

Situation Assessment and Recommendations for  
Government-to-Government Consultations between  
Interior Alaska Tribes and the U. S. Department of Defense  
on Military Impacts in Interior Alaska

Prepared for:

The U. S. Institute for Environmental Conflict Resolution

At the request of  
Tanana Chiefs Conference

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## **Executive Summary**

In 2003, Tanana Chiefs Conference (TCC) approached the U.S. Institute for Environmental Conflict Resolution (USIECR) to conduct a situation assessment and develop recommendations to enhance the government-to-government consultation process between the Department of Defense (DoD) and three Interior Alaska Tribes. TCC is a non-profit consortium of 42 tribal governments that occupy 235,000 square miles of relatively remote land in Interior Alaska. Thirty-seven of these Tribes are federally recognized and are actively engaged in government-to-government (GtG) consultations with the DoD about past or ongoing military impacts.

Created in 1998 through the Environmental Policy and Conflict Resolution Act (P.L. 105-156), USIECR works nationwide with parties engaged in environmental and natural resource issues where there is a federal agency or interest involved. Its mission is to promote collaborative problem solving and consensus-based decision making through facilitation, mediation, assisted negotiation, policy dialogues, and conflict assessment and process design.

In November 2003, USIECR initiated a collaborative process to select the neutral assessment team with representatives from the Tribes and DoD agencies that had agreed to participate in the assessment. In April 2004 Resource Solutions, a program at the University of Alaska Anchorage (RS/UAA), was chosen to conduct the assessment with Dee Hunt (DCH Consulting) and Margaret King (RS/UAA) as co-principal investigators.

This assessment attempted to clarify the extent to which Interior Tribes and DoD agencies were satisfied with government-to-government consultations on military impacts; what factors they believed promoted or prevented successful outcomes; and how the different perspectives, experience, resources, and objectives of the participants influenced their evaluation of GtG. Twenty in-depth, confidential interviews were conducted with village presidents, an executive director, DoD commanders and tribal liaisons from three military branches, tribal administrators and environmental managers, program and project managers for one of the DoD military branches, staff from the Native regional nonprofit for the Interior, environmental scientists, and a conflict resolution professional. For information-gathering purposes, assessors also spoke with 10 additional professionals with extensive experience in government-to-government consultation.

Interviews were developed to elicit several types of information. Participants were asked about their organizations' perspectives, policies, procedures, and activities in relation to the GtG relationship and consultation process. This kind of information was also obtained from published reports, websites and newsletters sponsored by the various organizations. But largely assessors sought informed personal opinions, based on professional knowledge and experience, about how GtG might operate more effectively now and in the future. This approach encouraged participants to highlight the operational successes of their respective organizations and to think freely and innovatively about changes that could improve the process, irrespective of their institution's policy or current practices.

Initially the assessment was to focus on three Interior villages and their consultation processes. However, as the assessment progressed, it became clear that for several reasons information gathering, analysis and recommendations would extend beyond the particular circumstances of these villages to include a regional focus. For example, while confidentiality agreements protected sensitive information and encouraged creative thinking, it was impossible to characterize the issues and process for specific consultations without compromising the identities of the participants and their villages. Also, assessors weren't able to get the same level of detail about consultations at each

of the villages, so a comparative analysis of their consultation processes wasn't possible. Further, restricting the analysis and recommendations to consultation processes at these three villages would have excluded important, extensive information gained from the interviews. Most of the interviewees had wide-ranging consultation experience and consistently spoke to the broader issues relevant to consultation and the government-to-government relationship.

Many of the ideas presented below draw from the interviews, strategies already developed by the Tribes and DoD agencies working together in Alaska, and other studies or reports on GtG and tribal self-governance. Recommendations focus on strengthening the GtG relationship through developing a programmatic approach to consultation, including a shared funding structure. Among other things, accessing the resources necessary to enhance government-to-government relations may involve utilizing federal programs in new, imaginative ways and working together in the political arena to obtain additional, sustainable funding to support GtG relations in Alaska.

### **Challenges, Needs and Context**

Interviewees defined the following as the primary issues and challenges to developing a more effective GtG relationship on military impacts:

- For DoD agencies, consultation with Tribes about past and potential impacts to protected resources is constrained by budgets, tight schedules for completing projects, and rotating leadership. In order to address tribal concerns during project implementation, DoD needs Tribes to be better prepared for consultations and better informed about the technical and policy issues surrounding cleanup, the identification of potential impacts, and the implications of environmental effects. This includes evaluation of Environmental Assessments and Environmental Impact Statements.
- For DoD, GtG consultation with the many Tribes in Alaska can be an overwhelming undertaking.
- Tribes need access to technical experts to assist in evaluating remediation proposals and the potential environmental impacts of ongoing and future military activities. At minimum, this requires capability to interpret scientific information about existing or potential environmental impacts on a regional basis, i.e., how DoD activities will affect the subsistence environment.
- Tribes in rural Alaska have both a subsistence-based and cash economy. This dual economy is integral to cultural and economic health, and informs the specific concerns, and some of the contention, expressed by the Tribes. DoD activities impact both economies – with cleanup and the development of military infrastructure providing opportunities for jobs and contracts, but also having the potential to negatively impact the environment that supports wild foods. With respect to cash opportunities, Tribes need better information about how to build capabilities relevant to DoD contracts and how to work within the DoD system to compete for contracts or to take advantage of sole source contracts. When it comes to assessing how the sustainability of a subsistence economy is being, or has the potential to be, affected by military activities, Tribes need access to information earlier in the project development process and to technical expertise.

- The liabilities posed by staff turnover can't be overemphasized. Turnover of military and tribal leaders creates an ongoing "learning curve" for both parties in the GtG relationship, with largely negative impacts. Also indicated by the assessment interviews and other studies, the frequent rotation of military leaders can contribute to inconsistencies in policy implementation (i.e., the DoD GtG policy). Such inconsistencies can work against tribal interests, creating information gaps, power imbalances and uncertainty.

These issues and challenges are further framed by circumstances unique to Alaska.

- Alaska is home to 229 of the 561 federally recognized Tribes in the country and has the highest percentage of indigenous population, relative to other states.
- Taking into account the military's use of the land and air for training purposes, Alaska leads the nation in the number of military training areas.
- The government-to-government relationship concerning military impacts is long-term. Six hundred and three (603) formerly used defense sites were slated for cleanup, with 120 properties (to include 307 FUDS projects) still under remediation, and further impacts to the protected interests of Alaska Natives are likely to occur from the present military build-up.
- Military activities result in substantial impacts to the land. This is particularly significant since rural Native communities rely heavily, both culturally and economically, on subsistence.
- Title VIII of ANILCA protects subsistence on public lands in rural areas and specifically acknowledges the cultural and economic importance of subsistence to Alaska Natives.
- Over the last five or six years, increased military activities in the Interior have produced greater GtG responsibilities for DoD personnel and Interior villages, but Tribes still lack basic resources to support their GtG efforts and DoD agencies need additional resources to support the level of GtG consultation that is required in Alaska.

In combination these factors create a unique framework for viewing the GtG relationship between Interior Alaska Tribes and DoD. The following recommendations take this framework into account and address the following: 1) the structural organization of the consulting parties; 2) the process of consultation; 3) personnel and training needed for a more effective process; and 4) preliminary ideas for a shared funding structure.

### **I. Recommend that Interior villages consider forming Intertribal Consortia around DoD issues**

In Alaska, Intertribal Consortia of various sizes already work together to forward mutual social and economic interests. These consortia are formally or informally organized based on location, shared values, common problems and interests, and a shared vision for the future. Forming Intertribal Consortia around DoD issues (or incorporating DoD concerns into the priorities of consortia already in existence) may offer Interior villages the opportunity to gain a critical mass of resources and personnel, better continuity of staff, and at the same time remain relatively close to the concerns of individual Tribes. Villages could pool resources for training, technical consultants, researchers, grant writers, student interns and meeting facilitators, and the knowledge gained by the villages more experienced with GtG (i.e., "lessons learned") would benefit and inform others in the consortium.

Since villages in the same geographic area generally share military impacts, the required “working knowledge” would be similar for each Tribe. This suggests that village-based Points-of-Contact (POCs) could work for more than one Tribe or be consortium-based, thereby extending limited funding resources and creating the potential for continuity and capacity building. Exploring additional means of retaining tribal staff committed to working on DoD issues – in other words, holding onto “institutional knowledge” – would also be of great benefit to Tribes.

Working with Intertribal Consortia has the potential to address several of DoD’s needs: timely consultation by working with more than one Tribe on issues; having a reliable, knowledgeable POC to coordinate communication and consultation schedules for several Tribes; obtaining tribal input on priorities for cleanup over a larger geographic area; gaining more informed, substantial and focused input on project-related consultations; and time efficiency in delivering and receiving information.

This recommendation should not be confused with promoting “regionalization,” as proposed by some Alaskan politicians and government officials. “Regionalization” seeks to by-pass individual Tribes by consolidating administrative responsibilities, decision-making, and resources at the regional level (i.e., ANCSA-defined regions). What assessors are proposing is an extension of the grassroots process of “consortium-building” by Alaskan Tribes, which has taken place with more regularity over the last 10-15 years. Two examples in Alaska’s Interior are the Council of Athabascan Tribal Governments (CATG) comprised of 10 Tribes in the northeastern section of the ANCSA-defined TCC region and the Upper Tanana Inter-Tribal Coalition (UTIC) consisting of the tribal governments and village corporations for the villages of Northway, Tanacross, Dot Lake, Healy Lake, Eagle and Tetlin. If Tribes decide it would be beneficial to address DoD impacts through these types of consortia, developing a formal process that would provide clear, written authority for an individual or individuals to represent the consortium in working with DoD agencies would be necessary.

## **II. Recommend that Interior villages revitalize TCC’s DoD program and develop a joint Interior villages – TCC strategy to maximize the productivity of GtG interactions.**

Revitalizing the Interior villages partnership with TCC through expanding its supportive role to Tribes and authorizing funds for additional DoD Program staff has the potential to strengthen the government-to-government relationship. Considering the size of the region and the number of member Tribes, coming to a consensus about the role of TCC might be challenging.

The first step might be to convene quarterly or monthly regional meetings for the purpose of redefining the role of TCC’s DoD program in the GtG arena. Discussions should result in a clear policy and protocols outlining TCC’s areas of authority and expected roles. This policy and protocols can then serve as guidance for Tribes, TCC, and DoD. It may be useful to engage the services of a meeting facilitator at critical junctures in the discussion process, which, in addition to policy and protocols, would ideally define regional and/or subregional objectives and action plans regarding the GtG relationship with DoD. The early engagement of a third party facilitator could assist in structuring the process, determining appropriate meeting formats, and identifying early on where sticking points exist between Tribes and TCC.

## **III. Recommend that DoD agencies and Interior Tribes enter into discussions about the most time-efficient and productive approach to consultation.**

Assessors suggest that initial discussions center around the structure of interaction, e.g., through restructuring working groups and work process to meet various timelines, reduce burdens on the



Tribes and DoD, and yield better-prepared participants and focused consultations. The following suggestions build on recommendations I and II: that Tribes maximize productivity through forming DoD-related Intertribal Consortia and strengthening the partnership with TCC.

**1. It is suggested that DoD and Tribes should continue to work together to streamline phases of GtG interactions that would not be compromised by meeting with a larger number of Tribes –** for example, informational sessions with the option for follow-up with Intertribal Consortia or individual Tribes.

**2. It is suggested that DoD initiate information sharing and discussion at the regional level in addition to statewide.** ALCOM's annual statewide meeting, Tribal Leaders/Military Leaders, is an occasion to talk about upcoming activities, the challenges of cleanup, about GtG relationship issues and to provide participants with an overview of military activities in the state. Holding intertribal discussions prior to this meeting to clarify regional issues, questions and perspectives would benefit both Interior Tribes and DoD. In addition, similar DoD meetings with each ANCSA-defined region would allow for greater focus on the unique needs of each area. Like the Tribal Leaders/Military Leaders, these meetings should include tribal leadership as well as military leadership from all DoD agencies.

**3. It is suggested that Interior Tribes and DoD distinguish between relationship-centered government-to-government discussions and project-specific consultations.** Most participants indicated that consultations rarely adhere to stated agendas. Often participants utilize consultations to forward their primary interests, irrespective of the intended purpose of the meeting. The parties may benefit from engaging in relationship-centered government-to-government discussions that would address general and long-term issues such as the contracting process, training needs and opportunities, tribal participation in the NEPA process, or how the DoD mentor-protégé program might benefit Alaskan Tribes. As much as possible TCC should be present at, or informed of, these types of consultations, which will enable TCC to gain the knowledge required to more fully assist Tribes and DoD in preparing for future consultations.

#### **IV. Recommend that DoD implement strategies that foster consistent policies and procedures to enhance coordination among the various DoD agencies.**

**1. It is suggested that greater coordination and uniformity of DoD agency GtG procedures may be desirable.** Most DoD agencies have developed their own procedures for implementing DoD's government-to-government policy and frequently have unique organizational decision-making structures. Standardizing procedures across DoD agencies when this does not interfere with agency mission or already-established, satisfactory relations or programs with local Tribes, may provide greater clarity and enhance the consultation process.

**2. In addition, sharing how DoD agencies interface (or remain independent) in the implementation of GtG is key to improving communications.** Regularized discussions and written reference materials (using graphics, where appropriate) about areas of authority and decision-making structure, chain of command, contact information, and standard operating procedures for each DoD agency will deepen the knowledge base of all GtG participants.

**3. Tribal liaisons/cultural resource managers should have direct, frequent access to commanders in order to orient new leadership and keep them informed about Alaskan issues, cultures and project status.** It has been suggested that liaisons should meet with commanders

monthly. Since liaisons offer the only opportunity for continuity in DoD staff working with Tribes on a government-to-government basis, these should be dedicated staff positions.

**4. DoD should establish procedures to ensure that local installation commanders take an active role in the government-to-government relationship when responsibility for implementing GtG with an Alaskan Tribe resides with out-of-state military/civilian staff.**

**V. Recommend that Tribes and DoD agencies further institutionalize government-to-government procedures to assist staff responsible for implementation.** Tribes and DoD can implement a number of complementary approaches to orient and educate new staff and build institutional memory.

**1. Suggest that DoD develop procedures for incoming installation commanders directed at building relationships with Tribes. Included would be required visits to villages as part of their orientation and GtG training.** ALCOM and several DoD agencies offer comprehensive training for incoming military, but first-hand experience of village life offers a more complete understanding of Alaska Native concerns. Other studies have recommended that GtG be conducted “on-site,” when possible. Since time efficiencies are important for both DoD and Tribes, strategies for streamlining these visits would be useful. An initial visit might include several commanders and their tribal liaisons (e.g., USACE, USAG-AK, USAF).

