

The Federal Trust Responsibility and Treaty Protected Resources on Ceded Public  
Lands: A Huckleberry Case Study

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## **Abstract**

Non-timber forest products (NTFPs) are an important aspect of the forest that has often been overlooked. NTFPs have been especially important to Native American people because of their subsistence, cultural, and economic values. As a result of their economic value, there have been an increased number of people harvesting NTFPs on public lands. In the Pacific Northwest, many Native American tribes have reserved treaty rights that guarantee that they can hunt fish and gather in usual and accustomed places. Many of these traditional food-gathering areas lie on what is now national forest land. As demand for NTFPs on public lands has increased, the U.S. Forest Service must find a way to reconcile its federal trust responsibility to the tribes with their responsibility to manage national forest lands for the general public. The research has focused on the ways in which the U.S. Forest Service (USFS) has gone about creating and implementing policies to fulfill the Trust responsibilities to the Tribes. Two case studies of treaty protected huckleberry harvests were conducted with two groups of Tribes and the associated National Forests where they exercise their treaty protected rights. The research involves an assessment of these policies and their implementation using two public policy frameworks: social construction and institutional rational choice. The majority of Forest Service offices in the Pacific Northwest have relied on informal agreements with the tribes to balance these responsibilities. Little formal policy has been created or implemented to manage user conflicts, and problems continue to plague NTFP management. These findings indicate that the USFS and the tribes need to find new ways of developing NTFP management policies that will satisfy tribal needs.

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# **The Federal Trust Responsibility and Treaty Protected Resources on Ceded Public Lands: A Huckleberry Case Study**

## **Chapter One – Introduction**

Since time immemorial Native American people in the Pacific Northwest have hunted, fished, and gathered foods for subsistence and cultural reasons. The traditional harvest of food continued uninterrupted for thousands of years until Europeans began to colonize what is now known as the United States of America. Settler's movement west through the nation resulted in interrupted tribal traditions, disrupted tribal societies, and most importantly, the loss of large amounts of tribal land. Through treaties, Native American tribes ceded their tribal lands in exchange for a reservation, protection of specific rights, and a promise from the federal government that there would be an enduring governmental relationship between the tribes and the federal government.

These treaties reserved a few very important rights to Native American nations including the right to "hunt, fish and gather in usual and accustomed places" (Treaty with The Yakama, 1855; Treaty with the Cayuse, Umatilla, and Walla Walla, 1855; Treaty of Wasco, 1855). Some examples of what is protected under this clause are rights to water, salmon, and cultural plants, such as the huckleberry (Chamberlain, Bush, & Hammett, 1998). This means that tribes were allowed to continue hunting, fishing, and gathering on sites that traditionally belonged to the tribes, but were now located off-reservation, on ceded tribal lands. Ceded lands are lands that once belonged to the tribes, but through a treaty, now belong to the federal government (Wilkins, 2007). It has been over 150 years since these treaties were signed, but they



still remain very important to Native Americans. These treaties not only ensure that the tribes' reserved rights are protected, but the treaties also provide the foundation for the tribe's relationship with the federal government.

One of the most important treaty issues for tribes, especially in the Pacific Northwest, is the maintenance of access to treaty protected natural resources that lay on off-reservation lands (Wilson, 2002). These are lands that were historically used by tribes and have played an intimate role in their lives. The tribes of the Pacific Northwest have a well documented cultural bond with the land and natural resources in the area (Lyden & Legters, 1992). This bond is important enough that a specific clause was added to the treaties to protect the tribes' access to their traditional lands. American Indian Tribes rely on federal lands for a myriad of reasons including: subsistence, economic, socio-cultural, and spiritual/religious reasons (Jones, 2000). That cultural connection to the land remains strong and the associated treaty rights are still important to tribes as a component of cultural survival and traditional connections to the land.

Fishing, hunting, farming, mining, and forestry have all been important elements of the livelihoods of both settlers and Native Americans in the Pacific Northwest. American Indian tribes, as well as non-Native people, have used many of the same natural resources for food, income, and ceremony for years. Today, natives and non-Natives alike continue to use natural resources, but as the popularity of products made from natural resources continue to rise, pressure on these natural resources have increased. This is especially apparent on public lands where these resources are accessible to all (Carroll, Blatner, & Cohn, 2003; McLain & Jones,

2005; Rouse & Hanson, 1991). As a result, the United States Forest Service (USFS), as the nation's largest public forestland management agency, has had to face a new challenge: managing the increased demand for non-timber products from the national forests. Many of the resources that are harvested from public lands are known as Non-timber forest products (NTFPs). Non-timber forest products are forest products, other than timber, that hold some cultural or economic value, and can include foods, medicinals, and horticultural stock (Richards & Alexander, 2006).

One of the NTFPs that has come to the forefront of natural resource policy in the Pacific Northwest in the past decade as a result of increased use and harvest is the huckleberry (*Vaccinium spp.*). Pressure has begun to mount as more and more harvesters come looking for huckleberries each year (Hansis, 1998; Vihn, 2005). The price that buyers are willing to pay per gallon for huckleberries has risen exponentially in the past decade (Briggs, 2006). As harvesters get more money per gallon, they pick more berries, and as a result there are fewer huckleberries available for non-commercial and tribal uses (Briggs, 2006). The amount of berries available for picking has also decreased. With the suppression of wildfire on National Forest lands the number of huckleberry harvesting areas has also decreased. The huckleberry fields that previously existed as a result of wildfire are becoming encroached upon by forest vegetation and are disappearing. The combination of increased numbers of harvesters with the loss of huckleberry fields throughout the region has had a big impact on Native American harvesters (Anzinger, 2002). Jones (2000) explains that "Though gathering rights have always been an important issue for most tribes, the expansion of NTFP industries has accelerated the urgency that agencies be sensitive and

accountable to Native American...off-reservation rights and uses of traditionally gathered forest resources” (p. 2). Since few National Forests in the Pacific Northwest have anticipated this growing demand for huckleberries, few of them have huckleberry management plans in place in order to regulate huckleberry harvests.

Huckleberries and their harvest on public lands are protected by the treaty rights of many of the tribes in the Pacific Northwest. This means that the USFS, as a federal agency, has a responsibility to provide for fulfillment of those treaty rights on their lands (McLain & Jones, 2005). Although the National Forests are America’s public lands, the federal government has a trust responsibility to honor the agreements made in treaties made with the tribes. The trust responsibility includes access to treaty protected resources in “usual and accustomed places.” As demand for NTFPs on public lands increases the USFS must find a way to balance their federal trust responsibility to the tribes with their responsibility to manage USFS lands for the general public. Off-reservation reserved rights, the rights to hunt, fish, and gather in usual and accustomed places, often located on the National Forest, present a challenge to public land managers in how to accommodate multiple uses and protect traditional gathering areas (Jones, 2000).

In this study, I will focus on how the USFS has developed policies to manage NTFPs that reside on public lands and how these policies are directed to and impact those who use the resource. I will be doing this through a case study of huckleberry management on the Umatilla and Mount Hood National Forests for two Tribes, the Confederated Tribes of the Umatilla Reservation and the Confederated Tribes of Warm Springs. As part of this, I am interested in discovering how the USFS has

reconciled their federal trust responsibility to the tribes with their responsibility to manage USFS lands for the general public. I will be investigating the policies that have been created and implemented through two theoretical public policy frameworks, institutional rational choice and social construction. This evaluation will reveal how facets of Native American society and culture affect the kinds of policies created and implemented by the USFS for them.

### **Rationale for Study**

There are a wide range of people who harvest huckleberries including: commercial harvesters, subsistence harvesters, recreational harvesters, spiritual harvesters, healers, and scientific harvesters (Jones, McLain, & Weigand, 2002). All of these people are harvesting a resource that is limited in its availability. The literature has shown that as the harvesting pressure on NTFPs, such as huckleberries, continues to rise, user conflicts inevitably follow (Hansis, 1996; Jones & McLain, 2002; Flood & McAvoy, 2007). Although there are many people interested in huckleberry gathering, for Native Americans, the protection and management of huckleberries is a crucial component of their culture. Accessibility and availability of huckleberries are an essential part of maintaining these Native American's traditions.

To access huckleberries, many Native Americans continue to use their traditional gathering grounds on USFS lands. There are some tribes that have huckleberry fields on the reservation, but this is not true for all tribes. However, just because huckleberries are available on the reservation does not mean that is where they were traditionally harvested. Many tribal members who could access

huckleberries on reservation lands prefer to harvest at the traditional areas, many of which lie on USFS lands. This has often led to conflicts between user groups. Native Americans believe they have a treaty protected right to access the berries, but the public also believes they have the right to access public lands and the resources that lie on these lands. This conflict brings up many questions as to what rights are actually protected by Native American treaties, which has led to court cases where a judge interprets the treaty and decides exactly what resources are reserved for the tribes through the treaty.

As a result of these court cases, many tribes' rights to publicly available water, fish, and game have been clearly defined, but as of yet there have not been any court cases testing the rights to gather on public lands. As the demand for huckleberries continues to increase and user conflicts become more frequent, the right to harvest at "usual and accustomed places" that lie on public lands could be the next issue that is debated in court. This study was undertaken in an effort to develop management recommendations that may guide USFS officials in developing future huckleberry management policies. If we can understand what issues are present on both sides of the spectrum, tribal and federal, then there may be a way to manage conflict without heading for yet another legal battle.

### **Terminology Used**

There are many terms used to describe the indigenous people of the United States of America, including: American Indian, Native American, First Nations, and Indian. Many of the communities indigenous to the United States prefer to be referred

to by their tribe's name (e.g. Navajo, Paiute, Yakama, or Lakota) rather than as a Native American or American Indian (Wilkins, 2007). There are two reasons for this. First, the term American Indian refers to Christopher Columbus' "discovery" of America, and his mistaken belief he had reached India and many indigenous people feel that the term "Indian" misidentifies them. Many find the term Native American incorrect, as indigenous people were here before the continent was named America. Secondly, these terms appear to lump indigenous people into single entity, rather than recognizing that there are many separate nations that fall under the term Native American or American Indian. However, for the purpose of most policies directed at indigenous people in the United States, a pan-ethnic term is generally used to describe the tribes. There are a variety of terms that have been used in policies and laws referring to indigenous people, but there is not a universally agreed upon term by which to describe this population of people. Despite the problems described, in this study I will refer to the indigenous nations of the United States as Native Americans or American Indians, because these are the commonly used terms in the policies, laws and research examined in this study.

### **Research Caveat**

As a caveat to my research, I want to be clear that I do not intend to represent or speak on behalf of any tribal group, organization, or tribal government. My perspectives are presented for the sake of discussion and for insights into problems and potential solutions presented for consideration. I speak from the perspective of a graduate student conducting research, not a tribal member or representative. My

observations and conclusions are based on interviews of a sample of the population, not the population of the whole.

### **Goals and Objectives**

The goal of this study is to investigate what the USFS is doing to meet its trust responsibility to the tribes, and whether or not the tribes find their efforts to be adequate. In particular, this study examines how the USFS deals with the protection and management of treaty protected resources on ceded public lands. More specifically, the objectives of this study are: (1) to determine which policies, if any, have been created or implemented by the USFS to manage their federal tribal responsibilities to the Tribes; (2) to discover the attitudes Tribal members have toward USFS huckleberry management and the issues they see with it; (3) to reveal the socio-cultural norms and rules-in-use that impact the types of policies developed; (4) to explore how the social construction of the two Tribes impacts how huckleberry resource management is developed and implemented on federal National Forestlands; and (5) to suggest ways to improve the relationship between the USFS and the tribes in the future relative to policies related to Tribal gathering of huckleberries.

## **Chapter Two – Literature Review**

No discussion of Native American policy is complete without a discussion of the history of Native American policy in the United States and a review of the policies and laws that have brought American Indian policy to the place it is today. Typically, the history of the United State's American Indian policies is divided into six distinct eras of Native American law: treaty making, removal and relocation, allotment and assimilation, reorganization, termination, and self-determination (Deloria & Lytle, 1983). Understanding the historical status and past policies that have been used toward Native Americans within American society is important in order to understand the roots of federal tribal policy and the role the relationship between the federal government and Native American Tribes has played through history (Deloria, 1985). An overview of Native American policies in the United States is important to understand if we are to analyze current Native American policy. Through knowledge of the history of Native American policies in the U.S. one can begin to better understand today's policies and their impact on tribal communities and relevance to past policies.

### **Discovery, Conquest, and Treaty-Making (1523-1828)**

When European settlers first came to America, they were not alone on the continent and they had to discover ways to live with the native people of North America, Native Americans. Indian nations were seen as competent entities that interacted both on friendly and hostile terms with the settlers. Because settlers were



moving into Indian land, it was for the best interest for the members of the original American settlements to develop treaties with the native groups. This allowed settlers to remain on the land without having to worry about conflicts with the native people of the U.S. When the European settlements became part of the United States, the U.S. government continued to use treaties to engage with the tribes. In this way, treaty making became the basis for the relationship between the U.S. government and American Indian tribes (Deloria, 1985). These treaties were used to secure a peaceful relationship with tribes that neighbored settlements and were used as a means for transferring land ownership from Indians to the United States in a peaceful and orderly way (Deloria & Lytle, 1983). Much of the precedent used for understanding Indian law and Indian affairs was created during this period of discovery, conquest and treaty making.

The U.S. has three branches of government: the executive, legislative, and judicial. Although it is commonly taught in civics class that the legislative branch is responsible for drafting and implementing legislation, in the case of Native Americans, it has actually been the judicial branch that has had the most impact on tribal laws and rights in the U.S. Since federal Indian law is often complex, vague, and outdated, the courts have been used to interpret how Indian law is interpreted and implemented (Deloria, 1985). In addition to court cases, the constitution, statutes, agreements, executive orders, and administrative rules, are also a source of federal Indian law.

Defining the nature of the relationship between the Indian nations and the fledgling U.S. government was difficult and it ended up being the Supreme Court that

defined this ambiguous relationship. The Supreme Court Chief Justice John Marshall is well known for his role in the clarification of the U.S. Federal – Indian relationship, and the definition of Federal Indian law. Three influential court cases outlined exactly what role tribal nations had within the context of the U.S. federal government (Wilkins, 2007). Justice Marshall’s decisions in these three cases are more commonly known as the Marshall trilogy. These court cases form the basis for all subsequent court cases involving the relationship between Native Americans and the federal government.

Although Marshall’s decisions are very important, they were based on a precedent set centuries ago. This precedent is known as the “doctrine of discovery” has become the foundation for all Indian law today. Pope Alexander IV developed this doctrine in 1493, stating that “barbarous nations be overthrown and brought into the faith,” meaning that all land discovered that was not ruled by a Christian prince would belong to Spain (Davenport & Paullin, 1917; Deloria, 1985). According to the values of the times, those who were not Christian were not considered to be fully human, rather they were known as heathens and savages. Since only a human could own title to the land, these lands now belonged Spain and the people who lived on them were considered under the jurisdiction of the Spanish. This doctrine denied the original inhabitants title of their land and handed the land title over to Spain (Deloria, 1985). This doctrine of discovery is what provided the theoretical basis for the reasoning in the Marshall Trilogy cases. The details of each of the three cases are not critical, but rather the decisions that stem from each case are important. The three opinions, *Johnson v. McIntosh* (1823), *Cherokee Nation v. Georgia* (1831), and

*Worcester v. Georgia* (1832) are important because of the far reaching implications for Federal Indian law, even in the 21<sup>st</sup> century.

The first case stemmed from an argument between two non-Indians. An Indian had sold Johnson a tract of land, and the federal government sold this same plot of land to a man named McIntosh. When the men found out they owned the same plot of land, they went to court to find out who was the true owner of the land. Justice Marshall determined that the land belonged to McIntosh, because Indians did not have the right to buy and sell land since they did not have the right to the title of the land.

*Johnson v. McIntosh* (1823) was important because in this decision Marshall defined how the “doctrine of discovery” would be applied in the United States. Marshall argued that Indians had lost their title to the federal government through discovery, and as a result Native Americans only had a right of occupancy to the land, rather than formal title to the land. The court decided that in the U.S. this doctrine would be used to extinguish tribal nations’ rights to full ownership of the land, but would not extinguish their right to “a political right of quasi-sovereignty” (Deloria & Lytle 1983: p. 5). In this way the U.S. federal government secured their place as the owner of Indian land. This case was influential in subsequent years because it was in this case that Justice Marshall established the federal government’s responsibility to aid with Indian affairs (Deloria & Lytle, 1983).

*Cherokee Nation v. Georgia* (1831) was a significant case in the history of Native American law because it further defined the political status of tribal nations within the U.S. This case established what the nature of relationship between American Indian tribes and the federal government would look like. From this case

stems the important and often cited “domestic dependent nations” characterization of Native nations (Deloria & Lytle, 1983). Marshall clarified his ruling in *Johnson v. McIntosh* finding that although the tribes were semi-sovereign (because of their ability to engage in treaties with the U.S. government) the land they lived on belonged to the U.S. and as such Native nations, “reside in a state of pupilage in their relationship to the U.S. similar to a ward and his guardian” (Deloria & Lytle 1983: p.30). This gave tribes some sovereign rights while other aspects of tribal sovereignty were overseen by or held in-trust by the U.S. government. This is where the trust relationship between the federal government and the tribes originated. As domestic nations within another nation, the federal government has a responsibility to protect the interests of Indians.

*Worcester v. Georgia* (1832) also had to do with the clarification of the definition of Native sovereignty, but this decision focused on the relationship of Native American tribes with state level governments. In this case Justice Marshall found that tribes were to fall under the jurisdiction of the federal government rather than the state government. He based this decision on the status of Native nations as separate distinct communities, where state law could not reach. Tribal nations’ status as semi-sovereign was enough to put them above state law, but not above federal law. Justice Marshall anticipated that legislators and other lawmakers would exploit the Native Americans and would one day seek to curtail the right to sovereignty that Marshall gave Native American groups through his decisions. He anticipated that someday lawmakers would desire to go back on the promises made in treaties in order to support an ever growing nation. Because of this, Marshall made the decision to

provide that there be a binding trust relationship between Indian tribes and the federal government.

As citizens of the U.S. continued to move westward into Indian lands, they secured land through two different means: military conquest and land cessions from tribes to the U.S. government. Usually these land cessions were negotiated through treaties, although there are other avenues such as executive order or an act of congress (Jones et al., 2002). The era of treaty making began in 1778 and came to an end in 1871. Attached as a rider to an appropriations bill, the rider stated that the government would not be entering into any more treaties with Native American nations.

### **Removal and Relocation (1828-1878)**

President Andrew Jackson ran his presidential campaign on a platform that advocated Westward expansion. When he was elected in 1828, in his first speech to Congress, he introduced the idea of voluntary removal of Indians living east of the Mississippi River to lands west of the Mississippi River, as a way of mitigating the increasingly hostile relationships between tribes and the states. When no tribes volunteered to migrate Congress passed a bill known as the Indian Removal Act. This policy forced Indians to move west from areas where Americans desired to settle. The bill passed in 1830 and essentially gave all Indian land east of the Mississippi River to the United States and in exchange the U.S. gave removed tribes new reservation land in the West (Wilkins, 2007). Throughout the 1830's and 1840's thousands of Indians were forcibly relocated to the western United States. The "Trail of Tears" refers to the forced migration of the Cherokee nation from their native homelands to present-day

Oklahoma. Cherokees were forced to travel on foot almost 1300 miles with limited amounts of food, water, and medicine (Wilkins, 2007).

Relocation did not fix the problems between Native Americans and settlers, but only delayed the inevitable confrontation between the two groups. The “manifest destiny” principle laid in many people’s mind, and the push westward was inevitable. With this in mind, the U.S. government had to develop a new policy to manage the Indian “problem” because they could only move tribes west so far. War with the Indians was considered a non-option, so the next step that was taken was to try to assimilate the Indians into U.S. culture (Wilkins, 2007).

### **Allotment and Assimilation (1878-1928)**

The focus of the federal government’s assimilation and allotment policies was to “introduce among the Indians the customs and pursuits of civilized life and gradually to absorb them into the mass of our citizens” (Deloria & Lytle, 1983; p .8). This attitude is what prevailed at this time, and policies created to manage Indian affairs followed suit.

In 1878, the U.S. government began showing interest in Indian education. The government began sending Native American children to Indian Boarding schools where students were to act like white students and learn white culture. At boarding school Native American students were forbidden to speak their native tongues, taught Christianity instead of their native religions, and forced to forgo their Native American identities and to adopt European-American culture. This was done with the express

intent to “kill the Indian, not the man” (Wilkins 2007; p.117). More policies were to follow that sought to assimilate Indians into American life.

The most important Indian policy passed in this era is known as the General Allotment Act or the Dawes Act, passed in 1887. This act sought to integrate Indians into white society by forcing them to act like whites. The idea behind the policy was if Indians became farmers like other whites, they would begin to understand and integrate into white society. This was accomplished through the General Allotment Act because it allotted reservation lands to individual Indians to be used for farming. Allotment gave individual Native Americans full ownership of their allotted lands. Policymakers believed that granting Native Americans outright ownership of the land rather than the traditional communal ownership of land by all tribal members would aid in assimilation of Native Americans. Each head of household was given a quarter section of land, to each person over 18 years old, one eighth of a section of land, and to each orphan under 18 an eighth section of land. All lands not allotted on the reservation were available for sale to whites. In this way Indians would learn to farm, and would be intermixed with whites from whom they could learn to be “civilized.” This policy resulted in a loss of 90 million acres of land in Indian title (Deloria & Lytle, 1983).

These policies disrupted tribal styles of living by introducing private property, separated families by sending children to live in boarding schools, and further reduced the Indians’ land base. Additionally they undermined the Native American way of life and instead forced upon them a “white way” of life. These policies were generally unsuccessful in assimilating Native Americans into an “American” farming lifestyle,

and in the early 1920's the federal government ended assimilation policies and decided to continue in a new direction in terms of Indian policy (Deloria & Lytle, 1983).

In order to discover what needed to be done through new Indian policy, the Secretary of the Interior commissioned a report in 1926 to investigate the conditions of Indian people and their reservations (Wilkins, 2007). Known as the Meriam Report, this investigation found that conditions in Indian country were destitute and included, but were not limited to, poverty, poor health, and lack of access to education. Further, the Meriam Report confirmed that the policies of assimilation had failed because of poor implementation and lack of funding. This report set the stage for a new era of Indian policy (Deloria & Lytle, 1983).

