



**FOREST STEWARDSHIP COUNCIL™
UNITED STATES**

The mark of responsible forestry
FSC® F000232

Issue Overview: Indigenous Peoples' Rights, Local Communities' Rights, & Free, Prior and Informed Consent

*To Support Public Consultation of the Forest Stewardship Council U.S.
National Forest Stewardship Standard (NFSS)*

October 5, 2020

Introduction

The Forest Stewardship Council U.S. (FSC US) developed this issue overview to support stakeholders who are interested in participating in the public consultation on Draft 1 of the revised FSC National Forest Stewardship Standard for the conterminous United States.

As the world's most trusted forest certification system, the existing FSC US Forest Management Standard offers a solid foundation for the current revision process. The issue overview is intended to facilitate actionable, informed input as FSC works to further refine Draft 2 of the revised Standard.

Ultimately the revision process is about identifying the appropriate balance between an existing "best-in-class" standard that is practical and achievable, with targeted refinements to streamline the Standard where possible, and incorporate changes that bring it into alignment with FSC Principles and Criteria Version 5, as approved by FSC's membership.

Summary

In FSC Principles and Criteria Version 5, the concept of Free, Prior and Informed Consent (FPIC) is now a core component of Principle 3 (Indigenous Peoples' Rights; Criterion 3.2) and Principle 4 (Community Relations; Criterion 4.2).

FPIC provides a process for Certificate Holders to engage with Native American groups and local communities to protect their rights in a way that is fair, clear, and inclusive of their right to withhold approval for management activities to proceed.

FPIC is required when the Certificate Holder's forest management activities may affect a Native American group's legal or customary rights, including rights of tenure and rights of access to resources and ecosystem services, both within and external to traditional tribal territories. While believed to be very uncommon in the US, FPIC would also be required if certain local communities (e.g., traditional peoples or forest-dependent local communities) hold legal rights.

The dependency of a 'forest-dependent' community would need to be assessed at the scale of the community, not individuals within it, but it is possible that these occur in the US. Engagement with the community would be necessary for this determination. Traditional peoples are social groups who do not self-identify as indigenous and who affirm rights to their lands, forests and other resources based on long-established custom or traditional occupation and use. A US example of traditional people could be the Gullah Geechee people in southeast US, but this would need to be confirmed through engagement with these communities.

FPIC is reserved for addressing communal rights held by Native American groups and eligible local communities; it is not required when ensuring that rights held by an individual or another legal entity are not violated.

While reaching an agreement with a rights holder regarding proposed management activities is a key desired outcome for an FPIC process, it is just as important to view FPIC as a process that results in a sustained relationship with the rights holder; one that does not end at the point when a decision regarding the management activities is made.

For example, if a management unit includes a site with rights of access for a Native American group, such as an important cultural or burial site, FPIC would be required prior to implementation of any management activities that might affect those rights of access.

Find it in the Standard

FPIC is required for engagement with Native Americans groups and certain other communities to protect rights that may be affected by management activities (Criterion 3.2, and Criterion 3.3, and Criterion 4.2), and for use of traditional knowledge and intellectual property (Criterion 3.6).

FPIC is not required for all engagement with Native American groups. Proactive engagement in management planning (Criterion 3.2) and identification of protections for Native American sites of special significance (Criterion 3.5), do not require FPIC when these activities occur before specific management activities are proposed that might affect any applicable rights.

Annex F provides US-oriented guidance for assessment and confirmation of rights, culturally appropriate outreach, and agreements intended to circumvent implementation of management activities that will have negative impacts on rights.

Rationale

The 2007 United Nations Declaration on the Rights of Indigenous People (UNDRIP) and the International Labor Organization (ILO) Convention 169 sets out minimum standards for the survival, dignity and well-being of Indigenous Peoples globally. FPIC is included as a collective right of Indigenous Peoples to self-determination.

FSC holds as a core tenet that certified forests are social beneficial, especially for communities that depend on the forest. FPIC helps to ensure these benefits are delivered.

The US federal government entered into more than 400 treaties with various Native American Nations from 1778 to 1871. Even though Congress ended treaty-making with tribes in 1871, the pre-existing treaties are still in effect and contain promises (i.e., rights) which are legally binding. In the US, FPIC will help to ensure self-determination of Native American groups by providing them with the right to participate in decision-making and to give, modify, withhold, or withdraw consent to an activity that affects their rights.

Impacts of the revision

FPIC is now a core component of engagement with Native Americans and certain local communities. This will help to ensure that the rights held by these communities are not violated during implementation of management activities.

While consultation with tribes during management planning and avoidance of harm to rights and resources have both been required of certificate holders, the more active engagement

requirements and documentation of the granting of consent in writing represent an increase in expectations of certificate holders. Additionally, a formal assessment of rights communally held by local communities and the possibility of an FPIC process were not previously required of certificate holders, although the Standard recognizes that these situations are expected to be rare.

The new guidance in Annex F indicates that an FPIC process is essential when rights may be affected. It focuses on building relationships with rights holders but doesn't require 'binding written agreements' – instead the revised standard requires that when FPIC (consent) is granted, it is documented in writing.

Key question for public consultation

- Have Free, Prior and Informed Consent, and the rights of Native American Groups and Local Communities been appropriately addressed in the Draft 1 revised standard?
- Will the changes result in indicators that are feasible for certified organizations?
- Is the guidance in Annex F sufficient for understanding and conforming with the associated requirements?

How to provide input

Individuals who are interested in participating in first phase of the public consultation on Draft 1 of the revised FSC US National Forest Stewardship Standard are encouraged to [visit the web pages dedicated to the consultation](#). Within these web pages, participants will find the draft revised standard, plus additional resource materials, learn about opportunities to participate in webinars, and how to submit comments on the draft.

Any comments that a participant wishes to be formally recognized must be submitted via the FSC Consultations Platform by Friday, December 18, 2020.

Addressing Social Values that May be Affected by Management Activities

