U.S. Fish & Wildlife Service

Tribal Consultation Handbook

Updated October 2018

U.S. Fish & Wildlife Service
Tribal Consultation Handbook

December 6, 2011

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Updated October 2018

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Cover Photo: The Tlingit are Indigenous peoples of the Pacific Northwest Coast of North America. Their name means People of the Tides. (USFWS / Ryan Hagerty)

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Preface

This Tribal Consultation Guide has been prepared as a tool for U.S. Fish and Wildlife Service (Service) employees to effectively communicate on a government-to-government basis with federally recognized Native American and Alaska Native governments (herein referred to as tribal governments or Tribes). Portions of this guide include information about our responsibilities to Native Hawaiian Organizations.

USFWS/DJ MONETTE

The guide is intended to be flexible and dynamic to adapt to the changing partnerships between the Service and tribal governments. The working relationship between the Service and tribal governments is constantly evolving due to changes in Federal and tribal administrations, personnel and priorities. Thus, it is imperative that we develop the capacity to adapt to each situation according to the trust doctrine and the consultation requirements that result from this unique relationship with Tribes. The Service's relationship with tribal governments is guided primarily by reserved rights doctrines, Executive Orders, judicial mandates, and specific treaties between the Federal Government and tribal governments.

These guiding principles apply to all Service employees, who, as part of their official duties, participate in actions that may potentially impact tribal governments.

As reiterated in the Service's Native American Policy (see Appendix B.14), the Service has a long history of working with tribal governments in managing fish and wildlife resources on Tribal lands. As quoted in the Service's Deputy Director's September 2, 2008, memorandum to the Directorate regarding the Importance of Native American Tribes and Alaska Natives in Achieving our Conservation Mission…"The Service cannot fully succeed in its mission without the help and support of Native American Tribes and Alaska Natives. I ask each of you, as the leaders of this agency, to renew your commitment to work with tribal governments and Alaska Natives to help sustain our fish and wildlife resources and the conservation legacy we wish to leave to future generations." In addition, this Tribal Consultation Guide is one of the elements of the Service's plan in response to the November 5, 2009, Presidential "Memorandum for the Heads of Executive Departments and Agencies, Subject: Tribal Consultation," (see Appendix B.9) and the subsequent Department of the Interior Tribal Consultation Policy of 2011 (see Appendix B.16). Though many of the issues related to consultation and maintaining positive government-to-government relationships are, at times, both complex and subtle, they can be understood and met through an application of cultural awareness, sensitivity, and respect. Maintaining positive relations with tribal governments will afford the Service an opportunity to form new relationships and enter into productive partnerships with Tribes, while also assuring that Tribes have knowledge of and access to all Service programs.

This Tribal Consultation Guide was compiled utilizing Department of the Interior and Service policy directives, as well as other Federal agency consultation guidance and policy resource information.

Executive Order 13647 established the White House Council on Native American Affairs (WHCNAA). The WHCNAA represents a path to a more effective federal government for Indian Country, bringing together federal Departments and Agencies from across the Executive Branch to "break down siloes" and coordinate for more effective programs. Tribal leaders from each of the now 573 federally-recognized Indian Tribes across the country attend the annual White House Tribal Nations Conference. Each year the President and his Cabinet officials meet with Tribes to discuss Tribal priorities and to chart the next course of action to address the many needs across Indian Country (see https://www.doi.gov/sites/doi.gov/files/uploads/whcnaa_report_1.2.2017.pdf).

1. Introduction

It is the goal of the Service to include federally-recognized Tribes in its decision-making process, from initiation to completion, for actions that may affect those Tribes or their membership. Consultation, as outlined herein, leads to information exchange, mutual understanding, and informed decision-making. To achieve this goal, and to the extent practicable and permissible by law, it is essential that the Service and Tribes engage in open, continuous, and meaningful communication throughout the relationship.

1.1. Background

Tribes have a unique status that entitles them to a special government-to-government relationship with the United States based on their federally-recognized status as sovereign nations, as set forth in the Constitution of the United States, treaties, statutes, court decisions, Executive Orders, and memoranda.

This unique status is founded upon Article 1, Section 8 of the Constitution, commonly known as the Commerce Clause. The Commerce Clause authorizes the Federal government to regulate commerce with foreign governments, between the states and with Indian Tribes.

There is no legislation or constitutional provision that explicitly defines the general trust responsibility derived from the Commerce Clause. However, the federal trust responsibility has been interpreted and applied in Federal common law.

Cherokee Nation v. Georgia1 and Worcester v. Georgia, described the duty of the United States to maintain a government-to-government relationship with Tribes as "distinct political communities," and sovereign nations protected by the more powerful national government. In accordance with these cases, tribal autonomy has been interpreted as stemming not from Federal policy but from the Tribe's original, inherent sovereignty. This tribal autonomy is at the core of the federal trust responsibility.

Treaties between Tribes and the Federal government diminish this sovereignty only to the extent laid out in the treaty. Treaties represent an agreement on the part of a Tribe to cede aboriginal lands and make peace in exchange for a cessation of hostilities, the provision of some services, and most importantly the establishment and recognition of a reservation homeland free from incursion of both the State and non-Indian settlers. Tribes bargained for a piece of their homeland and the right to continue governing their own affairs.

Because of the status of Tribes, the Federal Government has enacted numerous statutes, regulations, and policies that establish and define a trust relationship with them.

Inherent in the government-to-government relationship are the presumptions of inclusiveness and of the meaningful exchange of ideas and information. The Executive Branch has set forth guidance to ensure that tribal governments are provided sufficient opportunity to express their perspectives, concerns, and alternatives to the policies and actions of Executive Branch agencies and that such information is thoughtfully weighed in the decision making.

On September 23, 2004, a Presidential Memorandum (Appendix B.7) was issued for the Heads of Executive Departments and Agencies regarding the government-to-government relationship with tribal governments. This Memorandum reaffirms the Federal Government's commitment to continuing to work with federally-recognized tribal governments on a government-to-government basis and strongly supports and respects tribal self-government and self-determination. It further states that it is critical that all departments and agencies adhere to these principles and work with tribal governments in a manner that cultivates mutual respect and fosters greater understanding.

Accordingly, the head of each executive department and agency is directed to continue to ensure, to the greatest extent practicable and as permitted by United States law, that the working relationship with federally-recognized Indian tribal governments fully respects the rights of self-government and self-determination due to tribal governments.

On November 6, 2000, the President issued Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," (Appendix B.9) which sets forth guidelines for all federal agencies to:

1 Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1931).

(1) establish regular and meaningful consultation and collaboration with Indian tribal officials in the development of Federal policies that have tribal implications; (2) strengthen the United States government-to-government relationships with Indian Tribes; and (3) reduce the imposition of unfunded mandates upon Indian Tribes.

1.2. Purpose

The exchange of information between Service and tribal government staff can serve many beneficial purposes. *However, not all such exchanges may be regarded as meeting the requirements of formal government-to-government consultation.*

This Tribal Consultation Guide explains the requisite conditions of government-to-government consultation and provides guidance to all Service personnel when government-to-government consultation is requested by a tribal government, or is necessary pursuant to an anticipated Service action.

This document does not set policy but is intended to be used as a reference tool that provides guidance to Service management and staff about conducting consultations, and developing and maintaining positive government-to-government relationships with Tribes. As such, in addition to guidance about consultation, the document presents information about tribal law, general cultural awareness, and conducting meetings with Tribes. Information about Service-related policy guidance also is included, and those materials have been incorporated by reference into this document.

Another purpose of this document is to underscore the special relationship that the U.S. government has with tribal governments throughout the United States. Each Tribe is a distinct legal political entity. Tribes are sovereign governments and more than just a member of the public. In addition, each Tribe has a unique set of needs, concerns, and cultural and religious interests.

This document will afford Service staff an understanding on how to effectively consult and maintain meaningful government-to-government relationships with Tribes. As with any partnership endeavor, cultivating and maintaining positive tribal relationships will require openness, understanding, patience, and flexibility

Most importantly, the purpose of this document is to encourage more direct communications and a greater frequency of interactions between Service management and staff and tribal governments and their members.

1.3. Objectives

Objective 1

Encourage situations where the Service and Tribes can enter into meaningful partnerships and collaborative efforts. Those interactions are intended to bring to Tribes the benefits of Service programs, including opportunities to conserve fish, wildlife and their habitats on tribal lands.

Objective 2

Encourage Service programs and staff to draw upon the guidance provided in this document as they engage in proactive, reactive, and responsive consultations with tribal governments.

Objective 3

Provide guidance on developing a protocol to guide further consultations. Protocols honor mutually agreed upon processes and procedures for maintaining a dynamic ongoing federal-tribal relationship on a tribe-by-tribe basis.

EPA

Cabinet members at the 2013 White House Tribal Nations Conference.

2. Tribes: Their Rights & Responsibilities

Federal tribal policy and federal-tribal relations are topics deeply rooted in the history of the political relationship between the United States and Tribes. As such, they touch upon and are influenced by the Constitution, treaties, statutes, executive orders, court decisions, and administrative actions. Against this backdrop, a few of the central tenets of federal Indian law and policy stand out. This section examines some of those core themes and concepts. The Service's Tribal Trust Training courses that are held at the national and regional level provide information and discussion on this topic as well. A selected reading list addressing the history of federal- tribal policy and federal-tribal relations is provided in Appendix C, Suggested Reading.

2.1. What is an "Indian Tribe?"

The term "Indian Tribe" has two commonly used meanings, based on social-cultural and legal-political concepts. From a sociological or anthropological perspective, an "Indian Tribe" is a group of related people who share a common social, political, economic, and religious way of life in a defined geographic space and speak a common language or dialect. A Tribe in this sense derives its origin from a shared social or cultural experience.

The legal-political entities recognized by the federal government are often a subset of the Tribes recognized by sociologists and anthropologists. Generally, the federal government has determined tribal status for legal and political purposes using the powers granted through the Indian Commerce and Treaty clauses of the Constitution.

Once recognized by the United States, a Tribe exists as a semi-sovereign, legal-political entity and is entitled to receive services from the federal government. Congress retains an authority to diminish a Tribe's legal-political status. In the event Congress exercises this power, a Tribe would still exist as a social and cultural entity.

BIA

Department of the Interior Secretary Zinke (middle) welcomed by the Bureau of Indian Affairs during his first day as Secretary.

Federal agencies can only engage in formal government-to-government consultation with Federally-recognized Indian Tribes.

2.2. Tribal Sovereignty

Sovereignty is the power to govern, and Tribes historically have been recognized as distinct, independent, political communities with the power to exercise self-government. The right of Tribes to govern themselves is based on a pre-existing sovereignty that has been recognized or acknowledged in treaties, statutes, executive orders, and Supreme Court decisions. The United States continues to work with Tribes on a government-to-government basis to address issues concerning tribal self-government, tribal trust resources, tribal treaties and other rights and concerns.

Regarding the sovereignty of Indian Tribes, Felix S. Cohen surmises, *"Perhaps the most basic principle of all Indian law, supported by a host of decisions, is that those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished."* [2]

Although Tribes possess many of the rights and powers of sovereignty, these powers have been diminished as a result of their relationship to the United States. This relationship is based on three underlying concepts:

- Prior to European contact, Indian Tribes inherently possessed all powers of sovereignty.
- Each Tribe began its relationship with the United States as a sovereign power; however, the powers of sovereignty have been limited by treaties and laws.
- What has not been expressly limited by Congress remains within the domain of tribal sovereignty.

Because of their relationship with the federal government, Tribes are not foreign nations in the international sense of sovereignty. Rather, Tribes are characterized as having the status of domestic-dependent nations.

This means that Tribes are subject to the legislative authority of the United States. For example, Tribes cannot enter into treaties with foreign nations. It also means that, in exchange for consenting to enter into

2 Felix S. Cohen, Handbook of Federal Indian Law: 1982 Edition, edited by Rennard Strickland (Charlottesville VA: The Michie Company, 1982), p. 231.

treaties or agreements, the United States assumed a fiduciary obligation and is sometimes required to take certain actions on behalf of Tribes.

This latter principle provides the basis for the special federal-tribal relationship, and gives rise to the trust responsibility.

2.3. Federally-Recognized Tribes

Federal recognition can be derived from several sources, including a treaty, Executive or administrative order, legislation, or by custom of dealing with the federal government. Currently, approximately 573 tribal governments are recognized by the federal government as having a special political relationship with the United States. These Tribes are eligible to receive the support, benefit, and protection of federal programs and services, as well as the right to government-to-government consultation regarding Federal actions, initiatives and/or policy development that may affect those Tribes, their membership, or resources.

Please note, there are Tribes without Federal recognition with which the Service fosters relationships. These relationships should not be confused with the special government-to-government relationship between the Federal government and federally-recognized Tribes.

The Bureau of Indian Affairs (BIA) maintains and periodically publishes the List of Federally-recognized Tribes. The most recent Federal Register listing is available at: <https://www.gpo.gov/fdsys/pkg/FR-2017-01-17/pdf/2017-00912.pdf> (Appendix A). The BIA also maintains a Tribal Leaders Directory at:<https://www.bia.gov/sites/bia.gov/libraries/ maps/tld_map.html>.

2.4. Basics of Indian Law

One of the central tenets of Indian law is that Federal policy toward Native Americans has not been static. Instead, national policy toward Native Americans has been marked by periods of inconsistent or contradictory policy shifts. At times, Federal policy toward Native Americans has been idealistic (i.e., self-determination and self-governance), while at other times, it has been less than altruistic (i.e., allotment, assimilation, and termination eras). Although marked by periods of fluctuating policy extremes, there are common themes that have persisted throughout the history of federal-tribal relationships. The Service's Tribal Trust Training course provides information about these themes.

2.5. What is a Treaty?

A treaty is a contract between sovereign nations. The United States Constitution states that treaties are the supreme law of the land and all judges are to be bound by them, State law notwithstanding. In other words, States cannot make laws that contradict a treaty nor can States make treaties. Prior to the establishment of the United States, Great Britain and Spain signed treaties with Indian Tribes. The United States followed suit in order to obtain legal title to land held by the various Indian nations.

In treaties between Tribes and the United States, Tribes ceded lands to the United States. In addition, Tribes reserved certain rights — rights that they inherently already possessed. In other words, treaties retain certain rights for the Tribe. Each treaty is different. Relinquishment of rights may include retention of a portion of land for a homeland, and hunting, fishing and gathering rights, both on and off reservation lands. In exchange for holdings ceded, the United States has promised to provide certain services in perpetuity (e.g., health services, education, economic assistance and protection against crimes and infringements by United States citizens).

The Federal Government extends its trust responsibility to some Tribes with whom it has never signed a treaty. For example, the Pueblos of New Mexico have never signed treaties with the United States, yet they retain rights to their lands according to the 1848 Treaty of Guadalupe Hidalgo, signed between the United States and Mexico.

After 1871, the United States ceased signing treaties with Tribes because of a rider attached to an Indian appropriations bill abolishing treaty-making with Tribes. This was not the end of the Federal relations with Tribes, however, because the Federal Government entered into formal agreements with Tribes that were either approved by both houses of Congress or embodied in statutes.

Over time, the U.S. Supreme Court has established basic elements of Indian law and treaty interpretation. These include the following components:

The trust relationship: Tribes are not foreign nations but are "domestic, dependent nations." In Cherokee Nation v. Georgia (1831)[3], the Court developed the doctrine of Federal trusteeship over Indian affairs. In regards to Federal trusteeship, the United States asserts that it owns tribal lands and will hold them for the benefit of the Tribes who hold a right to occupy those lands.

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3 Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1931).

Government status: Tribes have limited sovereign authority and many State laws do not apply on reservations without the express consent of Congress.

Reserved rights doctrine: In signing treaties, the Tribes reserved many of their inherent rights. These may, and in many cases do, include land, hunting and fishing rights over ceded land, and the right to self-government on the reservation.

Canons of construction: Ambiguities in treaties are to be interpreted as the Native Americans would have understood them at the time of signing. Treaties are to be broadly construed in determining tribal rights but narrowly interpreted when considering elimination or abrogation of those rights.

Congress' plenary power: Congress can abrogate rights established by treaty or by other documents; such abrogation must be specific.

Treaties do not become obsolete: The Constitution guarantees treaties as "the supreme law of the land."

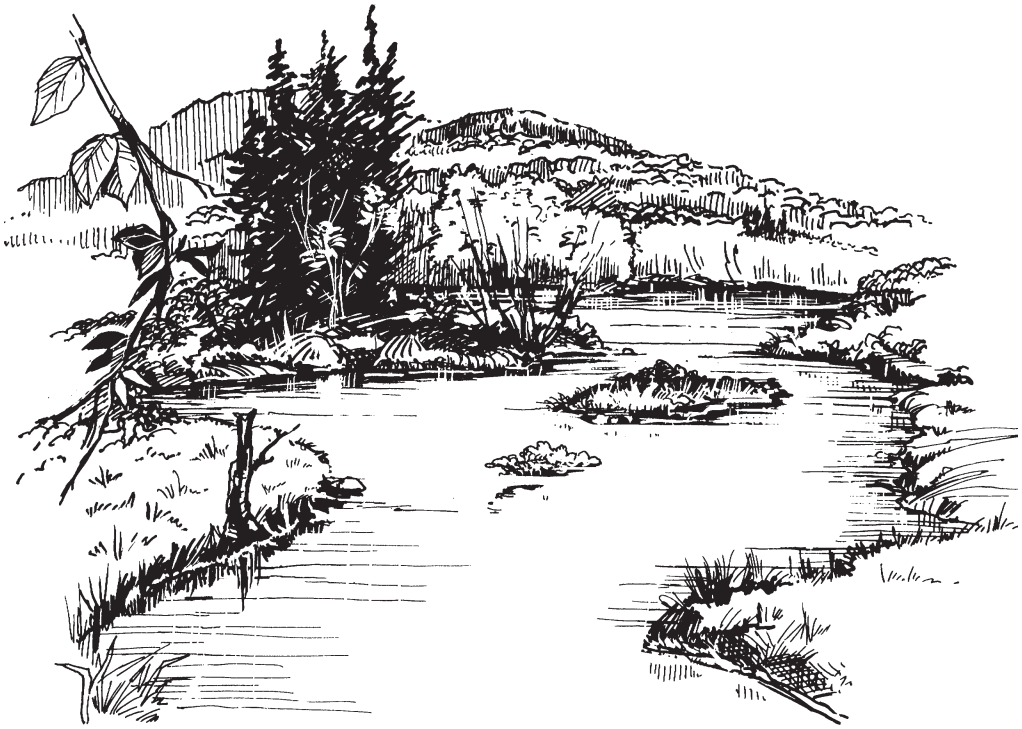
A tribal member is only entitled to those rights specifically guaranteed to the particular Tribe in which he or she is enrolled.

2.6. Government-to-Government Relationship

A government-to-government relationship is a mutual recognition of the authority of the respective parties. As such, it is a concept that draws upon principles of international law and diplomacy, particularly those used for establishing and maintaining a formal relationship between nations. In order to successfully engage in this type of relationship, it is necessary for the parties to be respectful of each other's positions as governmental entities.

When dealing with Tribes, maintaining a meaningful/productive government-to-government relationship frequently requires the Federal government (including the Service) to:

- Ensure that appropriate senior staff are present at initial and, if needed, follow-up meetings with tribal governments. The appropriate Regional or Washington-Office Native American Liaison in the Service should also be present, or notified.
- Understand the Tribe's political structure, including the appropriate terms for addressing tribal leaders.
- Conduct communications in a manner that is mindful of tribal preferences.
- Be sensitive to cultural diversity and apply an understanding of cultural awareness.
- Negotiate and develop agreed-upon principles and procedures for conducting interactions, including consultation.
- Avoid paternalism.



3. Cultural Diversity & Awareness

The Service values the relationships it has developed and maintained with Tribes. These relationships require understanding, sensitivity, and respect for tribal culture and lifeways. This section of the guide focuses on awareness and appreciation of cultural diversity. The following items should be kept in mind:

- Each Tribe is a unique and distinct cultural entity, and Tribes should be treated as such.
- The content of this section does not intend to provide cultural interpretation because tribal cultures are different and unique in their own ways far from what is possible or appropriate to describe in this guide.
- This information is intended as a brief look into some general aspects of tribal cultures.
- Much about working with Tribes involves understanding and respect; however, there is always more to learn about interacting with people from different cultural heritages.
- For cultural information about any particular Tribe, consider talking to your Regional Native American Liaison or the Washington-Office Native American Liaison for national programs (Appendix G) or other knowledgeable contacts before meeting with or engaging a Tribe.

USFWS

Alaska Native Affairs Specialist (third from left) with Alaska Native Tribal elders (left and right) and Chugach Regional Resource Commsission Executive Director (far left) at a Alaska Native Relations Training session held in Anchorage, Alaska March 2017.

3.1. What is Culture?

Culture—the integrated pattern of human behavior that includes thought, speech, action and artifacts, and depends upon peoples capacity for learning and transmitting knowledge to succeeding generations (Webster's New Collegiate Dictionary c1979).

Culture is a distinctive adaptation system used by human beings to deal with their environment. Humans use speech/language to transmit culture from one generation to the next. Culture is a complex system of interacting variables that maintain a community state of equilibrium with its environment. Tribal cultures change with technology as do all other cultures. For example, Tribes are not required to continue to use outmoded technology in order to access traditional resources.

An example of changing culture would be how the Plains Tribes adapted in obtaining bison for food. Three hundred years ago, after ceremonies, hunting parties would drive portions of bison herds over the edge of cliffs. The women would butcher the animals, and the meat would be distributed among the tribal members following a set of rules. Nowadays, Fish and Game departments or Bison Management programs use four wheelers to drive fenced-in herds to working pens where the animals are separated and hauled in trucks to meat packing facilities where the bison are slaughtered.

The meat is then distributed to tribal members during certain events and through diabetes prevention programs or other such efforts.

Bison for food is integral to the culture. How bison meat is obtained, processed and distributed has changed with the disappearance of wild roaming herds, introduction of tools, and development of additional socio-political institutions.

When working with Tribes, remember that culture is a dynamic and changing process that you need to consider. It is variable through time and space. Each Tribe has its own culture, which is different from others, and which is different than it was 100 years ago.

3.2. World View, Culture, and History

Understanding the concept of "world view" is a key to appreciating cultural diversity. World view refers to a cultural frame of reference. As children grow up in family units within particular cultural systems, they develop a world view—a general way of experiencing and interpreting the social, natural, and spiritual events of life. These ways of experiencing life create knowledge and belief systems that people may take for granted, never considering that people from other cultural groups may perceive things differently.

Even though we may accept variation in the attitudes and beliefs among the individuals of our own cultural group, we may not realize that individuals from other cultural groups might see life through a totally different but equally valid lens. No lens is right or

wrong, good or bad, and whenever you are working with any culture, it is good to look at the situation through their lens.

Realizing there are numerous world views among Native Americans helps in establishing positive relationships with each Tribe and its members. Service employees are encouraged to foster increased sensitivity to, and a working grasp, of the unique cultural, historical, and political aspects of the specific Tribes with whom they will regularly interact in their respective regions or field office locations.

The following is a list of people who may be able to provide information about Tribes:

- Tribal elders and traditional religious leaders
- Tribal cultural and/or historic preservation personnel
- Tribal government staff
- Bureau of Indian Affairs employees
- Service Washington Office and Regional Native American Liaisons
- Service archaeologists or Historic Preservation Officers
- Other Federal agency Native American program staff (e.g., EPA, USFS, USGS, NPS, etc.)

Reference Materials

Some suggested readings are found in Appendix C. Although the Service often relies upon technical information about fish and wildlife-related resources when working with a particular Tribe, other sources of information are useful for gaining a broader understanding of tribal culture. For example, information about traditions (e.g., oral history, cultural stories, or religious beliefs), customs (e.g., marriage, inheritance, and subsistence patterns), and history (e.g., prehistoric and contemporary) may provide a more in-depth appreciation and sense of their culture and present day lifeways.

3.3. Awareness of and Respect for Diversity

This section is not intended to make gross generalizations about Native Americans or Tribes. It provides basic information for Service employees who feel they need to enhance their effectiveness through cultural awareness and cross-cultural sensitivity.

Miscommunication between people due to differing cultural values can significantly impede, or even spoil, a positive relationship. Such errors can arise due to a variety of cultural nuances such as: differing perspectives or priorities, unrealistic expectations, language barriers, and a participant's role in a meeting. These challenges can be met and overcome in several ways.

Cross-cultural awareness training for Service personnel in new social or work environments is helpful in fostering an understanding of differing value systems and provides a framework for developing cross-cultural relationships. Examples of some training opportunities are listed in Appendix D.

Recognize and be aware that we all have cultural biases. Seek to reach a common understanding of the issues that are being are discussed with Native American groups. Awareness of our own beliefs and expectations is essential when working with cultures and people that have alternative values and perspectives.

Cultivating a relationship with a knowledgeable person is helpful in learning the customary and acceptable behaviors of a particular culture. In addition to providing insight into a new culture, such relationships are often personally enriching. The following are additional examples of some of the cultural differences that may be encountered along with some suggested interpretations and responses.

Traditional Beliefs and Wildlife

The culture and traditional beliefs of each Tribe are unique and may differ from yours. When it comes to managing fish and wildlife, some Tribes have cultural beliefs or practices that may revolve around the species the agency manages. Tribal members may refer to the "Mother Earth" and fish and wildlife as their relatives. Also, some wildlife may be considered "taboo" or of little interest to the Tribe, which could make convincing a Tribe to conserve the species more difficult.

Religion in Meetings

Religious practices are common at many cultural events but it is much less common for Service employees to encounter similar practices during work-related meetings or events.

Demonstrating appropriate behavior during unfamiliar religious activities is important in establishing or maintaining a positive relationship.

Interest in the meaning or significance of a certain practice is understandable and respectfully asking your host about it may or may not be acceptable.

English as a Second Language

The use of English or government-vernacular may complicate communicating with some groups. Some tribal members or elders may not speak English as a first language. Service employees must be mindful of their audience's ability to understand them and to be as inclusive as a situation permits. Using an interpreter may be the best solution in some situations. Overcoming language barriers may be as simple as asking if a statement was clear, or presentations may require long pauses so that an interpreter can translate and explain information for non-English-speaking participants.

Humor

It is recommended that Service employees exercise caution with the use of humor, particularly early in the relationship-building process.

Humor sometimes does not translate well between people from different cultures and can occasionally lead to misunderstandings.

Being Greeted with Silence

Be mindful that some groups will speak very little at meetings. Always assume that they are fully engaged in listening, even if they do not actively participate in an ongoing conversation. If you have presented your information and have not felt that your audience has fully engaged with you, announce that your presentation has concluded and open the floor to questions, concerns or comments. In the case of no response, thank your hosts for offering the Service the opportunity to meet with them. Ask if you should remain in the room or if they prefer that you excuse yourself. Sometimes, your counterparts may wish to discuss matters among themselves before responding.

Attorney's Role

Sometimes, Tribes will ask their legal counsel to attend meetings with Federal officials. In some cases, these attorneys will speak for the Tribe, and in other cases, they may have a much less significant role. Remember, the legal counsel is representing the interests of its client, and the Tribe (not the Service) decides their role.

In the event that the agency representative is aware that the Tribe will be accompanied by counsel, the agency representative should notify the appropriate Office of the Solicitor.

Duration of the Meeting

Understanding and accepting that other cultures place different priorities on the concept of time will go a long way toward establishing a strong, positive relationship. Generally, Tribes start meetings when everyone arrives, so oftentimes, the meetings may start late. Meetings conclude when everyone has had an opportunity for input and generally last several hours. While waiting for meetings to start, Service employees may want to interact socially with other meeting participants, make additional meeting preparations, and allow adequate time for the meeting so you avoid a sense of rushing the Tribe.

Proper Titles for Delegates

During official meetings or correspondence with another government, it is important that the Service address tribal leaders by their proper titles. Contact your Regional Native American Liaison or call the Tribal Administration Office to obtain the proper titles for addressing the particular tribal leadership that you plan to meet.

Conflict or Anger

We cannot reasonably expect that all groups will have a positive view of the Service. In fact, we may experience guilt by association simply because we are employees of the Federal government or because the issue is controversial in nature.

Be mindful that when dealing with new cultures or organizations, you may encounter strong emotions, especially early in establishing a relationship.

Recognize that anger and frustration are very real impediments to further meaningful communication and must be addressed as early as possible.

An emotional or defensive response can escalate an existing negative situation. It is better to listen with sensitivity and attempt to understand the cause of the anger. In doing so, you may find that your willingness to understand is sufficient to move beyond the contention and perhaps even to address your counterpart's concerns or perceptions.

