

**SUMMARY INFORMATION
ON THE
TRIBAL - FOREST SERVICE MOU
ON THE EXERCISE OF TREATY GATHERING RIGHTS
ON NATIONAL FOREST LANDS**

OVERVIEW

Since 1993, the Forest Service has been negotiating with a number of Chippewa Tribes in Wisconsin, Michigan, and Minnesota regarding the gathering of special forest products by tribal members on national forest lands and interactions between the Tribes and the Forest Service. Since 1994, there have been interim agreements between the Tribes and the Forest Service to manage tribal gathering on national forest lands through tribal permitting and joint tribal-Forest Service law enforcement efforts. There have been no known problems with violations, enforcement, or effects on resources during this period.

In December, 1998, the Forest Service and 9 federally recognized Indian tribes which are members of the Great Lakes Indian Fish and Wildlife Commission signed an agreement on the exercise of treaty-reserved gathering rights on national forest lands in Wisconsin and Michigan and on other aspects of interactions between the Forest Service and the Tribes. The implementation of this agreement will provide consistency in Forest Service - Tribal interactions, increase the effectiveness of law enforcement, and improve the management of National Forest resources through collaborative stewardship.

The area covered by this agreement includes the Chequamegon-Nicolet, Ottawa, Hiawatha, and extreme northern part of the Huron-Manistee National Forests. This agreement does not cover Minnesota National Forests.

Special forest products included in the agreement are plants traditionally gathered for food, medicine, and other purposes by Indian people in the region. The most commonly gathered products include fir boughs, birch bark, maple sap, decorative greens, and firewood. The agreement also provides for limited harvest of live trees for non-industrial timber purposes. There are hundreds of species of plants which have been gathered by Tribes over the past centuries that are important to sustain the lifeway and culture of Chippewa Indian people in this area.

This agreement recognizes tribal sovereignty and the Tribes' existing treaty rights. It complies with the federal government's American Indian policy towards tribal self-governance and with presidential Executive Order #13084 on coordination and consultation with tribes. It also complies with the Forest Service's American Indian policy and furthers its goals regarding partnerships and collaboration in natural resources management.

The agreement promotes the Forest Service's Natural Resource Agenda of sustainable forest ecosystem management.

SIGNIFICANT COMPONENTS OF THE AGREEMENT

The Tribes and the Forest Service have developed mutually beneficial agreements in which:

The Tribes' treaty gathering rights on national forest lands are acknowledged.

A consistent set of practices guiding Forest Service - Tribal interactions in a number of areas are developed.

Rules governing tribal gathering activities are developed.

- Tribes issue permits to their members for gathering on National Forest lands.
- Tribes monitor the amount and location of plant harvest by their members.
- Tribes adopt a code of regulations which govern the harvest of plants by their members on National Forest lands and which protect natural resources.
- Enforcement is done primarily by tribal off-reservation conservation wardens. Violations of tribal regulations by tribal gatherers will be dealt with by Tribes in their tribal courts. For matters not covered by the tribal code, federal regulations will be enforced.
- No tribal harvest of commercial timber for use as pulp, lumber, or similar products.
- Prohibition on tribal gathering in Research Natural Areas, administrative sites, and campgrounds.
- The restriction on use of motorized and mechanized equipment in Wildernesses.
- Restrictions on the gathering of trees, bark, and tree limbs in timber sale areas without a special permit.

The Forest Service and Tribes work cooperatively in research, inventory, and monitoring to ensure the long-term sustainability of special forest products.

Tribal sugarbushes will be designated on national forest lands.

Campground fees and length of stay limits will be waived for tribal members engaged in treaty rights gathering activities (specifics pending future discussions).

Upon the request of the Tribes, the Forest Service will provide a limited amount of trees to be used for the purpose of constructing homes on reservations.

QUESTIONS AND ANSWERS ABOUT THE FS-TRIBAL MOU

To help people understand the MOU, a number of questions and answers have been developed.

Q. How did this agreement come about?

A. In the early 1990's, several federally recognized Chippewa Indian tribes approached the Forest Service asking for consistent regulations regarding gathering of wild plants on National Forest lands in their ceded territory in Minnesota, Wisconsin, and Michigan and for the opportunity to issue their own permits and regulate their own members. A federal court ruling had affirmed the rights of these same tribes to hunt, fish, and gather wild plants on state and county owned lands within the treaty ceded area in northern Wisconsin. In lieu of litigation, the Regional Forester assigned a team of Forest Service employees to work cooperatively with the Tribes which resulted in this agreement.

Q. What authority does the Forest Service have to enter into this agreement?

A. The Forest Service authority for entering the agreement comes from federal law, regulations, and policies. Presidential Executive Order #13084 directs the Forest Service and other agencies to work with federally-recognized tribes in a government-to-government manner and to pursue consensual negotiated rule-making whenever possible. In addition, there are Forest Service and federal government policies which promote tribal self-governance and cooperative agreements for the stewardship of natural resources.

