

IMPLEMENTATION GUIDELINES

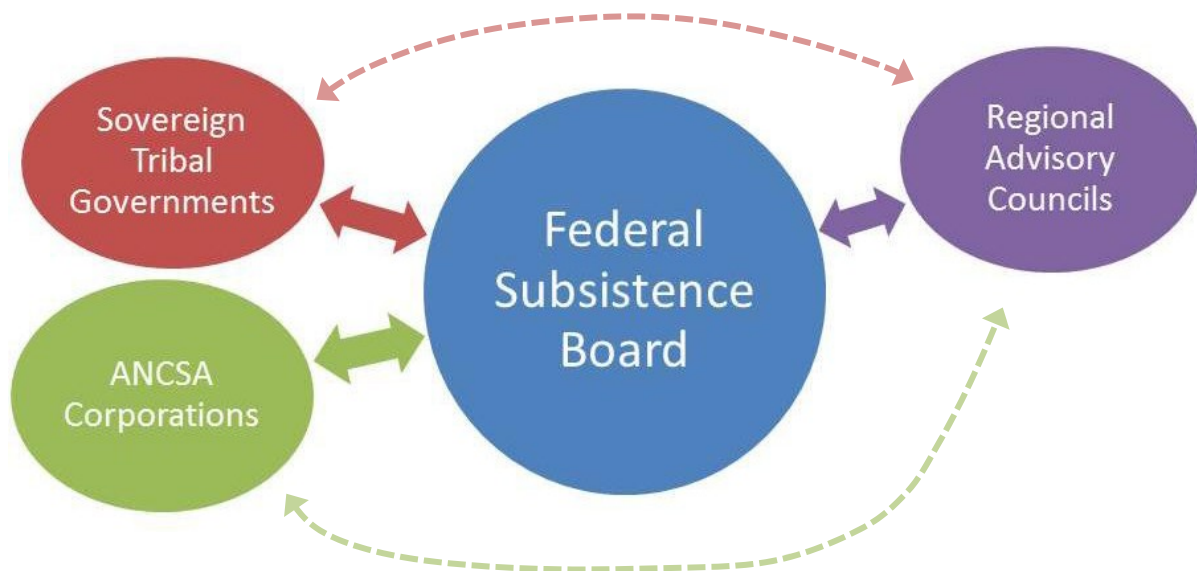
for the

Federal Subsistence Board Government-to-Government Tribal Consultation Policy

INTRODUCTION

This document is intended to provide additional guidance to Federal staff on the Federal Subsistence Management Program’s Tribal Consultation Policy. Refer to the *Federal Subsistence Board Government-to-Government Tribal Consultation Policy* (Policy) for a broad scope including goals of the policy; consultation communication, roles and responsibilities, topics, timing, and methods; accountability and reporting; and training.

This a “living” set of guidelines that can be modified per the Policy under Accountability and Reporting.



The Board consults directly with tribal governments and with ANCSA corporations. Consultation results are shared with the RACs, which informs their recommendations to the Board. Tribal governments and ANCSA corporations are also encouraged to attend RAC meetings to discuss proposals and influence RAC recommendations, in addition to consultation with the Board.

CONTENTS

| | |
|---|--------|
| Consultation Meeting Protocols | Page 2 |
| Regulatory Cycle Timeline and Roles and Responsibilities | Page 4 |
| Other Regulatory Actions Not Covered Under Regulatory Process | Page 7 |
| Special Actions | Page 7 |
| Non-Regulatory Issues | Page 8 |
| Training | Page 8 |
| Accountability, Reporting, and Information Management | Page 9 |

CONSULTATION MEETING PROTOCOLS

The items below provide general protocols about consultation meetings. Notice of the availability of these Protocols will be distributed to the Tribes at the beginning of each regulatory cycle and a copy will be sent to any Tribe requesting a consultation meeting with the Board.

1. Participants in Consultation Meeting:

If the consultation meeting is not being held immediately before a FSB regulatory meeting, at least two Board members (generally representing the most-relevant land managing agency and the nearest public member) will participate in the consultation meeting. Other Board members may join the meeting. Participating tribal officials are only those elected or appointed Tribal leaders or individuals designated in writing by a federally-recognized Tribe. The Board and Tribe(s) may invite appropriate staff to attend the consultation. The Chair of the most-relevant RAC(s) or their designee(s) will also be invited to attend.

