

social sciences

Lessons from a Programmatic Agreement and Heritage-Based Consultations between Tribes and the National Forests of Arkansas and Oklahoma

David H. Jurney, Don C. Bragg, Roger E. Coleman, and Bobby Gonzalez

Native American consultation and collaboration have become integral parts of national forest management, but the number of applicable laws, regulations, rules, and policies can make this process a daunting one. Over the years, a series of programmatic agreements (PAs) have been developed by the Ozark-St. Francis and Ouachita National Forests (OSFONF) to help with heritage resource management. These PAs have been continuously revised and improved, culminating in a document developed with the cooperation of more than a dozen tribes, state agencies, and the federal Advisory Council on Historic Preservation. Important lessons for managers can be gleaned from the 2006 OSFONF PA and related consultations. For example, in addition to providing a collaborative framework that streamlines OSFONF management, the PA facilitates other actions by identifying undertakings exempted from the National Historic Preservation Act of 1966 (NHPA) compliance process. Beyond their operational utility, PAs can build trust and enduring relationships with tribal stakeholders, both of which are vital to further collaboration. Improved relationships benefit participants with expanded training opportunities and logistical support for shared understandings of patrimonial areas and traditional ecological knowledge. PAs can also serve as models for nonfederal landowners, helping them meet forest sustainability requirements and reach out to Native Americans with ancestral ties to the land.

Keywords: collaboration, compliance, consultation, National Historic Preservation Act, traditional ecological knowledge

Since the founding of the United States, a unique relationship between the federal government and officially recognized Native American tribes has existed (Office of Native American Affairs ([ONAA] 2012). Tribes are constitutionally established sovereign-dependent nations,

and their interactions with the US government are regulated by a complex set of treaties, laws, and regulations (Clinton 2000, p. 67249; see also Supplement S1[§] for a partial list). Unfortunately, these interactions have been strained by centuries of conflict, misunderstandings, misgivings, missed op-

portunities, and political expediency (Jurney and Hoagland 2015). Considerable energy has been expended in recent decades to improve these government-to-government relations, which are of great importance to those agencies charged with stewardship of the natural resources and archeological sites on public lands. This is a major effort, as the five principal federal land management agencies (the US Department of Agriculture Forest Service [USDAFS]; the US Department of Interior National Park Service, Fish and Wildlife Service and Bureau of Land Management; and the US Department of Defense) control more than 623 million acres (Vincent et al. 2014). The USDAFS's National Forest System alone encompasses almost 193 million acres, most of which are forested lands in the western United States and more than half of all federal lands in the eastern United States (Vincent et al. 2014, p. 9).

The USDAFS has a legal obligation to engage with tribal stakeholders. Section 106 of the National Historic Preservation Act of 1966 (NHPA) mandated that federal agen-

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Affiliations: David H. Jurney (djurney@fs.fed.us), USDA Forest Service Ozark-St. Francis National Forest. Don C. Bragg (braggd@safnet.org), USDA Forest Service Southern Research Station, Monticello, AR. Roger E. Coleman (recoleman@fs.fed.us), USDA Forest Service Ouachita National Forest. Bobby Gonzalez (bobby@tribalenergyresource.com), Caddo Nation.

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cies "...consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by the agency's undertakings" (ONAA 2012, p. 1). By definition, most national forest management activities are considered undertakings and hence subject to the mandated regulatory requirements of the NHPA. In addition, it is USDAFS policy (e.g., USDAFS 1997, 2009, 2015a) to establish and maintain effective relationships (including consultations) with tribes and other government agencies with respect to cultural resources.¹ Beyond these formal legal and policy obligations, the USDAFS also has practical and moral justifications to cultivate its relationships with Native Americans. The agency's recognition that the multiple values of national forestlands require public involvement has become a point of emphasis, making outreach to tribal stakeholders a logical extension (USDAFS 1997, 2009, Jarvis and Public Lands Initiative Team of the National Trust for Historic Preservation 2008). After all, the management of natural and cultural resources on national forests is also vitally important to most tribes (e.g., Manandhar 2011), especially those that were removed from their homelands.

The development of a meaningful dialogue between the USDAFS and tribes is critical to safeguard tribal interests and improve the stewardship of national forests. Establishing formal policies and procedures, however, is often not enough to build the trust and mutual respect between tribes and the federal government needed to ensure effective engagement—some of this will only be achieved over time as evidenced by the actions and upheld commitments of agencies such as the USDAFS (e.g., Bengston 2004, Bussey et al. 2016). In this article, we describe heritage resource-based programmatic agreements (PAs) and explain how this policy tool can improve and streamline certain USDAFS planning and management activities while developing relationships with the tribes. To do this, we show how the Ozark-St. Francis and Ouachita National Forests (OSFONF) in Arkansas and Oklahoma have been using a PA to simultaneously facilitate their management of heritage resources and engage tribal governments. In addition, we explore how the heritage-related issues behind many PAs may also be of interest to other forest managers, particularly for those lands enrolled under sustainability certification programs.

