



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington D.C. 20240



DIRECTOR'S ORDER NO.: 227

Subject: Fulfilling the Trust Responsibility to Tribes and the Native Hawaiian Community, and Other Obligations to Alaska Native Corporations and Alaska Native Organizations, in the Stewardship of Federal Lands and Waters

Sec. 1 What is the background and purpose of this Order? Relationships, knowledge-sharing, and co-stewardship with federally recognized Tribes, Alaska Native Corporations (ANC), Alaska Native Organizations (ANO), and the Native Hawaiian Community are essential to the U.S. Fish and Wildlife Service (Service) mission. We have the direction and tools available to ensure the principles for collaborative interactions between the Service and Tribal governments, ANCs, ANOs, and the Native Hawaiian Community are implemented in furtherance of our shared interests in the conservation of fish, wildlife, and their habitats as well as protection and use of cultural, trust, and treaty resources that exist on Service lands and where Tribes have subsistence or other rights or interests. The Service recognizes the need for strong, healthy communication and relationships with Tribal governments, ANCs, ANOs, and the Native Hawaiian Community so that we can work together in support of Tribal sovereignty, Tribal self-determination, and our shared goals. We recognize that the Service is entrusted with the management of lands that are the ancestral homelands of Tribes and the Native Hawaiian Community that predate the National Wildlife Refuge System. When the Service and Indigenous peoples work together on managing our lands and waters, along with the fish and wildlife that inhabit them, our long-standing relationships are strengthened and resources are better protected. This Director's Order:

- a. Steps down the requirements in [Secretarial Order No. 3403](#), (of November 15, 2021), Joint Secretarial Order (Secretaries of the Interior and Agriculture) on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters, and the forthcoming 502 Departmental Manual (DM) 1, Cooperative and Collaborative Co-Stewardship with Tribes, by ensuring that the Service is managing Federal lands and waters in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of Tribes, ANCs, and the Native Hawaiian Community; that such management is consistent with the nation-to-nation relationship between the United States and federally recognized Tribes and the government-to-sovereign relationship between the United States and the Native Hawaiian Community; and that such management fulfills the United States' unique trust obligation to federally recognized Tribes and their citizens, and the United States' special political and trust relationship with the Native Hawaiian Community. Furthermore, this Order outlines our goals for co-stewardship with

ANCs and ANOs.

b. Establishes a consistent national framework for guiding the Service in administering trust responsibilities to Tribes and the Native Hawaiian Community in the stewardship of Federal lands and waters, including where Tribes have subsistence or other rights or interests. This framework provides flexibility to respond to regional and local variations in history, knowledge systems, ways of knowing, applicable laws, treaties, and Service relationships with Tribes, ANCs, ANOs, and the Native Hawaiian Community. It applies to all Service employees who have official duties that may affect these interests.

c. Reaffirms the Service's commitment for government-to-government relationships, which furthers the United States' and the Department of the Interior's trust responsibility to Tribes. It likewise reaffirms the Service's government-to-sovereign relationship with the Native Hawaiian Community, acting through Native Hawaiian organizations, which furthers the United States' special political and trust relationship with the community.

d. Supplements existing Service policy at [510 FW 1](#), the Service's Native American Policy, and 510 FW 2, the Alaska Native Relations Policy (*forthcoming*), which includes detailed Service requirements for implementing government-to-government relationships, communications, resource management, cultural and religious considerations, law enforcement, Tribal capacity building, and implementation and monitoring.

Sec. 2 What are the definitions that apply to this Order? The following terms apply to this Order:

a. **Tribe or Tribes.** These terms mean any Tribe, band, nation, pueblo, village, or other organized group or community, which the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Tribe List Act of 1994, as amended (25 U.S.C. 5130-5131). Statutes, regulations, and caselaw often refer to "Indian Tribes" and include Alaska Native Tribes when doing so. For example, the definition of sacred site from Executive Order 13007 only refers to Indian Tribes but is inclusive of Alaska Native Tribes. As of 2022, there are 229 federally recognized Tribes in Alaska.

b. **Native Hawaiian Community.** Native Hawaiian Community means the distinct Native Hawaiian indigenous political community that Congress, exercising its plenary power over Native American affairs, has recognized and with which Congress has implemented a special political and trust relationship (43 CFR 50.4).

c. **Native Hawaiian Organizations.** The Service has a special political and trust relationship with the Native Hawaiian Community that exists even without a formal government-to-government relationship (43 CFR 50). The Native Hawaiian Community uses Native Hawaiian organizations as its informal representatives.

