

**FISH AND WILDLIFE SERVICE
NATURAL AND CULTURAL RESOURCES MANAGEMENT**

Natural and Cultural Resources Management **Part 614 Cultural Resources Management**
Chapter 6 Tribal Consultation under Cultural Resource Authorities **614 FW 6**

6.1 What is the purpose of this chapter? This chapter describes the U.S. Fish and Wildlife Service's (Service) responsibilities for engaging in meaningful consultation with Tribal Preservation partners (i.e., federally recognized Native American tribes, Native Hawaiians, and Alaska natives) with respect to cultural resources-related laws and executive orders. We refer to all of these groups as "tribes/native organizations" throughout the remainder of this chapter.

6.2 What are the objectives of this chapter? Our objectives are to:

A. Define government-to-government consultation with tribes/native organizations within the framework of cultural resource authorities,

B. Ensure that the Service gives tribal issues and concerns adequate consideration and engages in meaningful consultation during decision making related to compliance with cultural resources authorities, and

C. Foster good working relationships with tribes/native organizations.

6.3 What are the authorities, definitions of terms, and responsibilities for this chapter?

See 614 FW 1 for information about the authorities, terms we use, and responsibilities for all the chapters in Part 614.

6.4 In addition to the relevant authorities in 614 FW 1, what specific guidance should Service employees be aware of when working with tribes/native organizations on cultural resource issues?

A. The 2009 Presidential Memorandum, "[Government-to-Government Relations with Native American Tribal Governments](#)" directs us to:

(1) Operate within a government-to-government relationship with federally recognized tribes;

(2) Consult openly and candidly with tribal governments before taking actions that affect recognized tribal, cultural, or sacred resources;

(3) Assess the impact of Service plans, projects, programs, and activities on tribal trust resources and consider tribal government rights and concerns during their development; and

(4) Remove procedural impediments to working with tribal governments on activities that affect the trust property or governmental right of the tribes.

B. The Service's Native American Policy, 510 FW 1, and our 2013 *Tribal Consultation Handbook*:

(1) Describe the policies, procedures, and methods for Service consultations and interactions with federally recognized tribes;

(2) Supplement the Presidential memorandum we discuss in section 6.4A; and

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(3) Assist employees to take the correct steps for tribal consultation, which includes consultation for the National Historic Preservation Act (NHPA).

6.5 Who in the Service has specific tribal consultation responsibilities related to cultural resources?

A. The Service Director or Regional Directors for Regional issues are the ultimate Service officials with respect to consultation activities that concern cultural or sacred resources. The primary technical experts that the Director and Regional Directors rely on are the Regional Historic Preservation Officers (RHPO) and Regional Native American Liaisons.

B. Project Leaders/Field Station Managers should contact Service technical experts, such as the Regional Native American Liaisons or other Native American points of contact, for professional advice and technical assistance on formal consultations with tribes/native organizations and their governments in the Region.

6.6 What should Service employees understand about relationships to tribes/native organizations?

A. Federally recognized tribes are the legal representatives for ensuring that tribal members may exercise rights and privileges held through treaties, executive orders, and agreements with the United States, both on and off reservations. The special legal status of tribal governments requires the Service to consult with their members on a government-to-government basis. Authorities and responsibilities of specific tribal governments are in the constitutions and bylaws of the individual tribes (e.g., Indian Trust Responsibilities).

B. The Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601) established federally recognized tribes and Alaska native entities.

(1) Alaska native entities have the same benefits and privileges as federally recognized tribes, including the requirement to consult with them on a government-to-government basis. The Bureau of Indian Affairs publishes the list of Alaska native entities in the Federal Register annually.

(2) The Service also acknowledges Alaska Native Corporations formed under the Alaska Native Claims Settlement Act for their additional roles in representing their stakeholders.

C. The Service may consult with groups and communities that are not federally recognized at its discretion. Non-recognized groups may still participate in the consultation process as members of the public.

D. Individual tribes/native organizations, whether members of a federally recognized tribe or not, may have rights related to claiming human remains and associated funerary objects and the protection of religious observances.

E. The 1992 amendments to NHPA allow federally recognized tribes to take on more formal responsibility for the preservation of significant historic properties on tribal lands. Tribes assume

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any or all of the functions of a [State Historic Preservation Officer](#) (SHPO) for their tribal land by designating a Tribal Historic Preservation Officer (THPO). Not every tribe has a THPO.

6.7 What are the laws and executive orders requiring the Service to consult with tribes/native organizations, and what are the major requirements? Table 6-1 summarizes the most prominent laws and executive orders requiring consultation with tribes or native organizations. Service managers and staff should also consider associated memorandums of understanding and other planning documents that have been developed because of these authorities when consulting with tribes.