### **Reorganization and Self-Government (1928-1945)**

In a complete reversal from previous governmental approaches to Native American populations, policies in this era focused on giving more control back to the tribes in hopes that they would assimilate themselves into mainstream society. With the election of President Franklin D. Roosevelt, a new group of administrators were assigned to manage Indian affairs with the goal of solving the Indian problems presented in the Meriam Report. The resulting policy that was used to transition from the era of allotment to a new era of self-government was passed in 1934 and titled the Indian Reorganization Act (IRA) (Deloria & Lytle, 1983).

The IRA formally ended the policy of allotment and ensured that tribal land that still belonged to the tribes would not be sold to non-Indians. The policy also



created a source of funding for tribal enterprises and made it possible for tribes to write a formal tribal constitution. Once the federal government approved tribally created charters and/or written constitutions, tribes had much more control over management of their internal affairs. As World War II began, money for social programs, such as those supported by the IRA, were instead funneled into war programs. As funding for programs dried up, bureaucrats began to look for ways to cut budgets and the Republican-controlled Congress and administration created a commission to review all government programs and to find areas where costs could be cut (Deloria & Lytle, 1983). The commission's report recommended that the responsibility for Indians should be transferred to the states as soon as possible (Deloria & Lytle, 1983).

### **Termination (1945-1961)**

The result of this commission's findings was a 1953 bill touting a new policy to, "free the Indians from federal supervision and control," better known as Termination. This policy ended not only all federal programs, but also served to terminate the federal trust relationship between the tribes and the government, thereby ending tribal sovereignty and the identification of tribal peoples as a separate nation within the U.S. (Deloria, 1985). The rationale for this change of policies was that when the government tried to help the Indians with federal programs they did not prosper. With Termination, many people felt that the Indians, no longer able to rely on the government for aid, would learn, "in the school of life those lessons that a

federal bureaucracy had not been able to instill in them” (Deloria & Lytle, 1983; p. 18).

The federal government felt that some groups of Native Americans, most notably the Menominee of Wisconsin and the Klamath of Oregon, no longer needed the government’s help and these tribes were the first to be terminated (Wilkins, 2007). The intention of this policy was to grant Native Americans all the rights and privileges of citizenship, but to reduce their dependence on the federal government; however, in practicality the implementation of this policy had much further reaching impacts. Termination ended the U.S. Government's recognition of sovereignty of tribes, ended the trust relationship that the federal government had with the tribes, divested Indians of their homelands, ended federal programs in support of Indians, and allowed Indians to be subject to state laws and federal taxes. During Termination the federal government discontinued its relationship with 109 tribes (Deloria & Lytle, 1983).

Termination also included funding for Indians from terminated tribes to relocate to urban areas (Wilkins, 2007). The intent of this policy was to move Indians away from their tribal way of life in the country and try to integrate them into mainstream American culture by forcing them to move to cities. The U.S. government set up job centers in cities and made Indians who went to the cities sign contracts that they would not return to the reservation (Lyden & Legters, 1992).

Termination was a policy that was intended to abrogate all treaty rights and other agreements between tribal governments and the United States. This included dissolution of tribal governments, eradication of reservations and all tribal assets and land, and most importantly, the elimination of the federal bureaucracy dedicated to the

support of Indian programs and the fulfillment of treaty guarantees (Wilkins, 2007). Termination technically ended in 1958 amid increasing public controversy over the policy and well publicized Indian protests. Termination policies were officially repealed in 1970 by President Nixon who stated that Termination had been “morally and legally unacceptable, produced bad practical results, and reduced self-sufficiency of tribes” (Deloria & Lytle, 1983; p.21). Despite the repeal, any tribes that had been terminated had officially lost their status as a sovereign nation within the U.S.

### **Self Determination (1970- Present)**

The most recent era of Native American policy has been called “Self Determination.” Self determination refers to a set of policies that have been enacted to allow federally recognized Native American tribes the right to govern themselves, to have their own land, and to be somewhat autonomous of the U.S. (Deloria & Lytle, 1983). After President Nixon officially ended termination, his new message to Congress and Native American nations called for an overhaul of Indian policy, which would include self-determination legislation.

Prior to the self-determination era, tribes had very little power in the policy arena. The policies related to Termination had such an impact on Native Americans that this era served as the impetus for the Native American movement to advocacy within the political arena. In 1968 one of the first Native American political movements was formed, the American Indian Movement (AIM). Fueled by the successes of other social movements (the civil rights movement and the environmental movement), Indians who had been moved to the cities began to get together and talk

about their dissatisfaction with the way the federal government had treated them. This is the era when the first real interest groups for Native Americans emerged on the national scale. Native Americans called their movement “Red Power” and modeled it after the Black Power movement with help from members of the Black Panthers and other minority groups (Deloria, 1985).

This push by Native Americans to assert their rights won them a series of important political, legal, and cultural victories in an overturn of Termination policies. The federal government enacted a series of new legislation focused on Native Americans and their rights. Of the new policies, the most important was the Indian Self Determination and Education Act, passed in 1975. This legislation completed a fifteen-year period of policy reform with regard to American Indian tribes. Passage of this law made self-determination, rather than Termination, the focus of government action, reversing a thirty-year effort to sever treaty relationships with and obligations to Native American tribes (Wilkins, 2007).

Also, during this time many interest groups formed to represent Native Americans on a national scale. The National Congress of American Indians (NACI), the Native American Rights Fund (NARF), American Indian Heritage Association (AIHA) and other groups were formed in order to take Native American issues to Washington D.C. (Wilkins 2007) The increased pressure from Indian country resulted in many positive policies, but also created a political backlash from non-Indians who felt that Indians were being given too many rights, rights that might impinge on the rights of non-Indians (Wilkins, 2007).

In the past decade there has been a movement within Native American tribes to involve themselves in politics within the U.S. political arena. This movement to action has been aided by the fact that the financial situation of many reservations and tribes has increased dramatically since Indian gaming has become more popular in the U.S. The money that reservations have generated from their casinos has allowed Native American groups more access to political groups. This makes tribal groups more powerful in the political arena and, as a result, makes it possible for tribes to assert the needs and concerns they may have with a multitude of issues. As a result, the average American, lawmakers, and policy makers are starting to pay attention to Native Americans and the issues that they face (Wilkins, 2007).

Since this time, little new legislation has been enacted that affects the sovereignty of Native American nations. During President Clinton's time in office, he issued executive orders (Executive Order No. 13007, 1994) and memoranda that provided Indians a measure of recognition and reinforced that Native Americans had certain protected rights.

### **The Federal Tribal Relationship**

The relationship between the federal government and Indian tribes has been described as one that is "like no other in the world" (Deloria, 1985; p. 239). This is because Native American groups are semi-sovereign nations residing within the United States. The United States developed as a country created for two sets of powers, the federal and the state. There was never a structure created for Indian power, and so tribes lie in limbo between a state and a sovereign government.

Technically a Native American has three sets of rights: federal, state, and tribal (Deloria 1985). This is what creates the special federal – tribal relationship.

The federal government has specific legal obligations to tribal governments. This suite of legal obligations is often referred to as the components of the trust responsibility that exist between the federal government and the tribes (Lyden & Legters, 1992). The obligations to be met under this responsibility include the management of trust resources, government-to-government consultation, and fulfillment of promises made to Native Americans nations through treaties. In order to properly understand the components of the U.S. government’s relationship with the tribes, one first must understand the complexities of a treaty. For most tribes, a treaty serves as the foundation for the federal – tribal relationship.

### ***The Power of Congress***

The federal government has absolute power over Indian tribes, their governments, their affairs, their property, and their members (Pevar, 2002). Congress has the power to recognize tribes, to provide services to tribes, and to abrogate or amend treaty rights if they expressly intend to do so. Congress may terminate the trust relationship with any Indian tribes at anytime without the consent of the tribes. Though this may be done, it cannot be done by “accident;” rather, termination of this relationship, or any aspect of this relationship, must come from an express and clear act of Congress (Pevar, 2002).

There are two main sources of this federal power over Indian affairs. The first source of power stems from the commerce clause of the Constitution. The commerce

clause states that, “The Congress shall have power . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes (US Const., art. 1, sec. 8). The second source of power stems from the guardian/ward relationship defined by Chief Justice Marshall in *Cherokee Nation v. Georgia* (1831). This relationship is the basis for the trust responsibility that the federal government has to protect tribes as the government sees fit (Pevar, 2002)

### ***Treaties***

A treaty is a contract between two sovereign nations. The United States is allowed to make treaties with other nations through a provision of the Constitution. The Constitution states that, “This Constitution, and the laws of the United States which shall be made in pursuance thereof; and *all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land;* and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding” (U.S. Const. art. IV, § 2, emphasis added). The Constitution also states that “no state shall enter into any treaty” (U.S. Const. art. I, § 10). These two sections of the Constitution are the sections that set up the ability for the federal government to enter into treaties (Pevar, 2002).

The language states that any treaties made by the federal branch will be treated on par with the Constitution and will be treated as the supreme law of the land. This means that these treaties are superior to state constitutions and laws (Jones et al., 2002). This language also establishes that treaty making rights are reserved to the federal branch of the US government; this right does not belong to any states. This

ability to enter into treaties was a very important component of the beginnings of the federal - tribal relationship.

Over time disputes have arisen about how to interpret these treaties to fit the more modern context of the federal – tribal relationship. The Supreme Court has devised three rules when it comes to the interpretation of what a treaty means. First, if the treaty is ambiguous, further definition of the treaty must be made in favor of Native Americans. Secondly, the treaties must be interpreted as the Native Americans who signed the treaty would have understood them, and thirdly, treaties must be constructed liberally in the favor of the Indians (Pevar, 2002). Reading treaties in such a manner has aided Native American groups in protecting their rights.

### **Terminology**

Treaties use specific terminology that has been developed to describe the different facets of Indian policy and law. The concepts associated with federal responsibilities to tribes are complex. It is important for policy makers to understand the nuances of a few key concepts in order to have a firm grasp on the many intricacies of Indian law. These key concepts and policies include Indian reserved rights, ceded lands, usual and accustomed areas, tribal sovereignty, federal recognition, the government-to-government relationship and the federal/tribal trust responsibility.



### ***Indian Reserved Rights***

Through treaties negotiated with the United States, Native American nations have reserved rights. In an influential court case, *U.S. v. Winans* (1905) the Supreme Court ruled that treaties reserved a set of rights to the Indians. The court explained that an Indian treaty should be viewed, “not as a grant of rights to the Indians, but rather a grant of rights from them” (*U.S. v. Winans*, 198 U.S. 371). This means that treaties did not grant rights to Indians but rather treaties were a grant of rights from the Native American nations to the U.S. The reasoning behind this is because Indians were the original people of the U.S. and therefore had exclusive rights to the land before Europeans began moving to the Americas. This means that all rights expressly granted through a treaty with the U.S. still belong to the tribe, and are known as reserved rights (Jones et al., 2002). This law is known as the reserved rights doctrine.

This ruling became the foundation for present day recognition and protection of off-reservation hunting, gathering, and fishing rights. Many tribes included language in their treaty that explicitly reserved the right for the tribes to hunt, fish, and gather, but other rights are also retained by the tribes unless there is specific language in the treaty that limits these rights. If the treaty does not expressly state that the Indians were ceding a right to the U.S. government then the right remains with the tribes (Pevar, 2002).

### ***Ceded Lands***

The term “ceded lands” refers to lands that originally belonged to Native American nations that were then transferred over to U.S. title through a treaty. In

*Johnson v. McIntosh* (1823), Chief Justice Marshall stated that the only way to gain title to Indian lands was to purchase them from the government, and the only way the government could gain complete title to these Native American lands was through a treaty that ceded them to the U.S. government (Wilkins, 2007). Lands were generally ceded for some compensation, explicit rights to access to certain resources, and a creation of a smaller, but permanent land base, known as a reservation, that tribes could call their own (Pevar, 2002). The most important payment that the U.S. government made for the land came through the promise that access to treaty resources would be protected (Wirth & Wickstrom, 2002).

### ***Usual and Accustomed Places***

The term “usual and accustomed” is a treaty term that describes the lands that tribes used to frequent for hunting, fishing or gathering food or other materials. These usual and accustomed areas lie on lands that were ceded through a treaty, and are now publicly or privately owned lands located off of the reservation (Deloria & Lytle, 1983).

### ***Sovereignty***

Sovereignty has been defined as “the absolute power of a nation to determine its own course of action with respect to other nations” (Deloria, 1985 p. 240). There are three sovereign entities in the United States: the federal government, the state government, and Native American governments. Native American tribes are considered sovereign because they can do things that other sovereigns can do

including: having their own governmental systems, deciding who is or is not a citizen of their tribe, and controlling resources present on the reservation.

In addition to having the rights of a sovereign, Indian nations have also been recognized by other sovereigns, including the United States. For tribes, the treaties they entered into with the United States government recognized their rights as sovereigns. Since treaties can only be negotiated between two sovereigns, the federal government's decision to negotiate treaties with the tribes recognized and validated their claim to sovereignty (McGuire, 1990).

### ***Government-to-Government***

Tribes are sovereign nations and so actions taken by the U.S. federal government that may affect Tribes require consultation between the two governmental groups. Government-to-government consultation can only occur between the U.S. Federal government and Federally Recognized Native American nations. Consultation between the governments is required by National Environmental Policy Act (NEPA); federal agencies must invite Indian tribes to participate in the public involvement process on projects or activities that may affect tribal lands, treaties, or rights (40 CFR 1507.7). Consultation with tribal governments must be established and maintained for lasting government-to-government relationships to work.

### ***Federal Recognition***

There are two types of groups of Native Americans now living in the United States -- those that are federally recognized by the U.S. government and those that are

not. Whether or not a tribe is federally recognized is important in how it affects the political relationship between an American Indian tribe and the U.S federal government.

Federal recognition of a tribe guarantees that the tribe is protected by the government's trust responsibility, which is to interact with and fulfill its responsibilities to the tribe (Wilkins, 2007). Federal recognition is also important because it is the first step toward a government-to-government relationship between the tribe and the federal government. If a tribe lacks federal recognition, the U.S. government does not consider the tribe as existing for governmental purposes.

Unrecognized tribes are groups that have not been acknowledged as meeting the federal requirements of being an Indian group. Generally these groups were smaller, were unimportant to the U.S. in terms of land and resources and so were left alone, and most never entered into any treaties with the U.S. These groups do not enjoy any of the benefits of the tribes that are federally recognized, and they are not engaged in a trust relationship with the federal government (<http://www.doi.gov/bia/>). As of 2007, 562 tribes have received federal recognition, ensuring that their treaties are honored and their status as semi-sovereign nations within the U.S. (Wilkins, 2007).

### **The Federal Trust Responsibility**

The federal trust responsibility is one of the most significant pieces of Native American law. Nearly every law enacted by Congress and court case decided by the Supreme Court involving Native Americans has cited, and found its support in, the federal government's trust responsibility. As the Supreme Court noted in 1983, a

principle that "has long dominated the government's dealings with Indians. . . [is] the undisputed existence of a general trust relationship between the United States and the Indian people" (*United States v. Mitchell*; 463 U.S. 206, 225, 1983). The most fundamental promise that the federal government made to the Indians was that if they ceded their lands the government would protect Native American culture, resources, and sovereignty (Wood, 2004). The protection of these rights is what the trust responsibility is all about.

Although Congress and the courts have recognized the federal government's trust responsibility for many years, there is no specific document in federal Indian law that outlines what the "trust doctrine" entails. As a result, the scope and standards of the trust responsibility are ambiguous, and the avenues for remedies if the government breaches this relationship are unclear (Pevar, 2002). What is clear is that the trust responsibility does exist and that generally it is found to be the unique legal and moral duty of the US to assist Indians in the protection of their property and rights (Wood, 2003). Part of this responsibility includes the responsibility to protect resources guaranteed through treaties.

### ***Treaty Protected Resources***

Tribe's rights to hunt, fish, and gather traditional resources have been a source of major conflicts across the nation (Sepez-Aradanas, 2002). The increasing pressure from non-Indians on these resources has led to confrontations concerning who has the right to the resource, and how much of the resource belongs to whom. Many non-Indians have argued that Indian treaties have given Indians an unfair advantage when

it comes to access to resources such as fish and game. They feel that the federally protected rights that Native Americans have are denied to the non-Indian population, and this is true. Native American nations have a special and unique relationship with the federal government, and because of this there are special and unique laws and regulations that apply to them. Native American nations received promises from the federal government to protect their resources. These promises were what were traded in exchange for cessions of millions of acres of Indian land. As a result, protection of these treaty promises is of utmost importance to Native American people.

***The United States Forest Service, Legal Responsibilities, and Federal Indian Policy***

The USFS has legally mandated trust responsibilities on National Forest land to Native Americans. This tribal trust responsibility must be met without compromising any of the legal responsibilities of the USFS or the tribes. Generally, to meet its trust responsibility to the tribes, the USFS must: consult with federally recognized tribes with whom the U.S. government has a government to government relationship, seek a relationship with the tribes for sharing knowledge, understand and acknowledge what treaty rights apply to the National Forest, honor treaty rights that apply to National Forest land, and facilitate access, consistent with federal law, so that tribal members may exercise rights reserved by the treaty (FSM 1563).

Although treaties afford Native Americans rights of protection over some resources, these rights are not exclusive, and are exercised in common with the public, non-Indian population. A Forest Service line officer may have to decide among many land uses, all of which may have legitimate, but conflicting, interests in the same

landscape. Forest Service leaders and managers must recognize and try to harmonize American Indian and Alaska Native cultural values as well as other management values that may occur on the same piece of land, and weigh potential impacts.

When managing the National Forests, the USFS has a responsibility to manage for availability and access of treaty rights, and also to manage for a myriad of other objectives as directed by Congress. While conflicts may occur among these various rights and objectives, the Forest Service National Resource Guide to American Indian and Alaska Native Relations advises that they can be “generally resolved by mutual effort” (Forest Service Manual, <http://www.fs.fed.us/people/tribal/>).

### **Non-Timber Forest Products**

People have been gathering and using non-timber forest products (NTFPs) for centuries. They were used widely as a food source by hunter/gathering societies, and since have played an integral role in the lifestyle and livelihood of contemporary people (Emery & O’Halek, 2001). When Europeans came to the United States, it was the native people of the nation that showed them the good things to eat and where to find them (Jones et al., 2002). Non-timber forest product use was at the center of many Native American traditions, and these products have been central to the maintenance of social and spiritual life for Native Americans (Jones et al., 2002). Native Americans in the Pacific Northwest relied upon a host of non-timber forest products for food and for the creation of products such as baskets and clothing, and harvest of many of the traditional NTFPs persists today (Emery & O’Halek, 2001). NTFPs have continued to sustain Native Americans and non-Indians alike through trade, harvest, use, and sale of these products.

Non-timber forest products have been defined by the United Nations Food and Agricultural Organization (FAO) as encompassing five broad categories of products that are harvested from a broad range of forest species. These include: 1) foods, 2) medicinal plants and fungi, 3) floral greenery and horticultural stock, 4) fiber and dye plants, lichens, and fungi, and 5) oils, resins, and other chemical extracts from plants, lichens, and fungi (FAO, 1998). Many NTFPs occur naturally in forested ecosystems, can either be wild or cultivated, and are removed from ecosystems ranging from old growth forests to non-forest environments where trees occur (Jones, 2000). Examples of NTFPs include: floral greens (salal and ferns), medicinal herbs, foods (wild camas, ginger, mushrooms and berries), cones, boughs, and maple syrup. The phrase non-timber forest products has been used interchangeably with terms like special forest products, but they will be referred to throughout this study as non-timber forest products, since this is the more commonly used term. Although there are many types of NTFPs, this study focuses on a member of the food category, the huckleberry.

As desire for NTFPs continue to increase on federal lands, federal land managers have discovered that they lack the information needed to determine how to best govern these resources, because scientific research about the biology of NTFPs and research on these products cultural importance is generally non-existent, or limited at best (Alexander & McLain, 2001; Doble & Emery, 2001). Most of the research to date has focused on use of NTFPs in third world countries, while far fewer studies have been focused on NTFPs within the United States (Jones, 2000, 2002; Love and Jones, 2001; McLain and Emery, 2001). Domestic research has generally



focused on the economics of NTFPs rather than on the social and cultural aspects of the resource (Hansis, 1996; Keller, 1989; Robbins et al., 2008).

Although it has been documented that huckleberry harvest is common throughout the U.S there is little knowledge about what is harvested, how it is harvested, who harvested it, and how much is harvested. (Alexander, McLain, & Blatner, 2001). Jones et al. (2002) stated that “At this point, managers and policy makers are unable to answer the most fundamental questions regarding NTFP harvesters and their resource use patterns.” (p.23) Even less literature exists on Native Americans and their use of these products (McAvoy & Shirilla, 2005). Of the studies done on NTFPs in the Pacific Northwest, some key characteristics of NTFPs harvesters have been revealed. It is important to understand who the harvesters of these products are if there is to be appropriate or effective policy to manage the resources they use.

### **Issues in Non-Timber Forest Product Management**

Today, despite the fact that specific clauses to protect Native American rights to harvest these NTFP resources were included and recognized in treaties, most NTFP’s have received little recognition in either a management or scientific manner (Jones, 2000). Forestry for the most part has ignored NTFPs but as the market for NTFP has grown into a multibillion-dollar industry, ignoring the NTFP market is no longer an option (Jones, 2000).

There are a few main issues associated with NTFP management within the U.S. First, there is very little is known about the ecological effects of NTFP harvest.

There is a need for biological research about the products themselves. Without this research it is difficult for managers to create policies that are based on scientific evidence to manage the resource.

Second, there is a need to understand the kinds of people engaged in NTFP harvesting. Overlapping cultural traditions, commercial and non commercial gathering practices, and increased pressure on the resource have lead to conflicts in the NTFP arena. These conflicts are exacerbated by Native Americans treaty claims to NTFPs, cultural conflict between classes of harvesters, and increased pressure on commercial harvesters to gather more products in less amount of time. The challenges of managing NTFPs will only continue to grow as the value of NTFPs economically, culturally, and ecologically continue to intensify (Hansis et al., 2001). As the number and types of people in the woods increase, some management activity has to take place to protect NTFP resources, to manage harvester conflicts, and to safeguard tribal rights to treaty protected resources (Love & Jones, 2001).

