe access to start-up funds that made it possible for the Tribe and the MKWC to convene a diverse group of people, governments, and organizations to discuss the management of upslope landscapes. As the WKRP Plan states:

> *"A hallmark of this effort was the intensive participation by individuals and organizations with diverse and sometimes conflicting perspectives about how to shape fire management" (Harling and Tripp 2014: 4).*

With a core group of participants established, the WKRP process in motion, and on-call facilitators to help direct the dialogue (see below), the Tribe and MKWC have been able to leverage additional funds through funding proposals submitted to the USFS, including one involving a collaboration with Six Rivers National Forest. These funds will in part serve to finance the implementation of the Somes Bar project, one of three initial restoration projects outlined in the WKRP Plan.

### *Facilitation*

In addition to opening up funding opportunities, the Fire Learning Network (FLN) has been critical to the success of the WKRP in that FLN staff with professional facilitation experience volunteered to serve as facilitators in the WKRP process. Given that the process brought together diverse people, governments, and organizations whose views sometimes conflict, facilitation has been a critical factor that has resulted in much more productive dialogue. As one Karuk staff member states:

> *"[This process] brought people to the table that haven't come to the table in the past, and I think that the facilitation was kind of the unique factor there that maybe inspired some people to stay at the table."*

Facilitation led to intensive sessions that were focused and regimented, and in which there was a balance of voices and opinions expressed. This was in part achieved by the facilitators' use of an Open Standards Process (see below).

### *Open Standards Process*

The WKRP has been guided by an Open Standards Process that was brought forth by FLN facilitators. This 5-step process (see diagram) provides collaborative dialogue with structure and direction, which along with the guidance of the facilitators and the establishment of dialogue ground rules makes for more effective, paced, and balanced collaboration. As one Karuk staff member describes:

Open Standards Process Diagram.

> *"We had to make some adjustments meeting to meeting, but [the Open Standards Process] set our objectives for what we were going to be doing during the meetings, and gave us our tasks and timelines, plus the facilitators to keep us on track. At every turn everyone is trying to go on a tangent, they want to get to the end before the process… the facilitation and [Open Standards] diagram bring you back. That was of value, as well as the ground rules of dialogue. Everyone had the opportunity to speak and most did. It brought about some common ground that people didn't realize they had."*

Through the Open Standards Process, collaborators were able to identify "zones of agreement" where all parties agree that upslope restoration needs to occur, set a collaboratively expanded geographic scope for the project, develop a collaborative vision, establish conservation targets, identify threats to regional landscapes and communities, develop principles and strategies for restoration, and select three initial restoration projects to get implementation kick started.

### *GIS Support*

The final component that has contributed to the success of this collaboration to date is tribal access to GIS support. Karuk staff indicates that the Tribe was able to receive "phenomenal" GIS support despite limited funds, in part due to volunteerism. Volunteers with significant GIS capabilities were able to contribute to the GIS-based fire modeling that served to inform the collaborative planning process.

## Strengthening the Federal-Tribal Relationship through Collaboration

The communication and collaborative nature involved in the various steps of this Partnership have helped strengthen many regional relationships, including the federal-tribal relationship with the USFS. The Six Rivers and Klamath National Forests sent line officers, district rangers, and even forest supervisors to participate in WKRP sessions, a fact that demonstrated interest and a willingness to collaborate. The Six Rivers National Forest further demonstrated their desire to collaborate by approaching the Tribe and suggesting that they work together to develop a collaborative proposal for funding to further restoration objectives of mutual interest, including those described in the WKRP Plan. One Karuk staff member stated:

> *"…just getting the e-mail to write a proposal together with the Six Rivers National Forest goes a long way in strengthening the relationship and building trust. That alone is something the Tribe has been trying to get to for decades."*

Additionally, the interagency agreement between the Tribe and the Bureau of Indian Affairs (BIA) resulting from this process has strengthened the Tribe's relationship with the BIA. Improvements in their relationship with the BIA could shape the Karuk's future cooperative agreements with the agency and potentially open up many more opportunities for the Tribe.

If this partnership continues without major disruption, and if collaboration continues at the current pace, tribal staff is hopeful that relationships could improve significantly with many of the agencies with which they regularly interact.

## Benefits Resulting from this Partnership

This partnership has resulted in immediate benefits for both the Tribe and the USFS. As a result of this collaboration, the Tribe is regaining significant capacity that had been lost due to the downsizing of local USFS districts. Karuk territory is remote, and it's often challenging for the USFS to hire and retain people in the local district. This partnership has brought forth funding that is enabling the Tribe to hire an archaeologist, a GIS/research coordinator, and an administrator for large-scale contracts. This not only creates jobs in a region facing economic hardships, it also takes the burden off of the USFS to fund and fill these positions.

Karuk staff also foresees a number of important

long-term benefits resulting from this collaborative process. Tribal staff that is on the core team of the Partnership is working to get a grant that would fund a wildlife biologist for the collaborative. This hire could benefit the state as well, particularly if the wildlife biologist could serve on an upcoming deer survey that the state plans to carry out. Tribal staff also sees the potential for this partnership to improve state-tribal relations, as well as state recognition of tribal rights and tribal management capacity. By enabling the Tribe to carry out ceremonial burns and other land management activities, this collaboration could help demonstrate the Tribe's commitment and expertise in resource management. Already, the Tribe has been in conversations with the Fish and Wildlife Service regarding the enhancement of elk wintering range in the area via traditional burning practices. The Tribe is confident that it can increase elk capacity in the region, and that in doing so it can open up conversations with the state regarding tribal hunting rights.

This partnership could also bring forth the long-term benefit of protecting regional communities from extreme wildfire by using prescribed burns, and guiding the wildfires that do occur in ways that reduce catastrophic damage. Fire management as the Tribe is proposing would involve an eco-cultural process that could serve resources that are critical to tribal culture. All of the activities involved in bringing fire back onto the landscape would create up to 200 reliable jobs, while simultaneously saving on federal fire suppression expenditures. As a tribal staff member described, the 200 jobs would require upfront costs, but could ultimately save millions of dollars in fire suppression.

## Current and Future Challenges

While the project has numerous strengths and projected benefits, there are some actual and potential challenges that threaten the effectiveness and continuity of the collaboration. One challenge involves the Open Standards Process, which despite being highly effective at guiding the collaboration, does not account for government-to-government consultation. The Tribe is leading the project, and eventually the Tribe will have to consult with the federal agencies involved, a process which will subsequently require public comment. In an attempt to compensate for the lack of consultation in the Open Standards Process, a second procedural diagram was developed that takes the need for consultation into account. Consultation between the Tribe and the agencies needs to occur in order to ensure the Partnership is procedurally sound and not subject to a Federal Advisory Committee Act (FACA) violation.

Another key challenge to the continued success of the Partnership is that at present, there is no formal agreement in place. The unpredictability of federal funding often prevents collaborations such as these from entailing formal commitments, a fact which can put an abrupt end to projects, even as its partners are ramping up capacity. While this collaboration is exemplary in its compatibility with National Cohesive Strategy objectives, in its incorporation of United Nations Declaration on the Rights of Indigenous Peoples' principles, in the way the collaboration is being guided by an Open Standards Process, and in the way the Partnership is receiving, funneling, and spending its funds, a sudden political or fiscal obstacle could put a halt on the project and undermine all the efforts to date.

