

Proposal for the Tribal Forest Protection Act Analysis

The Intertribal Timber Council (ITC) proposes to complete a comprehensive analysis of the implementation of the Tribal Forest Protection Act (TFPA, PL 108-278) and to develop a set of recommendations to improve the use of this authority.

Time Frame: Start date August, 2011; complete date September, 2012.

Need for Study and Anticipated Benefits: Indian tribes and the FS share over 2500 miles of common border and long-term stewardship responsibilities for the forests entrusted to their care. The TFPA was enacted to enable Indian tribes to propose treatments to FS lands which would help protect tribal lands held in trust by the United States from damage due to fire, insects, pests, disease and protection of cultural resources. In return treatment of tribal lands often offer reciprocal benefits of protection to Forest Service lands. Seven years after enactment of the TFPA, serious impediments to agency and tribal use of this authority remain. A plan of action is needed for the FS and tribes to effectively use the TFPA to establish and reach shared mutual goals, in an integrated fashion, to enhance and protect important cultural and natural resources on FS and tribal lands.

Collaborative involvement of tribes, and tribal partners working with the FS is essential to realize Department of Agriculture Secretary Vilsack's vision for "All Lands, All Hands" approach to landscape ecosystem management. The recommendations to be developed under the study will improve forest health, promote collaborative relationships with Indian tribes, and accomplish landscape-scale management objectives.

Introduction

In the summer of 2003, nearly 20 Indian reservations were devastated by wildfire that came from adjacent federal lands. The fires devastated tribal communities, destroying structures and costing tribes millions in lost resources and, tragically, a number of lives were lost.

As a result of the 2003 fires, the TFPA was passed authorizing the Secretaries of Agriculture and Interior to give consideration to tribally proposed stewardship contracting projects, agreements, service contracts, and timber sale contracts on FS and Bureau of Land Management lands adjacent to Indian trust land to reduce threats from fire, insects, disease and/or other factors or to provide treatments to improve forest health. The FS policy to implement the TFPA is included with Stewardship Contracting guidance in Forest Service Handbook (FSH) 2409.19, Chapter 60. The major key points of the TFPA include:

- Tribal proposals must focus on FS lands that 1) border or are adjacent to tribal lands; 2) pose a fire, disease, or other threat to the Indian trust land or community or is in need of restoration; 3) not be subject to some other conflicting

agreement or contract; and 4) involve a feature or circumstance unique to the proposing tribe (such as legal, cultural, archaeological, historical, or biological).

- To qualify, the Indian land must: 1) border or be adjacent to FS administered lands; 2) be in trust or restricted status; 3) be forested or have grass, brush, or other vegetative cover; and 4) if burned over land, be capable of regenerating vegetative cover.
- To initiate a project, a tribal government submits a request to the Forest Supervisor or District Ranger, and recommendations are forwarded to the Regional Forester. Within 120 days of the submittal, the Regional Forester may issue a public notice of either a) initiation of any necessary environmental review, b) potential for entering into an agreement or contract with the tribe, or c) notice of denial to the tribe.
- A notice of denial may include specific factors in the denial, identify corrective courses of action, and propose consultation on how to protect the Indian trust land and tribal interests on the FS land.
- The FS may utilize an array of appropriate instruments to enter into contracts and agreements with tribes to further the TFPA and will emphasize the use of stewardship contracting.
- In considering entering into tribal agreements or contracts, the agencies may use a best value basis and give specific consideration to tribally-related factors, such as the status of the Indian tribe as an Indian tribe, the trust status of the Indian forest land or rangeland of the Indian tribe, the cultural, traditional, and historical affiliation of the Indian tribe with the land subject to the proposal historical and cultural affiliation with the land, treaty rights, agency/tribal working relationships, landscape features, the indigenous knowledge and skills of members of the Indian tribe, the features of the landscape of the land subject to the proposal, including watersheds and vegetation types, and the access by members of the Indian tribe to the land subject to the proposal.

In September, 2009 a meeting between FS Chief and representatives of the ITC, several issues and concerns about TFPA implementation were discussed. In a second meeting which occurred in April, 2010 between the ITC Executive Board and Jay Jensen, Department of Agriculture Deputy Undersecretary for Natural Resources and Environment, it was agreed that a comprehensive assessment of the barriers and challenges of implementing the TFPA would be conducted to provide critical information needed to improve utilization of the TFPA..

Progress Reports

Progress reports will be provided on a quarterly basis.

Objectives of the Proposal

Four major objectives for the TFPA analysis are described below.

Objective 1: Identify and address barriers to successful implementation of the TFPA, including resolving technical issues, addressing administrative impediments (contracting issues), clarifying policy direction, and identifying where additional legislative authority may be needed.

A comprehensive analysis will be completed and a report will be generated that will identify barriers and provide recommendations for accountability and monitoring of TFPA progress and projects. The TFPA analysis will be conducted in three phases.

The first phase will be an exploratory survey that will assist in identifying TFPA issues and concerns, basic knowledge of TFPA, barriers, and interest in pursuing a TFPA project. The second phase involves phone surveys with specific questions about TFPA.. Both of these surveys will be developed for internal use within the tribal and government entities and will not involve the general public.

The final phase of the TFPA analysis will involve site visits to sites selected throughout the FS Regions that have identified both successful TFPA projects and areas identified of high concern due to major barriers. To minimize cost and time, site visits that are close in proximity will be combined.

Objective 2: Establish measures to promote on-the-ground, nation-wide implementation of the TFPA.

FS and tribes must: recognize, understand and value the opportunities derived from TFPA stewardship contracting/agreements by a) providing staffing and financial support; b) motivating their employees to integrate their efforts and use TPFA stewardship contracting/agreements to achieve multiple landscape objectives; and c) providing reporting of impediments and accomplishments.

The TFPA analysis will include recommendations for an accounting system that will provide information for monitoring implementation of the TFPA and producing an annual report that will include accomplishments, such as acres treated, timber harvested, biomass utilized, and other resource treatments. The annual report will include information on projects proposed, approved, denied (and reasons for denial) and information on specific accomplishment detail: e.g., number of projects with NEPA completed; number of projects that produce wood fiber, number of TFPA requests received, number of TFPA projects undertaken. The TFPA analysis will also incorporate a section on incentives, expectations, monitoring and accountability to use TFPA in accomplishing land management objectives.

Objective 3: Provide TFPA contracting/agreements training emphasizing: a) the purpose of the TFPA authority, b) the value and benefits of its use, and c) effective use of tools and mechanisms for implementation.

The TFPA training modules will be developed, taking into account and incorporating existing materials as appropriate. TFPA case studies will be developed and incorporated (lessons learned); the training will provide and identify differences between agreements and contracts focused on end results, best value, use of receipts, and collaborative monitoring process. TFPA training modules will be delivered by teleconference, video conference, online and in person.

Objective 4: Develop and implement a comprehensive communication strategy that provides consistent messaging and communication among partners.

The TFPA analysis will develop a process for finding & sharing stories (media, public, websites, newsletters, annual summits or meetings, etc.). Contextual information behind stories could include conditions treated, on-the-ground accomplishments, impacts on industry, treatment technology, involvement of partners, and testimonials regarding projects that have been successful