

Report to Federal Subsistence Regional Advisory Councils on

1. Tribal Consultation Draft Implementation Guidelines

2. Draft ANCSA Consultation Policy

January 24, 2014

From the Federal Subsistence Board's Consultation Workgroup

Requesting Regional Advisory Council Feedback on these two documents; while simultaneously seeking feedback from federally recognized Tribes and Alaska Native Claims Settlement Act (ANCSA) Corporations.

Draft Implementation Guidelines Summary

- The guidelines are intended to provide federal staff additional guidance on the Federal Subsistence Board's Tribal Consultation Policy.
- It includes
 - when consultations should be regularly offered,
 - meeting protocols including
 - meeting flow,
 - room setup suggestions,
 - topics for consultation,
 - preparation and follow-up for the meetings,
 - communication and collaboration with Tribes throughout the regulatory cycle,
 - training guidance and topics for federal staff and the Board,
 - reporting on consultation,
 - and how to make changes to the policy or guidance as needed or requested.

Draft ANCSA Corporation Consultation Policy Summary

- This policy is adapted from the DOI Policy on Consultation with ANCSA Corporations
- It includes a preamble, guiding principles and policy
- For your awareness, please read the policy section
- This draft policy has been improved upon by the workgroup, which now has representatives from village and regional ANCSA corporations, thereby adding to the meaning of this policy for the Board. It was originally drafted in December 2011.

Workgroup members

- Rosemary Ahtuanguaruak, Co-Chair, Barrow/Nuiqsut
- Crystal Leonetti, Co-Chair, US Fish & Wildlife Service
- John W. Andrew, Organized Village of Kwethluk
- Lillian Petershoare, US Forest Service
- Della Trumble, Agdaagux Tribe of King Cove, King Cove Village Corporation
- Jean Gamache, National Park Service
- Richard Peterson, Organized Village of Kasaan
- Jack Lorrigan, Office of Subsistence Management
- Brenda Takeshorse, Bureau of Land Management
- Bobby Andrew, Native Village of Ekwok
- Glenn Chen, Bureau of Indian Affairs
- Charles Ekak, Olgoonik Corporation of Wainwright
- Cliff Adams, Beaver Kwit'chin Corporation
- Gloria Stickwan, Ahtna, Inc.
- Roy Ashenfelter, Bering Straits Native Corporation
- Chief Gary Harrison, Chickaloon Native Village
- Edward Rexford, Native Village of Kaktovik
- Michael Stickman, Nulato Tribal Council

IMPLEMENTATION GUIDELINES

for the

Federal Subsistence Board Government-to-Government Tribal Consultation Policy

INTRODUCTION

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

Tribal consultation will be regularly scheduled twice each year:

- 1) before the fall Regional Advisory Council (RAC) meetings, and
- 2) before the spring Federal Subsistence Board (Board) meetings.

Additional consultations may be initiated by the Board and consultation is also available to tribal governments at any time on regulatory or non-regulatory topics as the need arises.

CONTENTS

Meeting Protocols	Page 1
Regulatory Cycle Timeline and Roles and Responsibilities	Page 3
Other Regulatory Actions Not Covered Under Regulatory Process	Page 6
In-Season Management and Special Actions	Page 6
Non-Regulatory Issues	Page 6
Training	Page 6
Accountability, Reporting, and Information Management	Page 8

MEETING PROTOCOLS

1. Timing:

- a. During the Meeting
 - i. Intend to not rush through the consultation
- b. When to hold the meetings
 - i. Before RAC Meetings: hold one or more teleconferences (depending on number of proposals) at least two weeks before RAC meetings begin.
 - ii. At 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.

2. **Introductions:** Board member and tribal government representative introductions.

All representatives will state for the purpose of this consultation: who they officially represent, and what their role is during the consultation (e.g. “I am Geoff Haskett, a member of the Federal Subsistence Board, and for the purpose of this government-to-government consultation, I am representing the U.S. Fish and Wildlife Service. My role is to listen, ask questions, and gain an understanding of Tribal perspectives so that I can fully consider those perspectives in my actions as a decision-maker for the U.S. Fish and Wildlife Service.”).

3. **Room Setup:**

- a. At in-person meetings, room should be configured in such a way that Board members and Tribal Government representatives are seated equally at the table. Consider chairs placed in a circle with or without tables. This will differentiate between the room configurations during the public process.
- b. Board members and Tribal representatives should be dispersed around the table.
- c. One or more people will be designated note-takers and notes will be made available to all participants as soon as they are typed and reviewed after the meeting.

4. **Topics:**

- a. Topics to be consulted on can be determined by either Tribes or Board members, and do not need to be determined nor agreed upon in advance, but known topics shall be announced one week ahead of the consultation (e.g.: proposals, rural determination process, OSM budget, etc.)
- b. The Board Chair should ask, “What other topics should we be consulting on?”
- c. For topics not within the purview of the Board, Tribes will be referred to a federal liaison who can help them determine how that topic can be addressed.
- d. For topics that need further consultation on any topic, the OSM Native Liaison will arrange follow-up consultation.