2. When to Hold Consultations:

- a. Before RAC regulatory meetings: hold one or more teleconferences (depending on number of proposals) at least two weeks before RAC meetings begin.
- b. At regulatory Board Meetings: consultation should begin prior to the start of the regular Board meeting. The regular Board meeting then begins after the consultation meeting is complete.
- c. At additional times as initiated by the Board or tribal governments on regulatory or non-regulatory topics.

3. Location and Room Setup:

- a. The consultation may be closed to public observation [including media], and documentation of the dialog will be made available to the public (see 7[e]). Transcription services may be utilized to capture the meeting notes.
- b. Consultation meetings should be held in easily accessible locations.
- c. At in-person meetings, room should be configured in such a way that Board members and Tribal Government representatives (and RAC representatives, if present) are seated dispersed, as equals. Consider chairs placed in a circle with or without tables. This will differentiate between the room configurations during consultation and the public process. If possible, avoid the appearance of a testimony table.

4. Topics:

- a. Topics to be consulted on can be determined by either Tribes or Board members (see also section 3. of the Policy for more information), and do not need to be determined nor agreed upon in advance, unless it is regulatory in nature. If the request for consultation is regulatory in nature, advance notice to agencies for Administrative Procedures Act (APA) compliance is required (see 7.a).
- b. For topics not within the purview of the Board, Tribes will be referred to a Federal liaison who can assist in determining how that topic can be addressed.

- c. For topics that need further consultation, the OSM Native Liaison will arrange follow-up consultation.

5. Information Availability:

- a. Materials and information relevant to the consultation meeting (i.e.: teleconference information, meeting topics, transcripts, meeting summary, etc.) will be made available on the Federal Subsistence Management Program's website.
- b. OSM will prepare a written summary of consultations (reviewed by the consulting participants) that will be sent to affected RACs and participating Tribes.

6. Follow-up to Participating Tribes:

Correspondence will be sent to participating Tribes expressing appreciation for their participation, providing a summary of the consultation, and, if applicable, relaying the decision that was made.

7. Consultation Meetings Requested by Tribes:

Staff will endeavor, to the extent authorized by law, to reduce procedural impediments to working directly and effectively with federally recognized Tribal governments.

- a. Government to Government Tribal Consultation will be held in accordance with the requirements of the Administrative Procedure Act (Act), 5 U.S.C. § 555 (2006).
- b. The consultation may be closed to public observation [including media], and documentation of the dialog will be made available to the public (see [e]).
- c. If a consultation with the Board is requested by Tribe(s), at least two Board members (generally representing the most-relevant land managing agency and the nearest public member) will participate in person unless the Tribe(s) and Board agree to a telephonic consultation (see [d]). Other Board members may join the meeting in person or telephonically. The Board and Tribe(s) may invite appropriate staff to attend the consultation. The Chair of the most-relevant RAC(s) or their designee(s) will also be invited to attend.
- d. Consultation will take place in a mutually agreeable location, or telephonically.
- e. Draft meeting notes will be made available for review by all participants in the consultation. Official meeting notes, or transcripts if prepared, will be made available to the RAC(s) and the public if the content of the meeting included discussion on regulatory matters.

REGULATORY CYCLE TIMELINE AND ROLES AND RESPONSIBILITIES

The Board is committed to providing federally recognized Tribes in Alaska with opportunities to be meaningfully involved in the wildlife and fisheries regulatory process. On an annual basis, the Board accepts proposals to change wildlife or fisheries regulations on seasons, harvest limits, methods and means of harvest and customary and traditional use determinations. In some instances, regulations are modified in-season, and that is typically accomplished through in-season or special actions taken by either the Board or the relevant land manager who has been delegated authority by the Board to take that action. The Board will provide Tribes with the opportunity to consult on the regulatory process, which includes proposal development and review, proposal analysis and review, and decision making by the Board.

Tribes must be given the opportunity to consult throughout the Federal Subsistence Management process when a “departmental action with tribal implications¹” is taken. A regulatory proposal is potentially a departmental action with substantial direct effect on an Indian Tribe. If an OSM recommendation on a regulatory proposal changes, then affected Tribes will be notified as that change becomes publicly available.

