



**HO-CHUNK NATION LEGISLATURE**  
*Governing Body of the Ho-Chunk Nation*

March 14, 2011

**VIA E-MAIL TO:** [consultation@doi.gov](mailto:consultation@doi.gov)

Ms. Mary Milam  
U.S. Department of the Interior  
1849 C Street, N.W.  
MS 4141 – MIB  
Washington, D.C. 20240

**Re: Tribal Comments Regarding Department of Interior Draft Tribal Consultation Policy**

Dear Ms. Milam:

The Ho-Chunk Nation provides the following preliminary comments regarding the Department of Interior's Draft Tribal Consultation Policy.

**RECOMMENDATIONS FOR MODIFICATIONS TO THE DEPARTMENT OF  
INTERIOR'S POLICY ON CONSULTATION WITH INDIAN TRIBES**

**Introduction**

The Ho-Chunk Nation appreciates the time and effort the Department of Interior is making with regards to the development of its policy toward a government-to-government relationship with Indian tribes. The Nation is heartened by the comprehensive nature of the language contained in the draft. However, the Nation will reserve final judgment until there is some experience on implementation with this consultation policy.

The Nation would like to make the following recommendations regarding specific provisions in Section VIII of the draft. The recommendations provide greater detail on some of the specific actions required by the policy and will help foster the government-to-government relationship.

**Recommendations**

- **Section VIII A. *Initiating Consultation-***

The Nation recommends that in addition to noticing individual tribes of the opportunity to consult, the Department be required to publish notices in national, regional, or local tribal newspapers or similar medium such as websites. There are a number of long-standing tribal news sources that tribes and individual tribal members depend on for information and this would assist in making those affected aware of the consultations.

The Nation also recommends that the notice component identified in the draft as “possible outcomes” include the impact to tribes, both positive and negative. The Nation would like this specifically spelled out in the policy. It is critical that tribes understand how they may be affected in order to truly benefit from any consultation process.

The Nation would also like the policy to clarify whether a tribal request for consultation will be granted. The draft policy states that a tribe may request consultation, but it does not specify if the request must be granted or could be denied. If the request can be denied, the policy should state under what circumstances.

- **Section VIII B. *Role of Tribal Governance Officer in Consultation Process-***

The Nation recommends that language in Section VIII A. and Section VIII B. be clarified because it is somewhat inconsistent between the two sections with regards to requesting consultation by a tribe. Section VIII A. states that “Requests should be made in writing to the Department’s TGO...”, while Section VIII B. states that “The TGO will encourage Indian Tribes to request consultation directly from the appropriate Bureau or Office...”. This is somewhat confusing as to whom the tribe actually makes the request to and can easily be clarified.

An additional recommendation is to perhaps allow the Tribal Liaison Official (TLO) to accept tribal requests for consultation and require them to forward the request the TGO. This would allow more points of entry for tribes to submit requests.

- **Section VIII D. 2. *Stages of Consultation, Proposal Development Stage-***

The draft identifies a bulleted list of “...appropriate processes for the Proposal Development Stage...”. The bullet point “Series of Open Meetings” is one of the most common forms of consultation used by the Department and it is also one of the most familiar forms to tribes. The Nation would like to recommend the following points in order to improve these consultation meetings:

- \* Schedule multiple sessions in various regions, in locations that make it possible for tribal governments to attend.
- \* Provide timely, advance notice to tribal governments of scheduled consultation meetings.
- \* In the scheduling of consultation, do not put tight timelines on the meeting at hand. If tribal leaders are rushed, it will deter from “meaningful” consultation.
- \* Hold consultation sessions in one large time block, for all tribal representatives to attend and speak. The benefit to this is that it tends to generate a better discussion in a group setting, and provide better feedback to the agency when it is formulating “policies that have tribal implications.” See Executive Order 13175, Section 1. If tribes have concerns or issues specific to them, that are best not discussed in an open forum, the agency should schedule a follow-up meeting with the tribe directly.
- \* In holding the consultation, do not require tribal leaders or speakers to register in order to speak or provide a written statement. This gives the impression of a more formal hearing with formal testimony.

\* If the agency has called the consultation in order to discuss a policy with tribal implications, provide a copy of what the agency spokesperson will be discussing at the session. This should be provided in advance of the consultation meeting to tribal governments, but also at the meeting itself.

\* Before any federal consultation starts, introductions should be made of federal officials and tribal leadership or representatives.

\* Follow up after any consultation session is critical. If the agency officials conducting the meeting have been asked to clarify information, or answer a specific question, the agency should commit to follow up with that tribal representative after the meeting.

The Nation would also like to recommend that a provision be added to this Section that would allow tribes to formally request an extension of the consultation period. The Nation would suggest that a consultation period be extended for a period of 30 days upon a written request by a tribe unless Federal law or regulation expressly prohibits continued discussion.

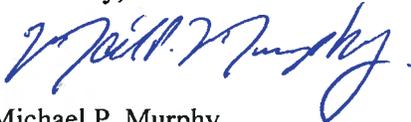
- **Section VIII D. 3. *Stages of Consultation, Implementation of Final Federal Action Stage***

The Nation recommends that in addition to publication in the Federal Register and written notice to tribes regarding final decisions that, similar to the notice recommendation, final decisions be published in national, regional, or local tribal newspapers or similar medium. It is currently often the case that tribes learn about final Department Action through these media sources which have the ability to monitor publication in the Federal Register. This would greatly improve timeliness of notification to tribes and individuals.

This concludes the Ho-Chunk Nation's recommendations for modifications to the Department's policy on consultation. The Nation reserves the right to provide additional comment, should the policy be published as a final draft for comment. Again, the Nation would like to thank the Department for its undertaking regarding the development of this policy.

Thank you.

Sincerely,



Michael P. Murphy,  
Legislative Counsel  
Ho-Chunk Nation