

Tribal Rights and Interests

The history of federal treaties, statutes, court decisions, policies, and Presidential directives regarding American Indians is complex and extensive. The relationship between the Superior National Forest and the Bois Forte, Fond du Lac and Grand Portage Bands of Chippewa is unique and distinct from those that apply to other interests, constituencies and is based upon the principles of tribal sovereignty.

The Superior National Forest recognizes and affirms the unique character of the government's relationship to the Indian tribes. The lands within the Superior National Forest System are affected by pre-existing rights, retained by treaty, and are vested with these federally recognized tribes. Grand Portage, Fond du Lac and Bois Forte each actively pursue the exercise of their reserved rights on National Forest System lands and waters. The 1854 Treaty Authority for Bois Forte and Grand Portage; and the Great Lakes Fish and Wildlife Commission (GLIFWC) for Fond du Lac, have delegated tribal authority to assist in the sustainable management of natural resources both on and off reservation.

Within this chapter topics of functional government to government consultation, improved relationships with the Bands; and facilitating the right of the Tribes to hunt, fish and gather as retained via treaty are discussed.

Monitoring Questions:

1. Are government to government relationships functional? The related monitoring drivers include:

Pertinent [Forest Plan direction](#) includes; D-TR-2: The Forest Service continues to work within the context of a respectful government-to-government relationship with Tribes, especially in areas of treaty interest, rights, traditional and cultural resources, and ecosystem integrity. The Forests provide opportunities for traditional American Indian land uses and resources.

O-TR-2: Maintain a consistent and mutually acceptable approach to government-to-government consultation that provides for effective Tribal participation and facilitates the integration of tribal interests and concerns into the decision-making process. O-TR-4: Consult, as provided for by law, with Tribes in order to address tribal issues of interest and national Forest management activities and site-specific proposals.

2. Does the Superior National Forest management help sustain American Indians' way of life, cultural integrity, social cohesion and economic well being?

The relating monitoring drivers include: D-TR-1: Lands within the Forest serve to help sustain American Indian's way of life, cultural integrity, social cohesion and economic well-being. O-TR-1: Improve relationships with American Indian tribes in order to understand and incorporate tribal cultural resources, values, needs, interests, and expectations in forest management and develop and maintain cooperative partnership projects where there are shared goals. O-TR-3: The Forest Service will work with the appropriate tribal governments

to clarify questions regarding the use and protection of miscellaneous forest products with the objective of planning for and allowing the continued free personal use of these products by band members within the sustainable limits of the resources. O-TR-5: The Forest Service will administer project and programs to address and be sensitive to traditional Native American religious beliefs and practices.

3. Is the Forest facilitating the right of the Tribes to hunt, fish, and gather as retained via treaty?

The related monitoring drivers include: D-TR-3, Superior National Forest facilitates the exercise of the right to hunt, fish and gather as retained by Ojibwe whose homelands were subject to treaty in 1854 and 1866 (10 Stat.1109 and 14 Stat. 765). Ongoing opportunities for such use and constraints necessary for resource protection are determined in consultation with the following Ojibwe Bands: Fond du Lac, Grand Portage, and Bois Forte.

The intent of the monitoring questions and drivers are to ensure that the Superior National Forest is:

- Consulting with the tribes as independent governments and not as members of the public or interest groups.
- Implementing treaties and trust responsibilities.
- The units of measure used to determine if the SNF is meeting its obligations included:
- The percentage of large scale vegetation projects in which government to government consultation occurred pre-scoping and pre-NEPA. This unit of measure is effective and appropriate because the responsibility of the forest is to achieve government to government consultation pre- NEPA with our Bands. The aim is to have 100% of all large scale vegetation projects discussed with the Bands prior to initiating NEPA.
- The issues discussed at meetings between the Bands and the Forest. This unit of measure is effective and appropriate because it demonstrates, through documentation, if meetings were held, and which issues were discussed. This unit of measurement will help determine if the Forest is facilitating the right of the Tribes to hunt, fish, and gather as retained via treaty. Through a review of minutes, issues are tracked and can be used to determine if the Superior National Forest management is helping to sustain American Indians' way of life, cultural integrity, social cohesion and economic well being.
- A review of notes from meetings to determine which tribal cultural resources, values, needs, interests, concerns and expectations in regards to forest management have been incorporated into the decision-making process.

Monitoring Methods

Forest-wide projects and programs were reviewed to ensure that government to government consultation occurred, with an emphasis on conversations prior to requesting input from the general public. Consultation is documented in the Forest Service correspondence database, National Environmental Policy Act (NEPA) and other project files and in Tribal consultation meeting minutes. The schedule of large scale vegetation projects was reviewed and compared

to consultation notes to determine if consultation occurred before the project was brought out to the public for their input, (the scoping process).