WHO SHOULD PARTICIPATE IN GOVERNMENT-TO-GOVERNMENT CONSULTATION

Tribal officials are elected or appointed Tribal leaders or individuals designated in writing by a federally recognized Tribe may participate in government-to-government consultations. Federal officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for the agency and/or Board, and exercise delegated authority in the disposition and implementation of a Federal action.

REGULATORY PROCESS

Steps 1-5 outlined below correspond to Appendix B of the Board’s Tribal Consultation Policy *Appendix B: Federal Subsistence Management Program Annual Regulatory Process at a Glance.*

Step 1.A.: Call for Proposals (January – March): Proposals recommending changes to fish or wildlife harvesting regulations may be submitted regarding seasons, harvest limits, methods and means and/or customary and traditional use determinations. The Office of Subsistence Management (OSM) staff or land managers can assist Tribes in developing proposals.

| RESPONSIBLE LEAD | ACTION |
|-------------------------|---------------|
|-------------------------|---------------|

| | |
|------------------|--|
| Federal Agencies | • Any Federal agency preparing regulatory proposal should contact representatives of Tribes potentially affected by a Federal agency regulatory proposal prior to submittal. |
|------------------|--|

| | |
|-----|---|
| OSM | • Announces the call for proposals and describes what this means; |
|-----|---|

¹ Department of the Interior Policy on Tribal Consultation definition of “Departmental Action with Tribal Implications” is: 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.

- Provide an overview and timeline of the annual Federal Subsistence Regulatory process; and
- Provides name and contact information for OSM staff who can provide assistance in reviewing and developing proposals.
- Notifies Tribes at the beginning of the period and a reminder two weeks before the end of the proposal period.

Step 1.B.: Federal Subsistence Regional Advisory Council (RAC) Meetings: (Winter Meetings February-March): During these meetings, the RACs can develop proposals to change subsistence regulations. The Tribes have the opportunity to work with the RACs to draft proposals.

- OSM
- Sends notice to all Tribes announcing all RAC meetings, including teleconference information if available.
 - Contacts local media (newspaper, radio, TV) to provide meeting announcement and agendas.
 - Arranges teleconference line for RAC meeting(s) so Tribes can participate in the RAC meetings. Tribes may discuss proposals with the RACs and relevant Federal staff. This should be included in the RAC's agenda.
 - Posts RAC meeting materials on the Federal Subsistence Management Program's website so Tribes can review the materials prior to the meetings.
 - OSM Native Liaison coordinates with Interagency Staff Committee (ISC) and Tribal representatives to draft summary reports on Tribal Consultations (if any have taken place since the fall RAC meetings). These written summaries are provided to the RACs. Tribal representatives are encouraged to share in the delivery of this report.

Step 2-3: Review of Regulatory Proposals (April-May) Once the Proposals are received by OSM, they are compiled into a book that includes all proposals from throughout Alaska. Tribes will have the opportunity to review the proposals and provide comments. Consultation can be requested.

- OSM
- Sends Tribes the proposal book with a link to the Federal Subsistence Management Program website, and a description of the process schedule. The name and contact information for OSM staff will be included in the proposal book.
 - Coordinates with appropriate Federal staff to notify Tribes if a particular proposal might impact them.
 - Meetings will be held for Federal analysts and affected Tribes to discuss proposals. These meetings can be with one or multiple Tribes.
 - Includes information in Proposal Books about the availability of Tribal consultation.
- Tribes
- Provides comments or participates in meetings. This can help with analysis of the proposal.
 - If interested in consulting at this step, Tribes may contact OSM or an agency official and discuss course of action.

STEP 3: Proposal Analysis (April – August): Each of these proposals will be analyzed by OSM or other agency staff to determine its effect on the resource, other resources, rural subsistence users, other users, etc. OSM develops a preliminary recommendation on the proposal.