A PA Primer

All federal agencies must comply with a complex web of laws, policies, and agency-specific regulations related to cultural resources (Figure 1; see Supplement S1 for a partial list of applicable laws, policies, and regulations). USDAFS cultural resource management is detailed in the agency's Forest Service Manual (FSM) chapter on heritage programs and in the Heritage Program Management Handbook.² Nearly 300 pages in total, these documents provide the legal and regulatory authorities for this program, as well as implementation guidance for agency officials and staff. As currently provided in FSM 2360.2, heritage program management objectives call for the USDAFS to develop and document "...responsible stewardship activities that recognize, preserve, protect, enhance, and use cultural resources for the greatest public benefit." For the OSFONF, these include the Forest Service Manuals (FSM 1560 Tribal Relations and FSM 2360 Heritage, as amended in 2008), the Forest Service Heritage Program Management Handbook (FSH 2309.12, as revised in 2015, USDA Forest Service 2015c) generally and the Southern Region FSM Supplement R8-2360-2014-1 specifically, as well as formal agreements signed at the forest level. Although the guidance in these documents is lengthy, it is neither exhaustive nor specific enough to address the needs of every national forest or tribe. Hence, authority has been given in the NHPA to develop PAs as an option for managing heritage resources. A PA is a legally binding agreement between all or part of a federal agency and the appropriate state-level historic preservation offices, Indian tribes, the Advisory Council on

Historic Preservation (AChP), and certain other interested individuals (FSM 2367.21a) that establishes substitute implementation procedures compliant with the requirements of Section 106 of the NHPA and all other applicable laws and regulations (FSM 2364.11).³ Although our article focuses on USDAFS efforts, other federal agencies have this tool available to them, and most have already developed their own PAs.

Because of their flexibility, PAs are an increasingly popular planning and implementation option for national forest managers. National-level (USDAFS-wide) PAs have been established for certain special use permits, rangeland management activities, and land management planning. However, most USDAFS PAs are more focused and involve undertakings at the region, forest, program, or even ranger district levels. PAs allow for the incorporation of the unique circumstances of the coverage area, from discovery and documentation to consultation, rehabilitation, preservation, and even enhancement of cultural resources. PAs do not circumvent the statutory or regulatory requirements of national forest heritage programs, nor are they simple or limited agreements; rather, they are designed to better operationalize the consultative process among SHPOs, tribes, federal, state, and local officials, and the public. Although not every PA includes Indian tribes as signatory parties, most involve Native Americans through at least the consultation and advisory process. Indeed, one of the strengths of the PA development process is that it gives the tribes a meaningful voice in their creation. However, the identification of relevant tribes and tribal organizations can be one of the biggest challenges for USDAFS

Management and Policy Implications

The relationships between Native Americans and federal land management agencies have suffered over the decades, to the detriment of all involved. Improving trust and collaboration with this important group of stakeholders is further challenged by staff turnover, budget issues, and shifting policies. PAs are available to federal agencies under the National Historic Preservation Act (NHPA) and can formalize and facilitate the consultation process, thereby improving collaborations for national forest managers. Developed in partnership with the tribes and other agencies and emphasizing mutual interests in natural, cultural, and human resource programs, PAs improve management efficiency, build trust, and increase collaboration in the decisionmaking that affects tribal interests on public lands such as the OSFONF. Managers who respectfully listen and learn from their tribal partners about traditional practices related to natural resources (including plants, animals, and special locations) should be able to enhance their management of federal, tribal, and even private lands while achieving other policy and sustainability goals.

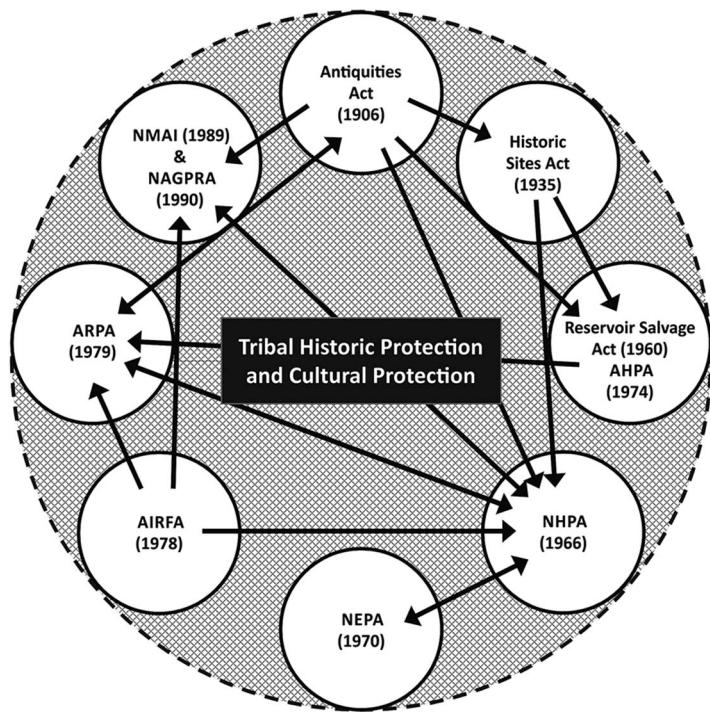


Figure 1. The web of relationships between the federal laws governing the implementation of tribal historic and cultural preservation, adapted from a keynote presentation given by Dr. Joe Watkins (University of Oklahoma) at the 2012 To Bridge a Gap meeting. Note that this figure only includes major pieces of legislation; additional aspects (represented by the larger circle) have been defined by numerous executive orders, agency policy directives, state laws, and even some local ordinances. AHPA, Archaeological and Historic Preservation Act; NHPA, National Historic Preservation Act; NEPA, National Environmental Policy Act; AIRFA, American Indian Religious Freedom Act; ARPA, Archaeological Resources Protection Act; NMAI, National Museum of the American Indian; NAGPRA, Native American Graves Protection and Repatriation Act.

heritage programs, as tribes may have connections to a given national forest even if their homelands did not originally encompass the lands within its proclamation boundaries. To facilitate this process (USDAFS 2015b), the Office of Tribal Relations (OTR) has made available an interactive website⁴ where tribes and agencies can track ancestral homelands as well as their historic migration routes.