Q. Why is the Forest Service choosing to enter into this agreement?

A. Part of the Forest Service's responsibility as an agency of the federal government is to maintain and enhance its relationships with federally recognized tribes and their governments. The Forest Service's policy (Forest Service Manual 1563) for interacting with federally recognized tribes directs the agency to honor treaty rights of tribes. Executive Orders from the President direct federal government agencies to interact with tribes on a government-to-government basis and to seek ways to streamline permitting procedures. The agreement complies with these directions and furthers federal American Indian policy towards tribal self-governance and self-sufficiency.

Q. Why didn't the Forest Service wait for a court decision on treaty rights on national forest lands?

A. The Wisconsin court cases of the 1980's and early 1990's were limited to State and County administered public lands. The Forest Service believes it is good public policy to work cooperatively with the Tribes to reach agreements with them on the application of their treaty rights to gather wild plants on national forest lands as opposed to taking an adversarial position and working things out in one or a series of court decisions. The Wisconsin federal court cases on Chippewa Indian treaty rights provided a basis for many aspects of the agreement and the Forest Service is of the opinion that the MOU is consistent with the decisions of those court cases.

Q. *Is this a change in Forest Service policy or management philosophy?*

A. No. This agreement is an example of implementing the existing Forest Service Policy toward Tribal Governments, specifically, maintaining a governmental relationship with federally recognized tribes, honoring treaty rights and fulfilling legally mandated trust responsibilities, addressing and being sensitive to traditional Indian beliefs and practices, and providing technical assistance to Tribes.

Q. *To which Tribes does this agreement apply?*

A. This agreement pertains specifically to the Tribes of the Great Lakes Indian Fish and Wildlife Commission: Mille Lacs, St. Croix, Lac Courte Oreilles, Red Cliff, Bad River, Lac du Flambeau, Sokaogan Chippewa Community (Mole Lake), Lac Vieux Desert, Keweenaw Bay, and Bay Mills.

Q. *When did the agreement take effect?*

A. The MOU was ratified in December 1998. The parties are the Forest Service and nine of the ten tribes (all but Keweenaw Bay) of the Great Lakes Indian Fish and Wildlife Commission. Because the agreement contains language about some already existing policies and practices, the associated activities are already occurring. They include tribal permitting, enforcement, and administration of justice and consultation in planning. Some of the new activities, such as, designation of tribal sugarbushes, campground fee waivers, and gathering logs for homes will not occur until a public involvement period is completed and until the Tribes and the Forest Service meet to discuss how to implement these parts of the agreement.

Q. *How will the agreement be implemented?*

A. The Forest Service and Tribes have agreed to establish working groups to monitor and implement the provisions of the agreement following its ratification. The agreement contains language which allows for future modifications. Also, any parties may elect to withdraw from the agreement at any time. There are provisions in the agreement for resolving disputes.

Q. *What lands are affected by the agreement?*

A. The agreement pertains only to National Forest lands in the ceded areas from the treaties of 1836, 1837, and 1842 which covered much of northern Wisconsin and northern Michigan. This includes all of the Hiawatha and Ottawa National Forests, most of the Chequamegon-Nicolet National Forest excluding a small part of the southeastern corner, and a small northern part of the Huron-Manistee National Forest. It does not affect private lands or lands under other public administration, such as County Forests, State Forests and Parks, or other federal lands. This agreement does not include any National Forest lands in Minnesota.

Q. *Are the products covered under this agreement limited to personal use by the Tribes?*

A. No. Most products gathered by tribal members can be sold much as non-tribal gatherers sell balsam boughs and decorative greens. However, tribes may not sell trees as lumber, logs, or pulp.

Q. Does this agreement recognize treaty rights of Tribes to commercial timber on National Forest lands?

A. No. The Tribes have no court recognized treaty rights to commercial timber. The agreement recognizes that the Tribes have treaty rights to gather wild plants on National Forest lands. This is consistent with the outcome of the federal court case on Chippewa Indian treaty rights in Wisconsin. For the purposes of the MOU, the Tribes and the Forest Service agree that Tribes may issue permits to their members to gather incidental trees for the purpose of constructing canoes, lodge poles, wooden decoys, and other like products. The Tribes may not issue permits to their members for taking trees to be used commercially for lumber, pulp, or similar products.