One potential obstacle involves the language in an interagency agreement between the USFS and the BIA in regards to this collaboration. The agreement describes the potential to use timber funds generated through restoration to help pay for future restoration activities, which in itself is beneficial. Yet a small detail in the language implies that the timber would be sold through a standard timber sale contract in which outside contractors unassociated with the Partnership would execute the timber harvest. For some Partnership participants, a standard timber sale contract involving outside contractors that are likely to be unfamiliar with project objectives is a dealbreaker. This illustrates how a small discrepancy in a federal document may be enough to prevent collaboration from moving into the implementation phase.

The WKRP Plan alludes to the lack of follow-through in past collaborations, and describes how this affects trust between entities:

> *"In recent years, agencies have engaged in collaboration with communities to plan projects that reduce the threat of wildfires, yet a true collaboration success has not been realized to date. Collaborations have not been maintained through implementation, monitoring, and feedback into future collaborative projects. These initial collaborative efforts have contributed to the further lack of trust between stakeholders in the planning area" (Harling and Tripp 2014: 8).*

The Karuk are aware of the failure of past collaborations to reach beyond the planning phase, and they are eager for this one to be different. As a tribal staff member described:

> *"This needs to be an intergenerational process that regional people can carry on in perpetuity. If the USFS can be funded yearly, then so can this collaborative. [This Partnership] takes on a more holistic role than the agency. It could, in the future, consolidate the action of various agencies and do it regionally in perpetuity."*

## Key Takeaways

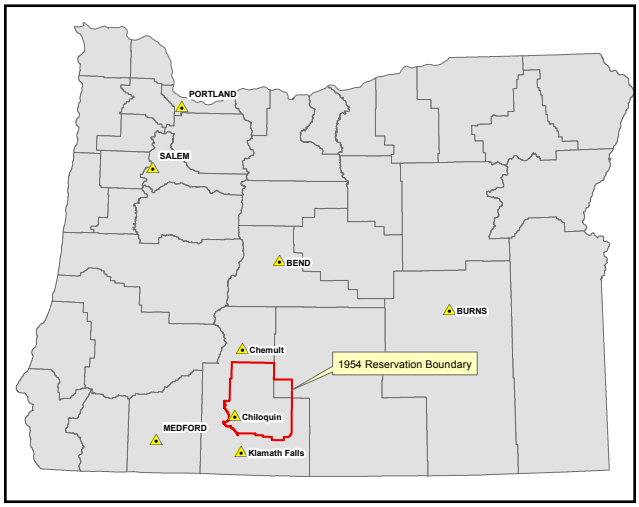
- Collaboration can be a strong mechanism for strengthening federal-tribal relations.
- Collaboration can bring significant benefits to both tribes and agencies.
- Tribal land management can alleviate financial and administrative burdens on federal agencies.
- Professional mediation can make the difference between effective and ineffective collaboration.
- Effective, long-term collaborations depend on reliable, long-term funding.

# Case Study #2: Klamath Tribes

*A Memorandum of Agreement with the Fremont-Winema National Forest Facilitates Federal-Tribal Relations*

## Introduction

The Klamath Tribes (Tribes) of Oregon include the Klamath, Modoc, and Yahooskin peoples, and are situated in Oregon's Klamath Basin, where they have lived since time immemorial. Like many other tribes, the Klamath Tribes have endured numerous hardships and conflicts with the United States federal government that affected federal-tribal relations. For many years, they sought to protect tribal rights via litigation, and was involved in various appeals and lawsuits against state and federal agencies (including the U.S. Forest Service (USFS)) (e.g. 493 F. 2d 564 1974[3], 478 F. Supp. 336[4], 590 F.2d 768 1979[5], 723 F.2d 1394 1983[6], Civ. No. 96-381-HA (D. Or., Oct. 2, 1996) 1996[7]). The Tribes had significant success protecting their rights




Klamath Tribes 1954 Reservation Boundary Vicinity Map

[3]493 F. 2d 564. 1974. Kimball v. D Callahan. http://openjurist.org/493f2d/564/kimball-v-d-callahan.

[4]478 F. Supp. 336, 345 (D. Or. 1979). 1979. United States v. Adair. https://casetext.com/case/united-states-v-adair-5/.

[5]590 F.2d 768. 1979. Kimball v. D Callahan. http://openjurist.org/590/f2d/768.

[6]723 F.2d 1394. 1983. United States v. Adair. http://openjurist.org/723/f2d/1394.

[7]Civ. No. 96-381-HA (D. Or., Oct. 2, 1996). 1996. Klamath Tribes v. Unites States. http://www.clintonlibrary.gov/_previous/KAGAN%20COUNSEL/Counsel%20-%20Box%20011%20-%20Folder%20008.pdf.

and interests using legal recourse, but litigation is time consuming and expensive, a fact which is particularly challenging for tribes that are often underfunded and understaffed.

Eventually, after years of adversarial relations, the Klamath Tribes and the USFS's Fremont-Winema National Forest worked to develop a Memorandum of Agreement (MOA), which was ratified in 1999. The overriding purpose of the MOA is to establish a government-to-government process to incorporate the Tribes as a cooperative government in the development of USFS policy, management, and natural resource activities that may have an effect on the Tribes' sovereign rights and treaty reserved resources. Since the ratification and implementation of the MOA, there has been noticeable improvement in the relationship between the Tribes and the USFS. In the past few years, the Tribes have ramped up their participation and contribution in the NEPA process on projects affecting treaty rights and resources, and are instrumental in shaping federal forest management on tribal ancestral lands.

This case study describes the circumstances that led to the development of the MOA and the ways in which the MOA has improved Tribal-USFS relations. The case study also highlights some of the benefits the Tribes and the agency have experienced as a result of the MOA.

## The Federal-Tribal Relationship Prior to the Implementation of the MOA

Prior to the development and implementation of the MOA, the Tribes' relationship with the USFS was characterized by lack of communication, conflict, and mistrust. For many years, the USFS failed to understand and take into account tribal treaty rights and the federal trust responsibility, factors which affected their ability to adequately and respectfully interact with the Klamath Tribes.

In 1864, the Klamath Tribes signed a treaty that ceded more than 23 million acres of ancestral territory and reserved 2.2 million acres as their reservation, which includes the reserved rights to "hunt, fish and gather in safety on the lands reserved for us "in perpetuity" (Klamath 2014). In the first half of the 20th century, the Tribes were economically self-sufficient, made possible through the harvest of timber on their vast ponderosa pine forests and to a lesser extent on cattle ranching. The Tribes' website states that "[They] owned and judiciously managed for long term yield, the largest remaining stand of Ponderosa pine in the west" (Klamath 2014).

In 1954, despite opposition from both the Klamath Tribes, the Bureau of Indian Affairs and other local, regional and national organizations, the U.S. congress terminated the Klamath Tribes with the enactment of the Klamath Termination Act[8] (Klamath 2014). As a result, the Tribes lost both their federally recognized status as an Indian Tribe and their reservation land base comprised of approximately 1.1 million acres (Klamath 2014). According to tribal staff, in the mid 1970's, the Tribes' treaty rights were also challenged when the Oregon Department of Fish and Wildlife (ODFW) tried to enforce hunting regulation over tribal members. This led the Tribes to sue the ODFW, claiming that termination did not abrogate treaty rights. The Tribes won the lawsuit (493 F. 2d 564 1974[9]), which the state agencies later appealed. The Appeals Court affirmed the original ruling, a decision which affirmed Klamath treaty rights despite the Tribes' terminated status (473 U.S. 753 1985[10]). The affirmation of the Tribes' treaty rights also lead to the formation of the Klamath Indian Game Commission (KIGC) to oversee the Tribes hunting, fishing, and trapping rights. According to Klamath staff, the KIGC was the first official tribal entity to interface with the USFS post-termination on projects affecting treaty resources and rights.