Based on these relationships, Native Hawaiian organizations can engage directly with the Service to address matters of mutual interest in the management of Federal lands and waters. The Service will maintain its special political and trust relationship with the Native Hawaiian Community by interacting through Native Hawaiian organizations. A non-exhaustive list of Native Hawaiian Organizations can be found on the [Department's Office of Native Hawaiian Relations website](#).

d. Alaska Native Corporations. The Alaska Native Claims Settlement Act of 1971 established 13 regional corporations and 195 village corporations. ANCs were established to meet the social, economic, and cultural needs of Alaska Native peoples. ANC lands often share boundaries with Federal lands, and this requires cooperation and regular communication on land use and management. Given the size and nature of ANC lands and the critical inter-dependence of fish and wildlife populations across shared habitats, there is a Service responsibility to communicate and work together on issues of mutual interest where outcomes may alter benefits to Alaska Native peoples and their Tribes, ANOs, and ANCs. The Service recognizes that there is a difference between the government-to-government relationship with Tribes and its relationship to ANCs. The Consolidated Appropriations Act of 2004, as amended, requires Federal agencies to consult with ANCs on the same basis as Tribes.

e. Alaska Native Organizations. ANOs are tribally controlled nonprofit organizations that act on behalf and for the benefit of their member Tribes. In addition to tribally controlled nonprofit organizations, the Service has a co-management relationship with certain species-focused ANOs as stipulated in the Marine Mammal Protection Act and the Migratory Bird Treaty Act. The Service acknowledges that Tribes may establish ANOs as official representatives of their interests and in government-to-government relations.

f. Federal Lands and Waters. When used in this Order, Federal lands and waters mean all areas of lands and waters administered by the Secretary, acting through the Director of the Service, including areas of the National Wildlife Refuge System, as defined in 16 U.S.C. 668dd(a)(1) and the National Fish Hatchery System, which includes the lands and waters, and interests therein, administered by the Service for the fundamental purpose of the propagation and distribution of fish and other aquatic animal life and managed for the protection of all species of wildlife.

g. Stewardship. Stewardship means the fulfilment of the Service's management responsibilities for Federal lands and water resources. This includes authorized development activities; management of vegetation, fish, wildlife, and other resources; protection of cultural resources; and the provision of recreational and educational opportunities on Federal lands and waters.

h. Co-Stewardship. Co-stewardship broadly means the cooperative and collaborative engagements of the Service with Tribes and Native Hawaiian organizations related to shared interests in managing, conserving, and preserving

natural and cultural resources under the primary responsibility of the managers of Federal land and water. Cooperative and collaborative arrangements can take a wide variety of forms based on the circumstances and applicable authorities in each case. Forms of co-stewardship may, among other forms, include sharing of technical expertise; combining Service capabilities with Tribes, ANCs, ANOs, and the Native Hawaiian Community to improve resource management and advance the responsibilities and interests of each; making Indigenous knowledge, experience, and perspectives integral to the public's experience of Federal lands and waters; and entering into annual funding agreements under the Tribal Self-Governance Act.

i. **Indigenous Knowledge (IK).** IK means a body of observations, oral and written knowledge, practices, and beliefs that promote environmental sustainability and the responsible stewardship of natural resources through relationships between humans and environmental systems that is applied to phenomena across biological, physical, cultural, and spiritual systems. Like scientific knowledge, IK is an evolving body of evidence-based knowledge with insights acquired through direct and long-term experiences with the environment, as well as extensive observations, lessons, and skills passed from generation to generation. Where appropriate, IK can and should inform Service decision making along with scientific inquiry.

j. **Co-Management.** Co-management means co-stewardship activities undertaken pursuant to Federal authority requiring the delegation of some aspect of Federal decision making or that makes co-management otherwise legally necessary. For example, in some instances, such as management of the salmon harvest in the Pacific Northwest, co-management has been established by law.

