

# Fulfilling the Promise of The Tribal Forest Protection Act of 2004



## EXECUTIVE SUMMARY

An Analysis by the Intertribal Timber Council  
In Collaboration with  
USDA Forest Service and Bureau of Indian Affairs  
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In 2002 and 2003, extensive wildfires, originating on national forests or other federal land, swept across the West and devastated tribal communities. Lives were lost and resources held in trust by the United States for the benefit of Indians were severely damaged.

The Tribal Forest Protection Act of 2004, PL 108-278 (TFPA) was passed in the aftermath of these catastrophic losses in order to provide a means for Tribes to propose projects that would protect their rights, lands, and resources by reducing threats from wildfire, insects, and disease. The TFPA offered promise as a means of helping the United States fulfill its federal responsibilities to protect the trust corpus while promoting the restoration of healthy forest ecosystems on the landscape.

Under the TFPA, the Secretaries of Agriculture and Interior are authorized to enter into agreements or contracts, pursuant to tribal proposals to address hazardous conditions on Forest Service (FS) or Bureau of Land Management (BLM) administered lands that border on or are adjacent to tribal trust lands or resources. (This report focuses on implementation of the TFPA by the FS and Tribes and does not include BLM.)

Information on the number of tribal TFPA proposals that were submitted, withdrawn, or rejected during the eight years since enactment of the TFPA was

unavailable. The FS identified eleven proposals that were accepted by the FS. Of those only six projects have been successfully implemented, encompassing less than 20,000 acres of forest lands out of the 193 million acres of forests and grasslands administered by the FS. The promise of the TFPA remains unfulfilled.

To better understand why the TFPA has not been extensively employed, the Washington Office of the FS entered into a Cooperative Agreement with the Intertribal Timber Council (ITC) to identify impediments to the use of TFPA and to develop recommendations to improve its implementation. The study was undertaken by the ITC in collaboration with the FS and Bureau of Indian Affairs (BIA) through the use of surveys, interviews and site visits to Indian reservations and National Forests.

The Tule River Tribe has been pursuing a TFPA project to protect Sequoias, their ladders to Heaven, for several years. Site visit photo by Dave Ernst July, 2012



## Findings

- Perceptions and understanding regarding use of the TFPA authority, proposal development, review, and implementation process differ between Tribes, the BIA and FS.
- FS understanding of government-to-government relationships and agency trust responsibilities to Tribes is variable throughout national forests.
- Tribes frequently attribute their unwillingness to aggressively pursue TFPA projects to their lack of confidence that limited tribal resources invested to pursue TFPA proposals will be well spent. There is concern over becoming embroiled in costly and protracted FS administrative processes that are fraught with uncertainties and cast doubt on timely implementation (e.g., funding availability, environmental clearances, impacts of restrictions to protect species listed under the Endangered Species Act, Wilderness designations, Roadless classifications, and litigation).
- Frequent turnover of leadership and staff hamper long-term, collaborative relationships at the local level between Tribes and the FS.
- FS policy guidance regarding the TFPA is unclear, incentives are lacking, and funding for implementation uncertain.
- The ability to fund TFPA projects has largely been dependent on Congressional appropriations because opportunities to defray treatment costs (e.g., goods for services) are becoming increasingly scarce due to the decline of viable markets for forest products.

## Recommendations

- 1. Improve understanding of TFPA, government-to-government relationships and trust responsibilities** by conducting joint training (i.e., general tribal relations training currently in development by the FS and adaptation of modules produced by the ITC) and providing post-training technical support.  
  
Undertake a tribal outreach effort to inform Tribes about the TFPA and encourage its use, including notice of training opportunities and distribution of technical assistance materials, such as templates for preparation of TFPA proposals along with descriptions of FS administrative guidance and proposal review processes.
- 2. Strengthen the partnership between the FS and Tribes through formal agreements** to institutionalize working relationships, forums, exchanges, collaborative project planning, engagement in national forest plan revisions, coordinated federal hazard fuel funding, and collaborative efforts to maintain viable infrastructure for utilization of forest products.
- 3. Promote the use of TFPA.** Encourage FS use of TFPA through performance incentives and accountability measures, budget direction, monitoring, reviews, and development of direction and guidance.  
  
Develop and implement a collaborative FS-ITC -BIA strategy to implement the TFPA, including information sharing, and interagency agreements to foster mutual understanding and use of administrative tools and authorities.
- 4. The ITC and Tribes should consider ways to amend TFPA** or other authorities to expedite consideration, approval, and implementation of TFPA projects by addressing environmental compliance categorical exclusions, alternative dispute resolution processes, and allowing for a greater range of management alternatives in special designation areas.

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