Another outcome of the ruling that affirmed the Tribes treaty rights was the execution of the Consent Decree in 1981 among the Tribes, the State of Oregon and United States of America. There were still unresolved issues relating to fish and wildlife management and conservation.

[8]Public Law 587. 1954. Klamath Termination Act. http://digital.library.okstate.edu/kappler/Vol6/html_files/v6p0635.html#mn1.

[9]493 F. 2d 564. 1974. Kimball v. D Callahan. http://openjurist.org/493/f2d/564/kimball-v-d-callahan.

[10]473 U.S. 753. 1985. Oregon Department of Fish and Wildlife v. Klamath Indian Tribe. http://openjurist.org/473/us/753/oregon-department-of-fish-and-wildlife-v-klamath-indian-tribe

These unresolved issues could have taken many years of litigation to resolve. Instead, parties agreed to enter into the Consent Decree.

According to a tribal staff member, tensions with the USFS regarding management of tribal ancestral lands worsened in the late 1970's and early 1980's, when the USFS began clear cutting ponderosa pine stands. At the time, the Tribes were terminated but still had treaty rights, which included one of the Tribes' primary subsistence species, mule deer. According to tribal staff, the Tribes were concerned that clear cuts were negatively impacting mule deer habitat. Tribal staff explained that, at the time, the Tribes felt that the USFS did not consider tribal input as meaningful, and that the Tribes were often regarded as another interested public, and not with recognition of the agency's trust responsibility to uphold treaty rights.

The United States government restored the Klamath Tribes' federal recognition in 1986[11]. As a result, the Tribes gained more capacity to challenge forest management practices that affected tribal rights and interests. The Tribes began using the National Environmental Policy Act (NEPA)[12] to challenge USFS projects that threatened tribal resources. With the help of a non-profit legal organization in Portland, OR, the Tribes appealed USFS plans and projects, and when appeals failed, the Tribes proceeded with litigation. For 15-20 years, the Tribes used litigation to prevent the USFS from infringing upon tribal rights and interests. After the Tribes won a number appeals and lawsuits, it became clear that they had the power to stop or impede USFS projects. However, litigation was a time consuming, costly, and adversarial endeavor. Current tribal staff suggested that at some point, the two governments mutually decided that an MOA might be in both of their interests. The Fremont-Winema National Forest and the Klamath Tribes worked on the development of the MOA over the course of several years, and it was finally ratified in February of 1999.

[11]Public Law 99-398. 1986. Klamath Indian Tribe Restoration Act. http://www.klamathbasincrisis.org/Indians/history/KlamathTribeRestorationAct1986.pdf.

[12]U.S. Environmental Protection Agency (EPA). 2013. National Environmental Policy Act (NEPA) Policy and Guidance. http://www.epa.gov/compliance/resources/policies/nepa/#air-quality.

Logging on the Klamath Indian Reservation, circa 1919. *Photo by Harold Weaver.*

Logging on the Klamath Indian Reservation, circa 1933. *Photo by Harold Weaver.*

## An MOA Helps Strengthen the Federal-Tribal Relationship

The relationship between the Klamath Tribes and the USFS has improved since the implementation of the MOA. In fact, since 1999, the Tribes have not had to appeal or litigate any projects. The MOA has played an important role in improving the relationship between the Tribes and the USFS, as have the efforts of the Tribes to help the "federal families" (as a tribal staff member puts it) understand their trust responsibilities to the Tribes, as well as what constitutes meaningful consultation.

According to a tribal staff member, the MOA "*laid out a more formalized written foundational framework for the Tribes and the National Forest to work under, instead of unwritten arbitrary processes.*" It provides the two parties with something in common— a document that they developed together and can frequently revisit to inform their continued relationship with each other.

The MOA has two parts: one that guides interaction between tribal and agency leadership (government-to-government), and one that guides interaction at the staff level. The staff level guidelines align closely with the timeline and structure of the USFS NEPA process, and according to tribal staff, have been highly effective. They ensure that the Tribes have a legitimate, meaningful way to contribute input into USFS projects that are of tribal relevance. If they so choose, the Tribes can be fully involved in every step of the NEPA process, or conversely, they can reply to a USFS request stating that they are not interested in participation at this time.

The MOA articulates that the USFS is to use tribal input to inform particular projects. If they choose not to use tribal input, they must provide a written justification describing their reasoning. Should disagreement between the Tribes and the National Forest escalate, or should one of the parties be operating outside of MOA protocols, the MOA has language that calls for a dispute resolution process. So far, the Tribes and the National Forest have not had to resort to dispute resolution. Klamath tribal staff suggest that this is a testament to both parties' commitment to honoring the MOA's protocols.

Since the mid-2000s and particularly in the last 2-3 years, the Tribes have contributed much more rigorous, in-depth participation in the NEPA process and project development. Tribal staff started attending Inter-Disciplinary Team (IDT) meetings, which is a team of natural resource professionals and specialists charged with planning and designing projects. Tribal participation has not only given the Tribes a better on-the-ground connection to USFS projects; it has created another avenue for input of tribal values and expertise.

The Tribes have been able to bring a level of sophistication, experience, and knowledge to the IDT that benefits Tribal and USFS interests. Not only have the Tribes contributed their own knowledgeable staff, they have also contracted top forestry consultants to participate in the process. These consultants also helped develop the Tribes' innovative Forest Restoration Plan for managing and restoring complexity and resiliency to dry East-side ponderosa pine forests. The Tribes Restoration Plan is informing many key aspects of project planning and design.

## Strengths and Limitations of the MOA

According to Klamath tribal staff, some of the strongest elements of the Tribes' MOA with the Fremont-Winema National Forest are the protocols guiding interaction at the staff level. These protocols provide a clearer framework to foster tribal involvement in every step of the NEPA process.

The Tribes and the USFS meet annually to discuss how the MOA is working and whether any MOA revisions are necessary. Since 1999, there has only been one revision

Spring Creek on the former Klamath Indian Reservation, circa 2001. Photo by Klamath Tribes staff.

Ponderosa pine stand near Blue Jay Spring on the former Klamath Indian Reservation, circa 2000. Photo by Klamath Tribes staff.

made, in 2005. A tribal staff member states that "*it has withstood 15 years of being implemented on a day-to-day basis,*" going on to explain that the document's durability is a testament to its well-written nature.