Sec. 3 What are the legal authorities for this Order? The Service's authority to fulfill the terms of this Order stems from many ratified treaties and agreements between the United States and federally recognized Tribes, along with the trust obligation owed by the United States to Tribes and the Native Hawaiian Community, as well as other legal obligations to ANCs. In addition, Service authority for the Order can be found in applicable statutes (e.g., P.L. 93-638, Indian Self-Determination and Education Assistance Act of 1975), Executive Orders, and relevant caselaw, including:

a. Executive Order 13007, Indian Sacred Sites – Directing each executive branch agency with statutory or administrative responsibility for the management of Federal lands, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, to:

(1) Accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and

(2) Avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies must maintain the confidentiality of sacred sites.

b. Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments – Directing Federal agencies to engage in meaningful government-to-government consultation with Indian Tribes, provide regulatory and statutory waivers to Indian Tribes to increase flexible policy approaches at the Tribal level, and use consensual mechanisms to support Tribal priorities.

c. Secretarial Orders 3206 and 3225, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act; and Endangered Species Act and Subsistence Uses in Alaska.

d. Secretarial Order 3342, Identifying Opportunities for Cooperative and Collaborative Partnerships with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources.

e. Secretarial Order 3403, Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters – Directing the Departments of the Interior and Agriculture to ensure they are managing Federal lands and waters, including wildlife and its habitat, in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of federally recognized Tribes, including the Native Hawaiian Community.

f. Memorandum of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights (November 2021).

g. MOU Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites (November 2021).

*An extensive list of additional authorities for working with Tribal governments can be found in [Exhibit 3 to 510 FW 1](#), *Authorities for the Service’s Native American Policy*.*

Sec. 4 What are the objectives of this Order? Service objectives through this Order are to reaffirm, through the implementation of policies and practices, that:

a. Federally recognized Tribes (including those within Alaska) are sovereign governments with a government-to-government relationship with the United States.

b. The Department is required to consult with ANCs on issues affecting their interests, and the Department often consults with ANOs representing the interests of multiple Tribes within a single region.

c. The Native Hawaiian Community, acting through Native Hawaiian organizations, has a government-to-sovereign relationship with the United States.

d. The Service has an obligation to work with Tribes to safeguard the cultural, treaty, and trust resources of any Tribes that may be affected by the Service’s decisions regarding lands, waters, and wildlife within the Service’s jurisdiction. The

Service likewise has an obligation to manage Federal lands, waters, and wildlife under the Service's jurisdiction across the Hawaiian archipelago in a manner that safeguards and duly considers the interests, practices, and traditional uses of Native Hawaiians, acting through Native Hawaiian organizations, which often represent the Hawaiian Native Community.

e. The Service will collaborate with Tribes, ANCs, ANOs, and the Native Hawaiian Community in a manner that recognizes that they may need additional resources to succeed in co-stewarding species and their habitats.

f. The Service will use strategies to address the co-stewardship of species and their habitats that often extend beyond reserved and trust lands and include habitat on Federal and private lands at ecosystem, landscape, and watershed scales.

g. The Service will build capacity and cultural competencies of staff to improve our ability to create conditions and practices for Tribes, ANCs, ANOs, and the Native Hawaiian Community to be more deeply involved in planning and management of Federal lands and waters.

h. The Service will seek to engage affected Tribes, ANCs, ANOs, and the Native Hawaiian Community in co-stewardship of Federal land and water resources.

Sec. 5 What must Service leadership, supervisors, and employees do to ensure that these objectives are met? Service leadership, supervisors, and employees must:

a. Partner with Tribes, ANCs, ANOs, and the Native Hawaiian Community to ensure that their respective interests play an integral role in decision making related to the planning and management of Federal lands and waters through consultation, capacity building, and other means consistent with applicable authority.

b. Engage in co-stewardship, consistent with applicable laws, where Federal lands and waters are located within or adjacent to federally recognized Tribal lands or traditional territories, where Tribes have subsistence or other rights or interests in non-adjacent Federal lands or waters, or where requested by Tribes, ANCs, ANOs, or the Native Hawaiian Community.

c. Coordinate at the earliest phases of planning and work directly with Tribes, ANCs, ANOs, and the Native Hawaiian Community, through their respective appropriate representatives, on activities that may directly or indirectly affect Tribal, ANC, ANO, or the Native Hawaiian Community's interests, practices, lands, and traditional use areas. If consultation is necessary, processes should be developed to resolve objections to the sufficiency, timing, and compliance with consultation policy requirements.

d. Ensure that the Service takes all steps necessary to allow for full engagement

of affected Tribes, ANCs, ANOs, and the Native Hawaiian Community regarding all related planning processes for Service programs. This includes [602 FW 1](#), Refuge Planning Overview and [602 FW 3](#), Comprehensive Conservation Planning Process. Additionally, ensure that the planning records document treaty, trust, cultural, natural resource, and other interests within the planning areas where Tribes, ANCs, ANOs, and the Native Hawaiian Community have an interest.