If you are unable to progress beyond a tense situation, seek an opportunity to state your desire to accept that both parties agree to disagree and to move forward. Or, if that fails, ask what it is that you might be able to offer in order to proceed.

As in any hostile situation, if you feel threatened or under unwarranted personal criticism, you should excuse yourself and inform your immediate supervisor and chain of command of the incident.

It may occur that another representative needs to assume the role of the agency in situations where interpersonal conflicts cannot be resolved.

4. Consultation

Appearance

If there is any question about what attire is appropriate when meeting with a different culture, either in general or under specific circumstances, ask someone from that group or a person that has experience working with them for guidance.

Proffering of Food and/or Gifts

In some tribal cultures, food and/or gifts may be offered to guests. To refuse would be considered an insult. Our ethics rules generally allow Federal employees to accept food and/or gifts under certain limits. If you judge the gift to be over the limit, you may accept such gifts "on behalf of the Service" and they become government property. Gifts that contain parts of regulated species e.g. feathers, pelts, or listed plants may be accepted on the behalf of the Service — but not personally. Check with your Ethics Officer for a complete understanding of these rules or visit the Department of the Interior Ethics Office website page on "Common Ethics Issues" at,<www.doi.gov/ethics/introduction-ethics-guide.

USFWS

Federal agency site visit along the Niagara River with natural resource staff from several Haudenosaunee Nations in New York to discuss cultural importance of the river.

Consultation is a term with many meanings, connotations, and expectations. It also is a concept that goes to the heart of federal-tribal governmental interactions. There is no universally agreed-upon definition for "consultation" throughout the Federal government but this section will describe several, helpful definitions and explore what is meant by consultation.

4.1.Consultation: A History and Legal Background

Consultation historically has been a core component of the federal-tribal relationship. Its early origins can be found in the treaty-making process, where Federal and tribal sovereigns conducted their discourse on a government-to-government basis. The term "consultation" frequently appears in treaties and is used to describe the process of maintaining and conducting formal federal-tribal communications. More recently, references to a consultation process with Tribes are found in a variety of laws, executive and secretarial orders, regulations, and policies as a required component of federal-tribal relations (Appendix B).

The President is head of the Executive Branch; he has powers listed within the Constitution to control the Executive Agencies. The Service, as an Executive Agency, must follow these Orders, such as Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*.

Secretarial Orders may, but do not always address Executive Orders, and usually remain in effect for a specified period of time. However, Secretarial Order 3206 (*American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act*, for more information, Appendix B.12) is still in effect because there was no expiration date in the Order when it was signed.

As the President's constitutionally authorized designee to lead the Department of the Interior, the Secretary of the Interior is within his/her authority to issue Orders as long as they do not contradict the authorities, expressed in law, for the affected agencies and bureaus.

If the President wants to change an Executive Order or the Secretary wants to change a Secretarial Order, then he/she has to issue a new Order with a new number, and quash the existing Order.

The closing paragraph of Executive Order 13175 states that it is "... intended for internal management of the Executive Branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person." The phrase is intended for potential third-party litigants and is not intended for Executive Agencies to choose whether to accept the authority of the President.

The President and the Secretary may exercise their constitutional Executive Authority as may be appropriate.

These Orders are not optional for members of the Executive branch. Executive and Secretarial Orders are binding on Service employees until they are quashed or modified.

Consultation is Not Defined in Federal Statutes or Executive Orders

Although the term consultation appears in many laws, there is no concrete definition of tribal consultation in any statute or Executive Order. The Department of the Interior Policy on Consultation with Indian Tribes states, "Consultation is a process that aims to create effective collaboration with Indian tribes and to inform Federal decision-makers. Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility. Communication will be open and transparent without compromising the rights of Indian tribes or the government-to-government consultation process." (Appendix B.17, Section 4.b.).

Tribal Perspectives and Expectations

In the broadest sense, the term consultation probably has at least as many definitions as there are federally-recognized Tribes. Each Tribe has its own view of how it prefers to engage in communications with the Federal government.

For example, some Tribes only recognize consultation between high-ranking government officials and tribal governmental leaders, while other Tribes may be more willing to acknowledge and sanction communications between lower ranking federal-tribal representatives. Given this situation, *discretion is recommended when talking to Tribes about consultation—the speaker and the listener may have different expectations about what is meant by consultation and how it should be conducted.*

Points on a Continuum

One way to appreciate the mix of meanings that are ascribed to the term consultation is to view it as a continuum. There is a range of meanings, and all points on the continuum are essentially correct. Two points on this continuum, however, stand out as general reference points.

Consultation with a Capital "C": This (big "C" consultation) is formal communication on a government-to-government basis. It is conducted between the decision-makers, who are tribal government leaders and senior representatives from the Service. After a relationship has been developed, a consultation protocol may be reached that recognizes and sanctions communications between federal/tribal designated representatives. A key factor of consultation is the Federal government's recognition of a Tribe's right to self-govern.

Consultation with a Lowercase "c": This (little "c" consultation) is the communication that frequently occurs between federal-tribal mid-level management and technical staff at meetings, telephone contacts, e-mails, and during on-site visits. Although generally not recognized by Tribes as consultation on a government-to-government basis, it serves as a useful conduit for communication and sharing information, satisfying certain legal requirements, and developing positive relationships. This communication at a lower level may be part of a consultation if it meets the negotiated terms (Section 6 and 8) of the consultation between the Service and a Tribe.

The distance between these two points on the consultation continuum is at times subtle. It is often shaped by a variety of factors:

- Tribe's political structure.
- Tribe's preferred methods of communication.
- Subject matter.
- Nature and complexity of the issues.
- Degree to which the federal-tribal relationship has developed.

Plain Meaning

In the absence of a statutory definition, and in light of tribal perceptions, it is necessary to turn to the dictionary for a better understanding of the plain meaning of the word consultation. According to the dictionary, consultation is the act of consulting or conferring. To consult means to ask for advice or to seek an opinion—*consultation does not mean obtaining consent.*

Depending on the issues, the complexity of the consultation generally increases in magnitude in direct relationship to, or as consequence of, the number of parties involved in a particular consultation. Therefore, it is recommended that the involved parties reach consensus or an understanding in advance about what is considered "consultation" and how the consultation will be conducted. Such arrangements will help to ensure that both the federal and tribal expectations and interests are considered, including a particular course of action for maintaining the government-to-government relationship.

Working Definition: For purposes of this guide, *consultation* is: A mutual, open, and direct two-way communication, conducted in good faith, to secure meaningful participation in the decision-making process, as allowed by law.

4.2. With Whom Do You Consult?

As a Federal agency, the Service has an obligation to consult with Tribes on issues that may affect Tribes or their resources. This responsibility is based on the unique political relationship between the United States and Federally-recognized Tribes as set forth in statues, Executive Orders, Department of the Interior policy, and Service Policy.

This body of law and policy requires consultation with one or more of the following entities:

- Federally-recognized tribal governments
- Designated tribal representatives
- Tribal elders and traditional religious leaders
- Lineal descendants

Depending on applicable laws and policies, consultation with Tribes may be required for proposed Federal actions or impacts to trust resources (e.g., Service land, migratory birds, threatened or endangered species) located on and off tribal lands located anywhere in the United States.

When deciding with whom to consult, consider whether consultation would be required for actions taken outside of tribal lands. For example, Tribes that reside in one state may have ancestral lands in another state.

Consultation may be needed for Federal actions on these ancestral lands. Finding information about ancestral lands can be obtained from your Regional Native American Liaison and other individuals knowledgeable about cultural resources.

Additionally, the National Park Service manages the Native American Consultation Database (NACD), which is a tool for identifying consultation contacts for Indian Tribes, Alaska Native villages and corporations, and Native Hawaiian organizations. The database is not a comprehensive source of information, but it does provide a starting point for the consultation process by identifying tribal leaders and NAGPRA contacts. The database is available online at: <https://home.nps.gov/nagpra/ONLINEDB/INDEX.HTM>.

Finally, the U.S. Department of Housing and Urban Development (HUD) manages the Tribal Directory Assessment Tool (TDAT) <https://egis.hud.gov/tdat>. TDAT was developed by the HUD's Office of Environment and Energy (OEE) to help users identify tribes that may have an interest in the location of a HUD-assisted project, and provide tribal contact information to assist users with initiating Section 106 consultation under the National Historic Preservation Act. A Tribe's "area of interest" may be different for Sec. 106 and for the Endangered Species Act.

4.3. When is Consultation Necessary?

According to the Department of the Interior Policy on Consultation with Indian Tribes (Appendix B.16) "Consultation" protocol must be followed when it is known that a decision about a "Departmental Action with Tribal Implications" must be made. This includes any Departmental regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula change, or operational activity that may have a substantial direct effect on an Indian Tribe, including but not limited to:

- Tribal cultural practices, lands, and resources; or access to traditional areas of cultural or religious importance on federally managed lands;
- The ability of an Indian Tribe to govern or provide services to its members;
- An Indian Tribe's formal relationship with the Department; or
- The distribution of responsibilities between the Department and Indian Tribes.

This terminology does not include matters that are the subject of litigation or in settlement negotiations, or matters undertaken in accordance with an administrative or judicial order where the Department has no discretion with respect to consultation.

The following three situations frequently arise in the field and initiate the need to engage in consultation with Tribes.

Proactive

Consultation is affirmatively initiated and conducted by the Service in order to build new or better positive working relationships with Tribes. This is a relatively new approach to federal-tribal interactions. It is particularly useful as a means to set the tone for future interactions and consultations, and to set the stage for partnerships and collaborative fish-and-wildlife-related projects. For example, in August of 2009, the Directorate invited tribal representatives to talk about how they do landscape conservation so that the Service can learn from them on that subject.

This took proactive action on behalf of the agency and was not in response to a particular agency action or tribal request.

Reactive

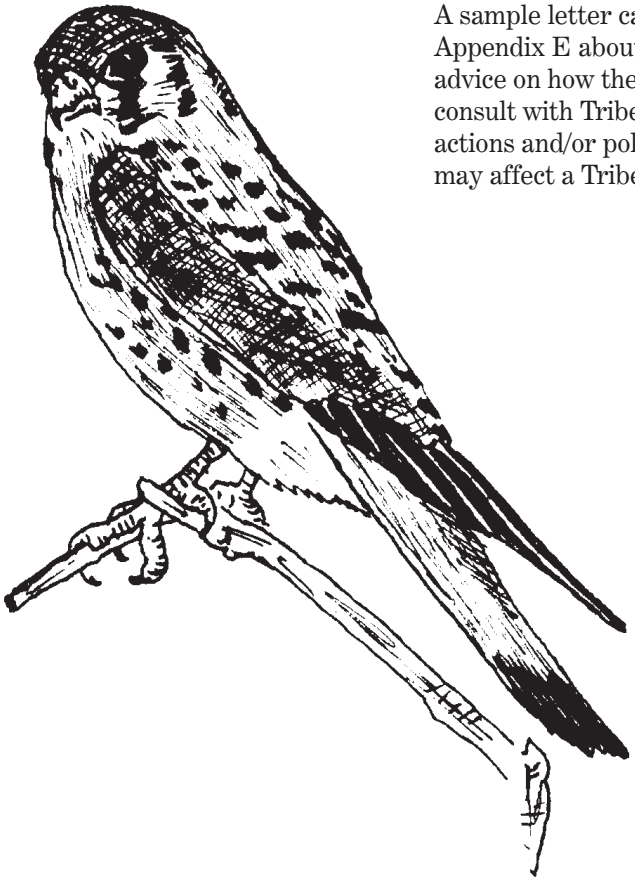
Consultation is required when the Service proposes regulations or policies that may have Tribal Implications such as the planning of projects or activities that potentially may affect trust resources, endangered species, cultural resources, sacred sites, or human remains. This has been the traditional approach to consultation. For example in 2009, the Federal government expanded the Gulf of Maine Distinct Population Segment for Atlantic salmon to include other rivers in Maine where there were known tribal interests. As a result, the Service and the National Marine Fisheries Service consulted with Tribes in Maine on the agency's action.

Responsive

Tribes may initiate consultation with the Service to learn about Service programs, obtain technical assistance, or inquire about opportunities for partnerships and collaborative efforts. Regardless of whether a tribal request to consult is a formal written letter or a less formal verbal request, the Service should respond.

An example of *responsive* consultation is demonstrated in the Service's response to numerous requests from Tribes to discuss law enforcement priorities regarding eagles and interpretation of the Morton Policy.

Although the Service has had a long history in working with Tribes, this type of consultation may increase in frequency as a result of the implementation of the Department of the Interior Policy on Consultation with Indian Tribes (Appendix B.16).



4.4. Range of Consultation Contexts

Consultation is a dynamic process that touches upon a wide variety of potential federal-tribal interactions. These interactions can occur in a range of consultation contexts, such as consultation with:

- A Tribe about a single issue, Service program, or activity
- A Tribe about multiple issues, Service programs, or activities
- A Tribe and two or more Service regions or offices
- Multiple Tribes
- Multiple Federal agencies and a single Tribe (Lead agency should be identified)
- Multiple Federal agencies and multiple Tribes (Lead agency should be identified)

A sample letter can be found in Appendix E about seeking tribal advice on how the Service can best consult with Tribes regarding Service actions and/or policy development that may affect a Tribe's interest.

5. Recommended Consultation Protocol

"Protocol" is a term that is increasingly being used in the context of federal-tribal governmental relations. This section focuses on what is meant by protocol and examines the recent policy statements that call for its development and implementation.

5.1. Protocol—What does it Mean?

Protocol is a term that is increasingly being used in the context of federal-tribal governmental relations. This section focuses on what is meant by protocol and examines the recent policy statements that call for its development and implementation.

Working Definition

For purposes of this guide, protocol has the following meanings when used in the context of federal-tribal interactions:

- The etiquette used when conducting federal-tribal interactions and communications, with particular consideration given to applying an understanding of cultural diversity and awareness, and being respectful of tribal autonomy.
- Or, it may be an understanding or document that records mutually agreed upon principles and procedures for conducting consultation, fulfilling trust responsibilities, and maintaining a government-to-government relationship

5.2. Considerations for Developing Protocols with Tribes

Recent Federal policy has embraced the use of protocol during federal-tribal interactions. Federal agencies are specifically directed to develop protocol for conducting consultations with Tribes (Appendix B). The following is a brief overview of the policies that underlie the need to develop protocol with Tribes:

Government-to-Government Relations: The President's April 29, 1994, memorandum on government-to-government relations, reaffirmed on September 23, 2004 (Appendix B.7), sets the stage for developing protocol with Tribes. The memorandum states that each department and agency is to:

- Respect tribal autonomy and operate within a government-to-government relationship with Federally-recognized Tribes.
- Consult to the greatest extent practicable and to the extent permitted by law.

Guidance on the Federal/Tribal Government Policy

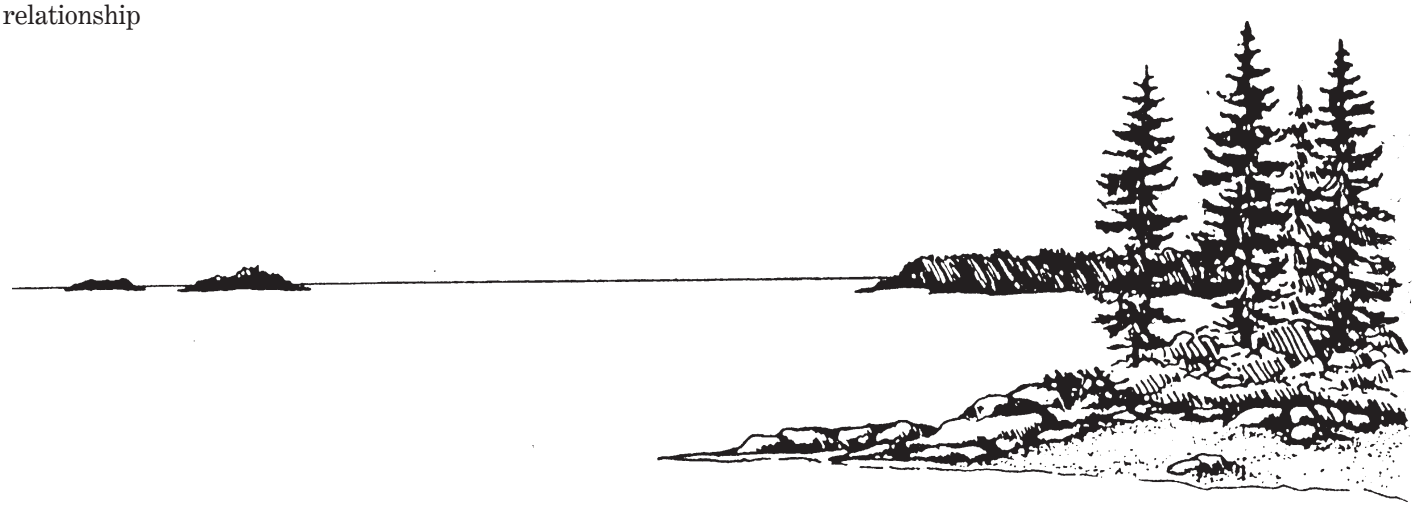
The memorandum from the Assistant Secretary—Indian Affairs, dated February 24, 1995, provides guidance to assist in the implementation of the President's government-to-government policy. It specifically recommends that each Department of the Interior bureau should:

- Design a special protocol for consultation.
- Take a proactive approach to working with tribal governments.

Trust Rights, Trust Responsibilities, and the Endangered Species Act

Secretarial Order 3206 (see Appendix B.11) states that the Departments of the Interior and Commerce shall recognize the importance of tribal self-governance and the protocols of a government-to-government relationship with Tribes. It also provides guidance about how to conduct consultation and maintain meaningful interactions with Tribes.

Secretarial Order 3225 supplements Secretarial Order 3206 and establishes a consultation framework relative to the subsistence exemption for Alaska Natives in Section 10(e) of the Endangered Species Act.



6. Laying The Groundwork: Meeting With Tribes

This section is directed at the practical aspects of organizing and planning for meetings with tribal governments and groups. Much of the guidance also applies to meetings with other entities and in different contexts. Although government-to-government consultation does not necessarily require face-to-face meetings with tribal representatives, this section only addresses that format. It provides guidance and procedures to support Service employees when they meet with Tribes and their representatives and enhances our long-term relationships with tribal governments.

6.1.Pre-Meeting Activities

Identify the need for the meeting. A consultation can be Service-initiated or tribally-initiated. For example, the Service should consult with Tribes as early as possible when an action may have tribal implications (Appendix B. 16, p. II).

Service-initiated consultations typically begin with a purpose for the meeting expressed to the Tribe(s) through a formal letter from the decision-maker in the Service to the tribal leader.

The Service should strive to provide the Tribe at least 30-day notice prior to a consultation meeting being scheduled. Although exceptions can occur, they must be explained in the letter. Adequate notice will include a description of the project/action, timeline, and possible outcomes (Appendix B. 16, p. VII).

For national issues such as a Policy change or new Rule, consultation authority is delegated from the Director to the Regional Directors. Assistant Directors support the Region's consultation responsibilities by providing background materials, subject matter experts, and drafts of letters to Tribal leaders informing the Tribes of the potential action.

It is important that Headquarters in Washington, D.C. coordinate national actions to maintain consistency in the information provided to our tribal partners. It is also critical that Regional offices ensure that communications on national issues are provided to the correct tribal contacts and in the most appropriate manner, given the unique circumstances in each Region.

A couple of weeks after the letter is mailed, Service staff may begin contacting tribal technical staff and managers through telephone calls or email to determine their desire to consult. Although in some cases it may not be possible, the preference is to continue contact until a "yes" or "no" decision about consultation is received from the Tribe(s). Sending the formal letter with no follow up does not meet the spirit of consultation. After the first consultation meeting, additional consultation meetings may occur at appropriate stages throughout the project or action.

Tribal-initiated consultations may occur through letter, email or phone call. You may request the Tribe send its request for consultation in written form with anticipated tribal attendees and agenda items. Requests for consultation should always be responded to and not dismissed arbitrarily.

It is recommended that the Service conduct internal meetings before scheduling meetings with tribal governments. Use these pre-meetings to identify tribal leaders, clarify issues, plan the meeting, and learn about the Tribe's history, culture, and political structure. The following are some useful planning steps and topics to consider during pre-meetings.

Evaluate and Identify the Issues

Evaluate the information collected so far, collaboratively decide with the Tribe the kind and level of meeting to hold, gaps in information, and a meeting agenda. When meeting with tribal leaders, keep in mind that two different agendas may converge—the Service's and the Tribe's. Both agendas must be understood, respected, and ultimately integrated. Be prepared to be flexible.

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Identify What You Want to Accomplish

Consider why the Service is meeting with the Tribe and what is expected to be accomplished:

- To exchange information, discuss ideas, or seek advice.
- To obtain comments on proposed Service plan(s) or action(s).
- Consider the Tribe's concerns and give thoughtful measures that will allay of resolve those concerns.

- To reach mutual agreement on processes or procedures for maintaining communication and solving problems.
- To build opportunities for developing partnerships and working collaboratively.

Identify with Whom You Will Meet

Identify with whom you will meet and give consideration to their role and position in the tribal government, or status within the tribal community.

Although Tribes are solely responsible for determining who from the tribal government attends any meeting, it is helpful to recommend to the tribal government that they have appropriate tribal technical, cultural, or resource staff participate.

Assess Who Should Attend the Meeting

The Service's participants may include, but are not limited to:

- Director*
- Assistant Director*
- Regional Director*
- Deputy Regional Director*
- Assistant Regional Director
- Washington Office or Regional Native American Liaison
- Program Managers, Supervisors, Project Leaders, Technical staff
- Facilitator, if one is needed and agreed to by mutual consent

It may be appropriate for the Director, Assistant Director or Regional Director (or their designees) to attend initial meetings to initiate the consultation process. Participation of Service leadership is likely to influence the type of meeting that will occur with the Tribe.

Regardless of who represents the Service, it is essential to use fundamental cross cultural communication skills including respectful listening. Avoid using overly rapid speech, acronyms and scientific terms. Always consider the use of, or have access to, a translator.

The Director has delegated his/her consultation authority to Regional Directors, and the Regional Directors have the authority to delegate consultation to subordinates.

Regional Directors should ensure they represent the Fish and Wildlife Service and/or Director's position and know the breadth of decision-making authority granted to them for consultation. If a Regional Director has delegated consultation authority to a subordinate, the subordinate should ensure they are aware of and represent the position of the Service, Director/Regional Director.

Be selective in who participates from the Service, and include only those people who will have an active role in the consultation or meeting. When going into joint consultations with other Federal agencies, pre-meeting activities should include discussions about limiting the number of staff from Federal agencies to only those who have an active role as well.

Identify the Type of Meeting

Determine whether the meeting is expected to be a formal meeting between senior Service staff and the tribal leader or the Tribal Council, or whether it will be an informal meeting between designated Service and tribal technical representatives.

Identification of the type of meeting will help to ensure that the appropriate level and type of Service staff will attend the meeting.

Meeting Format

Give consideration to the meeting format and the type of relationship that has been established, or needs to be established, with the Tribe.

The format for the initial meeting (or first few meetings) with the Tribe might conform to tribal procedures. Subsequent meetings ideally should conform to the procedures mutually agreed upon in the consultation protocol outlined by the Tribe and the Service. Possible meeting formats include: presentation followed by a discussion, listening session, small group "breakout," question-and-answer session, or a combination of these.

* Keep in mind that it may be extremely difficult to schedule a meeting with a Tribe and have senior-level staff participation. It will also depend upon what level of senior Service participation is warranted by the particular Tribe with whom you will meet and the topics involved.

Assess the Role of Third-Party Participants

Government-to-government consultation is a Federal responsibility. Many times, two or more Federal agencies are collaborating on a particular action appropriate for consultation. Joint consultations can be effective and efficient. It is important for the Federal agencies to discuss beforehand their consultation policies and procedures to develop a protocol that meets the agencies' and Tribe's requirements. Additionally, it is important to identify the lead federal agency and potential roles and responsibilities of other federal agencies involved.

Non-Federal and non-tribal participation in government-to-government consultation should be avoided unless both the Tribe and the Service expressly consent to such participation.

Consider the following questions regarding third-party participants (e.g., other local governments and municipalities, NGOs, environmental firm, or a NIMBY (not in my back yard)) person or people:

- What do they know about the topic?
- What is their stake in the meeting?
- Who are they politically and socially?
- What is their attitude about the meeting topic, and toward the Service and the Tribe?
- How are they perceived by the Tribe?
- Will their actions have impacts on the proceedings?
- Are all affected groups present, and thus all sides of the issue fairly represented?
- Who are the decision makers and are they present?

6.2. Meeting Logistics

Meeting Approval

Due to their nature, most Tribal consultation meetings will not need Departmental pre-approval.

However, if the meeting will have more than 30 people, with 15 or more participants in travel status where a advance registration is required or recommended and/or a conference fee is paid, the Department's Conference Approval guidance must be followed. See Director Dan Ashe's memorandum dated Nov. 11, 2011, titled Conference Approval (DTS 049757) or contact your Budget and Finance Office for further guidance.

Selecting the Meeting Site

Most often, government-to-government consultation is held at the tribal headquarters. Otherwise, non-consultation meetings can be held elsewhere with the following considerations: select meeting locations that are reasonably accessible to the Tribe, from logistic and financial perspectives. Selecting meeting locations on or near a reservation may be one approach.

Alternating meeting locations at Service and tribal offices might be an alternative and equitable solution. Depending upon the issue or action, consider having some meetings in the field where Service management and staff can conduct a site visit with tribal members. If meeting space will exceed the $2,500 micro-purchase limit and must be secured through a contract, be sure to send a purchase request to the Contracting Office at least 30 days prior to the meeting date.

Verbal Presentations

Service participants presenting information should make a "good-faith effort" to exchange their ideas, views, and information at consultation meetings, freely, openly and tactfully. Statements made to tribal leaders will be taken seriously and viewed as representing the positions of Service and the United States government. Offer and promise only what can be delivered.

Attendance Sheet and Building Information

Especially during a formal consultation meeting, it is recommended an attendance or "sign-in" sheet be prepared and made available at the meeting. Making contact and establishing good communication is important. Once the list is complete and everyone has signed in, copies should be made available to the attendees. When the meeting is held at a Service location, initiate the meeting by providing the attendees with building logistical information including an explanation of what to do if an alarm goes off and the smoking, beverage, food and restroom arrangements.

Visual Aides

Consider the usefulness of visual aids—a map of the project area, facility plans, diagrams, organizational and flow charts, etc. Visual information is sometimes easier to absorb than verbal. Be aware of the technical capabilities at tribal offices. Prior to the day of the meeting, ask if you are allowed to present visual aids and, if allowed, work with the tribal technical staff to line up any needed equipment. Offer to bring and set up your own equipment. Refrain from using Service jargon and acronyms in your presentation; it helps to ensure that everyone fully understands what is being presented.

Media Involvement

Unless both the Tribe and the Service agree otherwise, no media should be present at a government-to-government consultation. If the media will be present at a non-consultation meeting, or if the Service and the Tribe expect to be dealing with the media, consider working with the Tribe to prepare a joint media handout or news release prior to the scheduled meeting. If a joint news release is not desirable or feasible, either the Tribe or the Service, or both, may decide to issue its own. In the absence of an agreed-upon media protocol, this is a discretionary matter for both the Service and the Tribe.

The Host's Offer

Commonly, when Tribes host meetings they provide food and beverages for guests. If the Service is the host, non-Federal participants would expect appropriate refreshments to be provided. Be aware that there is a prohibition on using Federal funds for light refreshments. However, certain meetings with Tribes may be eligible for a waiver and Service employees should contact their contracting or partnership offices for more information. If federal funds are not available to you, speak with experienced meeting planners about alternative ways to be a good host that are within our regulatory guidance.

6.3. Meeting Closure/ Consensus

Before leaving the meeting, it is recommended to assess the following:

- Was the agenda covered?
- Did everyone have the opportunity to contribute?
- Did everyone understand the issues?
- Did everyone understand the process for action?
- Did everyone understand what will happen next?
- Did the participants make any commitments about what will happen next (i.e., is another meeting warranted)?

Developing a snapshot assessment of the meeting's outcome is not recommended. An initial evaluation of the meeting may be different from the tribal delegation's. Further, while some meetings may move quickly to a formal consensus, others may require subsequent discussions and additional meetings. Even if everyone at the meeting seems to agree, the process the Tribe will go through to decide its course of action may take additional time.

6.4.Post-Meeting Follow-Up

Questions, and some answers, to be considered after the meeting, and some answers, might include:

How do you know if you have had a successful meeting?

Success can be measured from several levels or aspects. For example, simply obtaining a meeting with a particular Tribe might be considered a success in one situation. In another, a written agreement might cap a series of negotiations. If there is an opportunity to talk informally with someone from the tribal delegation, ask for his or her assessment of the meeting. Find out what he or she expects will happen next.