Among the concerns the Klamath and other tribes have in regards to their relationships with the USFS is the high rate of turnover within the agency. New staff may or may not be aware of the history of USFS-Tribal relations, of the federal trust responsibility, or of tribes' treaty rights. Bringing new staff up to speed requires training and time to grasp what the USFS-Tribal relations entails. Even seasoned staff can struggle to fully comprehend what the federal trust responsibility is, and what tribal rights are regarding federal land management. When asked whether this MOA helps mitigate the impacts of USFS staff turnover, a tribal staff member stated, "*it's unlikely*." The staff member went on to say:

> *"You can have the best written policies, regulations and rules, but they're only as good as the people who have to implement them and use them"*

While the MOA may be limited in its ability to cut the learning curve of USFS staff first working with the Tribes, a tribal staff member states that there has been noticeable progress in the Tribes' relationship with the USFS, in part as a result of better federal effort:

> *"All the federal families, not just the Forest Service, are putting a lot more emphasis in the federal-tribal relationship, in part, as a result of Presidential Executive Orders from the White House that filter down through the agencies. We've come a long way. There has been noticeable progress over the years."*

A tribal staff member says that the Tribes and the National Forest have reached a point where both *"[Their] hearts are in the right place, and that's in the resource."*

## Moving Forward

According to tribal staff, the MOA can continue to promote positive and mutually beneficial relations between the Klamath Tribes and the Fremont-Winema National Forest as long as both parties continue to use it in a collaborative way, and not in a way that seeks to push a certain agenda.

In the future, tribal staff would like to see greater tribal decision-making authority, as well as more secure and steady funding that can better enable the Tribes to collaborate and engage in land management efforts with more professional staff. Despite being significantly underfunded and understaffed, the Tribes have accomplished a lot. A tribal staff member explains that the only way they have been able to accomplish as much as they have is by becoming effective collaborators, be it with consultants, with the USFS, or with other entities. These collaborative processes, in many ways facilitated in this case by the MOA, have changed the dynamic of USFS land management on former reservation lands of the Fremont-Winema National Forest. If the Klamath Tribes can secure access to better funding to support tribal forest management, they hope to take these collaborations to a higher level.

## Key Takeaways

- Litigation can be an effective way for tribes to protect tribal rights, but it is time-consuming and costly.
- MOAs can reduce the need for litigation in federal-tribal relations, benefitting both tribes and agencies.
- Tribal participation can greatly enrich federal programs and activities.
- Collaboration can help underfunded and understaffed tribes achieve their objectives.
- Better funding for tribal forest management is needed so tribes can take their collaborations to a higher level.

# Case Study #3: Quinault Indian Nation

*Continuing challenges with consultation and the Northwest Forest Plan's effects on the timber economy.*

## Introduction

The Quinault Indian Nation (QIN) is federally recognized 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 207,150 acres, the majority of which are conifer forest.

The QIN was highlighted in a case study in the 15-year NWFP Federal Tribal Relations Monitoring in which QIN staff discussed their experiences with consultation, and the effects of the NWFP on tribal resources and land management, among other topics. In this case study we revisit with QIN staff to document their present-day experiences and compare them with those described 5 years ago. In many ways, the Nation continues to face the same challenges today as they did during the 15-year report.

## Continuing Challenges with Consultation

In the 15-year report, QIN staff stated that while consultation frequency had increased, consultation was not occurring at the leadership level. Today, those concerns remain largely unchanged. QIN staff explains that they have developed a good relationship with the local ranger district in part due to the local ranger's proactive outreach. However, the QIN has yet to engage in meaningful consultation at the leadership level (with, for example, the regional office or forest supervisor).

Additionally, consultation protocols have yet to be established between the QIN and the USFS. The agency

### Events Leading to the Designation of the Quinault Special Management Area

The Quinault Indian Reservation was established on the Olympic Peninsula in western Washington by an Executive Order in November 1873. Parts of the area encompassed within the reservation were not surveyed until 1892. Because of an inaccuracy in the survey, approximately 15,000 acres along the northern boundary were improperly excluded from the resultant approximately 190,000 acre reservation. The Quinault Reservation was eventually totally allotted pursuant to the Dawes Act, creating 2,340 approximately 80 acre allotments. This fractionation has resulted in serious management complexities that continue to this day. In 1897, President Grover T. Cleveland set aside a large tract of forest land adjacent to the reservation. This tract later became the Olympic National Forest. Part of the boundary for the forest tract was stated to be the "North boundary of the Quinault Reservation." Lands that should have been included within the reservation thus became part of the Olympic National Forest.

The Olympic National Park was established by the Act of June 29, 1938. Part of the land for the park was taken from the Olympic National Forest and included acreage that should have been included in the reservation as established by the 1873 Executive Order. Public Law 100-638, 102 Stat. 3327 (P.L. 100-638), was enacted on November 8, 1988. P.L. 100-638 and was intended primarily to generate revenues from timber harvest to provide a means through which the Quinault Indian Nation could begin to acquire ownership of the allotments to remedy management problems on the reservation, and help decrease the administrative burden of the US government in managing a fractionated landscape.

Section 1 of P.L. 100-638 expanded the reservation by transferring approximately 11,905 acres of land from United States ownership with administration by USFS to United States ownership in trust for the Tribe with administration by the Department of the Interior. In addition, section 2 of the act (referred to as the Quinault Special Management Area) required USFS to continue to administer an additional 5,460 acres of land, but to transfer 45 percent of the income generated from those lands to the Secretary of the Interior to be transferred to the QIN.

often regards listening sessions or technical meetings as consultation, which does not align with how the Nation conceives of government-to-government consultation. QIN staff explains that they are waiting to see if President Obama's Executive Memorandum of November 5, 2009 for the Heads of Executive Departments and Agencies on Tribal Consultation will bring about any positive changes. The memorandum has sought to promote "*regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175*" (Presidential Memorandum 2009).

## Quinault Indian Nation Consultation Protocols

Despite not having established consultation protocols with the USFS, the QIN has proactively developed its own internal consultation protocols that are intended to guide federal relations with the Nation. In fact, the QIN was the first tribe to present its own consultation protocols to President Obama. Currently, the QIN hands out these protocols to some of the agencies with which they interact. For example, the QIN provided a copy to Olympic National Park staff and leadership when the two parties worked together on the development of an MOU. The QIN's consultation protocols clarify, for example, that government-to-government consultation involves decision-makers, not technical staff.

## NWFP Impacts on the Quinault Indian Nation Timber Economy

In the 15-year report, QIN staff described how timber harvest reductions caused by the NWFP has affected the QIN's timber economy. Today, those challenges continue. The NWFP has reduced logging in the region, which has led to a reduction in logging infrastructure, thereby affecting the ability of the QIN to carry out their timber operations. QIN staff explains that timber production depends on access to cable loggers, ground-based loggers, fallers, road-builders, mills, truckers, etc.; along with limited logging equipment. It also depends on having sufficient volume of various species and log sizes to create market demands that can create or sustain higher market values. This includes large log export markets and sawmills with the capacity to cut these high quality logs into lumber.

When there is not enough timber infrastructure in a given region, it can be challenging to carry out a timber harvest from start to finish in a time and cost-effective manner. Not only does the QIN have to wait their turn for some of these services; they now come at a higher cost than they did before.

> *"Because we don't have the base we used to, the logging industry and related economies are suffering" (QIN staff).*

QIN staff explains that recently, a timber sale was advertised and received zero bids, the reason being that none of the interested purchasers could find a logger who could commit the time to do the harvest. There has also been a loss of markets and sawmill availability to process and sell large, old-growth, high quality logs. These trends illustrate the challenges experienced by timber-dependent economies such as the QIN's in an era of decreased timber infrastructure, availability, and demand.

One promising initiative that is being piloted in Eastern Washington is the concept of "anchor forests."