5. **Briefings:**

- a. Briefing materials, such as those given to Board members should be made available to all Tribal governments one week, or earlier as they’re available, before the consultation.
- b. Tribes who are interested are encouraged to send in briefing materials one week before the consultation to the OSM Native Liaison for their topics of interest; these will be provided to the Board.

6. **Board Member Summary:**

A lead Board member shall be selected who will conclude the consultation with a summary of the consultation discussion.

7. **Information Availability:**

- a. Pre- and post-meeting materials and teleconference information will be displayed on the Federal Subsistence Management Program’s website.
- b. A written summary of consultations will be provided to RACs and Tribes by email, fax, or mail as appropriate.

8. **Follow-up to Participating Tribes:**

A letter from the Chair will be sent to participating Tribes expressing appreciation for their participation and explanation of how their input was utilized and the decision that was made. These letters may be archived on the OSM website.

9. Consultation Meetings Requested by Tribes:

- a. If a consultation meeting is requested by a Tribe(s), two Board members – one representing the nearest land managing agency, and the nearest public member will participate in that meeting. Other Board members can join if they wish.
- b. Consultation meeting may take place in the Tribal community or by teleconference.
- c. Meeting notes (see 3.c.) will be provided to the entire Board upon completion.

REGULATORY CYCLE TIMELINE AND ROLES AND RESPONSIBILITIES

The Board is committed to providing Federally Recognized Tribes 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 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. 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. As information becomes available which changes the recommendations or potential decision on a proposal, affected Tribes will be notified.

WHO SHOULD PARTICIPATE IN GOVERNMENT-TO-GOVERNMENT CONSULTATION

Tribal Officials are elected or appointed Tribal leaders or officials designated in writing by a federally recognized Tribe to 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 exercises delegated authority in the disposition and implementation of a federal action.

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.

REGULATORY PROCESS OUTLINED BELOW CORRESPOND TO THE STEPS IN 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): This step is where changes to fish or wildlife harvesting regulations can be offered such as seasons, harvest limits, methods and means and customary and traditional use determinations. The Office of Subsistence Management (OSM) staff or land managers can assist Tribes in developing proposals.

RESPONSIBLE ACTION
LEAD

Federal Agencies Contacts representatives of affected Tribes, prior to federal agency submitting regulatory proposals.

OSM

Sends a return receipt letter to Tribes:

- announcing the call for proposals and describing what this means;
- providing an overview and timeline of the annual Federal Subsistence Regulatory process;
- providing name and contact information for OSM staff who can provide assistance in reviewing and developing proposals;

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

OSM

Sends public notice to all Tribes announcing all RAC meetings.

- If available, teleconference information is included in announcements and posted to the Federal Subsistence Management Program's website.

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.

Posts meeting materials on the Federal Subsistence Management Program's website so Tribes can review the materials.

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. Consultation will also be made available to Tribes on deferred proposals.

OSM Sends Tribes the proposal book with a link to the Federal Subsistence Management Program website, and a description of the process schedule. 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.

If Tribe(s) is interested in consulting at this step, they may contact an agency official and discuss course of action through phone calls, emails, internet communication, and other methods.

Prepare draft analyses on proposals to make available to Tribes before consultations.

STEP 3: Proposal Analysis (April – August): Each of these proposals will be analyzed by agency staff to determine their effects on the resource, other resources, rural subsistence users, other users, etc.

OSM Draft analyses will be made available to Tribes one month prior to RAC meetings.

TRIBAL CONSULTATION OCCURS: One or more teleconference(s) will be scheduled to provide consultation open to all Tribes to discuss all proposals.

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

OSM Sends public 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 that Tribes can participate. Tribes may discuss proposals with the RACs, and appropriate federal staff.

Posts pre- and post-meeting materials and teleconference information on the Federal Subsistence Management Program’s website so that the Tribes can review the materials.

Coordinates reports on prior Tribal consultations during the regulatory cycle to the

RACs, and encourages Tribal representatives to share in delivery of this report.

A written summary of relevant consultations will be provided to RACs and Tribes by email, fax, or mail as appropriate.

Step 5: Federal Subsistence Board Regulatory Meeting (Winter): This is where the Board reviews the staff analyses, considers recommendations provided by the RACs, 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 subsistence regulations. **TRIBAL CONSULTATION OCCURS BEFORE THE BOARD MEETING.**

OSM Sends meeting announcement to Tribes, including teleconference call information.

Posts meeting materials on the Federal Subsistence Management Program’s website so that Tribes can review the materials before the meeting. During the meeting, OSM staff and/or Tribal representatives will report on the results of prior Tribal consultations.

Following the meeting, OSM will send notification on meeting results to the Tribes. Tribes who consulted on proposals will be notified of the outcome by telephone.

OTHER REGULATORY ACTIONS NOT COVERED UNDER REGULATORY PROCESS

Tribal consultation will also be offered on proposals which are deferred or not carried through the normal regulatory process.