What if there is a difference of opinion about what happened at the meeting?

- Avoid putting off an oral inquiry to reconcile this difference. Since oral communication is the preferred means of information exchange among many tribal cultures, expect most contacts to be face-to-face and, to a lesser degree, by telephone or e-mail.
- After oral exchanges send a letter to the Tribal participants' recapping the Service's participants understanding of the meeting.

During the meeting, the Service and the Tribe will normally reach agreement about which party will be responsible for preparing and distributing meeting notes or summaries (in most cases, it will be the Service). Agreement should also be reached about the appropriate Service-Tribal authority to contact in the follow-up phase. Circulate the meeting notes or summaries for review and comment to all participants before distributing them as a final document. This review will help to ensure that the views and interests of both parties are accurately characterized. When there has been controversy or a stoppage of communications after a meeting, the Service should engage in strategies for reinitiating the consultation. Each situation is unique in terms of the causes of the breakdown. Assess each situation and consider which strategies make sense. Sometimes, it may mean engaging someone at a higher level or perhaps involving officials at the Bureau of Indian Affairs.

When the Service has the responsibility for providing meeting notes or summaries, consider the timeframe for expecting a reply from the Tribe. In a letter (or e-mail) to the appropriate tribal authority, send the meeting summary and a reiteration of the process and steps for action.

In the letter (or e-mail), also state the Service's time frames, processes, or legal constraints, allowing a reasonable time for the Tribe to consider and respond to the summary. Establishing a reasonable length of time should involve tribal definitions and expectations. Ideally, this timeframe should have been agreed to as part of the meeting's closure.

In the absence of an agreement, the Service's good-faith effort should include clear delineation of required deadlines and procedures. As with all written correspondence to Tribes, if a reply is not received within a reasonable amount of time, Service employees should follow-up with a telephone call or e-mail to the designated tribal contact.

Generally, a Tribe will consider varying perspectives within the Tribe before it makes decisions regarding an issue. Exercise patience and try not to force issues or expect a response prematurely. Affording the Tribe a reasonable opportunity to respond to each action item of a meeting helps in gaining or reinforcing the Tribe's trust and good will.

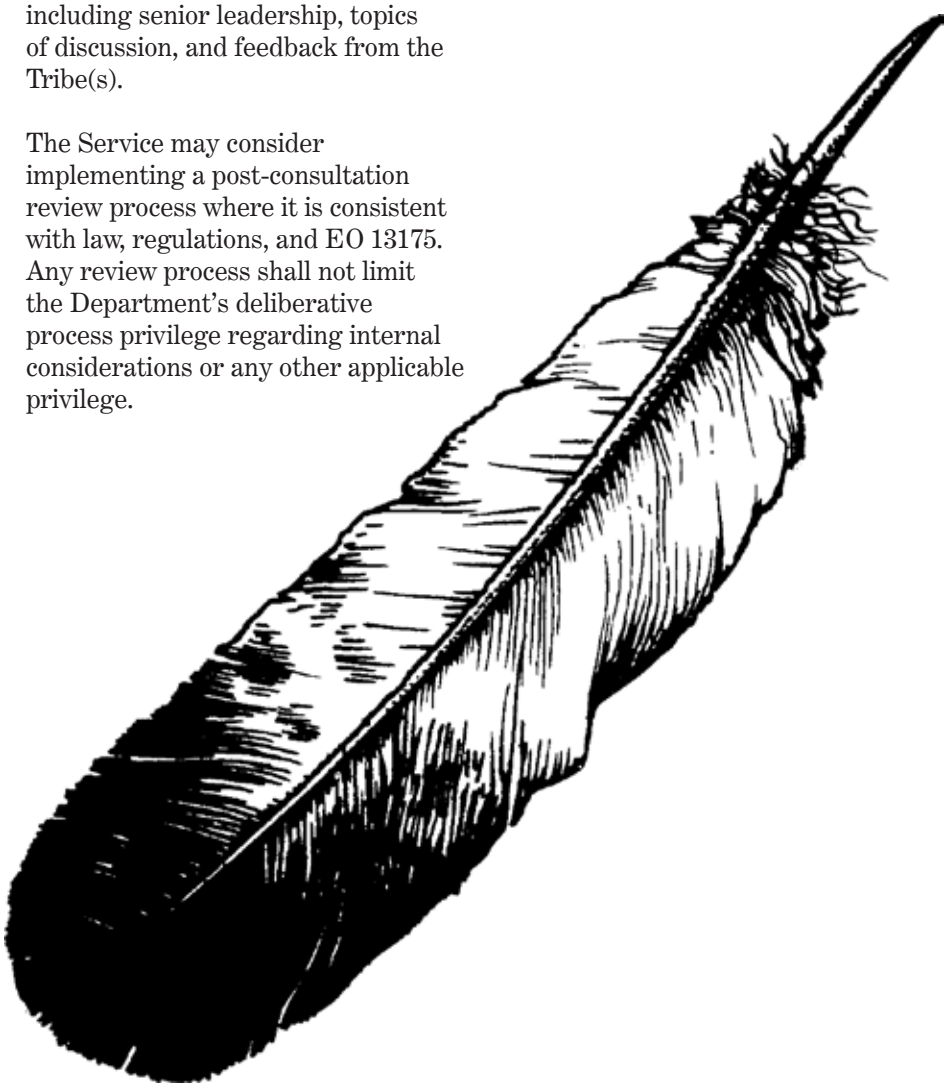
6.5. Maintaining Consultation Records and Reporting Requirements

As soon as the need for consultation with an Indian tribal government is identified, a Service representative should be assigned to establish a permanent record of interactions that are pertinent to, or are the result of the consultation process—including associated costs. The Service representative should be someone who is knowledgeable of the issues at hand and has sufficient access to the involved parties to ensure that documentation is thorough.

The Department of the Interior Policy on Consultation with Indian Tribes (Appendix B.16) establishes methodology accountability and reporting requirements for meaningful consultation.

A Service member of the consultation team for a project/action shall keep comprehensive records (i.e., log of consultation events for the project / action's administration file) which may include, but not be limited to, the scope of consultation efforts, the cost of these efforts, and the effectiveness of consultation activities (Appendix B. 16, p 4). In addition, keep records of the dates of meetings, attendees including senior leadership, topics of discussion, and feedback from the Tribe(s).

The Service may consider implementing a post-consultation review process where it is consistent with law, regulations, and EO 13175. Any review process shall not limit the Department's deliberative process privilege regarding internal considerations or any other applicable privilege.



7. Developing Consultation Protocols With Tribes

Though not required by the Service, the Service may develop, negotiate or enter into a protocol with a specific Tribe that can used to guide all future consultations with that particular Tribe. This section offers general guidance for developing consultation Protocols. It is intended to provide a conceptual frame of reference about the intent, content, and format of such Protocols.

7.1.What is a Protocol?

Protocol (usually a written document–Appendix F) records mutually agreed-upon principles and procedures for conducting a federal-tribal relationship on a government-to-government basis. As such, it is intended to:

- Provide a framework for maintaining a government-to-government relationship.
- Ensure that appropriate levels of Service leadership interact with the Tribe's leadership.
- Establish procedures and designate representatives with authority for conducting government-to-government consultation.
- Enhance timely and open lines of communication.
- Clarify expectations and promote the recognition of tribal and Service interests.
- Build opportunities for developing partnerships and working collaboratively on fish, wildlife, and natural resource-related activities.

7.2. Who Should Negotiate the Protocol?

The Service negotiation team may consist of the Regional Director, Assistant Regional Director, Regional Native American Liaison, and Service technical staff. The Regional Office Native American Liaison should take the lead responsibility for coordinating the Service's involvement during negotiation and preparation of the Protocol. The Washington Office Native American Liaison may be invited to participate as well.

7.3. Preparing the Protocol

Each Protocol will be unique and designed to recognize that the individual Tribe entering into the Protocol is a separate governmental entity with a special relationship with the United States. As such, each Protocol needs to be developed in collaboration with the Tribe and tailored to the specific needs and circumstances of the Service-tribal relationship. The Protocol also needs to be responsive to the particular type of relationship that the Tribe has developed or is in the process of developing with the Service.

For example, a Protocol may be developed that acknowledges the processes and procedures that are currently being used to maintain an established ongoing federal-tribal relationship. In other instances a Protocol may reflect the initial stages of a developing relationship.

Background and Preparation

Because each Protocol must be developed in collaboration with the Tribe, it is important that Service staff first become knowledgeable about the Tribe. As a starting point, the following should be considered:

- The Tribe's cultural and historical information
- The Tribe's political system and governing processes
- The appropriate channels of communication identified by the Tribe
- The Tribe's previous relations with the federal government.

Protocol Format

It is important to note that there are no set of, or pre-established requirements regarding a Protocol. The format and content of the Protocol should be developed jointly by the Service and the Tribe, through negotiation, in a manner that is respectful of their mutual autonomy.

It is recommended, however, that the Protocol should be structured to resemble either a memorandum of agreement, memorandum of understanding, or statement of relationship (Appendix F). Other less formal formats may be appropriate, depending on tribal preferences and the nature of the federal-tribal relationship.

Protocol Content

Both the Tribe and the Service should tailor each Protocol to their specific relationship. The following are examples of some of the recommended stipulations that may be considered, negotiated, and included (as appropriate) in the Protocol:

- Concurrence that the Service and the Tribe will maintain a government-to-government relationship.

- Concurrence on the types of issues that will require meetings and interactions between the Regional Director (or designee) and the tribal leader or council.

- Concurrence that the Service and the Tribe will designate representatives (by position or title) to serve as points of contact for conducting consultation about specified types of issues (e.g., policy or rule making, cultural resources, fish and wildlife or other natural resources, and environmental compliance).

- Concurrence on the appropriate methods for maintaining effective communication (e.g., telephone contact, fax, letter, e-mail, informal meetings, and formal meetings).

- Concurrence on the types of proposed Service activities that the Tribe wants to receive notice about and the appropriate methodology for providing notice.

- Concurrence on the time frame for responding to oral and written communications.

- Concurrence that the Service and the Tribe will exchange information, research, and technical assistance.

- Concurrence (when practicable) that the Regional Director will meet with the Tribe on a periodic basis (e.g., annually, every six months, or other specified interval) to exchange information, discuss upcoming projects or activities, and monitor the effectiveness of the Protocol.

- Concurrence on how to resolve disputes (e.g., this may include the use of alternative dispute resolution processes, third-party mediation, or mediation by the Regional Director or Regional Native American Liaison).

- Concurrence on how to amend or modify the Protocol.

- Concurrence on the time period in which the Protocol will remain in effect and on the process for ending or canceling the Protocol. Other stipulations may be included in the Protocol, as appropriate.

- Concurrence on the conclusion process of a particular Service consultation should adhere to the following:

  - All Tribes that have participated in the consultation should be notified of the Service's decision on the particular action.

  - The correspondence should be a formal written communication from a senior Service official, to the most senior Tribal official involved in the consultation. The correspondence should be sent by mail or delivery service and a copy retained for the Service official file.

  - This notification should specifically include a discussion of the Service's basis for its decision, how the final decision was or was not able to accommodate Tribal concerns raised during the consultation process.

- Consider having the Protocol reviewed by the DOI Solicitor's office.

7.4. Who Should Sign the Protocol?

It is recommended that the Protocol document be signed by individuals possessing sufficient delegated authority to represent their respective governments. This typically means that the Regional Director (or in some cases, the Director) would sign the document for the Service.

Tribes would then sign the document according to their established governmental practice.

7.5. Retention and Distribution of the Signed Protocol

Duplicate original Protocols should be prepared so that the Service and the Tribe each receive an original copy of the signed document. Because Protocols formalize agreed-upon principles and procedures for maintaining a government-to-government relationship, it is important that the Service retains and maintains a record of these documents.

The Regional Office Native American Liaisons will be the responsible Service staff for ensuring that original Protocols are retained by the Regional Offices for their safekeeping and future reference. The Native American Liaisons also will have the lead role in coordinating their distribution. To maintain a permanent Service-wide record about agreements with Tribes, a copy of each executed Protocol should be submitted to the Washington Office Native American Liaison. A copy of the Protocol document should be provided to appropriate Service field offices that may have interactions with the Tribe that has entered into the Protocol.

7.6. Stipulation about Protocols

Stipulation needs to be considered when negotiating and entering into Protocols:

■ The Protocol document is intended to improve Service-tribal interactions by formalizing agreed-upon procedures for conducting consultation and maintaining a government-to-government relationship. It is not intended to create any additional rights or responsibilities that may be enforceable against either the Service or the Tribe. Nor is it intended to take away any rights.

This stipulation is in keeping with the limitations provided in the President's government-to-government relationship memorandum, and is intended as guidance for implementing that policy:

■ The President's government-to-government memorandum (Executive Memorandum, Government-to-government Relations with Native American Tribal Governments, April 29, 1994) states that it "is not intended to, and does not, create any right to administrative or judicial review or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."

If enforceable provisions are desired to satisfy specific legal responsibilities, transfer funds, or incur obligations, a separate and distinct agreement should be entered into to accomplish these objectives. Such documents will require separate formal legal review from the Solicitor's Agreements. For the purposes of this Tribal Consultation Guide, it is recommended that when understanding or agreement documents are being negotiated or developed, legally enforceable provisions should not be included.

7.7. Tribal Discretion

Tribes have the discretion to decide whether they want to negotiate, prepare, and sign a formal Protocol document. If a Tribe does not want to sign a Protocol document, that decision is to be respected. Sometimes, depending on tribal preferences, understandings or agreements about consultation protocol may not result in a formal written document. Should that occur, Service employees are encouraged to consider and apply this guidance, as appropriate, to establish with the Tribe a general or informal frame of reference for conducting Service-tribal interaction. However, Service staff should keep a written record, in any case, of what protocol the Service has followed as the consultation proceeds.

8. Other Issues

This section examines a variety of miscellaneous issues associated with Service-tribal interactions.

8.1. Time Frame for Handling Tribal Interactions

The time frame for developing relationships, conducting consultations, and negotiating Protocols with Tribes is largely open- ended and will vary on a case-by-case basis. These activities are frequently time consuming, particularly when Service-tribal relations have not been established or maintained. Plan for and anticipate that substantial amounts of time and personal involvement may be required to develop relationships that will lead to productive consultations and meaningful Protocols. Patience also is necessary, so plan to consult early and often.

Sometimes, before a Tribe can take an action, approval must be obtained from the Tribal Council or similar governing body. Often, approvals and decisions are adopted by a Tribe in the form of a resolution. Since a resolution is a formal statement by a tribal government, time will be required for the Tribe to deliberate and advance a resolution through the Tribe's political process. When planning meetings with a tribal government, or placing matters before them for their consideration, attention needs to be given to the schedule that the Tribe has established for their tribal council meetings. The interval between meetings may range from several weeks to several months, depending on the Tribe.

8.2. Costs Associated with Consultation

The costs associated with the Service's involvement in conducting Tribal consultation should be viewed as a normal cost of doing business and are a part of our trust responsibilities to Tribes. Public hearings or scoping meetings do not replace government-to-government consultation, and it is incumbent upon the Service to be accommodating in meeting with Tribes or their representatives.

For national and occasional regional-level consultations, as an example, this may include paying for tribal travel expenses to a limited number of locations, meeting space, and services related to the consultation. For most regional and field-level consultations, it is also very important to account for the added expense of consultation-related travel for Service personnel.

When formulating budgets for future Service actions in which tribal consultation is expected—for instance; policy and rule making, ESA activities, and CCP development, funds for these expenses should be requested in the budgeting process.

Pursuant to Department of the Interior's Policy on Consultation with Indian Tribes, the Service is also required to report the cost of consultation with Tribes. An accounting of the value, purpose, and source of all consultation expenditures should be kept as part of each consultation record for reporting purposes and as a justification for future budget increase requests.

8.3. Budget Circumstances

The Service has the authority to consult with Tribes during the preliminary formulation of the agency's budget, particularly with regard to those programs and activities that are for the benefit of Tribes. Such consultations may be mutually beneficial. They afford the Service an opportunity to share information, and they give the Tribes a chance to learn about Service programs, including those activities that Tribes may be eligible to participate in through the Self- Determination Act, Tribal Self- Governance Act, or collaborative efforts and partnerships. Ideally, these consultations should be conducted early enough in the budget formulation process so that Tribes can provide meaningful input.

Although the Service may consult with Tribes about certain items in the budget, there is no mandate requiring that Tribes have an opportunity to participate in Service's budgetary matters. This is different from the process required when the Bureau of Indian Affairs (BIA) formulates its budget with full tribal participation. That type of involvement may create an expectation that the other Interior bureaus conduct their budgetary matters in the same manner as the BIA. The Service, however, operates under a different set of statutory authorities and obligations. For example, the Service does not have the authority to release the President's budget to Tribes prior to its release to Congress by the Office of Management and Budget.

8.4. Confidentiality

Tribes are particularly sensitive about the disclosure of certain kinds of information about religious practices and sacred sites, traditional knowledge, intellectual property, and cultural resources (Appendix F.3—Confidential and Proprietary Information Agreement). In order to minimize the likelihood that sensitive material may be released, it is recommended that the Service refrain from acquiring sensitive information. Tribes should be informed that they should only submit to the Service any information or material that the Tribe is willing to release as part of the public record. If tribally-sensitive information is discussed or collected during any consultation, it is recommended that Service staff consider the following:

- Tribal information that has been disclosed or collected should be protected to the maximum extent practicable.
- Service staff should inform Tribes that information obtained from Tribes may become part of the public record and be released as a result of requests made under the Freedom of Information Act (FOIA).
- Consult your Regional Native American Liaison (or Native American Liaison in the Washington-Office for national programs) or Records Officers if you have questions or would like to discuss how best to protect tribally-sensitive information.

When FOIA requests are made for the disclosure of tribal information, Service offices are required under Secretarial Order 3206, Principle 5, to notify and discuss the issue with the affected Tribe. In the event of a FOIA request, three exemptions may be applicable for withholding tribal information:

Self-Determination Act

Under the regulations implementing the Self-Determination Act the following types of information may be exempt from FOIA (25 CFR 900.2(d)):

- Copies of tribal records that are clearly required to be maintained as part of a DOI bureau's record keeping system.
- Records of contractors, including archived records.
- Records maintained solely by a Tribe.

National Historic Preservation Act

The National Historic Preservation Act provides that a Federal agency must withhold from any disclosure, including Freedom of Information Act (FOIA), after consultation with the Secretary of the Interior, information about a historic property (i.e., eligible for National Register of Historic Places) if the disclosure (16 U.S.C. 470w-3 (a)):

- May cause a significant invasion of privacy.
- Risks harm to the historic resource.
- Impedes the use of a traditional religious site by practitioners.

Archaeological Resources Protection Act

Under the Archaeological Resources Protection Act (ARPA) a Federal land manager can withhold information about the nature and location of any archaeological resource that requires an ARPA permit or other permission under this act (16 U.S.C. 470hh(a).

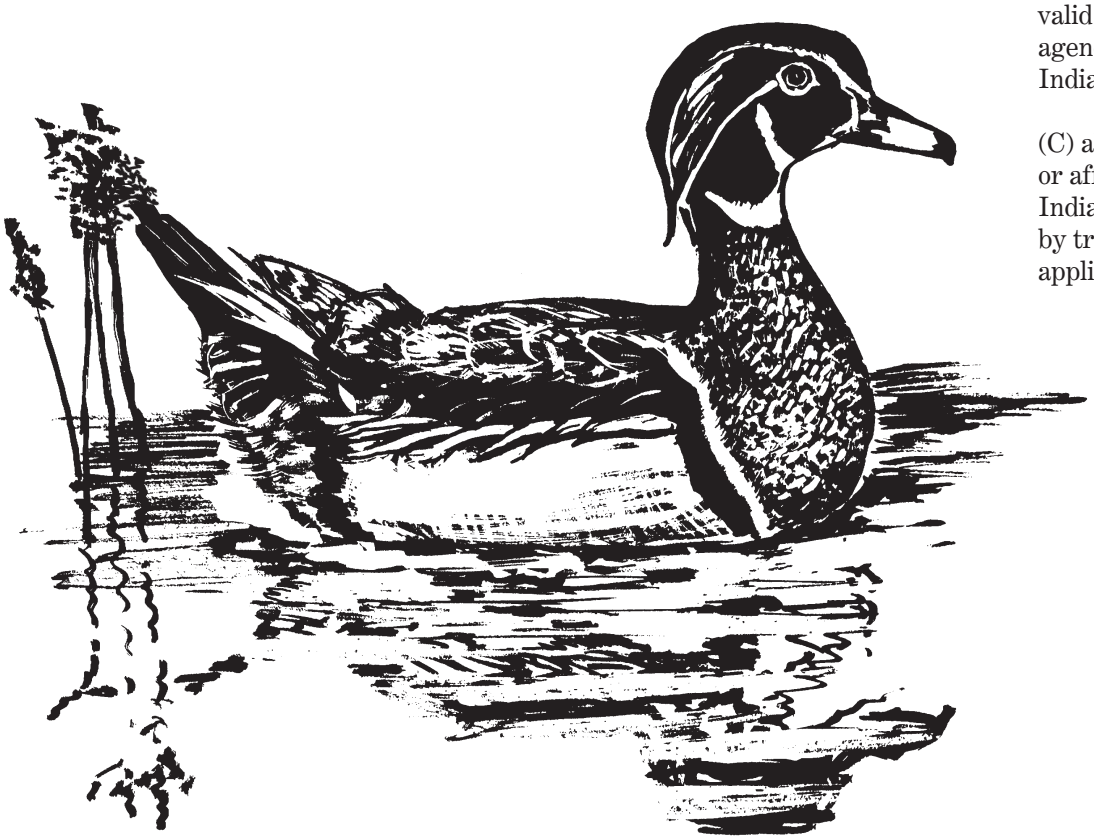
USFWS

Department of the Interior June 2017 Monument Listening Session for Tribes held in conjunction with the National Congress of American Indians conference at the Mohegan Sun in Connecticut.

9. Conclusion

The intent of this guide is to familiarize Service employees with the concepts of tribal status and their unique status defined by the government-to-government relationship between Tribes and the United States carried out through its agencies, including the Service. The guide describes the legal basis for such a relationship, and has offered guidelines on how to achieve such a relationship. The guide also provides information on the legal requirements for such a relationship, cultural awareness, guidelines for conducting meaningful consultations, development of consultation protocols, tips for conducting meetings with Tribes, and tools and principles for developing and maintaining positive government-to-government relationships with Tribes

Maintaining positive relations and providing open, continuous and meaningful communications with tribal governments will enable Service employees to fully succeed in fulfilling our Trust Responsibility and carrying out the mission of the Service.



10. Savings

This Tribal Consultation Guide is not intended to, and does not, create any right to administrative or judicial review or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. Nothing in this Tribal Consultation Guide shall be construed to:

(A) diminish or expand the United States' trust responsibility for tribal fish and wildlife resources, or any legal obligation or remedy arising out of the United States' trust responsibility;

(B) alter, abridge, repeal, or affect any valid, existing agreement between an agency of the United States and an Indian tribal government;

(C) alter, abridge, diminish, repeal, or affect the reserved rights of any Indian tribal government established by treaty, executive order, or other applicable laws or court decrees.

11. Appendices

Appendix A. List Of Federally Recognized Tribes

Five hundred and seventy three Tribes are currently recognized by the United States government (federally-recognized Tribes).

Published in the Federal Register each year is the list of *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs (published pursuant to Pub. L. 103–454; 108 Stat. 4791, 4792 and in exercise of authority established under 25 U.S.C. 2 and 9 and 209 DM 8.) The alphabetized list below also includes the state where the Tribe is located and is based on the latest information published in the Federal Register which is also located on the internet at www.bia.gov/cs/groups/xofa/documents/text/idc2-060708.pdf.

Regional Offices may adjust this list to their particular needs, to provide additional information about current Tribal contact persons, mailing addresses, and telephone numbers, etc. It should be recognized that Tribal interests frequently extend beyond state or regional boundaries. Service employees should contact their Regional Native American Liaison if there are questions about which Tribes have interests in their particular Region.

This list can change over time because there are petitions before the Federal government for non- Federally-recognized Tribes to become federally recognized, or perhaps other Tribes may lose their Federal recognition. Also recognize that several tribal governments are recognized as single entities and as part of a Joint Council which can cause the exact number of "Tribes" to differ depending on who or how you ask.