**2. Suggest that Tribes/TCC develop a presentation on military history and contemporary impacts.** It is important for incoming DoD leadership to learn about Alaska’s military history from the perspective of Native communities, in particular the public health concerns that subsistence-based cultures have about contamination. Jointly developing this presentation with advice from DoD would benefit the educational effectiveness of the product, enabling Tribes to present their unique perspectives in a way that engages military personnel.

**3. Suggest that Interior Tribes develop regional protocols & standard operating procedures for GtG with DoD.** Regional protocols would provide guidance for DoD and would stimulate tribal discussion about regional priorities and objectives.

**4. Suggest that Tribes and DoD agencies develop memoranda-of-agreement (MOAs), when relevant.** This initiates an important process of defining mutual objectives, defining roles and responsibilities, timelines, funding commitments, and an implementation plan. Such agreements offer continuity in approach when staff changes take place.

**5. Suggest that Tribes and agencies develop standard procedures for documenting consultations, meetings, and follow-up.** Frequent staff turnover at Tribes and DoD agencies suggests that project status reports with supporting documentation would assist new staff in implementing more efficient follow-up.

**6. Suggest that DoD agencies and Tribes jointly develop agreed-upon criteria and standard procedures for assessing whether ongoing or future military activities have the potential to impact the protected interests of Tribes.** Many Tribes and DoD agencies lack standard procedures for assessing potential impacts to Tribes. Assessors suggest that DoD and TCC work together to develop a template to aid Tribes and DoD project managers to identify potential impacts.

**VI. Recommend that TCC and DoD consider funding additional personnel to enhance government-to-government consultations.** While assessors are not fully knowledgeable about TCC and DoD budget constraints, funding for tribal staff working exclusively on government-to-government DoD issues seems necessary in light of the long-term need for consultation on military impacts.

**1. Suggest that TCC fund two full-time dedicated positions (program manager and environmental scientist) for DoD program.** Two key positions could be created at TCC to support the region's GtG efforts: a program manager and an environmental scientist for TCC's DoD program. These represent the minimum staff needed at the regional level to support Tribes in addressing short and long-term issues related to military activities. It would be preferable for these to be dedicated positions since the scope of work for grant-funded positions is too narrowly defined and intermittent funding makes it hard (or impossible) to build capacity in a sustained, progressive way.

**2. Suggest that DoD fund full-time consortium/village-based points-of-contact on DoD activities.** Most assessment participants indicated that not having village liaisons was an obstacle to implementing policy, particularly since the recent military build-up in the Interior has increased the need for consultation. There are currently no DoD-funded village positions for dealing exclusively with military activities. As outlined on pp. 32-33, these coordinators could work for several villages with similar interests, concerns, and military impacts. It is suggested that, for the long-term, Tribes work together on a statewide basis to advocate for sustainable funding for consortium-based DoD liaisons. In the short term, it is strongly recommended that DoD agencies consider reallocation of available funds to support these positions.

**3. Suggest that DoD institute Points-of-Contact at each DoD component/agency that could work with Tribes on jobs, contracts, military surplus, and training relevant to contracting and employment.**

**VII. Recommend that Tribes/TCC and DoD enter into relationship-centered government-to-government discussions about strategies for more comprehensive tribal participation in the National Environmental Policy Act (NEPA) process.**

In recognition of DoD's government-to-government relationship with Tribes and consistent with DoD policy, project-specific consultations with Tribes should occur prior to the NEPA public process regarding military activities. Ideally, during these consultations tribal interests should be identified and incorporated when possible into the alternatives developed for the Environmental Assessments and Environmental Impact Statements required under NEPA.

In addition, since Interior Tribes rely on subsistence it is in their interest to work proactively with DoD to increase their knowledge of and involvement in the public NEPA process. Reviews of NEPA implementation by government agencies, task forces, and universities suggest that public education and procedural requirements are needed to enhance collaboration with the public under NEPA. For example, the 2003 NEPA Task Force Report to the Council on Environmental Quality suggested that collaboration with stakeholders could be improved by agencies' sharing and developing methods to educate tribal, State and local partners about the "principles of NEPA, partner agencies' missions, communications skills and public involvement skills." The Task Force also recommended that a Federal Advisory Committee be formed to develop guidance to address "the components of successful collaborative agreements."

Tribal consultations with DoD should explore ways for Tribes to increase opportunities for gaining knowledge about the various NEPA processes (i.e., environmental assessments, environmental impact statements, programmatic NEPA analyses and categorical exclusions), decision-making, and avenues for increasing tribal input.

#### **VIII. Recommend that Tribes/TCC work with DoD to develop and conduct joint trainings.**

Consideration of training needs illuminates the dilemma of the GtG relationship. High staff turnover creates an ongoing need for training to ensure the basic competency of incoming staff but capacity built during trainings evaporates when personnel rotate out. In addition, trainings utilize a high amount of GtG resources that are in short supply. Assessors recommend that the GtG parties (federally recognized Tribes and DoD) along with TCC work together to develop and conduct more joint trainings, which can be implemented in several ways. Pooling resources for joint trainings on the basic knowledge required to conduct GtG would free up time and resources for additional trainings specifically geared toward either Tribes or DoD staff.

#### **IX. Recommend that Interior Tribes coordinate politically with Tribes statewide and nationwide to promote increased funding for the Native American Lands Environmental Mitigation Program (NALEMP) and for the tribal infrastructure required to build capabilities on DoD issues.**

The initial RS study on GtG and cleanup concluded that Alaska Tribes perceived NALEMP to be the best model for working with DoD and state regulators on a GtG basis, primarily because Tribes and DoD entered into cooperative agreements whereby Tribes received funding to design and implement cleanup plans and had access to NALEMP-supported training and project-related expertise from the Corps. Since this assessment reaffirmed tribal satisfaction with NALEMP, assessors suggest that Tribes engage in a political effort to increase the annual budget for NALEMP cooperative agreements with Alaskan Tribes.

While in the short term, it is strongly suggested that DoD reallocate funds to support Interior village-based POCs, obtaining long-term financial support for consortium/village-based staff to work exclusively on DoD issues will require a sustained political effort on the part of Tribes.

#### **Remarks**

These recommendations offer likely benefits to both Tribes and DoD: for Tribes, more effective protection of cultural and natural resources and increased assistance from DoD regarding opportunities for contracting on military projects; for DoD, a more efficient use of its resources to accomplish mission objectives, and to advance the environmental goals and processes that are legally mandated – and highly desirable in human terms – for the relationship between military services and tribal communities.

The potential exists to strengthen and streamline GtG consultations on military impacts. Both will require a joint commitment by Tribes and DoD for evaluating, funding and implementing those recommendations that hold promise for improving the government-to-government process and relationship. Consideration of these recommendations provides the opportunity for DoD and Tribes to re-evaluate together how resources can be increased and/or reallocated toward building tribal

infrastructure to support consultations with DoD; how GtG interactions and working groups can be restructured to maximize expertise, continuity, and productivity; and what kinds of procedural changes, institutional mechanisms and training need to occur to enhance consultation.

### **Teleconference with Participants**

On July 6, 2006 the assessment team convened a two-hour teleconference with key participants, which included present and former staff from the three assessment villages; and staff from three military branches, TCC and USIECR. The purpose of the teleconference was to get feedback on the report, especially with respect to the recommendations and next steps to be taken.

Participants provided comments about the recommendations, with the following highlights:

- Developing a presentation about Alaska's military history would be a useful orientation and educational tool as long as it didn't substitute for face-to-face discussions.
- Utilizing Intertribal Consortia to address military impacts made sense but implementation would be complicated, at least initially, since Tribes have varied perspectives on DoD issues and need to reach consensus. It would also be critical for consortia to develop a formal process for working with DoD agencies.
- Technical expertise through TCC or another entity was a critical need for Tribes in evaluating the existing or potential impacts from military activities.
- Many felt that relationship-centered government-to-government discussions would improve consultation and the GtG relationship.
- Further institutionalizing the consultation process would benefit GtG, including a focus on coordination and consistency among DoD agencies with regard to procedures and work process.
- Funding additional personnel, government-to-government discussions about tribal involvement in the NEPA process, and conducting joint trainings were seen as very important to building capabilities and feasible to implement.
- Follow-up after the teleconference indicated that consortium-based federal liaisons, to work exclusively on DoD issues but to be funded by several federal agencies, might be more realistic than DoD-funded liaisons, and appropriate given the fact that cleanup of formerly used defense sites often involves several responsible parties such as DoD, BLM, FAA, etc. Assessors recommend that the GtG parties determine the feasibility of this idea and how it might be advanced. How to include funding for federal liaison work on potential or ongoing military impacts would also need to be considered.

### **Next Steps**

**Disseminating the report.** Participants suggested that the assessment results be presented at several local events:

- TCC's annual regional conference (March) and subregional meetings (August-October);
- Alaska Forum on the Environment;
- Alaskan Command's *Tribal Leaders/Military Leaders* conference (presentation followed by panel discussion); and
- Bureau of Indian Affairs Providers Conference.

The Alaskan Command and TCC said they would work together to distribute copies of the report to DoD staff and to all Interior Tribes. There was also discussion about a statewide distribution to Tribes and other federal agencies working with Alaskan Tribes. The report will also be available online at the USIECR and RS websites.

Based on this teleconference, the assessment team recommends that a meeting be held within the next six months with Interior Tribes, DoD, and TCC participating. Leadership and management staff from all entities should be represented. The purpose of the meeting would be to identify the recommendations that have the greatest value and likelihood for success, and to clarify how they can be implemented. Ideally, this meeting would be the first in a series of joint face-to-face discussions and learning sessions where the GtG parties and support organizations, such as TCC, can explore and implement new ideas for consultation on military activities that will more fully meet the needs of all parties.

## **Section 1: Introduction**

### **Background**

In 2003, Tanana Chiefs Conference (TCC) approached the U.S. Institute for Environmental Conflict Resolution (USIECR) to conduct a situation assessment and develop recommendations on the government-to-government consultation process between the Department of Defense (DoD) and three Interior Alaska Tribes. The purpose of the assessment was to identify what's working and not working during GtG consultations on military impacts affecting these villages and to recommend guidelines, procedures and organizational activities that might enhance the outcome of future consultations.

TCC is a non-profit consortium of 42 tribal governments, of which 37 are federally recognized Tribes.<sup>1</sup> Its membership occupies 235,000 square miles of relatively remote land in Interior Alaska. All of the federally recognized Tribes in the TCC region are actively engaged in government-to-government (GtG) consultations with the DoD about past or ongoing military impacts. Since 1998, TCC's DoD program has been instrumental in providing training and technical assistance on contaminant cleanup in the region, and in coordinating GtG consultations with the DoD for some of its member Tribes. TCC's DoD Program initiated this assessment by contacting the USIECR.

Created in 1998 through the Environmental Policy and Conflict Resolution Act (P.L. 105-156), USIECR works nationwide with parties engaged in environmental and natural resource issues where there is a federal agency or interest involved. Its mission is to promote collaborative problem solving and consensus-based decision making through facilitation, mediation, assisted negotiation, policy dialogues, and conflict assessment and process design.<sup>2</sup>

In November 2003, USIECR initiated a collaborative process to select the neutral assessment team with representatives from the Tribes and DoD agencies that had agreed to participate in the assessment. Specifically, representatives from USIECR and TCC, tribal leadership, tribal administrators and environmental managers, DoD agency program managers and DoD tribal liaisons were involved in the selection process.

In April 2004 Resource Solutions, a program at the University of Alaska Anchorage (RS/UAA), was chosen to conduct the assessment with Dee Hunt (DCH Consulting) and Margaret King (RS/UAA) as co-principal investigators.

### **Related Experience of the Neutral Team**

This assessment builds on previous work by the neutral team on the role of the government-to-government consultation process in the remediation of military contamination in rural Alaska. From 1999-2001, Resource Solutions (Margaret King, Program Manager; Julie Sprott and Dee Hunt, Research Consultants) conducted a statewide study funded by the Federal Facilities Environmental

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<sup>1</sup> The other five are Alaska Native Associations (Simon, Jim and Steve T. Howdeshell, Robert A. Sattler and Kristina D. Adamczak, *Tribal Environmental Restoration Program's 1999 Final Report on Military Impacts to Tribes in Interior Alaska*, Tanana Chiefs Conference, Inc., May 2001, p. 4).

<sup>2</sup> For further information, see the USIECR website, [www.ecr.gov](http://www.ecr.gov).

Restoration Office of the U.S. Environmental Protection Agency on the public participation process as it related to military contamination and cleanup. Ninety people were interviewed statewide: village leaders and environmental managers; military leadership and project managers from several DoD agencies; staff at Native regional non-profits, the Alaska Department of Environmental Conservation, and Native corporations; environmental engineering contractors; and tribal liaisons representing both agencies and Tribes. Phase 1 of the study addressed the extent to which communities believed they were having an impact on the cleanup process through their participation in Restoration Advisory Boards and/or public meetings. Phase 2 explored how Tribes believed the GtG relationship with federal agencies influenced cleanup – specifically, whether or not Tribes perceived their role to be more effective as a result of GtG interactions with federal agencies.<sup>3</sup> What emerged was that Tribes believed the GtG relationship most successfully operated through cooperative agreements under DoD’s Native American Lands Environmental Mitigation Program (NALEMP). Consequently, Alaska Tribes with NALEMP agreements were interviewed in order to understand why they preferred this vehicle for addressing the military contamination issue.<sup>4</sup> The project also included a case study of Louden Tribe’s self-governance process, which described how the Tribe was working with the Air Force and city government to clean up contamination at Galena.<sup>5</sup>

The current assessment focuses more squarely on the consultation process itself which includes, but is not restricted to, participation in NALEMP. Case studies of three villages and the agencies relevant to military impacts near these villages allowed assessors to understand how particular GtG relationships operated, and provided both a general and very specific understanding of the obstacles encountered during consultations. The assessment team sought to understand the extent to which all parties – Tribes and DoD agencies – were satisfied with the consultation process; what factors they believed promoted or prevented successful outcomes; and how the different perspectives, experience, resources, and objectives of the participants influenced their evaluation of GtG.

To some extent, this assessment provides the opportunity to evaluate change over time with respect to how village governments view the effectiveness of the GtG relationship with DoD. Seven years have elapsed since the initial study, which began one year subsequent to President Clinton’s 1998 Executive Order 13084, titled *Consultation and Coordination with Indian Tribal Governments*. This Order set in motion the development by federal agencies of GtG consultation policies and procedures, which ultimately produced more frequent standardized interactions with tribal councils and consortia about military impacts to protected resources. Two of the Tribes in this assessment also participated in the previous study, and many of the additional interviews tapped into the knowledge and expertise of agency and tribal staff with years of GtG consultation experience in Alaska.