> *"An initiative of the Intertribal Timber Council, the anchor forest concept centers on the idea of tribal forest managers collaborating with neighboring ownerships to collectively ensure the long-term flow of harvested timber sufficient to sustain wood processing facilities within feasible transportation ranges. Key to these collaborations is recognizing that forest management must be both ecologically sustainable and economically viable" (2013 IFMAT)*

QIN staff explains that there has been interest expressed in their region in increasing the volume of timber production

in order to keep viable timber infrastructure in the area. It would be helpful to have a group develop an anchor forest plan in the Olympic Peninsula to keep a viable timber economy.

## NWFP Impacts on Quinault Special Management Area Revenues

Another challenge discussed by the QIN in the 15-year report that remains unresolved involves the Quinault Special Management Area (QSMA). The QSMA is a 5,460 acre area of forestland 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 (see *Events Leading to the Designation of the Quinault Special Management Area* description above).

Quinault Special Management Area. *Photo by Larry Workman.*

View from the Quinault Special Management Area. *Photo by Larry Workman.*

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 ceased almost entirely as a result. Because the QSMA is administered by the USFS, it is subject to NWFP policy, and management has been reduced to thinning only. Since timber production was drastically reduced, the revenue generated by the property has been minimal, thereby reducing revenue received by the QIN and compromising their ability to acquire lands as planned and provided for in P.L.100-638.

The lack of revenue generated by the QSMA was discussed by QIN staff in the 15-year report and remains unchanged. With the exception of the first two years after the QSMA was designated, the QIN has received only a small fraction of the yearly revenue that was first anticipated. An operation that was expected to generate over $100,000 per year has instead generated a few thousand dollars per year on average.

## Disagreement with USFS Forest Management Strategies

QIN staff explains that the NWFP has been beneficial by relieving some of the QIN's burden in protecting old growth forests. However, as the above descriptions illustrate, the NWFP has had significant impacts on the QIN's and broader regional timber economy. QIN staff doesn't agree with the NWFP's hands-off strategy, and feel that there are ways to reach the NWFP's ultimate goal without profoundly affecting timber production.

> *"One of the objectives of the NWFP is to accelerate the speed of late successional habitat, but there never was just one large expanse of old growth*

*across this country. Late successional habitat can be created through silviculture without having to shut down timber production. It's about stand dynamics" (QIN staff).*

*"Timber harvest doesn't have to destroy the environment. Using silvicultural practices, all objectives can be met: we can have fish and wildlife habitat, we can have clean water, and we can have a timber base, just let your silviculturist know what you want and he/she can get you there" (QIN staff).*

## Challenges to Tribal Cultural Resources Access

In recent years, QIN tribal members have been struggling to acquire "canoe trees," or large cedar logs from which a traditional canoe can be made. According to QIN staff, tribal members should be able to contact USFS staff to ask about tree availability. While in the 15-year report, QIN staff was satisfied with tribal access to cedar logs, the staff explains that access has been more difficult in recent years. QIN staff believes that part of the reduced access is due to road closures, while part of it is due to the fact that the USFS has not inventoried where large logs are located.

*"It seems the USFS does not have an inventory of where large logs are located, and it would be helpful to know where and what species the logs are, and what the procedure would be if it were to fall" (QIN staff).*

A tower logging operation in the North Boundary area. The QIN needs a skilled operator of this nature in order to harvest timber on the Reservation's steep grades, and yet struggles to retain such operators as a result of decreased timber production. *Photo by Larry Workman.*

The USFS could better facilitate tribal access to these important cultural resources, by developing a large tree inventory as well as protocols for what to do when these trees fall, and incorporating this information into USFS regional planning documents and Environmental Assessments.

## Bureaucratic and Fiscal Challenges, and Steps Forward

QIN staff explains that there are bureaucratic and fiscal challenges that affect the federal-tribal relationship, stating that *"the bureaucracy is very onerous*," and that *"the rules*

Quinault Business Committee Members on a tour of the QIN's 'Canoe Stand.' Back row, left to right: Councilman Clarinda "Pies" Underwood, Councilman Tyson Johnston, Secretary Latosha Underwood, President Fawn Sharp and Councilman Jim Sellers. Bottom: Councilman Lucretia Pope, Vice-President Gina James and Councilman Dawneen DeLaCruz. *Photo by Larry Workman.*

*the USFS has to follow means that things never get done quickly."*

Among the bureaucratic frustrations the QIN experience is the long length and convoluted rules of the National Environmental Policy Act (NEPA) process.

> *"The Upper Quinault River is horribly degraded because of logging and homesteading. The QIN has been leading a program in which they did a programmatic Environmental Assessment (EA) under the NEPA process. Even though they went through a formal BIA NEPA process, the USFS now has to do its own EA because of how USFS policy is written. This really slows things down. Every agency interprets the NEPA process differently, and does it differently" (QIN staff).*

According to QIN staff, a lot of national programs are becoming available because of the efforts of the Intertribal Timber Council and the USFS Office of Tribal Relations informing agencies that they need to have a better relationship with tribes. One of the programs that may benefit the QIN is a streamlined NEPA process that can speed up activities such as timber sales. Simplifying the NEPA and other bureaucratic processes is a way for understaffed and underfunded tribes to use their resources more effectively.

QIN staff also make mention of the need to improve tribal funding for forest management, reflecting the sentiments of the staff of the two other tribes highlighted in this report's case studies, as well as the findings of the 2013 IFMAT report.

> *"It would be nice if the reservation got the same funding as USFS to manage our forests" (QIN staff)*

## Key Takeaways

- Government-to-government consultation should involve federal-tribal interaction at the leadership level.
- A lack of consultation protocols can challenge federal-tribal communication and collaboration.
- Tribes can create internal consultation protocols that guide agencies and organizations when consulting and/or collaborating with a given tribe.
- NWFP policy can affect tribal timber economies by reducing logging infrastructure in tribal regions.
- The Anchor Forest concept may serve as a strategy to protect tribal and other timber economies.
- Federal bureaucracy can be especially burdensome for tribes that are understaffed and underfunded.
- Tribes need better, more consistent funding for tribal forest management.

# Case Study #4: Mechanisms for Strengthening Accountability in Consultation

*Memoranda, tribal ordinances, and federal policy as tools to enhance federal-tribal relations.*

## Introduction

Memoranda of Understanding (MOUs) were highlighted in a case study in the 15-year report as mechanisms that can strengthen federal-tribal relations. Five years later, MOUs continue to be important tools for tribes and federal agencies. When developed in a collaborative fashion that addresses the needs of both tribes and agencies, MOUs and Memoranda of Agreement (MOAs) can strengthen the relationship between parties, and make consultation and collaboration more accountable processes, as is illustrated by Case Study # 2. In addition to MOUs and MOAs, there are also new tools and policies in the works intended to increase accountability in consultation. Tribes in Arizona and elsewhere are exploring the possibility of using tribal law to establish baseline protocols for meaningful government-to-government consultation. Nationally, Congress is expressing interest over H.R. 1600, a consultation bill introduced by Rep. Grijalva that seeks to *"prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Indian tribes regarding Federal Government activities that impact tribal lands and interests to ensure that meaningful tribal input is an integral part of the Federal decisionmaking process."*

In a separate effort from this NWFP report, in 2013 the Oregon Washington BLM office conducted outreach pursuant to DOI's Tribal Consultation Policy and BLM national direction, to several tribes in Oregon, Washington, Idaho, Nevada and California, including tribes in the NWFP area. In some cases this outreach led to the development of MOUs with tribes. In particular, some tribes in western Oregon elected to enter into agreements with the BLM utilizing cooperating agency status to delineate their role(s) during revision of BLM resource management plans in western Oregon.

