

Abstract

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“An independent assessment on monitoring the effectiveness the federal-tribal relationships under the Northwest Forest Plan (NWFP) – A Huckleberry Trust Walk”

This presentation provides an overview on a pilot project for a mechanism to complete implementation and effectiveness monitoring for the provisions of the Northwest Forest Plan (NWFP) which affect tribal governments.

Implementation monitoring concerns the evaluation of government to government consultation processes for activities conducted under the NWFP, both from perspectives of individual tribes and the federal agencies, as well as issues pertaining to the conduct of activities under the NWFP (e.g., were tribal concerns for protection of cultural resources adequately addressed, was advance notice provided as appropriate? Did federal agencies provide feedback on the disposition of tribal comments and concerns regarding NWFP activities?).

Effectiveness monitoring concerns the impact of the NWFP on the resources, rights, and interests of affected tribes. For example, have NWFP activities diminished the quantity or restricted the capacity of tribes to hunt, fish, trap, and gather traditional foods, such as huckleberries? Has management on Federal lands under the NWFP adversely or positively affected the ability of tribes to manage their reservation lands and resources? Have cultural resources received adequate protection?

Federal Agency line officer performance and NWFP effectiveness/impacts need to be discussed directly at a local level. However, a NWFP-wide evaluation is also important.

A pilot project has been developed between the U. S. Forest Service Region 5 and 6 and regional inter-tribal organizations to independently assess the federal government’s performance, so the federal government will not be “pitching and umpiring,” when it comes to assessing its performance.

“An independent assessment on monitoring the effectiveness the federal-tribal relationships under the Northwest Forest Plan (NWFP) – A Huckleberry Trust Walk”

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Like a forest and the huckleberry fields, where my family has gathered for many years, the relationship between Indian tribes and the United States is dynamic. Rooted in the Constitution, the relationship between tribes and the United States varies and can be established many ways through treaties, statutes, executive orders, and judicial decisions. The various federal-tribal relationships have gone through several seral stages, which means our nations’ forefathers and chiefs were the pioneer species, but its climax state remains undefined. Absent an endpoint, the relationship can best be described as a trust walk, as described in “To Do Each Other No Harm.”¹



Since we’re seeking “sustainable and innovative solutions” to harvest pressures, this can be called a huckleberry trust walk.

In a trust walk, two people alternate being leader and blindfolded follower. As part of the Native American Fish and Wildlife Youth camp for example, individuals take turns as the blind follower or the visionary leader and guide each other through an obstacle course. Both learn communication skills and develop a sense of trust.



While attempting to manage huckleberries on federal lands, who plays the leader and who plays the blind?

In this case, Indian tribes and the federal government guide each other through a maze of congressional and administrative policies toward tribal self-government and self-sufficiency. Indian tribes are recognized as having the authority to make and enforce

¹ Don Motanic and Jim Cathcart, *To Do Each Other No Harm*, Journal of Forestry, November 1997, p 48

laws, administer justice, manage Indian lands, exercise tribal rights, and protect trust resources. This is not a special status: Indian rights and authority are reserved rights, never relinquished by loss of aboriginal title. Federal land agencies have various agreements with tribes to perform the “Huckleberry Trust Walk”

How Do We Monitor this Huckleberry Trust Walk?

The Intertribal Timber Council (ITC) has been involved with the Northwest Forest Plan (NWFP) since 1993. In 1994, the NWFP federal agencies chartered an Intergovernmental Advisory Committee (IAC) for the agencies to receive implementation advice from other government representatives from state, county and tribes. The IAC came to the Affiliated Tribes of Northwest Indians (ATNI) to seek tribal representation. The ITC was one of the organizations selected to sit at the table as one of the three intertribal organizations from 1994 until May 2007. During this time, the ITC has participated with two other intertribal organizations, which included the California Indian Forest and Fire Management Council (CIFFMC) and the Northwest Indian Fisheries Commission (NWIFC). The current tribal organization representatives involved in this process are George Smith, the Coquille Tribal representative for ITC, Merv George, former Hoopa Valley Tribal Chairman, for CIFFMC, and Dave Herrera, Skokomish Tribal representative for NWIFC.

The federal agencies received advice on plan implementation, but now as the IAC forum has entered the “sunset” phase, how will the plan monitor effective tribal-federal relationships? Will the federal agencies monitor themselves, but how objective and honest can the federal government be with themselves? The typical federal self monitoring system is like “pitching and umpiring” a baseball game.