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<sup>3</sup> See project summary (<http://resourcesolutions.uaa.alaska.edu>) titled *Rural Alaska’s Participation in Contaminants Cleanup: A View from the Public Stakeholders’ Perspective*, which was distributed to all project participants at the conclusion of the study.

<sup>4</sup> All Alaska Native Tribes with NALEMP agreements in 2000 were interviewed except for Metlakatla Indian Community.

<sup>5</sup> Spratt, Julie E. and Administrative Staff of the Loudon Tribal Council, *Neelghu neets’edeneyh: We Work Together, We Help Each Other: The Story of Loudon Tribal Council’s Self-Governance Process 1993-2000*, Printing funded by Loudon Tribal Council, University of Alaska President’s Special Projects Fund, Tanana Chiefs Conference, Inc. and Alaska Inter-Tribal Council, November 2000.



## Project Objectives and Methods

### Background Review

During the initial RS study (1999-2001) on GtG and contaminant cleanup, the assessment team surveyed material on the history of the military presence in Alaska and examined statutes, policies and programs relating to cleanup, such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA 1980), the Resource Conservation and Recovery Act (RCRA 1984, with amendments) the Defense Environmental Restoration Program (DERP), the Installation Restoration Program (IRP), and the Native American Lands Environmental Mitigation Program (NALEMP). Assessors also surveyed village site reports that detailed the types and extent of military contamination with recommendations for remediation, GtG cooperative agreements between villages and DoD agencies, and programs designed to support the government-to-government relationship and cleanup through facilitating communication and capacity building (e.g., TCC's Tribal Environmental Restoration Program (TERP) and the cross-cultural communications workshop sponsored by TCC and DoD and facilitated by the Kluckhohn Center). At that time, publications were scarce on the GtG consultation process with Tribes; although the Environmental Protection Agency published the "Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Members in Environmental Decision Making" in 2000. All this background provided an excellent foundation for conducting the current assessment.

However, there are several publications that have become available in recent years on the GtG consultation process with Tribes and the related, but critical, issue of tribal self-governance. Particularly useful were reports released by the Institute for Tribal Government at Portland State University (January 2005), the National Association for Tribal Historic Preservation Officers (May 2005), the Native Nations Institute (Udall Center, University of Arizona) and the Harvard Project on American Indian Economic Development (2003); a report titled *Tribal Policy for Restoration of Federal Sites: Aleutian/Pribilof Region* (June 2004) authored by 14 Tribes from southwestern Alaska in conjunction with the Aleutian/Pribilof Islands Association, Inc.; a master's thesis on GtG relations between DoD and several Interior Alaska Tribes (2005);<sup>6</sup> a synthesis of a conference on the government-to-government consultation process held August 17-18, 2004 in Washington, D.C. titled, *Beginning the Dialogue: Government-to-Government Consultation, Coordinating the Lessons Learned and Looking to the Future; the Final Report to the Alaska Commission on Rural Governance and Empowerment* (June 1999); and *Achieving Alaska Native Self-Governance* (May 1999).

### Interviews

Twenty people were interviewed in connection with this assessment. For information-gathering purposes, ten additional professionals with GtG experience were also contacted.

The objective was to interview all tribal/agency leadership and support staff that had participated in GtG consultations on military impacts at or near the three villages, as well as agency/tribal representatives outside the region who had relevant experience with the GtG consultation process. Interviewees included village presidents and an executive director, DoD commanders and tribal liaisons from three military branches, tribal administrators and environmental managers, program and

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<sup>6</sup> Shearer, Amanda, *Bridging Two Worlds: Government-to-Government between the Department of Defense and Federally Recognized Tribes in Athabascan Country, Alaska*, unpublished Master's thesis, University of Alaska Anchorage, 2005.

project managers for one of the DoD military branches, staff from the Native regional nonprofit for the Interior, environmental scientists, and a conflict resolution professional.

All interviews were confidential and ranged from 2 to 8 hours in length. Interviews were developed to elicit several types of information. Participants were asked about their organizations' perspectives, policies, procedures, and activities in relation to the GtG relationship and consultation process. This kind of information was also obtained from published reports, websites and newsletters sponsored by the various organizations.<sup>7</sup> But largely assessors sought informed personal opinions, based on professional knowledge and experience, about how GtG might operate more effectively now and in the future (see Appendix 2 for Interview Topics). This approach encouraged participants to highlight the operational successes of their respective organizations and to think freely and innovatively about changes that could improve the process, irrespective of their institution's policy or current practices.

Questions were directed toward identifying:

- if implementation was consistent with their understanding of the policy and procedures as outlined by the DoD policy;
- how the parties defined the GtG relationship;
- what the parties expected of the GtG relationship, both in terms of process and outcome;
- whether the parties clearly understood the roles and responsibilities of all those participating in GtG consultations;
- what the obstacles or challenges to successful consultations were and how they could be reduced;
- what characteristics or actions produced successful consultations;
- if conflict was handled effectively and by what means;
- what technical assistance or training had promoted successful consultations in the past; and
- what additional technical assistance or training was needed to enhance the process and outcomes of future consultations on military impacts.

### **Analysis and Recommendations**

Initially the assessment was to focus on three Interior villages and their consultation processes. However, as the assessment progressed, it became clear that for several reasons information gathering, analysis and recommendations would extend beyond the particular circumstances of the three villages to include a regional focus. For example, while confidentiality agreements protected sensitive information and encouraged creative thinking, it was impossible to characterize the issues and process for specific consultations without compromising the identities of the participants and

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<sup>7</sup> The inclusion or exclusion of secondary source information in the report does not reflect the opinion or position of the assessment team.

their villages. Also, assessors weren't able to get the same level of detail about consultations at each of the villages, so a comparative analysis of their consultation processes wasn't possible. Further, restricting the analysis and recommendations to consultation processes at these three villages would have excluded important, extensive information gained from the interviews. Most of the interviewees had wide-ranging consultation experience and consistently spoke to the broader issues relevant to consultation and the government-to-government relationship. This experience included familiarity or consultation experience with other Interior villages or in other regions of Alaska, consultation experience on DoD issues not specifically relevant to the assessment villages, and GtG consultation experience with Tribes outside Alaska.

### **How the Report Was Prepared, Reviewed, and Organized**

Assessors provided several versions of the draft report to USIECR for review and comments. The revised draft was then provided to assessment participants for their comments with respect to the recommendations, the accuracy, and whether all relevant background information was included. Decisions regarding the content of the draft provided to assessment participants and of the final report were up to the discretion of the assessment team.

After participants had reviewed the draft report, assessors convened a teleconference of key participants to discuss the report and next steps. Please see pp. xi-xii for a summary of this teleconference.

Following is a description of the project area (Section 2), a summary of key findings (Section 3), proposed recommendations to enhance the government-to-government relationship between DoD and Interior Tribes (Section 4), and concluding remarks (Section 5).

## Section 2: Project Area – Interior Alaska Tribes

### Description of the Region

Interior Alaska constitutes about one-third of the state and covers 235,000 square miles. The region is defined by the Brooks Range to the north, the Alaska Range to the south, and Canada to the east, with its western limit very near to the eastern coast of the Bering Sea. The region also includes the Yukon, Kuskokwim, Tanana and Koyukuk river drainages. At one time, nine different Native languages were spoken in the Interior and today there are more than 14,000 Alaska Natives living there. The 42 villages are predominantly Athabascan, but also include Inupiaq and Yup'ik communities. There are 37 federally recognized Tribes in the Interior.<sup>8</sup>

Following the 1971 Alaska Native Claims Settlement Act (ANCSA), regional nonprofit corporations were organized to administer services to tribal members through contracting with federal, state and private agencies. As the regional nonprofit for the Interior, TCC administers over 220 programs in health, education, cultural and natural resource management, economic development, employment and training, environmental management, and services related to military impacts. Due to the vast size of the Interior, there are six subregional offices that coordinate TCC programs for the Tribes in their areas. To varying extent, individual tribal governments manage some of these programs for their own communities, rather than utilizing the administrative services of TCC. In these cases, funds to support and deliver services go directly to the federally recognized Tribe.<sup>9</sup>

Military lands in the Interior include bases, operational stations and training grounds at the active installations of Fort Wainwright, Fort Greely, Eielson Air Force Base, Clear Air Force Station, and Galena Air Force Station (semi-active, slated to close). They also include Long Range Radar Stations at Tatalina, Indian Mountain, and Burnt Mountain and formerly used defense sites (e.g., Gerstle River Test Site).<sup>10</sup> Military impacts apply to these locations and to ANCSA-conveyed properties and trust lands (allotments and townsites). Both Eielson Air Force Base and Fort Wainwright are on EPA's National Priorities List (NPL)<sup>11</sup> of Superfund sites and all other Interior military bases/stations appear on the Federal Register's Hazardous Waste Compliance Docket (Environmental Protection Agency).<sup>12</sup> A TCC study estimated that 30% of the documented military impacts to Tribes nationwide are present in Interior Alaska.<sup>13</sup> (For a more detailed account of military impacts in Interior Alaska, see Appendix 3.)

TCC's DoD Program has been instrumental in identifying and documenting military contamination as well as working with villages and the DoD to prioritize mitigation in the region. TCC has also worked with DoD agencies and member Tribes to build the capabilities necessary for all parties to satisfactorily address military impacts. These efforts are described in detail below.

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<sup>8</sup> Simon, Howdeshell, Sattler *et al* (2001:4-6).

<sup>9</sup> *Ibid*, pp. 6,9.

<sup>10</sup> *Ibid*, pp.1, 8-9, 15, 105.

<sup>11</sup> NPL is a national ranking of contaminated sites, according to relative risk to human health and the environment, in order to prioritize cleanup actions.

<sup>12</sup> 13<sup>th</sup> update, December 29, 2000.

<sup>13</sup> Simon, Howdeshell, Sattler *et al* (2001:90).

### **TCC's Tribal Environmental Restoration Program**

TCC began studying military impacts in 1996 when funds from the Administration for Native Americans (ANA) supported a region-wide survey of impacts on Native allotments.<sup>14</sup> Results suggested that the Upper Tanana subregion was most heavily impacted and provided preliminary data concerning 21 individual impacts on allotments. These data built on information available from earlier assessments conducted for the U.S. Environmental Protection Agency by Portage Environmental (PE). For the Interior, PE's assessments concerned military impacts at the villages of Evansville, Galena, Northway, Tanana, and Tanacross. In addition, the U.S. Department of Interior had also compiled information reported by Alaska Native organizations and federal and state agencies concerning contamination on ANCSA-conveyed properties.<sup>15</sup>

In 1998, TCC developed the Tribal Environmental Restoration Program (TERP) with two primary objectives in mind: to train village staff to work directly with DoD on mitigation and to provide region-wide technical assistance and coordination for villages interacting with DoD. Additional support from the ANA, coupled with funds from NALEMP in 1998, funded TERP from 1998-2000.

Under TERP, TCC's efforts broadened to include identifying and documenting environmental impacts; working with villages to prioritize future mitigation projects; estimating mitigation costs; and providing technical assistance and training to villages affected by military impacts. TCC hired additional staff to accomplish these tasks including a NALEMP program manager, a program anthropologist, and an environmental project manager. TCC also entered into a cooperative agreement with the Alaska Department of Natural Resources (DNR) to utilize its GIS (Geographic Information System) capability to identify hazardous waste sites and impact zones resulting from activities at "bombing ranges, military maneuver areas, military reserves, and DoD facilities that were transferred to individuals as Native allotments."<sup>16</sup>

TERP's data gathering was confined to restricted lands since a PL 93-638 contract between TCC and the BIA provided TCC with clear authority to conduct research on these properties.<sup>17</sup> Although DoD impacts and remediation responsibilities also apply to ANCSA-conveyed properties, cooperative agreements with the relevant village corporations would have been necessary in order to pursue research on ANCSA-conveyed land. Consequently, for 1999, TCC staff decided to focus data gathering on trust lands.<sup>18</sup>

A critical component of TERP was funding part-time tribal liaison officers (TLOs) in 12 villages to take part in educational seminars and on-site training directed toward providing the necessary information and skills for villages to plan and design their own restoration projects. Since funds were limited, not all villages with possible military impacts could be involved. Consequently, TCC devised a ranking method based on existing site data and NPL criteria to assist in selecting the 12 villages. Ultimately, the villages of Nenana, Rampart, McGrath, Dot Lake, Healy Lake, Northway, Tanacross, Tetlin, Fort Yukon, Loudon Tribe at Galena, Evansville, and Hughes were chosen to participate.<sup>19</sup>

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<sup>14</sup> Sattler, R.A. and P.G. Headlee, *Inventory of Environmental Impacts to Indian Lands Resulting from Former Military Activities in Interior Alaska*, Report prepared for the Administration for Native Americans, Grant #90NM0018, Tanana Chiefs Conference, Inc., Fairbanks, Alaska, 1997.

<sup>15</sup> Simon, Howdeshell, Sattler *et al* (2001:9-11).

<sup>16</sup> *Ibid*, Appendix S, p.345.

<sup>17</sup> See Appendix 5 for information regarding PL 93-638.

<sup>18</sup> Simon, Howdeshell, Sattler *et al* (2001:1-2).

<sup>19</sup> *Ibid*, pp. 23, 103.

To support TLO training and investigations on military impacts, TERP staff reviewed archival information pertaining to military activities in the region, historical and environmental literature, federal and state environmental program reviews, and conducted oral history interviews. TERP staff also helped villages with site investigations, coordinated communications with DoD, and developed a military impacts data management system. Suspected military impacts at Interior sites were subsequently entered into DoD's Native American Environmental Tracking System (NAETS).

Training seminars provided TLOs with some of the background they needed to function effectively as tribal points-of-contact with DoD and TCC, and to begin identifying, documenting and reporting impacts. Seminars and onsite workshops provided training in the military organizational structure and budgeting process; remediation programs and environmental policy; types of contamination and cleanup technologies; oral history techniques; and how to identify, characterize, inventory and report environmental impacts. Safety issues were also covered in light of concerns over UXOs. On-site seminars in Galena and Northway familiarized TLOs with the methods these villages had utilized in GtG consultation, site assessment and remediation.<sup>20</sup>

NALEMP provided core funding for TERP through one of several cooperative agreements (CAs) TCC has with DoD. However, after 2000, TCC was not able to obtain additional funding to continue the Tribal Environmental Restoration Program. Currently a NALEMP CA supports a TCC partnership with the Alaskan Command<sup>21</sup> at Elmendorf Air Force Base to coordinate GtG consultations and information sessions with Tribes, and to conduct DoD staff training in relation to the current military build-up in the Interior. Staff training has addressed the background and current operation of the government-to-government relationship with Tribes.