Origins of the Current OSFONF PA

A Brief History of the OSFONF

The national forests of Arkansas and Oklahoma were formed from some of the last large blocks of the public domain in the eastern United States remaining in the early 20th century. Originally called the “Arkansas” National Forest, the Ouachita National Forest was officially proclaimed by President Theodore Roosevelt on Dec. 18, 1907, and the Ozark National Forest was established on Mar. 6, 1908; both had other public do-

main added by President Roosevelt in February 1909 (Strausberg and Hough 1997). Over the next decade, these national forests withstood repeated efforts by some local politicians and residents to completely eliminate them, although other proclamations during the administrations of Presidents Taft and Wilson reduced their combined area to just over 915,000 acres (Strausberg and Hough 1997).

After 1920, the federal government repeatedly enlarged the OSFONF. The Weeks Law of 1911, the Clarke-McNary Act of 1924, and the Bankhead-Jones Farm Tenant Act of 1937 permitted the expansion of eastern national forests through a variety of authorities, including purchases, donations, land exchanges, the acquisition of tax delinquent properties, and lands obtained during resettlement programs. For example, on Dec. 3, 1930, President Herbert Hoover added 53,000 acres of cutover timberlands in Le Flore County, Oklahoma, to the Ouachita National Forest for watershed

protection (Strausberg and Hough 1997). Other additions included the Crossett Experimental Forest (CEF), a small (1,675 acre) parcel of land in southeastern Arkansas originally leased by the USDAFS to conduct silvicultural research and demonstration (Reynolds 1980). President Dwight Eisenhower created the small (20,611 acre) St. Francis National Forest from the USDA Soil Conservation Service’s Marianna-Helena Land Utilization Project in November 1960 (Bass 1981) and shortly thereafter the St. Francis was merged with the Ozark National Forest (Strausberg and Hough 1997).

OSFONF Heritage Programs

Today, the OSFONF encompass a sizable portion of Arkansas and Oklahoma (Figure 2): the Ouachita covers approximately 1,800,000 acres and the Ozark-St. Francis includes nearly 1,160,000 acres (Jurney et al. 2010, Coleman et al. 2013). This large and diverse landbase inherently complicates consultations with Native Americans. The lands that would eventually become the OSFONF were ceded during the 1800s in treaties by the Quapaw, Caddo, Choctaw, Osage, and Cherokee Nations (Jurney et al. 2010, Coleman et al. 2013). As national forest policy encourages broad inclusion of potentially interested Native Americans, the consultation list of OSFONF has grown to include a number of tribes that did not make specific land cessions in the proclamation areas, including some from the neighboring states of Louisiana and Mississippi (Table 1). These other tribes used the region for seasonal hunting and gathering activities or passed through (e.g., along the Trail of Tears) en route to resettlement further west. Thus, they have legacy interests (e.g., temporary campsites, trails, ceremonial areas, and burials) in what would eventually become the OSFONF, although these interests are more ephemeral.

National Forest heritage programs are relatively new. Unlike timber, grazing, water, or mineral resources, which have been a part of national forest management since its inception, cultural resources only became a mandated priority after the passage of the NHPA in 1966. Even then, it took years for forest managers to incorporate NHPA requirements (although not without considerable internal resistance) in a formal heritage program (Jarvis et al. 2008, Etcheson 2013). By the mid-1970s, the OSFONF had entered cooperative agreements with the Arkansas Archeological Survey and the

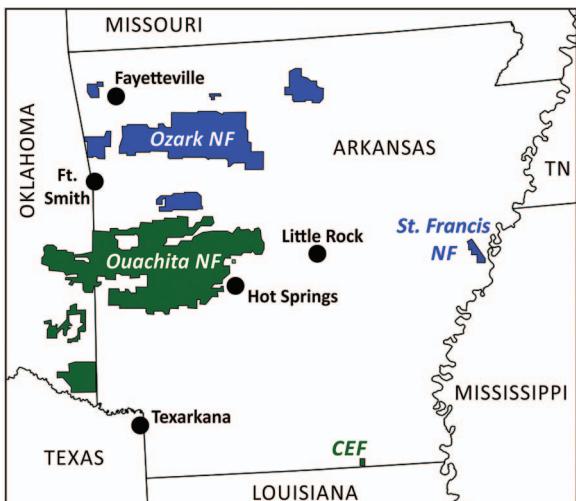


Figure 2. Map of the Ozark-St. Francis and Ouachita National Forests (NFs) and Crossett Experimental Forest (CEF) in Arkansas and Oklahoma.

Table 1. Parties consulted and actively engaged in the development of the current (2006) and ongoing draft (2016) OSFONF PAs.