Indian entities recognized and eligible to receive services from the United States Bureau of Indian Affairs:

Alabama

Poarch Band of Creek Indians

Alaska

Agdaagux Tribe of King Cove
Akiachak Native Community
Akiak Native Community
Alatna Village
Algaaciq Native Village (St. Mary's)
Allakaket Village
Alutiiq Tribe of Old Harbor
Angoon Community Association
Anvik Village
Arctic Village
Asa'carsarmiut Tribe
Atqasuk Village (Atkasook)
Beaver Village
Birch Creek Tribe
Central Council of the Tlingit & Haida Indian Tribes of Alaska
Chalkyitsik Village
Cheesh-Na Tribe
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Chuloonawick Native Village
Circle Native Community
Craig Tribal Association
Curyung Tribal Council
Douglas Indian Association
Egegik Village
Eklutna Native Village
Emmonak Village
Evansville Village (aka Bettles Field)
Galena Village (aka Louden Village)
Gulkana Village
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council
Ivanof Bay Tribe
Kaguyak Village
Kaktovik Village (aka Barter Island)
Kasigluk Traditional Elders Council
Kenaitze Indian Tribe
Ketchikan Indian Corporation
King Island Native Community
King Salmon Tribe
Klawock Cooperative Association
Knik Tribe
Kokhanok Village
Koyukuk Native Village
Levelock Village
Lime Village
Manley Hot Springs Village
Manokotak Village
McGrath Native Village
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Naknek Native Village
Native Village of Afognak
Native Village of Akhiok
Native Village of Akutan
Native Village of Aleknagik
Native Village of Ambler
Native Village of Atka
Native Village of Barrow Inupiat Traditional Government
Native Village of Belkofski
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Native Village of Chignik Lagoon
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)

Native Village of Council
Native Village of Deering
Native Village of Diomede (aka Inalik)
Native Village of Eagle
Native Village of Eek
Native Village of Ekuk
Native Village of Ekwok
Native Village of Elim
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Native Village of Hamilton
Native Village of Hooper Bay
Native Village of Kanatak
Native Village of Karluk
Native Village of Kiana
Native Village of Kipnuk
Native Village of Kivalina
Native Village of Kluti-Kaah (aka Copper Center)
Native Village of Kobuk
Native Village of Kongiganak
Native Village of Kotzebue
Native Village of Koyuk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
Native Village of Mekoryuk
Native Village of Minto
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Native Village of Nightmute
Native Village of Nikolski
Native Village of Noatak
Native Village of Nuiqsut (aka Nooiksut)
Native Village of Nunam Iqua
Native Village of Nunapitchuk
Native Village of Ouzinkie
Native Village of Paimiut
Native Village of Perryville
Native Village of Pilot Point
Native Village of Pitka's Point
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Native Village of Ruby
Native Village of Saint Michael
Native Village of Savoonga
Native Village of Scammon Bay
Native Village of Selawik
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Native Village of Stevens
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Native Village of Teller
Native Village of Tetlin
Native Village of Tuntutuliak
Native Village of Tununak
Native Village of Tyonek
Native Village of Unalakleet
Native Village of Unga
Native Village of Venetie Tribal Government
Native Village of Wales
Native Village of White Mountain
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Nikolai Village
Ninilchik Village
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Nulato Village
Nunakauyarmiut Tribe
Organized Village of Grayling (aka Holikachuk)
Organized Village of Kake
Organized Village of Kasaan
Organized Village of Kwethluk
Organized Village of Saxman
Orutsararmiut Traditional Native Council
Oscarville Traditional Village
Pauloff Harbor Village
Pedro Bay Village
Petersburg Indian Association
Pilot Station Traditional Village
Platinum Traditional Village
Portage Creek Village (aka Ohgsenakale)
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Saint George Island
Saint Paul Island
Seldovia Village Tribe
Shageluk Native Village
Sitka Tribe of Alaska
Skagway Village
South Naknek Village
Stebbins Community Association
Sun'aq Tribe of Kodiak
Takotna Village
Tangirnaq Native Village (aka Woody Island)
Telida Village
Traditional Village of Togiak
Tuluksak Native Community
Twin Hills Village
Ugashik Village
Umkumiut Native Village
Village of Alakanuk
Village of Anaktuvuk Pass
Village of Aniak
Village of Atmautluak
Village of Bill Moore's Slough
Village of Chefornak
Village of Clarks Point
Village of Crooked Creek
Village of Dot Lake
Village of Iliamna
Village of Kalskag
Village of Kaltag
Village of Kotlik
Village of Lower Kalskag
Village of Ohogamiut
Village of Red Devil
Village of Salamatoff
Village of Sleetmute
Village of Solomon

Village of Stony River
Village of Venetie
Village of Wainwright
Wrangell Cooperative Association
Yakutat Tlingit Tribe
Yupiit of Andreafski

Arizona

Ak Chin Indian Community
Cocopah Tribe
Colorado River Indian Tribes
Fort McDowell Yavapai Nation
Fort Mojave Indian Tribe
Gila River Indian Community
Havasupai Tribe
Hopi Tribe
Hualapai Indian Tribe
Kaibab Band of Paiute Indians
Navajo Nation
Pascua Yaqui Tribe
Quechan Tribe
Salt River Pima-Maricopa Indian Community
San Carlos Apache Tribe
San Juan Southern Paiute Tribe
Tohono O'odham Nation
Tonto Apache Tribe
White Mountain Apache Tribe
Yavapai-Apache Nation
Yavapai-Prescott Tribe

California

Agua Caliente Band of Cahuilla Indians
Alturas Indian Rancheria
Augustine Band of Cahuilla Indians
Barona Group of Capitan Grande Band of Mission Indians
Bear River Band of the Rohnerville Rancheria
Berry Creek Rancheria of Maidu Indians
Big Lagoon Rancheria
Big Pine Band of Owens Valley Paiute Shoshone Indians
Big Sandy Rancheria of Mono Indians
Big Valley Band of Pomo Indians
Bishop Paiute Tribe
Blue Lake Rancheria
Bridgeport Paiute Indian Colony
Buena Vista Rancheria of Me-Wuk Indians
Cabazon Band of Mission Indians
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community
Cahto Indian Tribe of the Laytonville Rancheria
Cahuilla Band of Mission Indians
California Valley Miwok Tribe
Campo Band of Diegueno Mission Indians
Cedarville Rancheria
Chemehuevi Indian Tribe
Cher-Ae Heights Indian Community of the Trinidad Rancheria
Chicken Ranch Rancheria of Me-Wuk Indians
Cloverdale Rancheria of Pomo Indians
Cold Springs Rancheria of Mono Indians
Cortina Indian Rancheria of Wintun Indians
Coyote Valley Band of Pomo Indians
Death Valley Timbi-Sha Shoshone Band
Dry Creek Rancheria of Pomo Indians
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria
Elk Valley Rancheria
Enterprise Rancheria of Maidu Indians
Ewiiaapaayp Band of Kumeyaay Indians
Federated Indians of Graton Rancheria
Fort Bidwell Indian Community
Fort Independence Indian Community of Paiute Indians
Greenville Rancheria of Maidu Indians
Grindstone Indian Rancheria of Wintun-Wailaki Indians
Guidiville Rancheria
Habematolel Pomo of Upper Lake
Hoopa Valley Tribe
Hopland Band of Pomo Indians
Iipay Nation of Santa Ysabel
Inaja Band of Diegueno Mission Indians
Ione Band of Miwok Indians
Jackson Rancheria of Me-Wuk Indians
Jamul Indian Village
Karuk Tribe
Kashia Band of Pomo Indians
Koi Nation of Northern California
La Jolla Band of Luiseno Mission Indians
La Posta Band of Diegueno Mission Indians
Lone Pine Paiute-Shoshone Tribe
Los Coyotes Band of Cahuilla and Cupeno Indians
Lytton Rancheria Makah Indian Tribe
Manchester Band of Pomo Indians
Manzanita Band of Diegueno Mission Indians
Mechoopda Indian Tribe
Mesa Grande Band of Diegueno Mission Indians
Middletown Rancheria of Pomo Indians
Mooretown Rancheria of Maidu Indians
Morongo Band of Mission Indians
Northfork Rancheria of Mono Indians
Pala Band of Luiseno Mission Indians
Paskenta Band of Nomlaki Indians
Pauma Band of Luiseno Mission Indians
Pechanga Band of Luiseno Mission Indians
Picayune Rancheria of Chukchansi Indians
Pinoleville Pomo Nation
Pit River Tribe
Potter Valley Tribe
Quartz Valley Indian Community
Ramona Band or Village of Cahuilla Mission Indians
Redding Rancheria
Redwood Valley Rancheria of Pomo Indians
Resighini Rancheria
Rincon Band of Luiseno Mission Indians
Robinson Rancheria of Pomo Indians
Round Valley Indian Tribes
San Manuel Band of Mission Indians
San Pasqual Band of Diegueno Mission Indians
Santa Rosa Indian Community
Santa Rosa Band of Cahuilla Indians
Santa Ynez Band of Chumash Mission Indians
Scotts Valley Band of Pomo Indians
Sherwood Valley Rancheria of Pomo Indians
Shingle Springs Band of Miwok Indians
Soboba Band of Luiseno Indians
Susanville Indian Rancheria
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria
Tolowa Dee-Ni' Nation
Torres Martinez Desert Cahuilla Indians
Tule River Indian Tribe
Tuolumne Band of Me-Wuk Indians
Twenty-Nine Palms Band of Mission Indians
United Auburn Indian Community
Utu Utu Gwaitu Paiute Tribe
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians
Washoe Tribe of Nevada & California
Wilton Rancheria

Wiyot Tribe
Yocha Dehe Wintun Nation
Yurok Tribe

Colorado

Southern Ute Indian Tribe
Ute Mountain Tribe

Connecticut

Mashantucket Pequot Tribal Nation
Mohegan Tribe of Connecticut

Florida

Miccosukee Tribe of Indians
Seminole Tribe of Florida

Idaho

Coeur D'Alene Tribe
Kootenai Tribe of Idaho
Nez Perce Tribe
Shoshone-Bannock Tribes

Iowa

Sac & Fox Tribe of the Mississippi in Iowa

Kansas

Iowa Tribe of Kansas and Nebraska
Kickapoo Tribe of Indians of Kansas
Prairie Band of Potawatomi Nation
Sac & Fox Nation of Missouri in Kansas and Nebraska

Louisiana

Chitimacha Tribe of Louisiana
Coushatta Tribe of Louisiana
Jena Band of Choctaw Indians
Tunica-Biloxi Indian Tribe

Maine

Aroostook Band of Micmacs
Houlton Band of Maliseet Indians
Passamaquoddy Tribe (Indian Township)
Passamaquoddy Tribe (Pleasant Point)
Penobscot Nation

Massachusetts

Mashpee Wampanoag Tribe
Wampanoag Tribe of Gay Head (Aquinnah)

Michigan

Bay Mills Indian Community
Grand Traverse Band of Ottawa and Chippewa Indians
Hannahville Indian Community
Keweenaw Bay Indian Community
Lac Vieux Desert Band of Lake Superior
Little River Band of Ottawa Indians
Little Traverse Bay Bands of Odawa Indians
Match-e-be-nash-she-wish Band of Pottawatomi Indians
Nottawaseppi Huron Band of the Potawatomi
Pokagon Band of Potawatomi Indians
Saginaw Chippewa Indian Tribe
Sault Ste. Marie Tribe of Chippewa Indians

Minnesota

Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe
Fond du Lac Band of the Minnesota Chippewa Tribe
Grand Portage Band of the Minnesota Chippewa Tribe
Leech Lake Band of the Minnesota Chippewa Tribe
Lower Sioux Indian Community
Mille Lacs Band of the Minnesota Chippewa Tribe
Minnesota Chippewa Tribe
Prairie Island Indian Community
Red Lake Band of Chippewa Indians
Shakopee Mdewakanton Sioux Community
Upper Sioux Community
White Earth Band of the Minnesota Chippewa Tribe

Mississippi

Mississippi Band of Choctaw Indians

Montana

Assiniboine and Sioux Tribes
Blackfeet Nation
Chippewa-Cree Indians of Rock Boys
Confederated Salish & Kootenai Tribes of the Flathead Reservation
Crow Tribe
Gros Ventre and the Assiniboine Tribes of Fort Belknap
Northern Cheyenne

Nebraska

Omaha Tribe of Nebraska
Ponca Tribe of Nebraska
Santee Sioux Nation
Winnebago Tribe of Nebraska

Nevada

Duckwater Shoshone Tribe
Ely Shoshone Tribe of Nevada
Fort McDermitt Paiute and Shoshone Tribes
Las Vegas Tribe of Paiute Indians
Lovelock Paiute Tribe
Moapa Band of Paiute Indians
Paiute-Shoshone Tribe of the Fallon Reservation and Colony
Pyramid Lake Paiute Tribe
Reno-Sparks Indian Colony
Shoshone-Paiute Tribes of the Duck Valley Indian Reservation
Summit Lake Paiute Tribe
Te-Moak Tribe of Western Shoshone Indians
Walker River Paiute Tribe
Winnemucca Indian Colony
Yerington Paiute Tribe
Yomba Shoshone Tribe

New Mexico

Jicarilla Apache Nation
Mescalero Apache Tribe
Ohkay Owingeh
Pueblo of Acoma
Pueblo of Cochiti
Pueblo of Jemez
Pueblo of Isleta
Pueblo of Laguna
Pueblo of Nambe
Pueblo of Picuris
Pueblo of Pojoaque
Pueblo of San Felipe
Pueblo of San Ildefonso
Pueblo of Sandia
Pueblo of Santa Ana
Pueblo of Santa Clara
Pueblo of Santo Domingo
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Zia
Zuni Tribe

New York

Cayuga Nation
Oneida Indian Nation of New York
Onondaga Nation
Saint Regis Mohawk Tribe
Seneca Nation of Indians
Shinnecock Indian Nation
Tonawanda Band of Seneca Indians
Tuscarora Nation

North Carolina

Eastern Band of Cherokee Indians

North Dakota

Mandan, Hidatsa and Arikara Nation
Spirit Lake Tribe
Turtle Mountain Band of Chippewa

Oklahoma

Absentee-Shawnee Tribe of Indians
Alabama-Quassarte Tribal Town
Apache Tribe of Oklahoma
Caddo Nation of Oklahoma
Cherokee Nation of Oklahoma
Cheyenne and Arapaho Tribes
Chickasaw Nation of Oklahoma
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation
Comanche Nation of Oklahoma
Delaware Nation
Delaware Tribe of Indians
Eastern Shawnee Tribe of Oklahoma
Fort Sill Apache Tribe
Iowa Tribe of Oklahoma
Kaw Nation
Kialegee Tribal Town
Kickapoo Tribe of Oklahoma
Kiowa Indian Tribe of Oklahoma
Miami Tribe of Oklahoma
Modoc Tribe of Oklahoma
Muscogee (Creek) Nation
Osage Nation
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians
Pawnee Nation of Oklahoma
Peoria Tribe of Indians of Oklahoma
Ponca Tribe of Indians of Oklahoma
Sac and Fox Nation of Oklahoma
Seminole Nation of Oklahoma
Seneca-Cayuga Tribe of Oklahoma
Shawnee Tribe
Thlopthlocco Tribal Town, Oklahoma
Tonkawa Tribe of Indians of Oklahoma
United Keetoowah Band of Cherokee Indians in Oklahoma
Wichita and Affiliated Tribes
Wyandotte Nation

Oregon

Burns Paiute Tribe
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians
Confederated Tribes of the Grand Ronde Community
Confederated Tribes of Siletz Indians
Confederated Tribes of the Umatilla Reservation
Confederated Tribes of the Warm Springs Reservation
Coquille Tribe
Cow Creek Band of Umpqua Indians
Klamath Tribes

Rhode Island

Narragansett Indian Tribe

South Carolina

Catawba Indian Nation

South Dakota

Cheyenne River Sioux Tribe
Crow Creek Sioux Tribe
Flandreau Santee Sioux Tribe
Lower Brule Sioux Tribe
Oglala Sioux Tribe
Rosebud Sioux Tribe
Sisseton-Wahpeton Oyate
Standing Rock Sioux Tribe
Yankton Sioux Tribe

Texas

Alabama-Coushatta Tribe of Texas
Kickapoo Traditional Tribe of Texas
Ysleta Del Sur Pueblo

Utah

Cedar Band of Paiutes
Confederated Tribes of the Goshute Reservation
Indian Peaks Band of Paiutes
Kanosh Band of Paiutes
Koosharem Band of Paiutes
Northwestern Band of Shoshone Nation (Washakie)
Shivwits Band of Paiutes
Skull Valley Band of Goshute Indians
Ute Indian Tribe

Virginia

Chickahominy Indian Tribe
Eastern Chickahominy Tribe
Monacan Indian Nation
Nansemond Indian Tribe
Pamunkey Indian Tribe
Rappahannock Tribe
Upper Mattaponi Tribe

Washington

Confederated Tribes of the Chehalis Reservation
Confederated Tribes of the Colville Reservation
Confederated Tribes and Bands of the Yakama Nation
Cowlitz Indian Tribe
Hoh Indian Tribe
Jamestown S'Klallam Tribe
Kalispel Indian Community
Lower Elwha Tribal Community
Lummi Tribe of the Lummi Reservation
Muckleshoot Indian Tribe
Nisqually Indian Tribe
Nooksack Indian
Port Gamble Indian Community
Puyallup Tribe
Quapaw Tribe of Indians
Quileute Tribe
Quinault Tribe
Samish Indian Tribe
Sauk-Suiattle Indian Tribe
Shoalwater Bay Tribe
Skokomish Indian Tribe
Snoqualmie Tribe Spokane Tribe
Squaxin Island Tribe

Stillaguamish Tribe

Suquamish Indian Tribe

Swinomish Indians

Tulalip Tribes

Upper Skagit Indian Tribe

Wisconsin

Bad River Band of the Lake Superior Tribe of Chippewa Indians

Forest County Potawatomi Community

Ho-Chunk Nation

Lac Courte Oreilles Band of Lake Superior Chippewa Indians

Lac du Flambeau Band of Lake Superior Chippewa Indians

Menominee Indian Tribe

Oneida Tribe of Indians of Wisconsin

Red Cliff Band of Lake Superior Chippewa Indians

St. Croix Chippewa Indians

Sokaogon Chippewa Community

Stockbridge Munsee Community (Band of Mohicans)

Wyoming

Eastern Shoshone Tribe of the Wind River Reservation

Northern Arapahoe Tribe of the Wind River Reservation

Appendix B. Legal and Policy Requirements for Consultation

Consultation with Tribes and their members is required by a variety of statutes, executive orders, and policies. In addition to Native American and Alaska Native governments, several of these legal and policy requirements pertain to Native Hawaiians, and mandate the same form of consultation with Native Hawaiian organizations.

The following is an overview of the major legal requirements for consultation.

The requirements for notification and consent also are addressed in order to distinguish these closely related topics from the subject of consultation. This section is intended to highlight the authorities and contexts that give rise to formal and informal Federal-Tribal communications, and the requirements for satisfying those responsibilities. A synopsis of each authority is presented, and the reader is referred to the pertinent sections of either the United States Code or the Code of Federal Regulations for a review of the codified statutory or regulatory language.

Statutes: The statutory framework for consultation involves three bodies of law pertaining to: Indians, cultural resources, and the environment.

B.1. Indian Self-Determination and Education Assistance Act (25 U.S.C. 450)

The Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended) establishes a self-determination policy and permits federally-recognized Indian Tribes to plan, conduct, and administer programs and services that traditionally have been managed by the Federal government. The Act is organized into six titles: Title I. Indian Self Determination, Title II.

Indian Education Assistance, Title III. Tribal Self-Governance Demonstration Project, repealed by Pub. L. 106-260), Title IV. Self-Governance, Title V. Tribal Self-governance, applicable only to the Indian Health Service, and Title VI Tribal Self-Governance—Department of Health and Human Services, Demonstration Project Feasibility Study).

Although the Service does not administer qualifying programs under Title I, this title provides for self-determination contracts and grants, and is commonly referred to as the "638 process"—these types of contracts or grants are primarily with the Bureau of Indian Affairs and a Tribe. It is important to understand Title I because it establishes the general framework for the consultation process for Title IV, and because a Tribe may present a case for which a Service program could be eligible under Title I. Title IV is a recent amendment that makes permanent and expands upon the Tribal Self-governance Demonstration Project (Title II). The following examines the consultation requirements under these titles.

Title I, Indian Self-Determination: Title I, referred to as the Indian Self-Determination Act, gives express authority to the Secretaries of the Interior and Health and Human Services to contract with and make grants to Indian Tribes and Tribal organizations for planning, conducting, or administering programs and services (including construction) that are funded by the Federal government for the benefit of Indians and because of their status as Indians. The regulations implementing this title establish that:

Consultation is to be maintained with tribal governments and tribal organizations about the budget process related to the relevant programs, functions, services, and activities available.

The Indian Self-Determination Act requires that either the Bureau or a Tribe provide written notice within prescribed a time frame and procedure for the following: allocation and availability of funds; intent to contract; conflict of interest; tort claims; awarded funds are insufficient to complete a contract; intent to suspend, withhold, or delay payment; intent to terminate a construction contract for convenience; reassumption of a project; emergency reassumptions; and appeals.

A comprehensive internal agency procedures handbook for non-construction contracting under Title I has been developed by a joint Federal-Tribal work group. Copies of this handbook, and supplemental guidance, can be requested through the Washington Office (WO) and Regional Office (RO) Native American Liaisons, or the Department of the Interior.

Title IV, Tribal Self-Governance: Title IV, the Self-Governance Act of 1994, expands upon the principles found in the Self-Determination Act. Under this title, Tribes and specially designated tribal consortia that wish to participate must have qualified for Self-Governance status through the Bureau of Indian Affairs' Office of Self Governance. Participating Tribes and consortia receive greater opportunities to actively participate in programs, services, functions, and activities, or parts thereof (programs) that are conducted by the Department of the Interior and to which they are able to establish a cultural, historic, or geographic nexus. Participating Tribes can negotiate and enter into Annual Funding Agreements to administer certain programs of the Department and its bureaus.

Questions about self-governance should be directed to the Headquarters and Regional Native American Liaisons, or to the Solicitor.

B.2. American Indian Religious Freedom Act (16 U.S.C. 1996)

In 1978 Congress passed the American Indian Religious Freedom Act (AIRFA) which recognizes that Indians have the right to conduct traditional religious practices, gain access to sacred sites located on public lands, and possess and use sacred objects. It also directs all Federal departments and agencies to evaluate, within one year after passage of AIRFA, their policies and procedures in consultation with traditional Indian religious leaders. AIRFA was amended in 1994 to provide for the traditional use of peyote by Indians for religious purposes.

Although AIRFA does not confer special religious rights to Indians, courts have held that it does impose certain procedural requirements:

- Federal agencies are required to learn about and to avoid unnecessary interference with traditional Indian religious practices. See Crow v. Gullett, 541 F.Supp. 785, 793 P.S.D. 1982).

- Federal agencies must evaluate their policies and procedures in light of AIRFA's purpose, and ordinarily should consult with tribal leaders before approving projects likely to affect religious practices.

- Federal agencies can satisfy the procedures required by AIRFA by including the consideration of Indian religious concerns in evaluations and documents completed under the National Environmental Policy Act.

See Wilson v. Block, 708 F.2d 735, 747 (D.C. Cir. 1983), cert. denied 464 U.S. 1056 (1984).

Service programs are recommended to contact your respective Regional or Washington Office Archaeologist regarding activities that may affect provisions under AIRFA.

B.3. Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)

The Native American Graves Protection and Repatriation Act (NAGPRA) requires consultation with Tribes, traditional religious leaders, and lineal descendants of Native Americans regarding the treatment and disposition of specific kinds of cultural items, including:

> human remains and-"associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects; and "unassociated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe, (see 25 U.S.C. 3001).

Under this Act, consultation is required:

- Prior to the intentional excavation or removal of Native American human remains and objects. 25 U.S.C. 3002(c).

- In the event of an inadvertent discovery of Native American human remains and objects. 25 U.S.C. 3002(d).

- During the completion of the inventory of human remains and associated funerary objects, and summary of unassociated funerary objects, sacred objects, and cultural patrimony. 25 U.S.C. 3003 and 3004.

- When repatriating human remains and objects. 25 U.S.C. 3005.

- In the preparation of action plans, Memoranda of Understanding, and other compliance related documents, and at other points in the compliance process.

The regulations implementing NAGPRA establish a procedural framework for conducting consultation, providing notice, and obtaining consent. This framework is, at times, complex and may present procedural difficulties, particularly if NAGPRA is not considered early in project planning.

NAGPRA compliance in the Service has been delegated to specific cultural resource staff, the Regional Historic Preservation Officer, a regional NAGPRA coordinator, or archaeologist. Service programs should contact their Regional Historic Preservation Officer (RHPO) or NAGPRA coordinator prior to any anticipated ground-disturbing activities, or in the case of inadvertent

discovery of human remains or objects thought to have been associated with them.

In the case of the discovery of human remains, the first call should be to the police, the second, to the Regional Historic Preservation Officer. If the police determine that the remains do not represent a crime, the RHPO or regional NAGPRA coordinator will determine whether the remains are Native American. If the remains are not Native American, they are probably archaeological. If they are Native American, NAGPRA comes into play. The RHPO or NAGPRA coordinator will determine the affiliation of Native American remains through research and consultation. The process may require sufficient archaeological field work to document the context (date and cultural associations) of the remains. Determination of affiliation requires professional anthropological expertise. Determination of affiliation requires professional anthropological expertise. The RHPO or NAGPRA coordinator will keep the Regional Native American Liaison informed about the progress of the process and consult with the Liaison about contact and correspondence.

Documentation, correspondence, determination of affiliation and notices are the responsibility of the RHPO or NAGPRA coordinator.

The following is a synopsis of the NAGPRA procedures that specifically deal with consultation, documentation, and notification. It is intended to introduce managers and planners to the complexities of NAGPRA, but is not enough to enable them to complete the process themselves.

Intentional Archeological Excavation

The intentional excavation of NAGPRA cultural items with an Archaeological Resource Protection Act Permit given by the RHPO for any archaeological excavation is allowed only if:

- The objects are excavated or removed in accordance with the requirements of the Archaeological Resources Protection Act. 43 CFR 10.3 (b)(1).
- Consultation has been completed, or in the case of Tribal lands, consent has been obtained from the Tribe. 43 CFR 10.3(b)(2).
- There is proof of the consultation or consent. 43 CFR 10.3(b)(4).
- The RHPO has taken reasonable steps to determine whether a planned activity may result in the excavation of NAGPRA cultural items.

If it appears likely that Native American human remains or related artifacts will be excavated, the RHPO will have followed NAGPRA and an action plan will be in place. In order to write the action plan, the RHPO or regional NAGPRA coordinator will have done the following:

- Provided written notice to Tribes that are likely to be culturally affiliated with the NAGPRA cultural items. 43 CFR 10.3(c)(1).
- Provided written notice to any present-day Tribe that aboriginally occupied the area of the planned activity and any other Tribes that are likely to have a cultural relationship to the NAGPRA cultural items. 43 CFR 10.3(c)(1).
- In the written notice described; the planned activity, its general location, the basis on which it was determined that NAGPRA cultural items may be excavated, and the basis for determining likely custody of those items. 43 CFR 10.3(c)(1).
- In the written notice proposed a time and place for meetings or consultation to further consider the activity and the proposed treatment and disposition of the NAGPRA cultural items. 43 CFR 10.3(c)(1).
- Attempted telephone contact if there is no response to the written notice within 15 days. 43 CFR 10.3(c) (1).
- Consulted with the Tribes.
- Following consultation, prepared and implemented a written plan of action 43 CFR 10.3(c)(2).

Consultation

In the event of intentional excavation or inadvertent discoveries, the RHPO or regional NAGPRA coordinator must consult with known lineal descendants or Indian Tribal officials. There are separate procedures for the two situations, but in both cases the consulting parties may include:

- Tribes that have aboriginal lands where the planned activity will occur or where the inadvertent discovery has been made. 43 CFR 10.5(a)(1).
- Tribes that are, or are likely to be, culturally affiliated with the NAGPRA cultural items. 43 CFR 10.5(a)(2).
- Tribes that have a demonstrated cultural relationship with the NAGPRA cultural items. 43 CFR 10.5(a)(3).

Inadvertent Discoveries

In the event of a discovery of NAGPRA cultural items or human remains RHPO or regional NAGPRA coordinator will have:

- Ensured that the person making the discovery provided immediate telephone notification, with written confirmation to the federal land-management agency or, if on tribal lands, to the responsible tribal official. 43 CFR 10.4(b).

- If the inadvertent discovery occurred in connection with an ongoing activity on federal or tribal lands, seen that the person providing notice also stopped the activity in the area of the inadvertent discovery and made reasonable efforts to protect the NAGPRA cultural items. 43 CFR 10.4(c).

If the discovery was made on Service lands, the RHPO or regional NAGPRA coordinator assists the project leader to complete the following within three days after receipt of the written confirmation of notification:

- Certify receipt of the notification. 43 CFR 10.4(d)(l)(I).

- Take immediate steps to protect the discovery. 43 CFR 10.4(d)(1)(ii).

- The RHPO or regional NAGPRA coordinator will notify the Tribes likely to be culturally affiliated with the discovery by telephone and with follow-up written confirmation. 43 CFR 10.4(d)(1)(iii).

- The RHPO or regional NAGPRA coordinator will initiate consultation. 43 CFR 10.4(d)(1)(iv).

The activity may resume 30 days after certifying the receipt of the written confirmation of notice, and when all of the requirements of NAGPRA and other laws have been completed. 43 CFR 10.4(d)(2).

Similar notification procedures apply to discoveries made on tribal lands; however, consent from the Tribe is required before the cultural items may be excavated or removed. 43 CFR 10.4(e). This means that any activity with a Service nexus (e.g., funding or permitting) requires that the RHPO work with the Tribal Historic Preservation Officer (or appropriate State Historic Preservation Officer) in this process.

All authorizations (leases and permits) to carry out activities on Federal lands must include a requirement for the holder of the authorization to provide notice in the event of a discovery. 43 CFR 10.4(g).

In the case of inadvertent discoveries, the RHPO or regional NAGPRA coordinator starts consultation after trying to identify lineal descendants or interested Tribes and provide them with written notice. 43 CFR 10.5(b) (l). The notice must propose a time and place for meetings or consultation, proposed treatment measures, and the proposed disposition of NAGPRA items. 43 CFR 10.5(b)(2). The consultation must seek to identify traditional religious leaders who have special specialized knowledge about the cultural items. 43 CFR 10.5(b)(3).

During the consultation process the RHPO or regional NAGPRA coordinator must provide in writing to lineal descendants or Tribal officials that are likely to be affiliated with the NAGPRA items:

- A list of all Tribes that are being, or have been, consulted. 43 CFR 10.5(c)(1).

- An indication that additional documentation used to identify affiliation will be supplied upon request. 43 CFR 10.5(c)(2).

The RHPO or regional NAGPRA coordinator requests:

- Name and address of the tribal official that will act as the tribal representative during the consultation process. 43 CFR 10.5(d)(1).

Names and appropriate-methods to contact lineal descendants who should be contacted to participate in the consultation process. 43 CFR 10.5(d)(2).

- Recommendations on how the process should be conducted. 43 CFR 10.5(d)(3).

- Following consultation, the RHPO or regional NAGPRA coordinator will prepare, approve, and sign a written plan of action. 43 CFR 10.5(e).

- A copy of the plan must be provided to the lineal descendants and involved Tribes.

- The lineal descendants and tribal officials may sign the plan of action.

- Whenever possible, comprehensive agreements should be entered into with Indian Tribes. 43 CFR 10.5(f).

The agreements should address all Federal land managing activities that could result in the intentional excavation or inadvertent discovery of cultural items.

Consultation regarding the agreement should lead to the establishment of standard procedures for carrying out the regulatory requirements regarding consultation.

Signed agreements, or correspondence related to efforts to reach agreements, constitute proof that consultation has been completed.

Custody

When transferring custody of NAGPRA cultural items intentionally excavated or inadvertently discovered back to lineal descendants or Tribes, the RHPO or regional NAGPRA coordinator follows these procedures:

- Publish a notice of the proposed disposition in a newspaper of general circulation in the area where they were excavated or discovered and, if applicable, in a newspaper of general circulation in the area(s) in which the Tribes now reside. 43 CFR 10.6(c).

- Publish the notice at least two times, at least one week apart. 43 CFR 10.6(c).

- Delay the transfer of remains or artifacts until at least 30 days after the publication of the second notice in order to allow time for additional claimants to come forward. 43 CFR 10.6(c).

Summaries and Inventories

RHPO or regional NAGPRA coordinator consults with the Tribes during the preparation of summaries of unassociated NAGPRA cultural items and/or inventories of associated NAGPRA cultural items held in museums and Federal collections.