In this case study, we describe the common structure of MOUs, and describe the strengths and weaknesses of these documents as mechanisms for meaningful consultation. We also highlight tribal ordinances and consultation policy as new strategies that could strengthen the accountability of consultation.

## The Structure of MOUs

For this part of the case study, we reached out to federal agencies within the NWFP region and asked that they fill out an online questionnaire regarding their experience with federal-tribal MOUs and MOAs. We asked agency staff whether they were aware of any federal-tribal MOUs or MOAs within their agency. If the answer was affirmative, we asked whether we could have access to a digital copy of the MOUs and/or MOAs. We received 25 MOUs, 1 General Agreement, and 1 MOA from the Bureau of Land Management, U.S. Forest Service, and National Parks Service. Importantly, none of these documents reference the NWFP. Nevertheless, they serve as helpful examples of documents that serve to navigate and better define federal-tribal relations. We analyzed the content of these documents, and compared our findings with tribal staff responses regarding the strengths and weaknesses of federal-tribal relations, particularly as they relate to consultation.

## Common MOU components

Most of the MOUs we received contained a set of common components that structured the document. These components included:

*Purpose:* Broadly defines the purpose the MOU is intended to serve. This section is normally a short paragraph describing the broad outcomes the signing parties hope to achieve.

*Objectives:* Describes specific strategies for MOU implementation. Typically involves a list a of objectives that are necessary to reach the intended outcomes of the MOU, as determined by all parties.

*Authorities:* Provides the basis for consultation rooted in tribal constitutions, the U.S. Constitution, and federal legislation and includes federal trust and consultation responsibilities. This section differs for each tribe, depending on its history and relationships with federal agencies and other entities.

*Obligations:* Includes a description of mutual obligations held by each party and obligations specific to each party. The obligations cover project planning, scheduling, and implementation. They also can cover procedures that range from identifying a contact person who is responsible for facilitating and maintaining government-to-government communication, to pursuing opportunities for collaboration among the parties and other federal agencies.

*Terms and Conditions:* This section describes the special arrangements, provisions, and requirements that characterize the document. Two particularly important elements often included in this section include Provisions for MOU Amendments, and FOIA.

Provisions for MOU Amendments: These provisions allow the parties to suggest MOU amendments, which are signed and implemented upon mutual consent.

Freedom of Information Act (FOIA): MOUs typically include language informing the signing parties that the information resulting from the MOU may be subject to FOIA requests. This means tribes not wanting sensitive information to potentially be available to the public should withhold such information from MOU-related documents and communication.

## Other MOU components

A few of the MOUs we assessed include provisions for dispute resolution, as well as definitions.

*Dispute Resolution:* If any party has issue with an aspect of the MOU or the processes described therein, a section on dispute resolution provides information on how to ameliorate conflict.

*Definitions:* Lists and defines the terms that underlie the MOU. The definitions are agreed upon by the various signing parties, and help prevent misinterpretations of the language.

## MOU Strengths

MOUs can serve to formalize relationships, clarify mutual interests and obligations, improve communication, and save tribes and agency time and resources. The MOUs we reviewed contained a number of valuable protocols and language that serves to strengthen federal-tribal relations. Examples of strong MOU provisions and language included:

- Protocols for working relationships as well as for formal consultation
- Detailed descriptions of what constitutes formal consultation, under what conditions it will occur, and how the process will unfold
- Protocols for communicating consultation outcomes
- Coordination between agencies to save tribes time and resources
- Language that promotes and protects gathering rights/ treaty rights
- Establishing annual or more frequent meetings to discuss the effectiveness of the MOU and federal-tribal relationship more broadly
- Promoting collaborative training and monitoring, and information-sharing opportunities
- Establishing opportunities for co-management
- Promoting tribal employment within federal agencies
- Agency pay/ expense coverage in exchange for consultation

## Room for Improvement

There were also some arenas that were not sufficiently addressed in many of the MOUs and could be improved to strengthen the adequacy of these documents. Protocols or

topics that are often underutilized or inadequately addressed include:

- Protection of TEK and culturally sensitive information
- Cultural competence training
- Mechanisms for addressing staff turnover (i.e. training and orientation)
- Agency communication about how tribal input has affected agency action
- Dispute resolution mechanisms

There was also concern expressed by some tribal staff regarding the fact that MOUs tend to not be legally binding, reducing the accountability of consultation. MOUs are typically not legally binding documents, though it ultimately depends on the language included within the MOU. MOUs are among the most utilized mechanisms to establish consultation protocols, yet for some tribes seeking a more legally binding mechanism, they might not suffice. New approaches, such as tribal consultation ordinances and proposed national consultation policy, are being taken by tribes, allies, and legislators to make consultation more accountable.

## Tribal Consultation Ordinances

In response to the challenges experienced by Arizona tribes when engaging in consultation, the University of Arizona's Indigenous Peoples Law and Policy Program is researching "*the best practices and tribal laws already in existence and organizing them into a workable format for use by Arizona Tribes*" (University of Arizona 2013). The intent is for this information to inform a tribal consultation ordinance that Arizona tribes could enact as tribal law by exercising tribal sovereign authority. The tribal ordinance would set baseline requirements for federal and state agencies seeking to consult with the tribes.

> *"The hope is that tribes will use this model to adopt and enforce a uniform, baseline set of consultation laws that all federal (and state) agencies and departments would be required to comply with when consulting with the Indian Tribes in Arizona" (University of Arizona 2013).*

The University of Arizona has compiled language used by other tribes, agencies, and governments that can serve as examples and/or context for the ordinance to be developed by the Arizona tribes. The document contains examples and background information for a variety of consultation-related topics that would likely form part of the future ordinance, including when to initiate consultation, timing of consultation, traditional knowledge protection, consultation outcomes, and consultation funding, among others.

Tribal consultation ordinances are also peaking the interest of tribes outside of Arizona seeking to increase the accountability of consultation. Enacted as tribal law, tribal ordinances would enable tribes to take legal recourse if agencies fail to abide by the consultation requirements specified by the ordinance. This could significantly enhance the accountability of consultation processes. For more information, visit: http://www.tribalconsultation.arizona.edu/.

## Consultation Policy at the National Level

In April 2013, Rep. Grijalva in the House Committee of Natural Resources, introduced H.R. 1600 titled "Requirements, Expectations, and Standard Procedures for Executive Consultation with Tribes Act," or the "RESPECT Act." The RESPECT ACT[13] is intended to "*prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Indian tribes regarding Federal Government activities that impact tribal lands and interests to ensure that meaningful tribal input is an integral part of the Federal decisionmaking process*" (H.R. 1600). The Act's goals are listed as the following:

(1) to establish and support a process of regular, meaningful consultation and collaboration with Indian tribes in the development of Federal policies and the initiation of Federal activities that impact tribal lands and interests;

[13]H.R. 1600. 2013. RESPECT Act. http://www.gpo.gov/fdsys/pkg/BILLS-113hr1600ih/pdf/BILLS-113hr1600ih.pdf.

(2) to strengthen the United States government-to-government relationships with Indian tribes;

(3) to establish minimum standard procedures to ensure the above goals are achieved; and

(4) to recognize tribal regulatory authority and jurisdiction generally, and specifically through the waiver process.

