




# TLINGIT & HAIDA TRIBAL CONSULTATION

# FEDERAL TRIBAL CONSULTATION

Under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the federal government must consult with tribal governments when making decisions that may affect tribal interests, a requirement stemming from the trust relationship the federal government has with tribes.

	
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<b>Federal Register</b>	<b>Presidential Documents</b>
Vol. 65, No. 218	
Thursday, November 9, 2000	
<b>Title 3—</b>	<b>Executive Order 13175 of November 6, 2000</b>
<b>The President</b>	<b>Consultation and Coordination With Indian Tribal Governments</b>
	<p>By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:</p>
	<p><b>Section 1. Definitions.</b> For purposes of this order:</p>
	<p>(a) “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 Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.</p>
	<p>(b) “Indian 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.</p>

# MARINE MAMMAL PROTECTION ACT

The 1994 amendments to the Marine Mammal Protection Act (MMPA) included Section 119 to allow the Secretaries of Commerce and the Interior to “enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.” Cooperative efforts to manage subsistence harvests that incorporate the knowledge, skills, and perspectives of Alaska Natives *is more likely to achieve the goals of the MMPA than is management by the federal agencies alone.*

- collecting and analyzing data on marine mammal populations;
- monitoring the harvest of marine mammals for subsistence use;
- participating in marine mammal research conducted by the federal government, states, academic institutions, and private organizations; and
- developing marine mammal co-management structures with federal and state agencies.”

# HISTORY FEDERAL CONSULTATION

- NOAA Procedures for Department of Commerce Tribal Consultation and Coordination Policy Statement (78 FR 33331, June 4, 2013).
- DOC Administrative Order 218-8 Consultation and Coordination with Tribal Governments, April 2012
- Office of Management and Budget (OMB) Guidance for E.O. 13175, July 2010
  - Executive Order 13175, November 2000
  - Section 161 of the Consolidated Appropriations Act of 2004 (Public Law 108-199) and amendments made by Section 518 of the Consolidated Appropriations Act of 2005 (Public Law 108-447)
- Department of Commerce (DOC) Tribal Consultation and Coordination Policy, May 2013
  - DOC Plan to Develop Tribal Consultation Policy, February 2010
  - DOC American Indian and Alaska Native Policy, March 1995
  - Department of Commerce (DOC), Office of Native American Affairs
- Memorandum from the President, November 2009
- Memorandum from the President, April 1994
- List of Federally Recognized Tribes, 82 FR 4915, January 2017
- NOAA, Office of Legislative and Intergovernmental Affairs, Tribal Relations



# WHO IS INVOLVED WITH TRIBAL CONSULTATION

Under the Executive Order, federal agencies must consult on a *government-to-government* basis with tribal officials and authorized intertribal organizations. While the consultation right lies with tribal governments, the inclusion of authorized intertribal organizations in the Executive Order indicates that other organizations—like marine mammal co-management bodies—may be authorized by tribes to engage in consultation on behalf of (or alongside of) tribal governments.

The agencies should be represented by federal officials with decision-making authority for the proposed action at issue

# MARINE MAMMAL PROTECTION ACT

- Indigenous Peoples Council for Marine Mammals (IPCoMM)
- Marine Mammal Commission
- Handbook:  
[https://www.mmc.gov/wp-content/uploads/model\\_consultation\\_procedures\\_handbookfinal.pdf](https://www.mmc.gov/wp-content/uploads/model_consultation_procedures_handbookfinal.pdf)

## HANDBOOK: Model Alaska Native Consultation Procedures

This Handbook is meant to provide Alaska Native communities with guidance on how they can design their own policies and procedures for government-to-government consultation with federal agencies. Specifically, the Handbook focuses on consultation as it relates to federal actions that affect marine mammals and the communities that depend upon them, though its principles are meant to be broadly applicable to natural resource management issues faced by Alaska Native communities.

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Drafted by the  
Environmental Law  
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with the Indigenous  
Peoples Council for  
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with support from the  
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Commission.

# BENEFITS

- Local infrastructure
  - Facilities and human resources
  - Creating efficiencies
  - Providing services in the most remote communities
- Local solutions to local problems
  - Federal Oversight
  - Efficiencies in overcoming real world issues – many cases saves lives in rural communities.
- Formal Representation
  - On the Record
- Myth Busting
- Saves Taxpayer money by identifying efficiencies
- Communication
  - Overcoming Bureaucracy

# OTHER ISSUES

## Other Examples

- Governor's Tribal Advisory Council (GTAC)
  - Expanded Public Safety ideas
  - Identified significant cost savings-Transportation
- Department of Interior's Secretary's Tribal Advisory Committee
  - VP Will Micklin 2016-2018

## Future Consultations:

- BIA Reorganization Act
  - Executive Order 13781 March 2017

### Requested:

- Mixing Zones- Clean Water Act
- Waters of the United States Rulemaking (WOTUS)



# TRIBAL PARTNERSHIPS



**GUNALCHÉESH, HÁW'AA!**