- | | |
|----------------|---|
| OSM | <ul style="list-style-type: none">• Draft analyses should be made available to Tribes for consultation at least two weeks prior to Tribal consultation.• Draft analyses should be posted on the OSM website and provided directly to Tribes affected by proposals.• Summary bullets of the analysis, written in plain language, will be provided to affected Tribes. |
| Tribes / Board | <ul style="list-style-type: none">• TRIBAL CONSULTATION OCCURS: One or more teleconference(s) will be scheduled to provide consultation opportunities open to all Tribes to discuss proposals with the Board. Consultation occurs approximately 2 weeks before the RAC meeting (see consultation meeting protocols on page 2 of this Guideline).• Results of consultation are written, and distributed to the appropriate RACs, Tribes and the Board as provided in the Consultation Meeting Protocols. |

Step 4: Federal Subsistence Regional Advisory Council (RAC) Meetings (Fall meetings August - October): During these meetings, RACs develop recommendations to the Board on proposal(s) based on their review of the staff analyses, their knowledge of the resources and subsistence practices in the area, testimony received during the meeting, and Tribal input.

- | | |
|----------------|--|
| OSM | <ul style="list-style-type: none">• Sends e-mail notification and or fax to all Tribes announcing all RAC meetings, including teleconference information if available.• Contacts local media (newspaper, radio, TV) to provide meeting announcement and agendas.• Arranges teleconference line for RAC meeting(s) so that Tribes that cannot participate in-person may do so by teleconference. Tribes may discuss proposals with the RACs, and appropriate Federal staff.• Materials and information relevant to the consultation meeting (i.e.: teleconference information, meeting topics, transcripts, meeting summary, etc.) will be made available on the Federal Subsistence Management Program’s website (http://www.doi.gov//subsistence/index.cfm).• Coordinates reporting on prior Tribal consultations during the regulatory cycle to the RACs, and encourages Tribal representatives to share in delivery of this report. |
| RACs Tribes | <ul style="list-style-type: none">• Includes time on the RAC agenda for Tribes to give additional comments and recommendations (in addition to the consultation with the Board) on proposals and other matters.• Tribes may choose to attend RAC meetings to provide input directly into the regulatory process, assisting the RACs make better informed recommendations to the Board. |

Step 5: Federal Subsistence Board Regulatory Meeting (Winter or Spring): The Board reviews the staff analyses, considers recommendations provided by OSM and the RACs, considers comments provided by the State, consults with Tribes, and makes a decision as to whether to adopt, reject, defer, or take no action on each proposed change to the Federal subsistence regulations. **Tribal consultation occurs before the Board meeting following the protocols outlined in the first section of this Guideline (Consultation Meeting Protocols).**

- | | |
|----------------|---|
| OSM | <ul style="list-style-type: none">• Sends a meeting announcement to Tribes, with the teleconference call-in information. Contacts Tribes (with assistance of agencies, when needed) to verify that Tribes significantly affected by proposals are aware of the Board meeting.• Posts meeting materials on the Federal Subsistence Management Program’s website so that Tribes can review the materials before the meeting. |
| Tribes & Board | <ul style="list-style-type: none">• Consults on regulatory proposals following the “Consultation Meeting Protocols.” Time should be available to consult on other items of interest. RAC Chairs are invited to participate in the consultation.• During the meeting, OSM staff and/or Tribal representatives will report on the results of prior Tribal consultations. |
| OSM | <ul style="list-style-type: none">• Following the Board meeting, OSM sends notification of meeting results to the affected Tribes. Tribes who consulted on proposals will be notified of the outcome. |

OTHER REGULATORY ACTIONS NOT COVERED AS PART OF ANNUAL REGULATORY CYCLE

If regulatory actions occur outside of the regulatory cycle, Tribes will be offered the opportunity to consult on them.

SPECIAL ACTIONS

Because the regulatory process occurs on a biennial basis (fish one year, wildlife the next), sometimes issues arise that require immediate action. Special actions may be taken as needed to address harvest regulations outside of the normal regulatory cycle. Special actions include emergency (60 days or less in duration) and temporary (more than 60 days in duration) actions. Public hearing requirements are followed for temporary special actions. Special actions may be routine in-season actions taken by Federal managers who have been delegated authority by the Board or interim regulatory changes made by the Board on a case-by-case basis.

Special action requests usually require a quick turnaround and consultation may not be possible. However, every effort will be made by the decision maker to consult with Tribes that are directly affected by a potential action. For in-season actions, it is the responsibility of the Federal manager with delegated authority to arrange consultations between the manager and affected Tribes to the extent practicable, prior to taking action. For interim regulation changes, it is the responsibility of

OSM to arrange consultations between Board representatives and Tribes to the extent practicable, prior to Board action. The decision maker or their staff will work with Tribes in the affected area and distribute Tribal consultation information. Affected Tribes will be notified by the decision maker or their staff about any actions taken.

