

TRIBAL RIGHTS AND INTERESTS

Monitoring Conducted

Consultation and Trust Responsibilities with Tribal Governments

The Superior National Forest (SNF) goal is to inform the Tribal Chairs, staff and 1854 Treaty Authority (1854 Treaty Authority represents Grand Portage and Bois Forte Bands), at the initial planning stage of projects so Tribal governments can help develop proposals and shape management planning actions. With early input from the Bands, the SNF can mitigate actions and propose projects which would better serve the Tribes in their exercise of Treaty Rights. It is appreciated and recognized that the SNF is part of the ceded territory and that tribal members use the area for hunting, fishing, gathering forest products, recreating, and other cultural activities.

The need for continued discussions between Tribal entities and the SNF to develop solutions that mutually meet Tribal and the SNF needs, particularly resolution of tribal access in the pursuit of hunting, fishing and gathering, is noted. Consultation will continue to occur during FY08 and beyond in order for the SNF and the Bands to continue to develop solutions that allow the SNF to fully meet our obligations to provide Band members with their Treaty rights and interest to the lands that are managed by the Superior National Forest. Concerns that were raised by Tribal entities that consultation to resolve issues doesn't seem to be filtering down to on the ground activities were addressed and will continue to be addressed in FY08 and beyond. Efforts were made, and will continue to be made, to have Tribal/District Ranger consultation pre-scoping, since District Rangers have direct responsibility for on-the-ground-issues. This will allow for the Tribes to be part of the solution and for changes to be made before the general public is involved.

During Fiscal Year (FY) 2007, Bois Forte, Fond du Lac and Grand Portage Bands of the Lake Superior Ojibwe, and the 1854 Treaty Authority were consulted with and were kept informed of projects on the SNF. The Forest Supervisor, Deputy Supervisor, District Rangers and specialists periodically met with Tribal elected officials, Band members and staff, and 1854 Treaty Authority personnel. The Bands received the Superior Quarterly which provides a written report of activities that will occur each quarter and were consulted individually on projects of specific interest. The Bands also received information on individual SNF projects.

During FY 2007, project consultation and government-to-government contacts were made in the following programs, projects and incidents:

Tribal Rights Summary Points

During FY 2007, project consultation and government-to-government contacts were made in the following programs, projects and incidents:

- * Forest Heritage Program
- * Forest Vegetation Management Projects
- * Wildlife & Fisheries Management Consultation
- * Lands Projects
- * Minerals Activities
- * Travel Management
- * Campground Concessionaire
- * Air Quality
- * Prescribed Burns
- * Campground Use
- * St. Louis County Community Wildfire Protection Plan

Forest Heritage Program:

SNF staff consulted with the Bands on the Heritage annual program of work, and discussed all projects in advance of commencing the project including proposed Passport In Time (PIT) projects. Staff also reviewed the Heritage Annual Report of Work Completed and provided results of the completed projects.

- **Programmatic Agreement** : A formal Programmatic Agreement is near completion in regards to heritage consultation with the Bands, SHPO and the Advisory Council on Historic Preservation.

- **Vermillion PIT project:** During the field season, one site associated with the Vermillion PIT project was evaluated.
- **Burial Sites:** Ten of 12 recorded burial sites were monitored in 2007 to insure no impacts are occurring through SNF projects or visitor use of the adjacent areas. A Historic Native American burial site received a blessing by a Bois Forte elder at a ceremony with SNF, Bois Forte and 1854 Treaty Authority staff in attendance. The site is scheduled for closure and enhanced protection in 2008.

Forest Vegetation Management Projects:

- **SNF Five Year Vegetation Plan:** consultation with 1854 Treaty Authority to determine how to best discuss projects planned in out-laying years in order to get tribal input pre- mid-level and pre-scoping.
- **Border Project:** Consultation with 1854 Treaty Authority pre-scoping.
- **Whyte Project:** Built upon earlier discussion in FY06, with continued Tribal consultation on this project with specific concern to issue of access for hunting moose.
- **Glacier Project:** Consultation with 1854 Treaty Authority and Bois Forte pre-scoping. Specific roads information was exchanged. Tribal representatives main interests were maintaining opportunities for hunting and gathering, potential large openings for moose habitat and the potential for wild rice seeding.
- **Mid-Temperance Project- Environmental Assessment:** -Consultation with 1854 Treaty Authority resulted with the Decision of Record to included parking pull-offs to be established next to a number of stands with proposed clearcut units in order to improve Band members Treaty rights to subsistence based hunting.
- **Cascade Vegetation Management Project Scoping Report.** Consultation with 1854 Treaty Authority in which they stated their support for the creation of young age class forest types that is beneficial habitat for moose. Also stressed the importance to allow for access (motorized) for Tribal moose hunters, with access by truck or ATV into some of the treatment units and maintained that the Forest Service must consider treaty-right hunting activities as a use to be accommodated rather than a use to be curtailed. Continued access to Mark Lake was noted as important as it is utilized by Tribal wild rice harvesters.

Resource Issues:

- **Wild Rice:** Consultation with Bois Forte and 1854 Treaty Authority to discuss wild rice management, access and monitoring throughout the SNF.
- **Hush Lake:** consultation with 1854 Treaty Authority on cooperative wild rice management for Hush Lake.
- **Seven Beavers Lake:** consultation with Tribes over access for wild rice on Seven Beavers Lake.
- **Access to Tommila Lake** (formerly know as Stone) for Gathering of Wild Rice: In FY07 a preliminary trail route was opened with expectations that the trail and a small (3 vehicle) parking space will be completed in FY08. 1854 Treaty Authority requested access across public land to the lake, which is known for its wild rice and in FY06 preliminary work of located access was initiated.