At present, the Act contains seven sections: requirement for consultation, timing, scoping stage consultation, decision stage procedures, documentation and reporting, implementation, and sensitive tribal information. The Act's language addresses a number of weaknesses highlighted in this report, including requiring initial consultation to be at the tribal leadership level, and better documentation and reporting of the consultation process and outcomes. Importantly, the Act provides for protection of sensitive tribal information by making consultation meetings closed to the public at the discretion of the tribe/s involved, and creates a Freedom of Information Act exception for sensitive tribal information records. Additionally, the Act also requires that agencies pay tribes who wish to be paid for providing tribal documentation that informs agency plans and programs.

Congress is expressing interest in the Bill, which tribal staff view as a promising step forward. On September 2014, a House Subcommittee hearing was held. If the RESPECT Act eventually becomes law, agencies would be legally required to follow certain protocols that ensure accountability in the federal-tribal consultation process.

## Key Takeaways

- MOUs, and to a lesser extent MOAs, continue to be used by tribes and agencies to formalize federal-tribal relations.
- For some parties, MOUs may not be strong enough mechanisms to ensure accountability in consultation.
- Tribal consultation ordinances are being explored as mechanisms that could enhance accountability in consultation by enacting tribal law that sets minimum consultation requirements.
- If written into law, the RESPECT Act, introduced as a proposed bill to the House of Representatives by Rep. Grijalva in April 2014, would legally require agencies to follow consultation protocol that would enhance accountability and include a number of tribal protections.

# V. Recommendations

The interviews and case studies revealed a number of arenas in which improvements could be made in order to make federal-tribal relations more effective and meaningful. Of particular importance is the need to align tribal and federal visions on what constitutes consultation, the need to ensure that agency staff are culturally competent and informed on treaty rights, other tribal rights, the federal trust responsibility, and the history of federal-tribal relations, and the need to ensure that tribes' needs, knowledges, and practices shape not only tribal, but also federal forest management. This section provides recommendations for federal agencies based on key findings from the interviews and case studies discussed in this report. Recommendations are divided into three categories:

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

## 1. Consultation Recommendations

### Learn about, recognize, and act on each tribe's unique vision for consultation.

The most important recommendation regarding consultation is for agencies to understand that each tribe has a unique vision and unique needs when it comes to consultation. Meeting with each tribe to learn about this vision, and then recognize and act upon it by developing customized consultation protocols that honor this vision could address many of the concerns tribes have in regards to the adequacy of consultation. Additionally, ensuring that all new agency staff familiarizes themselves with these customized protocols is critical.

### Increase effectiveness of government-to-government consultation.

One concern articulated in response to several interview questions related to the discrepancy between what tribes and agencies consider true government-to-government consultation. Respondents made the distinction between what they refer to as "small-c" consultation (project-related consultation at the staff level), and consultation with a capital C (consultation between tribal council and agency leadership regarding broader decision-making). Both types of consultation are important when nurturing an effective federal-tribal relationship, but it's the degree to which consultation with a capital C is appropriately carried out that conveys to many tribes whether their sovereign status, and treaty and other tribal rights are being respected by federal agencies. Agencies should have full knowledge of what the government-to-government relationship means, and ensure they fully and respectfully engage in consultation.

### Create more formalized, individualized agreements between tribes and agencies to clarify the relationships between them.

Formal consultation policies and other agreements such as MOUs or MOAs can specify tribal contacts, procedures, and the topics that an agency should be notifying tribes about in regards to agency actions that affect tribal interests and rights. Defining these parameters can improve the adequacy of agency notifications, thereby reducing the burden on tribes and improving their ability to meaningfully address issues of critical importance. It is critical that agreements be customized to meet the needs of each specific tribe, a process which requires meeting with that tribe and understanding tribal rights, lands and resources of interest, culture, and capacity. The process of developing these agreements itself can strengthen mutual understanding and enhance federal-tribal relations.

### Strengthen the accountability of consultation

It is not enough to engage in consultation with tribes and listen to tribal input and concerns– agencies need to report how tribal contributions have been incorporated into federal documents or affected agency decisions. Without this, tribes have little way of knowing whether their input has been incorporated, and therefore have little incentive to consult in the first place.

Several respondents expressed concern over the lack of accountability in the consultation process. Agency and tribal leadership can work together to develop accountability measures for agencies as they pursue consultation. MOUs, MOAs, tribal consultation ordinances, and national consultation policy development are among the mechanisms that can be used to make consultation a more accountable process.

### Customize tribal notifications

Many tribes receive numerous notifications from agencies regarding agency actions that may have implications for tribal lands, resources, cultures, and/or economies. When the content of these notifications is generic and not specific to a given tribe, that tribe must take time to carefully review the ways in which the given action may have tribal implications, an activity that takes staff time that many tribes do not have due to limited funding and staff. Agencies, particularly those with staff partially or fully dedicated to tribal relations, could dedicate more effort to customize the content of notifications in order to reduce the burden on tribes and improve their ability to adequately respond to notifications that the tribe deems critical. In tribal notifications, agencies should aim to address the following:

1. What it is that the agency is looking to achieve?
2. How does it relate to the tribe?
3. What actions need to be taken by the tribe?

### Map and increase agency awareness of tribal lands and territories in relation to the NWFP boundary

Currently, the NWFP does not have maps delineating how the NWFP boundary interacts with tribal lands and territories. The USFS and BLM should develop GIS maps that clearly specify which tribes have reservations, rancherias, and/or trust lands within the NWFP boundary. Maps should also be developed indicating which tribes have ceded lands and ancestral territories within the NWFP boundary. These maps can serve to clearly identify which tribes may be affected by specific agency actions across the NWFP region, and can also serve to clarify federal-tribal contacts and relations.

### Increase agency and tribal awareness of NWFP policies and their implications

Both tribes and agencies experience turnover in leadership and staff. Many of the staff and leadership that were a part of agencies and tribes during the development and initial implementation of the NWFP have likely changed in the last 20 years. New staff and leadership may not be as familiar with the NWFP as the people who were active when it was first put in place. The USFS and BLM should ensure that both agency and tribal staff and leadership are familiar with NWFP policies and their tribal implications.

### Work with tribes to develop an orientation process for new agency staff

Staff turnover continues to be a concern for tribes and agencies. Agencies and tribes can work together to develop an orientation process that introduces new staff to the federal-tribal relationship, and how to effectively and adequately navigate this relationship. Orientations could include a history of federal-tribal relations in the region, information on treaty and other tribal rights and the federal trust responsibility, and training on how to engage in federal-tribal consultation and/or collaboration.

### Increase the use of more personal forms of communication

Increasing more personal forms of communication such as face-to-face meetings and phone calls can add legitimacy, be more culturally appropriate for tribes, and enhance camaraderie between tribes and agencies. Impersonal communication forms such as mass mailings and e-mails are off-putting to many tribes and are unlikely to lead to meaningful interactions.

### Encourage tribal participation in intergovernmental forums.

Tribes are critical contributors to intergovernmental forums and, as many respondents asserted, tribes often benefit from participating in these forums. As such, agencies should ensure that they are informing all tribes of intergovernmental forum opportunities in their region, and fully encouraging tribal participation in these forums.

