



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



JUL 30 2015

In Reply Refer To:  
FWS/D/060406

Dear Tribal Leader:

The U.S. Fish and Wildlife Service (Service) will publish a final draft Native American Policy (Policy) in the Federal Register (FR) on August 3, 2015, for a 30-day public comment period. To view a copy of the FR notice, please visit the following link the day of publication:

[http://www.gpo.gov/fdsys/html/FR/todays\\_toc.html](http://www.gpo.gov/fdsys/html/FR/todays_toc.html). Together with a team of Tribal representatives from around the country, the Service has been working over the last two years to update its Policy originally issued in 1994. In November of 2014, the Service initiated nationwide government-to-government consultation with all federally-recognized Tribes on an early working draft of the Policy. The final draft Policy to be published in the Federal Register includes Tribal input from this consultation period combined with internal Service review comments.

To view a copy of the published draft Policy, please visit the following link:

<http://www.fws.gov/policy/draft510fw1.pdf>

The Service invites continued Tribal consultation and will accept written Tribal comments on the final draft Policy through September 2, 2015. Please send or email your written comments on the final draft Native American Policy to:

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National Native American Programs Coordinator  
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Further updates and refinements to the Policy will be informed by input provided during the public review process and continued Tribal consultation. If you have questions or would like additional information, please contact the Service's National Native American Programs Coordinator, Mr. Scott Aikin, (360) 604-2531, [scott\\_aikin@fws.gov](mailto:scott_aikin@fws.gov), or Native American Policy Team Leader/Native American Policy Analyst, M.s Marlene Zichlinsky, (202) 257-9156, [marlene\\_zichlinsky@fws.gov](mailto:marlene_zichlinsky@fws.gov).

Sincerely,

**Deputy** DIRECTOR

**Series:** Intergovernmental Activities  
**Part 510:** Working with Native American Tribes  
**Chapter 1:** The Service's Native American Policy  
Will supersede the policy dated 6/28/1994

## 1. INTRODUCTION AND PURPOSE

This updated Native American policy (policy) provides a framework for government-to-government relationships, which furthers the United States' trust responsibilities to federally recognized tribes. The U.S. Fish and Wildlife Service (Service) and representatives from tribes across the country worked together to update the policy. The policy articulates the principles for interactions between the Service and tribal governments as they relate to shared interest in the conservation of fish, wildlife, and their habitats, which includes Service lands and the protection of cultural resources that exist on Service lands. The Service and tribal governments recognize the need for strong, healthy communication and relationships so that we can work together to improve and enhance conservation of fish and wildlife resources and shared natural and cultural resource goals and objectives.

We recognize that Service-tribal relationships will evolve and adapt as needed and as is consistent with Federal policy supporting tribal self-determination.

We will work to enhance both our relationships with tribal governments and our value to them by improving communication and cooperation, providing technical expertise, and sharing training and assistance. We acknowledge and respect the diverse Native American religious, spiritual, and cultural identities, and their understanding of ecosystems and cultural resources. We will listen to and consider the traditional knowledge, experience, and perspectives of Native American people to manage fish, wildlife, and cultural resources.

The Service's engagement with and responsibilities to tribes is guided primarily by doctrines of reserved rights, statutes, treaties, judicial mandates, Executive Orders and Secretarial Orders. The policy provides clarification of the application of those legal authorities to guide the Service's efforts.

The policy establishes a consistent framework nationwide, yet remains flexible to reflect regional and local variations in history, knowledge systems, applicable laws, treaties, and Service-tribal relationships. The policy applies to all Service employees who have official duties that may affect tribal interests.

## 2. DEFINITIONS

The following definitions help to clarify the policy:

**Agreement** – a document approved by two or more parties that identifies their roles and responsibilities in achieving mutual objectives (e.g., Memoranda of Agreement, Memoranda of Understanding, Cooperative Agreements, Statements of Relationship, Grants, and Contracts).

**Alaska Native Organizations (ANO)** – for purposes of the Marine Mammal Protection Act, a group designated by law or formally chartered that represents or consists of Indians, Aleuts, or Eskimos residing in Alaska (see 16 U.S.C.1362(23)).

**Collaborate** – the Service and tribal governments working together.

Co-management – two or more governmental entities, each exercising their respective sovereign authorities, working collaboratively to achieve mutually agreed upon or compatible objectives to protect, conserve, enhance, or restore natural and cultural resources.

Consult – to conduct mutual, open, and direct two-way communication in good faith to secure meaningful participation in the decisionmaking process, as allowed by law.

Director – the Director of the U.S. Fish and Wildlife Service.

Fish and wildlife resources – fish and wildlife (including invertebrates), plants, and their habitats that the Service is responsible for managing and conserving, including migratory birds, marine mammals, inter-jurisdictional fish, refuges (including fish, wildlife, and plants found on refuges), and federally listed threatened and endangered species.

Fish and wildlife and cultural resource management – all activities that are intended to contribute directly or indirectly to the preservation, protection, use, maintenance, mitigation, or enhancement of fish, wildlife, and cultural resources.