- Consultation about summaries and inventories with lineal descendants, tribal officials. 43 CFR 10.8(d)(l) and 10.9(b)(1).

- Consultation about summaries and inventories may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue. 43 CFR 10.8(d)(2) and 10.9(b)(2).

- During summary consultation copies of the summary are to be provided by the RHPO or regional NAGPRA coordinator to lineal descendants (when known), tribal officials, and traditional religious leaders. 43 CFR 10.8(d)(3).

- During inventory consultation the RHPO or regional NAGPRA coordinator provides information about the tribes that have been or are, being consulted, a description of how the inventory is being conducted, time frames for completing the inventory, and an indication that additional information will be supplied upon request. 43 CFR 10.9(b)(3).

- During summary and inventory consultation the RHPO or regional NAGPRA coordinator must requests information about the name and address of the Tribal official that will act as the representative during consultations, recommendations on how to conduct the consultation process, names and appropriate methods to contact lineal descendants and traditional religious leaders. 43 CFR 10.8(d)(4) and 10.9(b)(4).

- The RHPO or regional NAGPRA coordinator also publishes a notification of the completion of the inventory in the Federal Register and sent to likely and identified culturally affiliated Tribes. 43 CFR 10.9(e).

- The RHPO or regional NAGPRA coordinator publishes a notice of intent to repatriate unassociated and associated NAGPRA cultural items, and human remains in the Federal Register. 43 CFR 10.8(f), 43 CFR 10.10(a)(3) and 10.10(b)(b)(2)..

Repatriation

- Consultation is required for the repatriation of associated and unassociated NAGPRA cultural items.

- Consultation is required to determine the appropriate place and manner of repatriation. 43 CFR 10.10(d).

B.4. Archaeological Resources Protection Act (16 U.S.C. 470aa)

The Archeological Resources Protection Act (ARPA) provides a means for protecting archeological resources located on public and tribal lands. This act delimits prohibited activities, establishes civil and criminal penalties, and creates a permitting process for scientific archaeological excavations. Permits may be required prior to excavating or removing archeological resources located on either public (i.e., Service lands) or tribal lands. In the case of tribal lands, the consent of the Tribe or tribal member owner also is required prior to the issuance of a permit. In the Service, ARPA permits are administered by the RHPO. Although ARPA does not specifically require consultation, it does impose a notification requirement:

- Tribes are required to be notified before an ARPA permit is issued for actions that could result in possible harm to, or destruction of, sites on public lands having cultural or religious importance. 16 U.S.C. 470cc(c) and 43 CFR 7.7(a).

- Notice is to be provided at least 30 days before a permit is issued. 43 CFR 7.7(a).

- The notice is to be sent to the tribal leader or other designated tribal official. 43 CFR 7.7(a)(1).

- If a Tribe requests a meeting during the 30-day period, a meeting may be held with official tribal representatives to discuss their interests, including ways to avoid or mitigate potential harm or destruction. Any adopted mitigation measures are to be included in the permit. 43 CFR 7.7(a)(3).

- In the event that a permit must be issued immediately because of an imminent threat of loss or destruction of an archeological resource, the 30-day period is waived. However, Tribes are required to be notified after the permit is issued. 43 CFR 7.7(a)(4).

B.5. National Historic Preservation Act (16 U.S.C. 470)

The National Historic Preservation Act (NHPA), as amended, creates a framework for the preservation of important cultural resources and establishes a procedural process for the consideration of the effects of Federal undertakings on historic properties. The term historic property means any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places. NHPA requires Federal agencies to conduct consultation with Tribal governments when carrying out preservation and compliance responsibilities:

- Properties of traditional religious and cultural importance to a Tribe may be determined to be eligible for the National Register. 16 U.S.C..470a(d)(6)(A).

- Consultation is required with any Tribe that attaches religious and cultural significance to historic properties. 16 U.S.C. 470a(d)(6)(B).

- An agency's preservation related activities are to be carried out in consultation with Tribes. 16 U.S.C. 470h-2(a)(2)(D).

- An agency's procedures for compliance with section 106 are to provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with Tribes, regarding the means by which adverse effects on such properties will be considered. 16 U.S.C. 470h-2(a) (2)(E)(ii).

The regulations implementing NHPA's section 106 compliance process also establish procedural requirements for conducting consultation with Tribes. Compliance with NHPA is administered by the RHPO. See 36 CFR Part 800.

B.6. National Environmental Policy Act (42 U.S.C. 4331)

The National Environmental Policy Act (NEPA) is a procedural process that has been established to ensure that Federal agencies will have available and consider detailed information concerning significant environmental impacts, and that relevant information will be made available to the public during decision making. The regulations implementing NEPA require tribal consultation and involvement during the NEPA process.

- Federal agencies are to consult with Tribes early in the NEPA process. 40 CFR 1501.2(d)(2).

- Affected Tribes are to be invited to participate in the scoping process. 40 CFR 1501.7(a)(1).

- During the analysis of environmental consequences to a tribal reservation, discussions must consider possible conflicts between the proposed action and the objectives of tribal land use plans, policies, and controls. 40 CFR 1502.16(c).

- Tribes must be invited to comment on a draft Environmental Impact Statement when the effects may occur on a reservation. 40 CFR 1503.1(a)(2)(ii).

- As part of the public involvement process, notice must be provided to Tribes when effects may occur on reservations. 40 CFR 1506.6(b)(3)(ii).

- When effects take place on a tribal reservation, a Tribe may become a cooperating agency by entering into an agreement with the lead agency. 40 CFR 1508.5.

The reader is referred to the Service's NEPA Handbook for additional guidance about how the NEPA process is used to consider Tribal trust assets, sacred sites, and off-reservation effects.

Executive and Secretarial Orders: The authority underlying executive and secretarial orders is found in a variety of sources, including the U.S. Constitution, treaties, judicial decisions, and statutes.

B.7. Government-to-Government Relations

The Presidential Memorandum of April 29, 1994, reaffirmed in the memorandum issued September 23, 2004, is the most recent policy statement about maintaining a government-to-government relationship with tribal governments. It directs that executive agency activities that affect tribal rights or trust resources are to be implemented in a knowledgeable and sensitive manner that is respectful of tribal autonomy.

Each department and agency is required to:

- Operate within a government-to-government relationship with federally-recognized Tribes.

- Consult to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally-recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

- Assess the impact of agency activities on tribal trust resources and assure that tribal government rights and concerns are considered before the activities are undertaken.

- Remove any procedural impediments to working directly and effectively with tribal governments on activities that affect trust property or governmental rights of Tribes.

- Work cooperatively with other agencies to accomplish the goals established by the President in this memorandum.

The memorandum from the Assistant Secretary—Indian Affairs, dated February 24, 1995, provides additional guidance regarding the President's policy on the government-to-government relationships with Indian Tribes. The memorandum specifically recommends that each agency design a special protocol, and take a proactive approach to working with Tribal governments:

- Establish and apply processes and procedures that recognize Tribes as separate governments with a special relationship with all federal bureaus and agencies.

- Communicate directly with Tribes.

- Establish permanent systems for communication between bureau management and tribal officials through appropriate channels as indicated by tribal officials.

B.8. Sacred Sites

Executive Order 13007, dated May 24, 1996, establishes new requirements for the protection and preservation of Indian religious practices. Each federal agency is required to accommodate access to and ceremonial use of Indian sacred sites by Indian practitioners, and avoid adversely affecting the physical integrity of such sacred sites.

- Each agency is required to develop and implement procedures in compliance with the Presidential memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," including consultation with tribal governments.

The developed procedures, where practicable and appropriate, are to ensure that reasonable notice is provided about proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites.

Each agency is to report to the President the procedures implemented or proposed to facilitate consultation with appropriate Tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

B.9. Memorandum for the Heads of Executive Departments and Agencies, Subject: Tribal Consultation

In November 5, 2009, while meeting with delegations of Federally-recognized Tribes in a government-to-government consultation with President Obama and members of his Cabinet, President Obama signed the following memo, directing departments to develop plans of action for consultation with Tribes.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release November 5, 2009

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Tribal Consultation

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175.

Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on more (OVER) 2 the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms "Indian tribe," "tribal officials," and "policies that have tribal implications" as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

BARACK OBAMA

B.10. Consultation and Coordination with Indian Tribal Governments

In November 6, 2000, President Clinton signed Executive Order (EO) 13175, Consultation and Coordination with Indian Tribal Governments. This EO builds on previous administrative actions and is intended to:

■ Establish regular and meaningful consultation and collaboration with Tribal officials in the de he imposition of unfunded mandates upon Tribes.

For purposes of EO 13175, "policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Tribes, on the relationship between the Federal government and Tribes, or on the distribution of power and responsibilities between the Federal government and Tribes.

This EO revokes EO 13084 (Consultation and Coordination with Indian Tribal Governments, issued on May 14, 1998). The new EO modifies and expands many of the concepts and procedures found in the 1998 EO on Consultation and Coordination with Indian Tribal Governments (EO 13084). Its format and procedural requirements generally parallel the EO on Federalism (EO 13132), dated August 4, 1999. The following is a section-by-section analysis of the new EO:

Sec. I. Definitions

Definitions are added for "policies that have tribal implications" (see above) and "tribal officials." The latter means "elected or duly appointed officials of tribal governments or authorized inter- tribal organizations."

Sec. 2. Fundamental Principles

Fundamental principles are provided to guide agencies when formulating or implementing policies that have tribal implications. The principles affirm the unique legal relationship that Tribes have with the United States, including the trust relationship. They also recognize the right of Tribes to self-government and provide support for tribal autonomy and self-determination.

Sec. 3. Policymaking Criteria

Agencies are required to:

■ Adhere to the fundamental principles (Sec. 2) and the EO's policymaking criteria, to the extent permitted by law, when formulating and implementing policies that have tribal implications.

■ Respect tribal self-government and autonomy, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal government and tribal governments. Sec. 3 (a).

■ Grant tribal governments the maximum administration discretion possible with respect to Federal statutes and regulations administered by tribal governments. Sec. 3(b).

When undertaking to formulate and implement policies that have Tribal implications, agencies are required to:

1. Encourage Tribes to develop their own policies to achieve program objectives;

2. Where possible, defer to Tribes to establish standards; and

3. In determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Tribes. Sec. 3(c).

Sec. 4. Special Requirements for Legislative Proposals

Agencies are prohibited from submitting legislation to Congress that would be inconsistent with the policymaking criteria in Sec. 3.

Sec. 5. Consultation

Each agency is required to have an accountability process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications:

■ Within 30 days after the effective date of the EO, the agency head is required to designate an agency official with principal responsibility for the agency's implementation of the EO. Sec. 5(a).

■ Within 60 days after the effective date of the EO, the responsible agency official is required to submit to the Office of Management and Budget (OMB) a description of the agency's consultation process. Sec. 5(a).

Regulations that impose unfunded mandates are prohibited. Sec. 5(b). To the extent practicable and permitted by law, agencies are prohibited from promulgating any regulation that has tribal implications, imposes substantial direct compliance costs on tribal governments, and is not required by statute unless:

■ Funds are provided by the Federal government to pay the direct costs incurred by the Tribal government or the Tribe in complying with the regulation; or

■ The agency, prior to the formal promulgation of the regulation, has:

■ Consulted with tribal officials early in the process of developing the proposed regulation;

■ In a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides the Director of OMB with a tribal summary impact statement (a description of the extent of the agency's Tribal consultation, a summary of the nature of the Tribe's concerns and the agency's position supporting the need to issue the regulations, and a statement of the extent to which the concerns of Tribal officials have been met); and

■ Makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

Regulations that preempt tribal law are prohibited. Sec. 5(c). To the extent practicable and permitted by law, agencies are prohibited from promulgating any regulation that has tribal implications that preempts Tribal law unless:

■ The agency, prior to the formal promulgation of the regulation, consulted with tribal officials early in the process of developing the proposed regulation;

■ In a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides the Director of OMB with a tribal summary impact statement (a description of the extent of the agency's tribal consultation, a summary of the nature of the Tribe's concerns and the agency's position supporting the need to issue the regulations, and a statement of the extent to which the concerns of tribal officials have been met); and

■ Makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

Agencies are encouraged to explore and where appropriate, use a consensual mechanism for developing regulations, including negotiated rulemaking, on issues relating to tribal self-government, tribal trust resources, or tribal treaty or other rights. Sec. 5(d).

Sec. 6. Increasing Flexibility for Indian Tribal Waivers

Agencies are required to review the process under which Tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those procedures. Sec. 6(a).

To the extent practicable and permitted by law, agencies are required to consider any application by a Tribe for a waiver of statutory or regulatory requirements with a general view toward increasing opportunities for using flexible approaches when a proposed-waiver is consistent with applicable Federal policy objectives and is otherwise appropriate. Sec. 6(b).

To the extent practicable and permitted by law, agencies are required to render a decision about an application for a waiver within 120 days after receipt of an application, or as otherwise provided by law or regulation. If a waiver is not granted, timely written notice of the decision and the reasons therefore must be provided. Sec. 6(c).

This section applies only to statutory or regulatory requirements that are discretionary and subject to a waiver by the agency. Sec. 6(d).

Sec. 7. Accountability

When final draft regulations having tribal implications are transmitted to OMB, agencies are required to include a certification from the official designated with compliance responsibility for the EO, stating that the requirements of the EO have been met in a meaningful and timely manner. Sec. 7(a).

When transmitting proposed legislation that has tribal implications to OMB, agencies are required to include a certification from the official designated with compliance responsibility for the EO, stating that all relevant requirements of the E0 have been met. Sec. 7(b).

B.11. Tribal Trust Responsibilities

The Department Manual Part 512, Chapter 2, articulates the policy, responsibilities, and procedures for consulting with Tribes to identify and assess impacts to tribal trust resources (originally issued as Secretarial Order 3175, dated November 8, 1993):

It is the policy of the Department of the Interior to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of Federally-recognized Tribes and tribal members, and to consult with Tribes on a government-to-government basis whenever plans or actions affect tribal trust resources, trust assets, or tribal health or safety.

Heads of bureaus and offices are responsible for assessing impacts to trust resources and for consulting with the recognized tribal government whose trust assets are potentially affected.

All consultations are to be conducted in an open and candid manner respectful of the special relationship enjoyed by the Federal government and recognized Tribes, so that all interested parties may evaluate for themselves the potential impact of the proposal on trust resources.

B.12. Tribal Rights, Trust Responsibilities, and the Endangered Species Act

In June 5, 1997, the Secretaries of the Interior and Commerce jointly issued Secretarial Order 3206 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act).

This order provides guidance about the federal- tribal relationship, and its relationship to tribal rights, trust responsibilities, and the Endangered Species Act:

- It clarifies responsibilities when action is taken under the Endangered Species Act effect (or may effect) Indian lands, tribal trust resources, or the exercise of Indian tribal rights.
- It further acknowledges the trust responsibility and treaty obligations of the United States toward Tribes and Tribal members, and the government-to-government relationship in dealing with Tribes.
- It directs that the responsibilities under the Endangered Species Act are to be carried out in a manner that harmonizes trust responsibilities, tribal limited sovereignty, statutory missions, and strives to ensure that Tribes do not bear a disproportionate burden for the conservation of listed species.

Working Relationships: The order establishes a policy framework for establishing and maintaining effective working relationships and mutual partnerships to promote the conservation of sensitive species (including candidate, proposed listed and listed species) and the health of ecosystems on which they depend.

Such relationships are intended to focus on:

- Cooperative assistance
- Consultation
- Sharing information
- Creating government-to-government partnerships

Guiding Principles

The order articulates a set of principles that are to be followed:

PRINCIPLE I

Work directly with Tribes on a government-to-government basis to promote healthy ecosystems.

- Whenever agencies and offices are aware that actions planned under the Endangered Species Act may impact tribal trust resources, the exercise of tribal rights, or Indian lands, they are to consult with and seek the participation of the affected Tribes to the maximum extent practicable.
- The Tribes are to be afforded adequate opportunities to participate in data collection, consensus seeking, and associated processes.

PRINCIPLE 2

Recognize that tribal lands are not subject to the same controls as federal public lands.

PRINCIPLE 3

Assist Tribes in developing and expanding tribal programs so that healthy ecosystems are promoted and conservation restrictions are unnecessary.

- Tribal management of tribal lands and tribal trust resources is to be respected.
- Government-to-government consultations are to be conducted to discuss the extent to which tribal resource management plans for tribal trust resources located outside of tribal lands can be incorporated into actions that address the conservation needs of listed species.

■ In the event that it is determined that conservation restrictions are necessary in order to protect listed species, consult with the affected Tribes and provide written notice about intended restriction as far in advance as practicable.

■ If the proposed conservation restriction is directed at a tribal activity that could raise the potential issue of a direct take under the Endangered Species Act, meaningful government-to-government consultation is required in order to strive to harmonize the federal trust responsibility, tribal autonomy, and the agency's statutory mission.

PRINCIPLE 4

Be sensitive to Indian culture, religion, and spirituality.

■ Take into consideration the impacts of actions and policies under the Endangered Species Act, regarding tribal use of listed species for cultural and religious purposes.

PRINCIPLE 5

Make available to Tribes information related to tribal trust resources and tribal lands, facilitate the mutual exchange of information, and strive to protect sensitive tribal information from disclosure.

■ Recognize the critical need for Tribes to possess complete and accurate information related to tribal lands and trust resources.

■ Make available to Tribes all information that is related to tribal lands and trust resources.

■ Protect, to the maximum extent practicable, v information that has been disclosed or collected.

■ Promptly notify and, when appropriate, consult with affected Tribes regarding all requests for tribal information.

Agreements: When appropriate, and at the request of a Tribe, federal-tribal inter-governmental agreements may be pursued in order to formalize agreed on arrangements about sensitive species, such as:

■ Land and resource management

■ Multi-jurisdictional partnerships

Dispute Resolution: The order also encourages the use of alternative dispute resolutions.

Federal-tribal disputes regarding implementation of the order are to be addressed through government-to-government discourse, using alternative dispute resolution processes to resolve conflicts about technical and policy issues.

Note: Secretarial Order 3225 (Endangered Species Act and Subsistence Uses in Alaska—Supplement to Secretarial Order 3206)—Principal 5, section 7 of Secretarial Order 3206 recognizes that section 10(e) of the Endangered Species Act governs the taking of listed species by Alaska Natives for subsistence purposes and therefore exempts Alaska from application of Secretarial Order 3206. Secretarial Order 3225, signed January 19, 2001, supplements Secretarial Order 3206 by:

■ a. Defining the application of Secretarial Order No. 3206 in Alaska

■ b. Establishing a consultation framework relative to the subsistence exemption in Sec. 10(e) of the Endangered Species Act (ESA).

■ c. Reiterating the government-to-government consultation requirements relative to overall implementation of the ESA in Alaska.

Multi-federal agency meeting with Tribes to discuss ongoing activities potentially affecting their interest.

USFWS

B.13. Environmental Justice

The Environmental Justice program, established by Presidential Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), requires Federal agencies, including the Service, to ensure that all environmental policies and the disposal of toxic waste do not adversely impact minority and low-income communities, including Tribes. The common concern is that these communities are exposed to unfair levels of environmental risk arising from multiple sources, often coupled with inadequate government response.

The Service considers environmental justice issues through implementation of the National Environmental Policy Act, the law that requires Federal agencies to consider the interests of under-represented communities when making decisions. The Service's National Environmental Justice Coordinator works with regional contacts to disseminate information regarding EJ issues and offers training through the NEPA course offered by the National Conservation Training Center. For more information, contact Kim Lambert, the Service's Environmental Justice Coordinator, (703) 358-2554.

USFWS

Multi-federal agency meeting with Tribes to discuss potential cultural impacts at a hydro-electric power intact on a major river.

B.14. U.S. Fish and Wildlife Service's Native American Policy

1. Introduction and Purpose

This updated Native American policy (policy) provides a framework for government-to-government relationships, which furthers the United States' and the Department of the Interior's trust responsibility to federally recognized tribes to protect, conserve, and use tribal reserved, treaty guaranteed, or statutorily identified resources. 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 interests in the conservation of fish, wildlife, and their habitats, which include 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 sovereignty and 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 are guided primarily by doctrines of reserved rights, statutes, treaties, judicial mandates, Executive Orders (E.O.), Presidential proclamations, and Secretary's Orders (S.O.). The policy provides clarification of the application of those authorities to guide the Service's efforts.

The United States' trust responsibility is a well-established legal obligation that originates from the unique, historical relationship between the United States and Indian tribes. The trust responsibility consists of the highest moral obligations that the United States must meet to ensure the protection of tribal and individual Indian lands, assets, resources, and treaty and similarly recognized rights (see S.O. 3335).

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.

While this national policy applies to all the federally recognized tribes, including tribes in Alaska, we plan to develop a subsequent chapter in the Fish and Wildlife Service Manual that will address further statutory considerations for Alaska, including consultation for Alaska Native Claims Settlement Act (ANC) corporations.

For definitions of terminology we use in this policy, see Exhibit 1. For overall responsibilities, see Exhibit 2, and for the authorities for the policy, see the list in Exhibit 3.

2. 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, E.O.s, 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.

3. 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, begin early in the planning process, and 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. The Service will hold regular, periodic meetings with tribal representatives.

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 and Alaska Native Corporations, 512 DM 4.

We will work in a timely manner 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. The tribal consultation process goes beyond the requirements of a public comment period. For details on tribal consultation procedures, see the *U.S. Fish and Wildlife Service Tribal Consultation Handbook*.

INFORMATION SHARING AND 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.

While Service and tribal personnel may share information through working collaboratively, the Service also 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 Freedom of Information Act (FOIA) requests), we will work to inform tribal governments about disclosure requests and work collaboratively with tribal governments to protect and prevent disclosure of confidential or sensitive information to the extent allowable by law.

4. 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 sharing conservation management of resources.

The Service, as an agency of the United States, and tribal governments, as individual 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, States, and other co-managers to manage and conserve fish and wildlife and cultural resources.

For the entire range of Endangered Species Act (ESA) activities, including, but not limited to, candidate conservation, the listing process, section 7 consultations, habitat conservation planning, recovery, and law enforcement, the Service will consult and collaborate with tribal governments when developing plans and regulations, in accordance with S.O. 3206. Specific to critical habitat designation, we will always consider exclusions of tribal lands under section 4(b) 2 of the ESA before finalizing a designation of critical habitat.

We will also give great weight to tribal concerns in analyzing the benefits of exclusion.

CO-MANAGEMENT AND COLLABORATIVE MANAGEMENT

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

We support opportunities for the Service and tribes to collaborate to protect, conserve, use, enhance, or restore natural and cultural resources. This may include working together 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.

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, E.O.s, and judicial decrees, certain tribal governments and State governments may have shared responsibilities to co-manage fish and wildlife resources. In such cases, and where Service jurisdiction is involved, 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.

5. Culture/Religion

The Service will meaningfully involve tribal governments in our actions when we or the tribal government(s) determines 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 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: (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 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 remains, 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 for tribal members 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 remains to federally-recognized tribal members for religious, ceremonial, and cultural purposes in accordance with Federal law. Timeliness of processing and distributing eagle feathers and remains 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.

Through the non-eagle repositories, we will continue to permit the collection, processing, and distribution of migratory bird feathers and remains as expeditiously as possible for recognized religious, ceremonial, and cultural purposes in accordance with Federal law.

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.

6. 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.

Because working with tribal members may require additional sensitivity to cross-cultural issues, the

Service will provide training to promote tribal cultural competency awareness within Service law enforcement and to help officers communicate in ways that improve tribes' understanding regarding the Service's Federal mandates and mission.

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 will 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.

7. 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 its own technical expertise in fish and wildlife resources 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 them.

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 fish and wildlife resources that may be included in tribal resource management goals and objectives. Service involvement may be limited where litigation or other court actions have established a specific process for the development of species management plans and tribal codes.

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)

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. The Service will promptly address requests from tribes and other eligible entities for ISDEAA contracts and annual funding agreements. Programs eligible for contracts under Title I are those that are available for the benefit of Indians because of their status as Indians. Under Title IV, approved Self-Governance tribes may request that the Service enter into funding agreements for Service programs, services, functions, and activities that are eligible for contracting under Title I, as well as those which are of a special geographic, historical, or cultural significance to the tribe. The Service is committed to negotiating self-determination contracts when applicable, as well as to considering discretionary Self-Governance requests for annual and multi-year funding agreements where resources are available and the agreements meet the mutual needs of tribes and the Service.

In addition to the authorities under the ISDEAA, the Service has additional authorities to enter into grants and cooperative agreements. The Service will consider the full range of operating protocols that are consistent with the Service's obligations under the Department's rules and regulations implementing the ISDEAA. The Service may also assist tribal governments to identify Federal and non-Federal funding sources that may be available for tribal fish and wildlife resource management activities.

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.

8. Implementation And Monitoring

The Service is committed to implementing this policy in a way that ensures effective outcomes. The Service and tribes will continually monitor Service programs and projects that affect tribal interests to determine if they support 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. The Service, in collaboration with tribes, will develop a national implementation plan, and, as necessary, develop Regional plans. We will form national and Regional teams comprised of both Service and tribal representatives to carry out these plans.

Every 3 to 5 years, the Service, with assistance from tribal governments, will evaluate the national 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 for any appropriate improvements to the policy 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 training for employees whose duties may affect tribal interests. This training will improve understanding of this policy; regionally specific Native American traditional, cultural, and religious values and practices; natural resource values; treaty and other federally reserved rights; consultation protocols; and appropriate law enforcement policy issues. The Service will encourage and support joint training with tribes to promote common understanding about implementing the policy within the context of circumstances specific to a Region.

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.

9. 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.

Nothing in this policy may be construed as affecting the authority, jurisdiction, or responsibilities of States to manage, control, or regulate fish and resident wildlife under State law or regulations.

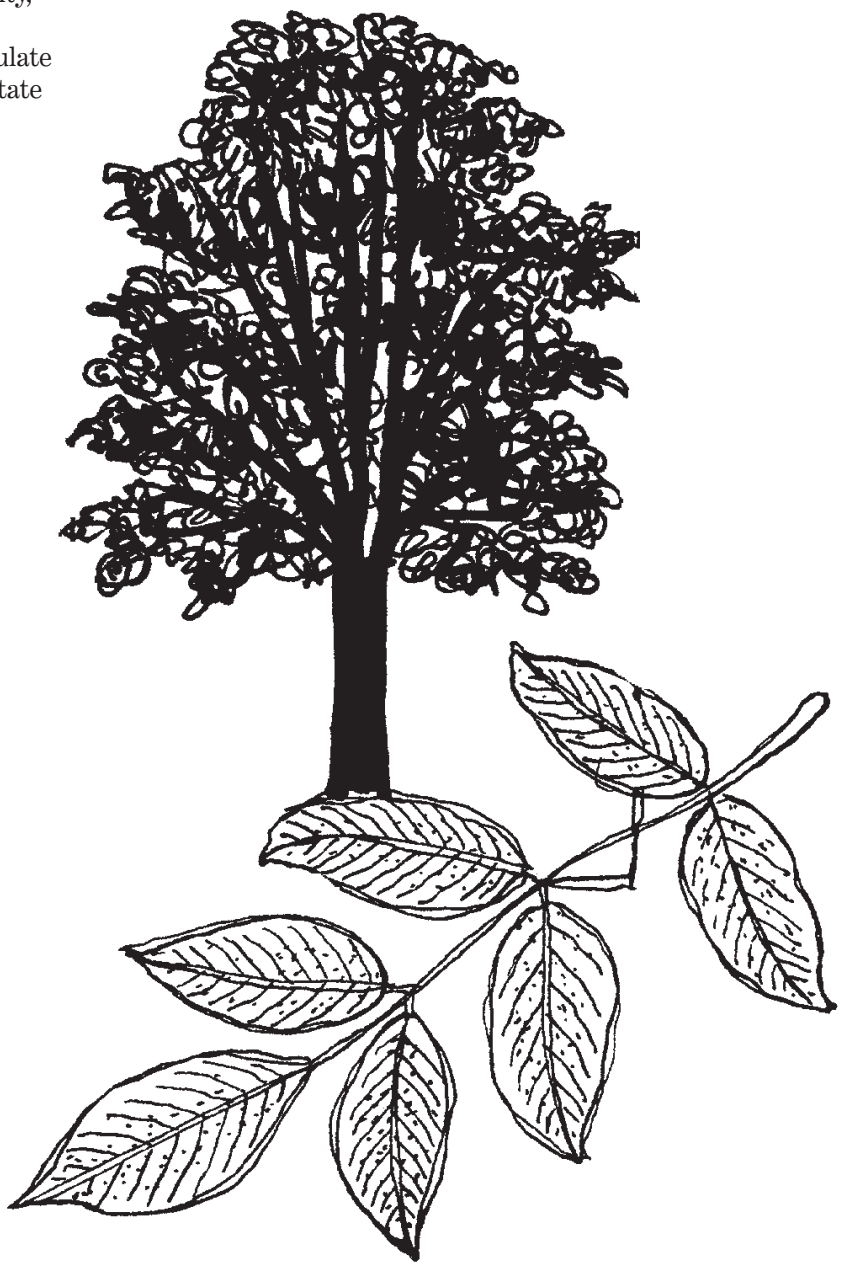


Exhibit 1

DEFINITIONS

The following definitions help to clarify the Service's Native American policy (510 FW 1):

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) — any organization established by Alaska tribal governments or by law, whose interests encompass the conservation, protection, restoration, and enhancement of fish, wildlife, and environmental resources. 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)).