### ***Increasing Demand***

Restaurants, specialty shops, and other users have discovered the many uses of NTFPs and have begun to use them in high end products, such as gourmet foods and unique forest based products (Love & Jones, 2001). In addition to the domestic market, there is an increasing overseas market for NTFPs. Due to the global demand for NTFPs, many of which exist solely in the Pacific Northwest, demand for NTFP often far outstrips available supplies. As demand has increased, and wild crops of these products have dwindled due to forest encroachment or lack of forest

management, prices for these products have risen (Berry Bulletin, 2004). The increasing use and harvest of NTFPs has led to conflicts between harvesters and between harvesters and managers. As more and more people use the land, conflicts continue to occur (Hanes & Hansis, 1995).

### ***Cultural Conflicts***

The limited demographic data on harvesters of NTFPs that has been collected suggests that there are many people who are involved in recreational NTFP use (Jones et al., 2002). Defining gathering communities has been the core of some research efforts in the Pacific Northwest (Robbins, Emery, & Rice, 2008). Research has indicated that people involved in NTFP harvesting have demographics that are quite varied but that ethnicity is an important variable to examine in any discussion of NTFP harvesting (Robbins et al., 2008).

There is a great deal of ethnic variability among NTFP harvester populations (Hansis et al., 2001). Traditionally harvesting of NTFPs in the Pacific Northwest was done by rural European-Americans and Native Americans who harvested NTFPs for substance and spiritual reasons (Jones et al., 2000). However, in recent years there has been a trend of increasing non-European American ethnic groups engaging in forest work, including harvest of NTFPs (Jones et al., 2002; Love & Jones, 2001; McLain 2000). European-Americans and Native Americans continue to participate in NTFP harvesting, but the demographics of NTFP harvesters have shifted over the past decade from one dominated by local harvesters to one dominated by immigrants from Southeast Asia, Latin America, and Mexico (Hansis et al., 2001).

The surge of immigrant populations harvesting in the national forests has created resentment among other NTFP harvesting populations. Local non-Indian and Native American populations alike are upset because they feel that these immigrants are invading their traditional gathering areas through their gathering activities (Hansis, 1998). Native Americans, especially those with treaties, have strong legal claims to harvest NTFPs to large tracts of land in the Pacific Northwest. Many of the members of Pacific Northwest Native American tribes have been picking in these places with their families for many years. They consider these areas their traditional treaty protected harvesting grounds and become upset when newcomers “encroach” upon their harvesting areas (Love & Jones, 2001).

Movement of other groups into the area not only increases the competition for these NTFPs, but also causes tension between different ethnic groups (Hansis, 1998). Tensions between cultural groups have heightened due to differences in harvesting techniques. Previous research has shown that local non-Indian and Native American populations criticize the way immigrant populations harvest NTFPs, because their practices are viewed as being destructive to the resources they harvest. Activities seen as destructive include raking of the mushroom fields and raking or removing huckleberry bushes (Hansis et al., 2001). Native Americans have historically been protective of their treaty rights, and feelings of protectiveness extend to NTFP plants and harvesting areas (Fisher, 1997).

Cross-cultural communication has also arisen as an issue in NTFP management. Forest work and harvest of NTFPs has drawn large numbers of immigrants because the work does not require that they speak English and the skills

required for the job are not complex. Many of the immigrant harvesters have trouble reading posted signs or communicating with NTFP managers and other harvesters because of the language barriers that exist between different groups (Love & Jones, 2001).

### ***Limited Research***

Although the NTFP industry in the Pacific Northwest is the most extensive in North America and accounts for over \$200 million in revenue annually, there is little research available on these products and limited funding for research to discover more about these products (USFS, 1998). Without increased research in this area, nebulous policies and uninformed management will continue to be produced (Alexander & McLain, 2001; Doble & Emery, 2001; Jones et al., 2002; Love & Jones, 2001). Few studies have focused on the social aspects of these NTFPs and the roles that they play in the socio-cultural aspects of NTFP management (Jones et al., 2002).

### ***Sustainability***

There is a concern that the commercial harvest of NTFPs could be damaging the resource, but biological effects of removal are relatively unknown (Jones et al., 2002). As the environmental movement swept through the Pacific Northwest, some environmentalists took notice of the NTFP industry and questioned its impact on the ecosystem (Love & Jones, 2001). Since the research does not appear to be forthcoming in many instances, incorporating information about NTFPs from those who have harvested NTFPs over time could be one way to assess how to maintain

sustainable levels of these NTFP resources (Love & Jones, 2001). In any event, the need for management of these NTFP resources is evident. The USFS manages most of the lands where NTFPs are harvested, and so an overview of the policies that have been implemented in the past by the USFS to manage these types of resources can provide a framework for what has been done and what needs to be done in the future.

### **Federal Non-Timber Forest Product Policy**

Federal agencies with federal land management responsibilities play an important role in creating and implementing NTFP policies, particularly in the West where most forestland is managed and owned by the federal government (Jones 2000). Of the five major federal land management agencies, the USFS has the most prominent role in the harvest and management of NTFPs, as it manages over 190 million acres of public lands, most of it located in the West and Alaska (McLain & Jones, 2005).

The USFS's authority to manage NTFPs stems from the 1897 Organic Act that originally created the Forest Service. This act gave the USFS the right to manage the National Forests and create the rules "governing forest occupancy, use, and related activities" including NTFP management (McLain & Jones, 2005). Although this act gave the USFS the right to manage NTFPs, the USFS historically paid very little attention to NTFP harvest and use. This was mainly because the agency's focus centered on the three mandates of the Organic Act; to improve and protect forests within the forest reservations, to secure favorable conditions of waterflows, and to furnish a continuous supply of timber for the use and necessities of the people of the United States. NTFPs tended to be overlooked because they did not bring in revenue

on par with that of timber, nor were there large organized contingents of forest users dedicated to their protection. USFS policy related to NTFPs was mostly embedded in other national laws that regulated overall forest land management (McLain & Jones, 2005). Subsequent USFS authority to manage NTFPs was included in the Multiple Use Sustained Yield Act (MUSY) of 1960 and the National Forests Management Act (NFMA) of 1976.

Historically regulations to control NTFP harvest occurred at the local level, and very little national direction focused explicitly on NTFP management. The limited national policy that referred to NTFPs focused on the most highly used National Forest commodities, such as Christmas trees and firewood (McLain & Jones, 2005). In some areas rudimentary NTFP management systems were put into place; however, they were often poorly enforced (McLain, 2000). Traditionally, District Rangers and their staff had considerable autonomy in making day-to-day decisions about issues that would affect their district, but this did not mean that District Rangers always had the capacity to properly administer programs, such as the ones created to govern NTFP harvest and buying activities (McLain, 2000).

In the past, NTFP management by the federal government has generally focused on managing and regulating access to the resources rather than on managing the resources themselves. This has included managing physical access to the resource as well as protecting legal access to the resource (Alexander, 2007). Permits and small sales contracts continue to be the most common way in which commercial NTFP users access NTFPs on the National forest, while most non-commercial harvesters either have to obtain free use permits to gather or can just go out to the forest and gather

when they please (McLain, 2000). The USFS has used a number of other strategies to try to manage the harvest of NTFPs, including restricting access to harvesting sites, charging harvesting fees, and putting limits on the amount of material that may be harvested (Alexander & McLain, 2001).

In 2000 the USFS introduced an appropriations rider titled “Pilot Program of Charges and Fees for Harvest of Botanical Products” (PL 106-113). This law created pilot programs across the United States to develop fair market value pricing for NTFPs so that the USFS could start charging NTFP harvesters the fair market value for harvesting these materials. The bill also included a research component to discover whether or not NTFP harvesting levels were sustainable.

Then in 2001, as a result of some of these pilot projects, the USFS released its “National Strategy for Special Forest Products” (USDA FS, 2001). This report described the USFS’s overall policy for management of NTFPs. This strategy provides guidance to USFS personnel on how to manage NTFP resources and suggests the need for more research in the field. It also addresses the issue of Native American’s protected treaty rights, stating that these rights need to be taken into consideration when developing new NTFP management policies (USDA FS, 2001). Although the responsibility to protect Native American treaty rights was inherently included in previous legislation, this was the first piece of legislation introduced that specifically referred to Native Americans and the important role that NTFPs play in Native American cultures. Additionally, policies developed through this legislation aimed at managing NTFPs which had generally been absent from the forest management agenda up until this point. NTFPs were beginning to gain importance



with the USFS and the public, and as a result the USFS finally created some explicit policy direction for the management of NTFPs in the U.S.

After this strategy was released, the USFS amended the Forest Service Handbook (FSH) to add the new direction for NTFPs on the National Forests. This amendment directed USFS employees to include the impacts on NTFPs in all National Environmental Policy Act (NEPA) analyses. This amendment also required that National Forests manage NTFPs sustainably, and that forest supervisors “develop direction for the traditional gathering of [NTFP] by ... Native Americans” (FSH 2409.18; McLain & Jones, 2005). The development of these two documents was a considerable step forward in the effort to create reasonable and consistent NTFP policy, because it explicitly required that forest supervisors include the needs of Native Americans in the implementation of this policy. The insertion of the requirement to develop management direction aimed at the needs of Native Americans in the FSH meant that the Forest Service was beginning to take steps to ensure that their staff understood the importance of Native American claims to these resources via their treaties. Though this was a first step, these new regulations did not fix all NTFP management problems.

In the past few years, news of conflicts over NTFPs once again appeared in the public arena through a number of articles in regional and national newspapers in the Pacific Northwest (Associated Press, 2005; Briggs, 2006; Vinh, 2005). This national press drew attention to the issue of NTFP harvest and use and created pressure for the USFS to do more to manage these resources than just outlining a strategy.

On December 29, 2008, the USFS released a final rule in the Federal Register titled “Sale and Disposal of National Forest System Timber; Special Forest Products and Forest Botanical Products” (36 CFR 223). This rule was created to “regulate the sustainable free use, commercial harvest, and sale of special forest products and forest botanical products from National Forest lands” (36 CFR 223). This regulation focused how to manage commercially valuable NTFPs that exist on the National Forest. Those in opposition to the regulation argue that it generally ignores that NTFPs are culturally important to many groups and that regulation of these NTFPs could have serious impacts on certain groups of users, including Native Americans.

Initially the rule was set to go into effect on January 28, 2009, but a flurry of complaints about the public involvement process, especially concerning the lack of tribal involvement in development of the rule, has set the date back. The rule has drawn a lot of criticism from Tribes and inter-tribal partnerships such as the Intertribal Timber Council. All of the tribal members included in this study commented on this rule, expressing concerns that this regulation may create opportunities for USFS employees to interfere with Tribal treaty rights. Other concerns with this regulation centered on the rights of Tribal members to gather NTFPs on National Forests without being subject to the USFS’s regulation of such activities. Comments on the rule were reopened and accepted through March 2, 2009, and the decision was delayed until March 30, 2009 and delayed again until May 29, 2009. At the time of printing, decision on this regulation has been delayed indefinitely.

Many of the laws developed to manage NTFP harvesting on National Forest land have been challenged because they have appeared to have been developed with

little understanding of NTFP ecology, markets, and cultural traditions. Past research has shown that traditional Forest Service approaches to encouraging public involvement in policy making have systematically excluded minorities as USFS employees haven't reached out to these populations (McLain, 2000). This is a major concern because minorities make up a sizeable amount of the NTFP harvester population (McLain, 2000). If a large part of the population involved in NTFP harvest is excluded from the NTFP policy development process, problems arise. Not only will these groups have little buy in to the policies that are developed, but important management issues that are observed by harvesters may be overlooked by those who create policy.

Research done by other NTFP scholars that suggest that in order to create beneficial and practical NTFP policy, socio-cultural variables must be included in research on NTFPs and the impacts of policy on NTFP harvesters must be examined (Alexander, 2007; Carroll et al., 2003; Jones et al., 2002; USDA, 2001). Without this information managers will remain unable to create culturally sensitive policies, and policies will have a negative impact on those who use NTFPs in a cultural manner. It is only when managers and policy makers begin to understand the cultural components associated with NTFPs that they will be able to develop policies that are, "both efficient and equitable" (Jones et al., 2002). Otherwise, policies will be developed that only focus on the biological or economic aspect of the resource, omitting the fact that cultural use of these resources also occurs. Policies that exclude part of the problem in their attempt to revise a situation will fail, because they will not respond

properly to the entire policy problem. One arena where policy makers need to make sure they include the cultural aspect when designing policy is huckleberry policy.

### **Huckleberry Harvest**

One of the treaty protected resources that is of great cultural importance to Pacific Northwest tribes is the huckleberry. Archeological studies indicate that huckleberries were, and still remain, an important food source for Native Americans throughout south eastern Washington and north eastern Oregon (Mack & McClure, 2002). In reading treaties with Native Americans in this area, it becomes apparent that they valued huckleberries, along with other traditional foods such as venison and salmon, very highly. In many of these treaties the tribes expressly reserved the right to harvest these resources in their usual and accustomed places (Treaty with The Yakama, 1855; Treaty with the Cayuse, Umatilla, and Walla Walla, 1855; Treaty of Wasco, 1855). Understanding the specific ecology of the huckleberry, along with the long history of huckleberry use in the Pacific Northwest sets the stage for the issues surrounding huckleberry harvest and use today.

### ***Huckleberry Ecology***

Huckleberries (*Vaccinium spp.*) are a small round fruit that grows throughout the Pacific Northwest. They can be blue, black, or red in color depending on the species of huckleberry. There are many species of huckleberry; there are 12 different species of huckleberries that grow in Oregon and Washington. The most commonly harvested huckleberry in the Pacific Northwest is *Vaccinium membranaceum*, or the thin leafed huckleberry (Minore, 1972). In recent decades these berries have become

used commercially outside of the Native community for a variety of food products (Richards & Alexander, 2006). Huckleberries have not been domesticated, meaning that they can only be found and harvested in the regions where they grow naturally (Berry Bulletin, 2004). Generally huckleberries are found in the sub-alpine regions of the Pacific and Inland Northwest, often on mid to upper slopes of mountains (Anzinger, 2002). In the Pacific Northwest, huckleberries are located on federal forests, private land, and reservation land (Minore, 1972).

Huckleberry fields in the Pacific Northwest originated and were maintained through use of fire. Many Native Americans in the area were documented setting fire to the berry fields after the picking season (Mack & McClure, 2002). Without disturbances such as wildfires, that clear space for huckleberry growth, the berries will eventually be crowded out by other vegetation snowbrush or tree seedlings (Anzinger, 2002; Minore, 1972; Minore et al., 1979). As the Forest Service does an increasingly better job at suppressing wildfires, huckleberry fields are dwindling because of overcrowding by timber out competition by other forest vegetation. Trees of low quality timber have been invading many high quality huckleberry fields (Minore, 1972; Minore et al., 1979).

Wild huckleberry fields occupied about 160,000 acres of land in Oregon and Washington and a gallon of huckleberries was worth \$3 in 1972 (Richards & Alexander, 2006). In 1979 the amount of acreage of huckleberries had decreased to 100,000 acres of huckleberries, and a gallon of huckleberries was selling for about \$10 a gallon (Richards & Alexander, 2006). Northwest huckleberries are an extremely

valuable resource, and were once worth more than timber on lands where huckleberry were the dominant understory plant (Anzinger, 2002; Minore, 1972).

A number of experimental management techniques have been used to protect huckleberry fields in the Pacific Northwest over time. These have included fencing out grazing animals from the fields, removal of encroaching trees, herbicide treatments, and prescribed fire (Minore, 1972; Minore et al., 1979). Results of these experimental treatments were generally inconclusive, although Minore determined that thinning of stands substantially increased the number of huckleberry plants on the site (Minore, 1972). Experiments also determined that there was a long return interval for huckleberries after wildfire or disturbance (Minore, 1972). This meant that although disturbance was needed to create larger and more productive huckleberry fields, the lag time between disturbance and the increase in berry production could last as long as 5-7 years (Minore, 1972). Archeological studies conducted by Mack and McClure (2002) found that the average duration of use of a huckleberry patch by Indians was between 40-70 years, probably because the berry fields become less productive as encroachment occurs.

### ***History of Huckleberry Use in the Pacific Northwest***

Huckleberries have played a role in the livelihoods of many people in the Pacific Northwest over time. They have been used by Columbia River Native Americans since “time immemorial,” supplemented many incomes during the Great Depression, and now are used widely in Pacific Northwest in a variety of foods and commercial products. Much of the historical record of huckleberry use focuses on the

use of the Sawtooth huckleberry fields on the Gifford Pinchot National Forest. Although not all the information is applicable to all historical huckleberry harvesting in the region, it provides a backdrop of the cycles of huckleberry harvesting throughout the region and illustrates the importance of huckleberries for a variety of harvesters. Less information is available on other huckleberry picking areas in the region because the most productive fields were located on the Gifford Pinchot National Forest. Many tribal members also traveled both historically and currently, from their reservations, to the Sawtooth huckleberry fields to gather huckleberries. In this way, the history of the Gifford Pinchot National Forest is different than that of the two other sites included in this study because of its history of constant use as it relates to huckleberry harvest.

#### *Pre- Settlement*

Records of Native American use of huckleberries have not just been found in the historical archeological record, but have also been documented in the journals of many early settlers to the Pacific Northwest (Mack & McClure, 2002; Richards & Alexander, 2006). In previous studies on huckleberries, interviews with informants identified the Mount Adams area of Washington as a prime spot for huckleberry picking. As early as 1928 Forest Service employees were documenting Native Americans picking and performing traditional Native American rituals in the Sawtooth huckleberry fields at Mount Adams (Mack & McClure, 2002). Huckleberry picking usually occurred in the months of August and September when the berries were ripest (Mack & McClure, 2002).

Many people who lived during this time recall seeing Indians picking huckleberries in the mountains during the summer. Tribal members were typically seen spending weeks; if not the whole summer picking in the huckleberry fields (Richards & Alexander, 2006). Native Americans set up camps next to the berry fields, and extended family groups tended to camp together at these sites (Mack & McClure, 2002). Huckleberry picking time served as a time for Native American groups to socialize and trade (Fisher, 1997). Native Americans generally returned to the same campsites each year following a “first foods” feast. This feast celebrated the tribe’s first foods and thanked Creator (the deity for Pacific Northwest Native Americans) for providing these foods for the people. Indians were observed drying berries in the sun and then placing them on smoldering logs to complete the drying process. This was done so that the berries would be preserved and could be eaten throughout the winter (Mack & McClure, 2002).

Non-Indian observers of the huckleberry fields noted that, “the berry month is to the natives like one great holy-day” because there were so many people out in the berry fields (Mack & McClure, 2002; p. 40). People from tribal areas all over came to the Sawtooth huckleberry fields because they had the most and best berries (Mack & McClure, 2002). However, Native Americans were not the only ones who found picking huckleberries enjoyable. Many of the early homesteaders in the Pacific Northwest also enjoyed huckleberry picking (Richards & Alexander, 2006).

### *Moving to Industry*

In the mid 1920’s the allure of huckleberries brought commercial industry to the berry fields (Richards & Alexander, 2006). The historical record begins to show



that settlers to the Pacific Northwest not only gathered huckleberries for personal use, but also sold huckleberries to others for a profit. With the rise in the popularity of canning during World War I, many non-Indians collected huckleberries for canning. This way they would preserve longer and could be shipped to other parts of the country, even other parts of the world. This allowed people outside of the huckleberry growing areas to have access to huckleberries, and as a result increased the demand for the fruit (Richards & Alexander, 2006).

Huckleberries were a profitable resource that could be harvested for free on public lands. Mount Adams and the Sawtooth huckleberry fields were located on National Forest land, and so access to their huckleberries was free. Additionally, access was becoming more and more available. As the USFS continued its policy to suppress fires, the agency built more and more roads throughout the forest to be used for fire prevention activities. These roads provided access to areas of the forests that would have previously been difficult to access, such as the subalpine forests regions, which are home to some of the most productive huckleberry fields.

Non-Indians began to take “working vacations” in the berry fields of Mount Adams. People enjoyed this kind of work because they got to be outside, but picking and canning berries to be sold also meant that they were making a profit off of their “vacation.” As more non-Indians began to spend time in the berry fields, Native Americans and non-Indians began to interact with one another. For many, this was the first interaction that settlers had with the native people of the area (Richards & Alexander, 2006).

*The Great Depression and the Migration to the Berry Fields*

By the early 1930's the commercial huckleberry industry began to take off. It became the most popular free use of the forest. A district ranger for the USFS wrote in 1933 that "[T]he value of huckleberries gathered on the [district] last year alone considerably exceeded the total grazing, special use, and timber receipts [on the district] for several years past" (Richards & Alexander, 2006; p.25). Another ranger wrote that in this same year he estimated about 60,000 gallons of huckleberries were harvested on his forest.

Huckleberry picking is tedious work, and so harvesters started to create "labor saving machines" to speed up the picking process. These pickers or rakes were not much more than tin cans with a comb attached to the rim of the can. They were used to rake through the huckleberry bush and remove the fruit. They were engineered to save time from picking each berry, but in doing so they stripped many twigs and leaves off of the huckleberry plant. The use of these rakes upset many Native American people. They were upset because they perceived these rakes as destroying a plant that was very sacred to them. At the time, many forest managers were not concerned about protection of huckleberries, but this was soon to change.

Because of the economic value of the crop, more and more people began to engage in huckleberry picking. In 1931 almost 7,000 unemployed Americans (non-Indians) flooded the huckleberry fields of Mount Adams (Fisher, 1997). Since huckleberries were free to pick but sold for quite a bit of money for the time, thousands of non-Indians turned to huckleberry picking to garner some sort of income. The influx of so many non-Indians into the berry fields upset many Native Americans,

because the flood of people disrupted Native American traditional practices and increased competition for the resource. Additionally, many Native Americans objected to the commercialization of their sacred food (Fisher, 1997). Due to the increased worth of the huckleberry and the huge amounts of people heading into the forest to pick the berry, USFS forest managers began to take note of the huckleberry. Many of these managers believed that having so many people out in the woods picking berries was becoming a management issue and that something needed to be done about it.