IN-SEASON MANAGEMENT AND SPECIAL ACTIONS

Special actions include emergency and temporary special actions. Because the regulatory process occurs on a bi-annual basis (fish one year, wildlife the next), sometimes issues come up that require immediate action; these actions may be taken as needed to address harvest regulations outside of the normal regulatory process.

In-season management actions and decisions on Special Action requests usually require a quick turnaround time and consultation may not be possible; however, in-season and land managers will make every effort to consult with Tribes that are directly affected by a potential action prior to taking action. Regular public meeting requirements are followed for special actions that would be in effect for 60 days or longer. Affected Tribes will be notified of actions taken. Federal field staff are encouraged to work with Tribes in their area and distribute Tribal consultation information.

NON-REGULATORY ISSUES

For non-regulatory issues, the Board's process for consultation with Tribes will be followed when needed.

TRAINING

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

1. OSM staff will work with the ISC to develop training modules on the subsistence regulatory process, customary & traditional use determinations, rural versus non rural criteria, proposal development, Tribal consultation, 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 regional cross-cultural training 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 differences
 - b. Alaska Native perspectives on natural resource management
 - c. Customary and Traditional relationship to land, water, and wildlife
 - d. Effects of colonialism 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
 - a. Special actions

- b. In-season management
- c. 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. Tribal and Federal consultation policies
- n. Wildlife and fisheries monitoring, including the Fisheries Resource Monitoring Program
- o. Opportunities for co-management or shared stewardship
- p. Leadership transition protocols so that the tribal leaders and the agency staff are clear about 1) how authority gets transferred (who are the successors & timelines) and 2) next steps in moving a project forward (outgoing official documents project accomplishments and next steps in a letter to his supervisor and copies the relevant tribal leaders).
- 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.
<https://connect.doi.gov/os/Portal/nat/SitePages/Home.aspx>
 - b. U.S. Department of Agriculture (USDA) employees will utilize the Forest Service contact database. [web address]
2. **Tracking Consultations:**
 - a. The Alaska Region of the Forest Service has a tribal consultation database to track Forest Service and tribal consultations.
 - b. Office of Subsistence Management and DOI employees shall 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 the implementation of them; and any other follow-up actions or accomplishments. The OSM report on the Board's consultations with Tribes 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 implementation guidelines. The Workgroup will report to the Board at its annual winter 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.

DRAFT

**Note to reviewer: This supplemental policy for consultation with ANCSA corporations is adapted from the DOI Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations. Where it said “Department”, it was changed to say “Board” or “Department” was deleted. Where ANILCA or FSMP provisions required extra explanation for this policy, it was added and is indicated as additions in italics.*

Federal Subsistence Board Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations

I. Preamble

The Federal Subsistence Board (Board) distinguishes the federal relationship to ANCSA Corporations from the Tribal government-to-government relationship enjoyed by any federally recognized Indian Tribe, and this Policy will not diminish in any way that relationship and the consultation obligations towards federally recognized Indian Tribes. Recognizing the distinction, the Board is committed to fulfilling its ANCSA Corporation consultation obligations by adhering to the framework described in this Policy.

The Department of the Interior has a Policy on Consultation with ANCSA Corporations and the U.S. Department of Agriculture has an Action Plan on Consultation and Collaboration with Tribes, which includes consultation with ANCSA corporations. The Board will follow the Department-level policies; and for the purpose of Federal Subsistence Management, this policy further clarifies the Federal Subsistence Board’s responsibilities for consultation with ANCSA Corporations.

II. Guiding Principles

In compliance with Congressional direction, this Policy creates a framework for consulting with ANCSA Corporations. Congress required that the Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native Corporations on the same basis as Indian Tribes under Executive Order Number 13175. Pub. L. No. 108-199 as amended by Pub. L. No. 108-447. Pursuant to the Alaska Native Claims Settlement Act (ANCSA) of 1971, ANCSA Corporations were established to provide for the economic and social needs, including the health, education and welfare of their Native shareholders. ANCSA also extinguished aboriginal hunting and fishing rights.

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) states, “except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with adjacent landowners and land managers, including Native Corporations, appropriate State and Federal agencies and other nations.”

III. Policy

The Board will consult with ANCSA Corporations that own land within or adjacent to lands subject to the jurisdiction of the Federal subsistence program (see 36 CFR242.3 and 50 CFR 100.3) when those corporate lands or its resources may be affected by regulations enacted by the Board.

ANCSA Corporations may also initiate consultation with the Board at any time by contacting the Office of Subsistence Management Native Liaison.

Provisions described in the Federal Subsistence Board Tribal Consultation Policy sections entitled Consultation, Training, and Accountability and Reporting shall apply to the Federal Subsistence Board Policy on Consultation with ANCSA Corporations, with adjustments as necessary to account for the unique status, structure and interests of ANCSA Corporations as appropriate or allowable.

DRAFT