### **Developing Good Communication and Partnerships**

In 1999 TCC convened a cross-cultural communications process titled *Developing Tribal and Military Relations in the Alaskan Interior*, as part of its effort to support the government-to-government relationship with DoD and to advance cleanup on a regional basis. The workshops were conducted by the Florence R. Kluckhohn Center for the Study of Values, which seeks to promote intercultural understanding and partnerships among diverse cultural groups, organizations and communities.

Workshop participants included decision-makers and representatives from Interior Tribes and TCC, the USACE (Alaska District), the 611<sup>th</sup> Air Support Group, and the Alaskan Command. Facilitators from the Kluckhohn Center conducted interviews and workshops to identify and promote discussion of the critical issues concerning cleanup. These discussions were the basis for developing specific action plans that would forward cleanup and encourage enduring partnerships between the DoD, TCC, and Interior Tribes. At the conclusion of the workshops, a Steering Committee and Working Group, each consisting of representatives from TCC, Interior Tribes, and DoD agencies, organized to work together over the long term to address contaminant issues. Participants also developed a

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<sup>20</sup> *Ibid*, pp. 23-34.

<sup>21</sup> The Alaskan Command (ALCOM) is the joint subordinate command of the Pacific Command. ALCOM is headed by a 3-star Air Force general, who is the highest-ranking officer in Alaska. In times of peace, ALCOM functions to coordinate services and set policy, but DoD component commands (e.g., the Army, Navy, Air Force) also fund and implement their own policies. ALCOM will also work to resolve conflicts among components or if conflicts are not resolved at the component level.

substantial list of near-term (1 year), mid-term (1-2 years) and long-term action items to be implemented by the Working Group with oversight and guidance from the Steering Committee.<sup>22</sup>

While action plans were developed, there were no implementation funds to continue the dialogue. Attempts to obtain funding from DoD and TCC were initially unsuccessful. By the time funding was received through a NALEMP Project Implementation Demonstration Project cooperative agreement with Alaskan Command, both the Steering Committee and Working Group had lost their momentum and some of the key decision-makers at the tribal and agency levels had moved on to other endeavors. Also DoD had come to believe that NALEMP funds should be directed toward cleanup rather than relationship building.

### **Village Restoration Efforts**

Interior villages have utilized NALEMP to expand and solidify their role in environmental restoration and in the consultation process on military impacts. Since the late 1990's, many Interior villages have advanced cleanup through NALEMP cooperative agreements, including Evansville, Healy Lake, Galena, Northway, Tanana, and Tanacross. Several of these villages have existing NALEMP CAs.

Some villages have hired outside expertise to assist in implementing the NALEMP cleanup projects. Others have established their own environmental restoration companies, usually through the village corporation but sometimes through the Tribe. Village governments often coordinate training for tribal members in HAZMAT, HAZWOPER and other cleanup methods in order to facilitate their employment on cleanup projects.

Other than NALEMP, few resources are available to support village-based environmental restoration. EPA's Indian General Assistance Program (IGAP) provides seed money for developing tribally administered environmental management programs. To some extent, these funds can support the identification and minor testing (e.g., soil sampling) of suspected contamination.

Some Interior villages have also joined with other Alaskan Tribes and Canadian First Nations to raise awareness within and outside their communities about the various point sources of pollution to the Yukon River, including past and ongoing military activities. Known as the Yukon River Inter-Tribal Watershed Council (YRITWC), this consortium is developing a monitoring and assessment program that will utilize a holistic and comprehensive approach in assessing the health of the watershed. YRITWC also promotes community-based environmental education.<sup>23</sup>

## **Department of Defense Policies and Programs**

### **American Indian and Alaska Native Policy**

In October 1998, DoD finalized its American Indian and Alaska Native Policy. Developed over an 18-month period with input from over 200 representatives from Tribes across the nation, the policy outlines the principles and procedures for interacting with Tribes on a government-to-government

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<sup>22</sup> Florence R. Kluckhohn Center for the Study of Values, *Developing Tribal and Military Relations in the Alaska Interior: Final Report to Tribes*, Bellingham, Washington, 1999, p.2.

<sup>23</sup> Yukon River Inter-Tribal Watershed Council, *Yukon River Unified Watershed Assessment*, June 2002.

basis both at the leadership and staff levels. The policy states that DoD will support tribal self-governance and the government-to-government relationship and will work to establish “stable and enduring” relationships with Tribes through the consultation process (for more information on the legal basis of the GtG relationship between Tribes and federal agencies, see Appendix 4). It also states that DoD will “recognize and respect the significance Tribes attribute to natural and cultural resources.”<sup>24</sup>

More specifically, the policy establishes DoD’s obligation to engage in timely consultations so that Tribes have the opportunity to participate in any decisions concerning protected rights or resources; affirms tribal “rights to fish, hunt and gather resources at both on and off-reservation locations;” commits to help “remove any procedural or regulatory impediments” to working with Tribes; and states its intention to enhance “to the extent permitted by law, tribal capabilities to effectively protect and manage natural and cultural tribal trust resources whenever DoD acts to carry out a program that may have the potential to significantly affect those resources.” This includes providing “information concerning opportunities available to Tribes to compete for contracts, subcontracts and grants, and participate in cooperative agreements,” and to benefit from education, training and surplus equipment.<sup>25</sup>

### **American Indian/Alaskan Native Policy: Alaska Implementation Guidance**

DoD’s government-to-government relationship with Alaskan Tribes operates under unique circumstances due to the legal status of Native-owned lands and its relationship to trust responsibilities, particularly since military impacts directly and indirectly affect land and other resources. In 1971, the Alaska Native Claims Settlement Act (43 USCA 1601-1628) extinguished all tribal rights to land based on aboriginal title, use or occupancy. Alaska Natives received \$962.5 million and fee simple title to 44 million acres of land through state-chartered regional and village corporations, not through tribal governments. With a few exceptions, ANCSA transformed the legal status of Native-owned lands from trust lands subject to restricted alienation to privately owned lands with few restrictions.<sup>26</sup> Exceptions were the Metlakatla Indian Community Federal Reservation on Annette Island, restricted townsites, and Native allotments. These lands still qualify as “Indian country” where the federal government recognizes Native (tribal/ individual) authority over land.

Nonetheless, Alaska Tribes still have a protected interest in natural or cultural resources “either on or off Indian Land” as prescribed in statutes, executive orders, and court decisions.<sup>27</sup> Government programs and services directed toward Native Americans by virtue of the GtG relationship continue to list Alaska’s federally recognized Tribes and other tribal entities as eligible parties. While ANCSA expressly extinguished aboriginal hunting and fishing rights, Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) established a subsistence preference for rural Alaskans, Native and non-Native, who are dependent on subsistence. As a result of ANILCA, when hunting or fishing is restricted, rural residents dependent on subsistence have first preference.

Due to the unique circumstances faced by Alaskan Tribes in their GtG relationship with DoD, representatives from local DoD agencies formed a committee to develop a DoD policy implementation guidance in Alaska. Finalized in May 2001, the guidance clarifies the interaction between land status and trust responsibilities, recognizing that “trust responsibilities are not limited to

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<sup>24</sup> U. S. Department of Defense, *American Indian and Alaska Native Policy*, October 20, 1998, pp. 1,3,5.

<sup>25</sup> *Ibid*, pp. 3-5.

<sup>26</sup> Getches, David H. and Charles F. Wilkinson, Robert A. Williams, Jr., *Cases and Materials on Federal Indian Law*, 4<sup>th</sup> edition, West Publishing Company, St. Paul, 1998, p. 900.

<sup>27</sup> Alaskan Command, *DoD American Indian/Alaskan Native Policy: Alaska Implementation Guidance*, May 11, 2001, p. 3.



Tribal rights and resources associated with Indian Land, but extend to protected rights and resources off Indian Land as well.”<sup>28</sup>

### **DoD Programs and Initiatives**

Prior and subsequent to the development of DoD’s American Indian and Alaska Native Policy, DoD developed programs and initiatives to support the government-to-government relationship with Tribes. These efforts are summarized in Appendix 5.

### **The Military Transformation and Interior Alaska**

Nationally, the Department of Defense and U. S. military forces are undergoing a significant “transformation” that encompasses fundamental changes in defense philosophy and infrastructure; soldier training, war technology and strategic operations; and intelligence gathering, global surveillance and reconnaissance.<sup>29</sup> Put another way, DoD’s transformation strategy consists of “transforming [DoD] culture; transforming processes; and transforming capabilities through force or military transformation.... This includes strengthening joint operations; exploiting U.S. intelligence advantages; concept development and experimentation; and developing transformational capabilities.”<sup>30</sup>

These mandates underpin the 2005 Base Realignment and Closure (BRAC) recommendations, which demonstrated the breadth of structural changes considered necessary by DoD to ensure “transforming.” Base realignment and closures will affect more than 800 installations, as compared to the four previous BRAC rounds which, according to DoD figures, resulted in only “97 major closures, 55 major realignments and 235 minor actions....”<sup>31</sup> In Alaska, the 2005 BRAC affected Eielson Air Force Base (to be realigned), Kulis Air National Guard Base (to be closed), Galena Air Station (to be closed), Elmendorf Air Force Base (to be realigned), and Fort Richardson (to be realigned).

Alaska continues to play an integral role in the Pentagon’s national defense plan due to its strategic importance for defense and training. In recent years, military buildup related to the Army Transformation and development of the Missile Defense System has had a large impact on the Interior. In October 1999, the Army announced plans for “a synchronized program of transformation to occur in three phases over a 30-year period ...[that] would affect most aspects of the Army’s doctrine, training, leader development, organizations, installations, materiel, and soldiers.”<sup>32</sup> Currently U.S. Army Alaska (USARAK) is implementing the second phase – the conversion of existing brigade units to Stryker Brigade Combat Teams (SBCT). Known as the Interim Capability Phase, USARAK estimates it will take five to 10 years to fully man, equip and train SBCTs.<sup>33</sup> SBCTs are part of a new brigade-based defense strategy that incorporate light, mobile, and more lethal fighting brigades to

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<sup>28</sup> Alaskan Command (2001:2).

<sup>29</sup> Cebrowski, A.K., *Military Transformation: A Strategic Approach*, Office of the Secretary of Defense, Fall 2003.

<sup>30</sup> *Ibid*, p. 20.

<sup>31</sup> Miles, Donna, “BRAC Deadline Expires; DoD to Begin Closures, Realignments,” *American Forces Press Service*, November 9, 2005.

<sup>32</sup> U.S. Army Alaska, Department of the Army, *Draft Environmental Impact Statement, Volume 1, Transformation of the U. S. Army Alaska*, Anchorage, Alaska, n d.

<sup>33</sup> *Ibid*, pp. 1-2.

support a network-centric approach to warfare that links communication systems, weapons systems, and joint forces.

Due to the Military Transformation, training maneuvers and other military activities have increased in Interior Alaska. More than 7,000 soldiers and paratroopers staff both the Stryker Brigade at Fort Wainwright and the Airborne Brigade at Fort Richardson. Over the next three years, an additional 880 soldiers will be stationed at Fort Wainwright to form an Aviation Task Force that will focus on wartime helicopter training for ground forces.<sup>34</sup>

As an interceptor test site, Fort Greely is one of the focal points of the Missile Defense System, which is viewed by DoD as critical to addressing the “emerging operational challenges of the 21<sup>st</sup> century.”<sup>35</sup> The Missile Defense System is a land-based missile interceptor system that consists of ground-based interceptors, X-band radar, upgraded early warning radars, space-based radars, and battle management command, control and communications. Installation at Fort Greely of 16 interceptors that use radar and infrared data to identify and destroy intercontinental missiles was slated for completion by the end of 2005.

The recent upgrade of radar communications at Clear Air Force Station (CAFS) is also related to national missile defense. The primary function of CAFS is to notify North American Aerospace Defense Command (NORAD) of any incoming Intercontinental Ballistic Missiles and/or Sea-Launched Ballistic Missiles. Clear’s Ballistic Missile Early Warning System was deactivated in 2001 and replaced with the Solid State Phased-Array System (SSPARS), which will increase coverage on missile warning and space surveillance. Begun in 2004 and to be completed in 2007, the Alaska Air National Guard will replace the active-duty troops at Clear, which rotate annually. This is the first time in 42 years that permanent troops will staff Clear AFS.<sup>36</sup>

The Military Transformation marks a new period in national defense and in the history of the military in Interior Alaska. Vast changes in military organization, mission initiatives, training, communications, and war technology are taking place that will affect Interior Tribes and their environment, culture and economy over the next decades.

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<sup>34</sup> Brant, Tataboline. “Army to Add Alaska Forces,” *Anchorage Daily News*, November 1, 2005.

<sup>35</sup> Cebrowski, 2003:18.

<sup>36</sup> “Air Force Turns Over Its Station at Clear to National Guard Unit,” *Anchorage Daily News*, May 23, 2004.

### **Section 3: Issues and Perspectives**

An assessment of government-to-government interactions between three Interior Alaska Tribes<sup>37</sup> and the three DoD agencies most actively engaged with these Tribes provided the foundation for the following discussion. GtG interactions included group meetings and one-on-one<sup>38</sup> consultations that addressed potential environmental, cultural or economic impacts from ongoing military activities, as well as environmental impacts from past activities. Interviews about consultations in other regional contexts also contributed to an understanding of GtG in the Interior.

As defined by DoD policy, consultation is the primary means for implementing the GtG relationship. In the following discussion, the assessors refer to the GtG relationship in Alaska as consisting of both government-to-government interactions and consultation. These terms reflect the distinction made by tribal and DoD participants between consultation and other types of interactions that also support the GtG relationship.

Following is a discussion of the key issues, referencing what participants in this assessment identified as the operational challenges of implementing the government-to-government relationship and their suggestions for improvement. As mentioned in Section 1, participants included village leadership, administrators and environmental coordinators; DoD leadership, cultural resource managers, project managers, program managers, and tribal liaisons; and federal agency environmental scientists, a conflict resolution specialist, and staff at the Native regional nonprofit corporation for the Interior.