### *Conflict in the Berry Fields*

As more and more people came to the huckleberry fields, tensions between Native Americans and non-Indians began to grow. As members from the two cultures interacted more and more often, cultural conflicts between the two groups began to arise (Richards & Alexander, 2006). Native Americans did not mind that non-Indians were harvesting huckleberries, but argued that the Creator had made huckleberries for the Indian people, and that the “Whites could share in this bounty but had no right to usurp Indian berry fields” (Fisher, 1997; p. 295). As more non-Indians began to use the forest for a suite of different reasons (grazing, picking, hiking, timber), it threatened Native Americans access to huckleberries and other forest resources. The first conflicts between Native Americans and non-Indians arose over grazing. Native Americans felt that the sheep were eating all of the berry plants, while ranchers argued that Native Americans’ horses were eating the sheep’s forage (Fisher, 1997). Other non-Indians worried about the Native American tradition of setting fire to the berry fields and worried that this practice was harmful because it could start wildfires. The

flood of non-Indians into traditional Native American picking areas created “unprecedented competitive pressure for berries while augmenting concerns that the sacred huckleberry that had been created for the Native Americans was no longer being respected” (Fisher, 1997; p 297).

### *The Handshake Agreement*

Concerned Native Americans from the Yakama reservation, located closest to the Sawtooth huckleberry fields, approached officials of the USFS and asked that they do something to protect the Native Americans’ berry fields. Chief Yallup of the Yakama Indian Reservation and J.R. Bruckart, the Forest Supervisor of the Gifford Pinchot National Forest met to discuss the concerns that the Native Americans had about the huckleberry fields (Fisher, 2002). The Chief argued that his people had the right to hunt, fish, and gather huckleberries in their usual and accustomed places as guaranteed to them through the 1855 treaty between the Yakama and the federal government (Treaty with the Yakama, 1855).

In 1932, in an unusual move, the USFS decided to informally set aside 3,000 acres of the Mount Adams Ranger District as an exclusive Native American huckleberry picking area (Fisher, 2002). The Yakama originally had ceded 10,800,000 acres to the government in their treaty, and so this set aside area was considered a small area to allow for huckleberry pickers to have. This gave Indians access to prime huckleberry areas and afforded them some privacy to conduct their traditional picking activities. This area still exists today and is known as the Handshake Agreement Area, since the agreement was secured through a handshake

and not in any formal or legal way. This handshake agreement has been described as an “unusual happenstance of history” because it was one of the few times in the early years of this nation that the federal government created positive policy for Native Americans (Fisher, 2002). This is the only set aside area of its kind in the nation.

This set aside area relieved some of the pressure felt by the Indians and validated for many Native Americans the right that they had protected through their treaty. Although the Handshake Agreement Area was not a formal, legally binding set aside, it served the purpose of having an area for Native American pickers only. The pressure on the huckleberry resource might have continued to increase through the 1940’s, but as domestic economic conditions began to improve, many non-Indian pickers no longer needed the additional income and returned to their more customary types of work.

### ***Contemporary Huckleberry Challenges***

Through the next few decades non-Indians occasionally continued to pick huckleberries, and Native American pickers continued to gather berries as they always had. Tribal members still returned each year to their traditional huckleberry harvesting areas and camps in the huckleberry fields. In more recent years, demand for huckleberries and huckleberry products have increased causing new conflicts in the berry fields (Fisher, 2002). Huckleberries are widely commercialized in Idaho, Montana, Washington and Oregon, and have become somewhat of a cultural icon for the Inland Northwest. From huckleberry chocolates, to huckleberry soap, there is an ever growing product base that relies on huckleberries for their production. Though

large amounts of huckleberries are desired, there are not the large amounts of people harvesting huckleberries for commercial resale as was seen during the 1930's. In order to provide the amount of huckleberries required by these manufacturers, sizeable contract crews of huckleberry pickers head out to the berry fields to harvest berries. These pickers are paid by the gallon, and so they pick as many berries as they can, as fast as they can. The ever rising commercial demand for huckleberries stemming from the increased demand for a multitude of huckleberry products has put pressure on the resource, but has also increased the pressure on Native American harvesters who still require huckleberries for subsistence, traditional, and cultural uses.

### ***Cultural Importance of Huckleberries to Native Americans***

Native Americans have many tribal traditions that are connected with plants located in their traditional hunting and gathering areas. There are strong linkages with the "first foods" as they are referred to because of the role these plants have played in their socio-cultural heritage. For many Native Americans, access to their traditional foods is of critical cultural importance. Interest in traditional foods also holds some symbolic value as it related to personal and cultural identity (Carroll et al., 2003).

Sahaptin Tribes refer to a language group of Sahaptin speaking people. Sahaptin speakers lived all along the Columbia and its tributaries, and include the Warm Springs, Umatilla, and Yakama Tribes (<http://www.britannica.com/EBchecked/topic/516371/Sahaptin>). For these tribes, the huckleberry was seen as containing great power. Tribal members of these groups have a special word for the huckleberry in the Sahaptin language. The Sahaptin word for

huckleberry is *wiwnu*, and means the “chief” of all the berries (Richards & Alexander 2006). In his study of the Yakama people, Fisher (1997) documented a tribal member stating “We have communion with God with the huckleberry like the white man uses wine” (p. 3). Other tribal oral traditions state that the huckleberries “know everything; they do nothing wrong” (Fisher, 1997; p. 3). The Sahaptin tribes believe that as long tribal members showed respect for *wiwnu*, giving thanks for this sacred food while taking only what was needed, that the berries would return each year to provide them with more food (Richards & Alexander, 2006).

To thank the Creator for these foods the Sahaptin tribes had “First Foods” feasts. These ceremonies were held throughout the year before the food for that season was to be harvested. Although each food had its own first foods ceremony, all of the first foods were served at each feast. At the first food ceremonies, foods are always served in the same order (See figure 1). They include foods traditionally considered to be “men’s foods” (water, salmon, and deer), followed by traditionally “women’s foods.” (cous-roots, and huckleberry) (Quaempts, Schumacher, & Shippentower, 2008). The foods are served in this order because it represents the order of the harvest of these foods. During the late summer, the first foods feast for huckleberry is held (Mack & McClure, 2002). The value of these first foods as a cultural component of Native American culture can be seen through the use of these same foods across many generations. These foods were important enough to be included in the 1855 treaties for protection, and are still an integral part of many of the tribe’s spiritual and cultural ceremonies today.

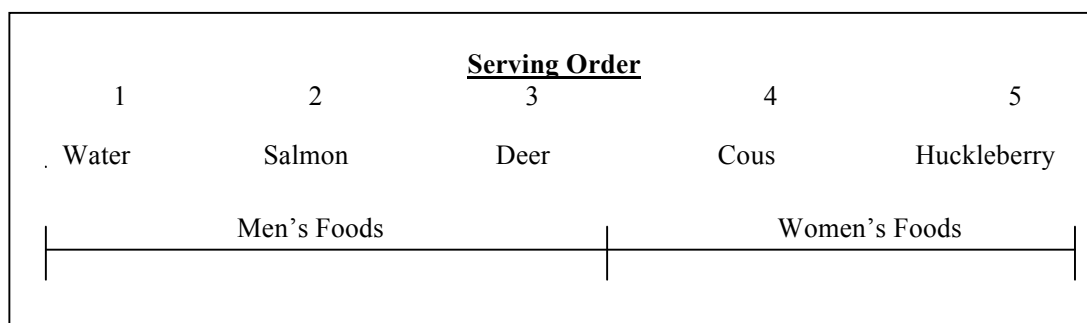


Figure 1: Service Order of First Foods at Feasts

(Adapted from Quaempts et al., 2008)

Because huckleberries were (and remain) very sacred to Native Americans, they have been treated with great respect (Jones et al., 2002). The tribes, concerned with preserving traditional gathering practices and protecting the cultural significance of the berry, developed rules about how huckleberries should be harvested (Richards & Alexander, 2006). Strict codes of conduct about how to harvest these berries are handed down between elders and new inductees to their circle (Jones et al., 2002). There were cultural norms about when harvests could occur, who was allowed to harvest at what times, and which fields were to be used each year. Tribal members complied with these rules of use because they were the social enforced norm, but also because these strategies proved effective, with the return of the huckleberry each year (Jones et al., 2002). In addition to the spiritual component, social relationships are at the heart of huckleberry harvesting (Emery, 2001). For many, huckleberry harvesting plays an important part of their lives because gathering these products was time they could spend with their friends and family (Doble & Emery, 2001). It is curious then, if so much cultural and spiritual importance is placed on many of these NTFPs, particularly huckleberries, why this aspect of NTFP harvest has not been addressed in the policies governing NTFPs.



Public land managers often are stuck in between Native Americans responsibilities and responsibilities to the public when it comes to enforcing laws and satisfying multiple constituencies. This case study on huckleberries is meant to reveal the complexities associated with Native American claims to NTFPs on federally managed forestlands, lands that are also ceded lands and areas of “usual and accustomed” gathering places. Off-reservation reserved rights present challenges to land managers in how to accommodate multiple uses and how to protect traditional gathering areas. (Jones et al., 2002) To manage the Tribe’s rights to their treaty protected resources and gathering areas, USFS managers must develop public policy to determine how these treaty protected rights will be utilized on the landscape.

### **Public Policy**

Public policy does not have a single definition, but rather many interpretations. In 1972, Thomas Dye broadly stated that public policy is “what government chooses to do or not to do” (p. 2). Another definition by J. Anderson (1997; p. 330) describes public policy as “a purposive course of action followed by government in dealing with some problem or matter of concern.” No matter how public policy is defined or designed, public policy affects citizens. It determines what kind of services they do or do not receive, which of their rights are protected, and how well rules of action are upheld. Policies tend to manifest themselves in the form of laws, regulations, ruling, decisions, or any combinations of these things (Birkland, 2005). Many of these laws are not intended to specify each step of implementation, but rather to create rules

about what can and cannot be done, and the task of implementation is passed on to the government agencies, such as the USFS.

There are a variety of different types of policies that are created that are used to drive government activities. In the simplest terms, they can be divided into three categories, distributive, redistributive, and regulatory policies (Birkland, 2005).

- ***Distributive policy***: A distributive policy distributes a good or benefit to a particular group of persons, groups, or communities;
- ***Regulatory policy***: A regulatory policy that creates limits or regulations upon persons, groups, and businesses that limits their ability to act without oversight;
- ***Redistributive policy***: A policy that give a benefit to one group by pushing the cost of that benefit upon another group of people, thereby shifting resources among groups of people.

Some kinds of policies do not fit into these three basic categories. Policy researchers have developed more typologies to categorize the policies that do not fit into the original three. These typologies include substantive and procedural policies as well as material and symbolic policies (Birkland, 2005)

- ***Substantive policy***: A policy that actually provides goods and services to people;
- ***Procedural policy***: A policy that establishes the procedures that determine how government will administer some matter (process);
- ***Symbolic policy***: A policy that expresses desired outcomes and values, but does not deliver any particular policy and has little if any impact on society;
- ***Material policy***: A policy that provides concrete resources to groups to provide a tangible benefit to the group.

A variety of policy types been used in managing different aspects of Indian affairs across the United States. Much of present day Indian policy would is described as

symbolic, meaning that most of the policies that are in place appear to be helping the Native Americans, while in practice, these policies are doing little to aid Tribes. It is hard to characterize “Indian policy” as a certain kind of policy because it changes so often, depending especially upon the policy climate set by the executive branch.

Although overarching Native American policy types may be hard to assess, examining the way that huckleberries are managed on the National Forest can allow for a more detailed analysis of what policy types are used and why they are used. Before policy types are examined though, one must first understand what kind of good is being regulated by the government; a public good or a private good.

There are two kinds of goods that can be provided by the government through policies; public goods and private goods. A public good is defined as one which is not subject to exclusion and is subject to jointness in its consumption or use (Ostrom & Ostrom, 1977). This means that unlike a private good, a public good, once provided for one user, is available for all. A private good can be used by a select group of people who can enjoy that use while the use is denied to others (Birkland, 2005). The huckleberries that grow on USFS lands are public goods. They are available for public use, and since they grow on public lands, their use cannot be denied to select groups of people.

Huckleberry policy has been generally referred to as a distributive policy. A distributive policy is a policy that provides services to specific targeted persons, groups or communities. Huckleberry policy is considered a distributive policy because the policy seeks to find ways to provide different communities, specifically Native Americans and non-Indians, with the huckleberries they desire. Although both

Native American groups and Non-Indians desire access to huckleberries, for Native Americans, access to huckleberries is crucial for cultural survival. As one Warm Springs tribal member describes it, “Huckleberries are a part of us. They are a part of our culture. They are like our fingers or our toes. People don’t understand how important they are to us.” For members of the Confederated Tribes of the Umatilla Reservation and the Confederated Tribes of the Warm Springs, huckleberries are not just a source of food, but they are part of who they are. The huckleberries are part of their cultural identity. The desire to protect and exercise treaty rights to these berries stem from the important role they play in Native American culture. These strong cultural and treaty claims to natural resources located on public national forests have the potential to affect the kinds of policies used to manage these resources.

Because public policy covers such diverse terrain, policy analysts have developed a number of policy frameworks as tools to help understand complex policy processes. Policy frameworks provide a very general list of variables for analysis for all types of institutions and aids in understanding how policies are created and implemented. Policy frameworks provide language that can be used to compare theories and can help to generate questions for analyses (Sabatier, 2007). These policy frameworks are then used to try and explain why policymakers have made particular policy choices (Gosling, 2004). Different frameworks are used in different situations because each framework has a specific way in which it attempts to explain the relationship between variables to describe why certain phenomenon exists. Generally there are two types of public policy theories: macro-level theories and mid-level theories.

Macro-level theories are used to describe a policy arena on the national level. Examples of macro-level policies include pluralism, elitism, and systems theory. These theories are used to describe entire national policy arenas. Alternatively, mid-level theories focus on a specific policy domain or issue, such as huckleberry management. Since this project focuses on huckleberry management policies on two specific National Forest sites, the use of a mid-level policy framework is an appropriate tool for analysis.

Each type of framework highlights a different aspect of the policy process, and using one more than one policy framework in analysis can provide more informed and robust conclusions (Sabatier, 2007). The focus of this study is on the way that the USFS reconciles its trust responsibility to the public with the tribal trust responsibility by examining on a specific issue that illustrates this relationship, huckleberry management. The main focus of this project is to suggest what USFS employees could do to improve Tribal federal relations and how the two trust responsibilities might be reconciled. To do this, I used two mid-level policy frameworks to compare in the analysis. The two policy frameworks used in this analysis took different approaches to understanding the problem. One policy framework took an inductive approach to the issue and this framework was compared with a policy framework that took a deductive approach to understanding the federal-tribal relationship.

Deductive theories follow the reasoning process more traditionally known as the scientific method. Deductive methods begin with a theory, and develop a hypothesis based on this theory, and then through analysis of the data, determine whether or not the observations and data collected support the hypothesis. Inductive

approaches to problem solving are more commonly used in the social sciences.

Inductive theories begin with observations and data, and seek to find patterns in the data that could support a tentative hypothesis. These hypotheses are then linked back to established theories to describe what has been found. Both approaches use the same tools for analysis, but go about the implementation of these tools in a different manner.

The two frameworks chosen for inclusion in this paper are Institutional Rational Choice (IRC) framework, a deductive approach to understanding policy that focuses on institutions and actors, and the Social Construction framework, an inductive framework that focuses on policy makers and the impacts of their decisions on populations.

The use of the IRC framework for this study is appropriate because this study is a classic case of the difficulties in managing common pool resources. Elinor Ostrom's framework has often been applied to explain why researchers see many different groups using similar strategies to manage the commons, especially when those commons are natural resources (Ostrom, 1990). Through the Institutional Rational Choice framework we will be able to see if traditional forms of commons management are being used in huckleberry management regimes, as well as understand whether an individual's desire to maximize their utility affects the effectiveness of implemented policies.

The use of Schneider and Ingram's (1993) theory of Social Construction of target populations as a framework for this study is appropriate because this framework can be used to understand why policies (or lack thereof) intended to protect treaty

rights and manage treaty protected resources have succeeded or failed in reaching their goals. An analysis of huckleberry management policies will reveal important lessons about how social constructions of Native American populations affect the kind of policies implemented for and applied to them.

I will first describe my study sites, as these are the places where real public policies are being developed and implemented on the ground. I will use the frameworks of political science to describe the findings from my research sites.

## **Chapter Three – Methods**

A case study approach to research generally involves multiple methods of data collection to understand the unit of analysis (Yin, 1994). A case study approach to research is defined as, “an attempt to systematically investigate an event or set of related events with the specific aim of describing and explaining a phenomenon” (Berg, 2007; p. 285). I used huckleberry management as a case study of how the USFS reconciles their trust responsibilities because huckleberries are a treaty protected resource that is valued by both the public the USFS serves and the Tribes with whom they have a trust responsibility. The case study examines how huckleberry management is done on two National Forests located in Oregon and Washington that are partly made up of ceded lands from local Native American tribes. Additionally, tribal members from the local Native American Nations have traditional huckleberry harvesting sites located on these National Forests. Therefore these two cases present interesting study sites for huckleberry management of National Forest lands.

### **Case Study Research**

I chose to use a case study approach for this project because past research with NTFP users has shown that quantitative approaches to accessing information about harvester’s use patterns, demographics, and participation in the NTFP arena have been unsuccessful (Alexander & McLain, 2001; McLain, 2000). A study conducted by McLain (2000) with commercial wild mushroom harvesters on the Olympic Peninsula of Washington, found that the use of written surveys to gather data had close to a zero



response rate. However, when the same study was done using ethnographic methods, much more information about NTFP harvesters was gathered. Multiple studies have also documented low response rates to surveys administered to Native American groups (Jones et al., 2002; McLain, 2000). The use of qualitative research methods is significant because this method provides a robust explanation of the complexities of the situation in a way that quantitative studies may not be able to properly ascertain (Berg, 2004). Although ethnographic data collection is more time intensive, for the purposes of NTFP research, it is the best way to gather data.

Through the use of a case study, I was not only able to speak with those directly involved with this issue, but I was also able to spend some time with the participants in their environment (whether that was the reservation or the USFS office). I hoped that by speaking with them in person, on their territory, that I would be more likely to elicit honest information about potentially contentious management and very culturally important resources.

### ***Comparative Case Studies***

I chose to take a comparative case study approach to this research; one in which the researcher studies more than one instrumental case to allow for better understanding and insight of a particular phenomenon (Berg, 2007). Comparative case studies are useful because they can reveal patterns of insight across individual cases that would not be visible through a single case study (Berg, 2007). Given that Native American tribes are inherently different from one another, a study of one tribe's experience of huckleberry management would not necessarily represent the

experience for another tribe. Including multiple case studies of two separate tribes provides more robust and triangulated research results.

Multiple case studies were chosen because they would provide a broader representation of the huckleberry conflict in the Pacific Northwest and what is being done to manage this conflict at different sites. My choice of a multiple case study approach integrates study replication into the research design. This creates a more robust study, and allows the findings to be generalized more readily to other situations outside of the case study and provides external validity to the research findings (Berg, 2007).

### **Study Area**

This study focuses on tribal members of two Indian reservations and two National Forests located in Oregon and Washington (See Figure 3). Most of the study area is contained in close proximity to the state border between Southern Washington and Northern Oregon. The study focuses on two sites, and each site is made up of an Indian Reservation and a National Forest. Reservations and forests were paired together because the Native Americans who now live on the reservation have treaty protected rights on ceded lands that are located on the National Forest they have been paired with. Therefore, site one is made up of the tribal members of the Warm Springs Reservation and the USFS employees of the Mount Hood National Forest, while site two is composed of the tribal members of the Umatilla Reservation and the USFS employees of the Umatilla National Forest. An additional study area, the Gifford Pinchot National Forest was included because many of the members of the

Confederated Tribes of the Umatilla Reservation (CTUR) and members of the Confederated Tribes of the Warm Springs (CTWS) reported traveling to the Gifford Pinchot National Forest to pick huckleberries. Additionally, historical and present day huckleberry management occurs on the Gifford Pinchot for the Confederated Tribes and Bands of the Yakama Nation. The tribal members of the Confederated Tribes and Bands of the Yakama Nation were not included in the study due to an inability to secure any tribal participants in the study.

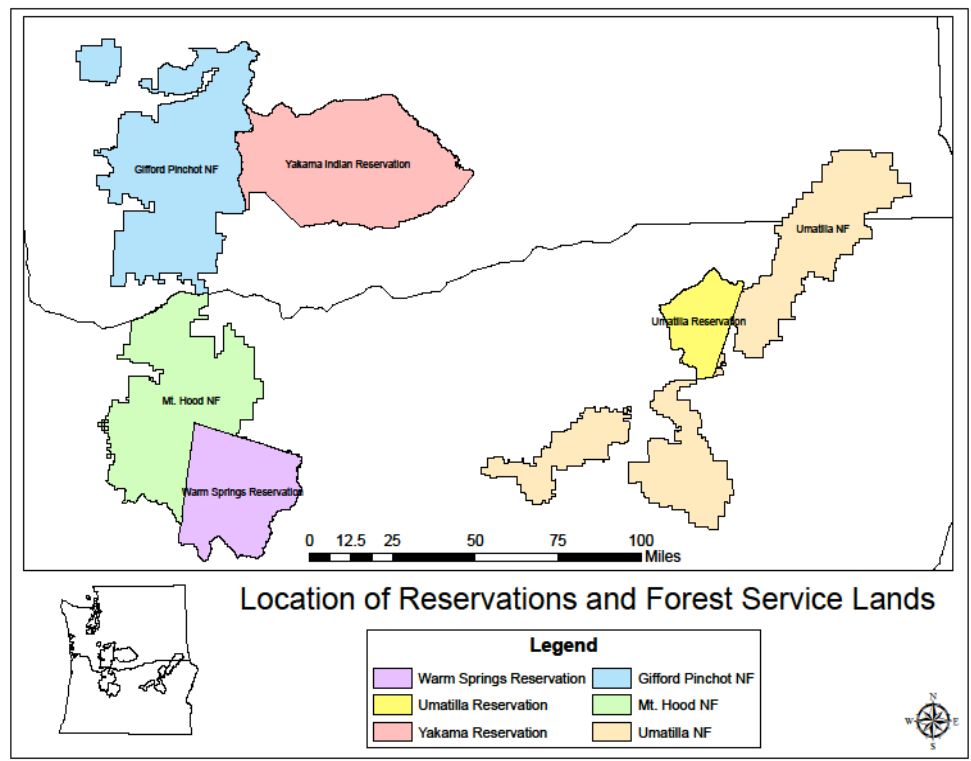


Figure 2: Map of Study Area

The areas included in the study are National Forests that are either wholly or partly made up of lands ceded by Native Americans who live on reservations adjacent to these National Forests. Also, areas within the study area contain some of the most productive huckleberry fields in the nation. The Warm Springs Reservation encompasses 643,491 acres and the Umatilla Reservation 172,000 acres. The

neighboring forests are also large in size; the Mount Hood National forest covers 1,067,043 acres; the Umatilla National Forest 1,400,000 acres; and the Gifford Pinchot National Forest 1,312,000 acres.