Wildlife & Fisheries Management Consultation:

- **Wood Turtles:** Consultation with Fond du Lac over wood turtles management.
- **Moose:** Consultation and coordination with Fond du Lac on moose research project
- **Walleye Assessments:** Cooperated with the Fond du Lac and 1854 Treaty Authority to conduct spring and fall walleye assessments. These assessments have been ongoing since FY05 and information gleaned has been extremely useful for evaluating and managing fish populations, aquatic habitat and Treaty resources on the SNF.
- **Dark River:** Continued to conduct fish population assessments with Fond du Lac and other partners to monitor the status of existing fish populations and the success of future stream channel modification projects intended to improve habitat for brook trout and other aquatic species including Regional Forester Sensitive Species.

Lands Projects:

- **Conveyance Project:** Consultation with 1854 Treaty Authority, Bois Forte and Grand Portage Bands over Grand Marais Dwellings (former Ranger and Assistant Ranger homes) conveyance project.
- **Lake County Land Exchange:** Consultation with 1854 Treaty Authority in regards to the potential exchange with Lake County for the balance of their BWCAW lands for lands in the SE corner of the Laurentian District.
- **South Kawishiwi Cabin Group** - An update on the status of this project was discussed with 1854 Treaty Authority. Exchange is expected to occur in FY08 or FY09 with the SNF receiving lands in and around the Vermillion gorge.
- **Polymet Land Exchange Project:** Pre scoping consultation with Bois Forte, Fond du Lac, Grand Portage, 1854 Treaty Authority, and others to discuss mineral activities and the potential PolyMet land exchange.

Minerals Activities:

- **Mineral Activities and potential:** Consultation with Bois Forte, Fond du Lac, Grand Portage, 1854 Treaty Authority, and others to discuss mineral activities with in the SNF. Topics included mineral prospecting (EA / EIS), wetland/habitat loss, water quality, archaeological issues, tribal access to natural resources, including moose.

Other Topics:

- **Travel Management:** Consultation with District Rangers and 1854 Treaty Authority, Bois Forte and Grand Portage Bands pre and post scoping.
- **Campground Concessionaire:** Consultation with Fond du Lac Tribal and Community College in regards to a student-operated Forest Campground. Funding did not work out in FY07, but could occur in future years.
- **Air Quality:** Project consultation and government-to-government contacts were made with the Leech lake Band, the Mille Lacs Band, the Fond du Lac band and the 1854 Treaty Authority on issues specific to air quality, monitoring, and related issues including regional haze, mercury monitoring, and impacts on air quality from industrial development. There were frequent conversations with Fond du Lac regarding the development of the State of Minnesota's mercury reduction strategy (TMDL plan). There is on-going collaboration, coordination of programs, planning and monitoring on the issues.
- **1854 Treaty Authority Code for Tribal Gathering:** Consultation with 1985 Treaty Authority to provide input to the tribal code on gathering. The guide will be available for distribution at SNF offices.
- **Monitoring Report FY05** Distribute copy of FY05 report and copies of the **Tribal Rights and Interests** section of the monitoring report for each person (pages 173-177). Discussed with 1854 Treaty Authority if and how we can improve on any of the standards and guides for the current year.
- **Agreement with Grand Portage Reservation re: Prescribed Burns:** Consultation with Grand Portage Band to develop an agreement to allow Tribal members to be paid directly from the Forest for pre-suppression and prescribed fire. Suppression work can still be reimbursed through agreements through the BIA. Shared information with 1854 Treaty Authority that we have worked on this with Grand Portage and if they know if other bands would want to work on such agreements the SNF would be willing to do so. The SNF is interested in created such agreements for other projects so that if band member encore costs on projects they can be paid directly.
- **Campground Use:** Consultation with 1854 Treaty Authority over request for Band members to have free use of campgrounds. The SNF needs to wait for decisions to be made at the national level, before additional changes to campground use can be made on the SNF. However, the 2200 BWCAW campsites are currently free to Band members, plus there are an additional 63 individual free campsites at non-concessionaire run sites.

- **St. Louis County Community Wildfire Protection Plan:** Coordination with Bois Forte Band throughout the development of the plan which is expected to be signed in FY08.
- **Crane Lake:** Forest Service engineers worked on a contract to fix the leaking dam, it is planned to be completed in FY08.

Evaluation and Conclusions

The SNF has worked to enter into discussions in an earlier timeframe (pre-NEPA) and to increase the amount of government-to-government interactions with Tribal entities in FY 2007. Ongoing collaboration efforts for the SNF and the Bands of the Ojibwe have occurred through: Government-to-Government Consultation; Discussions based on National Historic Preservation Act Sec 106 and 110, Pre-NEPA and NEPA related discussions; Collaborative agreements; Project implementation; and Regularly scheduled multi-topic meetings. The SNF has and continues to consult, engage, and cooperated with the Tribes at the project and program level during 2006. Forest Plan objectives were met, yet the opportunity exists for more proactive government-to-government interaction and collaboration to actively facilitate rights of band members for hunting, fishing and gathering.

Management Considerations

The Forest Interdisciplinary Team identified one Management Consideration as follows:

- * The SNF is accomplishing consultation efforts with the bands, yet the opportunity exists for more proactive government-to-government interaction and collaboration to actively facilitate rights of band members for hunting, fishing and gathering (D-TR-3).