How do you monitor this sunset and in effect, monitor the Huckleberry Trust Walk, which is part of the NWFP?

The intertribal organizations developed, and the federal agencies accepted, a pilot tribal monitoring project so the effectiveness of the federal-tribal relationships can be independently assessed by a third party. The monitoring process was recommended in a report on the Effectiveness of the Federal-Tribal Relationship during the first 10 year period of the NWFP.

²This third party assessment has been developed similar to several independent assessments such as the Assessment of Indian Forest Land and Forest Management of the United States.³ Another third party monitoring process concerning treaty resources has been developed for the Chequamegon-Nicolet National Forest and several tribes in Wisconsin and Michigan area with the Great Lakes Indian Fish and Wildlife Commission.⁴

The following paragraphs describe the purpose, objectives, design, method and participation.

² Claudia Stuart and Kristen Martine, tech. eds. 2005. *Northwest Forest Plan-the First 10 Years (1994-2003) Effectiveness of the Federal-Tribal Relationship*, Tech. Paper R6-RPM-TP-02-2006. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Region

³ John Gordon, Jerry F. Franklin, K. Norman Johnson, John Sessions, *Assessment of Indian Forest Lands and Forest Management of the United States*, 1993 and 2003, by the Independent Forest Management Assessment Teams (IFMAT-I & IFMAT-II)

⁴ D. Lynn Roberts, Forest Supervisor, Chequamegon-Nicolet National Forest, *Memorandum of Understanding*, Twenty-Fourth Annual Indian Timber Symposium Final Proceedings, June 15, 2000, p 304-306

In the end, this pilot monitoring project could be a model for the nation as it relates to treaty and non-treaty tribes.

I. Purpose

A mechanism is needed to complete implementation and effectiveness monitoring for the provisions of the Northwest Forest Plan (NWFP) which affect tribal governments.

Implementation monitoring concerns the evaluation of government to government consultation processes for activities conducted under the NWFP, both from perspectives of individual tribes and the federal agencies, as well as issues pertaining to the conduct of activities under the NWFP (e.g., were tribal concerns for protection of cultural resources adequately addressed, was advance notice provided as appropriate? Did federal agencies provide feedback on the disposition of tribal comments and concerns regarding NWFP activities?).

Effectiveness monitoring concerns the impact of the NWFP on the resources, rights, and interests of affected tribes. For example, have NWFP activities diminished the quantity or restricted the capacity of tribes to hunt, fish, trap, and gather traditional foods? Has management on Federal lands under the NWFP adversely or positively affected the ability of tribes to manage their reservation lands and resources? Have cultural resources received adequate protection?

Federal Agency line officer performance and NWFP effectiveness/impacts need to be discussed directly at a local level. However, a NWFP-wide evaluation is also important.

The Tribal Monitoring Advisory Group (TMAG) was chartered by the Intergovernmental Advisory Committee (IAC) to advise the IAC Monitoring Committee on the tribal monitoring process for the NWFP. The TMAG is comprised of tribal and federal agency representatives and has developed a tribal monitoring proposal for a five year periodic assessment, an outline of objectives, a design, a method and participation, timeline, product and budget.

II. Objectives

- A. Report the ongoing government-to-government relationships at the local level
- B. Collect information on how the:
 - 1. Government to government process is functioning
 - 2. Resources of tribal interest are being managed
 - 3. Feedback is being processed between the governments
- C. Summarize the regional outcomes for regional federal executives to review and make appropriate changes to guidelines.

III. Design

The project design will involve reviewing the government-to-government process through questionnaires and case studies.

Local Government to Government Process

The core component of the Tribal monitoring process will be the ongoing government to government relationship between Tribal governments and federal agencies at the local level. It is desirable that this process be formalized in a Memorandum of Understanding (MOU) which defines the relationship, sets forth policies and procedures for consultation and coordination, identifies desired outcomes, and provides for feedback on how Tribal input has been used in the

decision-making process relating to NWFP implementation. The MOU will also establish methodology for providing annual information to the regional level summarizing activities and results which have occurred and evaluating the level of success in achieving desired outcomes.

The federal agencies will continue to report on the local government to government process annually which will rely on the federal regional guidelines.

Feedback from Tribal governments will be summarized annually and every 5-years by an independent "third" party. The 5-year results will be reported in the NWFP comprehensive evaluation report (interpretive report). The annual reports will summarize the findings for that year in order to provide timely feedback to agency line officers.