e. Invite Tribal governments, and relevant ANC and ANO leadership, as well as Native Hawaiian Community representatives, to serve on all related Service planning teams (e.g. [602 FW 1](#), [602 FW 3](#)); and encourage opportunities for participation in the implementation of those plans. Service plans and revisions must document Tribal treaty, trust, cultural, and other interests, including known existing or proposed Tribal uses of the refuge or hatchery and surrounding landscape.

f. Ensure decisions made relating to the Federal stewardship of lands, waters, and wildlife include consideration of safeguarding interests of any affected Tribes, ANCs, ANOs, and the Native Hawaiian Community.

g. Increase Service staff understanding of Tribal and Native expertise and Indigenous Knowledge (IK), and incorporate it into Service decision making.

h. Ensure processes are in place to respond to requests from Tribes, ANCs, ANOs, and the Native Hawaiian Community and their organizations with treaty, trust, or other interests in public lands, to advance their goals to the extent permitted by law and consistent with applicable Service policy.

i. Develop appropriate institutional structure and tools to implement agreements related to co-stewardship with Tribes, ANCs, ANOs, the Native Hawaiian Community, and Native Hawaiian organizations.

j. Integrate collaborative stewardship direction in Service handbooks, manuals, policies, training, performance appraisals, and other guidance that can support staff and Service partners in implementing this Order.

k. Consistent with the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA), 25 U.S.C. 5301 *et seq.*, the Service must publish and distribute to all federally recognized Tribes a list of any service, function, or activity that the Service administers that is otherwise available to self-governance Tribes, in accordance with ISDEAA, and can be administered by a Tribe through a self-governance funding agreement. The Service must include in this list other programs, services, functions, and activities or portions thereof that may be implemented in a refuge, hatchery, or other Service property of “special geographic, historical, or cultural significance” to a self-governance Tribe. The Service will enter into these agreements with Tribes as we describe in [510 FW 1](#), and publish annual reports of agreements executed with Tribes along with an

analysis of requests for agreements that the Service denied and an explanation for each denial.

Sec. 6 What communication requirements must become standard as part of every Service decision that may affect federally recognized Tribes, ANCs, ANOs and the Native Hawaiian Community? The Service must:

- a. Communicate on matters affecting the rights and interests of Tribal governments in accordance with 512 DM 4, the Department's Policy on Consultation with Indian Tribes and Alaska Native Corporations; and 513 DM 1 and 2 (*forthcoming*), its policy on consultation with the Native Hawaiian Community.
- b. Coordinate in a timely manner with affected Tribes when revising or developing policies, programs, plans, or actions that may affect a Tribe. The Tribal consultation process goes beyond the requirements of a public comment period. Similarly, coordinate in a timely manner with ANCs, ANOs, and the Native Hawaiian Community through their Native Hawaiian organizations when revising or developing policies, programs, plans, or actions that affect them.
- c. Collaborate with Tribes, ANCs, and ANOs to learn how to better engage with neighboring non-Tribal communities and communicate Service treaty and trust obligations and the role sovereign Tribal governments play in the stewardship of Federal public lands, waters, and wildlife. Similarly, collaborate with Native Hawaiian organizations to learn how to better engage with neighboring non-Native Hawaiian communities and communicate Service trust obligations and the role that Native Hawaiian organizations play in the stewardship of Federal public lands, waters, and wildlife across the Hawaiian archipelago.

For details on the Tribal consultation process, see the [U.S. Fish and Wildlife Service Consultation Handbook](#).

Sec. 7 What analysis and reporting must the Service do to meet the goals we describe in this Order?

- a. Working with the Office of the Solicitor, as appropriate, pursuant to Secretarial Order No. 3403, the Service must finalize a legal review of current land, water, and wildlife treaty responsibilities and authorities that can support collaborative stewardship and Tribal stewardship by November 15, 2022.
- b. The Service must issue a report on actions taken to fulfill this Order within 1 year from the date of this Order, and each year thereafter.

Sec. 8 Does this Order create any legal right or benefit? No. This Order and any resulting report or recommendations are not intended to, and do 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. To the extent that there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 9 When is this Order effective? This Order is effective immediately. It remains in effect until it is incorporated it into the Fish and Wildlife Service Manual or until it is amended, extended, superseded, or revoked, whichever occurs first.

DIRECTOR