Organization	2006 PA	2016 PA
Federal agencies		
USDAFS Ozark-St. Francis National Forests	Yes*	Yes
USDAFS Ouachita National Forest	Yes*	Yes
Advisory Council on Historic Preservation (AHP)	Yes*	Yes
Office of General Council (OGC)	Yes	Yes
State agencies		
Arkansas State Historic Preservation Officer (SHPO)	Yes*	Yes
Oklahoma SHPO	Yes*	Yes
Arkansas Archeological Survey (ARAS)	Yes	Yes
Oklahoma Archeological Survey (OAS)	Yes*	Yes
Indian tribes/nations with Tribal Historic Preservation Officers (THPOs)		
Absentee Shawnee Tribe	Yes	Yes
Alabama-Quassarte Tribal Town of Oklahoma		Yes
Caddo Nation	Yes*	Yes
Cherokee Nation of Oklahoma	Yes	Yes
Chickasaw Nation	Yes	Yes
Choctaw Nation of Oklahoma	Yes*	Yes
Coushatta Tribe of Louisiana		Yes
Delaware Nation	Yes*	Yes
Eastern Shawnee Tribe	Yes	Yes
Jena Band of Choctaw Indians		Yes
Kialegee Tribal Town		Yes
Miami Tribe of Oklahoma		Yes
Mississippi Band of Choctaw Indians		Yes
Muscogee (Creek) Nation	Yes	Yes
Osage Nation	Yes	Yes
Peoria Tribe of Indians of Oklahoma		Yes
Quapaw Tribe of Oklahoma	Yes	Yes
Seminole Nation of Oklahoma	Yes	Yes
Shawnee Tribe	Yes*	Yes
Thlophlocco Tribal Town		Yes
Tunica-Biloxi Tribe of Louisiana	Yes	Yes
United Keetoowah Band of Cherokee Indians		Yes
Wichita and Affiliated Tribes		Yes

* Original 2006 PA signatories; other "Yes" consulted but did not sign in 2006 or signed the agreement at a later date.

Oklahoma Archeological Survey and hired some professionals to survey and test sites. Significant staffing and budget resources were not devoted to the program until well into the 1980s (Etchieson 2013). Today, the

OSFONF administer heritage resource programs through their respective supervisor's offices. These heritage staffs have a combined 350 years of professional experience in finding, identifying, assessing, and protect-

ing the archeological resources of the Forests. Since their inception, the OSFONF heritage programs have contributed about one-third of the approximately 48,000 known archeological sites⁵ recorded in Arkansas and found these on less than $\frac{1}{10}$ of the state's landbase. This high proportion is not because the OSFONF are exceptionally rich in archeological sites, but rather because more time and resources have been invested in site surveying. As of early 2015, the Ozark-St. Francis has completed inventories on slightly more than 938,000 acres (almost 81% of its landbase) and documented 6,098 archeological sites, whereas the Ouachita has completed inventories for 517,000 acres (about 29% of its landbase) and recorded 9,313 sites, numbers that continue to grow.

USDAFS heritage staffs are charged with protecting and preserving all historic properties, as well as protecting "not eligible" sites when feasible. This task is done jointly with partners in other federal agencies, state agencies (e.g., the Arkansas Archeological Survey, Arkansas Historic Preservation Program, Oklahoma Archeological Survey, and Oklahoma Historic Preservation Office), and tribal historic preservation programs (when available: many tribal preservation programs are small, have been started recently, and face a myriad of almost daily requests for consultation by local, state, federal, and nongovernmental sources). In conjunction with these partners and the ACHP, the OSFONF heritage staff entered a series of agreements starting in the early 1990s (see Supplement S2 for a more detailed account of the process). The time and effort required of the USDAFS staff and tribal collaborators to develop an effective PA is significant and does not end with the final signed agreement, but must be continually maintained. For instance, an updated version of the OSFONF PA, developed after years of consultations, with the assistance of over two dozen tribes, state agencies, and federal staffs (Table 1), has recently (January 2016) been released for comment to the Arkansas and Oklahoma SHPOs, Native American tribes, and ACHP.

What Does the OSFONF PA Do?

Improving National Forest Planning and Implementation

Besides listing the statutory requirements of the OSFONF, the 2006 PA outlines the scope and duration of the agree-

ment, designates points of contact, and specifies cultural resource training, public outreach and interpretation, site protection, investigation, and reporting standards, including those incurred under emergency situations (e.g., wildfire response, tornado damage, and ice storms). Rather than adding more bureaucracy to OSFONF operations, this PA provides a framework that clarifies how cultural resource management should proceed. For example, a process for addressing the discovery of human remains and any associated funerary objects within areas of potential effect (APE) is given to forest managers and signatory parties as well as the invocation of specific protocols under other Native American Graves Protection and Repatriation Act (NAGPRA) and Archaeological Resources Protection Act (ARPA) agreements. Similarly, detailed procedures for addressing emergency actions prompted by wildfire control and postburn mitigation are also provided to help national forest staff.

Also key to the 2006 OSFONF PA is the section (V.A.1.; see Supplement S3) listing programmatic allowances (exempted undertakings or documented categorical exclusions) for many activities otherwise subject to standard compliance and consultation. Some of these activities are routine in nature (e.g., road right-of-way maintenance) and do not involve significant ground disturbances in the APE or have no potential effects on known cultural resources (e.g., structures). Under this PA, other activities that might have significant adverse effects may also be deemed exempt because previous field surveys of suitable intensity and scope conducted in the APE revealed no cultural resources at risk. For instance, much of the OSFONF has been subject to repeated prescribed fires over the years, a treatment permitted because no vulnerable cultural resources were found aboveground (e.g., structures threatened by fire) or belowground (e.g., burials) in prior surveys.⁶ A number of other timber management-related allowances are also provided in the 2006 PA, including certain types of herbicide site preparation, limited firewood cutting by the general public, some cut-and-leave projects (including wildlife habitat improvement associated with certain restoration activities), insect infestation suppression, precommercial thinning of pine plantations, and chainsaw-based competition control. Many nondestructive research- and monitoring-related activities (e.g., removal of modern measuring stations and conduct-

ing studies and tours) are also exempted. This is important, as a number of areas on the OSFONF have been established as permanent research locations (including the Alum Creek, Crossett, Koen, and Sylamore experimental forests), and other sites are periodically studied by agency scientists and university academics.