Indian lands – any lands where title is either held in trust by the United States for the benefit of an Indian tribe or individual Indian, or held by an Indian tribe or individual Indian subject to restrictions by the United States against alienation (i.e., sale or transfer).

Lands – includes uplands, wetlands, and open waters such as streams, lakes, estuaries, and bays.

Native American – refers to American Indians in the conterminous United States and Alaska Natives (including Aleut, Eskimo, and Indian) who are members of federally recognized tribes.

Sacred site – any specific, discrete, narrowly delineated location on Federal land that is identified by (1) a tribal government, or (2) an Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion, provided that the tribal government has informed the agency of the existence of such a site.

Traditional knowledge – includes Tribal Ecological Knowledge (TEK) and is used to describe the knowledge held by indigenous cultures about their immediate environment and the cultural practices that build on that knowledge. TEK includes an intimate and detailed knowledge of plants, animals, and natural phenomena; the development and use of appropriate technologies for hunting, fishing, trapping, agriculture, and forestry; and a holistic knowledge, or “world view” that parallels the scientific discipline of ecology. See the Service’s [Native American Program Web page](#) for more information.

Tribal governments *or* federally recognized tribes – all Indian tribes (including Alaska Native entities) identified in the most recent list of “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs” published in accordance with section 104 of Public Law 103-454 (108 Stat. 4792; 25 U.S.C. 479a-1) and any other Indian tribes acknowledged by the Bureau of Indian Affairs and identified for inclusion on such a list.

Tribal trust resources – pertains only to Indian trust assets (i.e., lands, natural resources, money, or other assets) that the Federal Government holds in trust or that are restricted against alienation for the benefit of Indian tribes and individual Indians.

### 3. AUTHORITIES

#### *Statutes:*

Alaska National Interest Land Conservation Act of 1980, as amended (16 U.S.C. 3101-3233.) (ANILCA).  
Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601-1629h) (ANCSA).  
American Indian Religious Freedom Act, as amended (42 U.S.C. 1996-1996a) (AIRFA).  
Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa-470mm) (ARPA).  
Bald and Golden Eagle Protection Act, as amended (16 U.S.C. 668-668d) (BGEPA).  
Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544) (ESA).  
Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a-742d and 742e-742j-2).  
Freedom of Information Act (5 U.S.C. 552) (FOIA).  
Indian Reorganization Act (Wheeler-Howard Act) (25 U.S.C. 461, *et seq.*) (IRA).  
Indian Self-Determination and Education Assistance Act of 1975, as amended (Public Law 93-638) (ISDEAA).  
Marine Mammal Protection Act (16 U.S.C. 1361, *et seq.*) (MMPA); for ANO cooperative agreements, *see* 16 U.S.C. 1388.  
Migratory Bird Treaty Act (16 U.S.C. 703-712) (MBTA).  
National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) (NEPA).  
National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101, *et seq.*) (NHPA).  
National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee).  
Native American Graves Protection and Repatriation Act (25 U.S.C. 3001-3013) (NAGPRA).  
Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-2000bb-4) (RFRA).

#### *Executive Orders (E.O.):*

E.O. 13007; Indian Sacred Sites; May 24, 1996.  
E.O. 13175; Consultation and Coordination with Indian Tribal Governments; November 6, 2000.

#### *Presidential Memoranda:*

Government-to-Government Relations with Native American Tribal Governments; April 29, 1994.  
Government-to-Government Relationship with Tribal Governments; September 23, 2004.  
Tribal Consultation; November 5, 2009.

#### *Secretarial Orders (S.O.):*

S.O. 3206; American Indian Tribal Rights, Federal Trust Responsibilities, and the Endangered Species Act; June 5, 1997.  
S.O. 3225; Endangered Species Act and Subsistence Uses in Alaska; January 19, 2001.  
S.O. 3335; Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries; August 20, 2014.

#### *Department of the Interior Policy:*

Department of the Interior Policy on Consultation with Indian Tribes (512 DM 4).  
Departmental Responsibilities for Protecting/Accommodating Access to Indian Sacred Sites (512 DM 3).  
Rogers C. B. Morton, Secretary of the Interior, Policy Statement on Indian Use of Bird Feathers; February 5, 1975.

*Department of Justice Policy:*

*Attorney General Memorandum: Possession or Use of Feathers or Other Parts of Federally Protected Birds for Tribal Cultural and Religious Purposes; October 12, 2012.*

4. OVERALL RESPONSIBILITIES

Table 1-1 below describes the responsibilities of Service officials for implementing this policy. Sections 5.0 to 12.0 provide details about how we achieve these responsibilities.