Alaska Native Corporation—any Alaska Native village corporation, urban corporation, or regional corporation as defined in, or established under, the Alaska Native Claims Settlement Act.

Collaborate—the Service and tribal governments working together.

Co-management—two or more entities, each having legally established management responsibilities, working collaboratively to achieve mutually agreed upon, compatible objectives to protect, conserve, use, enhance, or restore natural and cultural resources.

Collaborative management—two or more entities working together to actively protect, conserve, use, 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 informs the Service 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 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.

Exhibit 2

OVERALL RESPONSIBILITIES

Table 1 below describes the responsibilities of Service officials for implementing the Service's Native American Policy, 510 FW 1. Sections 2.0 to 9.0 in the policy provide details about how we achieve these responsibilities.

Table 1: Responsibilities for the Service's Native American Policy, 510 FW 1

These officials…	*When working with federally recognized tribal governments, are responsible for…*
A. The Director	(1) Serving as the final authority for those Servicewide decisions that may affect tribal interests;
	(2) Overseeing the management of all Service programs, including our work with tribal governments;
	(3) Ensuring Servicewide policies and programs are consistent with our tribal trust responsibility;
	(4) Working to resolve issues with tribal governments when elevated by Regional Directors; and
	(5) Delegating authority to consult with tribal officials.
B. National Native American Programs Coordinator	(1) Coordinating with Headquarters and Regional Directorate members on national and cross-Regional programs and issues;
	(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;
	(3) Developing and providing national-level training opportunities for Service employees, tribal staff, and tribal members;
	(4) Developing and administering a national implementation plan to incorporate this policy into Service operations;
	(5) Reviewing this policy with assistance from Directorate members and tribes (see section 8 of 510 FW 1) to strengthen its implementation and identify recommended revisions and updates;
	(6) Developing agreements and programs with tribes under ISDEAA as we discuss in section 7 of 510 FW 1;
	(7) Promoting tribal cultural competency awareness within the Service and improving tribes' understanding regarding our Federal mandates and mission at the national level;
	(8) Promoting partnership opportunities between the Service and tribes at national and Regional levels; and
	(9) Leading and facilitating the resolution of conflicts between tribes and the Service that are multi-Regional or national in scope.

Table 1: Responsibilities for the Service's Native American Policy, 510 FW 1

These officials…	*When working with federally recognized tribal governments, are responsible for…*
C. Directorate members at Headquarters	(1) Serving as the delegated agency officials in government-to-government consultation or other coordination on issues relevant to tribes; and (2) Ensuring the goals and intent of this policy are implemented as their staff develop: (a) Program policies, (b) Regulations, (c) Strategic plans (national and Regional), and (d) Other planning documents.
D. Chief – Office of Law Enforcement (OLE), through Special Agents-in-Charge	(1) Ensuring that all OLE employees implement this policy; (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 (3) Ensuring the goals and intent of this policy are implemented as OLE staff develop: (a) Program policies, (b) Regulations, (c) Training for Service officers and tribal conservation officers, (d) Strategic plans, and (e) Other planning documents.
E. Regional Directors	(1) Serving as the delegated agency officials in government-to-government consultation or other coordination on issues relevant to tribes; (2) Fulfilling the Service's Federal Indian trust responsibilities to tribes; (3) Ensuring the Service operates on a government-to-government basis with tribes; (4) Coordinating with tribes on a regular basis to address important issues; (5) Promoting partnership opportunities between the Service and tribes at the Regional level; (6) Resolving issues that may arise within the Region when implementing this policy; (7) Assigning a Regional Native American Liaison or point of contact; and (8) Developing and providing Regional training opportunities for Service employees, tribal staff, and tribal members.

Table 1: Responsibilities for the Service's Native American Policy, 510 FW 1

These officials…	*When working with federally recognized tribal governments, are responsible for…*
F. Regional Native American Liaisons or Point(s) of Contact	(1) Serving as the point of contact or intermediary between the Service and tribes, (2) Assisting Service employees in implementing this policy, (3) Maintaining and continuing to build and promote positive working relationships with tribes at the Regional level, (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, (5) Promoting partnership opportunities (e.g., co-management and training) between the Service and tribes at the Regional level, (6) Providing assistance and support to the Regional Director in resolving conflicts between tribes and the Service, and (7) Developing step-down policies (e.g., in Region 7 for Alaska National Claims Settlement Act (ANCSA) corporations and Marine Mammal Protection Act (MMPA) Alaska Native Organizations) and Regional implementation plans, where appropriate.
G. Regional Directorate Team Members	(1) Serving as the delegated agency official in government-to-government consultation or other coordination on issues relevant to tribes; (2) Ensuring the goals and intent of this policy, including timely communication with tribes in planning and implementation phases, in their programs; and (3) Developing agreements with tribes under ISDEAA as we discuss in section 7 of 510 FW 1.
H. Project Leaders, Managers, and Supervisors	(1) Serving as the agency official in government-to-government consultation or other coordination on issues relevant to tribes, when delegated; (2) Ensuring activities for which they are responsible are consistent with this policy; (3) Developing agreements with tribes under ISDEAA as we discuss in section 7 of 510 FW 1; (4) Ensuring employees understand the relevance of this policy to their job duties; (5) Making relevant training opportunities related to implementing this policy available to employees whose duties may affect tribal interests; (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; (7) Providing assistance and support to the Regional Director in resolving conflicts between tribes and the Service; and (8) Assisting Service employees to implement this policy.

Table 1: Responsibilities for the Service's Native American Policy, 510 FW 1

These officials…	*When working with federally recognized tribal governments, are responsible for…*
I. Employees whose duties may affect tribal interests	(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 section 8 of 510 FW 1); (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 (3) Communicating with managers and supervisors when professional activities include federally recognized tribes.

USFWS

U.S. Fish and Wildlife Service former Director and Native American Policy Team at January 20, 2016 signing ceremony in Washington, DC.

Exhibit 3

AUTHORITIES FOR THE SERVICE'S NATIVE AMERICAN POLICY

The Service relies on the list of authorities below when working with tribes as we describe in the Service's Native American Policy, 510 FW 1. The Service recognizes that these authorities are not all encompassing, and we may update this list from time to time.

Statutes:

Alaska National Interest Lands 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).

Consolidated Appropriations Act of 2004, (P.L. 108-199 Div. H. sec. 161 118 Stat 3 452, as amended by Consolidated Appropriations Act of 2005 P. L. 108-447, Div. H, Title V. Sec. 518,118 Stat. 3267).

Department of the Interior General Authorities, Duties of the Secretary (43 U.S.C. 1457).

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).

Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. 661-667d)

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 93-63825 U.S.C. 450 et seq.)) (ISDEAA).

The Lacey Act of 1900 (16 U.S.C. 3371-3378).

Marine Mammal Protection Act (16 U.S.C. 1361-1423h) (MMPA); for ANO cooperative agreements, see 16 U.S.C. 1388.

Migratory Bird Treaty Act, as amended (16 U.S.C. 703-712) (MBTA).

National Environmental Policy Act of 1969 (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.

Secretary's 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 Alaska Native Claims Settlement Act Corporations (512 DM 5).

Department of the Interior Policy on Consultation with Indian Tribes and Native Corporations (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.

Interdepartmental Memorandum of Understanding:

Memorandum of Understanding Among the U.S. Department of Defense, U.S. Department of the Interior, U.S. Department of Agriculture, U.S. Department of Energy, and the Advisory Council on Historic Preservation Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites, December 4, 2012.

B.15. U.S. Fish and Wildlife Service Director's memo (Sep. 2, 2008)

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

SEP 0 2 2008

Memorandum

To: Service Directorate

From: Deputy Director Kenneth Stansell

Subject: Importance of Native American Tribes and Alaskan Natives in Achieving Our Conservation Mission

Indian Tribes and Alaskan Natives are one of our many important partners to achieve the Fish and Wildlife Service mission and priorities. Indian Tribes and Alaskan Natives manage a significant portion of available wildlife habitat in the United States. Larger tracts of tribal lands are often in remote areas where little urban or agricultural development has taken place, and these lands are often highly valued for their diversity of species and undisturbed habitats. At least 85 tribal reservations offer hunting and/or fishing opportunities to the public. Indian Tribes also share extensive fish and wildlife resource interests with Federal, State, private entities and other tribes in a variety of ways such as treaties, multi-jurisdictional fisheries, ceded lands, subsistence harvest, and legislated rights on non-Tribal lands.

Executive, legislative, and judicial decisions guide our special government-to-government relationship with Native American Indian Tribes and Alaskan Natives and define the Service's trust responsibility to this unique constituency. As the lead federal agency responsible for our nation's fish and wildlife conservation, the Service has much to gain by partnering with Indian Tribes and Alaskan Natives.

To this end, I have asked the Office of External Affairs, who oversees the Native American Liaison program, to begin discussions addressing how the Service can enhance its working relationship with Tribes. This includes identifying ways to engage our leadership in developing strategies to build the capacity of the Service to work with Indian Tribes and Alaskan Natives on conservation issues of mutual importance. Doing so will require the support and participation of all programs and regions of the Service. You will be hearing more about this effort in the coming months.

The findings and conclusions from this process will: 1) guide the Service in updating its policies regarding Native Americans to reflect a renewed commitment to working with Tribes; 2) help us identify new opportunities to work with Tribes on landscape level conservation initiatives, using the principles of Strategic Habitat Conservation; 3) and position the Service and Tribes to develop more collaborative partnerships in the future, as threats to fish and wildlife from a changing climate continue to challenge us.

TAKE PRIDE IN AMERICA

Tribes and Alaskan Natives, I am asking your assistance in ensuring that the managers in your Region or Program receive training in our federal trust responsibilities to Native Americans. The National Conservation Training Center will launch a new Native American Partnerships training course in FY 2009 to help our managers and staff better understand these important skills, and begin to learn about the diverse cultures of our Tribal partners. The course will be modeled on recent, successful training provided to Project Leaders in the Service's Pacific Northwest Region earlier this year. In addition, smaller training sessions or modules are being developed to be included in other NCTC leadership and supervisory training courses. I challenge each Region to provide Tribal trust training to all project leaders by the end of FY2010.

The Service cannot fully succeed in its mission without the help and support of Native American Tribes and Alaskan Natives. I ask each of you, as the leaders of this agency, to renew your commitment to work with Tribal governments and Alaskan Natives to help sustain our fish and wildlife resources and the conservation legacy we wish to leave to future generations.

2

B.16. Department of the Interior Policy on Consultation with Indian Tribes (December 1, 2011)

I. Preamble

The obligation for Federal agencies to engage with Indian Tribes on a government-to-government basis is based on the U.S. Constitution and Federal treaties, statutes, executive orders, and policies. Federal agencies help to meet that obligation through meaningful consultation with Indian Tribes.

The Department of the Interior (Department) is committed to fulfilling its Tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments) or other applicable Secretarial Orders or policies—by adhering to the consultation framework described in this Policy. Through this Policy, the Department strives to strengthen its government-to-government relationship with Indian Tribes and begin a new era of consultation.

This Policy reflects the Secretary's commitment to consultation with Indian Tribes, recognition of Indian Tribes' right to self- governance and Tribal sovereignty.

The Department's Bureaus and Offices shall review their existing practices and revise them as needed to comply with this Policy. All Bureaus and Offices will report to the Secretary, through the designee, on their efforts to comply with this Policy, as described in a companion Secretarial Order.

II. Guiding Principles

This Policy broadly defines provisions for enhancing the Department's consultation processes with Indian Tribes. This Policy shall complement, not supersede, any existing laws, rules, statutes, or regulations that guide consultation processes with Indian Tribes.

This Policy requires a government-to-government consultation between appropriate Tribal Officials and Departmental officials. The appropriate Departmental officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for the Department, and exercise delegated authority in the disposition and implementation of an agency action. Departmental officials will identify appropriate Tribal consulting parties early in the planning process and provide Indian Tribes a meaningful opportunity to participate in the consultation process as described in Section VII of this Policy. Departmental officials will participate in the consultation process in a manner that demonstrates a meaningful commitment and ensures continuity in the process. The Policy thus honors the government-to-government relationship between the United States and Indian Tribes, and complies with the Presidential Memorandum of November 5, 2009, which affirms this relationship and obligates the Department to meet the spirit and intent of EO 13175.

Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making. Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility. Communication will be open and transparent without compromising the rights of Indian Tribes or the government-to-government consultation process.

Federal consultation conducted in a meaningful and good-faith manner further facilitates effective Department operations and governance practices. To that end, Bureaus and Offices will seek and promote cooperation, participation, and efficiencies between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding a Departmental Action with Tribal Implications. Efficiencies derived from the inclusion of Indian Tribes in the Department's decision-making processes through Tribal consultation will help ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of tribal input.

III. Definitions

B**ureau or Office**: As defined in the Department Manual.

Collaboration: The Department and Indian Tribes working together to implement this Policy.

Consultation Policies: Those policies established to comply with the procedures described in Section VII.

Departmental Action with Tribal Implications: Any Departmental regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial direct effect on an Indian Tribe on matters including, but not limited to:

1. Tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance on federally managed lands;

2. The ability of an Indian Tribe to govern or provide services to its members;

3. An Indian Tribe's formal relationship with the Department; or

4. The consideration of the Department's trust responsibilities to Indian Tribes. This, however, does not include matters that are in litigation or in settlement negotiations, or matters for which a court order limits the Department's discretion to engage in consultation.

Indian Tribe or Tribe: Any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a.

Tribal Governance Officer (TGO): An individual designated by the Department to carry out responsibilities defined in this Policy.

Tribal Liaison Officer (TLO): One or more individuals designated by a Bureau or Office to carry out responsibilities defined in this Policy.

Tribal Official: An elected or appointed Tribal leader or official designated in writing by an Indian Tribe to represent the Tribe in government-to-government consultations.

IV. Accountability and Reporting

Methods that ensure accountability and reporting are essential to regular and meaningful consultation. The heads of Bureaus and Offices shall include appropriate performance measures consistent with this Policy in future annual performance plans of their employees.

On an annual basis, Bureaus and Offices shall report to the Secretary the results of their efforts to promote consultation with Indian Tribes. Reporting is intended to be comprehensive and may include, but is not limited to, the scope of consultation efforts, the cost of these efforts, and the effectiveness of consultation activities. As part of its annual report, Bureaus and Offices shall provide a comprehensive listing of the topics on which consultations were held, training, innovations, and the engagement of senior leadership in these efforts. Where possible, such reports shall include feedback from Indian Tribes with whom the Bureau or Office has consulted. Reports should reference the documents and correspondence with Indian Tribes that address the implementation of the Final Federal Action Stage described in Section VII of this Policy, a description of budget expenditures in the execution of consultation efforts, narratives describing significant consultation efforts, and forthcoming consultation opportunities.

Based on information received from the Bureaus and Offices, the Secretary will provide an annual report to Indian Tribes on implementation of the Department's Consultation Policy. The Department will use its website to share report information, where appropriate.

V. Training

The Department will design training for Department staff aimed at improving the Department's capacity for promoting collaboration with Indian Tribes and executing the consultation provisions of Section VII of this Policy. The training will:

A. Promote consultation, communication, collaboration, and other interaction with Tribes;

B. Outline and reinforce the Department's duties concerning tribal interests;

C. Describe the legal trust obligation of the Federal-Tribal relationship; and

D. Highlight and provide the knowledge, skills, and tools necessary for collaborative engagement to Tribal and Departmental staff engaged in the consultative process with attention to the unique distinctions within Indian Country.

The Department, through the Department of the Interior University (DOIU), in collaboration with Bureaus, Offices, Tribal colleges and universities, and other entities with Indian expertise, will develop and deliver training to facilitate implementation of this Policy.

DOIU will develop required core competencies, which Bureaus and Offices may enhance through other appropriate sources of Tribal expertise. This training will seek to enhance mutual understanding of cultural perspectives and administrative requirements between Tribal and Federal officials and to promote inter-governmental relationships. Tribal representatives will be encouraged to participate in training along with Federal employees.

VI. Innovative and Effective Consultation Practices

The Department's leadership will strive to advance Federal consultation practices and to offer examples for innovation across the Administration. The Department will identify and seek to address impediments, both external and internal, to improving its consultation processes.

In consultation with Indian Tribes, the Secretary will establish a joint Federal-Tribal Team for the purpose of making recommendations on the implementation of this Policy and for ensuring continued improvement of this Policy. The Federal Tribal Team may:

A. Host regular meetings between the Secretary and Indian Tribes;

B. Communicate through a regular gathering of Indian Tribes to discuss improving consultation practices and procedures;

C. Solicit recommendations from Indian Tribes for the initial development of performance measures described in Section IV, and thereafter for the evaluation of consultation practices.

VII. Consultation Guidelines

Consultation guidelines are meant to establish uniform practices and common standards, which all Bureaus and Offices will use except when otherwise agreed to in writing by a Bureau or Office and Indian Tribe, through an individual protocol conforming to the guidelines in this Section. Consultation and individual protocols will provide greater efficiency and transparency in Department practices in order to maximize Indian Tribes' participation. Departmental Actions with Tribal Implications that are regional or impact a limited number of Indian Tribes shall be carried out in a manner consistent with this Policy while allowing discretion to employ only appropriate parts of this Section.

A. INITIATING CONSULTATION.

When considering a Departmental Action with Tribal Implications, a Bureau or Office must notify the appropriate Indian Tribe(s) of the opportunity to consult pursuant to this Policy. The Bureau or Office will strive to ensure that a notice is given at least 30-days prior to scheduling a consultation. If exceptional circumstances prevent notice within 30-days of the consultation, an explanation for the abbreviated notification will be provided in the invitation letter. An Indian Tribe may request an extension for timelines associated with this Policy.

Adequate notice entails providing a description of the topic(s) to be discussed, a timeline of the process, and possible outcomes. Notification of a consultation should include sufficient detail of the topic to be discussed to allow Tribal leaders an opportunity to fully engage in the consultation. The notice should also give Tribal leaders the opportunity to provide feedback prior to the consultation, including any request for technical assistance or request for clarification of how the consultation process conforms to this Policy.

Beginning at the Initial Planning Stage, see Section VII, Part E, Subsection 1, a Bureau or Office will consult with Indian Tribes on a Departmental Action with Tribal Implications.

An Indian Tribe may request that the Department initiate consultation when the Indian Tribe believes that a Bureau or Office is considering a Departmental Action with Tribal Implications. Requests should be made in writing to the Department's TGO and should describe the specific Departmental Action with Tribal Implications. However, in the event that an Indian Tribe may choose not to engage the TGO, a Bureau or Office is not relieved of its obligation to engage in consultation as described by this Policy. If the Bureau or Office initiates consultation with a Tribe but does not receive a response, the Bureau or Office should make reasonable and periodic efforts to repeat the invitation and, whenever feasible, should allow an Indian Tribe to join an ongoing consultation. These efforts of engagement shall be appropriately documented.

B. ROLE OF TRIBAL GOVERNANCE OFFICER AND TRIBAL LIAISON OFFICER IN CONSULTATION PROCESS.

1. *The Secretary shall designate a TGO, who will have access to the Secretary or Deputy Secretary, to carry out the responsibilities defined in this Policy. These responsibilities shall include:*

a. Monitoring compliance with this Policy, EO 13175, and other Consultation Policies pertaining to government-to-government consultation;

b. Serving as the Secretary's representative when requested to do so in matters pertaining to consultation;

c. Promoting government-to-government consultation;

d. Communicating and coordinating with TLOs concerning Bureau and Office compliance with this Policy;

e. Encouraging Indian Tribes to request consultation directly with the appropriate Bureau or Office representative or the TLO and helping to ensure the resolution of all requests.

f. Implementing, in coordination with the TLOs, a reporting system to ensure that consultation efforts are documented and reported to the Secretary and to the Department's TGO for EO 13175; and

g. Facilitating a government-to-government relationship that is honored by all parties in Tribal consultations of national significance or involving multiple Bureaus or Offices.

2. *Each Bureau or Office shall designate one or more TLOs whose responsibilities shall include*:

a. Working with the Bureau or Office to achieve compliance with this Policy, the Consultation Policies of the Bureau or Office, and any future policies related to EO 13175 or other government-to-government consultation policies;

b. Promoting and facilitating consultation and collaboration between Indian Tribes and the Bureau or Office;

c. Advocating opportunities for and consideration of the positions of Indian Tribes, consistent with Bureau or Office mission;

d. Serving as the principal point of contact for the TGO concerning compliance with this Policy, including the Bureau's and Office's reporting requirements;

e. Striving to enhance a trusting and on-going relationship with Indian Tribes, consistent with applicable law and executive orders;

f. Serving as an initial contact for Indian Tribes to request or inquire about consultation when it is unclear whom to contact in the Bureau or Office; and

g. Carrying out other responsibilities as assigned by Bureau or Office Consultation Policies.

3. *Identify TLOs and TGO—Each Bureau or Office shall take appropriate measures to identify and disseminate the name and contact information of the TGO and the TLO(s) to facilitate contacts by Tribal Officials.*

C. GUIDELINES FOR RESPONSE TO REQUEST FOR CONSULTATION.

The TGO or appropriate representative will confirm receipt of a request for consultation from a Tribal Official. When the request is directed to the TGO, the request is to be forwarded to the appropriate Bureau or Office. The TGO or appropriate representative will treat an official request for consultation in an expedited fashion and respond in writing that the Department has received the request, using the most expedient methods to communicate to the Indian Tribe.

D. CONSULTATION PROCESS SUPPORT.

The Office of Collaborative Action and Dispute Resolution can assist in planning and facilitating an effective consultation process, negotiated rulemaking, or other collaborative approach to decision-making. In planning consultation processes as outlined below in Paragraph E, Bureaus and Offices are encouraged to consider best practices for engagement, including but not limited to, the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution.

E. STAGES OF CONSULTATION.

Bureaus and Offices shall carry out the consultation stages described below for a Departmental Action with Tribal Implications.

1. *Initial Planning Stage*.
Each Bureau or Office will consult with Indian Tribes as early as possible when considering a Departmental Action with Tribal Implications.

A Bureau or Office may conduct a meeting or other forms of interaction with Indian Tribes in order to receive and evaluate comments received as part of the Initial Planning Stage.

Bureaus and Offices will work with each other and with other Federal agencies, where appropriate, to avoid duplicative consultations.

2. *Proposal Development Stage.*

The Proposal Development Stage begins once the Department discloses the scope of a Departmental Action with Tribal Implications. Indian Tribes should be considered appropriate collaborative partners, particularly where negotiated rulemaking or a Tribal Leader Task Force is created.

The Bureau or Office shall develop a process for the Proposal Development Stage that maximizes the opportunity for timely input by Indian Tribes and is consistent with both Tribal and Bureau or Office schedules. The Bureau or Office will solicit the views of affected Indian Tribes regarding the process timeline to consult on a Departmental Action with Tribal Implications. The Bureau or Office should work with Indian Tribes to structure a process, to the extent feasible, that considers specific Indian Tribal structures, traditional needs, and schedules of the Indian Tribes.

The Bureau or Office should make all reasonable efforts to comply with the expressed views of the affected Indian Tribes regarding the process timeline at this Stage, taking into account the level of impact, the scope, and the complexity of the issues involved in the Departmental Action with Tribal Implications, along with the other factors driving the schedule. The process will be open and transparent. The Bureau or Office then may proceed with the expectation that interested Indian Tribes will respond within a reasonable time period.

When the matter under consultation involves confidential or culturally sensitive information, the Bureau or Office will work with the Indian Tribe to develop a consultation process that addresses the sensitivity of the information to the extent permitted by Federal law. If litigation or legal requirements impact a Bureau's or Office's schedule for conducting consultation, the Bureau or Office shall explain these constraints to the Indian Tribe.

Examples of appropriate processes for the Proposal Development Stage include, but are not limited to, the following:

■ Negotiated Rulemaking. Where appropriate, the Bureau or Office shall consider using negotiated rulemaking for developing significant regulations or other formal policies in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act.

■ Tribal Leader Task Force. A Tribal Leader Task Force may be used, in appropriate circumstances, on regional or issue-specific matters (e.g., timber). In each instance, the composition of the Task Force shall be collaboratively determined by the Indian Tribes, provided that the Task Force shall be a process open to all Indian Tribes and, to the extent possible, represent a cross-section of Tribal interests with respect to the matter at issue. The location and number of meetings to be held will conform to the expressed views of the Indian Tribes, to the extent practicable and permitted by law and in accordance with FACA.

■ Series of Open Tribal Meetings. The Bureau or Office may provide open invitations for Tribal leaders to attend a series of open meetings. Open meetings can be used for national, regional or subject-matter specific issues.

■ Single Meetings. The Bureau or Office may host Tribal Officials in a single meeting to discuss a Departmental Action with Tribal Implications under consideration. Single meetings are particularly appropriate for local or regional issues, or a Tribe-specific issue.

If either the Bureau or Office determines that the Administrative Procedure Act or other Federal law or regulation expressly prohibits continued discussion at a specified point in the decision-making process, the Bureau or Office should so inform the Indian Tribes at the earliest opportunity in this Stage in the process.

3. *Implementation of Final Federal Action Stage.*
A Bureau or Office may consider implementing a post-consultation review process where it is consistent with law, regulations, and EO 13175. The review process shall not limit the Department's deliberative process privilege regarding internal considerations or any other applicable privilege. The Department may invite feedback from the Indian Tribe of the consultation process at this Stage. The Bureau or Office also will consider the need for training or technical assistance concerning the final Federal action.

F. IMPACT OF CONSULTATION GUIDELINES.
Consultation does not preclude requests or recommendations by Bureaus, Offices, or Indian Tribes to collaborate and foster collaborative relationships between the Department and Indian Tribes outside of the processes described in this Section.

VIII. Supplemental Policies.

Bureaus and Offices, in collaboration with the TGO, shall review existing policies affected by this Policy. All existing policies shall conform to this Policy and, where necessary, a Bureau or Office may develop a new policy in order to conform to this Policy.

Consistent with Federal law, the Department shall develop a policy for consultation with Alaska Native Corporations and other entities as appropriate following the principles set out in this Policy.

Departmental entities that are not Bureaus and Offices may develop policies consistent with this Policy and in coordination with the TGO.

IX. Disclaimer.

Except to the extent already established by law, this Policy is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the Department or any person. The Department also does not waive by virtue of this Policy any applicable privilege that it may hold.

Appendix B.17. Secretarial Order 3317 DOI Policy on Consultation with Indian Tribes

THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3317

Subject: Department of the Interior Policy on Consultation with Indian Tribes

Sec. 1 **Purpose**. The purpose of this Order is to update, expand, and clarify the Department's policy on consultation with American Indian and Alaska Native tribes; and to acknowledge that the provisions for conducting consultation in compliance with Executive Order (E.O) 13175 (Consultation and Coordination with Indian Tribal Governments) and applicable statutes or administrative actions are expressed in the Department of the Interior Policy on Consultation with Indian Tribes.

Sec. 2 **Background**. Based on a renewed commitment to assess its practices and the opportunities to enhance consultation with Indian tribes, the Department consulted with tribal leaders, engaged Department leadership from across the organization, and convened a working group of tribal and Department officials to recommend new approaches to consultation. These efforts produced a policy document that guides how the Department engages Indian tribes when meeting the Department's responsibilities to consult Indian tribes and how the Department can maximize the benefit of consultation.

Sec. 3 **Authority**. This Order is issued in accordance with the authority provided by 25 U.S.C. sections 2 and 9; and Section 2 of the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended.

Sec. 4 **Policy**.

a. Government-to-government consultation between appropriate Tribal officials and the Department requires Departmental officials to demonstrate a meaningful commitment to consultation by identifying and involving Tribal representatives in a meaningful way early in the planning process.

b. Consultation is a process that aims to create effective collaboration with Indian tribes and to inform Federal decision-makers. Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility. Communication will be open and transparent without compromising the rights of Indian tribes or the government-to-government consultation process.

c. Bureaus and offices will seek to promote cooperation, participation, and efficiencies between agencies with overlapping jurisdictions, special expertise, or related responsibilities when a Departmental action with Tribal implications arises. Efficiencies derived from the inclusion of Indian tribes in all stages of the tribal consultation will help ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of tribal input.