In order to ensure that all Tribes have an opportunity to provide feedback, every Tribe will annually receive a questionnaire. Local line officers will be asked to encourage the Tribes they work with to respond to the questionnaire. Tribes will be asked to send their answers to an independent "third" party. As part of the annual mailing, we would offer all Tribes the opportunity to share by phone or in face to face meetings more in-depth feedback and involvement on a more regular basis.

Case Studies

An assessment will be based on case studies completed every five years. Opportunities to have more in-depth discussions with Tribes about our relationships and resource management issues will form the basis for case studies. These case studies will explore more fully what is working, what's not, and ways to make improvements. Case studies will provide an opportunity to highlight new ideas, tools, and creative ways local line officers and Tribes are working together.

The Huckleberry Trust Walk could become one of the case studies to monitor the sustainable and innovative solutions over time.

IV. Method

Credibility is vital for acceptance of the results of the monitoring program. Monitoring would be done by an entity independent of the federal agencies responsible for implementation of the NWFP to prevent the appearance of self-interest.



The case study research will be conducted by a contractor selected by the federal tribal relation program managers for each region. The contractor will be familiar with tribal resource management as it relates to federal government interaction. The contractor will provide technical direction, participate in field reviews and oversee the completion of the final report. The tribal relation program managers will review and make recommendations concerning criteria, case study selection, products and will review and comment on draft interim and final reports.

V. Participation

Participation with the contractor will be by the regional tribal program managers and Local Tribal-Federal Contact Teams (LTFCT). The LTFCT will be drawn from a consortium of local based groups from existing tribal and federal agency partnerships involved with the case studies.



One example for this LTFCT participation involves the Huckleberry Patch Special Interest Area Forest Plan Amendment for the Umpqua and Rogue River-Sisikiyou National Forest and the Cow Creek Band of Umpqua Tribe of Indians. An environmental assessment for this project was completed in October 2005 and the 9,500 acre project was approved on January 26, 2006.

Another example would be tribal participation with stewardship contracting on federal lands through the 2004 Tribal Forest Protection Act (PL108-278). The Mescalero Tribe in New Mexico has started this process to create a more “fire-friendly” Lincoln National Forest next to their reservation.⁵



Mescalero Tribal land left, Lincoln NF right

Conclusion

When the federal government recognizes its trust responsibility with the Tribes’ and both governments understand that a “trust walk” through the huckleberry fields must begin, that walk needs to be monitored overtime. Monitoring this trust walk should include an independent third party assessment to assure Tribes’ feedback is heard and understood by it’s trust walk partner, so everyone can feel safer during its journey through the huckleberry fields.

About the ITC in 2007

The Intertribal Timber Council (ITC) was founded nearly 31 years ago for the purpose of improving the management of Indian forests and other natural resources through building working partnerships between Indian tribes, government agencies, private industry, and academia. The ITC is a national association of tribal governments that collectively manage over 90% of the 18 million forest land acres held in trust by the United States for the benefit of Indian people. The ITC is headquartered in Portland, Oregon and receives its guidance from an eleven member, elected Executive Board of tribal leaders from throughout the U.S.

Instead of building a large organizational infrastructure, the ITC relies upon contributions of staff from member tribes to work on issues of regional and national significance. The ITC has been an active force in advancing initiatives to improve the management of Indian forests and other resources held in trust for the benefit of Indians. An annual symposium convened by the ITC provides where issues and problems can be investigated and recommendations can be crafted to correct deficiencies or advance new initiatives. Through its annual symposium, periodic meetings of its Executive Board, and workshops, the ITC provides forums where forest and other natural resource management problems can be identified and cooperatively resolved. The ITC maintains a strong scholarship and education program, issues newsletters and updates, participates in national wildland fire activities, monitors and pursues legislation, is engaged in the forest green certification issue, and is an active contributor to the on-going debate on Indian trust reform. See www.uwtv.org or www.researchchannel.org for the 2007 video programs on Indian forestry. Also check out the updated ITC website at www.itcnet.org

⁵ Thora Padilla, Program Manager, Division of Resource Management & Protection, Mescalero Apache Tribe P.O. Box 227, Mescalero, New Mexico 88340, Phone: (505) 464-4711, thora@mescaleroapache.org
16 Springs Stewardship Contract With the Lincoln National Forest, Thirty-First Annual Indian Timber Symposium Final Proceedings, June 7, 2007