I chose to conduct my case studies with tribes who have treaty protected rights on National Forest lands in the Pacific Northwest because the majority of domestic NTFPs research has been conducted in this region of the U.S. (Alexander et al., 2001; Alexander & McLain, 2001; Hansis et al., 2001; Love & Jones, 2001). Additionally, in the Pacific Northwest, the public has begun to take interest in the issue of NTFPs and their management (Associated Press, 2005; Briggs, 2006; Vinh, 2005).

I chose to use the huckleberry as the treaty protected resource upon which to focus my study not only due to the limited amount of previous research that has been conducted on huckleberries, but also because of the significant cultural value of the huckleberry to members of the Native American tribes in the research area. The right to gather berries is explicitly protected by the treaties that the members of the CTUR and the CTWS negotiated with the U.S. (Treaty with the Cayuse, Umatilla, and Walla Walla, 1855; Treaty of Wasco, 1855). Therefore, the inclusion of these two tribes in the study provide a particularly good example of two cases where the USFS is responsible for managing a treaty protected resource on public lands for local Native American tribal members.

### ***Population***

Within each case study two population groups were chosen to be included in the research. One population group was made up of members of Pacific Northwest Native American tribes affected by NTFP management policies. This included for site

one, tribal members of the Confederated Tribes of the Warm Springs Reservation. For site two, the population was comprised of members of the Confederated Tribes of the Umatilla Reservation. The second population that was included in this study was made up of employees of the USFS who create and implement NTFP policies on National Forests in the Pacific Northwest. For site one this included employees of the Mount Hood National Forest. For site two, this included employees of the Umatilla National Forest.

I chose to use the CTUR and CTWS tribal populations in the study because these two tribes have historically harvested huckleberries on what are now National Forest lands. These tribes have a strong cultural tradition that involves the gathering, eating, and management of huckleberries, and so have the potential to be powerfully impacted by policies intended to manage NTFP on National Forests. I also chose to include these two tribes, as opposed to other Oregon tribes, because these are the only two tribal populations in Oregon to have had a treaty with the federal government continuously, since it was signed (other Oregon tribes also had treaties, but these treaties were terminated during the Termination era). As discussed in the section on treaties and federal recognition, this gives these tribes a much more powerful legal entitlement to certain sets of natural resources because their treaties ensured their ability to access and utilize these resources. The Mount Hood and Umatilla National Forests were selected for inclusion in this study because they are located adjacent to the reservations of the two tribes included in the study. These two National Forests were created partly from tribal lands ceded through treaties, and as a result, tribal

members have treaty protected rights to resources located on these two National Forests.

I selected informants based on two criteria 1) their involvement with huckleberry issues and 2) their affiliation with either the USFS or one of the three tribes that were included in the case study. Therefore participants were selected if they were employed by the USFS on either the Gifford Pinchot, Mount Hood, or Umatilla National Forests. Tribal participants were selected based on their membership in the Confederated Tribes of Warm Springs or the Confederated Tribes of the Umatilla Reservation. In the event that a tribal member was also a USFS employee, I asked them to self-identify with the group they felt most comfortable with.

### ***Sampling***

I chose to use a non-probability sampling technique, purposive sampling, to select the first informants to be interviewed for this research study. Purposive sampling is used when a researcher can use their knowledge about a particular group to select subjects that represent the population they are studying (Berg, 2007). I chose to select my first informants with this technique because it permitted me to get in touch with key informants involved in huckleberry issues, who could then refer me to other key players involved in huckleberry management. The first people I contacted were people that had either spoken or attended the 2007 or 2008 Huckleberry Conference. These conferences were designed to “bring together the most current knowledge of huckleberry management, review on-the-ground management practices, and build an effective working relationship with our tribal partners in the restoration

and conservation of the huckleberry resource”

(<http://www.reo.gov/ecoshare/huckleberry/>). Large numbers of tribal members from a number of reservations and many USFS personnel attended these conferences.

Conference attendance lists, presenter biographies, and contact information for those interested but not able to attend these conferences were used to generate lists of names from which to contact initial interviewees. Through my attendance at the 2008 Huckleberry Conference, held on the Warm Springs Reservation, I made personal contacts with many of those involved in huckleberry issues which gave me preliminary access to these groups of people. I then relied on these initial contacts to refer me to others who are highly involved in treaty rights issues and the history of huckleberry usage and conflict in the Pacific Northwest. This type of sampling is known as snowball sampling, and is often used to access difficult to reach populations, such as Native American groups (Berg, 2007).

### **Data Collection**

Semi-structured interviews were conducted with informants. These semi-structured interviews were conducted from October 2008 to April 2009, and each interview took about an hour to complete. Informants included tribal and agency leaders, district rangers, archeologists, traditional harvesters, tribal elders, and other individuals who are involved in huckleberry issues. Interview questions were provided in advance to participants, and were used as a loose structure for the interview (see Appendices 1 and 2). Interviews were recorded if the informant gave consent; otherwise notes were taken. Recorded interviews were transcribed, and handwritten

notes from non-audio recorded interviews were reformatted to a word processor for analysis. Interview transcriptions, or notes, were sent to the interviewee for review. This practice is also known as a member check and improves the accuracy, credibility, and validity of qualitative studies (Berg, 2007). Member checks were done after interviews and notes had been written and were sent to each of the subjects for editing. Most subjects had very few substantive changes to their transcriptions or notes.

Semi-structured interviews were used because the flexibility in the interviewing style was important to cater to the two different groups I interviewed. Two separate sets of questions were developed to serve as an interview guideline. One set of questions was developed for the USFS employees and another set for tribal members. Although I went into the interview process with a set of guiding questions for each population, in practice, additional topics arose that were not covered by the initial list of questions. The use of semi-structured interviews enabled me to probe answers to questions that were particularly interesting.

A total of 19 interviews were completed for this research. Of my interviews, 10 were conducted with women, and 9 with men. These included five interviews for the Umatilla National Forest/CTUR case study and ten interviews for the Mt. Hood National Forest/CTWS case study. Three other interviews were conducted with personnel associated with the Sawtooth huckleberry fields and the Handshake Agreement Area on the Mount Adams Ranger District of the Gifford Pinchot National Forest.



### ***Secondary Data/Archival Research***

In addition to the primary interview data gathered from stakeholders involved in the management of huckleberries, secondary (non-interview) data relevant to USFS and huckleberry management and the tribal-federal government relationship were also collected. Supplemental sources of data included informal discussions with persons involved in huckleberry issues in the Pacific Northwest, direct observations of experimental huckleberry management projects, text of tribal and/or USFS policies, Memoranda of Understanding (MOU), USFS management decisions, tribal and USFS forest management plans, news releases, and discussion with other huckleberry scholars. Sources of secondary archival data included treaty documents, previously recorded and transcribed interviews done by other researchers with members of the Tribes, newspaper articles, and historical documents about huckleberry use. Collection of this information allowed me to understand the historical use of huckleberries, and the history of the tribal-federal relationship in the Pacific Northwest and will be used in the analysis when discussing the success of certain policies.

### **Data Analysis**

Transcribed interviews were coded to analyze the data for common themes, patterns, and other pertinent information. Because certain passages covered more than one topic, some passages were coded more than once under different categories. I assigned codes to the data using words that described the phenomena present in the data. In many cases I developed subcategories of these phenomena to provide better specificity of the phenomenon.

Theoretical coding is the process of identifying and categorizing text for the purpose of theme identification (Berg, 2007). There are different types of coding techniques, and the first one I used is called open coding. Open coding is done to develop categories of concepts and to explore the themes emerging the data (Berg, 2007). It is a process where the researcher can engage in exploration of the data without making any prior assumptions about what the findings will be. This process, in addition to my literature review, provided the themes that I would use to code my data in the axial coding stage of my analysis. Axial coding seeks to build connections within and between categories and seeks to support the theoretical basis of the project (Berg, 2007). I used a freeware computer program, WEFT- QDA to code the data in the open and axial coding stages of the analysis.

### ***Limitations***

One of the limitations of this study is the small sample size. Due to the small sample size the scope of inference from these interviews is limited to the populations within the selected case studies. Although there are no statistical generalizations that can be made beyond these communities, this study may be able to inform future issues concerning treaty rights on ceded public lands. Little research has focused on the quality of management of treaty resources on public lands; thus this research may add to the body of work on NTFPs and how future development of policies to manage such resources may affect tribal groups.

## **Chapter Four – Application of the Theories of Public Policy**

A number of different types of policies have been used to manage public goods on National Forest lands, but the management of huckleberries differs from other public goods management situations because there is an additional piece to the puzzle. Huckleberries are considered to be public goods, just like many of the other resources found on the National Forest, but they are also protected under Native American treaties. This creates a conundrum for huckleberry managers because this makes huckleberries different than other exclusively public goods. The treaties of the CTUR and the CTWS protect the huckleberry resource for Tribal access and use. This means that huckleberries cannot be managed as purely public goods, nor can they be managed as purely private goods because they are located on publicly owned federally lands. This has created a situation where policy design has been difficult to create and implement.

I have chosen to use two public policy theories to frame my analysis of the huckleberry situation. I seek to use these two different policy frameworks to understand why huckleberry management and policy are being implemented in particular ways on the Mount Hood and Umatilla National Forests. I chose to use one inductive and one deductive framework to study this policy phenomenon, as this would provide two different approaches to understanding the huckleberry case.

I chose to use Institutional Rational Choice as my deductive framework to analyze my findings because it focuses heavily on institutions. Institutions are established and organized systems of social behavior, that use rules to influence social

behavior. The Institutional Rational Choice framework has been applied in many common pool management situations to explain how policies for management of common pool resources succeed or fail (Ostrom, 1990). Common pool resources generally refer to natural resources where exclusion of the public from these resources is very costly, but not impossible (Ostrom, 1990). These goods often suffer from problems of overuse. I thought that this would be an appropriate framework to use for a common pool resource such as the huckleberry.

Secondly, I selected the Social Construction framework as the inductive policy framework because it has been used in other policy studies of Native Americans and includes cultural stereotypes into the framework. I thought that this would be especially useful for a study of a minority culture working within the majority culture's institutions. The analysis can reveal how the majority culture's characterization of Native Americans as a target for policy effects the way these policies are created and implemented.

### **Comparative Case Studies**

Initially, two case studies were included in this research for comparative purposes, but the findings are grouped together because I found limited differences between the opinions of tribal members of the CTUR and CTWS as related to huckleberries and their management by the USFS. There were many similarities within populations and many of the same issues existed between populations on each National Forest. One difference that I did find was that Tribal members from the CTUR indicated that their relationship with the USFS has just begun to form, whereas

tribal members from the CTWS explained that they had a longer working relationship with the USFS. Though these two case studies were not used in comparison to one another, it did help to reveal patterns across multiple populations which indicated that these problems are persistent across huckleberry management areas, not just with one particular National Forest or Tribe as these results will reveal.

### **Institutional Rational Choice Framework**

The Institutional Rational Choice (IRC) framework, developed by Elinor Ostrom, is a deductive framework that has its roots in economic theory (1991). In economics, researchers assume that actors are rational; to act rationally, actors must seek to maximize their utility. Rational actors make decisions between a number of alternatives, and select an alternative based on maximizing their preferences (Birkland, 2005). Rational choice theory assumes that actors have nearly all the information about a problem, the roots of the problem, and the available solutions to the problem. This theory also assumes that an actor's preferences are grounded in the actor's self-interest and that actors will seek to maximize their preferences through their choices and through strategic interactions with others (Gosling, 2004).

Rational choice theory sees preference maximization of an actor, or "self-interest" as the foundation of theory (Gosling, 2004). Though, in the real world actors often make choices in situations where complete information is not available, and where the outcome of a particular decision may be unknown. Therefore actors are forced to make choices under conditions of uncertainty and therefore may sometimes make decisions that do not result in preference maximization. Lack of complete knowledge is acknowledged in the IRC framework (Ostrom, 1991). IRC differs from

a rational choice framework because it suggests that rational individuals will work together in complex situations in scenarios where complete knowledge of the situation is unknown. This is because the framework assumes that actors will recognize that the decisions that they make can affect their long-term interests, especially in common pool resource situations. In working together actors can create more effective ways to manage and allocate resources.

For example, in this study on huckleberries, to maximize their utility actors who harvest huckleberries would harvest as many huckleberries as possible in the fastest manner possible. This is because their goal is to gather the most huckleberries, therefore maximizing their use of the resource. If each huckleberry harvester had this maximization scheme in mind when harvesting however, this could quickly deplete the resource and possibly ruin the harvest of next year if huckleberry plants were damaged while harvesting. In this way, although the harvesters may be maximizing utility in one year, this course of action may affect their long term interests in harvesting huckleberries over time. Therefore harvesters may choose to harvest in ways that are different than using preference maximization as a sole driver of harvesting style. Harvesters also may engage with one another to create new ways to manage the huckleberry for all to use, rather than just creating a race to use as much of the resource as possible until it is gone. Actors are encouraged to work together because, as the IRC framework assumes, actors realize that the long term effects of resource maximization may not be to their benefit in the long term.

The IRC framework is structured in a way that each aspect of the actor can be analyzed to discover why the actor makes the choices that he or she does (Gosling,

1994). The IRC framework was developed and has been used to center the policy analyst's attention on identifying the major variables that are present in all institutional arrangements, understanding how these variables are related, and testing whether the discoveries made in the lab about the way institutions work also apply in the field.

The IRC theory, rather than focusing on formal institutions such as the federal government and Congress instead focuses on the informal rules, norms, and strategies that actors use in collective decision making (Gosling, 2004, p. 94). Since institutions are systems that regulate behavior of actors, focusing on these variables enables the researcher to understand how institutions affect the behavior of actors. In order to do this, the IRC framework examines three different subdivisions of the policy process, focusing on how the individual or actor moves through these stages. The framework uses three main variables to suggest how different institutions affect the commons management action arena. These variables are 1) attributes of the physical world in which the actor lives, 2) attributes of the community where actors are embedded, and 3) the sets of rules imposed on the actor that create incentives for some actions and disincentives for other actions (1994). The construction of the framework as thus guides the researcher into examining the individual, and the way that an individual acts in the action arena based on the use of rules of these institutions, the physical world, and the community of which they are a part. Examination of these factors illustrates the values and preferences that the actor brings with them into the action arena. In this study on huckleberries, I am examining the Tribes and the USFS as actors, and I am interested in understanding how the physical context, social context, and institutional arrangements of the actors affect the way they behave in the action

arena (Ostrom et al., 1994). I am particularly interested in examining how the rules in use affect actor's behavior in the action arena. The action arena is the space where individuals interact with other actors, exchange goods and services, and solve problems (Koontz, 2003).

In this case study, these actors are both the USFS and the Tribal members of the CTUR and the CTWS. These are the two groups that must take action in reference to the huckleberry based on their physical and cultural context. They both also bring their experience of rules into the action arena. For Tribal members and USFS employees, they may have widely disparate experiences of huckleberries that they bring into the action arena. Policy outcomes then are affected by not only institutional rules in use, but also the physical and cultural background of actors the actors involved.

IRC theorists see public policies as institutional arrangements. Policies create rules in use that allow, permit, require, or forbid particular actions from citizens and public officials (Ostrom, 1991). These rules shape how an actor behaves in the action arena, particularly in collective action situations. This is because, in the real world, actors not only desire to maximize their utility, but they must do so within the context of policies that mold how these desires can expect to be realized. Additionally, actors must often make decisions in situations where the choices that they make will affect other actors (Gosling, 2004). It is in this situation that actors must get together and try to develop collective solutions to problems. In this study, the choices made by the USFS on how to manage huckleberry harvest and use along with choices made by Tribes on how to implement their Treaty rights each affect how the other faces the



issue of huckleberry use. Both groups must make their choices within the context of the institutional rules of the USFS, and Tribes must make decisions within the rules of traditional law as related to huckleberries. The use of the IRC framework takes all of these factors into account and uses them to describe what kind of institutional setup will work best to create the best outcomes for all actors. In this way it examines how institutions affect the way that actors utilize a resource, such as huckleberries.

Ostrom's IRC theory is best known for its application of common pool resource management situations such as the one of huckleberry management on the Mount Hood and Umatilla National Forests (1990). Common pool resources often include natural resources, such as water, grazing lands, or berries. A fear of the "tragedy of the commons" is a widely recognized concept which stems a 1986 article by Hardin in which he describes what happens if use of the commons continues unregulated. This concept assumes that multiple individuals acting independently will all seek to maximize their own self interest, and through doing this can ultimately destroy a shared limited resource, even when it becomes clear that it is in no actor's long term interest the destruction of the resource to occur (Hardin, 1968). This is the basic argument of rational choice theorists. Although Hardin's premise and theory have been widely critiqued since it's printing, the fear of a tragedy of the commons still exists today, and manifests itself in many ways.

In huckleberry management, the huckleberry fields themselves are the commons, and the berries are the object of desire. USFS officials have noted that Native Americans have voiced concerns that a "tragedy of the commons" sort of

dilemma was occurring in the berry fields for many years. As one Forest Service official on the Gifford Pinchot National Forest stated:

In that period right after the great depression was when the USFS started hearing that there were more than a thousand people up there in the huckleberry fields, so that's when the pressure on the land actually was beginning to be felt by the Native Americans. Suddenly they felt there was competition for this resource.

The commons problem in the berry fields is not just a historical issue, as many Native Americans interviewed in the research pointed out that the increased competition for the berries mixed with less berry picking sites and a lack of management have only amplified the historical problems in the berry fields. One tribal member from the Warm Springs reservation told of the problems finding huckleberries in areas were once plentiful:

I go huckleberry picking with my wife every year. When we are out there we will find bushes with no berries, and sometimes bushes with no leaves on them. It has been getting harder and harder to find the berries. There are good berry years and bad berry years, but it seems like there are more bad years than good these days.

Hardin's "tragedy of the commons" is based on the assumption that rational individuals are helplessly trapped in social dilemmas from which they cannot extract themselves without inducement or sanctions from the outside (Ostrom, 1998).

Ostrom's IRC framework seeks to develop a theory of common pool resource management that attempts to explain whether, and under what circumstances, common pool resource users can avoid a tragedy of the commons situation through the use of institutions (Klooster, 2000). Ostrom defines institutions as "shared concepts used by humans in repetitive situations organized by rules, norms, and strategies" (Sabatier,

2007; p. 23). Inducements or sanctions from the outside come from institutions that use these inducements or sanctions to manage the common pool resource.

Many studies of commons management have found that numerous smaller scale communities have been able to successfully develop and manage common pool resources through use of institutions. Scholars have found that:

A diversity of societies in the past and present have independently devised, maintained, or adapted communal arrangements to manage common-property resources. Their persistence is not an historical accident, rather these arrangements build on knowledge of the resource and cultural norms that have evolved and been tested over time (Klooster, 2000; p. 2).

Traditionally the Native Americans in the study area, the CTUR and the CTWS, managed huckleberries in traditional ways that would maintain the sustainability of the berries for centuries to come. One man from the Warm Springs tribal leadership describes the way the Tribal members knew when huckleberry season had arrived:

We would pick huckleberries in the same spot. We could go up to pick and camp for 2-3 months at a time. We would know where to pick because the women who did the traditional picking had scouted out areas. They told us where to go and pick and where the berries were ripe.

He goes on to explain that huckleberry picking was not done in an unregulated manner where actors seek to maximize their profit in the berry fields as a rational choice theory may lead us to believe. Rather the traditional laws of the Tribal members regulated how huckleberries were harvested and managed. This regulation of harvest was and remains driven by Tribal institutions rules and social norms.

We wouldn't go to the same spot twice to pick berries in a year. We had a stewardship for the land. When our people moved out the mountains for the winter there were people called fires starters who set off fires in the huckleberry fields. The fire was used to promote the propagation of huckleberries. These fires were done purposefully because they opened up the

canopy so that huckleberries could grow. Ensuring that the huckleberries would grow was important because huckleberries are one of our 1st foods.

The rules of use that Native American Tribes developed to manage common pool resources such as huckleberries were not simple, and were deeply embedded in cultural systems. None of these traditions are written down, but instead are referred to as traditional law, rather than as rules for use of resources, but essentially serve the same purpose. These traditional laws dictate a land ethic that includes cultural norms into common pool resource management. Tribal members recognize that their cultural norms are different than that of mainstream USFS land users. One tribal member commented that they knew that Tribal people had different beliefs but that these beliefs are important for reasons that might not make sense to non-Indians. “We have different values than everyone else, but our food is important not only for money or sustenance, but for cultural reasons. It is our responsibility to take care of the gifts that creator gave us. It is our responsibility to take care of the earth.”

One of the ways that the Tribes take care of the earth and thank the Creator for the resources provided to the Indians is through a 1<sup>st</sup> foods feast. Both the CTWS and the CTUR tribes celebrate the 1<sup>st</sup> foods through a feast. Traditionally, the 1<sup>st</sup> foods were split into two sets of foods, the women’s foods and the men’s foods (See Figure 1). As the 1<sup>st</sup> foods came into season the Tribes would have a 1<sup>st</sup> foods feast to celebrate the return of the resource.