#### **Discussion of the Key Issues**

Since the initial RS study (1999-2000), assessors found a greater awareness or “working knowledge” of the requirements of the government-to-government relationship. Beginning with the federal recognition of Alaska’s Tribes in 1994, which reinstated some of the authority in tribal governments that had been diminished by ANCSA, many factors at the national and local (i.e., Alaska) levels have contributed to a greater conceptual and operational knowledge of GtG in Alaska:

1. Executive Order 13084 (1998) set in motion policies and programs that supported consultation and collaboration by federal agencies and Tribes on natural and cultural resource issues;
2. DoD finalized its GtG policy in 1998 and the Alaska Implementation Guidance in 2001;
3. DoD produced educational materials, available online and in print, on the rights and responsibilities inherent in the government-to-government relationship with Tribes;
4. DoD created a template for developing policies, programs and trainings with the potential to support GtG with Tribes at the state level. In Alaska, staff trainings by ALCOM (every two years) and various DoD agencies<sup>39</sup> include sessions that define GtG, outline the unique aspects of GtG with Alaskan Tribes, educate about Alaska Native cultures, and address the importance of effective cross-cultural communication;
5. Local DoD agencies (to varying extent) have coordinated with Tribes to enact policies and procedures that support the GtG relationship;

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<sup>37</sup> Please see Appendix 6 for a brief characterization of the assessment villages.

<sup>38</sup> Referring to a consultation between the leadership of one federally recognized Tribe and a military branch or component.

<sup>39</sup> For example, the U.S. Air Force 611<sup>th</sup> Air Support Group has hosted training workshops in 2003, 2004 and 2006 on the government-to-government relationship and implementation of the DoD policy. In 2006, Tribes were also invited to participate in the training.

6. Alaska Tribes (to varying extent) have furthered self-determination and self-governance on DoD issues through developing tribal protocols, negotiating MOAs with DoD that structure working relationships on particular issues, advising on DoD agency standard operating procedures (SOP); implementing NALEMP remedial actions on cleanup projects, and establishing village-based environmental contracting companies.

Yet despite these efforts, interviews reveal that there is not a consistent, complete or mutual understanding of GtG. Perspectives continue to differ on some key issues that speak directly to how the parties define the relationship. Consequently miscommunication, unrealistic expectations, resentment, mistrust, and a less effective and efficient consultation process on the substantive issues occur.

### **How the Participants Defined the Government-to-Government Relationship**

On the surface, most participants defined GtG in terms of the responsibility of federal agencies to interact with Tribes in recognition of their sovereignty and self-determination. But how participants implemented GtG had more to do with how familiar they were with the DoD policy and how well they understood the legal basis for the government-to-government relationship. Also influencing participants' definition of GtG (including what issues they believed were relevant to the GtG relationship) were their respective cultures, institutional missions and governance, and the resources available to them to support GtG consultation.

### **Knowledge of GtG Principles and Requirements**

The substance of GtG is informed by an understanding of the principles and legal foundation of GtG, the rights the GtG relationship confers upon Tribes, and the responsibilities GtG requires of both DoD and Tribes. All these aspects are outlined, to varying extent, in the DoD policy, and the assessment team explored how participants in GtG processes draw upon these three perspectives.

Five of the 11 DoD interviewees were knowledgeable about DoD's government-to-government obligations as outlined in the policy. One military leader was especially responsive to tribal requests and concerns, and proactive in eliciting tribal review of DoD component policy and SOPs. Four of the DoD program/project managers and tribal liaisons also demonstrated a high level of GtG expertise and involvement with Tribes – their understanding of the principles and requirements of GtG appeared consistent with the policy and they were proactive in working with Tribes.

Six of the 11 DoD agency staff<sup>40</sup> at the leadership (1) and management (5) levels were not deeply familiar with GtG principles and requirements as outlined in the policy. While all six understood that GtG consultations are mandated and separate from the public involvement process, they didn't view consultations as leading to, or offering, a participatory role in decision-making. For example, one military interviewee defined GtG as a process to promote cooperation because it was important to establish good relationships with surrounding communities. This individual acknowledged that relations with the Tribe had been "cool" as compared to interactions with the non-tribal community near the base. This interviewee was unfamiliar with DoD's GtG policy, had had no training in GtG, and had not previously participated in a consultation. Another DoD interviewee characterized GtG as

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<sup>40</sup>Staff turnover during the assessment periods resulted in follow-up with new DoD program / project managers.

information sharing in contrast to what he characterized as the more participatory process of community involvement.

All eight tribal representatives (villages and regional nonprofit) cited DoD's responsibility to interact with Tribes in recognition of their sovereignty and right to self-determination. From an operational point of view, five tribal representatives had a conceptual understanding of GtG that was consistent with the policy. However, tribal staff had a wide range of understanding and familiarity with how GtG requirements are implemented. Three other tribal participants were less familiar with the DoD policy, and conveyed expectations about the rights of Tribes that were not consistent with the policy and legal foundation of GtG.

Six out of eight tribal participants reported a lack of familiarity on how to work within the DoD bureaucracy to advance their priorities. For example, in forwarding their interests villages rarely distinguished among DoD agencies with regard to their respective areas of responsibility and authority. Consequently, sometimes Tribes raised issues over which the installation commanders attending a consultation had no influence or control.

### **Influence of Mission and Governance**

**Economic Opportunities.** An issue that goes to the core of both definition and conflict over GtG relations and consultation is the differing perspective about whether promoting village-based DoD contracts and jobs for Alaska Tribes is relevant to the GtG relationship, and an appropriate issue for consultation.

Local hire, opportunities to compete for 8a contracts,<sup>41</sup> and making sole source contracts more available in relation to DoD projects were the stated priorities for the Tribes in this assessment and in the previous RS study. NALEMP, which is restricted to cleanup, is currently the primary mechanism for developing funding opportunities at the tribal level. As reported by many DoD and tribal participants, Tribes have been persistent about forwarding their interest in contracting at consultations, a frequently reported source of frustration at DoD.

Some points raised by DoD participants (as excerpted from interview notes):

- *The government-to-government consultation process is “not about jobs, but about working with Tribes to address their protected interests as related to DoD’s mission and activities;”*
- *The DoD American Indian and Alaska Native policy requires staff to provide Tribes with information about opportunities to compete for work, contracts, training and education. For the most part, this can be done outside the consultation process;*
- *Discussions about subcontracting and local hire dominate consultations that are convened to address issues more relevant to the consultation process;*
- *There is a misperception by Tribes that installation commanders and program/project managers have authority over contracting and employment; and*

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<sup>41</sup> This refers to a Small Business Administration program directed toward businesses owned by minorities or members of underserved populations.

- *DoD assists Native communities economically through cooperative agreements with Tribes and by contracting with 8a subsidiaries of regional and village Native corporations.*

The Tribes' perspective was that an important role of tribal governments is to advocate for the economic well being of their members. Identifying and promoting DoD-related jobs and village-based contracts fall within this area of responsibility. This is also why many of the village representatives interviewed believe that some consultations should address how to build capabilities for contracting opportunities, both in terms of job training and how to navigate the contracting process. One village leader defined village-based 8a contracting as a means to clean up contaminants and handle construction projects in a local area that will also provide economic benefits to the Tribe. And finally, some of the Tribes interviewed emphasized that DoD contracts to 8a subsidiaries of regional and village Native corporations *do not support Tribes*.

**What Directs the Process?** Participants also expressed their views about what directs, or what should direct, the GtG process – at the policy level. In general, DoD agencies cite the DoD policy/Alaska Implementation Guidance as directing implementation. Some Tribes agree. But many Tribes also see a need for village and/or regional protocols to be developed. One village leader expressed frustration that the protocols provided by his village were rarely taken seriously by the DoD.

Finally, with the exception of one tribal interviewee, tribal representatives characterized the GtG relationship as ongoing, where over time many of the issues of concern to a Tribe would be addressed in partnership with DoD. With the exception of two military interviewees, DoD representatives said that limited time and budgets meant that most often GtG consultations occur on a project-specific basis. One DoD participant clarified that consulting on a project-specific basis is consistent with DoD policy where past impacts, ongoing activities, or upcoming projects with potential impacts to protected interests are the impetus for initiating consultation with Tribes.

## **Culture**

That many Native people practice subsistence, or are part of subsistence networks, is relevant to the GtG relationship in Alaska. An Alaska Federation of Natives 2002 special session on subsistence summarized the importance of subsistence to Native communities in Alaska: “That subsistence is a human right to food and a cultural right to continue to exist as a people.” The potential of military activities to affect the health of subsistence resources is a cultural and public health issue that Tribes and DoD want (and are required) to address in consultations. During the interviews, all village interviewees expressed concern that past impacts may have created health risks for people who engage in subsistence through the contamination of soils, rivers, fish, animals and plants. In particular, tribal participants expressed concern about Cold War chemical and biological weapons testing at Gerstle River, radioactive waste from the reactor formerly operating at Fort Greely, and herbicides used along the Haines-Fairbanks pipeline.

Some participants suggested that an individual's culture and overall familiarity with governance in Native American communities could be a factor in policy implementation. Both may affect how incoming military leaders gauge the importance of GtG.

## **Resources**

All participants agreed that Tribes lack the resources (e.g., funds for staff, to build capabilities, and to gain access to technical expertise) they need to consult and collaborate with DoD on military impacts.

Where disagreement occurs is the extent to which participants believed that DoD should support the effort. While some Tribes and DoD representatives portray consultation on military impacts as an unfunded mandate<sup>42</sup> for Tribes, others believe that DoD is currently meeting its responsibilities through various training and mentorship programs aimed at promoting effective GtG and economic opportunities for Tribes. The impact of insufficient resources for GtG is further addressed under policy implementation.

### **Is Implementation Consistent With DoD Policy and Procedures?**

Assessors tried to determine if participants perceived implementation of GtG to be consistent with DoD policy and procedures. If so, was this an improvement over interactions between Tribes and DoD prior to the policy? And what were some of the challenges to implementation of the policy?

#### **Implementation of Policy and Procedures in Alaska**

All participants agreed that EO 13084 and the DoD policy / Alaska Implementation Guidance had helped to forward the GtG relationship and consultation process between DoD and Alaskan Tribes. Some interviewees (both Tribes and DoD) indicated that prior to EO 13084, DoD and other federal agencies regularly implemented projects near villages without informing or consulting with Tribes. Now GtG consultations are occurring on a consistent basis.

There are now points of contact (POCs) on GtG issues at all DoD agencies in Alaska and several agencies have developed Standard Operating Procedures (SOP) for GtG. DoD agencies that have frequent interaction with Tribes employ full-time tribal liaisons, and those agencies consulting with Tribes less often also have POCs for GtG issues.

All of the interviewees felt that project and issue notifications sent to Tribes were timely and took into account subsistence and other cultural activities. Both Tribes and DoD representatives cited slow response time on the part of Tribes as a problem in implementing GtG. The Tribes interviewed noted that they receive countless notices and “requests to consult” from federal and state agencies and that lack of resources and staff can prevent them from responding within the specified time period.

Aware of these demands and constraints on Tribes, many DoD staff continued to notify Tribes with repeated calls, emails, and/or letters after the 30-60 day deadline for a specific project or issue had passed. Other DoD staff felt this level of persistence was unrealistic, and that failing to respond to notifications would result in Tribes not having input on activities related to their protected interests.

Some of the interviewees (from both Tribes and agencies) most experienced in GtG consultation believed that Tribes should be brought into project planning at an earlier point in the process. This would enable them to be better informed, to anticipate and prepare for the types of decisions they would ultimately face, and therefore would help to facilitate a more effective and substantial contribution by Tribes.

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<sup>42</sup> Also see Shearer (2005:82-83) for excerpts from interviews with DoD tribal liaisons that refer to GtG consultation as an “un-funded mandate” for Tribes.

## **Resources and Policy Implementation**

The military and tribal leaders interviewed cited insufficient resources to support GtG, both within DoD and for Tribes, as one of the main impediments to effective policy implementation and consultation. Two of the military leaders noted that, in general, component commanders don't interact with Native leadership to the extent that is required in Alaska. Consequently, from their perspective, DoD does not pay consistent attention to providing the necessary resources and training to support DoD personnel in the GtG relationship with Tribes.

As stated earlier, all participants agreed that, in general, Tribes don't have access to the resources, training and technical expertise they need to participate fully in the consultation process. In addition, many tribal interviewees stated that they are unclear about how to obtain information concerning opportunities to compete for DoD contracts, subcontracts, grants or cooperative agreements, surplus equipment and property. Many of the tribal interviewees were also not aware of the education, training, or employment that is available to them through DoD in relation to military activities.

From a different perspective, military participants pointed to the significant budget and timeline constraints installation commanders face in implementing projects, which means that installations staff (leadership and management) are sometimes reluctant to embrace changes in operating procedures. GtG consultation can be viewed as an obstacle by some interviewees to meeting deadlines and staying within budgets.

## **Staff Turnover and Policy Implementation**

Frequent staff turnover<sup>43</sup> at both DoD and Tribes creates an ongoing "learning curve" for parties in the GtG relationship, and was one of the most cited impediments to informed participation in GtG relations. And often the incoming DoD/tribal leadership are unfamiliar with the current GtG military projects.

Incoming military leaders encounter unfamiliar issues and cultural perspectives, and at the same time are tasked with establishing priorities early in their tenure. While DoD policy provides guidance on GtG, there is no detailed implementation process. This, in combination with the frequent rotation of military leadership, can lead to inconsistent policy interpretation and implementation.<sup>44</sup> As expressed by tribal participants, this creates a situation that can stifle progress on GtG issues because a new commander's priorities are not always consistent with a predecessor's intentions and actions or beneficial to GtG relations.

Military participants talked about the difficulties of not having village-based POCs on DoD activities, both at the leadership and staff levels. Sometimes staff turnover at Tribes makes it hard for the military to determine who has the authority to consult, which presents significant obstacles to project-related consultations, and can create frustration at DoD, particularly in light of the number of Tribes they need to engage in consultation.

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<sup>43</sup> Rotation of military leadership occurs every one to two years. Tribal leadership also can change at one to two years.

<sup>44</sup> See also Institute for Tribal Government (2005:5) and Shearer (2005:83).



### **Role of DoD's Tribal Liaisons**

All parties expressed appreciation for the role that DoD tribal liaisons play in implementing policy and facilitating the GtG relationship. Liaisons provide Tribes with a reliable POC at DoD; act as a “bridge” for military leadership on issues and projects relevant to Alaska Tribes; educate commanders about the GtG policy/Alaska Implementation Guidance; and coordinate schedules and briefing materials pertaining to consultations. Since these are civilian positions, they also provide some continuity in a system with high turnover of personnel.

Some tribal participants felt that one improvement would be to expand the scope of work for tribal liaisons to include working more closely with Tribes on contracting and providing information about studies or reports on contamination in their areas.