Table 6-1: Laws and Executive Orders Requiring Consultation with Tribes/Native Organizations		
Law/Order	What It Says	What We Must Do
National Historic Preservation Act (NHPA)	<ul style="list-style-type: none"> Establishes requirement that Federal agencies provide leadership in preserving the Nation’s prehistoric and historic resources. 	<ul style="list-style-type: none"> Consult with tribes/native organizations whose tradition or history connects them to the general area of the undertaking. Consult with tribes/native organizations to identify significant religious or cultural properties that may be eligible for the National Register in or near the area of potential effect of the undertaking. Consult with tribes/native organizations to identify and consider potential effects that our undertakings might have on properties that are on or may be eligible for the National Register or may be culturally or religiously significant to the tribe/organization.
The Archaeological Resources Protection Act (ARPA)	<ul style="list-style-type: none"> Protects materials of archaeological interest that are more than 100 years old from unauthorized removal or destruction. 	<ul style="list-style-type: none"> If we determine that a location with cultural or religious importance to a tribe/native organization may be harmed or destroyed by an excavation or collection, notify the tribe/native organization before we approve the permit. Include in the permit any terms and conditions necessary to protect the cultural resources. Consult with the tribal/native organization representative on both the proposed project and the terms in the permit. Include a Plan of Action in case any human remains are encountered.
The Native American Graves Protection and Repatriation Act	<ul style="list-style-type: none"> Requires Federal agencies and museums to inventory, determine ownership of, and 	<ul style="list-style-type: none"> Consult with tribes/native organizations to determine affiliation and disposition of the specific kinds of “cultural items” defined in the Act—human remains, funerary

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	<p>repatriate specific cultural items the Act identifies as Native American.</p>	<p>objects, sacred objects, and objects of cultural patrimony.</p> <ul style="list-style-type: none"> ● Consult with the lineal descendant, if known, claimant tribes/organizations, or the tribal/organization representative before items are excavated or found whenever possible. ● Also consult with tribes/native organizations after items are excavated or found to ensure their proper treatment and disposition. Includes inadvertent discoveries under NHPA, ARPA, or other applicable authority. ● Managers and staff determine if cultural items should be reburied on a case-by-case basis.
<p>National Environmental Policy Act</p>	<ul style="list-style-type: none"> ● Among other things, requires Federal agencies considering actions that could significantly affect the human environment to prepare statements of environmental impact and identify adverse effects and alternatives. 	<ul style="list-style-type: none"> ● Consult tribes/native organizations whenever other governmental entities or the public are formally involved in the environmental review process. ● Consult with tribes/native organizations to identify a proposed action's potential to conflict with tribal/organizational members' cultural, religious, or economic uses and resolve potential conflicts.
<p>American Indian Religious Freedom Act</p>	<ul style="list-style-type: none"> ● Establishes U.S. policy to protect and preserve for Native Americans their right of freedom to believe, express, and exercise their traditional religions including: <ul style="list-style-type: none"> - Access to sacred sites or areas, including cemeteries, required in their religion; - Use and possession of religious objects necessary to properly exercise their religious rites and ceremonies; and 	<ul style="list-style-type: none"> ● Consult with the tribal/organizational representatives to identify potential for land management procedures that may conflict with their religious observances and to seek alternatives that would resolve any potential conflicts.

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Law/Order	What It Says	What We Must Do
	<ul style="list-style-type: none"> - Freedom to worship through ceremonies and traditional rites without Government intrusion or interference. 	
Executive Order 13007, Indian Sacred Sites	<ul style="list-style-type: none"> • Federal land managers must accommodate Native American religious practitioners' access to and ceremonial use of sacred sites and avoid adversely affecting the integrity of these sites. 	<ul style="list-style-type: none"> • Consult with tribes/native organizations to determine whether proposed land management actions will accommodate access to and ceremonial use of their sacred sites on our lands. • Notify tribes/native organizations of future actions that might limit access or ceremonial use of sacred sites and work with them to seek alternatives that would resolve potential conflicts. • Consult with tribes/native organizations if the proposed action may impact a sacred site that is also a historic property under the NHPA
Executive Order 13175, Consultation and Coordination with Tribal Governments	<ul style="list-style-type: none"> • Agencies must respect Indian tribal self-government and sovereignty, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and tribal governments. 	<ul style="list-style-type: none"> • Involve tribes/native organizations early in discussions of issues with tribal implications, • Conduct meaningful consultation with tribes/native organizations, and • Be accountable for the outcomes of consultation.

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DEPUTY DIRECTOR

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