For men and women of the longhouse, it was their responsibility to hunt or gather the food to have available at the feast. Longhouse pickers were expected to provide enough huckleberries for the longhouse all year long and to provide the huckleberries for the 1<sup>st</sup> foods feast. Women, the traditional huckleberry pickers, went

up to the berry fields to determine when the berries were ripe. Tradition for both tribes was that no one from the tribe was allowed to go and pick huckleberries until after the first foods feast. The only people that were allowed to pick huckleberries for the feast were the women of the longhouse. Once these women determined that the berries were ready for picking then the rest of the tribe was able to go and pick huckleberries for their families. A woman who is a gatherer for the Umatilla Tribal longhouse describes the responsibilities of longhouse pickers:

We pick berries for the Huckleberry Dinner which is a big 1<sup>st</sup> foods feast where everyone gets to taste the huckleberry. After the ceremony then all tribal members can go and pick huckleberries wherever they want, but not before the ceremony. Gathering huckleberries can be hard work. We must gather enough berries to last for the whole year because huckleberries are used for many important occasions, such as births, marriages, and funerals. We are supposed to have huckleberries every Sunday for the entire year so we need to gather a lot for the longhouse alone. Huckleberries are what make us up as Indians because they are our foods and they nourish us. So the huckleberry is a part of us. Because of this we must take care of our foods, and if we do they take care of us in return.

There were a variety of initiation rites that went into becoming a longhouse gatherer. Becoming a gatherer for the longhouse carried with it responsibilities to the rest of the Tribe, and because of this becoming a longhouse picker was an important job. There were ceremonies associated with becoming initiated as a gatherer. Most traditional longhouse gatherers were from one family, and became longhouse pickers at a young age. One of the Umatilla tribal huckleberry harvesters reflected that “The first foods were always very important to me and my family. My family has always been associated with the longhouse and picking. My family, my mother and my sisters have all been pickers. It is a very special job.”

This association with the importance of managing, harvesting, and protection of the huckleberry resource is quite evident. Tribal members from both the CTUR and the CTWS recognize the importance of the huckleberry to their culture and that improper care for the huckleberry or over harvest of the huckleberry is breaking traditional law and cultural custom. In this way their institutions create cultural incentives to protect and manage huckleberries as a common pool resource. As one of the leaders in the Warm Springs tribes explains:

Traditional law is very strong among our people and the #1 rule is that until our first gatherers, the traditional gathers, are back and have huckleberries then no one else can pick. After they come back and we have our feast then everyone else can go and pick the berries. The 1<sup>st</sup> foods are the most important thing to us. Water, it gives life to everything. We lay out the first foods on the table, and it is like laying out your life, because the first foods are what sustain you. There are a lot of unwritten laws in our culture. There are traditional laws that are tied to the land that are not written down anywhere. We need to share the culture and everyone within the culture. Because these laws are written in our language, it is hard to interpret the law of the land to those who do not know our language. The law is with the land, the land knows the law. That is where you learn it.

The law of the land and the rules that are embedded within the first foods appear to be institutionalized, as described by Ostrom (1991). Native American groups use formal social norms to manage the commons. It is evident that these norms are pervasive throughout both tribal communities. Since caring for and ingesting these 1<sup>st</sup> foods are what provide these communities with their identity as members of these two Native American Tribes, protection of these resources is not regulated by an institution, treatment of these resources are engrained in the values and norms of society within these two Tribal nations. One of the traditional leaders of the Warm Springs expressed that:

One of the important things for our people is to plan ahead. There is not just our generation, but there are ones to follow. More children are coming. We need to take care of our land so we leave it a better place for those who follow us. This used to be the role of the chief, to teach people the law of the land and how to protect it for the future, but the natural resources department has now taken over some of the Chief's traditional roles. There is a song that we sung this morning at council in our language that tells how the law isn't going to go anywhere. The law stays with the land.

The members of the tribe have a deep seated belief in traditional law, but understand that times are changing and that natural resource management departments have now taken over some of the roles of the Chief. This is not a result of a loss of the value of the traditional law of the Tribes. The social norms that stem from traditional law have served to manage common pool resources within Native American communities for centuries. Rather, the responsibility for management of natural resources on many reservations has moved to natural resource departments because these are the kinds of institutions that the USFS knows how to deal with. Natural resource department staff interpret traditional law in a way that the USFS can understand because the societal norms held by the tribes often do not extend to the non-Indian population who also harvests huckleberries on the National Forests.

Ostrom's IRC framework suggests members of small groups can design institutional arrangements to help to sustainability manage resources (1990). Through my research I saw that the two Native American Tribes that were part of my study were able to do this. Both members of the CTUR and the CTWS describe strategies that were used by tribal members to manage huckleberries as a common pool resource through the use of social norms and traditional laws. The actions of tribal members were a result of the Tribal institutions that regulate huckleberry harvest (Ostrom, 1990). Institutions affect the behavior of individuals through rules and norms that tell

actors what can and cannot be done. Institutions can reduce uncertainty in the behavior of individuals and can create incentives for coordination and cooperation (Bravo, 2002). Traditional law is the institution used within the CTWS and the CTUR groups to sustainability manage the huckleberry resource.

The IRC theory focuses more on informal institutions than it does on formal government institutions, such as the USFS or Congress. This is because traditionally these informal institutions work better to manage the commons than larger resource regimes. Shared norms and values, enforced rules, and strategies formed by local knowledge and input help shape common pool resource management institutions that benefit individuals and do not lead to the overutilization of resource, or a “tragedy of the commons.” Ostrom found that institutions that utilized these variables tended to be located in communities with strong social capital, such as the Native American Tribes in this study (1990). This was important because individuals who use the common pool resource understand how their overuse could affect other individuals, and therefore the entire community.

The norms for adhering to the rules and sanctions developed by the community using the common pool resource are stronger in these communities. Conversely, Ostrom discovered in larger communities with less social capital, there was less community pressure to adhere to the norms, and a free rider problem was more likely to develop, as individuals can overuse the resource without seeing direct or immediate consequences to the resource, themselves, or other users (Ostrom, 2000).

Today, huckleberries are managed by formal governmental land management institutions, in this case, the USFS. Although Native Americans continue to practice



huckleberry harvesting according to the rules of traditional law, they are no longer the managers of the huckleberry fields. When the management of some of the ceded lands that were traditional huckleberry harvesting areas were transferred to the USFS for management, traditional Native American common pool resource management systems were no longer the ruling concept of management on the lands. This nationalization of huckleberries led to a rejection of existing Native American huckleberry management regimes, increasingly poor monitoring of harvesting practices as a result of a lack of funding, and defacto open access to the resources (Ostrom, 1990).

This “resource management” regime existed in the USFS for many years unabated. Records from the 1930’s describe many of the same problems in the huckleberry fields that are being recorded today. The USFS did not focus on the huckleberry as an important part of the forests, in either cultural or economic terms. In the past years a resurgence of interest in traditional foods from Native Americans tied with increased pressure from the executive branch for the USFS to include Native Americans and their concerns into the National Forest Management planning process has suggested that a reassessment of huckleberry policy take place.

The USFS is now responsible for the management of huckleberries on the National Forest. The USFS must manage for a much larger group of actors than the tribes. The USFS manages public lands not only for the Native American trust, but also for the entire American public. This means that as a larger group, as Ostrom’s framework suggests, the USFS, will have more difficulties managing common pool resources. This is because it is harder to institute social norms to control behavior in

these situations, and since the pool of actors who desire use of and access to the good are much larger, free-riding is more likely to occur (Ostrom, 1999).

The USFS has very little in the way of formal policy developed to manage for huckleberries. There are a few overarching laws delineating how the USFS should manage the tribal trust responsibility on federal lands, but these regulations are generally vague and provide very little direction for huckleberry management. As a commons resource, huckleberries have been the recipient of very little special management on the National Forest. Commons management in terms of huckleberries has been a very low priority for the USFS until recent years, and so few institutions have been developed to regulate how huckleberry commons are used. Traditionally the USFS has focused on managing the National Forests for timber, recreation, and wildlife (MUSY 1960).

The IRC framework poses the question: Under what conditions are groups of people likely to make rules that govern commons resources, and how do they get people to follow these rules? Ostrom discovered, through application of the IRC theory, that there were four variables that were present in all successfully common pool resources management regimes: 1) clearly defined boundaries, 2) rules congruent with local conditions, 3) local input, and 4) sanctions against those who violate the rules (Ostrom, 1990).

Tribal huckleberry management includes these four conditions necessary for successful common pool resource management. The boundaries of harvesting areas are clearly defined as the Tribe's "usual and accustomed" gathering areas. The rules of the Tribes regulate the use and harvest of huckleberries. For example, no one from the

tribe is allowed to pick any huckleberries until the women from the longhouse have traveled to the berry fields and determined that they are ripe. The local input on the resource comes from these women. Then these women bring back the huckleberries and serve them at a feast where everyone can get a chance to have a taste of the huckleberry before anyone from the tribe can go and pick huckleberries. Lastly, if tribal members do not conform to these traditions of harvest they will be breaking traditional law, defying Creator, and breaking social norms enforced by the rest of the tribe.

USFS huckleberry management does not have many of these four conditions. The location of the huckleberries is generally defined as located on certain areas on the forests, but there are very few laws regulating huckleberry use. One of the things that the USFS doing to take a step forward in terms of commons management is to work at the local level. One man, who manages a large area of the National Forest where huckleberries are harvested, after admitting that there were problems with huckleberry management, stated that:

I think that the way that we are probably going to solve this issue, or try to solve the issue, will be local. We are going to work here on this forest to try to figure out what best meets the needs of the folks using that resource which is probably very different from the folks on other National Forests close to us. You know it might be a different way to solve that issue here. I don't see a big regional thing happening, I don't see a big blanket thing like that. It will come down to what best meets the needs we have here. I think that education would be best and some of those sorts of things to get people to comply voluntarily, but maybe we can't get people to do that. I think it will end up being local, on the forest. What best meets the users on this forest.

While it appears that the USFS is still in its infancy when it comes to develop a common pool resource management regime, it does appear that they are taking some

of the steps to develop the capacity that Ostrom suggests are at the heart of all successful commons management regimes (1990).

Although the USFS is working to improve the management of huckleberries as common pool resources, the problem is that they are working with a much larger community than the tribes worked with. The USFS instead will have to make use of policy tools or other widely applicable social norms to have the kind of community control over resources access and use that the Tribes had. Although the IRC theory suggests ways that an institution can create a successful commons management regime, many of these suggestions are more applicable to small scale managers, rather than managers such as the USFS. There is no single best strategy for commons resource management, and a search for one is futile. Really, the best tool for sustainable management of common pool resources depends on the characteristics of the users of the resources and the resource itself.

The IRC framework focuses mainly on individuals rather than groups. Although it states that individuals will work together within an institution to manage common pool resources, it does not deeply examine how the institution itself comes about, and how groups of actors together affect institutions. The social construction framework takes a close look at the characteristics of those who use the resource (Tribal members) and those who develop policies for those using the resource (USFS) and tries to explain how the characteristics of the groups affect policy outcomes. This framework then shows how the characteristics of these two sets of actors influence the sorts of policies that are developed and how they are implemented.

## **Social Construction Framework**

The social construction framework developed by Schneider and Ingram (1993a) takes an inductive approach to understanding how policy is developed and implemented. The framework focuses on groups as the unit of analysis, referred to in this framework as “target groups” which are populations for which policies are created. Generally the social construction framework is concerned with how these target groups are socially constructed by those who develop and implement policy. This framework suggests that policies created for target groups are based on the social construction of the group along with the political power of the target group. The social construction of target populations explains, “Why some groups are advantaged over others independently of traditional notions of political power” (Schneider & Ingram, 1993a; p 334). The classification scheme created by Schneider and Ingram (1993a) splits target groups into four different quadrants based on two axes: the target group’s political power and social construction (Lieberman, 1995). This creates four groups, those that are powerful and positively constructed (Advantaged), powerful negatively constructed groups (Contenders), weak positively constructed groups (Dependents), and weak negatively constructed groups (Deviants) (See Table 1).

Scholars who use this framework to study the public policy process begin by observing the ways in which the target groups are characterized. A target population is a group of people or a population for which specific policies are developed intended to impact (Ingram & Schneider, 1995). In many ways a target group can be compared to a stereotype. Stereotypes of groups become embedded in societal discourse and over time, the stereotype is the way that the target population becomes identified. These

stereotypes then affect how policy makers think about the target group and in turn this influences how policy makers see and value the group (Schneider & Ingram, 1993a). Target populations can be characterized politically as negative or positive as a result of the types of language, metaphors, and causal stories used to describe them (Schneider & Ingram, 1993b). Policy maker's perceptions about a target group can then influence the social construction of the group. Schneider and Ingram posit that a group's social construction along with that group's political power affect the way the target group is treated in terms of policy development.

**Table 1: Social Constructions and Political Power: Types of Target Populations**

	<b>Positive Social Construction</b>	<b>Negative Social Construction</b>
<b>Politically Powerful</b>	<p><b>Advantaged</b> Politically influential Positively Portrayed Burdens undersubscribed Benefits oversubscribed</p>	<p><b>Contenders</b> Politically influential Negatively Portrayed Burdens undersubscribed Benefits positive but hidden</p>
<b>Politically Weak</b>	<p><b>Dependents</b> Politically Weak Positively Portrayed Burdens oversubscribed Benefits symbolic</p>	<p><b>Deviants</b> Politically weak Negatively Portrayed Burdens oversubscribed Benefits undersubscribed</p>

(Adapted from Schneider & Ingram, 1993a)

Policy makers manipulate social constructions of target groups to influence the policy tools, agendas, and rationale that legitimate policy choices for these groups (Schneider & Ingram, 1993a). In applying this framework of social construction to

the huckleberry case studies, the target group will be the Tribes, and the federal government will be the policy makers. I will examine how these social constructions are applied to Tribes and how the perceptions of Tribes as a target group influence how their treaty rights are enforced.

In this study two Native American tribes, the CTWS and the CTUR, were the target populations for huckleberry management policies. Native Americans have been depicted in a variety of stereotypical ways throughout history. This diversity of stereotypes speaks to the many complex ways that non-Indians have understood what it means to be a Native American. Native American nations have typically been considered the “other,” and have been lumped together as a single ethnic group by non-Indians (Bobo & Tuan, 2006). Although it is important to note that tribal groups are not the same as one another, policy makers tend to construct Tribal nations as a single “Native American” entity. Because many Native American groups tend to share socially significant characteristics such as values, cultural traditions, or political views that are distinct from non-Indians, they are generally lumped together as a single socially constructed group. In this way policy makers do not have to decide what the political ramifications of supporting one tribe might be, rather they view Native Americans together, so that they can aim public policies at the group as a whole.

In order to understand how Native Americans are viewed as a target group, I examined popular stereotypes of Native Americans and how these stereotypes were used to support particular policies.

- *The Innocent Indian* - Columbus called Indians naïve, childlike, undeveloped and in need of being civilized. During the exploration years, native people were portrayed as a gentle people who would not stand in the way of progress (i.e. European conquest). This stereotype served to aid policies encouraging movement to the New World, because this stereotype enforced the notion the native people of the land were not “angry savages” and were nothing to be afraid of (Bobo & Tuan, 2006).
- *The Uncivilized Indian* – As more non-Indians moved to the Americas, Native Americans began to reject idea of being “civilized” and adopting a European way of life. As a result, non-Indians began to characterize Native people as primitive, savage, and un-American. It was believed by many that Indians were wild and uncivilized, and, like the wild and uncivilized frontier, they too needed to be conquered and tamed (Bobo & Tuan, 2006). This stereotype aided in the justification of taking Native American lands and making them a part of the U.S. land base.
- *The Hostile and Savage Indian* – As Westward expansion continued, hostilities between non-Indians and Native Americans began to increase. The new stereotype of the Indian was one of a savage and warlike aggressor. This stereotype allowed for new, hostile policies toward Native Americans to be developed and implemented (Bobo & Tuan, 2006.)
- *The Conquered Indian, aka the Reservation Indian* – This stereotype refers to the drunk and indolent reservation Indian. This Native American is still considered the “other”, and is wholly un-American, and is neither an assimilated Indian nor a “real” Indian. This stereotype characterizes Native Americans as lazy and powerless and dependent on non-Indians to help them. (Bobo & Tuan, 2006).
- *Treaty Asserting Indian* – This is one of the most recent stereotypes of Native Americans. This stereotype is reminiscent of the “savage and hostile” Indian stereotype of an earlier era. The treaty asserting Indian has aroused animosity among those who benefit economically and politically from Native American tribes that do not assert their treaty rights.

Stereotypes about American Indians are deeply embedded in American history and reflect a historically competitive relationship between Native Americans and non-Indians. Many of the racial stereotypes of Native Americans still exist, particularly in areas where Native Americans and non-Indians compete for resources, so it is important to understand how the commonly held notions of Native Americans affect



the way the policy makers view Native Americans and how they will create policy for them (Rouse & Hanson, 1991).

In the two case studies examined in this paper the issues of racism and stereotypes were raised with both USFS employees and Tribal members at both study sites. Both tribal members and USFS employees admitted that there were some stereotypes used in their communities. One Warm Springs tribal member, when questioned if he had noticed any racism in the local community or from the USFS stated that he had notice that:

There is some local racism. At Shears falls, a traditional Native American fishing area, non-Indians complain that there are special camping areas for tribal members. Also, when non-Indians see that Native Americans have nice things, like a nice car, they assume that we must have stolen it or something because obviously because we are Indian we aren't rich enough to have that kind of stuff.

Another tribal member from the Umatilla Reservation said that the perception of Native Americans goes both ways in the local community.

I think there is a good perception of the tribe but also a negative, especially with us gatherin' resources they (non-Indians) think that we shouldn't be. Especially with hunting and fishing, the non-Indian population thinks that we are out there year round killing all the animals and taking all the fish. There is that perception and it still exists today. People think that we really do that when we don't. We have managed seasons, and we are a small population so we have a small impact on those resources. I think that's a perception other people have of us, people think that Indians just get handouts from the government, that everything is free for us, that we get free medical, and it's not true. There's that perception. But I'm sure that there are positive perceptions too, as seein' us as managing resources and havin' a big positive impact on some resources, especially with the fish.

One tribal member from the Warm Springs who looked very "traditionally" Indian, with a long thick black braid and a prominent nose who was wearing turquoise jewelry described how if he were out picking huckleberries, that no one would bother

him, because he “looks like what an Indian is supposed to look like.” He said that sometimes other pickers are questioned by USFS officials about their authenticity as Native Americans, because they do not look like what an Indian is supposed to look like. This illustrates that as a target population, Native Americans are described in stereotypical ways. These comments from the Warm Springs and Umatilla members illustrate some of the popular stereotypes described earlier. One of the stereotypes that was present was of the “Reservation Indian.” Tribal members reported that they felt some non-Indians saw them as too poor and lazy to earn anything for themselves and as a result the U.S. government has to help Native Americans with everything. Another stereotype that Tribal members observed was the application of the “Treaty Asserting Indian” to Tribal members. Interviewees felt that non-Indians saw them as taking advantage of and abuse the rights protected by their treaties. Lastly, tribal members also indicated that non-Indians do not consider them “real” Native Americans unless they look like a stereotypical Native American.

Though the interviews revealed some aspects of stereotypes, secondary documents and data revealed a very noticeable stereotype, one that stems from the “Uncivilized Indian” and this was the stereotype of the “Dependent Indian”. Since the earliest stages of Native American Law the U.S. government has created policies based on the notion that Native Americans are unable to manage their own lands, resources, and communities. Justice Marshall stated that Indian nations were “dependent nations” and this sentiment continues to color American Indian policy today. USFS employees appeared to be wary of handing over management responsibility of the huckleberry resource to Tribal members because they saw that as

their responsibility, one that the Tribes could not handle on their own. This notion that tribes are dependent on the federal government persists, and affects how policy for Native Americans is developed.

These stereotypes affect the way that policy makers view their target population. These stereotypes, though not necessarily true, become true over time as they become embedded in the ways that people think about this target population. The stereotype then becomes the way that the target population is identified, and influence the ways that policy makers see and value the target group politically (Schneider & Ingram, 1993a).

Once a researcher determines how a target population is defined, they next try to understand the social construction of that target group. Social constructions are cultural characterizations or popular images of persons or groups whose behavior and well-being are affected by public policy. Social constructions can be created and influenced by many factors including: politics, media, literature, culture, history, and religion (Ingram & Schneider, 1995) The social construction of a target population has a powerful effect on public officials, the way these officials shape their political agendas, and the actual design and implementation of policies (Schneider & Ingram, 1993a). The allocation of policy benefits and burdens depend on the group's social construction in society. Groups become socially constructed because they tend to share socially significant characteristics such as values, cultural traditions, or political views. This allows them to be grouped in a way in which politics can aim public policies as affecting these particular groups. Since these populations are grouped together based on characteristics, policy makers can then assign negative or positive

connotations to characteristics these social group share (Schneider & Ingram, 1993a). Then, the researcher is able to use their understanding of this social construction to place the target population into the four square scheme created by Schneider and Ingram (1993a) to separate different types of social groups (See Table 1).

First I sought to understand whether the two Native American populations included in this research project were viewed in a positive or negative light by the USFS employees on the Mount Hood and Umatilla National Forests. I was interested in speaking to these USFS employees because they are responsible for the development and implementation policies that affect Native Americas as a target group. I did this in order to understand how the USFS employees socially constructed the members of the two Tribes included the study as a target population.

I asked USFS employees how they thought the local tribes were viewed by themselves and other employees of the USFS. I also asked members of both Tribes what they felt the local USFS employees thought of them. Since the social construction of a population is presented either positively or negatively, I hoped to get a sense of whether the general feeling among tribal members and USFS employees was positive or negative. I began by asking an employee from the Mount Hood National Forest who works closely with the tribe on many cultural issues. I asked him if setting aside some areas for Native American only huckleberry harvesting was considered on the Mount Hood National Forest. He answered thusly:

I think that there would be negative public opinion about something like that. Over on the Gifford Pinchot National Forest the set aside area is informal, and I think that it's almost better the way it is. They get few complaints about the informal Handshake Agreement area. That works, but when the Gifford Pinchot restored a part of the Forest to the Yakima nation, which was a very publicized thing, there was a lot of public complaint about that. Lots of people

still do complain about it, so I think it would be, I think we would get a lot of negative feedback if we tried to do a set aside area. I think that there is resistance from the public because they see the National Forest as public lands, and they would question why the USFS was creating an area on public lands that the public couldn't access.