Sacred Site and Traditional Cultural Property Identification and Protection

Sacred sites and other locations visited on a regular basis by descendant communities for cultural uses that are eligible for the National Register of Historic Places are considered traditional cultural properties (TCPs) (USDA OTR and US Forest Service 2012). TCPs are active components of the modern cultural landscape and are priorities for management and protection. As may be expected, TCPs are also a sensitive issue to many tribes, who may be reluctant to disclose their locations or the activities involved because of concerns about harassment, desecration, and loss of cultural identity. However, for the national forests to be effective stewards of TCPs, they must be defined and sufficiently known to managers to avoid actions that may not be compatible with their utilization or preservation. Special use permitting, wilderness designation, differences in preferred management approaches, conflicting uses, and other overriding laws and legal precedents are a few of the complicating factors making TCPs a particularly challenging issue to forest managers. A lack of trust in federal agencies regarding confidentiality, appropriate management, and the discretionary use of existing authorities in regard to TCPs has been expressed by many Native Americans (USDA OTR and US Forest Service 2012, Alexander et al. 2017), further suggesting the need to improve relationships with these stakeholders.

However, the progress made to date probably would not have occurred if the 2006 PA failed to assure confidentiality regarding aspects of cultural resources, including TCPs, when provided to the OSFONF. Sometimes this requires broader consideration than project evaluation in the past, in part because not all affected resources relate to aboveground sacred sites. For instance, prehistoric peoples have explored the “dark zone” of many caves for hundreds to thousands of years. Wooden and cane torches, footprints and handprints, and at least one human burial are known in the undeveloped recesses of Blanchard Springs Caverns in

northern Arkansas, a nationally renowned “living” cave open to public tours. The Osage Nation considers all caves sacred and is currently working with the Ozark-St. Francis toward appropriate management of Blanchard Springs Caverns. Other caves and bluff shelters in the OSFONF contain panels of rock art showing bison hunting, male and female figures, and other artistic motifs, which are also considered sacred.

The issues surrounding sacred sites and TCPs are not likely to be resolved anytime soon, and more conflicts of interest are likely to arise. For example, both tribes and public land managers must recognize that designation of a TCP does not necessarily exclude other uses of that location by other members of the public (USDA OTR and US Forest Service 2012). However, as TCP management has become one of the multiple uses of national forestlands, it must also be incorporated in project objectives and consultation requirements. To facilitate this, the Secretary of Agriculture initiated sacred sites consultations with tribes in 2011. As a direct result, the USDAFS is developing protocols for line officer consultations with tribes concerning the management of sacred sites and TCPs. Recent reports and memoranda of understanding have helped to define what constitutes a sacred site (USDA OTR and US Forest Service 2012) and new/updated regulations in the FSH and FSM related to sacred sites have been made and are currently undergoing public comment (Tidwell 2015). Furthermore, USDAFS Chief Thomas Tidwell signed a Tribal Relations Directive on Feb. 8, 2016, and it is expected to be rolled out in the near future, with specified changes in policy.

Facilitating Dialogue

The growing dialogue between the OSFONF and tribes has helped to build trust and management opportunities for both parties (e.g., Manandhar 2011), further evidenced by increased participation by the tribes in ongoing PA revisions (Table 1). For national forest managers, the immediate need is an improved and streamlined consultation process on nonexempt undertakings. Although there are statutory requirements about consultations, including necessary time frames, the entire process works far more smoothly when tribes are engaged partners, rather than neglected or alienated ones. Some of these steps are remarkably simple and easy to implement, for example, meeting tribal staff and elders face-to-face in

locations more suitable for their travel provides for more productive consultative meetings than impersonal forms of communication such as e-mail or video teleconferencing. Sharing meals together is also often an essential element of rebuilding trust. In addition, not all discourse needs to fall under the formal requirements of consultations on specific projects, nor does this dialogue need to relate exclusively to interactions with the OSFONF. For example, after one consultative meeting with the OSFONF, Osage Elders visited Caddo Elders and agreed on a protocol for repatriation of human remains uncovered across the Ouachita Mountains and Ozark Highlands where their areas of interest overlap. Under this arrangement, the Osage are to receive remains from upland sites (such as rock shelters) and the Caddo are to receive remains from lowland sites (e.g., open air cemeteries), a protocol then followed during recent NAGPRA repatriation activities by the OSFONF.

To help facilitate further dialogue, the “To Bridge a Gap” meeting series was initiated in 2002 (Jurney and Hoagland 2015). While not a requirement of past or present OSFONF PAs, To Bridge a Gap meetings are a direct offshoot and have greatly expanded participation in the consultation process. This forum supports required consultations, fosters partnerships and information exchange, builds trust, and addresses natural resource-related issues as they arise. Specifically, To Bridge a Gap meetings have transferred knowledge on USDAFS wildlife and fire programs, NAGPRA, tribal relations programs, remote sensing, tribal access to and use of sacred sites and TCPs on the OSFONF, cemetery documentation, preparing agreement documents, managing for native plants, and numerous training opportunities. The meeting has grown to encompass more agencies (both federal and state), tribes and tribal representatives, and private organizations and individuals across much of the eastern United States in a venue that helps all parties develop better relationships (Jurney and Hoagland 2015).