<b>Table 1-1: Responsibilities for the Service’s Native American Policy</b>	
<b>These officials...</b>	<b>When working with federally recognized tribal governments, are responsible for...</b>
<b>A. The Director</b>	<ul style="list-style-type: none"> <li>(1) Serving as the final authority for those Servicewide decisions that may affect tribal interests;</li> <li>(2) Overseeing the management of all Service programs, including our work with tribal governments;</li> <li>(3) Ensuring Servicewide policies and programs are consistent with our tribal trust responsibilities;</li> <li>(4) Working to resolve issues with tribal governments when elevated by Regional Directors; and</li> <li>(5) Delegating authority to consult with tribal officials.</li> </ul>
<b>B. National Native American Programs Coordinator</b>	<ul style="list-style-type: none"> <li>(1) Coordinating with Headquarters and Regional Directorate members on national and cross-Regional programs and issues;</li> <li>(2) Maintaining and continuing to build and promote positive working relationships with federally recognized Indian tribes by listening to tribes and gaining insight to further conservation goals and cultural protection at the national level;</li> <li>(3) Developing and providing national-level training opportunities for Service employees, tribal staff, and tribal members;</li> <li>(4) Developing and administering a national implementation plan to incorporate this policy into Service operations;</li> <li>(5) Reviewing this policy frequently with assistance from Directorate members and tribes (<a href="#">see section 11</a>) to strengthen its implementation and identify recommended revisions and updates;</li> <li>(6) Developing programs with tribes under ISDEAA as we discuss in <a href="#">section 10</a>;</li> <li>(7) Promoting tribal cultural competency awareness within the Service and improving tribes’ understanding regarding our Federal mandates and mission at the national level;</li> <li>(8) Promoting partnership opportunities between the Service and tribes at national and Regional levels; and</li> <li>(9) Leading and facilitating the resolution of conflicts between tribes and the Service that are multi-Regional or national in scope.</li> </ul>
<b>C. Directorate members at Headquarters</b>	<ul style="list-style-type: none"> <li>(1) Serving as the delegated agency officials in government-to-government consultation or other coordination on issues relevant to tribes; and</li> <li>(2) Ensuring the goals and intent of this policy are implemented as their staff develop:</li> </ul>

**Table 1-1: Responsibilities for the Service’s Native American Policy**

These officials...	When working with federally recognized tribal governments, are responsible for...
	<ul style="list-style-type: none"> <li>(a) Program policies,</li> <li>(b) Regulations,</li> <li>(c) Strategic plans (national and Regional), and</li> <li>(d) Other planning documents.</li> </ul>
<p><b>D. Chief – Office of Law Enforcement (OLE), through Special Agents-in-Charge</b></p>	<ul style="list-style-type: none"> <li>(1) Ensuring that all OLE employees implement this policy;</li> <li>(2) Serving as or designating an OLE agency official in government-to-government consultation or other coordination on law enforcement issues relevant to tribes; and</li> <li>(3) Ensuring the goals and intent of this policy are implemented as OLE staff develop:               <ul style="list-style-type: none"> <li>(a) Program policies,</li> <li>(b) Regulations,</li> <li>(c) Training for Service officers and tribal conservation officers,</li> <li>(d) Strategic plans, and</li> <li>(e) Other planning documents</li> </ul> </li> </ul>
<p><b>E. Regional Directors</b></p>	<ul style="list-style-type: none"> <li>(1) Serving as the delegated agency officials in government-to-government consultation or other coordination on issues relevant to tribes;</li> <li>(2) Fulfilling the Service’s Federal Indian trust responsibilities to tribes;</li> <li>(3) Ensuring the Service operates on a government-to-government basis with tribes;</li> <li>(4) Coordinating with tribes on a regular basis to address important issues;</li> <li>(5) Promoting partnership opportunities between the Service and tribes at the Regional level;</li> <li>(6) Resolving issues that may arise within the Region when implementing this policy;</li> <li>(7) Assigning a Regional Native American Liaison or point of contact;</li> <li>(8) Developing and providing Regional training opportunities for Service employees, tribal staff, and tribal members; and</li> <li>(9) Developing programs with tribes under ISDEAA as we discuss in <a href="#">section 10</a>.</li> </ul>
<p><b>F. Regional Native American Liaisons or Point(s) of Contact</b></p>	<ul style="list-style-type: none"> <li>(1) Serving as the point of contact or intermediary between the Service and tribes,</li> <li>(2) Assisting Service employees in implementing this policy,</li> <li>(3) Maintaining and continuing to build and promote positive working relationships with tribes at the Regional level,</li> <li>(4) Promoting tribal cultural competency awareness within the Service and improving tribes’ understanding regarding the Service's Federal mandates and mission at the Regional level,</li> <li>(5) Promoting partnership opportunities (e.g., co-management and training) between the Service and tribes at the Regional level,</li> <li>(6) Providing assistance and support to the Regional Director in resolving conflicts between tribes and the Service, and</li> <li>(7) Developing step-down policies (e.g., in Region 7 for Alaska National Claims Settlement Act (ANCSA) corporations and Marine Mammal</li> </ul>