### **How Some GtG Interactions on Military Impacts Are Structured in Interior Alaska**

#### **Orientation Meetings**

Orientation meetings take place between several DoD agencies and Tribes or one DoD agency and a number of Tribes in order to provide information about upcoming, ongoing or past military impacts. One DoD participant indicated that these meetings are often a necessary step in the consultation process. Interviewees described these meetings as a time when most of the talking is done by the military with a question-and-answer period. Orientations are characterized as a starting point for discussions on a particular issue or project and were not considered to be GtG consultations by DoD or tribal participants.

#### **Project-Based Interactions**

In Alaska, project-based GtG interactions operate according to several different models, some of which were described in this assessment. The type/phase of the project and the DoD/tribal SOPs in place all influence the interaction. Whether or not a decision-maker is present at the consultation varies at both the DoD agency and tribal level, but when Tribes are present they are more likely to be represented by leadership.

**Group Meetings.** GtG interactions on proposed activities and formerly used defense sites (FUDS) sometimes involve group meetings between a DoD agency/agencies and a number of Tribes to share information and elicit feedback. Whether the Tribes and agency representatives interviewed judged a group meeting to be a GtG consultation (as opposed to informational sessions or orientation meetings) depended on the level of give-and-take discussion that occurred as well as the particular projects or issues that were addressed.

All of the tribal representatives said that such group meetings, however substantive, do not necessarily substitute for one-on-one consultations. They felt that the GtG relationship confers upon Alaskan Tribes the right to request consultations with military leadership one-on-one, if deemed necessary. None of the DoD representatives interviewed disagreed with this point of view, but emphasized that group meetings were useful for GtG relations and essential in a state with 229 federally recognized Tribes.

**One-on-One Consultations.** These are issue or project-related consultations between a Tribe/s<sup>45</sup> and a DoD agency. One point raised by tribal participants was that, frequently, the military doesn't send decision-makers to GtG consultations.<sup>46</sup> In some situations, this means that village chiefs/presidents are meeting with DoD program or project managers. Since such consultations address GtG issues and can result in positive outcomes, this is seen as an improvement over the past when DoD actions occurred without informing or consulting with villages. But most of the Tribes interviewed conveyed that formal GtG relations require that military and tribal leadership meet to define issues and objectives, and then develop an action plan that their respective staffs will work together to implement. Tribal participants also suggested that military leadership make more of an effort to meet in villages, especially in relation to consultations about FUDS.

Some tribal participants mentioned that consultation agendas should be co-developed with DoD. Most DoD participants expressed frustration that consultation agendas are rarely adhered to by Tribes, even when they are co-developed, which results in less efficient and less productive consultations.

All of the DoD participants shared that the high number (229) of Tribes in Alaska makes one-on-one consultations as the predominant form of interaction unrealistic, and that time and budgets limit trips to villages. However, one military leader noted that time and resources are always limited, and that military leaders in setting their priorities can make a good faith effort to maximize consultations, which can include visits to villages.

### **Specific Examples of GtG Interaction/ Consultation in Interior Alaska**

Following is a description of some of the ways in which assessment villages have interacted with DoD regarding military impacts.

- ALCOM Tribal Leaders/Military Leaders orientation meeting. Each year, ALCOM brings together tribal and military leadership to discuss upcoming military activities in Alaska. Often there is also discussion about cleanup of past impacts. Present are the ALCOM commander, DoD component commanders, and the USACE commander. The 1<sup>st</sup> chiefs/IRA presidents from all 229 Tribes in Alaska are invited. Tribal liaisons for ALCOM and the DoD components attend the meeting, but are not present for all presentations or discussions.

The tribal participants interviewed found this meeting useful, but suggested that ALCOM hold meetings on a regional level prior to the statewide meeting, in order to better address the unique issues of their region. These regional meetings should also include the extent of military leadership cited above.

Other types of orientation meetings or informational sessions take place on GtG issues. These, however, do not include the level of participation by military leadership as the annual Tribal Leaders/Military Leaders meeting coordinated by ALCOM.

- One DoD agency initiated informational group meetings to provide basic project information, to address project-related issues that were relevant to Tribes, and to get initial feedback on proposed actions. Travel reimbursement was provided to the Tribes when the DoD agency requested the

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<sup>45</sup> One-on-one consultations also refer to a meeting between DoD representative and two or three Tribes that may be working together on a common issue, which is the topic of the consultation.

<sup>46</sup>At the present time, this appears to vary according to DoD agency/component.

meeting. This strategy was used to increase efficiency, as the component had identified over 50 Tribes that could potentially be affected by proposed activities. Some of the Tribes followed up these meetings with requests for one-on-one consultations with the DoD agency commander. The agency also implemented quarterly meetings with Tribes requesting project updates and to discuss some of the more general aspects of the GtG relationship. Also upon request, MOAs were co-developed that formalized how Tribes and the DoD agency would work together on particular issues.

- Another military agency administers two cleanup programs that interact with Tribes in fundamentally different ways. Upon request, Tribes can consult on past impacts and cleanup with the agency commander.

1. Tribes initiate a potential cleanup through registering military impacts on a national database. If monies are allocated for cleanup at their sites, Tribes develop MOAs with the agency and receive funds through cooperative agreements to plan and implement cleanup projects. During this period they have access to ongoing DoD technical support, but Tribes direct the cleanup. On these projects, GtG consultations primarily occur between Tribes (chiefs/presidents with follow-up by village environmental coordinators, if applicable) and the DoD program/project manager.

2. The Tribe or DoD agency initiates the cleanup and consultation process and the DoD agency directs the cleanup, which is implemented through private contractors. In this assessment and the previous RS study on GtG and cleanup, GtG consultations about these projects occurred between tribal leadership (with follow-up by village environmental coordinators, if present) and DoD project managers.

The project/program managers interviewed from this DoD agency did not consider their working relationship with Tribes to be “official” GtG consultation. But certainly their actions contribute to, and are part of, the GtG relationship as defined by the DoD policy.

- In some cases, DoD agency personnel responsible for conducting GtG consultations with Alaskan Tribes about activities at Alaskan installations are based in the Lower 48. This means that local command at the Alaskan base is not interacting with Tribes in a regular, substantive way regarding environmental or cultural resource issues. From the perspective of one of the Tribes interviewed, Lower 48 DoD liaisons, however well informed, are not as familiar with the interests, priorities and operations of Alaska Tribes as individuals who are based in Alaska.

### **The Government-to-Government Consultation Process**

The purpose of consultation is to exchange information, identify existing or potential impacts, and define and accomplish mutually beneficial objectives in relation to DoD activities. How satisfied participants are with consultation influences their overall perception of the GtG relationship and its ability to address DoD/tribal concerns.

As the interviews were also aimed at determining what was and wasn't working during consultations, questions focused on expectations, whether roles and responsibilities were clearly defined, what issues or conditions hindered the process, and what characteristics promoted success. All participants in this assessment believed that consultations could be more effective.

The following information highlights how participants defined successful consultation, what obstacles they believed impeded successful consultation, and some suggestions for improvement. Some of the issues presented apply to the consultation process in general, rather than to the assessment participants in particular. For example, interviews indicated that all of the villages in this assessment respond to notifications and attend consultations related to their federally protected interests, although DoD cites lack of participation by Tribes in general as a main obstacle to implementation.

### **How Participants Defined Success**

A DoD representative described successful consultation in the following terms (as excerpted from interview notes).

*The consultation should provide information about activities, clarify concerns the Tribe may have about potential or past impacts; and address and try to resolve those impacts. While the consultation is a meeting between representatives of governments, it should also be viewed as a meeting between neighbors. My component's approach to GtG is both project-based and ongoing. It was important and sometimes difficult to reach mutually attainable goals, but that should be the objective. Tribes and DoD components need to have an ongoing relationship as a basis to determine and work toward mutually attainable goals.*

*For the GtG relationship to reach its potential, consultations should focus on issues within the component's control. A successful outcome is two-way communication. All feedback is useful, because it enables the parties to learn from each other and to continue to try to achieve outcomes that will benefit both the Tribe and DoD. Failure is not communicating at all.*

A tribal representative described a consultation that occurred during the assessment period, which several other participants also referred to as a great success (as excerpted from interview notes):

*There was a dedicated effort by the military to get input. The staff they selected to participate was high-caliber. The commander was a decision-maker, which he made clear to the group from the beginning. He had the authority to negotiate, to explore options with the Tribes and to sign agreements right then and there. He was also a skilled diplomat, so he had everything going for him to get the job done.*

*There was high-caliber coordination at DoD and among Tribes. Staff at the regional nonprofit networked with Tribes prior to the meeting, and got a lot of information out. Folks were happy, not frustrated. Because of the caliber of the folks there and the way the meeting was presented to Tribes, important things got talked about. Even though the ranking officer presided, there was a collaborative feeling to the gathering.*

*Everyone was forming ideas all throughout the meeting. There were good support staff who understood what needed to be done and why. The meeting ended with a tribal caucus – Tribes worked together with regional nonprofit staff on the topics discussed during the meeting. The next day, Tribes presented specifics to the military. Folks outside the region were present and they were amazed. They said they had never been to a GtG like this.*

Another tribal representative spoke to the constant “learning curve” for incoming military leadership and suggested the following (as excerpted from interview notes):

*For a “meet and greet” meeting, the new commander should be prepared for the Tribes to air their grievances and be prepared to truly listen. The fact is that until the Tribes air grievances, they don’t know that the new commanders are aware of them. The commander should ask questions, ask what s/he personally wants to know. This way the Tribe will know s/he has been really listening. This approach might encourage better communication at the follow-up meetings, which should be one-on-one. This is when the work really begins.*

**Other suggestions from participants for promoting successful consultations** (as excerpted from interview notes):

- *Encounters should hold promise of a long-term cooperative relationship where parties will work to define shared objectives and work toward mutually beneficial outcomes.*
- *It should be predetermined who will attend the GtG. Shouldn’t be a last minute decision. With DoD-initiated consultations, Tribes receive information one to three months ahead of the meeting. At this point, the Tribe should determine if it needs to consult and who will represent the Tribe. This person can then begin preparing for the consultation.*
- *Coming to the consultation informed and with open minds is the most important thing. The tribal liaison needs to brief the colonel; TCC’s DoD program manager needs to brief the chief/president of the village.*
- *The right setting promotes good communication. Setting includes the meeting room and how it’s laid out. If you’re in a huge room around a huge table and need to yell to be heard, this isn’t conducive to good communication. People need to be able to discuss issues in normal tones.*
- *GtG worked really well when everyone spoke up. We were able to identify contaminated sites and determine which were most important to start working on, and why.*
- *Successful GtG consultations depend on continuity and follow-through after a meeting. As far as the consultation itself: is there a mutual interest identified by the end of the meeting? Were participants attending the meeting engaged in meaningful dialogue? Is there a sense that they want to work together?*
- *At each consultation, parties need to define goals and to assess at a later point to what degree each party believes the goals have been met.*
- *An intimate setting – at the recent GtG, none of the military showed up in uniforms. This led to a more open dialogue. Before the meeting, participants spent two hours tromping through the brush looking at sites and getting to know each other. When they got to an old fuel tank farm, the woman who runs the 8a said, “I used to play there when I was a kid.” This personalized the problem and brought home the danger to kids living near these sites.*

## **Challenges to Consultation**

Since consultation is the primary means for implementing the DoD policy and developing a “stable and enduring” GtG relationship with Tribes, there is considerable overlap between the factors that hinder policy implementation, productive consultation, and effective communication. Along with differences in the way the parties define, understand and characterize GtG relations, these factors can also be sources of conflict.

Following is a discussion of the additional factors most cited as impediments to effective consultation, including suggestions for improving communication and preventing and resolving conflict when it occurs.

### **Need for Greater Participation by Tribes**

While this did not apply to the three assessment villages, the DoD representatives interviewed felt that, in general, Tribes respond poorly to notifications and requests for consultation, which leads some DoD staff to conclude that consulting on a GtG basis about military activities is not that important to Tribes.

To illustrate this problem, one participant described the coordination of a specific consultation. Thirty-three Tribes were notified about a proposed activity and asked to consult. The military explained that, for this consultation, travel and per diem would be covered. Follow-up included a letter and three to four phone calls to each of the 33 Tribes. After 6 months, only one Tribe had responded. Coordinators followed up with more phone calls. Three more Tribes responded affirmatively; seven couldn't decide if they would attend. Ultimately, eight Tribes participated in the consultation, which yielded good results. Both Tribes and DoD judged the consultation to be a success.

When asked about low response by Tribes, tribal participants said the following (as excerpted from interview notes):

- *Tribes receive numerous notifications and requests for consultation from many federal and state agencies, and there are no village-based POCs funded to address DoD requests/projects.*
- *Tribes are not always clear about how to proceed with identifying impacts.*
- *Tribes often believe that DoD just wants to fulfill a procedural requirement. Many consultations fail to produce constructive outcomes.*

### **Need for Informed Participation**

As reported by some interviewees, informed participation involves an understanding of consultation requirements, the specific topics to be addressed, and the roles and responsibilities of the participants. Understanding the social, historical, regulatory and instrumental context within which consultations occur was also reported as critical to informed participation.

**Understanding the consultation process.** The extent to which assessment participants were familiar with the principles and guidelines for consultation was addressed earlier. The absence of a shared understanding by all parties can result in frustration, mistrust, and ineffective consultations.

**Understanding the consultation topic/s.** Representatives from both Tribes and DoD stated that Tribes were not as prepared for consultations as they could be. While many DoD agencies send out briefing information about three months prior to a consultation, their perception is that the questions and discussion initiated by Tribes rarely addresses this information. Efforts by a DoD agency to provide opportunities for Tribes to review information with technical experts prior to consultations did not, in the opinion of the agency representatives interviewed, benefit subsequent discussion of the issues at consultation.

Many tribal interviewees mentioned that the DoD information (e.g., EIS) to be evaluated in relation to military impacts is highly technical and voluminous, requiring expertise in several subject areas: environmental science and contamination, federal/state regulations, remediation technology, DoD decision-making process and organizational structure, to state a few. One participant reminded the assessors that DoD has been building capacity on these issues for four to five years prior to a consultation.

Many tribal participants and some agency representatives have suggested that a more collaborative project design process would encourage more substantial participation. One tribal participant suggested that project-specific consultations with Tribes at an earlier stage in project design might help guide NEPA (National Environmental Protection Act) and NHPA (National Historic Preservation Act) processes through utilizing Tribes for information gathering, to help develop analytical frameworks for projects, and to contribute to site mitigation plans. This level of consultation has occurred in relation to some military projects. Yet, in general, more resources and technical support are required to support a more collaborative process.