This explanation reinforced the notion that non-Indians feel that Native Americans already get too much from the government and that they do not need to "take" anything else from the government or the public. This feeling, that the USFS's is unable to create management for the tribes as a result of a possible backlash from the public, was echoed by other USFS employees and tribal members. One Tribal member from the Warm Springs Reservation described how she had been reading in the newspaper about the tribes. She got the feeling that:

In Bend and Portland, I read the newspaper editorials from there, and the general response from the public is, you know, big deal about huckleberries or other treaty resources. Or you know, or the Indians are whining again. Everyone thinks it's such a big forest. Why can't the Indians share? There must be many huckleberries out there. But what they don't understand is the importance of the huckleberry. There is no understanding of how important that food gathering is to us and the connection in all that is the thankfulness of the people for being provided that food.

Although these viewpoints do not reflect directly how USFS employees feel, these two opinions do reveal how the public tends to view Native Americans, particularly in the Pacific Northwest. Previous studies have found that in areas where there is competition over resources, tensions between the groups who use those resources tend to be high (Bobo & Tuan, 2006). This appears to be the case between the general public and the Tribes. The general public is made up of all those users of the National Forest who are not Native American. This population is treated as an advantaged group in this analysis as compared to Native American groups. The public

that uses National Forest lands has more political power and a more positive social construction if taken as a single group than do the Tribal populations.

This characterization by the public is important because it is the most common viewpoint held about the Tribes in the Pacific Northwest, and determines how they are socially constructed. Since the general public represents “society” these societal characterizations of the Tribes can determine whether the Tribes as a target group should receive positive (beneficial) or negative (burdensome) policies. When the public sees Native Americans as either the “Treaty Asserting Indian” or the “Reservation Indian” these stereotypes affect the kinds of pressure that the public puts on policy makers, and in turn the types of policies created for Native Americans. The public puts pressure on policy makers to provide beneficial policies to some target groups and pressure to inflict burdensome policies on other groups based on these groups social construction, and the types of pressure the public exerts depends upon the public’s perception of the target group.

The social construction and political power of groups are used in tandem to create a four square scheme which Schneider and Ingram (1993a) use to describe different the four different types of target populations. The groups are labeled advantaged, contenders, dependents, and deviants (See Table 1). This quarterly scheme is used to explain why some groups are treated better by policies than other groups although all groups technically are equal before the law (Schneider & Ingram, 1993a).

Members of the advantaged group are powerful and positively constructed, and example of this in the Native American community would be Code Talkers from

WW II who helped the United States communicate in secret. Contenders are powerful, but they are negatively constructed. Some Native American groups that fall into this group are Tribes that have benefited greatly from the development of casinos. These Tribes have political power as a result of the money they generate, but are disliked by many because they provide opportunities for gambling in states where gambling was previously banned. Dependents are a group of people who are constructed positively, but have little power. This group would describe how Americans thought about Native Americans in the formative years of the nation. Tribes were viewed in a positive light, but were not considered a part of the American policy arena. Lastly, deviants are those with little power who are also negatively constructed. Many of the stereotypes of the “Reservation Indian” or the “Drunken Indian” have led to much of the public viewing Native American populations as deviant.

These four descriptions then serve as policy targets for policy makers. Depending on where a group falls in the quadrant, policy makers will develop different kinds of policies that they see as appropriate for that “type” of group (Advantaged, Contender, Dependent or Deviant). Policy makers are drawn to developing different types of policies for the four different groups. Public policies can assign either benefits or burdens upon different target groups depending on purpose of the policy and the social acceptability of implementing such a policy. Policy burdens and benefits are distributed differently to each group depending upon their political power and social construction.

The concept of social construction of target populations is central to decisions made in the policy arena. Most people desire to be a member of the advantaged group, because advantaged groups receive the bulk of beneficial policies. Public officials have a tendency to provide reinforcing, beneficial policy to groups with political power and a positive public social construction. These groups have the political power to pressure policy makers to make beneficial policy, and policy makers are willing to do so because it is popular with the public. As a result, groups will work within the policy arena in order to portray their group as powerful and socially constructed in a positive way. Alternatively, public officials tend to create punitive policies toward those groups that are negatively perceived by the public, which serves to reinforce the social perception that these groups are bad (Schneider & Ingram, 1993b).

Schneider and Ingram (1993a) discuss the different ways that those who develop policy work within the range of target groups in order to create policies that give benefits and control advantaged groups, while creating policies that diminish control and apply burdens to deviant groups. Contenders are often recipients of beneficial policies as a result of their political power, but these policies are not widely publicized or publicly acknowledged because policy makers fear that these policies may appear unfavorable to the public. In a similar vein, those who are dependent often receive the “benefits” of symbolic public policy, created to appear to mitigate their problems, without spending any actual money (Schneider & Ingram, 1993a). Lastly, most of the policies developed for deviant groups prescribe strong burdensome policies to these groups.



In this research I was interested in using the social construction framework to discover if the Tribes included in this study were perceived as being in one of these groups, and how their location in a particular quadrant affected the types of policies created for huckleberry management on National Forest land. After identifying the CTUR and CTWS as the target populations for whom huckleberry management policies would be created and developing a notion of the social construction of these groups I examined at the sorts of huckleberry policies that had been created and implemented by the USFS on the Mount Hood and Umatilla National Forests that affect these target populations.

I found that there were little if any policies directing the USFS how to manage huckleberries, or any other treaty protected plant resource, on ceded public National Forest lands. There are some general, overarching laws that outline what kind of responsibilities the USFS has as a federal agencies to federally recognized Indian tribes, but none of these directives stated anything about how to manage treaty protected resources on public lands. There were no national guidelines that regulated huckleberry harvest, stated how the USFS should best meet its trust responsibility to the tribes in terms of plant management, or how the responsibility to protect treaty resources should be valued among responsibilities to protect other forest resources.

I was interested in discovering what the USFS and the Tribes considered the policies for huckleberry management, since it appeared that there was little formal policy, particularly at the national level, guiding USFS managers on what to do about the huckleberry resource and its protection under the CTUR and CTWS treaties. One USFS employee who works as an archeologist on a ranger district that is known for its

popular huckleberry picking areas described the reasons why they manage huckleberries the way they do on her particular forest as resulting from ambiguity in the treaty. She described it this way:

There are a few differences among the treaties of the Native American nations that have ceded right on this Forest, but there are very few differences. For the most part the treaties are very general. The pieces of the treaty that have been put to court are very clear, but for instance, the thing with special forest products and permits, that has not been decided by the courts. Something like huckleberries, it is open for interpretation until the court closes the interpretation and decides, like it did with fish, you get 50% we get 50% discussion over. Until that court decision is made on any given implied right in the treaty, then its open to interpretation and each forest may interpret it in a different way. We do get some direction on how to interpret treaties from our tribal liaison, but is hard to get blanket direction because all the tribes and their treaties differ. So instead, you know, we pretty much have taken care of many of these things on the forest, and how to manage huckleberries, this is just the sort of decisions our forest makes.

One USFS employee who works at the regional level on NTFP across the Pacific Northwest described the lack of huckleberry policies as a result of the many other issues that the USFS has to deal with. He found that since there were no rules explicitly requiring huckleberry management, enabling managers to manage for these plants was difficult. USFS managers through the interviews expressed a fear of being sued, and so if there aren't hard and fast rules or laws there to support their actions, they are less likely to engage in those management actions in order to avoid potential litigation. He explains:

Well, we have a hard time managing huckleberries because we've painted ourselves into a corner with so many rules and regulations. You know the one thing about huckleberries is they don't like a lot of trees. They like the clearcuts<sup>1</sup>, and you've probably been around to hear all the wars and lawsuits we get from cutting one tree. You think you cut a tree and the sky is going to fall. So having a clearcut or an opening really goes against those things. I mean you look at the Handshake Area or Potato Hill and we see these old

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<sup>1</sup> It has not been shown that clearcuts aid in huckleberry regeneration (Anzinger, 2002; Minore 1972)

photos that were from the twenties and thirties, where it is wide open, and there are berries everywhere. You look at it today and it is all encroached, and our management policies, even our prescription policies as far as burning, you know we put out every flame and burning is how the tribes kept those fields open. Management is a no brainer, do a clear cut in that area and you get huckleberries. So why don't we manage like that? Because it goes against what the general public wants us to do. If we try to implement something like that, and we are trying, we get sued in a lawsuit. In the lawsuit the federal judge says you can't burn, you can't have a clearcut, but tribes, they are saying look at this, our berry fields are getting encroached, and huckleberry production is down. But what is the USFS supposed to do? We are stuck in the middle.

There is a disconnect and the laws are unclear. Even though we have executive orders telling us to consult with the tribal government, even though there's a whole bunch of acts that say we have this trust responsibility to the tribes, these laws aren't clear. They don't explain whether we have the authority to do something that we think need to be done to meet our responsibility to the tribe. There is a grey area, some CFR's don't separate the general public and the tribes, and so we don't know how to implement these laws. Also, when we do something for the tribe to try and help them, sometimes it makes some hard feelings with the public, because they are like wait a second, where's mine? So we are working on it. Because we have had people in line positions that have said "look we want to do this for the tribes, but we can't, I don't have the authority to do this for the tribes" and they didn't want to get in trouble because there wasn't a CFR allowing them to take a certain action, there still isn't one, although we are drafting one.

It appeared that there were three main barriers to policy development: 1) specific directives related to the USFS's responsibility to the tribes have not been developed or formalized through national laws or through clarification of Treaties, 2) that huckleberry policies stemming from Treaty responsibilities sometimes come into conflict with other laws that the USFS has to adhere to, and to a lesser extent, 3) management on public lands for Tribes is publicly contentious. I assumed that because the USFS has a legal trust responsibility to the tribes, that ignoring the tribes and their desires completely was an unacceptable form of action. This meant that the USFS must be taking some form of action to meet the Tribes needs, and I was

interested what types of measures the USFS was taking in the interim to carry out their trust responsibilities to the tribes.

It appeared that as an alternative to formal policies, many USFS managers turned instead to informal policy structures to cooperate with Native American tribes and to create a working relationship with the tribes outside of the regular institutional rules. One way that this was done was through the use of MOUs. One USFS employee I interviewed who has significant control over development and implementation of forest policies describes how he and his employees have used informal policies and relationships to meet Tribal requests for huckleberry management:

There isn't really an overarching management policy; things are decided more locally, on a forest by forest basis. We have MOU's in place. These MOU's are mainly operating guidelines, and I think we can do a lot better than that in terms of developing policies for management. I think that we know what we need to be doing, we need to be talking to each other, we need to be sharing and working together as partners and collaborators. How we manage to do this is done somewhat on a forest by forest basis, and what we decide to do on the forest comes down to the communications and the relationships that you have, and the interests that the different tribes have. We know first foods are an important issue. Access is also an important issue, although it varies among individuals, individuals among each tribe.

Instead of forging policies through the traditional formal avenues, USFS and Tribes alike have been working together outside of these institutions through more informal agreements as a way to get things accomplished without getting tangled up in the rules and terminology that appear to be hindering their progress. One of the members of the Warm Springs tribal leadership described the relationship with the USFS this way:

There are some policies that the USFS has with the tribe. There is a verbal agreement with the USFS. In this agreement the USFS has a management plan

for the forest. Indians have been burning the huckleberry fields for a long time. We have to do projects with the USFS now instead of burning because of changing land management practices. There are other things too, like sometimes the people at the USFS will tell Warm Springs Tribal members where huckleberries might be that aren't in the publicized places. Like the USFS officer will know where the berries are because they've been out in the woods a lot, and they'll tell us where to find good patches of berries. It's informal like that, without any formalized policy, it's more based on a relationship. We can't make that formal because non-Indians will get mad about that. Policies are formal and informal. For example, many policies are enacted formally but enforcement is done informally. There is the actual policy, and then there is the way that it is really implemented.

So much of the relationships between the Tribes and the USFS are rather informal, but I wondered if these informal agreements were doing enough to make tribal members to feel like the USFS was holding up their end of the bargain that was made through the treaties, the trust relationship. Both USFS personnel and Tribal members indicated that there needed to be more done to meet the trust responsibility when it came to huckleberry management.

I began by asking Tribal members what they thought the USFS needed to do to better meet the trust relationship. Many of the comments provided proscriptive suggestions (i.e. more clearing away of brush, more open trails) but many discussed how the USFS and the Tribes could improve their informal agreements through increased communication, better relationships among personnel, and joint planning of projects. This indicated to me that the informal agreements were working for the Tribes. The only comment that was repeated over and over that could not be ameliorated through these informal agreements was protection of their treaty rights. Many of the interviewees comments centered on the notion that the USFS needed to remind non-Indians of the treaty rights of the Tribes. One Warm Springs tribal

member who often interacts with the USFS on a formal government-to-government basis described his concerns this way:

The USFS sees huckleberries as a public resource that they can use to collect money from permits to run their programs. Serving the public is their #1 priority, Native Americans come second. They need to begin educating people about treaty rights. There have been lots of meetings and tours have helped in the past to try and build a relationship between the Tribes and the USFS, but a lot of the projects that the USFS has promised us, like tree girdling to kill trees in the overstory so huckleberries would be able to grow there, never actually panned out. They have also never really followed through with the test burning that they said that they were going to do to try to increase the huckleberries. The Forest Service said that they would do things but they didn't. There has to be a give and take between the USFS and the tribes in order to make things work, but the USFS does have to remember that the Warm Springs people were the original people on this land and that we have the 1st rights to this land.

USFS officials explained to me that huckleberry management is a new area for many of their employees and for the forest on the whole. Huckleberries have always been there, but the pressure on the resource hasn't been, and so it is only now that they have to learn to reconcile the treaty rights of the Tribes with public land management. There are trainings provided for USFS employees about once a year that focus on Tribes and their rights, but many of the USFS employees that I spoke to had not attended one of these trainings. A prominent manager of the USFS who was working very hard on the National Forest to create a better relationship with the local tribe explained it to me this way:

It might be because this is an emerging policy issue. NTFPs are becoming more important and there is increasing pressure on these resources. The USFS seems like it has, in the past few years just started to make a good faith effort when it comes to tribes. This I think is a result of the increased political power that tribes have. It does seem that tribal members are still somewhat fearful of turning over personal and traditional information to the federal government. They are fearful of losing what few rights they have, and are afraid that the USFS is not protecting their rights and that the USFS could do more to protect

these areas. Tribes are concerned about huckleberries and they are trying to push some forward-looking policies for huckleberry management.

Although tribal members seemed to appreciate that the USFS was making some effort to acknowledge the importance of huckleberries to the tribes through informal policies and projects, some tribal members worried that these informal policies were more hollow promises rather than agreements that would hold strong when pressure was put on them. One Warm Springs gatherer who had previously worked with the USFS and with Oregon State in collaboration between the University, the Tribe, and the USFS put it this way:

Right now we have a MOU with the USFS, the forests surrounding the reservation. We have a MOU with them but I think it needs to go beyond that, in meeting together, the Tribes and the USFS and discuss that ability for the tribal members to gather. I personally think that the USFS needs to carry the MOU further, to actually get into it, spelling out the process, just getting out there and working in the forest to really see, to do whatever it would take to make the huckleberry grow. I think that the USFS knows that we have a treaty and that we have food gathering rights in the treaty, but how we go about that ability for the tribal members to go out there and continue to harvest, I think that needs to be reviewed. There's a concern that Natural Resources has each year, which is specifically to talk about the treaty rights. And USFS come from all over, the Willamette, Linn Benton County, all of the USFS people are there to listen. I've gone to one of those to talk about the huckleberry project. And you know they are aware of it. But I think that the Warm Springs tribe needs to say we do have this with huckleberries but that we would like to have this. Like I said before, we need to go beyond that MOU and set out the steps. We need to say the USFS will do this and the tribe will do this. It's the Tribe's responsibility to do such and such and it's the USFS's responsibility to do these other things.

Public policies, such as huckleberry policies, send groups of citizens, such as Native Americans, highly targeted messages about their worth in the political system and what they can expect from the government in terms of the amount of responsiveness. Examining the types of policies developed to manage treaty protected resources on National Forest lands can give researchers insight into patterns of policy

formation to manage a federal agency's treaty responsibilities. To further understand what the pattern of informal policy formation really meant for Native Americans as a target of public policy, I turned to the Social Construction framework to aid in explaining what kinds of policies Native Americans can expect to receive from the government. I used the Social Construction framework because it has often been used to explain policy choices in other studies of Native Americans and policy development and implementation (Holmes & Antell, 2001; Hirshberg, 2002; Ross, 1998).

It is clear that stereotypes about Native Americans have changed over time, but looking at these popular stereotypes combined with the appraisal of the public opinion of the CTUR and CTWS tribe provided by the informants, it appears that Native Americans have generally been negatively socially constructed. In order to determine the political power of the tribes, I returned to the history of American Federal Indian policy in the United States. A review of the eras of federal Indian law reveals that Native Americans have held strong political power at some points in history (e.g. reorganization era) and held little political power at other points in history (i.e. Termination era). This means that over time, Native American groups have either held strong political power and were negatively socially constructed (Contender), or held little political power and were positively socially constructed (Dependent).

Social construction theory suggests that when power and social construction converge (such as low power and a negative social construction) statutes tend to be clear and specific and the power of agencies to implement these policies will often be avoided so that the policy maker gets all the credit for the policy and its implementation (Schneider & Ingram, 1993b). This is not what I have seen in Native



American policy, historically, or with huckleberries. Policies created by the federal government and directed at Native Americans are messy, undefined and complicated.

Alternatively, this framework suggests that in non convergent situations, statutes tend to be vague and complicated, discretion for implementation is passed on to agencies and lower levels of government (Schneider & Ingram, 1993b). Agencies are often left with the task of connecting the policy logic to the goals of the policy while devising effective programs to achieve these goals. When the goals are not achieved, elected officials can accuse the agencies of being inefficient (Schneider & Ingram, 1993b). USFS officials have complained that there is a lack of clear and straightforward guidance when it comes to management of treaty protected rights on ceded public lands. This describes the situation on the Mount Hood/Umatilla National Forests and the CTUR/CTWS. Therefore, in terms of huckleberry policy, I would categorize the two Native American tribes participating in my study as a contender target populations.

Contenders are told by those who create public policy that they are controversial and that they will be treated with caution by the government. As a result, contenders become suspicious of the government, and believe that politics and the government are corrupt (Schneider & Ingram, 1993a). Developing policies that address contenders is difficult because there are few policies created for these groups that are well received by the public. Burdensome policies are seen as unfavorable because these policies will be placed against a group with political power that may be able to fight these policies. Beneficial policies are also seen as unfavorable as a result of the negative social construction of contender groups. Hence, policies that address

contenders at all tend to be very difficult to place on the public agenda. This is seen in the case of Native Americans and the USFS, in the fact that very little if any formal policy exists to manage how the plants protected by the Tribe's treaties are to be managed on public lands.

Rather, the social construction framework predicts that public officials most prefer to create beneficial policies for contenders that are largely hidden from the public view (Schneider & Ingram, 1993b). This is what I have seen in the policies used to manage huckleberries on public lands. There have been beneficial informal policies put into place, but most of these policies have been largely hidden from public view. This type of policy formation and implementation follows the logic of the social construction framework for target populations who have been described as contenders.

As one of the leaders of the Warm Spring Indian Reservation explained:

The Mount Hood National Forest is where we are working on preserving our 1st foods. We asked the USFS to put together a permit system that would not allow any non-Indians to get a permit before our feast. We asked the USFS for huckleberry picking areas designated for Indians only. The USFS did not want to designate an Indian only area. They did not develop a permitting system. They said that they didn't want to do these things because it might appear to the public that they were discriminating against other races by giving preference to Native Americans. We understand that the world is not fair and that finding parity or equal footing is hard. But we are losing our root and berry picking areas both on private and public lands, and the treaty is the law of the land.

As contenders, the USFS is afraid to create policy for Native Americans that would appear to treat them as advantaged. This is a direct result of the social construction of Native Americans. Since many members of the public see Native Americans as "the losers" as one Warm Springs tribal member put it, the public does

not think that Native Americans should get any special treatment from the Federal government.

I would argue that Native Americans deserve to be treated more fairly by the federal government because they do have treaty agreements with the federal government that afford them some particular rights, although I do not think that they are special rights. Much of the public does not recognize the importance or legal clout that the treaties hold, because this is not part of general knowledge of the public. This information is not transmitted through the stereotypes and stories told about Native Americans. Rather, negative images of Native American people persist, which create value laden stereotypes about Native Americans that are then reflected in the ways that policies are developed and implemented for these target populations. Since few USFS officers or congress people benefit from developing policies that aid Native Americans or validate their treaty rights, little policy is created for them. This is because as a social construction framework would suggest, there is little to be gained politically by taking such an action. Additionally, when policy actions are taken their implementation is done informally, so that these policies will go generally unnoticed. They are also implemented informally so in the event that the public does discover that these policies are being implemented, they can easily be changed or abolished.

## **Chapter 5 – Discussion**

Two policy frameworks were used to explain how the USFS is reconciling their multiple trust responsibilities; the one they have to the tribe to provide access to huckleberries and the one they have to the public to provide reasonable use of National Forest lands. Each framework had areas where it worked well in explaining what was occurring on the Umatilla and Mount Hood National Forests, and other areas where it failed to describe what was occurring in these areas. In this section I will describe the strengths and weaknesses of each theory as applied to the huckleberry case study.

### **Strengths of the Institutional Rational Choice Framework**

The IRC framework worked well in this case study to describe how the rules-in-use, physical environment, and communities that influence an actor come into play when creating and using institutions to manage resources. One interesting aspect of the IRC framework that worked well in this case study on huckleberry management was the notion that rationality is defined by the institution. The social norms and rules in use create a space within which actors can make rational choices. Although rational choice theory suggests that actors will always act solely in self-interest, the IRC framework modifies this premise to suggest that actors will act in ways that the institution of which they are a part guides them to act. This explains why different sets of groups of people, with different sets of rules permitting, requiring, or forbidding actions might choose different rational actions. Differences in notions of

rationality can explain differences in huckleberry management by tribal members and the USFS.