Other Mutual Benefits

The PA consultation and collaboration process has helped to meet some of the needs of tribal communities, and vice versa. These have ranged from providing plant or animal materials for cultural uses (Sidebar 1) to helping with community and resource development. For example, OSFONF staffs have provided assistance to tribes for imple-

Sidebar 1. Traditional Plant Use on the National Forests

As with many issues related to government-to-government relationships, off-reservation treaty rights and comanagement of resources are challenging, involving many different legal, cultural, and ethical concerns (Nie 2008). One of the rights reserved by some tribes in the treaties ceding their homelands was the ability to collect a number of renewable natural resources on adjacent public forestlands or homelands within their proclamation boundaries for traditional uses (including subsistence, ceremonies, and medicines). In addition to those collections guaranteed by treaty rights, the passage of the Food, Conservation, and Energy Act of 2008 (Title VIII Subtitle B, codified under the Cultural and Heritage Cooperative Authority 25 USC 32A) provided the USDAFS direction for granting tribal access to forest products for traditional uses. These are codified in USDAFS regulations (currently, FSH 2409.18-2015-1, 82.5) that allows for “...any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes” (note that this authority specifically prohibits their commercial use).

In the spirit of full cooperation, the OSFONF have made a number of recent allowances related to traditional plant uses, even though this is not explicitly outlined in the 2006 PA (they could fit under some of the programmatic exemptions provided). For example, collection of eastern redcedar (*Juniperus virginiana*) poles for a Native American church was granted to the Caddo Nation, and a separate collection of eastern redcedar poles was also allowed for the Apache Tribe of Oklahoma. Likewise, a forestwide collection permit for gathering plants has been granted to a member of the Muscogee Nation on the Ozark-St. Francis, within the limits of current statutes concerning rare and endangered species. In addition, the OSFONF are currently working with the Cherokee Nation to provide pine logs suitable for making dugout canoes.

menting management activities on their own lands, including training sessions on prescribed fire use, wildfire control, and timber marking. Training tribal members provides employment opportunities to underserved communities, as well as tangible connections to their culture and history. Additional training and certification opportunities are available to heritage paraprofessionals who aid in inventory work under the direct supervision of OSFONF archeologists (Figure 3). This paraprofessional training has been shared with the Choctaw Nation of Oklahoma, the Chickasaw Nation, the Muskogee (Creek) Nation, the Caddo Nation, the Cherokee Nation, the Coushatta Tribe of Louisiana, the Absentee Shawnee Tribe, and the Seminole Nation (Etchieson 2013). These tribes now have heritage programs for tribal lands, and, under special participating agreements, some of their heritage technicians are employed to monitor and work on OSFONF lands under the direct supervision of professional archeologists. Certified tribal heritage paraprofessionals have also been trained to monitor outside (non-USDAFS) activities where tribes are concerned about inadvertent archeological discoveries. For example, at a 2013 OSFONF heritage paraprofessional training hosted by the Coushatta Tribe of

Louisiana, a major pipeline company sponsored several students from tribes that had entered into pipeline construction monitoring agreements with the firm. In addition, this firm entered into a PA with the Osage Nation to direct fieldwork and consult on proposed pipelines.

OSFONF managers likewise benefit from tribal assistance. By training Native Americans as heritage paraprofessionals, the OSFONF gains the skills of a people highly invested in the discovery and protection of these sites. As an example, the OSFONF has many unique and important archeological sites in caves and rock shelters. Many of these sites contain remains of ancient material culture of significant heritage value, particularly in the form of burials, rock art, food items (especially seeds of early domesticated plants), and other organic artifacts (such as clothing, tools, and floral and faunal remains) that are rarely preserved outside of these dry environments. Unfortunately, these sites have also long been the target of people who have stolen or destroyed irreplaceable artifacts, burials, and other features. Tribal heritage paraprofessionals have assisted in a number of detailed, time-consuming surveys of looted and vandalized rock shelters, caves, and rock art sites (Figure 4), helping OSFONF heritage staff recover



Figure 3. Robin Soweta, Jr. (left) of Muscogee Nation and Solomon Blanchard (right) of Absentee Shawnee Tribe document a shovel test probe while attending a heritage paraprofessional training program hosted by the Absentee Shawnee Tribe in 2015. (Photograph by David Jurney.)



Figure 4. Heritage paraprofessionals from the Cherokee Nation documenting looter damage to a rock shelter site on the Big Piney Ranger District of the Ozark-St. Francis National Forest. (Photograph by David Jurney.)

information and monitor these at-risk locations. In addition, the protection of cultural resources can benefit other natural resources, and vice versa, for example, gates and access restrictions intended to protect endangered bats also shield against the looting and vandalism of archeological materials in those caves and mines.

In addition to assisting with the identi-

fication and conservation of sensitive cultural resources, improved cooperation provides forest managers opportunities to learn from the tribes, who possess a wealth of traditional ecological knowledge (TEK) acquired over innumerable generations. Federal land managers and policymakers have increasingly recognized the unique value of TEK across a range of natural resource issues

(Indian Forest Management Assessment Team [IFMAT] 2013, USDAFS 2015a). Research and policy reviews on TEK have identified a number of ways that combining contemporary scientific knowledge and TEK improved outcomes for both forest managers and tribal members, including wildfire management (Mason et al. 2012), biodiversity (Charnley et al. 2008), ecological site classification (e.g., Hummel and Lake 2015), tribal cultural needs (Emery et al. 2014, Long et al. 2017), climate change adaptation (Vinyeta and Lynn 2013), and invasive species (Alexander et al. 2017). The integration of TEK and contemporary resource management on national forests is not without its tensions—the product of years of distrust, skepticism, and the desire to keep some knowledge within the tribal community as a part of their unique heritage. An example of these challenges can be seen in an assessment of efforts to merge different kinds of ecological knowledge with national forest management in northern Minnesota (Bussey et al. 2016). Science and resource management interests are likely to continue to conflict with indigenous interests, recently highlighted by disputes over the construction of a new deep space telescope in Hawaii (Schouten 2015). Hopefully, the goodwill engendered by effective implementation of PAs will help make this less of an issue with resource management on the OSFONF.