Sec. 5 **Responsibilities.**

a. Tribal Governance Officer. A Senior Departmental Official designated by the Secretary will serve as the Department's Tribal Governance Officer and will, in coordination with the Assistant Secretary – Indian Affairs establish and oversee the activities of a joint Federal Tribal Team, as described more fully in Section 9, below.

b. Tribal Liaison Officer. Heads of bureaus and offices will designate at least one official to serve as a Tribal Liaison Officer to carry out appropriate duties described in this Order.

c. Bureaus and Offices. Within 180 days of the effective date of this Order, bureaus and offices will review their existing practices, revise those practices as needed in order to comply with this policy, and begin a process to reference practices on tribal consultation in their appropriate bureau or office manual.

Sec. 6 **Training Plan**. Within 180 days of the effective date of this Order, the Office of Strategic Employee and Organizational Development will develop and present to the Tribal Governance Officer a plan of action to implement the provisions of this Order, including development and delivery of the training.

Sec. 7 **Reporting Requirements**. Within 180 days of the effective date of this Order, bureaus and offices will provide to the Tribal Governance Officer the results of their efforts to promote consultation with Indian tribes. Reports shall be submitted annually, thereafter, within 60 days of the end of the fiscal year.

Sec. 8 **Certification**. Heads of bureaus and offices will certify in a written statement that is part of the final publication for all regulations under their purview that the regulatory process complies with E.O. 13175.

Sec. 9 **Establishment of Joint Tribal-Federal Team**. A Joint Federal Tribal Team (Team) is established beginning with the effective date of this Order. The Team will convene a minimum of two (2) times annually to identify areas and opportunities for improvements in the Department's consultation practices.

a. Membership. Within 45 days of the effective date of this order, the Tribal Governance Officer will recommend to the Secretary a list of members to serve on the Team. The recommended list of members should represent diversity for the Department and the tribes. Members will continue to serve on the Team at the discretion of the Secretary.

b. Annual Work Plan. The Team will develop an annual work plan that identifies priorities that will improve the quality of the Department's consultation practices with Indian tribes.

Sec. 10 **Establishment of an American Indian and Alaska Native Leaders List**. A single Departmental process shall be established to manage and maintain the contact list for all tribes and Alaska Native Corporation Settlement Act (ANCSA) corporations that are eligible for Federal consultation.

a. Action Plan. In compliance with Departmental consultation policy requirements for enhanced communication; the Tribal Governance Officer, the Chief Information Officer, the Director of the Bureau of Indian Affairs and the Director of the Fish and Wildlife Service will develop a plan of action to establish an electronic database that features an interactive system to update and list all appropriate points of contact for Indian tribes and ANCSA corporations that are eligible for consultation under Federal law.

b. Inter-Agency Outreach. The Assistant Secretary – Indian Affairs will solicit from applicable Federal agency heads any proposals to coordinate the use and access to any communication lists used for the purpose of federal compliance with E.O. 13175.

Sec. 11 **Effective Date**. This Order is effective immediately. It shall remain in effect until its provisions are converted to the Departmental Manual, or until it is amended, superseded, or revoked, whichever occurs first. In the absence of any of the foregoing actions, the provisions of this Order will terminate and become obsolete on December 30, 2012. The termination of this Order will not nullify the Department's consultation policy, effected herein.

Ken Salazar

Secretary of the Interior

Date: DEC 01 2011

B.18. White House Council on Native American Affairs. (WHCNAA) E.O. 13647

Executive Order 13647 of June 26, 2013

Establishing the White House Council on Native American Affairs

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote and sustain prosperous and resilient Native American tribal governments, it is hereby ordered as follows:

Section 1. *Policy.* The United States recognizes a government-to-government relationship, as well as a unique legal and political relationship, with federally recognized tribes. This relationship is set forth in the Constitution of the United States, treaties, statutes, Executive Orders, administrative rules and regulations, and judicial decisions. Honoring these relationships and respecting the sovereignty of tribal nations is critical to advancing tribal self-determination and prosperity.

As we work together to forge a brighter future for all Americans, we cannot ignore a history of mistreatment and destructive policies that have hurt tribal communities. The United States seeks to continue restoring and healing relations with Native Americans and to strengthen its partnership with tribal governments, for our more recent history demonstrates that tribal self-determination—the ability of tribal governments to determine how to build and sustain their own communities—is necessary for successful and prospering communities. We further recognize that restoring tribal lands through appropriate means helps foster tribal self-determination.

This order establishes a national policy to ensure that the Federal Government engages in a true and lasting government-to-government relationship with federally recognized tribes in a more coordinated and effective manner, including by better carrying out its trust responsibilities. This policy is established as a means of promoting and sustaining prosperous and resilient tribal communities. Greater engagement and meaningful consultation with tribes is of paramount importance in developing any policies affecting tribal nations.

To honor treaties and recognize tribes' inherent sovereignty and right to self-government under U.S. law, it is the policy of the United States to promote the development of prosperous and resilient tribal communities, including by:

(a) promoting sustainable economic development, particularly energy, transportation, housing, other infrastructure, entrepreneurial, and workforce development to drive future economic growth and security;

(b) supporting greater access to, and control over, nutrition and healthcare, including special efforts to confront historic health disparities and chronic diseases;

(c) supporting efforts to improve the effectiveness and efficiency of tribal justice systems and protect tribal communities;

(d) expanding and improving lifelong educational opportunities for American Indians and Alaska Natives, while respecting demands for greater tribal control over tribal education, consistent with Executive Order 13592 of December 2, 2011 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities); and

(e) protecting tribal lands, environments, and natural resources, and promoting respect for tribal cultures.

Sec. 2. *Establishment.* There is established the White House Council on Native American Affairs (Council). The Council shall improve coordination of Federal programs and the use of resources available to tribal communities.

Sec. 3. *Membership.* (a) The Secretary of the Interior shall serve as the Chair of the Council, which shall also include the heads of the following executive departments, agencies, and offices:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of Agriculture;

(vi) the Department of Commerce;

(vii) the Department of Labor;

(viii) the Department of Health and Human Services;

(ix) the Department of Housing and Urban Development;

(x) the Department of Transportation;

(xi) the Department of Energy;

(xii) the Department of Education;

(xiii) the Department of Veterans Affairs;

(xiv) the Department of Homeland Security;

(xv) the Social Security Administration;

(xvi) the Office of Personnel Management;

(xvii) the Office of the United States Trade Representative;

(xviii) the Office of Management and Budget;

(xix) the Environmental Protection Agency;

(xx) the Small Business Administration;

(xxi) the Council of Economic Advisers;

(xxii) the Office of National Drug Control Policy;

(xxiii) the Domestic Policy Council;

(xxiv) the National Economic Council;

(xxv) the Office of Science and Technology Policy;

(xxvi) the Council on Environmental Quality;

(xxvii) the White House Office of Public Engagement and Intergovernmental Affairs;

(xxviii) the Advisory Council on Historic Preservation;

(xxix) the Denali Commission;

(xxx) the White House Office of Cabinet Affairs; and

(xxxi) such other executive departments, agencies, and offices as the Chair may, from time to time, designate.

(b) A member of the Council may designate a senior-level official, who is a full-time officer or employee of the Federal Government, to perform his or her functions.

(c) The Department of the Interior shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations.

(d) The Council shall coordinate its policy development through the Domestic Policy Council.

(e) The Council shall coordinate its outreach to federally recognized tribes through the White House Office of Public Engagement and Intergovernmental Affairs.

(f) The Council shall meet three times a year, with any additional meetings convened as deemed necessary by the Chair.

The Chair may invite other interested agencies and offices to attend meetings as appropriate.

Sec. 4. *Mission and Function of the Council.* The Council shall work across executive departments, agencies, and offices to coordinate development of policy recommendations to support tribal self-governance and improve the quality of life for Native Americans, and shall coordinate the United States Government's engagement with tribal governments and their communities. The Council shall:

(a) make recommendations to the President, through the Director of the Domestic Policy Council, concerning policy priorities, including improving the effectiveness of Federal investments in Native American communities, where appropriate, to increase the impact of Federal resources and create greater opportunities to help improve the quality of life for Native Americans;

(b) coordinate, through the Director of the Office of Public Engagement and Intergovernmental Affairs, Federal engagement with tribal governments and Native American stakeholders regarding issues important to Native Americans, including with tribal consortia, small businesses, education and training institutions including tribal colleges and universities, health-care providers, trade associations, research and grant institutions, law enforcement, State and local governments, and community and non-profit organizations;

(c) coordinate a more effective and efficient process for executive departments, agencies, and offices to honor the United States commitment to tribal consultation as set forth in Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), and my memorandum of November 5, 2009 (Tribal Consultation); and

(d) assist the White House Office of Public Engagement and Intergovernmental Affairs in organizing the White House Tribal Nations Conference each year by bringing together leaders invited from all federally recognized Indian tribes and senior officials from the Federal Government to provide for direct government-to-government discussion of the Federal Government's Indian country policy priorities.

Sec. 5. *General Provisions.* (a) The heads of executive departments, agencies, and offices shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out the functions of the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) For purposes of this order, ''federally recognized tribe'' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(e) For purposes of this order, ''American Indian and Alaska Native'' means a member of an Indian tribe, as membership is defined by the tribe.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
June 26, 2013.

[FR Doc. 2013–15942
Filed 6–28–13; 11:15 am]
Billing code 3295–F3

Appendix C: Suggested Reading

C.1. Cultural Resources

Berger, Thomas, *Village Journey: The Report of the Alaska Native Review Commission* (1985)

Cutler, Charles L., *O Brave New Words!: Native American Loanwords in Current English*, 1994, University of Oklahoma Press, Norman, and Tracks that Speak: The Legacy of Native American Words in North American Culture, 2002, Houghton Mifflin, Boston. Two studies of Native American words that have passed into English.

Deloria Jr., Vine. *Indian Education in America*. 1991, American Science and Engineering Society.

Evans, Susan Toby, & David L. Webster, editors, *Archaeology of Ancient Mexico & Central America: An Encyclopedia*, 2001, Garland Publishing, New York.

Information on the major culture areas, archaeological sites, and daily life of the ancient peoples, with maps and photographs.

Kerber, Jordan E. (editor), *Cross-Cultural Collaboration: Native Peoples and Archaeology in the Northeastern United States*, 2006, University of Nebraska Press, Lincoln.

Nabokov, Peter, & Robert Easton, *Native American Architecture*, 1989, Oxford University Press, Ox-ford and New York. A detailed, well-illustrated study of North American Indian houses, organized by region.

Paterek, Josephine, *Encyclopedia of American Indian Costume*, 1994, W.W. Norton & Company, New York. An overview of North American Indian clothing, organized by region. Includes information on men's and women's basic clothing, footwear, outerwear, hairstyles, headgear, accessories, jewelry, and changes in dress after European contact. (Note: not a "how-to" book.)

Watkins, Joe, *Indigenous Archaeology: American Indian Values and Scientific Practice*. 2000 Altamira Press, Walnut Creek, California.

C.2. History

Adams, R.E. & Murdo MacLeod, editors, *The Cambridge History of the Native Peoples of the Americas, Volume 2*, Mesoamerica, 2000, Cambridge University Press, Cambridge & New York. In two parts. Articles by numerous contributors.

Bunson, Margaret, & Stephen M. Bunson, *Encyclopedia of Ancient Mesoamerica*, 1996, Facts on File, New York. Information about the people, places, and events of Mesoamerica, from 11,000 BC to 1500 AD.

Dillehay, Thomas D., *The Settlement of the Americas: A New Prehistory*, 2000, Basic Books, Perseus Books Group, New York. An account of recent thinking regarding the first settlement of the Americas based on science from many disciplines. The author has carried out extensive archaeological research at a number of sites, including Monte Verde in Chile.

Ferguson, T.J., and Chip Colwell-Chanthaphonh, *History is in the Land: Multivocal Tribal Traditions in Arizona's San Pedro Valley*, 2006, University of Arizona Press, Tucson.

Schwarz, Stuart, & Frank Salomon, editors, *The Cambridge History of the Native Peoples of the Americas, Volume 3*, South America, 1999, Cambridge University Press, Cambridge & New York. In two parts. Articles by numerous contributors.

Trigger, Bruce G. & Wilcomb E. Washburn, editors, *The Cambridge History of the Native Peoples of the Americas, Volume One*, North America, 1996, Cambridge University Press, Cambridge & New York. In two parts. Articles by numerous contributors.

C.3. Law

Cohen, Felix, *Cohen's Handbook of Federal Indian Law*, 2005, LexisNexis, Newark, NJ. This is the standard reference work on Federal Indian law. First published in 1942.

Deloria Jr., Vine and David E. Wilkins. *Tribes, Treaties and Constitutional Tribulations*. 1991, University of Texas Press, Austin.

Pevar, Stephen L., *The Rights of Indian and Tribes: The Authoritative ACLU (American Civil Liberties Union) Guide to Indian and Tribal Rights, Fourth Addition*, 2012, New York University Press. This is the fourth edition of a series to inform individuals of their legal rights.

Georgeie Reynolds, PhD., *Tribal Consultation Strategies For Beginners*. 2016, archaeofun@gmail.com.

Steve J. Langdon, *The Navtive People of Alaska: Traditional Living in a Northern Land*, Fifth Addition, 2014, Greatland Graphics Anchorage, Alaska.

C.4. NAGPRA Related Material

Gulliford, Andrew. *Sacred Objects and Sacred Places: Preserving Tribal Traditions*. 2000, University Press of Colorado, Boulder.

C.5. Profiles and Biography

Bataille, Gretchen M. & Laurie Lisa, editors, *Native American Women: A Biographical Dictionary*, 2001, Routledge, New York. Brief biographies of historic and present-day Indian women. \First published 1993 by Garland Publishing, New York.

Champagne, Duane, editor, *The Native North American Almanac, Second edition*, 2001, Gale Research, Detroit, MI. Includes brief biographies of 470 prominent Native North Americans, in addition to a chronology, and chapters on historical demography, languages, law and legislation, activism, religion, education, and the arts.

Johansen, Bruce E., & Donald A. Grinde, Jr., *The Encyclopedia of Native American Biography,* 1998, Da Capo Press, New York. Brief, alphabetically arranged biographies of Indians and of non-Indians who were important in Indian history, from the early contact period through the present day. Originally pub-lished by Henry Holt & Co., 1997.

Lester, Patrick D., *The Biographical Directory of Native American Painters,* 1995, SIR Publications, Tulsa, Oklahoma. Distributed by the University of Oklahoma Press, Norman. Foreword by Jeanne O. Snodgrass. Includes over 3,000 painters working from 1800 to the present. Typical entries list the artist's Tribal affiliation and Tribal name, birth and death dates, residence, publications, exhibits, awards and honors, supplemented by brief passages of human interest and excerpts from professional reviews and critical essays.

Reno, Dawn, *Contemporary Native American Artists*, 1995, Alliance Publishing, Brooklyn, NY. Brief profiles of over 1,000 artists from over 100 Native American Nations.

Waldman, Carl, *Who Was Who in Native American History,* 1990, Facts on File, New York. Brief, alphabetically arranged biographies of Indians, and of non-Indians who were important in Indian history, from the early contact period through 1900.

C.6. Reference

Davis, Mary B., editor, *Native America in the Twentieth Century: An Encyclopedia*, 1994, 1996, Garland Publishing, New York. A comprehensive reference work on Native Americans in the twentieth century, the encyclopedia includes signed articles authored by Native Americans and other experts on contemporary tribes and issues of importance to Indians living in today's world. Arranged alphabetically, entries range from short articles on small groups to detailed discussions of larger groups. Subject entries--health, education, art, government policy, and economic issues, for example--are also included.
The encyclopedia is thoroughly indexed.

Estell, Kenneth, editor, *Native Americans Information Directory*, 1998. Gale Research, Detroit. A guide to organizations, agencies, institutions, programs, publications, services, and other resources concerned with the indigenous peoples of the United States and Canada.

Hirschfelder, Arlene, & Martha Kreipe de Montaño (Prairie Band Potawatomi), *The Native American Almanac: A Portrait of Native America Today*, 1998, John Wiley & Sons, Somerset, NJ. Includes information on Indian-white relations, Native Americans today, treaties, tribal governments, languages, education, religion, games and sports, and Indians in film and video. Also lists the addresses of all U.S. tribal governments.

Hoxie, Frederick E., editor, Encyclopedia of North American Indians, 1996, Houghton Mifflin, Boston. Entries by over 260 contributors on a diverse assortment of topics, tribes, and individuals.

Klein, Barry T., *Reference Encyclopedia of the American Indian,* 12th edition, 2006, Todd Publications, Boca Raton, FL. Lists the names, addresses, and phone numbers of all U.S. Indian reservations and tribal councils, and of government agencies, Indian schools, national, state, and local organizations, museums, libraries, colleges, periodicals, and sources of financial aid. Includes a section on Canadian organizations.

Russell, George L. (Saginaw Chippewa), *American Indian Facts of Life*, 2004, Native Data.Com, Phoenix. A brief, useful digest emphasizing con-temporary demographics. Also available from Native Data.com is an information-packed wall map of Indian country today.

Swanton, John R., *The Indian Tribes of North America*, 1952, reprinted 1969, 1979, Smithsonian Institution Press, Washington, D.C. A detailed study of North American tribes, arranged by State. Especially useful for the reader who wants to know what Indian nation occupied a specific region of a given State at a particular time.

Sturtevant, William C., general editor, *Handbook of North American Indians*, Smithsonian Institution Press, Washington, D.C. When complete, the handbook will consist of twenty volumes. A volume on each of the major culture areas of North America is now available, plus two topic volumes (languages, Indian-white relations).

Tiller, Veronica E. Velarde, *Tiller's Guide to Indian Country: Economic Profiles of American Indian Reservations*, 1996, 2005, BowArrow Publishing Co., Albuquerque. Profiles of all U.S. Federal and State Indian Reservations, including the Alaska Native Corporations. Includes information on economy, history, culture, government, and community facilities.

Utter, Jack, *American Indians: Answers to Today's Questions,* second edition, 2002, University of Oklahoma Press, Norman. Lots of useful information in a Q & A format.

Waldman, Carl, *Atlas of the North American Indian,* with maps and illustrations by Molly Braun, 1985, revised edition 2000, Facts on File, New York.

Includes information on Indian history, past and present locations of peoples, a chronology, and over 100 maps.

Waldman, Carl, *Encyclopedia of Native American Tribes*, 1988, revised edition1999, Checkmark Books (Facts on File), New York. Brief but detailed alphabetically arranged listings for over 150 Native peoples, plus information on culture areas, language families, and prehistoric Indian cultures.

C.7. Religion

Hirschfelder, Arlene, & Paulette Molin, *The Encyclopedia of Native American Religions: An Introduction*, updated edition, 2000, Facts on File Publications, New York. Foreword by Walter R. Echo-Hawk. Includes information on ceremonies, individuals, places, and concepts from Native American groups throughout North America.

C.8. Other Native American Interest

Blackman, Margaret B. *Upside Down: Seasons Among the Nunamiut*. 2004, University of Nebraska Press, Lincoln and London. Memoirs of an anthropologist.

Moore, Lucy. *Into the Canyon: Seven Years in Navajo Country.* 2004, University of New Mexico Press, Albuquerque. Memoirs.

C.9. Sources on the Internet

All Native Books, Sorted by Tribe—by Karen Strom
<www.kstrom.net/isk/books/all_trib.html>

Brunot Agreement
<digital.library.okstate.edu/KAPPLER/Vol1/HTML_files/SES0151.html>

Bureau of Indian Affairs
<www.doi.gov/bia/>

Council of Large Land-based Indian Tribes
<www.mtwytlc.com/cllbt.htm>

Indian Country Today
<www.indiancountrytoday.com/>

Indianz.com
<www.indianz.com/>

Native American Fish and Wildlife Society
<www.nafws.org/>

National Congress of American Indians
<www.ncai.org/>

Native America Discovered
<lawlib.lclark.edu/blog/native_america/>

Native American Nations
<www.nativeculturelinks.com/nations.html>

Kapplers Indian Affairs
<digital.library.okstate.edu/Kappler/>

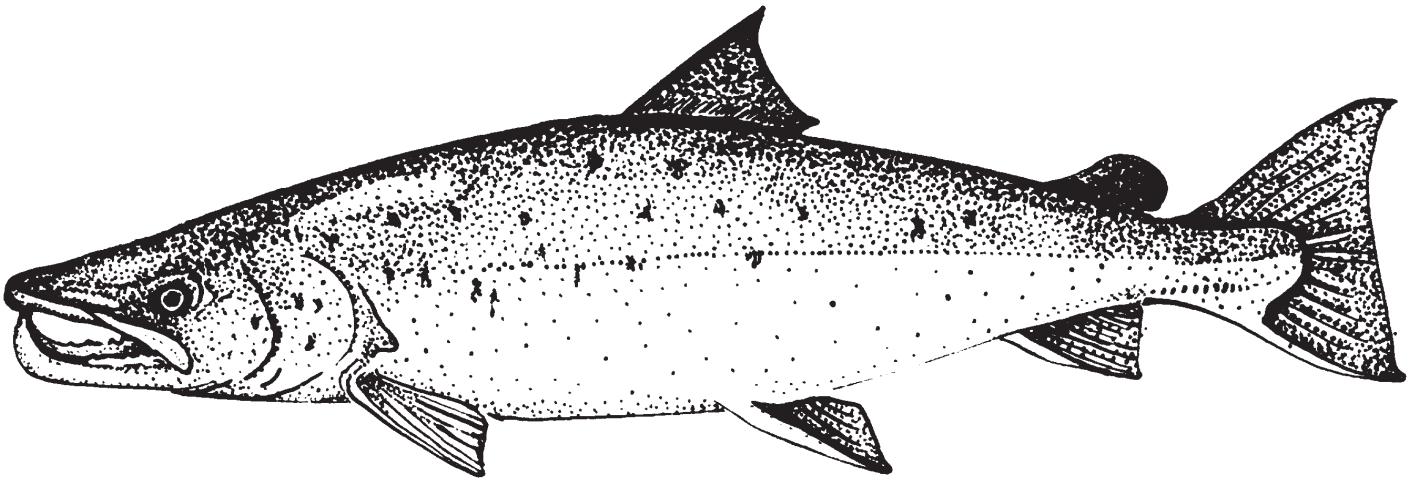
National Association of Tribal Historic Preservation Officers
<nathpo.org/mainpage.html>

American Indian Higher Education Consortium
<www.aihec.org/about/index.cfm>

Tribal Court Clearinghouse
<www.Tribal- institute.org/lists/pl93-638.htm>

Considering Cultural Resources—A Reference Guide for Service Employees
<www.fws.gov/historicPreservation/employeeTraining/empGuidance.html>

Fish and Wildlife Service—Native American Liaison
<www.fws.gov/nativeamerican>



Appendix D: Training Opportunities

The Department of the Interior's Policy on Consultation with Indian Tribes (Appendix B.16), requires the Department, through DOI University, and collaboration with Bureau and Offices, to develop and design training to facilitate implementation of the DOI Policy on Consultation with Indian Tribes. The DOI University web site is located at; <www.doiu.nbc.gov>.

U.S. Fish and Wildlife Service Tribal Trust Training Course

Purposes and Objectives: The purpose of the training is to provide a historical and legal framework concerning Indian affairs, as well as further delineate the Service's government-to-government relationship with Native American governments in the conservation of fish and wildlife resources, and the pro-active assistance to Tribes outlined in the Service's Native American Policy. The training has a special emphasis on the Tribal consultation process and contemporary fish and wildlife topics. The primary training is for supervisors and may be augmented by follow-up trainings in selected field offices on the same topics, although in a synthesized one-day presentation.

All of the training will be accented by the Service's current commitment to maintain strong communications and relations between the Tribes. This focus is based on the government's trust responsibility to Tribes to ensure that consultation and coordination with Tribes takes place as the Service works to carry out its mission. This national training model has the flexibility to accommodate for regional perspectives, with an opportunity to educate staff in a much more coherent and consistent manner which would result in greater organizational fluency.

Curriculum and Contents of the Training: Typically the course will run two days (or can be modified to meet WO and regional needs) consisting of the following major topics:

- History of Federal Indian Law
- History of Federal Indian Policy
- Specific Regional Indian Law or Policy
- Overview of Effective of Tribal Consultation
- Contemporary Tribal/U.S. Fish and Wildlife Issues of Importance to the Host Region
- Current Indian Law Fish and Wildlife Related Opinions from the Office of the Solicitor

For further information about when this course may be offered in your region, please contact your WO or regional Native American Liaison (see Appendix G).

Native American Environmental & Cultural Resources Training: A Cross-Cultural Immersion Course

Participants will have the unique opportunity to camp out on reservation lands with Native American instructors. Traditional cultural uses of natural resources will be emphasized with hands-on activities, meals, and facilities.

Costs range from $1,700 to $2,100 per attendee, based on total #'s signed up, includes food and lodging for 4–5 days of training.

Pack a spirit of adventure and a willingness to try something new!

FOR FURTHER INFORMATION OR TO SIGN UP, PLEASE CONTACT:

Jim Waddell, Course Proponent;
(404) 562-5270
<James.m.waddell@usace. army.mil>

Susan James, logistics & research;
(541) 374-7985
<Susan.j.james@ usace.army.mil>

ArizonaNativeNet: offers an online course developed for Tribal leaders and explains Federal Indian law.
<www.arizonanativenet.com/news/captcha/mediaInfo.cfm?mediaID=2>

Four Directions Teachings: is an online course.
<www.fourdirectionsteachings.com/main.html>

Falmouth Institute: offers workshops on a variety of Tribal topics.
<www.falmouthinstitute.com>

LDK Associates: offers classes on working with Tribes.
<www.LDKassociates.com>

Appendix E: Sample Letter to Tribe(s)

E.1. Sample Letter to Tribe(s) Seeking Advice on How to Consult

Dear [**Honorable Tribal Leader(s)**],

The purpose of this letter is to seek your advice on how the US Fish and Wildlife Service (Service) can best consult with your Tribe during [describe the action: policy development process, proposal, or project].

The Service is now developing the [**policy development process, proposal, or project**].

The Service wishes to work with Tribal governments to develop sustainable processes for government-to-government consultation. We intend to conduct our efforts with sensitivity to the needs and culture of Tribes and with attention to the impact of our actions on tribal self-government. We recognize that one Tribe does not speak for another, and that there is no single voice for all Tribes. Our goal, therefore, is to reach as many Tribes as possible through a consultation process.

We note that resource constraints upon the Tribes and the Service make consultation with all tribal governments an enormous challenge. The Service will share information in a timely, open and continuing manner and facilitate tribal participation as much as possible. We will strive to clearly define our objectives, statutory requirements and the limitations on our activities. In recognition of the practical realities of undertaking this effort, we are asking for your help in developing these processes.

The Service is considering several ways to consult with Tribes, such as calling tribal contacts directly, or meeting at workshops and national tribal meetings across the United States. Also, to develop a communication strategy, the Service is considering electronic mailings, publishing articles in Indian Country newsletters, mailing information to tribal governments and posting materials on the Service's Native American Liaison Web site. Please let us know of other particular mechanisms of communication that could be used between your Tribe and the Service. We are including below a list of various options for consultation processes as well as requested information that will help us engage in meaningful consultation.

The input received will be invaluable to the Service in developing a consultation process which will best serve both Tribal needs and our requirements. The process will be developed in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and will facilitate further coordination.

List of Requested Information and Options for Consultation Processes

Please let us know which (include all that your Tribe would consider suitable) options your Tribe would prefer for input on the [policy development process, proposal, or project] and for future consultations:

- Direct call with appropriate tribal contact.
- Electronic mailings with appropriate Tribal contact.
- Participating in tribal workshops/stakeholder meetings.
- Publish articles in Indian Country newsletters, asking for comment.
- Mail information to tribal governments/natural resources staff/ cultural resources staff, asking for comment.
- Post materials on Service Native American Liaison web site, asking for comment.

If you have other recommended options for the consultation process, please send them to the Office of the Native American Liaison as well.

Other Considerations

- Would you prefer a meeting if it could be arranged, and where?
- What level of Service management do you require at a meeting?
- How much lead time prior to the meeting would you like?
- Do you have a specific person we could talk to on a regular basis regarding the Tribal rule? Please send us their name, phone number, fax number, e-mail address (if available), and mailing address.

Additionally, please let us know if there are multiple Tribal jurisdictions with which we should coordinate for consultation, providing the same information as the previous item in the list.

We encourage you or your staff to respond with ideas and recommendations on how to develop the consultation process. Please provide your response by either mail, email, or fax to us at [contact information] by [set reasonable date 30-60 days, but follow up with calls]. We thank you in advance for taking the time to advise us on how the Service can best consult with your Tribe.