The IRC framework focuses on the components of institutions that enable them to sustainably manage the commons. This theory aided in explaining via these components why common pool resource management for huckleberries was more sustainable when the two tribal groups in the study managed them versus the USFS's management of the resources. The framework suggests that smaller groups with shared norms, identities and interests, as was seen between the two tribal groups. The IRC framework suggests that groups that have strong social capital among their members are better at managing common pool resources such as huckleberries. In this way more of the commons users will follow the rules in use and be less likely to free ride. Native American informants in the study described the huckleberry management of the past in these terms.

The IRC framework also predicts that commons management by large agencies who manage commons users that have a low level of social capital across group members will be unsustainable. The comments from USFS managers and Tribal members about the state of the huckleberry and its harvest on USFS lands indicate that the IRC framework has correctly predicted the outcome in this case study. There has been an indication that the USFS's management of huckleberries has allowed for overharvest, increased use, and decreased protection of CTWS and CTUR member's treaty protected rights to access and availability of huckleberries.

### **Weaknesses of the Institutional Rational Choice Framework**

One of the limitations of the IRC model is that it has generally been applied in a very specific context. Although this framework has the ability to include the effects of different beliefs systems on institutions, generally it has not been used to do so. The definition of what a rational action can vary greatly from culture to culture and between differing belief systems. Though the IRC framework can show that differing belief systems, or institutions, create differences among actors, the IRC has not been used to predict what actors from each group will see as a strategy to maximize their utility, and therefore cannot predict what course of action they will choose. IRC does not address the context in which an actor's choices are made, and assumes that all actors within an institution compare the benefits and costs of an action in the same way, which members of different cultures or ethnic groups may not (Ostrom, 1991). Since the IRC theory focus on the how the individual behaves within the institution, it leaves out how being a member of an institution can affect the way the group acts on a whole. The way a group acts together may not be the same way that a lone actor would act on their own. My research suggests that this may be a limitation to the theory. It appears that Native Americans have a very different approach to common pool resource management than does a formal institution like the USFS, and that this is not only a result of the cultural differences between the two groups, but the way in which their institutions have been developed and how actors behave within them.

Another limitation of the IRC framework is its simplicity. The IRC framework focuses on the individual and leaves out groups and complex institutions. Though the framework examines institutions and their affects on the individual, the framework has

not yet been used to examine how the institution affects groups or how the interactions of multiple institutions affect actors and action situations. For common pool resource work, the IRC framework assumes one institution and many individuals, when in reality; most common pool resources are managed by a multitude of individuals who must coordinate many groups of people to develop common pool management plans. The huckleberry fields on national forest lands are managed by the USFS, but the management efforts of the agency is not the only “institution” affecting the huckleberry fields. For example, tribes play a very important role in their capacity as a sovereign government in regulating how a portion of huckleberry harvesters conduct huckleberry harvesting on the national forests. The framework could be applied in a much broader way than it has been traditionally to include multiple institutions and the affects of these multiple institutions on actors.

The USFS plays a very important role as a formal institution in determining what kinds of policies are created to manage resources protected by the CTUR and the CTWS treaties. A different public policy lens approaches the huckleberry management issue on National Forest lands by examining how the ways an institution perceives the population it serves affects the policies developed for this population.

### **Strengths of the Social Construction Framework**

The social construction framework posits that the social construction of a target population affects the sorts of policies that are created for a group, and this proved to be true in these two case studies. The members of the two tribes that were included in this research were considered the target population for the USFS in this

study. Members of these two tribes desired to harvest huckleberries off of National Forest lands, and have a treaty-protected right to do so. Although these tribal members have the right to these berries, there are many members of the public that also have a right to access and harvest these berries as a result of them being available on public National Forest land. This has created problems between the two groups, the public at large, and members of these Native American tribes.

If we turn to the social construction framework to help us understand how the USFS might manage huckleberry use of these two groups, we find that it describes relatively well the sort of public policy developed for these two groups as a result of their political power combined with their social construction. The public falls into the advantaged category, while members of the CTUR and the CTWS fall into a Contender category.

The framework posits that the public, as an advantaged target group, will receive beneficial and unambiguous policies related to huckleberry picking. In fact what exists is a dearth of policies managing how the public harvests huckleberries. This lack of policy does not put any burdens on the public, and as such is the type of policy action that the social construction framework would predict for an advantaged group.

Members of the tribes were characterized as a contender target population. Social construction framework suggests that members of this group will be at the receiving end of policies that are hidden from the public, that are vaguely constructed, but are generally beneficial. This is descriptive of the types of huckleberry policies that were created for the tribal members. The policies were informal and so neither do



they imply a legal commitment between the two groups nor are they very visible to the public, but they do exist in some form. Agreements, such as MOU's were used to benefit the tribe by engaging in projects and planning together with the USFS, but are not formal agreements.

The policies used and implemented by the USFS reflected the types of policies that the social construction framework would predict for target groups with particular levels of political power and with a certain type of social construction. This framework did a good job in describing how social constructions of target populations do influence the types that policies are created and the ways that they are implemented.

The goal of the social construction framework is to describe why some groups are treated better than other groups when all are equal before the law. In these two case studies the framework worked well in describing how the stereotypes of Native Americans change how policy makers view and value the CTUR and the CTWS in terms of policy development. Although, according to the USFS, tribal members and the public are equal according to the law, they are treated differently as a result of the perception of these two groups.

The framework also suggests that policy makers create different kinds of policies in order to benefit themselves. Schneider and Ingram (1993) give examples of local elected officials creating policies that are widely supported, though possibly not monetarily wise or politically necessary, because they receive a political payoff for doing so. Alternatively, public officials are unlikely to create, support, or implement unpopular policies because they receive little or negative political repercussions from

such an action. This piece from social construction theory is useful in describing why there has been little huckleberry management policy developed at all. USFS officials may feel that developing policy in this area is politically risky because of the social construction of Native Americans but also due to the political power of Native Americans. Although the framework worked well, it does have areas of weakness where critiques of the theory can be found.

### **Weaknesses of the Social Construction Framework**

Social construction theory has been criticized widely for its inability to predict into which quadrant (advantaged, contender, dependent, or deviant) a target group will fall. The theory does not provide any explicit criteria for determining how to evaluate the political power of a group or the social construction of the group. Although the framework is useful for showing how policies are distributed to the different target groups, into which particular quadrant a particular target group will fall can be hard to determine. Sometimes, where a group is located can change overnight. For example, some Native American groups have been viewed as advantaged because they are viewed as good stewards of the land, but then if this same tribe decides to build a casino on their reservation, they may move to a different quadrant as a result of the negative connotation gambling has with much of the public and with many policy makers. As a result, it can be hard to predict without research how a particular target group is socially constructed.

Another weakness of the theory is its circular reasoning. The theory predicts that groups will fall into a particular quadrant as a result of their social construction,

but the social construction of a group could have resulted from the policies the group received. One example of this would be Native Americans who are advocating for better protection of their treaty rights. I suggest that Native Americans are located in the contender quadrant. Native American Tribes that push for the federal government to create policies to ensure the protection of their treaty rights creates a negative social construction about these Native Americans Tribes because the public feels like they are demanding too many rights. One reason that policies to protect Native American treaty rights have not been developed may be that Native Americans need to fight for them, therefore creating a negative social construction about the tribes. The social construction theory does not explain what comes first, the policies or the social construction of the target group. Social construction of a group could affect the type of policy created for them, or past policies could perpetuate a particular social construction of a group. This type of circular reasoning has caused some to question the validity of the theory of social construction. (Lieberman, 1995)

One limitation of the social construction framework is that only addresses the social construction of the target population, not the population creating policies for the target population. The USFS, who in this study created and implemented the policies affecting Native Americans, is an agency whose workforce is dominated by white males. There are few employees of a minority heritage working in the USFS, and this could have a strong impact on the types of policies that are created for minorities that come out of the USFS. Without a significant minority employee base, the USFS may be unable to adequately craft policies that are culturally sensitive to the minority culture's needs. The framework, although not limiting this analysis, does not suggest

that it be done. Studying the social construction of the USFS as a target population may have revealed more insight as to the reasons why policies were created as they were, and why compliance with USFS policies does or does not occur. This is possibly a very important component of social construction that is not presently addressed in the theoretical framework.

### **Theory Synthesis**

Used separately neither framework neither fully predicts what has been seen in the arena of huckleberry management on national forest lands nor fully explains why the policies that are in place have come to be, but used together the frameworks describe a variety of the reasons that policies have been developed in particular ways and have been implemented as they have. Although I believe that both these frameworks have their place in analysis of a situation such as the one examined in this case study, neither of these frameworks suggest a way to remedy the issues described by both the Tribal members and the USFS about huckleberry management.

These theories may be useful in predicting what policy researchers can expect to see in certain situations, but they provide little in terms of suggestions for modifying existing institutional frameworks and policies. For example, the social construction framework describes the types of policies that will be created by policy elites for members of a particular group, but do not describe how members of a particular target population can move into a more favorable quadrant. The IRC framework describes governance structures that have proven successful in terms of commons management, but generally these structures are not feasible for institutions

like the USFS to use. Therefore, though the frameworks are helpful for understanding what we currently see, they do not necessarily provide insight on where to go from here.

Theory helps researchers to think about how policies are created and implemented, but policy frameworks can also be useful in informing researchers on ways to resolve concrete policy issues. The practical issues raised through these two case studies, such as the need for increased numbers of available berries, a deeper understanding from the USFS of the tribal trust responsibility, and increased public education about the CTUR and the CTWS's treaty rights to resources on the National Forests can be addressed through management recommendations that stem from the use of these two frameworks. Theory, in order to be useful, must generate practical implications for management.

## Chapter 6 – Conclusions

In this research project I discovered that management of huckleberries via informal policies would continue to be used by the USFS to fulfill the trust responsibility that they have to the tribes. The USFS believes that the CTUR's and CTWS's treaties give them the right to access and make use of huckleberries on national forest land. The USFS manages the tribe's rights as one of many other uses that must be managed for on the national forests. This study provides important insights into the relationship between the land management agency (USFS) and the neighboring tribes (CTUR and CTWS) who access treaty protected resources on federal lands. It sheds light on what has been done to improve the relationships between the governments, but also reveals where there have been shortcomings, and what might be done to rectify them.

To really move past the policy situation that currently dictates how the USFS engages with the Tribes and “fulfills” their trust responsibility USFS employees and tribal members alike would need to look past the superficial huckleberry management policies to the true root of the problem, the lack of understanding by the federal government of the trust responsibility. Although neither party would like the courts to determine what this trust responsibility entails, the data show that both tribal members and USFS employees found that the confusion over this responsibility is really at the core of a lot of the disputes over huckleberry management and policy. I would argue that the as described by the constitution that “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land;

and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding” and as such should be treated as one of the number one priorities on the Umatilla and Mount Hood where tribes that have treaties protecting their use and access of natural resources(U.S. Const. art. IV, § 2). Though I believe that until this interpretation of the treaties is adjudicated, the USFS will continue with the same management scheme for huckleberries and treaty rights as is currently in use. With this in mind, there are some steps that can be taken within the current situation that may aid in creating better relationships between the tribes and the USFS to reconcile the CTUR and CTWS concerns over huckleberry management.

These recommendations were not only informed through the words of Tribal members and USFS employees, but also through the use of the two policy frameworks applied in this study. The IRC framework suggests that creating social capital among actors can aid in developing more effective commons management. These recommendations seek to create institutions that will affect all actors. In creating an institution that influences all actor’s actions social capital among groups will increase and management of the huckleberry resource may improve.

The social construction framework led to the following practical suggestions for improving huckleberry management through developing relationships between huckleberry users and huckleberry managers. Social construction suggests that societal perceptions of a target group may affect the policies created for that group. Through a modification of the social construction of a particular group, development of different policies may become more socially acceptable and therefore more likely to be implemented. Fostering communication between Tribes and the USFS, increasing

education about Tribes and their rights, and building trust among the two groups has the potential to create better relationships between the policy makers and the target populations, therefore allowing for more beneficial policy development and possibly better huckleberry management. The following recommendations are a few ways that the USFS and the Tribes can work together to improve huckleberry management on national forest lands.

### **Increase Communication between Actors**

It is imperative that USFS employees learn how to communicate with tribal members in order for there to be a productive working relationship between the two groups. Increasing the communication between the two groups could allow for considerably more collaboration between the two groups. Since it appears that policies will remain informal, increased communication would allow the USFS to communicate their concerns to the Tribes while it would allow for the Tribes to give their input on projects that the USFS is conducting and possibly develop huckleberry management or protection projects with the USFS. The National Strategy for Special Forest Products released by the USFS in 2001 stated that the USFS was “only beginning to understand the social importance” of NTFPs such as huckleberries. With the help of the tribes, they could get a much deeper understanding of what role these NTFP’s play in Tribal communities.

### **Understand Cultural Differences**

The employees of the Umatilla and Mount Hood National Forest and members of the CTUR and the CTWS need to acknowledge that relationships between the two



groups are historically and culturally complex. Different social histories can determine how cultural groups perceived one another, value a natural resource, or determine what is rational. If we, as researchers seek to inform land managers about strategies for better policy formation for Native Americans, we must discover the reasons that Native Americans and Non-Native Americans do not agree on ways to manage resources. Specifically, in this case, if we understand the importance of the huckleberry resource to the CTUR and the CTWS, we may be able to guide USFS managers to more culturally sensitive and appropriate forest management policies. If USFS managers and Tribal members are able to better understand what drives their choices about management, and where these choices come from, they may be able to better understand one another.

This research has shown that Native Americans and the USFS often have different land management priorities. Native Americans put more emphasis on protecting culturally important resources, while the USFS's priorities lie in managing for ecosystem management, as driven by the multitude of laws and policies developed by Congress. If both sets of actors can understand that their actions are value driven, they may be able to identify places where their values and priorities overlap, and focus on these areas as some of the first places to begin work.

### **Build Trust**

Past research has shown that trust between the USFS and the tribes is not very strong (Flood & McAvoy, 2007). If the USFS and the Tribes are willing to spend some time together, to build relationships and grow the trust between the two

governments, then some of the tension between the two groups may dissipate, creating clearer channels for communication, and enhanced opportunities for collaboration. USFS employees need to garner trust from the Native Americans in order to create a working relationship that will help to alleviate the problems in the berry fields. An open dialogue will not happen between the two groups overnight. Rather the USFS needs to show the tribes that they are willing to participate as a partner with the tribes, and that they will stay true to their word. Since the USFS is required to interact with the tribes on a government to government basis, especially on issues regarding management of natural resources close to the reservation, they will need to work on breaking down this history of mistrust.

The extensive history of Native American policy that was included earlier in this paper was not included solely for interest, but to illustrate that the historical policies directed to Native Americans have an effect on present day policies created for Native Americans as a target group. Native Americans were considered “conquered” people who suffered from assimilation and widespread colonization. Members of the majority culture in the U.S. have always considered themselves as superior to Native Americans, and that legacy lives on through policies. This racial assumption about the “other” was essentially written into Marshall Trilogy. Since these three rulings have, in effect, determined how all subsequent federal Indian law has been interpreted, the racist attitudes about Native Americans from the 1800’s continue to influence American Indian policy and law today. This is an important point to acknowledge if we are to continue creating policies for members of Native American tribes based off of the premises developed in these cases.

These strategies may encourage better relationships between Tribal members and USFS employees, but they do not remedy any of the issues that were present in the policy frameworks used to analyze the policies and management in use. While each public policy framework explained a portion of what was seen, neither framework completely explained what was observed. Neither the IRC nor the Social Construction frameworks explains, on its own merit or in combination, the policies examined in these two case studies because neither of them were created to deal with the particular political relationship between the U.S. Federal government and federally recognized Native American Tribes. The relationship between these two entities is one that is unique to the United States. I have not encountered any theories in political science that have stemmed from an observation of this one of a kind relationship. It is possible that there are not any public policy frameworks that could fully explain the observed phenomena because theorists have not yet thought about what kinds of tools would be needed to assess this policy arena. This could be an area where political scientists interested in development of theory could work in the future.

### **Future Research**

There is a great need for a more complete understanding of what Native American's treaties mean in terms of management of treaty protected resources on public lands, such as the national forest. This research provides a good analysis, but could benefit from an in depth examination from a scholar educated in the nuances of federal Indian law. It would be interesting to discover what a legal scholar might believe the legal ramifications of a decision in favor of the tribes would be. A research project such as this could provide very useful information to the tribes.

In addition to research into federal Indian law, future research should focus on the missing part of this story, the commercial and immigrant huckleberry harvesters. It would be useful to discover how these populations view huckleberry picking as an activity, if they have any knowledge about treaty rights or the trust responsibility, and how huckleberry plays into their lives both economically and culturally. Generally, these populations have not been included in conversations between the Tribe and the USFS, and have generally been excluded from the dialogue on huckleberries in the Pacific Northwest. Encouraging them to participate and reaching out to these populations may provide more insight on huckleberry management in the Pacific Northwest.

One of the reasons that huckleberries have not been as contested as other traditional Native American foods such as deer and salmon is because huckleberries are considered a woman's food. There is the possibility that because this food belongs to the women that it is more unlikely to become a contentious issue between Native Americans and non-Indians. Future research on the role that gender has in its relation to food would be interesting.

Lastly, I would encourage other researchers to do some cross cultural studies that examine the issues that Native Americans are having with protection of their usufructuary rights to huckleberries to other indigenous groups across the world. Commons management problems exist everywhere, and there are many situations where an ethnic majority and an ethnic minority are vying for the same resources. It would be interesting to compare an experience of an indigenous group from another

culture to that of the Native Americans in the United States to see if resource management problems are similar across cultures.

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**APPENDICIES**

## Appendix - A

### Forest Service Employee Questions

#### **Introduction:**

1. Can you please generally describe your job responsibilities?
2. How long have you worked for the USDA Forest Service? How long on this particular forest?

#### **Background Knowledge**

3. When you arrived here, what did you learn about local histories and the local community? Was this through training or just informal discussion?
4. Did you receive information and/or training (either formal or informal) about tribal groups in the area?
5. Did you learn about the tribes purely for historic reasons, or for more modern day interactions as well?
6. Are you familiar with the treaties and treaty rights of local tribes?
  - a. How familiar would you say that you are?
  - b. How did you obtain this information, on your own, or as part of a requirement for your job?
7. How often would you say that you interact with tribes, or specific tribal members?
8. How would you characterize these interactions (pleasant, upsetting)?
9. How would you characterize the relationship between the \_\_\_\_\_ USDA Forest Service office and local tribes?
10. How would you characterize the local community's relationship with the local tribes?
11. Has either of these relationships changed over time? Why do you think so?

#### **Work Experience:**

12. What kind of training have you received or knowledge do you have regarding the Federal government's trust responsibility to tribes?
13. How does the USDA Forest Service fulfill this responsibility on the \_\_\_\_\_ Forest?
14. Has this forest previously dealt with local tribes in the context of resource use and protection?
15. Are you familiar with the value (cultural and monetary) of non timber forest products on the forest, such as camas, huckleberries, and bear grass?
16. Do the cultural aspects of these plants play into any of this forest's planning processes?
17. How familiar are you with the history and cultural significance of huckleberries in the Pacific Northwest?
18. Has harvest and use of huckleberries become a more prominent issue in the past decade? How?
19. What do you believe is the \_\_\_\_\_ Forest's policy on protecting and managing tribal cultural resources?
20. Other land in the USDA Forest Service is set aside for special uses. Why or why not do you think that this has not been done for the local tribes?
21. Are there other restrictions to this land that makes it difficult to protect for treaty rights?
22. What do you think is the key to a good working relationship between the federal government (here, represented by the USDA Forest Service) and tribal nations in the PNW?

### **Wrap up**

23. Are there any key lessons from your experience that we haven't covered already?
24. Is there anyone else you'd recommend we talk to about policy issues regarding treaty rights on public ceded lands?
25. Is there anything else you'd like to add or do you have any other questions about this research?



## APPENDIX – B

### Tribal Member Questions

#### **Introductions:**

1. Can you tell me about the history of your tribe's interaction with the federal government?
2. Can you describe the history of harvest and use of huckleberries for your tribe?
3. How does the tribe use huckleberries?
4. Are there any traditions associated with huckleberry harvesting for your tribe?
5. What kind of cultural importance do huckleberries have to your group?
6. Please describe a typical huckleberry harvester (age, gender, household role).
7. How has huckleberry picking on the \_\_\_\_\_ National Forest changed in the past decade?

#### **Relationship with Federal government:**

8. Do you feel that officials on the \_\_\_\_\_ National Forest have provided sufficient protection of huckleberries? Why or why not?
9. Do you feel that federal officials on the \_\_\_\_\_ National Forest are educated about your tribe's treaty rights to harvest huckleberries on the National Forest?
10. If they are, do you think that they try to preserve the treaty right? Why or why not?
11. Do you as a tribal member feel that the rights guaranteed to the tribe in your treaty have been respected? Why do you feel this way?
12. How does the tribe feel about the way land and resources are managed by the USDA Forest Service, specifically on the \_\_\_\_\_ National Forest?
13. Has the harvest and use of huckleberries been a more prominent issue among your tribe in the past decade (increased use, mechanized harvesting, poor management)?

**Management Issues:**

14. What could the USDA Forest Service do to better manage huckleberries for the tribes?
15. How often do you interact with USDA Forest Service officials?
16. What do you feel is the role of the Tribe in the \_\_\_\_\_ National Forest's planning process?
17. Is the Tribe's involvement with planning and coordination with the National Forest effective?
18. Do you discuss the issues surrounding huckleberry management and treaty rights with other tribes? Which ones?

**Issues of Perception:**

19. How does your tribe feel that they are perceived by those who are not a member of the tribe?
20. What do you think public opinion toward your tribe (and then Tribes in general) is today?
21. Do you personally feel discriminated against in terms of access to resources, or concerns about resource management? Can you give me an example of this?
22. Have you or your tribe ever discussed pursuing a legal remedy to protect the cultural plant resource? Why or why not?
23. Do you think that Native American groups are gaining more political power? Why or why not?

**Wrap up**

24. Are there any key lessons from your experience that we haven't covered already?
25. Is there anyone else you would recommend we talk to about policy issues regarding treaty rights on public ceded lands?
26. Is there anything else you would like to add or do you have any other questions about this research?