<b>Table 1-1: Responsibilities for the Service’s Native American Policy</b>	
<b>These officials...</b>	<b>When working with federally recognized tribal governments, are responsible for...</b>
	Protection Act (MMPA) Alaska Native Organizations) and Regional implementation plans, where appropriate.
<b>G. Regional Directorate Team Members</b>	<ul style="list-style-type: none"> <li>(1) Serving as the delegated agency official in government-to-government consultation or other coordination on issues relevant to tribes,</li> <li>(2) Ensuring the goals and intent of this policy are implemented in their programs, and</li> <li>(3) Developing programs with tribes under ISDEAA as we discuss in <a href="#">section 10</a>.</li> </ul>
<b>H. Project Leaders, Managers, and Supervisors</b>	<ul style="list-style-type: none"> <li>(1) Serving as the agency official in government-to-government consultation or other coordination on issues relevant to tribes, when delegated;</li> <li>(2) Ensuring activities for which they are responsible are consistent with this policy;</li> <li>(3) Developing programs with tribes under ISDEAA as we discuss in <a href="#">section 10</a>;</li> <li>(4) Ensuring employees understand the relevance of this policy to their job duties;</li> <li>(5) Making relevant training opportunities related to implementing this policy available to employees whose duties may affect tribal interests;</li> <li>(6) Encouraging and supporting implementation of the goals and responsibilities described in this policy as they are applicable to the programs and projects for which they are responsible;</li> <li>(7) Providing assistance and support to the Regional Director in resolving conflicts between tribes and the Service; and</li> <li>(8) Assisting Service employees in implementing this policy.</li> </ul>
<b>I. Employees</b> whose duties may affect tribal interests	<ul style="list-style-type: none"> <li>(1) Understanding this policy and its importance in carrying out the agency mission, specifically by developing a working knowledge of any policy goals and responsibilities relevant to their job duties. This includes taking relevant training (see <a href="#">section 10</a>);</li> <li>(2) Implementing applicable sections of the policy for issues or projects that may affect tribal interests (e.g., through coordination with tribal biologists or other staff of federally recognized tribes, development of working relationships with tribal staff in the area, etc.), to fulfill the Service’s Federal Indian trust responsibilities; and</li> <li>(3) Communicating with managers and supervisors when professional activities include federally recognized tribes.</li> </ul>

## 5. SOVEREIGNTY AND GOVERNMENT-TO-GOVERNMENT RELATIONS

The U.S. Government’s legal and trust relationship with tribal governments as set forth in the Constitution, treaties, statutes, Executive Orders, and court decisions, serves as the foundation for our

interactions with tribes. For the Service's purposes, the special Federal Indian trust responsibility involves our obligation to exercise due care where our actions affect the exercise of tribal rights. The United States recognizes the right of tribal governments to self-govern and supports tribal sovereignty and self-determination in accordance with E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*. Tribal governments exercise sovereign powers over their members and territory. The United States works on a government-to-government basis with tribes to address issues concerning self-governance, tribal trust resources, and Indian tribal treaty and other rights.

This policy is consistent with the *Department of the Interior's Policy on Consultation with Indian Tribes*, and is adopted in the spirit of the United Nations Declaration on the Rights of Indigenous Peoples with respect to federally recognized tribes. We maintain government-to-government relationships with tribal governments by working directly with those governments, observing legislative mandates and trust responsibilities, and considering Native American cultural values whenever we develop policies, plan projects, and implement programs that affect tribal interests. We will designate formal points of contact and rely on tribal governments to identify formal contacts to represent them in government-to-government interactions. We will consult with inter-tribal organizations to the degree that tribes have authorized such an organization to consult on the tribe's behalf.

## 6. COMMUNICATIONS AND RELATIONSHIPS

Effective communication with tribal governments includes acknowledgment, open and transparent dialogue, and interpersonal interactions that depend on mutual respect and understanding. Communications with tribal governments will be proactive and will occur throughout various levels of our organization.

While we use formal government-to-government communications, we also encourage day-to-day staff-level discourse. In many situations, Service and tribal fish and wildlife and cultural departments will work together. For joint initiatives or frequent interactions, we may enter into agreements with tribal governments that are mutually agreed upon, developed by both parties, and that clearly identify the roles, responsibilities, and obligations of the Service and tribal government(s). Both our employees and those of tribal governments will continue to follow protocols in existing agreements.

We will communicate on matters affecting the rights and interests of tribal governments in accordance with the Department's Policy on Consultation with Indian Tribes, 512 DM 4. We will work with affected tribe(s) when we are revising or developing policies, programs, or actions that may affect a tribe or its legally recognized rights or resources. For details on tribal consultation procedures, see the *U.S. Fish and Wildlife Service Tribal Consultation Handbook*.

### Information Sharing – Tribal Knowledge

We will use the best available scientific and commercial data and solicit and consider information, traditional knowledge, and expertise of affected tribal governments in policies, agency actions, and determinations that have tribal implications.

The Service will give tribal government representatives access to technical information when it is final and releasable. The Service may identify other agencies that could provide technical information.

We will not share or release information we obtain from tribes without the explicit consent of the tribe(s) except as required by law. Because we have a limited ability to protect sensitive tribal knowledge (e.g., in response to FOIA requests), we will work collaboratively with tribal governments to protect and prevent

disclosure of confidential or sensitive information to the extent allowable by law.

