

**FISH AND WILDLIFE SERVICE
INTERGOVERNMENTAL ACTIVITIES**

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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

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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.

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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 consultation, 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

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

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

The Service should provide Native Americans access to Service 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

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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

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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.

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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

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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.

/sgd/ Daniel Ashe
DIRECTOR

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