Implications for Nonfederal Forest Management Organizations and Landowners

Although the PA described in this article is only directly applicable to the OSFONF, a number of relevant lessons for other federal, state, or private forest landowners can be taken from this document. First, we believe the engagement required to develop this PA (and its predecessors) has helped turn the formal, mandatory consultation process into a more cooperative and mutually beneficial collaboration between the OSFONF and relevant stakeholders. If nothing else, the parties understand each other considerably better. The consultation requirements of the NHPA and other statutes should not be avoided because of unfounded concerns regarding yet another (presumably hostile) stakeholder in the forest management process. Although tribes have strong interests in protecting their cultural heritage, they are not inherently opposed to natural resource management, in-

cluding tree harvesting. Indeed, tribal governments are often highly effective forest managers and frequently operate substantial timber programs on their own lands, collectively having produced hundreds of millions of board feet annually over the last few decades and having provided thousands of jobs to tribal members and others (Pecore 1992, Yazzie-Durglo 1998, IFMAT 2013).

Second, PAs can serve as a model for nonfederal land management agencies bound to the same (or similar) laws, regulations, policies, and obligations. Increasingly, forest management activities on other types of public ownerships are being challenged regarding their impacts on cultural resources. State and local governments control large areas of forest, and their requirements to consult and collaborate with tribes vary considerably, reflecting a patchwork of rules and regulations. Treaty rights, for instance, although an agreement between sovereign governments at the federal level, can affect other public ownerships under certain circumstances (for a review, see Nie 2008). In addition, federally funded projects conducted by other levels of government are considered undertakings under NHPA and hence subject to all relevant laws and regulations. Developing such a plan should facilitate the consultation process for a wide range of undertakings, even if it does not ensure that all those undertakings will eventually be permitted. Through proper consultation, some type of mutually agreed on strategy is highly likely to be the result—as opposed to months or years of delay and acrimony. Many of these governments have already taken the initiative to consult with Native Americans. For example, a number of states have formal policies related to tribal relations and consultations for their agencies, including Alaska, California, Colorado, Michigan, Minnesota, New Mexico, Oregon, Washington, and Wisconsin (e.g., Galanda 2012, Hanschu 2014).

Third, although public land managers are far more subject to legal and regulatory challenges, private landowners are increasingly affected by cultural resource issues and may benefit from a PA-based model of cooperation and consultation with tribes. There are a handful of cultural resource-related statutes that directly regulate private land use or forest management practices in the United States. These include laws in most states involving the disturbance of cemeteries and other documented burials. For example, the State of Arkansas treats the

willful desecration of funerary sites on all ownerships as a Class D Felony; however, accidental damage or destruction is exempted if either occurs during certain activities including agricultural practices (which presumably includes forestry-related actions) (A.C.A. §13-6-401–409). In other words, if silvicultural treatments, such as site preparation for planting, disturb a previously unknown burial or unmarked cemetery, that would not be a violation. However, this same action could be considered a crime if it was knowingly done to a recognized burial ground, Indian mound, or residential site thought to contain burials. Cultural resources such as artifacts (but not human remains) or plant materials are considered the property of the private landowner and fall within their discretion to use as they see fit as permitted by applicable laws. Obviously, these regulations can and will vary by geographic location, so forest managers and landowners should be aware of their specific circumstances.

Not all potential issues for private landowners are statutory. For decades, many industrial landowners have voluntarily engaged in the protection of major archeological sites and consultations with state archeological agencies. These informal practices are now evolving into more formal, structured ones. Furthermore, private landowners who contractually agree (e.g., through binding easements) to follow a certain set of specified standards of practices are obligated to the terms of those legal documents, which can include consultation. Many large-scale private landowners have enrolled in sustainable forestry certification programs. All of the major certification programs include language in their standards of practice specifying how heritage resources should be addressed. In addition to requiring adherence to all applicable laws, statutes, and regulations governing the environment, these certifying bodies expect that heritage resources be addressed to maintain certification compliance. For instance, according to current Sustainable Forestry Initiative (SFI) Objective 6, Performance Measure 6.1 requires the protection of special sites, calling on program participants to “...manage lands that are geologically or *culturally important* in a manner that takes into account their unique qualities” by identifying these locations using information “...such as existing natural heritage data, expert advice or stakeholder consultation in identifying or selecting *special sites for protection*” (their emphasis; SFI

2015, p. 22). SFI Objective 8 on indigenous peoples’ rights also has performance measures and indicators tiered to a written policy that acknowledges and respects indigenous rights. This includes formal consultations with affected indigenous peoples by public land managers and the identification and protection of “...spiritually, historically, or *culturally important sites...*” and the “...use of *nontimber forest products* of value to *Indigenous Peoples...*” (their emphasis; SFI 2015, p. 23). SFI also encourages private land participants to communicate with and be respectful of local indigenous peoples.