## 7. RESOURCE MANAGEMENT

There is a broad range of collaborative management opportunities available to the Service and tribes. These opportunities include holding informative discussions to seek tribal input, entering into formal agreements with tribes, cooperatively setting harvest quantities, and equally sharing conservation management of resources.

The Service, as an agency of the United States, and tribal governments, as independent sovereigns, should meaningfully participate in managing resources where the Service and tribes have legally established management responsibilities to actively protect, conserve, enhance, or restore fish, wildlife, and cultural resources, to the maximum extent allowed by law. Resource management agreements should be tailored to specific circumstances based on such factors as history, knowledge systems, applicable laws, and affected communities. We encourage the development of agreements to partner with tribes to manage and conserve fish and wildlife and cultural resources.

### Co-Management

Co-management refers to two or more governmental entities, working collaboratively to achieve mutually agreed upon or compatible objectives to protect, conserve, enhance, or restore natural and cultural resources.

We support the rights of tribal governments, as they exercise their sovereign authorities, to manage or co-manage, fish and wildlife resources where there is a legal basis for such. Examples of legally established resource co-management include, salmon harvest in the Pacific Northwest, Alaska Migratory Bird Co-management Council cooperatively setting subsistence harvest regulations, and lake trout fisheries in the Great Lakes area. In Alaska, this includes cooperative agreements we enter into with ANOs to conserve marine mammals and to provide co-management of subsistence use by Alaska Natives.

We also may collaborate with tribal governments to monitor fish and wildlife resources, particularly when it involves evaluating trends in species and environmental conditions.

### Indian Lands

The Service recognizes that Indian lands are not Federal public lands and that, in general, tribal governments have authority to manage fish and wildlife resources on Indian lands. In some situations, a tribal government may have fish and wildlife authority affecting lands within reservation boundaries not owned by the tribe or its members. In such cases, we will properly recognize the rights of both the tribal government and the affected State(s), according to the specific nature of the case. In addition, we will work with tribal governments when managing eagles and other migratory birds, fish, endangered and threatened species, and other public resources where Federal laws apply.

When managing ESA-listed species and their habitats, including designated critical habitat, on Indian lands, the Service will consult and collaborate with tribal governments when developing plans and regulations, in accordance with S.O. 3206.

### Non-Indian Lands

The Service recognizes and supports the rights of tribal members to use fish and wildlife resources on non-Indian lands where there is a legal basis for such use. As a result of treaties, statutes, Executive Orders, and judicial decrees, certain tribal governments and State governments may have shared responsibilities to co-manage fish and wildlife resources. In such cases, we will consult and collaborate with tribal governments and affected State or local resource management agencies to help meet the objectives of all parties while honoring the Federal trust responsibility. In addition, we will work with tribal governments when managing ESA-listed species in accordance with S.O.'s 3206 and 3225. When managing Service lands, we will consult and collaborate with affected tribal governments to solicit meaningful tribal input on resource use and management for those lands.

## 8. CULTURE/RELIGION

The Service will meaningfully involve tribal governments in our actions when we or the tribal government(s) determine the actions may affect their cultural or religious interests, including archaeological resources, cultural resources, and sacred sites, consistent with Federal law. We will work collaboratively with tribal governments to protect confidential or sensitive information, including location, ownership, character, and use of cultural resources and sacred sites where disclosure may cause a significant invasion of privacy; risk harm to the historic resource; or impede the use of a traditional religious site by practitioners, to the extent allowed by law.

### Access for Cultural, Archaeological, and Historic Resources, and Indian Sacred Sites

The Service should provide Native Americans access to Service-managed lands and waters for exercising cultural, ceremonial, medicinal, and traditional activities recognized by tribal governments to the extent practicable, permitted by law, and not inconsistent with essential Service functions. In doing so, we should, in accordance with applicable Federal law,:

- 1) avoid adversely affecting the physical integrity of sacred sites while managing our lands;
- 2) accommodate and, as needed, collaborate with tribal governments for access to and maintenance of appropriate settings for ceremonial use of Indian sacred sites; and
- 3) consider tribal government protocols and procedures to give their members access to and use of cultural resources.

For easements across private property, the Service will abide by easement restrictions.

Where tribal members access Service-managed lands for cultural purposes on a recurring basis, the Service and tribal governments may enter into written agreements to facilitate such access.

When considering non-member requests for access to areas that have cultural resources, we will notify and, where appropriate, consult with tribal governments in the geographic vicinity or other tribes known to have physical historical connections to those areas.

### Tribal Cultural Uses of Plants and Animals

The Service recognizes that many Indians use federally protected birds, bird feathers and parts, and other animal and plant material for their tribal cultural and religious expression. We will work in collaboration with tribal governments to protect traditional, customary, ceremonial, medicinal, spiritual, and religious uses of plants and animals where it is not contrary to our legal mandates and conservation goals. We are committed to balancing enforcement of wildlife laws with acknowledgement of tribal cultural and religious needs.