### Increase opportunities for collaboration in planning and management

Collaboration is another critical mechanism to enhance the federal-tribal relationship. Bringing tribes into planning and management processes from the start can ensure that tribal needs and traditional knowledge inform these processes. This benefits both agencies and tribes, as it results in plans and management that are informed by various ways of knowing and that address tribal needs, and reduces conflict later on in the planning and/or management process.

### Incorporate tribal comments into agency plans prior to making plans public.

Tribes are governments that hold special relationships with the federal U.S. government. As such, their comments and contributions hold a different importance than that of the general public, and should be incorporated into federal plans and documents prior to these being made public.

### Coordinate consultation policies and practices across USFS districts.

Currently, there seems to be little coordination between USFS districts in regards to federal-tribal practices, policies, and guidelines. While each district should work with regional tribes to customize consultation and communication with each tribe, there needs to be more consistency across general federal-tribal practices across districts and the broader organizational structure.

### Strengthen pathways within USFS agency for tribal concerns to flow from districts to agency leadership.

There is a need for clear direction from national Forest Service leadership in regards to federal obligations towards tribes, consistency across forests in regards to federal-tribal relations, conveyance of tribal needs and concerns, and education of local and regional staff regarding federal funding opportunities and congressional programs of tribal relevance.

### Increase opportunities for inter-agency learning

Some agencies may have more effective ways of approaching certain aspects of federal-tribal relations than others. Federal agencies can engage in mutual learning opportunities to strengthen federal-tribal relations.

## 2. Tribal Rights and Access Recommendations

### Train agency staff across all levels to ensure strong cultural competency in tribal matters

In order for the federal-tribal relationship to be meaningful, agency staff must have a clear understanding of:

1. Treaty and other tribal rights
2. Federal trust responsibilities
3. The impact of unratified treaties (in areas where unratified treaties exist)
4. The history of federal-tribal relations

Agencies can develop trainings, ideally in coordination with tribes, that serve to inform agency staff on these issues. Only upon clearly understanding these topics can agency staff engage meaningfully in federal-tribal consultation, collaboration, and communication. Respondents also suggested that agencies must take responsibility for past wrongdoings, and take the necessary steps to re-build a level of trust that can foster meaningful relationships with tribes.

### Review policies that severely impact tribes' rights to interact with traditional lands and resources.

Treaty rights and other tribal rights are critical to tribal cultures, lifeways, and economies and should not be infringed upon other than under extreme circumstances. Agencies have the responsibility to consult with tribes and find appropriate compromises in situations where management priorities interfere with tribal rights.

### Adopt procedural frameworks to protect sensitive tribal and traditional knowledge.

As tribes spearhead and become involved in federal-tribal collaborations related to traditional knowledge, it is critical for there to be strong procedural frameworks that protect sensitive tribal and traditional knowledge. Agencies can reference and implement the Guidelines for Considering Traditional Knowledges in Climate Change Initiatives to ensure protection of sensitive knowledge and meaningful, equitable collaboration with tribes.

### Develop and use effective conflict resolution processes

Conflict resolution processes can be mutually beneficial in that they may avoid costly and contentious litigation, and potentially result in stronger solutions and enhanced federal-tribal relations. Agencies and tribes can work together to develop conflict resolution mechanisms that can be deployed when conflict arises. Conflict resolution appears to be underutilized in federal-tribal relations, and should be more frequently incorporated into federal-tribal agreements such as MOUs and MOAs. Conflict resolution processes that were deemed effective by respondents were led by a neutral facilitator agreed upon by both the tribe and the agency, and established conversation ground rules that ensured mutual respect and equal speaking opportunities.

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

### Consult and collaborate with tribes to enhance the compatibility of federal-tribal forest management practices

Agencies have a trust responsibility to protect tribal needs, lands, and resources when managing federal lands. Additionally, agencies could benefit from incorporating tribal values and knowledges in federal land management. As such, agencies should consult and collaborate with tribes to make federal and tribal forest management practices more compatible, align federal and tribal management programs, and improve time- and cost-efficiency for both agencies and tribes. Management compatibilities and incompatibilities that arose during the interviews included the following:

#### Compatible management

- Management that focuses on ecosystems rather than single species
- Holistic conservation of the forest
- Protection of riparian areas and prioritization on water quality
- Restoration and/or protection of fish and wildlife habitat
- Incorporation of tribal forest management practices, including prescribed fire
- Considerations of tribal needs and values when managing forests
- Multiple-use management orientation
- Shift from clear-cuts to regeneration harvests with partial stand retention
- Management of noxious weeds

#### Incompatible management

- Exclusion of management as a conservation mechanism
- Aversion to fire as a natural process and as a management practice
- Prioritization of timber over other forest resources
- Prioritization of industry needs over tribal needs
- Lack of incorporation of traditional knowledge and tribal values into management
- All-or-nothing approaches that either deplete ecosystems or shut down economies
- Lack of true multiple-use considerations

### Increase opportunities for tribal land management

At the core of many tribal cultures and knowledge formation is close interaction with the landscapes and waterscapes that form a critical part of tribal culture. Many tribes are eager to increase their management of lands that are in their ancestral

territories but are currently managed by federal agencies. Agencies should work with tribes to increase opportunities for such management, promoting the implementation of policies such as the Tribal Forest Protection Act. This can reduce management responsibilities for federal agencies, and restore land management to tribes.

## Increase funding and support opportunities for tribal natural resource departments

The 2013 IFMAT Report lists steady, predictable and adequate funding, and access to technical support and research among the critical prerequisites for tribes to maximize their forestry programs. In order for tribes to be able to consult, collaborate, manage and engage fully, tribal natural resources departments (and tribes more generally) need to receive adequate and steady funding comparable to that of agencies with similar land management responsibilities.

## Increase funding and ensure adequate staffing levels for agencies working closely with tribes

Respondents expressed concern regarding staff reductions in federal agencies, a fact which leads to tribes being underserved and receiving less technical support. Tribes are often underfunded and understaffed themselves, and depend on the technical support and communication capacity of agencies to carry out their planning and management objectives. Agencies working with tribes must be sufficiently staffed to meet tribes' needs and fulfill federal trust responsibilities.

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# Appendix A. Prototype of Letter Sent To Tribes

Tribal Leader' name, title
Tribe
Address
City, State  Zip code

Dear Tribal Leader' name, title:

We are writing to invite you to participate in an effort to monitor the Federal-Tribal relationship in the context of the Northwest Forest Plan. This letter summarizes the background and objectives of the monitoring efforts. Included with the letter is also a description of the process we will use to develop the monitoring report and accompanying case studies, as well as a discussion of the confidentiality issues related to the monitoring process..

Under the terms of the 1994 Northwest Forest Plan (the Plan), agencies managing federal land within the range of the Northern Spotted Owl are to conduct monitoring of the effects of implementation of the Plan Standards and Guidelines.

The USDA Forest Service Pacific Northwest Region has contracted with the University of Oregon Environmental Studies Program to implement the monitoring in California, Oregon and Washington.

Through these interviews, reporting, and follow-up case studies, we hope to gain information that will be meaningful and provide beneficial impacts to the management of those lands entrusted to federal land managers.  We look forward to your enthusiastic participation in this process and hearing the insights and perspectives you are willing to share.

If you have questions or comments regarding this process, please contact _____, at _____

Regional Forester
Region ____
Forest Service

# Appendix B. Interview Questions

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 C. Glossary of Acronyms

| | |
|---|---|
| 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 |