NON-REGULATORY ISSUES

For non-regulatory issues, the Board's Consultation Meeting Protocols will be followed when needed.

TRAINING

The Board's Policy directs that the Federal Subsistence Management Program follow the Department of the Interior and the Department of Agriculture's policies for training of Federal staff:

1. OSM staff will work with the ISC (Interagency Staff Committee) and others to develop training modules on the subsistence regulatory process, customary and traditional use determinations, proposal development, Tribal consultation, Alaska Native cultures and the Federal budget process. Additionally, OSM staff will work with the ISC, agency Tribal liaisons, and others such as tribal elders to develop a training module that Federal staff can deliver at regional Tribal meetings (see Appendix C of the FSB's Tribal Consultation Policy) and to interested Tribal councils.
2. These trainings will be open to other entities responsible for management of subsistence resources, such as marine mammals, migratory birds, halibut, etc.
3. Board members should make every opportunity to directly participate in or observe subsistence activities.
4. It is recommended that Board members, OSM, ISC, & Federal land management staff directly involved in Tribal consultation as part of their work responsibilities attend cross-cultural training and cultural events in Alaska Native communities to learn the unique communication and cultural protocols of the Tribes with which they interact.
5. Recommended Training Topics for Federal Staff and Tribal Citizens
 - a. Alaska Native identity, language, cultures, traditions, history, and regional differences
 - b. Alaska Native perspectives on natural resource management
 - c. Customary and traditional relationship to land, water, and wildlife
 - d. Effects of historical trauma and acculturation stress on Alaska Native peoples
 - e. Alaska National Interest Lands Conservation Act subsistence provisions
 - f. Natural resource law, especially pertaining to fisheries and wildlife management and conservation
 - g. Federal subsistence regulations
 - h. Federal subsistence regulatory process
 - 1) Special actions

- 2) Customary and traditional use determinations
 - i. Rural determination process and implications
 - j. Jurisdiction (Tribal /Federal Government/ State of Alaska)
 - k. Relevant information about Tribe(s), including sovereignty, history of Tribal interactions with the United States government, Tribal constitutions, and traditional knowledge
 - l. Foundations of the government-to-government relationship and trust responsibility within Federal Indian law as expressed through the U.S. Constitution, U.S. Code, Supreme Court decisions, and executive actions
 - m. International Covenant on Civil and Political Rights, Article 1.2
 - n. Tribal and Federal consultation policies
 - o. Wildlife and fisheries monitoring, including the Fisheries Resource Monitoring Program
 - p. Opportunities for co-management or shared stewardship
 - q. Communication etiquette and protocols

ACCOUNTABILITY, REPORTING, AND INFORMATION MANAGEMENT

1. **Tribal Contact Information:**
 - a. Department of the Interior (DOI) employees will utilize the DOI Tribal Consultation SharePoint site contact list.
 - b. U.S. Department of Agriculture (USDA) employees will utilize the Forest Service Alaska Region's contact list on the region's Tribal Relations webpage.
2. **Tracking Consultations:**
 - a. The Alaska Region of the Forest Service will utilize the USDA consultation database to track Forest Service and tribal consultations.
 - b. The Office of Subsistence Management and DOI employees will utilize the DOI Tribal Consultation SharePoint site database to track and record consultations.
3. **Report on Consultations:**
 - a. Report annually as required by DOI and USDA consultation policies.
 - b. The OSM Native Liaison provides a summary report annually to the Board on Federal Subsistence Management Program consultations noting any feedback received from Tribes regarding the policies and their implementation and any other follow-up actions or accomplishments. The report shall be posted on the OSM web site.
4. **Review of the Tribal Consultation Policy:**
 - a. Annually, the Consultation Workgroup, OSM Native Liaison, land managers, and ISC should assess the effectiveness of the Tribal Consultation Policy and the implementation guidelines. The Workgroup will report to the Board at its annual winter/spring meeting.
5. **Follow-up to Consultations at the Federal Subsistence Board Meeting:**
 - a. OSM is responsible to follow up on action items from Tribal Consultations at Federal Subsistence Board meetings.
 - b. Post-Board meeting follow-up includes notification to Tribes of Board actions.