Q. Why did the Forest Service agree to provide the Tribes logs for the construction of homes?

A. The Tribes have been interested in acquiring logs for the construction of homes on their reservations. Providing a limited amount of logs to the Tribes for this purpose is one way the Forest Service can assist the Tribes and carry out federal trust responsibility to the Tribes. Forest Supervisors on the four individual national forests chose to use their administrative use authority to provide on request up to, but not more than 40,000 board feet of timber per year to a tribe or tribes (total of 40,000 board feet per Forest, not per tribe) for the purpose of constructing buildings on a reservation. The use of this authority does not recognize tribal rights to commercial timber. Rather, it is a discretionary decision that can be made by Forest Supervisors which offers federal assistance to tribes and accomplishes forest management objectives of the Forest Service. The amount is less than one-tenth of one percent of the annual commercial timber harvest from each National Forest and a far smaller amount of the standing timber on national forest lands. The amount of 40,000 board feet per year per National Forest seemed like a reasonable amount which would provide real assistance to Tribes (an estimated two or three moderate-sized log homes) without adversely affecting the commercial timber sale program or the sustainability of other natural resources on the National Forests.

Q. Do the Tribes have the ability to effectively regulate their members and enforce regulations?

A. Yes. Each tribe, as a sovereign government, provides services for their members. This includes an administrative, biological, regulatory, and judicial system. Each tribe will issue permits from their natural resources department and will adopt a set of regulations which will be enforced by approximately 40 wardens from the Great Lakes Indian Fish and Wildlife Commission and the various tribes. Each tribe also maintains a tribal court system which metes out justice. In contrast, the Forest Service has only around ten Level IV Law Enforcement Officers in the same area to deal with the non-tribal public. The tribal system has been in place for over 15 years and has worked effectively in regulating off-reservation hunting and fishing activities.

Q. Is this agreement subject to the National Environmental Policy Act (NEPA) which requires public involvement and disclosure of environmental effects?

A. No. The agreement itself describes how the Tribes will exercise the rights they have always had to gather wild plants on National Forest lands in the treaty ceded area. It does not make a decision for the Forest Service to take any site-specific actions. However, when certain parts of the agreement are proposed for implementation (designation of tribal sugarbushes, removal of trees for house logs), the Forest Service will conduct the appropriate site-specific NEPA analyses.

Q. Does the MOU give decision making authority to the tribes for land management activities on national forest lands?

A. No. The MOU re-emphasizes the existing requirements of the Forest Service to consult with federally recognized tribes on activities which may affect them before final land management decisions are made. The National Environmental Policy Act (NEPA) requires Federal agencies to invite Indian tribes to participate in the scoping process for planning of national forest management activities. Tribes with Treaty rights on national forest lands may also meet with line officers in advance of formal planning processes to discuss their reserved rights. Other laws and policies direct the Forest Service and other federal agencies to consult with federally recognized tribes on a government-to-government basis. The Forest Service is still the decision-making agency and public involvement, input, scoping and comment on land management activities will continue to occur with other interested and affected citizens and groups as is required under NEPA and other laws.

Q. Why did the Forest Service agree to waive fees and length of stay limits in campgrounds for tribal members engaged in gathering activities?

A. The Tribes requested fee and length of stay limit waivers for developed campgrounds for tribal members engaged in gathering activities. Based on a recent agreement between the Nez Perce Tribe and the Forest Service in Idaho which waived the same things and based on a recent presidential executive order (#13084) which directs federal agencies of the Executive Branch to among other things look for opportunities to waive fees for tribes, the Forest Service agreed in principle to the campground fee and length of stay limit waiver. The MOU states that the Tribes and the Forest Service will meet in the future to discuss and agree on which sites will be included and under which conditions use of campgrounds by tribal members will be done. Until that time, the waiver is not in effect.

Q. How will the public be involved in the MOU?

A. The MOU was negotiated in a way which respected the sovereignty of tribal governments. After recognizing strong public interest in this MOU, the Forest Service and the Tribes mutually agreed to delay implementation of new practices within the MOU to provide the public opportunity to learn more about it and to offer comments on the MOU. The Forest Service and the Tribes will collect comments, analyze them, and consider making changes to the MOU which improve or clarify it. The public will be informed of the comments made and any changes made to the MOU.

Q. What are tribal wildernesses and tribal RNAs?

A. These are designations that the Tribes have given to federally designated wilderness and RNAs. The designation provides for consistency within the tribal code of regulations for governing off reservation hunting, fishing and gathering by tribal members as enforced by tribal officers and tribal court. Gathering rights belong to the tribe, not to its members. Therefore, the tribe retains the authority to issue permits and enforce the stipulations for gathering among its members. The boundaries for tribal wildernesses and RNAs are identical to the boundaries of the same federally designated areas. Tribes have designated other special areas with specific restrictions on hunting, fishing, and gathering, such as, tribal waterfowl refuges. These tribally designated areas and their tribal regulations pertain only to tribal members and not to the non-tribal public. Non-tribal people continue to be regulated under applicable federal, state, and local laws and regulations.