Through the National Eagle Repository, we will collect, process, and distribute, as expeditiously as possible, eagle feathers and parts for recognized religious, ceremonial, and cultural purposes in

accordance with Federal law. Timeliness of processing and distributing eagle feathers and parts depends on availability and on our need to conduct scientific and law enforcement investigations. We process such items with dignity in recognition of the sacred nature of their use.

If a tribe wants to regulate their members' collection and use of resources from Service lands, the Service may enter into an agreement with the tribe to do so to the extent allowed by law.

## 9. LAW ENFORCEMENT

The Service recognizes that tribal governments have responsibilities for managing Indian lands and tribal resources. We encourage cooperative law enforcement as an integral component of tribal, Federal, and State activities to enforce fish and wildlife resource laws. Where appropriate, Service law enforcement officers should cooperate with tribal governments, including tribal law enforcement, to enforce Federal or tribal laws and regulations pertaining to fish, wildlife, or cultural resources by: (1) identifying opportunities for joint enforcement operations or investigations, (2) collaboratively developing techniques and methods for detecting and apprehending violators, and (3) exchanging law enforcement information.

We will coordinate with tribal law enforcement officers about our law enforcement operations on or adjacent to Indian lands when it is feasible and appropriate. We should also help tribal governments when it is feasible and appropriate to coordinate fish and wildlife law enforcement investigations that require the use of the Federal court system.

Some tribal governments have their own authority and jurisdiction to process violations under tribal natural resource laws. When a tribe requests assistance with criminal prosecution of a wildlife law violator, whether or not the violator is a tribal member, we should work with the tribe to prepare Lacey Act violations for referral to the Department of Justice.

## 10. TRIBAL CAPACITY BUILDING, ASSISTANCE, AND FUNDING

### Technical Expertise and Assistance

When a tribal government requests it, and as resources and priorities allow, the Service will make our technical experts available to help the tribal government develop their own technical expertise in fish and wildlife conservation and management. The Service and tribal governments will collaborate on the kinds of technical assistance that each can provide and will work together to prioritize technical assistance needs at the local and Regional levels.

When a tribal government requests it, we will review their law enforcement capabilities and, if warranted, recommend ways to improve their capabilities.

### Service Assistance for Tribal Development of Fish and Wildlife Plans and Codes

When a tribal government requests it, and as resources and priorities allow, the Service will cooperatively review and assess tribal conservation measures for species that may be included in tribal resource management goals and objectives.

### Agreements

When a tribal government requests it, we may develop agreements with them to work together and to exchange personnel, expertise, and information.

Indian Self-Determination and Education Assistance Act (ISDEAA) *Public Law 93-638, as amended*

The Service is committed to negotiating contracts, cooperative agreements, annual/multi-year funding agreements (e.g., 638 contracts and self-governance funding agreements), or grants with tribal governments for the administration of fish and wildlife conservation programs consistent with the availability of funding and provisions of applicable law including the ISDEAA. The Service supports tribal governments and their missions and objectives to assume program management roles and responsibilities through applicable ISDEAA agreements and other available mechanisms. We should work together to develop implementation and other plans, pilot projects, policies, and standard operating protocols that are consistent with the Service's obligations under the Department's rules and regulations implementing the ISDEAA.

The Service may assist tribal governments to identify Federal and non-Federal funding sources that may be available for tribal fish and wildlife resource management activities including, but not limited to, annual and multi-year agreements.

#### Law Enforcement Training

When a tribal government requests it and as resources and priorities allow, we will provide expertise, guidance, and assistance in developing, maintaining, or improving tribal fish and wildlife law enforcement programs. The basic and refresher fish and wildlife law enforcement training courses we provide to other governmental agencies are available to tribal law enforcement officers.

#### Training and Professional Development

As resources and priorities allow, we will facilitate and assist in the education and development of Native Americans by providing educational programs and on-the-job training opportunities. We may establish partnerships and cooperative relationships with Native American educational institutions to assist in such areas as developing natural resources curricula or implementing cooperative education programs, and providing opportunities for tribal youth to participate in environmental education and outreach activities. We may also include opportunities for career pathways programs, such as tribal Youth Conservation Corps projects

The Service will provide tribal governments and their staff access to our fish and wildlife resource training programs in the same manner that we provide access to other government agencies. In addition, we plan to work with tribes to develop, conduct, and attend joint training programs to increase awareness and sensitivity and to cross-train our employees and tribal staff on each other's responsibilities for resource stewardship.

## 11. IMPLEMENTATION AND MONITORING

The Service is committed to implementing this policy in a way that ensures effective outcomes. The Service will continually monitor its programs and projects that affect tribal interests to determine if they are in compliance with this policy. We will collaboratively devise methods for applying and assessing this policy in the field to ensure it is adaptable to changing Service and tribal priorities, resource requirements, and laws. For example, the Service and tribes may develop a national implementation plan and Regional step-down plans as necessary or appropriate.