**Understanding Roles and Responsibilities.** Assessment participants had the following to say (as excerpted from interview notes):

- *Tribes don't always distinguish among DoD agencies with respect to missions and areas of decision-making authority. Tribes often bring up issues and requests that don't fall under the authority of the DoD agency present at the consultation.*
- *Some military leaders don't take seriously their responsibility (in accordance with DoD policy) to provide Tribes with information about opportunities to compete for grants, contracts, and subcontracts; to participate in cooperative agreements, training, and education relevant to GtG issues; or to obtain employment and surplus.*
- *Tribes frequently maintain that federal and state cleanup standards are unacceptable. But DoD project managers are subject to these standards and don't have the option to clean up to a higher level.*
- *Tribes often have little patience for the federal government's cleanup process, which is highly bureaucratic and not easily understood.*

**Understanding the social and historical context of GtG in Alaska** is critical to effective consultation. This requires knowledge of ongoing land-use patterns, Alaska's military history including how military impacts have affected and continue to affect Tribes, the implications of

ANCSA and ANILCA in GtG, and understanding what most Tribes see as the priority GtG issues: cleanup, past and ongoing contamination, and employment on DoD projects.

**Understanding the instrumental context** refers to the political, legal, structural, and economic constraints and requirements faced by Tribes and DoD in implementing cleanup, military activities, and the consultation process. For DoD, this includes changes in mission and requirements as related to political circumstances and statutory regulations; a strict hierarchy and complex bureaucratic process; staff rotation; fast timelines on current projects; and limited cleanup budgets. For Tribes, this means understanding DoD mission and requirements as related to political circumstances and statutory regulations; meeting deadlines for GtG collaboration and consultation in light of frequent staff turnover and inadequate staff; working within a governance structure that values inclusiveness but can take time to arrive at internal consensus; and limited resources to support GtG training and access to technical expertise. In addition, understanding how environmental regulations affect project implementation by DoD is essential to tribal evaluation of proposed actions on FUDS or new projects (see Appendix 3).

### **Need for Effective Communication**

While ineffective communication also results from many of the issues presented above (e.g., lack of knowledge about GtG principles and requirements, the DoD policy, etc.), participants talked about communication problems from many different perspectives. Following are some of the other issues they raised (as excerpted from the interview notes):

- *Not being completely forthright during interactions creates problems. This applies to both Tribes and the military. The Tribe may not address issues fully due to a mistrust of the military. Military staff may be hesitant to contradict the Tribe, even if it is to clarify misinformation.*
- *Since emotions can run high, it's important to keep it from getting personal. Focus on the subject at hand and make sure both parties fully present their points of view. Get down to the crux of the matter. These steps will enable the group to work toward a resolution.*
- *There is often a belief that the agencies can significantly affect resources available for cleanup. Talking to political leaders has the potential for success. Talking to colonels, etc. has no potential to significantly increase their organizations' funding for GtG or cleanup. Changes need to be proposed at the political level.*
- *Being inconsistent about follow-up was another problem expressed by participants. For example, there's a consultation – the tribal representative takes material to the tribal council and the military representative puts it through military channels. But then the outcomes are not brought back to the table for further discussion.*
- *Tribal entities don't always reach internal consensus about tribal interests in relation to DoD activities.*
- *Revisiting past injustices without clear linkages to the current context or issues can create barriers to communication and effective outcomes. These grievances often refer to military activities that were considered necessary in times of war. If the political climate or defense situation repeated itself, things could well be done the same way. Today's military leaders don't feel guilt over the past and just get mad at the rehashing.*



- *Military leaders aren't always as empathetic with Tribes as they should be, there could be more humility on the part of the military concerning military impacts, more understanding as to how they affect people's lives.*

### **Preventing and Resolving Conflict**

Participants made the following observations and suggestions (as excerpted from the interview notes):

- *Honest, frequent communication. Maintain a routine dialogue through more frequent GtG meetings.*
- *Encourage agency-tribal partnerships in project planning and development, when possible.*
- *Keep asking questions in order to better understand the Tribe's or the agency's needs and concerns.*
- *Promote staff continuity when possible.*
- *GtG partners should develop mutually attainable goals, and periodically evaluate their progress in working together.*

When asked to suggest ideas for reaching mutually attainable goals, one DoD representative responded:

- *Keep an open mind;*
- *Set goals, but allow for flexibility;*
- *Do not take setbacks and/or debates personally;*
- *Cultural awareness and respect;*
- *Honesty in everything;*
- *Be prepared to make concessions.*

### **Technical Assistance and Training**

Participants also provided ideas about how technical assistance and training could promote GtG, e.g., workshops on the NEPA process, risk communication, conflict resolution, environmental training, on the decision making structure of DoD agencies, how the DoD contracting process works, the site assessment process, ongoing training in the legal and policy foundations of GtG in Alaska, cross-cultural communication, and grant writing.

But perhaps more importantly, they talked about the importance of defining or redefining the objectives of capacity building, that evaluating outcomes should figure into decisions about whether ongoing training is required, and that gaining resources for Tribes is fundamentally necessary to implementation of the GtG relationship. The following insights and suggestions are excerpted from the interview notes:

- *Training introduces the potential for capacity, but capacity is only garnered through actual experience.*
- *It's not about capacity; it's about resources.*
- *The most important thing is for villages to be realistic about capacity building, to think more carefully about this issue. Tribes need to come to an understanding about what's in their best interest. As with DoD, there is an in-out rotation of council members and staff. There is also lack of expertise in technical areas, and lack of funding. So some of the key questions are: How can we build capacity? How can we pass on the baton? What are realistic goals?*
- *Inherent in the DoD structure are professionals with years of expertise in the project and issues – sometimes 15-20 years experience/person. They have a body of knowledge in their heads, which pertains to the project. Then they take months, often years to work together to put a plan forward.*

*On the tribal side, there can't be effective interaction and input unless the entities are meeting on like terms. There is a huge amount of data to digest in an unreasonable amount of time in order to meet the government's schedule. Therefore, these consultations will never work out in the interests of the Tribes.*

*This allows the government a tremendous amount of leeway to follow its own interests, and the question is: Does DoD fulfill its GtG obligations without Tribes being able to meet on like terms?*

- *Many have said that GtG trainings can't be repeated regularly. But it's important to look at the following issue before coming to that conclusion. Of the villages who participate in training efforts, how many have gone on to garner their own funds to participate more significantly in GtG interactions, or to implement agreements and cleanup efforts? This may be a way to judge the success and need for trainings.*
- *Successful training has to go both ways – the awareness and capabilities of both Tribes and DoD should be increased. In essence, they learn together.*
- *How do you orient people to understand what subsistence is – make them understand how Alaska Natives use the land. Some kind of orientation is definitely needed to minimize the impact of military personnel and their families.*

### **Possible Roles for Tanana Chiefs Conference in Government-to-Government Relations**

All participants emphasized that, as a regional nonprofit corporation, TCC cannot engage in government-to-government relations on behalf of member Tribes since, by law, GtG relations apply directly to DoD agencies and federally recognized Tribes. Nonetheless, participants believed that TCC was a resource for both DoD agencies and Tribes and could provide support in several key areas.

As excerpted from the interview notes:

- *TCC can help facilitate the relationship between villages and DoD. To support villages, TCC should stay abreast of military activities in the region and keep villages informed. For DoD, TCC has been helpful in providing background and contact information on villages and in coordinating consultation.*
- *TCC has trained professionals in numerous areas who are good technical resources and can assist with various reports.*
- *TCC has the expertise to offer GIS services concerning environmental restoration of Interior sites and could maintain an archive of all electronic versions of data.*
- *TCC can provide technical assistance to villages, particularly with respect to cleanup and interpreting technical reports concerning environmental impacts.*
- *TCC can help Tribes understand relevant laws and administrative procedures.*
- *TCC can assist with capacity building, planning and organizing, and grant writing.*
- *While TCC has no inherent authority to represent the interests of federally recognized Tribes, there are legal authorities that justify its participation in GtG consultations on particular issues. For example, TCC has legal jurisdiction on issues relating to trust services that Tribes have authorized TCC to execute on behalf of the Bureau of Indian Affairs.<sup>47</sup>*
- *TCC can represent the interests of Tribes to the military, but should leave the decision-making to Tribes.*

Many tribal participants indicated that they were surprised when TCC staff did not attend consultations. But it became clear through the interviews that consultations often occur without TCC's knowledge. Many DoD participants indicated that since the GtG relationship is between Tribes and DoD, TCC is not always notified of consultations DoD initiates. One DoD participant indicated that if Tribes want TCC present at a consultation, it is their responsibility to notify and invite TCC. This was either not clear to Tribes or something they hadn't considered. While the tribal representatives interviewed also agree that TCC has no decision-making authority, they felt that in many cases it would have been beneficial for TCC to be present at consultations.

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<sup>47</sup>Also noted in the *Alaska Implementation Guidance*, Section VII, p. 7.

## **Section 4: Recommendations**

The discussion and recommendations that follow are only a first step in exploring opportunities for enhancing the government-to-government relationship. The assessment team's objective has been to identify obstacles to effective consultation and to suggest a series of options that may produce outcomes that both Tribes and DoD agencies will find more satisfactory.

While the scope of this assessment was initially defined to include three Interior villages, the issues, perspectives and events that have framed GtG in these villages go beyond the particulars of any one situation. In any part of Interior Alaska, interactions on military impacts between Tribes and DoD agencies are based on varied levels of experience and knowledge about the principles and requirements of the GtG relationship as well as the environmental impacts resulting from military activities. This applies to both Tribes and agencies and is intensified by the frequent turnover in the tribal/DoD agency staff responsible for addressing military impacts on a government-to-government basis. Assessors suggest that the obstacles to a successful GtG relationship are systemic, both at the agency and tribal levels. These recommendations reflect that point of view.

Many of the ideas presented below draw from the interviews, strategies already developed by the Tribes and DoD agencies working together in Alaska, and other studies or reports on GtG and tribal self-governance. Recommendations focus on strengthening the GtG relationship through developing a programmatic approach to consultation, including a shared funding structure. Among other things, accessing the resources necessary to enhance government-to-government relations may involve utilizing federal programs in new and innovative ways and working together in the political arena to obtain additional, sustainable funding to support GtG relations in Alaska.

### **Challenges, Needs and Context**

It may be useful at this point to restate what participants have defined as the primary issues and challenges to an effective GtG relationship on military impacts:

- For DoD agencies, consultation with Tribes about past and potential impacts to protected resources is constrained by budgets, tight schedules for completing projects, and rotating leadership. In order to address tribal concerns during project implementation, DoD needs Tribes to be better prepared for consultations and better informed about the technical and policy issues surrounding cleanup, the identification of potential impacts, and the implications of environmental effects. This includes evaluation of Environmental Assessments and Environmental Impact Statements.
- For DoD, GtG consultation with the great number of Tribes in Alaska can be an overwhelming undertaking.
- Tribes need access to technical experts to assist in evaluating remediation proposals and the potential environmental impacts of ongoing and future military activities. At minimum, this requires capability to interpret scientific information about existing or potential environmental impacts on a regional basis, i.e., how DoD activities will affect the subsistence environment.

- Tribes in rural Alaska have both a subsistence-based and cash economy. This dual economy is integral to cultural and economic health, and informs the specific concerns, and some of the contention, expressed by the Tribes. DoD activities impact both economies – with cleanup and the development of military infrastructure providing opportunities for jobs and contracts, but also having the potential to negatively impact the environment that supports wild foods. With respect to cash opportunities, Tribes need better information about how to build capabilities relevant to DoD contracts and how to work within the DoD system to compete for contracts or to take advantage of sole source contracts. When it comes to assessing how the sustainability of a subsistence economy is being, or has the potential to be, affected by military activities, Tribes need access to information earlier in the project development process and to technical expertise.
- The liabilities posed by staff turnover can't be overemphasized. Turnover of military and tribal leaders creates an ongoing “learning curve” for both parties in the GtG relationship, either increasing or reducing the benefits to either or both sides. Also indicated by the assessment interviews and other studies,<sup>48</sup> the frequent rotation of military leaders can contribute to inconsistencies in policy implementation (i.e., the DoD GtG policy). Such inconsistencies can work against tribal interests, creating information gaps, power imbalances and uncertainty.

These issues and challenges are further framed by circumstances unique to Alaska.

- Alaska is home to 229 of the 561 federally recognized Tribes in the country and has the highest percentage of indigenous population, relative to other states.<sup>49</sup>
- Taking into account the military's use of the land and air for training purposes, Alaska leads the nation in the number of military training areas.<sup>50</sup>
- The government-to-government relationship concerning military impacts is long-term. Six hundred and three (603) formerly used defense sites were slated for cleanup, with 120 properties (to include 307 FUDS projects) still under remediation,<sup>51</sup> and further impacts to the protected interests of Alaska Natives are likely to occur from the present military build-up.
- Military activities result in substantial impacts to the land.<sup>52</sup> This is particularly significant since rural Native communities rely heavily, both culturally and economically, on subsistence.

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<sup>48</sup> Institute for Tribal Government (2005:5); Shearer (2005:83).

<sup>49</sup> Department of the Interior, Bureau of Indian Affairs, *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, Federal Register, Vol. 70, No. 226, November 25, 2005.

<sup>50</sup> Shearer (2005:76).

<sup>51</sup> Per 5/25/06 telephone conversation with Mollie TeVrucht, Alaska District FUDS Program Manager, U.S. Army Corps of Engineers. FUDS properties are categorized by risk, cost, and type but not according to geographic area. Therefore, assessors were not able to ascertain the number and status of FUDS in the Interior.

<sup>52</sup> DoD acknowledges the unique impact military activities have had on Native American societies: “In order to ensure that it meets its national security mission, DoD operates and trains on vast amounts of land, including American Indian and Alaska Native lands. Evidence of DoD's past use of these lands remains: hazardous materials, unexploded ordnance (UXO), abandoned equipment, unsafe buildings, and debris. This contamination degrades the natural environment and threatens tribal economic, social and cultural welfare. In some cases, the contamination has an effect on tribal and traditional ways of life, such as the ability to access subsistence activities or to protect sacred sites. Contamination may also prevent tribes from using their land and natural resources in a safe and economically productive manner. As DoD continues to conduct realistic operational and training activities throughout the nation, some of these activities will invariably affect tribal lands and resources.... DoD is actively pursuing cooperative endeavors with American Indian and Alaska Native tribes to mitigate the negative impact of prior activities, minimize the effects of current activities, and prevent further impacts in the future” (U. S.

- Title VIII of ANILCA protects subsistence on public lands in rural areas and specifically acknowledges the cultural and economic importance of subsistence to Alaska Natives. Title VIII further notes: “the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from the fish and wildlife which supply rural residents dependent on subsistence resources.”<sup>53</sup>
- Over the last five or six years, increased military activities in the Interior have produced greater GtG responsibilities for DoD personnel and Interior villages, but Tribes still lack basic resources to support their GtG efforts and DoD agencies need additional resources to support the level of GtG consultation that is required in Alaska.