SFI is not alone. Forest Stewardship Council (FSC) certification standards for the United States also have specific language regarding respect of indigenous peoples’ rights and consultation, in addition to requiring the maintenance of “high conservation value forests,” which include areas of cultural, ecological, economic, or religious significance critical to the traditional cultural identity of local communities (FSC 2010, p. 74). American Tree Farm System (ATFS) 2015, p. 16–17, 19) certification requires that “...forest management activities should maintain or enhance forests of recognized importance...[i.e.,] globally, regionally and nationally significant large landscape areas of exceptional ecological, social, cultural or biological values... [including] large-scale cultural or archeological sites including sites of human habitation, cities, burial grounds and in situ artifacts” (Performance Measure 5.4) and “[f]orest management activities *shall* consider and maintain any special sites relevant on the property.... Special sites are diverse and can be identified through consultation and consideration processes....” (Performance Measure 7.1). Adherence to these self-imposed rules and regulations falls on participants in the SFI, FSC, and ATFS certification programs and the willingness of those programs to enforce their policies.

Conclusions

Relationships between tribes and the federal government can be made far more meaningful than the formal, mandated government-to-government interactions of sovereign nations. Through the discovery of common interests in natural, cultural, and human resources, PAs present opportunities to develop trust, broaden collaboration, and improve on the effectiveness of public forest-land management efforts. The investment of time and resources at the front-end of the

process yields dividends over the life of the agreement, some of which are quantifiable (in terms of financial outcomes) and others that are less apparent (e.g., enhancing the habitat of a culturally valued plant). In an era of declining agency budgets, the ability to get projects done efficiently is greatly aided by smooth collaboration with stakeholders such as tribal members, particularly if they can help in the discovery, interpretation, and protection of important cultural resources.

Because of their flexibility, heritage-based PAs are some of the most useful tools available to federal land managers. The PA developed by the OSFONF can serve as a model for how national forests and tribes can work together to meet both natural resource management needs and the cultural resource concerns of the tribes. When properly designed, PAs merge defined operating procedures and best business practices with required inventories and evaluations of the historic and cultural significance of archeological sites. Thus, properties with historic, scientific, cultural, patrimonial, and sacred values can be integrated into annual programs of work for public lands while preserving the archeological record when properly done, a process facilitated by effective tribal consultation. As is apparent from this case study, PA development is an involved and interactive process requiring meaningful participation from the tribes and other agencies (e.g., the ACHP and SHPOs) to be successful.

We believe that cultural resources should be given equal footing with timber, wildlife, water, minerals, recreation, and the other better-known uses of public lands. Archeological sites can provide a wealth of information about the past, but these fragile resources need protection (and even careful restoration) to ensure their integrity and value for future generations. Tribal cooperation is vital to this effort. Forest management on private lands has noticeably different priorities and legal requirements. Nevertheless, we would argue that these ownerships can likewise benefit from an inclusive and meaningful consultation process including, when appropriate, a formal plan regarding cultural resource management. For example, engaged Native Americans may offer untold generations of experience about the land and the resources found there, thereby helping today's forest managers adapt past knowledge to help ensure that future generations will still be able to enjoy

these resources. In addition, consulting with tribes and state archeological agencies should allow landowners to comply with the requirements of most certification programs, continuing their good stewardship of their properties.

Endnotes

1. Cultural (heritage) resources are defined in Forest Service Manual (FSM) 2350.5 as "an object or definite location of human activity, occupation, or use identifiable through field survey, historical documentation, or oral evidence." The NHPA defines consultation as "...the process of seeking, discussing, and considering the views of other participants designated in statute or regulation and, where feasible, reaching agreement with them regarding matters affecting cultural resources on National Forest System lands" (FSM 2309.12, p. 12). Note that how the USDAFS interprets this concept is not the same as the interpretations of others; to paraphrase a statement on the front cover of the State of Colorado's state-tribal consultation guide (Hanschu 2014), consultation can also mean asking for advice or seeking an opinion, not obtaining consent.
2. For more information, see www.fs.fed.us/im/directives/fsm/2300/2360.doc and www.fs.fed.us/cgi-bin/Directives/get_dirs/fsh?2309.12.
3. State Historic Preservation Officers (SHPOs) are state/territorial government employees—appointed by the respective governors—who work with the federal government to help carry out the mandates of the NHPA. Also established by the NHPA, the ACHP (www.achp.gov/index.html) is an independent federal agency that promotes the preservation, enhancement, and use of the historic resources of the United States and advises the President and Congress on national historic preservation policy. Existing national-level PAs for various federal agencies can be accessed on the website www.achp.gov/palist.html. Numerous other USDAFS-related PAs can be found in an online search by typing "Forest Service programmatic agreements" in a search engine.
4. For more information, see usfs.maps.arcgis.com/apps/webappviewer/index.HTML?id=fe311f69cb1d43558227d73bc34f3a32.
5. Technically speaking, archeological sites can be prehistoric (before circa AD 1600 in Arkansas) or historic (between AD 1600 and 1966). Not all archeological sites are Native American, but virtually all prehistoric sites in North America are related to Native American activities (historic archeological sites can be Native American and/or Euro-American).
6. Some archeological sites (e.g., wooden structures, rock art sites, bluff shelters, and historic cemeteries) are vulnerable to fire, including activities performed to help control, suppress, and recover from these burns (Ryan et al. 2012). The 2006 PA contains specific language on how to address these sensitive locations from adverse impacts, including the need for additional surveys and protection as warranted.

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