Sincerely,

Director (or Regional Director)

cc: [Name],
Cultural Resources, w/attachments

[Name],
Tribal Natural Resources, w/ attachments

Appendix E (Cont.):

E.2. Sample Letter to Tribe(s) Inviting Consultation on a Proposed Service Action

Dear [**Honorable Tribal Leader(s)**],

In the spirit of Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), Department of the Interior Policy on Consultation with Indian Tribes, [Note: If Appropriate, Also Add: Secretarial Order 3206 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act)], and the U.S. Fish and Wildlife Service's (Service) Native American Policy, the Service would like to offer the opportunity for Tribes to consult with us and seek input on [**Briefly Describe the Type of Action(s), Policy Development or Rule Making, etc., Here**] that may have Tribal implication.

[**Describe the Type of Action(s), Policy Development or Rule Making, etc., Here in More Detail**]

We look forward to discussing our [**Insert Action Title**] with you further. If you would like to meet or consult on this matter, or would like to submit written feedback on our [**Insert Action Title**], or have any questions, please contact [**Insert Headquarters or Regional Contact].**

Sincerely,

Director (or Regional Director)

Attachment [**If Necessary**]

cc: [**Insert Name**], Tribal Cultural Resources, w/attachments

[**Insert Name**], Tribal Natural Resources, w/ attachments

Appendix E (Cont.):

E.3. Sample Letter to Tribe(s) Inviting Consultation Under Section 106 of the National Historic Preservation Act on a Service Project

Dear [**Honorable Tribal Leader(s)**],

The U.S. Fish and Wildlife Service (Service) invites the [**Insert Name of Tribe(s)**] to be a consulting party under Section 106 of the National Historic Preservation Act for the proposed [**Insert Name of Project**] at [Inser**t Geographic Location**].

This project will involve [**Insert Detailed Description of Project].**

If the [Insert Name of Tribe] wishes to be a consulting party for the proposed [Insert Name of Project], the Service respectfully requests a response within 30 days of receipt of this letter. Upon request the Service can provide the [**Insert Name of Tribe**] with the opportunity to review and comment on the project designs.

If the [**Insert Name of Tribe**] has any questions or need further information at this time, please contact [**Insert Contact Information —Include E-mail and Telephone Number**].

Sincerely,

Regional Director (or, Assistant Regional Director or Project Leader)

Attachment:

cc: [**Insert Name**], Tribal Cultural Resources, w/attachments

Appendix F: Examples of Statement of Relationship Documents Prepared by Reg. 2, U.S. FWS

NOTE: Though the following examples of statement of relationship do not specifically address how the Service will consult with the particular Tribe, they do provide an understanding of how the Service will work with each referenced Tribe on a government-to-government basis.

F.1. Statement of Relationship—Example 1:

STATEMENT OF RELATIONSHIP
Between the [Tribe's name] and the U.S. Fish and Wildlife Service

PURPOSE

Tribal and Service legal mandates, as applied by the Service, have appeared to conflict in the past, but both the Tribe and the Service believe that a working relationship that reconciles the two within a bilateral government-to-government framework will reduce the potential for future conflicts.

I. GUIDING PRECEPTS

■ The Tribe and the Service have a common interest in promoting healthy ecosystems.

■ The Service recognizes the Tribe's aboriginal rights, semi-sovereign authority, and institutional capacity to self-manage the lands and resources within the [**Tribe's name**] Reservation as the self-sustaining homeland of the [**Tribe's name**].

■ The Service's technical expertise in fish, wildlife, and plants establishes it as a significant resource for the Tribe's management of the ecosystems and associated sensitive species of the Reservation.

■ The Service has a trust responsibility and is required to consult with the Tribe, as articulated in Executive Order No. 13175 by the Secretary of the Interior, regarding any of its activities that may affect the Tribe's trust resources, and the sustained yield of those resources. Such activities will support the Tribe's self-determination and economic self-sufficiency.

■ The Tribe and the Service acknowledge that delays in communication as well as unclear lines of communication have led to problems in the past. The Tribe and the Service agree that clarification of this issue through implementation of the concepts contained in this statement will ensure early two-way interactions and will lead to productive resolution of issues of mutual concern.

■ The Tribe and the Service agree and recognize that this statement and any process established by it do not preempt or modify the respective rights and responsibilities of either entity.

II. TRIBAL MANAGEMENT

■ The Tribe is continuing to institutionalize internal processes for planning, review, regulation, and enforcement to ensure that economic activity on its reservation is consistent with traditional Apache values for living in balance with the natural world.

■ The Tribe will complete integrated resource management plans on a watershed basis that promote tribal goals, including sustained yield. These plans will direct the assessment, management, and restoration of ecosystems in accordance with tribal values. Other tribal resource management plans must conform to the conservation guidelines and practices established in the integrated resource management plans.

■ In the interim, the Tribe is preparing an Ecosystem Management Plan that addresses sensitive species, based on existing knowledge, active conservation practices, and current management plans. The plan will be continuously enhanced with new information obtained from ongoing surveys, habitat assessments, and other planning processes.

III. COMMUNICATION

■ The government-to-government relationship requires working with the [**Tribe's name**] Government and its resource management authorities, including the sharing of technical staffs and information, to address issues of mutual interest and common concern. Both the Tribe and the Service recognize, however, that release of Tribal proprietary, commercial, and confidential information may be restricted by either the Tribe or the Service.

■ While the Tribe and the Service encourage open, informal discussion to facilitate proactive, cooperative efforts; formal communications follow the outline in Table 1. Mutual agreement on communications with

outside parties will promote the innovative and creative process that the Tribe and the Service have agreed to pursue.

■ The Service and the Tribe acknowledge that the Tribe manages access to and is responsible for the safeguarding of information on tribal ecosystems, flora, and fauna (including Federally endangered, threatened and candidate species). The Tribe will establish protocols for the safekeeping and dissemination of such information.

■ Whenever the Service considers a change in the status of a species that may exist on the Reservation now or in the future, it will promptly notify the Tribe's Endangered Species Coordinator. Concurrently, the Service will indicate what scientific information it presently has, the nature of the Service's concern, and what additional information and management would render unwarranted the elevation of the species to a more protected status or would encourage the delisting of the species.

■ The Service's Director of Region 2 will be the contact person for cross-regional communications on any Service activity that may affect the Tribe and Tribal land management.

■ The Service's primary contact point with the Tribe is the Arizona Fishery Resources Office in Pinetop, Arizona, which has decades of experience in working with the Tribe to promote healthy ecosystems, its focus on fisheries resources supports an emphasis on sensitive habitats, and it enjoys close proximity to and extensive familiarity with the Reservation.

■ The Gila-Salt-Verde (GSV) Ecoregion Team provides an avenue for the Service and the Tribe to implement cooperative projects to assess and restore sensitive ecosystems in accordance with Tribal goals; in particular, the restoration of degraded riparian areas and the elimination of introduced species considered detrimental by the Tribe. The Service will invite the Tribe to send representatives whenever the Team meets to discuss goal-setting or tasks for the types of ecosystems that exist on the Reservation.

IV. COORDINATION

■ Upon Tribal request, the Service will provide technical assistance on the maintenance of healthy ecosystems. Such assistance will normally be provided through the Gila-Salt-Verde Ecoregion Team.

■ The Service and the Tribe will cooperatively develop and propose management practices based upon identified threats to sensitive species and their habitats for incorporation into the Tribal Management Plan (TMP), which consists of the portions of the Ecosystem Management Plan and integrated resource management plans which address sensitive species. This activity will initially take the form of lists of sensitive species, threats, and an assessment of commonality and severity of the threats.

■ The Service will notify the Tribe upon initiation of formal or informal consultation with a Federal agency regarding tribal lands as soon as it becomes aware of a request.

■ Active management and implementation of the TMP will generally serve as the basis for Reasonable and Prudent Measures and Alternatives arising from formal or informal consultations with Federal agencies.

■ The Service and the Tribe will hold an annual conference on the TMP and its implementation. The conference will be held to make year-to-year changes and will include field visits and requests for future technical assistance.

■ Adoption and implementation of the TMP will normally mean no additional special management considerations or protection for sensitive species will be needed.

DIRECTOR, U.S. FISH AND WILDLIFE SERVICE DATE

[TRIBAL LEADER'S NAME AND TITLE] DATE

Table 1: Matrix For Communications

Issue Type [Tribe's Name]	Lead Contact* Service	Lead Contact*
Informal Discussion	*Any*	*Any*
SCIENTIFIC AND MANAGEMENT ISSUES ■ Technical assistance ■ Requests for site visits ■ Requests for biological data ■ Species / Ecosystem management plans ■ Integrated resource management plans ■ Data management protocol ■ Cooperative projects with Ecoregion Team	[Tribe's name] Endangered Species Coordinator (602) 338-4385, ext. 12 Arizona Fishery	Resources Office Pinetop, AZ (602) 367-1953
POLICY DEVELOPMENT (PRE-DECISION) ■ Intergovernmental agreements ■ Coordination of working group ■ Program funding	[Tribe's name] Director of Planning and Developmental Services (602) 338-4346, ext. 213	John Rogers, Region 2 Director, (505) 766-2321
LEGAL CONCERNS (PRE-DECISION) ■ Potential FWS regulatory actions directly affecting the Tribe (e.g., listings, critical habitat, initiation of formal/informal consultations) ■ Potential Tribal governmental actions directly affecting the Service ■ Requests for comments	[Tribe's name] Director of Planning and Developmental Services [Tribe's name] General Counsel (602) 338-4346, ext. 410	John Rogers, Region 2 Director Regional Solicitor Perry Mason
FORMAL DECISIONS BY TRIBE OR FWS ■ Final policy decisions, regulatory actions, findings from formal/informal consultations, or enforcement actions of direct concern to the Tribe or FWS	[Tribe's name] Tribal Chairman (602) 338-1560	Mollie Beattie, Director, as delegated to John Rogers

**Or successor*

F.2. Statement of Relationship—Example 2:

STATEMENT OF RELATIONSHIP
Between the [Tribe's name] and the U.S. Fish and Wildlife Service

PURPOSE

The purpose of this document is to set forth a new framework for a working relationship between the [**Tribe**] (Tribe) and the U.S. Fish and Wildlife Service (Service) in order to avoid conflicts concerning the management of fish and wildlife.

The Statement of Relationship recognizes [Tribe] autonomy and works within the context of a government to government relationship which exists between the United States and the [**Tribe**].

GUIDING PRINCIPLES AND DEFINITIONS

1) The Tribe and the Service share a common goal of responsible and sustainable management of natural resources and ecosystems, maintaining healthy populations of plant and animal species, and protecting sensitive species.

2) The Service recognizes the Tribe's authority to self-government and ability to self-manage lands and natural resources within the boundaries of the [**Tribe**] Reservation.

3) The Service will comply with the intent of the Native American Policy, dated and signed June 24, 1993, by the Director of the Service, concerning its commitment to assist Native American Governments in the conservation of fish and wildlife resources.

4) The parties recognize, support, and will comply with the Secretarial Order #3206, dated and signed June 5, 1997 by the Secretary of the Interior, concerning American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act.

5) The parties recognize The American Indian Religious Freedom Act (P.L. 95-341) which states, in part, that the United States shall protect and preserve for the American Indian their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian....including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites.

6) The Tribe has the most intimate knowledge of species locations, population health, and, in many cases, management requirements for species occurring on [Tribe] lands.

7) The Service has expertise in the area of fish and wildlife management and can provide important technical assistance to the Tribe, subject to the availability of resources.

8) As a U.S. Government and Department of the Interior Agency, the Service has a trust responsibility to assist the Tribe in caring for fish, wildlife, plants, and other natural resources as articulated in Interior Secretarial Order No. 3175 concerning Department responsibilities for Indian Trust Resources, signed November 8, 1993.

9) [Tribe] management of fish, wildlife, plants and other natural resources, while in accordance with many of the same principles as Federal management of these resources, is at times guided by different goals and concerns than those of the U.S. Government and the Service.

10) The Tribe and the Service recognize that this statement does not preempt or modify the respective rights and responsibilities of either entity nor does it affect the Tribe's inherent authority to manage its lands and resources.

TRIBAL FISH AND WILDLIFE MANAGEMENT

1) The Tribe has prepared and is implementing a [**Tribe**] Natural Resources Development Plan and is practicing integrated resource management that protect fish and wildlife and other natural resources, while at the same time protecting [**Tribe**] cultural beliefs and values.

2) Both parties acknowledge that the tribe will be the primary manager of fish and wildlife resources on tribal lands and will maintain and hold records concerning fish and wildlife species and management. The Tribe will, upon written request, share this information with the Service in such cases where it does not compromise tribal proprietary or confidential cultural or religious information. The Tribe will establish safeguards for safekeeping and disseminating this information. The information that is collected by the Tribe is not subject to Federal Freedom of Information Act Requests, provided that the information was collected using tribal funds and is maintained with the Tribe.

3) The Service and Tribe will seek appropriate and mutually acceptable means to manage the sustainable use of, and monitor the populations and population trends of, certain species of wildlife for [Tribe] religious purposes.

FISH AND WILDLIFE LAW ENFORCEMENT

1) The Tribe and the Service have entered into a Memorandum of Agreement for Cooperative Law Enforcement through which the Regional Director of the Service may delegate to certain designated Tribal law enforcement officers authority to enforce enumerated Federal laws that address the protection and conservation of fish, wildlife and natural resources within the jurisdiction of the Tribe. Regional Director delegation of Federal wildlife conservation law enforcement authority will be contingent upon the qualifications of the designated Tribal law enforcement officers.

2) Likewise, after approval by the Tribal Council, the Governor of the Tribe will delegate the authority to enforce certain tribal laws and regulations for the protection and conservation of wildlife and natural resources to designated Service law enforcement officers.

COMMUNICATION

1) The Tribe and the Service agree to work together to implement the precepts of this relationship and encourage open discussion on the best ways to implement this agreement

2) Formal discussion for the implementation of this agreement and the continued management of fish and wildlife on [Tribe] land will take place at regular, agree-upon intervals. Informal discussions or consultations will take place at any time if either of the parties desires more information or clarification.

3) Whenever the Service considers a change in the status of species that may exist on [**Tribe**] land, it will promptly notify the Tribe. The Service will also indicate what scientific or other information is available concerning the species, the nature of the Service's concern, and what additional information would assist in the management of the species.

COORDINATION

1) Upon request by the Tribe, the Service will provide technical assistance to manage fish, wildlife, sensitive species, migratory birds, or any other fish or wildlife species for which the Tribe does not have the technical capabilities or knowledge.

2) The Service and the Tribe will cooperatively develop management practices for fish and wildlife based on accepted wildlife management practices.

3) The Service and the Tribe will hold yearly meetings to update this agreement and discuss changes or modifications based on the experiences of the preceding year.

4) The Service will assist the Tribe in identifying avenues of funding, outside the Service, to implement the precepts in this Statement of Relationship.

REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, REGION 2 DATE

[TRIBAL LEADER] [TRIBE] DATE

F.3. Confidential and Proprietary Information Agreement—Example

Note: Nothing in this Agreement below shall be deemed to affect the Service's obligations under the Privacy Act or the Freedom of Information Act (FOIA), or the Service's ability to continue to assert FOIA exemptions with regard to FOIA requests

CONFIDENTIAL AND PROPRIETARY INFORMATION AGREEMENT
Between the [Name Of Tribe] Tribe and the U.S. Fish and Wildlife Service

Preamble

The [**name of Tribe**] Tribe (hereinafter referred to as the "Tribe"), a federally recognized Indian Tribe, has the inherent authority to develop codes and regulations to protect natural resources on its Tribal lands. The Tribe also has the authority to develop and enter into agreements with other agencies and entities in order to promote, protect, enhance, and pursue effective management of its natural resources. The Tribe has authority to manage access to and to safeguard information about tribal lands, resources, and ecosystems, and their associated flora and fauna.

The Tribe has begun a process to formalize steps to restore and manage the Rio Grande ecosystem within Tribal lands.

The Tribe, through its Natural Resources Department, and the U.S. Fish and Wildlife Service (hereinafter referred to as the "Service") anticipate cooperating in conducting surveys, habitat assessments, and restoration projects in the Rio Grande on tribal lands. The Native American Policy of the Service states that information obtained from tribal governments will not be shared or released without the Tribe's consent or as required by law, including information obtained from tribal governments and information generated by the Service through technical assistance to tribal governments. As set forth in this Confidential and Proprietary Information Agreement (hereinafter referred to as the "Agreement") and pursuant to the trust obligations of the United States to the Tribe, both the Tribe and the Service desire to establish a protocol to facilitate sharing of information while ensuring that tribal proprietary, commercial, and other confidential information is protected.

Terms

1. DEFINITIONS

a. "Confidential Tribal Information" means all information that is religious, cultural, ceremonial, proprietary, financial, technical, commercial, privileged, sensitive or confidential in nature or content or that relates to natural resources, cultural resources, or resource management practices of the Tribe, and includes, but is not limited to, Information pertaining to:

- the [common name of species—Example:] Rio Grande Silvery Minnow, the Southwestern Willow Flycatcher or any federally threatened, endangered, or candidate species;
- habitat or ecosystem conditions on Tribal lands;
- water quality of the Tribe's water resources, including surface water and groundwater;
- water quantity and inventory of the Tribe's water resources, including surface water and groundwater;
- commercial activities of the Tribe;
- natural resource management practices or plans of the Tribe;
- location and nature of sites of traditional cultural significance to the Tribe;
- Information that the Tribe would not customarily release to the general public; and Information gathered on Tribal Lands.

b. "Information" means any verbal, visual, pictorial, specimen, graphic, electronically-stored, printed, recorded, or written material acquired from the Tribe or other person or entity or obtained in any other way and includes, but is not limited to reports, summaries, data, maps, photographs, correspondence, phone call records, audio or video recordings, and any other information pertaining to the Tribe or its property, assets, or interests, including information in the custody of the Service.

2. SCOPE

This Agreement applies to all offices, personnel, agents, consultants and contractors of the Service in the collection, receipt, possession, use, review, disclosure, or dissemination of Confidential Tribal Information.

3. RESTRICTIONS ON ACCESS AND INFORMATION COLLECTION

a. Nothing in this Agreement shall be construed to authorize access to Tribal Lands or collection of Confidential Tribal Information. The Service may be allowed to access Tribal lands or collect Information only upon written authorization by the Tribal Council or the [Chief, Chairman, Governor] of the Tribe, and shall be accompanied at all times by an authorized representative

designated by the Tribe. Such authorization may include additional conditions beyond those in this Agreement.

b. Upon execution of this Agreement by both parties, the Tribe and the Service will each designate a Primary Contact Person to coordinate any authorized field activities and Information requests.

c. Prior to contractors or agents of the Service entering onto the Tribe's land or obtaining access to Confidential Tribal Information, the Service shall provide the Tribe a copy of an agreement, in the form of Exhibit A, signed by an authorized representative of said contractor or agent, confirming that said contractor or agent acknowledges and agrees that the obligations of the Service under this Agreement apply to said contractor or agent.

d. The Service shall not collect Confidential Tribal Information relating to the location, nature, description, or use of any sacred site or other cultural resource of the Tribe.

4. USE OF CONFIDENTIAL TRIBAL INFORMATION

a. Confidential Tribal Information shall be used by the Service solely for purposes authorized by the [Chief, Chairman, Governor] or Tribal Council in writing. Under no circumstances shall the Service use Confidential Tribal Information in any way that is detrimental to the Tribe, including without limitation, to the competitive disadvantage of the Tribe.

b. The Service shall not copy, cite, or incorporate any Confidential Tribal Information in any document or publication without obtaining prior written consent from the [Chief, Chairman, Governor] or Tribal Council for either the use of such Information or the use of certain redacted or summarized Information. The Service shall provide an opportunity for the Tribe to review and consult on a draft of any document containing Confidential Tribal Information prior to its disclosure or completion as a final document.

5. DISCLOSURE OF CONFIDENTIAL TRIBAL INFORMATION

a. The Service shall keep all Confidential Tribal Information confidential, and shall not disclose any Confidential Tribal Information in any manner whatsoever, in whole or in part, to any person or entity, except disclosures:

i. to another person approved in writing by the [Chief, Chairman, Governor] or the Tribal Council upon the receipt by the Tribe and the Service of a Confidentiality Agreement acceptable to the Tribe and the Service executed by the person;

ii. as otherwise required by law or legal process; or

iii. as otherwise authorized by the Tribal Council.

b. The requirements of this Paragraph shall not extend to any portion of the confidential Tribal Information that is or becomes generally available to the public other than as a result of a disclosure by the Service.

6. RESTRICTION ON REMOVAL OF CONFIDENTIAL TRIBAL INFORMATION FROM TRIBAL LANDS

a. All Confidential Tribal Information shall remain the exclusive property of the Tribe and shall not be removed from the Tribe's land except by prior authorization pursuant to Paragraphs 6.b or 6.c of this Agreement.

b. Upon the written approval by the [Chief, Chairman, Governor] or Tribal Council of an official, specific written request by the Service to review Confidential Tribal Information, the Service may review the specified Information at the Tribe's Natural Resources Department (or any successor Tribal department with responsibility for implementing this agreement, such as a Resource Protection Office) by prior appointment with the Primary Contact Person designated pursuant to Paragraph 3.b of this Agreement.

c. Upon the written approval by the [Chief, Chairman, Governor] or Tribal Council of an official, specific written request by the Service to remove Confidential Tribal Information from Tribal lands, the Service may remove Confidential Tribal Information from Tribal lands to carry out Tribally-authorized purposes so long as: (1) only those Service personnel specifically authorized by the Tribe to review the Information shall have access to it and the Service will take every precaution to secure the confidentiality of the Information; (2) the Information shall not be photocopied, digitally copied, or reproduced in any other manner without prior written consent of the Governor or Tribal Council; (3) the Service will maintain and provide to the Tribe a written record of all such Information including without limitation the date of removal, description of the Information, name of individual removing Information, the purpose and justification, and the date of return; (4) the Information will not be removed for a period longer than 15 to 30 days unless otherwise specified by the Tribe; and (5) the Service shall return all information, including copies, to the Tribe upon completion of the authorized purpose or the authorized period, whichever is sooner. The Tribe shall also have the right to request the immediate return of any and all Information at any time, and the Service shall immediately return it. All Information shall remain the property of the Tribe, and not of the Service.

d. The Tribe may develop redacted versions or summaries of Confidential Tribal Information and, by explicit written approval by the Tribal Council or [Chief, Chairman, Governor], authorize the Service to retain or publish such Information in the public record or in other documents. However, providing such Information in this or any other form does not indicate that similar or like Information would customarily be released to the public by the Tribe.

7. AUDIO AND VIDEO RECORDING AND PHOTOGRAPHY

The Service is not permitted to make audio or video recordings or to take photographs without the prior written permission of the [Chief, Chairman, Governor] Tribal Council and in the presence of a Tribal representative designated by the [Chief, Chairman, Governor] or Tribal Council. Contractors of the Service shall not be permitted to take photographs or make audio and video recordings. All photographs and audio and video recordings shall be returned to the Tribe, and the Service shall not keep copies of returned photographs and audio and video recordings. Notwithstanding the foregoing, the Service may retain certain photographs or audio or video recordings upon written request by the Service and written approval of the [Chief, Chairman, Governor] or Tribal Council for the specified photographs or recordings.

8. ACKNOWLEDGMENT BY THE SERVICE

The Service acknowledges that serious damage could result to the Tribe if any of the Confidential Tribal Information is disclosed to any third party other than as provided herein and that such Confidential Tribal Information has been furnished to the Service subject to and in consideration of the Service's agreement to keep the Information confidential as intended herein. While the Tribe will endeavor to mark potentially sensitive information "confidential," "restricted" or with other similar markings, the absence of such markings shall not be construed to mean that the Information is not Confidential Tribal Information.

9. EFFECTIVE DATE AND DURATION OF AGREEMENT AND OBLIGATION OF CONTRACTORS

a. The Service agrees that its obligations hereunder were, are, or shall be effective as of the first date on which the Service first had, has, or shall have access to any Confidential Tribal Information or prior to entering onto the Tribe's land.

b. This Agreement may be terminated upon written notice. The obligations of the Service hereunder shall survive the term of this Agreement and shall continue indefinitely.

c. This Agreement may be amended by written agreement between the parties.

10. LIMITATIONS

a. This Agreement does not authorize the expenditure or exchange of funds between the parties.

b. Nothing in this Agreement shall be deemed to affect the Service's obligations under the Privacy Act or the Freedom of Information Act (FOIA), or the Service's ability to continue to assert FOIA exemptions with regard to FOIA requests.

c. This Agreement shall not be construed to grant, expand, create, or diminish any legally enforceable rights, benefits or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this Agreement be construed to alter, amend, repeal, interpret or modify the Tribe's status, any treaty rights, or other rights of the Tribe or preempt, modify or limit the exercise of any such rights.

d. Nothing in this Agreement shall be applied to authorize take of species listed pursuant to the Endangered Species Act of 1973, or any activity that would jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat.

e. Consistent with the requirements of the Anti-Deficiency Act, the expenditure of any money or the performance of any obligation by the United States under this Agreement shall be contingent upon appropriation or allotment of funds.

11. LAW TO BE APPLIED

This Agreement shall be construed in accordance with the laws of the United States.

12. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement with respect to the subject matter hereof. The parties hereto have executed this Agreement as of the latter date written below.

REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, REGION 2 DATE

[TRIBAL LEADER'S TITLE AND FULL NAME] [TRIBE] DATE

Appendix G: Contact List for Service Native American Liaisons

Region	States	Native American Liaison Updated as of October 2017	Address
Region 1	Hawaii, Idaho, Oregon, and Washington	Nathan Dexter nathan_dexter@fws.gov T: (503) 736-4774 F: (503) 231-2122	U.S. Fish and Wildlife Service Eastside Federal Complex 911 N.E. 11th Avenue Portland, OR 97232-4181
Region 2	Arizona, New Mexico, Oklahoma, and Texas	Joseph Early joe_early@fws.gov T: (505) 248-6602 F: (505) 248-6915	U.S. Fish and Wildlife Service 500 Gold Avenue SW P.O. Box 1306 Albuquerque, NM 87103
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin	Chuck Traxler charles_traxler@fws.gov T: (612) 713-5311 F: (612) 713-5280	U.S. Fish and Wildlife Service 5600 American Blvd. West, Suite 990 Bloomington, MN 55437-1458
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee	Tim Binzen timothy_binzen@fws.gov T: (413) 253-8731 F: (413) 253-8456	U.S. Fish and Wildlife Service 300 Westgate Center Drive Hadley, MA 01035
Region 5	Connecticut, Delaware, Washington D.C. Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia	Tim Binzen T: (413) 253-8731 F: (413) 253-8456	U.S. Fish and Wildlife Service 300 Westgate Center Drive Hadley, MA 01035
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming	Anna Munoz anna_munoz@fws.gov T: (303) 236-4510 F: (303) 236-3815	U.S. Fish and Wildlife Service 134 Union Blvd., P.O. Box 25486 Denver, CO 80225
Region 7	Alaska	Crystal Leonetti crystal_leonetti@fws.gov T: (907) 786-3868 F: (907) 786-3306	U.S. Fish and Wildlife Service 1011 East Tudor Road MS-101 Anchorage, AK 99503
Region 8	California and Nevada	Richard Adkins richard_adkins@fws.gov T: (916) 532-5327 F: (916) 414-6512	U.S. Fish and Wildlife Service Habitat Restoration Division 2800 Cottage Way Sacramento, CA 95825
WO	Washington Office	Scott Aikin, scott_aikin@fws.gov National Native American Programs Coordinator T: (360) 604-2531 F: (360) 604-2505	U.S. Fish and Wildlife Service 8510 NE 69th Street Vancouver, WA 98683
		D.J. Monette, dj_monette@fws.gov Associate Native American Liaison Advisor T: (413) 244-4495	U.S. Fish and Wildlife Service 300 Westgate Center Drive Hadley, MA 01035
		Linda Friar, linda_friar@fws.gov Fisheries Tribal Liaison Fish and Equatic Conservation T: (703) 358-2056 F: (703) 358-2487	U.S. Fish and Wildlife Service 5275 Leesburg Pike Falls Church, VA 22041
		January Johnson, january_johnson@fws.gov Migratory Bird Tribal Liaison / FOIA Specialist Migratory Bird Program T: (703) 358-2006 F: (703) 358-2282	U.S. Fish and Wildlife Service 5275 Leesburg Pike Falls Church, VA 22041

U.S. Fish and Wildlife Service
fws.gov/nativeamerican
1/800 344 WILD

October 2018