Every 3 to 5 years the Service, with assistance from tribal governments, will evaluate the implementation

and effectiveness of the policy across our Regions and programs. This review should include an analysis of disagreements and resolutions as they pertain to this policy and a report with recommendations to the Director.

If there are disagreements regarding implementation of this policy, the Service and tribal government(s) will work together to resolve them on a government-to-government basis at the appropriate level. A disagreement between the Service and tribal government(s) will be handled at the appropriate local or Regional level using the specific mechanisms established in any existing agreements. Regional Directors or Regional Native American Liaisons or points of contact will bring cross-Regional disagreements concerning this policy to the attention of the National Native American Programs Coordinator and appropriate Directorate member at Headquarters. The Service and tribal government(s) may agree to employ a mutually acceptable neutral facilitator within statutory timeframes, as long as both governments realize the results are not intended to apply in the context of investigative or prosecutorial law enforcement activities.

#### Employee Training and Education

The Service invites tribal governments to work with us to develop cultural awareness training for employees whose duties may affect tribal interests. This training will improve understanding of regionally-specific Native American traditional, cultural, and religious values and practices; natural resource values; treaty and other federally reserved rights; and appropriate law enforcement policy issues.

We encourage our employees to attend training that tribes offer.

#### Workforce Diversification

The Service has active recruitment programs to attract qualified personnel so that its workforce is representative of the cultural diversity of the nation. We encourage qualified Native Americans to apply for jobs with the Service. We will collaborate with tribal governments to recruit Native Americans for Service law enforcement officer positions, especially where Service-managed public lands are within traditional tribal territories.

## 12. SCOPE AND LIMITATIONS

We have adopted this policy for guidance purposes only, consistent with all applicable laws and regulations. It does not preempt or modify the Service's statutory mission and authorities, position in litigation, applicable privilege, or any professional responsibilities of Service employees. Implementation of this policy is subject to the availability of resources and the requirements of the Anti-Deficiency Act. This policy must not be used to arbitrate differences in opinion between government agencies or to interpret any authorities, laws, or judicial findings. This policy does not negate or supersede the diverse mandates and priorities of the Service.

This policy is intended only to improve the internal management of the Service. It is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

This policy does not supersede, amend, or otherwise modify or affect the implementation of existing agreements or understandings between the Service and individual tribal governments except through mutual agreement.

**Billing Code 4310–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–HQ–NAL–2015–N111]**

**[FXGO1660091NALO156FF09D02000]**

**Native American Policy for the U.S. Fish and Wildlife Service**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of a draft policy for public notice and comment.

**SUMMARY:** The Fish and Wildlife Service (Service) issues this draft Native American policy for public comment. The purpose of this policy is to further the United States’ trust responsibility to Indian tribes by establishing a framework on which to base our continued interactions with federally recognized tribes as well as interactions with Alaska Native Corporations. The policy recognizes the sovereignty of federally recognized tribes; states that the Service will work on a government-to-government basis with tribal

governments; and includes guidance on co-management, access to and use of cultural resources, capacity development, law enforcement, and education.

**DATES:** The Service will accept public comment through [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

**ADDRESSES:** The draft Native American policy is available at <http://www.fws.gov/policy/draft510fw1.pdf>. The existing policy is available in the Fish and Wildlife Service Manual at <http://www.fws.gov/policy/native-american-policy.pdf>. To submit comments, please mail or email them to Scott Aikin (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Scott Aikin, Native American Programs Coordinator, by mail at U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR, 97232; or via email at [scott\\_aikin@fws.gov](mailto:scott_aikin@fws.gov).

**SUPPLEMENTARY INFORMATION:**

**Introduction**

We are publishing this draft Native American policy, which is available at <http://www.fws.gov/policy/draft510fw1.pdf>.

When it becomes final, we will incorporate the policy in Part 510 of the Fish and Wildlife Service Manual. The purpose of the policy is to articulate principles and serve as a framework for government-to-government relationships and interactions between the

Service and federally recognized tribes to conserve fish and wildlife and protect cultural resources. The policy includes guidance on:

- The relationship between the Service and federally recognized tribes, inter-tribal organizations, including Alaska Native Organizations (ANO), and Alaska Native Claims Settlement Act (ANCSA) corporations,
- Service employee responsibilities,
- Government-to-government consultation and relations,
- Communication,
- Co-management,
- Tribal access to Service lands and Service-managed resources for cultural and religious practices,
- Tribal cultural use of plants and animals,
- Law enforcement,
- Training and education,
- Capacity building and funding, and
- Guidance for implementing and monitoring the policy.

This policy is not meant to stand on its own. To implement this policy, the Service will update its *U.S. Fish and Wildlife Service Tribal Consultation Handbook* and develop training so that Service employees will be able to better perform duties related to this policy.

### **Draft Policy**

We recognize that when the Service and tribes work together on resource matters, our longstanding relationship is strengthened and resources are better served. This policy

provides guidance on recognition of tribal sovereign status, Service responsibilities, and opportunities for the Service and tribes to work together toward natural and cultural resource conservation and access. The purpose of this policy is to provide Service employees with guidance when working with recognized tribes and other entities such as Alaska Native Organizations and Corporations.