Results

The SNF's goal to provide Tribal governments the opportunity to comment on project proposals prior to public involvement occurred in FY 2009. The large scale vegetation projects in which the scoping process began in FY2009 included Twins, and Tracks. In both, consultation occurred months prior to the public process. ⁱ

During Fiscal Year (FY) 2009, a number of specific items were monitored for project consultation between the SNF and the Bands. Examples of inter-governmental contacts to discuss programs, projects and incidents included: Forest heritage program, Forest vegetation management projects, wildlife and fisheries management, lands projects, travel management, minerals and mining, fire, employment outreach, and recreation.

SNF staff expanded efforts to consult with Tribal Chairs, staff and 1854 Treaty Authority. Meetings were held at all levels, including elected officials, Tribal Chairs and Councilors, various tribal staff, the Forest Supervisor, District Rangers, and District and Headquarters staff. Meeting settings included working one-on-one and in small groups with Band members and representatives as each entity attempted to improve communication and coordination. 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 Fiscal Year 2009, examples of inter-governmental issues discussed included:

Tracks; Border; Twins; Lima Green; Two Island; Metro; Clara; PolyMet Project (land sale / exchange); Maude Creek structure removal; Stewardship contracting; Biology Issues; Moose habitat; Moose harvest locations; Forest management and priority area of importance to the bands; Language and terminology used in large vegetation projects; Transparency in SNF documentation; Annual Monitoring and Evaluation; Project level NEPA; Roads and access for moose hunting; South Kawishiwi land exchange; Sand Lake/Seven Beavers meetings and MOU; Sharing staff; Excess vehicle; Isabella property; Campground use; Lake County Land Exchange; Employment opportunities for tribal members; Community Wildfire Protection Plan; Bois Forte Biomass Project & U.S. Forest Service, Forest Products Lab; Harvesting biomass; Cultural Resources; Curation room move; Passport in Time (PIT) project at Ironworld; upcoming PITs at South Kawishiwi Pavilion and Saganaga Lake; Survey of Washington Island; Federal hardrock mineral prospecting permits EIS; Canoe the Heart of the Continent; Secure Rural Schools / Resource Advisory Committee; and Travel management. ⁱⁱ

Implications

Consultation has helped the SNF meet its duty in terms of Treaty rights of the Bois Forte, Fond du Lac and Grand Portage Bands of Chippewa. With regular meetings between tribal personnel and SNF staff progress has been made. An example that demonstrates how

consultation helps meet treaty rights is through meeting notes with Acting Forest biologist and 1854 Treaty Authority staff, in follow-up meetings to consultation that occurred earlier in FY09. Purpose was to discuss how the SNF addresses tribal needs at the project scale and needs were met and streamlined through the production of a map of moose habitat on the Forest which was overlaid with existing access; moose harvest locations, and boundaries of the Forests large vegetation management projects. The goal, to identify targeted areas and issues so pre-NEPA discussions can occur in a more streamlined way and to brainstorm ways to have more transparency in our documentation, so that it is more apparent to the tribes, when the SNF does actions that address their issues, was reached through consultation for the large scale vegetation projects discussed (Tracks, Border, Twins, Lima Green, Two Island, Metro, and Clara.

Recommendations

1. Develop a Superior National Forest Tribal Strategy to describe expectations and provide consistency across the forest to help: government to government relationships be functional; management work to sustain American Indians' way of life, cultural integrity, social cohesion and economic well being; and to help the Forest facilitate the right of the Tribes to hunt, fish, and gather as retained via treaty.
2. Include in the large-scale vegetation project records, project notes from consultation that would include: the effectiveness of the consultation in terms of concerns raised; and the mitigation measures recommended addressing said concerns to determine if tribal cultural resources, values, needs, interests, concerns and expectations in regards to forest management have been incorporated into the decision-making process.
3. Continue to strive for early input and consultation with the Bands so that the SNF could mitigate actions, propose projects, and develop solutions that meet both the Tribes and the Forests needs, particularly so the SNF can more fully meet its obligations to provide Band members with their Treaty rights and interest to the lands that are managed by the Superior National Forest.
4. The SNF continues to make progress in building better relationships and accomplishing government to government consultation with the bands, yet the opportunity exists for improvement. An increased effort will be made in FY10 and FY11 to focus on these activities and moving forward in FP Desired Conditions, and Objectives, particularly O-TR-1 and O-TR-2, which highlight consolation and strengthening the bond between the Bois Forte Band, Fond du Lac Band, Grand Portage Band, 1854 Treaty Authority, Great Lakes Indian Fish and Wildlife Commission, and the SNF. To assist in these efforts, forest-wide documentation of consultation will increase and forest expectations will be highlighted and communicated.

ⁱ Twins Decision Notice p.22 and Tracks draft version of the Record of Decision.

ⁱⁱ Meeting notes FY2009