*Section 1* of this policy recognizes the unique relationship that Federal governmental agencies have with federally recognized tribes. It explains that while this is a nationwide policy, the Service maintains flexibility for Service Regions and programs to work more appropriately with the tribes and ANCSA corporations.

*Section 2* includes the definitions of terms used in the policy.

*Section 3* lists the authorities under which the Service is able to take the actions described in the policy.

*Section 4* describes the responsibilities of employees at all levels of the Service to carry out this policy.

*Section 5* recognizes the U.S. Government's trust responsibility toward federally recognized tribes, tribes' sovereign authority over their members and territory, the tribes' rights to self-govern, and that government-to-government communication may occur at various levels within the Service and the tribes.

*Section 6* describes communication, consultation, and information sharing between the Service and tribes.

*Section 7* sets out a range of collaborative management opportunities and establishes principles of co-management where tribes and the Service have shared responsibility.

*Section 8* recognizes that, for meaningful cultural and religious practices, tribal members may need to access Service lands and use plants and animals for which the Service has management responsibility.

*Section 9* recognizes tribal law enforcement responsibilities for managing Indian lands and tribal resources and encourages cooperative law enforcement between the Service and tribes.

*Section 10* invites tribal governments to work with the Service to develop and present training for Service employees. It also makes available Service technical experts to help tribes develop technical expertise, supports tribal self-determination, encourages cross-training of Service and tribal personnel, and supports Native American professional development.

*Section 11* establishes monitoring and implementation guidance for the policy.

*Section 12* describes the policy's scope and limitations.

### **Background and development of this draft policy**

On June 28, 1994, the U.S. Fish and Wildlife Service (Service) adopted its Native American Policy (available at <http://www.fws.gov/policy/native-american-policy.pdf>) to guide the Service's government-to-government relations with federally recognized tribal governments in conserving fish and wildlife resources and to "help accomplish its mission and concurrently to participate in fulfilling the Federal Government's and Department of the Interior's trust responsibilities to assist Native Americans in protecting, conserving, and utilizing their reserved, treaty guaranteed, or statutorily identified trust assets."

In July 2013, the Service convened a Native American Policy Team to review and update the policy. The Native American Policy Team is comprised of Service representatives from its Regions and programs. In addition, the Service invited all federally recognized tribal governments across the United States to nominate representatives to serve on the team. A total of 16 self-nominated tribal representatives from all of the major Regions across the country joined the team to provide input and tribal perspective.

Tribal representatives from the following tribal governments and organizations participated in a series of meetings with Service representatives to review and update the policy: Cherokee Nation, Chugach Regional Resources Commission, Confederated Tribes of Grand Ronde, Eastern Band Cherokee Indians, Fond du Lac Band of Lake Superior Chippewa, Gros Ventre and Assiniboine of Fort Belknap, Great Lakes Indian Fish and Wildlife Commission, Muckleshoot Indian Tribe, Native Village of Emmonak, Navajo Nation, Oglala Sioux Tribe, Penobscot Indian Nation, Quinault Indian Nation, San Manuel Band of Serrano Mission Indians, Central Council of Tlingit & Haida Indian Tribes of Alaska, and Yurok Tribe. Varying perspectives were shared on a wide range of issues including sovereignty, co-management, law enforcement, and trust responsibilities, among others. Substantial focus and attention was given to improving the implementation and accountability aspects of the policy.

Although Service and tribal team members took part in writing the draft, full agreement was not possible on every issue and some differences remain. In November 2014, the Yurok Tribe withdrew from the Service's Native American Policy Team. Other tribal

representatives have continued to participate in an effort to work out differences and make further improvements to the policy.

In November 2014, the Service invited federally recognized tribal governments in each of its Regions and Alaska Native Corporations to consult on a government-to-government basis. The Service provided an early working draft of the updated policy for their review and input. A total of 23 of the tribal representatives submitted written comments to further develop and refine the draft updated policy.

From December 2014 to April 2015, the Service also held 24 consultation meetings and webinars within the Regions and nationally. Representatives from approximately 100 tribes attended these meetings. In March 2015, the Service revised the working draft of the updated policy and distributed it for internal Service review throughout all levels, Regions, and programs within the agency. We incorporated feedback from the internal Service review and additional comments received from tribal governments into this draft updated Native American Policy.

### **Open Comment Period**

While this publication opens the 30-day public review period, we also invite and encourage tribes and Alaska Native Corporations (ANCs) to continue to review and submit comments. The Service's invitation to federally recognized tribal governments to consult on a government-to-government basis regarding development of this updated Native American Policy continues until 30 days after this Federal Register notification.

Comments from local, State, and Federal government agencies; federally recognized tribal governments; inter-tribal organizations, non-federally recognized tribal governments; ANCSA corporations; and the general public are welcome.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: 6-24-2015

James W. Kurth

James W. Kurth  
*Director*  
*U.S. Fish and Wildlife Service*

ACTING