In combination these factors create a unique framework for viewing the GtG relationship between Interior Alaska Tribes and DoD. The following recommendations take this framework into account and address the following: 1) the structural organization of the consulting parties; 2) the process of consultation; 3) personnel and training needed for a more effective process; and 4) preliminary ideas for a shared funding structure.

### **I. Recommend that Interior villages consider forming Intertribal Consortia around DoD issues**

In Alaska, Intertribal Consortia of various sizes already work together to forward mutual social and economic interests. These consortia are formally or informally organized based on location, shared values, common problems and interests, and a shared vision for the future. Forming Intertribal Consortia around DoD issues (or incorporating DoD concerns into the priorities of consortia already in existence) may offer Interior villages the opportunity to gain a critical mass of resources and personnel, better continuity of staff, and at the same time remain relatively close to the concerns of individual Tribes. Villages could pool resources for training, technical consultants, researchers, grant writers, student interns and meeting facilitators, and the knowledge gained by the villages more experienced with GtG (i.e., “lessons learned”) would benefit and inform others in the consortium.

Since villages in the same geographic area generally share military impacts, the required “working knowledge” would be similar for each Tribe. This suggests that village-based POCs could work for more than one Tribe or be consortium-based, thereby extending limited funding resources and creating the potential for continuity and capacity building. Exploring additional means of retaining tribal staff committed to working on DoD issues – in other words, holding onto “institutional knowledge” – would also be of great benefit to Tribes.

With technical consultants, consortium-based research could provide a more complete understanding of environmental impacts, which would support effective consultations and more substantial feedback to DoD. Consortium-based research would assist support organizations like TCC to deliver services more cost-effectively (e.g., staff time, travel, coordination and communication, meetings, training, technical assistance). Consortia may also be able to mobilize DoD-related economic initiatives to benefit a greater number of tribal members.

Working with Intertribal Consortia has the potential to address several of DoD’s needs: timely consultation by working with more than one Tribe on issues; having a reliable, knowledgeable POC

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Department of Defense, *Fiscal Year 2001 Annual Report to Congress*, Defense Environmental Quality Program, Washington, D. C., p. 129.

<sup>53</sup> ANILCA, Title VIII – Subsistence Management and Use Findings, Section 801.2.

to coordinate communication and consultation schedules for several Tribes; obtaining tribal input on priorities for cleanup over a larger geographic area; gaining more informed, substantial and focused input on project-related consultations; and time efficiency in delivering and receiving information.

This recommendation should not be confused with promoting “regionalization,” as proposed by some Alaskan politicians and government officials. “Regionalization” seeks to by-pass individual Tribes by consolidating administrative responsibilities, decision-making, and resources at the regional level (e.g., with the regional nonprofit corporations for ANCSA-defined regions).<sup>54</sup> What assessors are proposing is an extension of the grassroots process of “consortium-building” by Alaskan Tribes, which has taken place with more regularity over the last 10 to 15 years. Two examples in Alaska’s Interior are the Council of Athabascan Tribal Governments (CATG) comprised of 10 Tribes in the northeastern section of the ANCSA-defined TCC region and the Upper Tanana Inter-Tribal Coalition (UTIC) consisting of the tribal governments and village corporations for the villages of Northway, Tanacross, Dot Lake, Healy Lake, Eagle and Tetlin.

Since tribal consortia are not new to Alaska, there is a body of knowledge and experience to help promote successful consortium partnerships. Much of this knowledge resides in the Interior. Also available are studies and narratives that have focused on the self-determination and governance strategies of Alaska Tribes.<sup>55</sup> All this information is available to inform discussions and to help consortia develop processes and procedures that will encourage building capabilities in the required areas.

Some key questions for Interior Villages to consider regarding Intertribal Consortia:

- If Interior Tribes decide that restructuring tribal interactions with DoD (i.e., Intertribal Consortia) would benefit the GtG relationship, on what basis would Intertribal Consortia be formed?
- How large should consortia be to create a critical mass of personnel and resources without requiring too much output in coordination? Would size vary by subregion? Would size be influenced by how intensely a particular group of Tribes interact with the military?
- How will villages coordinate with each other to pool expertise and resources in relation to the GtG relationship? What will their decision-making process be? Once common needs for information, training, and technical expertise have been identified, how will consortia work together, and with TCC, to coordinate and develop action plans and funding strategies to accomplish their objectives?
- How will Intertribal Consortia designate authority for working with DoD agencies? A formal process that provides clear, written authority for an individual to represent the consortium in working with DoD agencies would be necessary.

It may be beneficial to engage in these discussions on a regional basis with input from TCC leadership and management.

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<sup>54</sup> See Cornell, Stephen and Joseph P. Kalt, *Alaska Native Self-Government and Service Delivery: What Works?* Joint Occasional Papers on Native Affairs, No. 2003-01, Native Nations Institute, Udall Center, University of Arizona and The Harvard Project on American Indian Economic Development, Harvard University, 2003, p. iv.

<sup>55</sup> cf. The Economics Resource Group, Inc. and The Institute of Social and Economic Research, *Achieving Alaska Native Self-Governance: Toward Implementation of the Alaska Natives Commission Report*, Final Report, Alaska Federation of Natives version, May 1999; Cornell and Kalt 2003; Spratt *et al* 2000.

## **II. Recommend that Interior villages revitalize TCC's DoD program and develop a joint Interior villages – TCC strategy to maximize the productivity of GtG interactions.**

Revitalizing the Interior villages partnership with TCC through expanding its supportive role to Tribes and authorizing funds for additional DoD Program staff has the potential to strengthen the government-to-government relationship. Considering the size of the region and the number of member Tribes, coming to a consensus about the role of TCC might be challenging.

The first step might be to convene quarterly or monthly regional meetings for the purpose of redefining the role of TCC's DoD program in the GtG arena. Discussions should result in a clear policy and protocols outlining TCC's areas of authority and expected roles. This policy and protocols can then serve as guidance for Tribes, TCC, and DoD. It may be useful during some of these discussions to include DoD tribal liaisons and military leadership/management in order to benefit from their GtG experience and understanding of the DoD bureaucracy. It may also be useful to engage the services of a facilitator at critical junctures in the discussion process, which, in addition to policy and protocols, would ideally define regional and/or subregional<sup>56</sup> objectives and action plans regarding the GtG relationship with DoD. The early engagement of a third party facilitator<sup>57</sup> could assist in structuring the process, determining appropriate meeting formats, and identifying early on where sticking points exist between Tribes and TCC. Participants generally feel that a facilitated meeting creates a more effective use of their time, and helps to clarify issues and next steps.

It may be beneficial for Interior village – TCC discussions to address some of the following:

- What will be TCC's roles and authority concerning GtG? As mentioned earlier, discussions should result in a written policy and protocols concerning the Villages/TCC partnership that can be used as guidance by DoD, Tribes and TCC.
- How will Tribes and TCC work together to develop and implement short-term, mid-term and long-term objectives and strategies to forward their government-to-government concerns in relation to the military? It may be advisable to review the Kluckhohn report to see if action plans developed at that time may still apply.
- What strategies will support funding TCC's DoD-related services to Tribes?
- When does it benefit villages for TCC to take the lead in GtG-related issues? For example, TCC received NALEMP support to develop a cleanup plan that would focus on the Alaska Highway, the Yukon River and the Kuskokwim River (FY 2002-2007). Is this perceived by Tribes to be an advantageous use of TCC staff and resources? If so, is there more work to be done at this level?
- How can the resources presently available better be used or reallocated? For example, are there ways that TCC departments, other than the DoD program, can support GtG efforts on DoD activities? If so, it may be possible to redirect some departmental funds toward these efforts. More consistently utilizing services already available through TCC (e.g., staff

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<sup>56</sup>Here subregional could refer to Intertribal Consortia rather than subregions as currently defined in the TCC region.

<sup>57</sup> Budgets don't always allow for funding third-party facilitators, but some federal agencies will offer facilitation services to other federal agencies free of charge. For example, assessors were told of a consultation between Tribes and DoD that was facilitated by BIA staff.



expertise on the government-to-government relationship, employment and training) is highly recommended.

Ideally, this partnership would encourage a more comprehensive evaluation of military impacts, which would provide DoD with more substantive feedback during the NEPA process and with respect to cleanup. Strategies to maximize the productivity of TCC/village staff should be directed toward increasing expertise in villages and at TCC for identifying and proposing alternatives to minimize military impacts. All this would benefit both DoD and Tribes.

Such a partnership could also clarify how TCC can further assist DoD in its GtG relationship with Interior Tribes and create more vital pathways for Tribes to train Tribes in the areas relevant to GtG.<sup>58</sup> This may result in significant savings of time and resources for DoD, which could then be redirected toward other GtG activities.

### **III. Recommend that DoD agencies and Interior Tribes enter into discussions about the most time-efficient and productive approach to consultation.**

Assessors suggest that initial discussions center around the structure of interaction, e.g., through restructuring working groups and work process to meet various timelines, reduce burdens on the Tribes and DoD, and yield better-prepared participants and focused consultations.

The following suggestions build on Recommendations I and II: that Tribes maximize productivity through forming DoD-related Intertribal Consortia and strengthening the partnership with TCC. Both of these strategies might also benefit DoD agencies.

**1. It is suggested that DoD and Tribes should continue to work together to streamline phases of GtG interactions that would not be compromised by meeting with a larger number of Tribes –** for example, informational sessions with the option for follow-up with Intertribal Consortia or Tribes.

**2. It is suggested that DoD initiate information sharing and discussion at the regional level in addition to statewide.** ALCOM's annual statewide meeting, Tribal Leaders/Military Leaders, is an occasion to talk about upcoming activities, the challenges of cleanup, and about GtG relationship issues. Discussions also provide participants with an overview of military activities in the state.

With greater informed participation by Tribes, the ALCOM meeting offers an exceptional opportunity to address concerns with leadership from all DoD branches. Holding intertribal discussions prior to this meeting to clarify regional issues, questions and perspectives would benefit both Interior Tribes and DoD.

In addition, similar meetings with each ANCSA-defined region would allow for greater focus on the unique needs of each area. These meetings should also provide access to military leadership at all agencies. With informed participation by Tribes and the military, these meetings could function as relationship-centered government-to-government discussions.

**3. It is suggested that Interior Tribes and DoD distinguish between relationship-centered government-to-government discussions and project-specific consultations.<sup>59</sup>** As presently

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<sup>58</sup> The latter point is also structurally built in to Intertribal Consortia.

<sup>59</sup> Both DoD's American Indian and Alaska Native Policy (U. S. Department of Defense 1998:4) and the Alaska Implementation Guidance (Alaskan Command 2001:7) specify that consultations occur in relation to DoD actions that may

initiated, most consultations are project-specific<sup>60</sup> but rarely adhere to stated agendas. Often participants utilize consultations to forward their primary interests, irrespective of the intended purpose of the meeting. The parties may benefit from engaging in relationship-centered GtG discussions that would be geared toward addressing general and long-term issues such as the contracting process, training needs and opportunities, tribal participation in the NEPA process, or how the DoD mentor-protégé program might benefit Alaska Tribes. As much as possible TCC should be present at, or informed of, these types of consultations, which will enable TCC to gain the knowledge required to more fully assist Tribes and DoD in preparing for future consultations.

With the more general issues addressed in a different consultation context, project-specific consultations could address a limited number of agreed-upon topics. A jointly developed agenda would focus the discussion and may result in better follow-through. It may also be necessary to increase the number of consultations on any given project, as determined by the interests of both parties. *Tribes should work with DoD to establish realistic preparation times for project-specific consultations.* Main factors to consider are the Tribe's GtG responsibility to prepare effectively for consultation, which may involve obtaining technical expertise, and DoD project deadlines.

#### **IV. Recommend that DoD implement strategies that foster consistent policies<sup>61</sup> and procedures to enhance coordination among the various DoD agencies.**

**1. It is suggested that greater coordination and uniformity of DoD agency GtG policies and procedures may be desirable.** Most DoD agencies have developed their own government-to-government policies and standard operating procedures for working with Tribes and frequently have unique organizational decision-making structures. According to Tribes and DoD participants, this generates confusion about mission, roles, authorities, and how to access services.<sup>62</sup> Making policies and procedures more uniform, when standardization does not interfere with agency mission or already-established, satisfactory relations or programs with local Tribes, may provide greater clarity and enhance the consultation process.<sup>63</sup>

**2. In addition, sharing how DoD agencies interface (or remain independent) in the implementation of GtG is key to improving communications.** Regularized discussions and written reference materials (using graphics, where appropriate) about areas of authority and decision-making

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have the potential to impact tribal protected resources, interests, rights or Indian land. Therefore consultation, as required by DoD policy, is always project-specific. Yet DoD policy also requires DoD agencies to establish “stable and enduring relationships” with Tribes in significant, prescribed ways that may, in some cases, require government-to-government discussions on general rather than project-specific topics (U. S. Department of Defense 1998: 3). It is in this context that assessors suggest that relationship-centered GtG discussions may function to further the government-to-government relationship.

<sup>60</sup> Exception is one component that implemented quarterly meetings with Tribes on GtG relationship and project issues.

<sup>61</sup> While the DoD's government-to-government policy as outlined in *American Indian and Alaska Native Policy* (October 20, 1998) and the *DoD American Indian/Alaskan Native Policy: Alaska Implementation Guidance* (11 May 2001) should be consistently implemented statewide, other DoD component policies that apply to the GtG relationship concerning military impacts differ. For example, with respect to environmental compliance the U.S. General Accounting Office states that “DoD's broad program policy does not provide specific guidance on what activities are eligible for the program ... resulting [in] inconsistent interpretation and implementation of this policy by the military services” including differences in funding eligibility and prioritization (U.S. General Accounting Office, *Report to Congressional Committee, Environmental Compliance: Better DOD Guidance Needed to Ensure That the Most Important Activities Are Funded*, GAO-03-639, June 2003, pp. 1-9).

<sup>62</sup> Tribal confusion about the mission, roles and authorities of the various DoD agencies extends beyond Alaska (Institute for Tribal Government 2005:4).

<sup>63</sup> Some DoD components have developed procedures in collaboration with Tribes. Standardization across agencies should not sacrifice such collaborative efforts when they meet both DoD and tribal interests.

structure, chain of command, contact information, and standard operating procedures for each DoD agency will deepen the knowledge base of all GtG participants.

**3. Tribal liaisons/cultural resource managers should have direct, frequent access to commanders in order to orient new leadership and keep them informed about Alaskan issues, cultures and project status.**<sup>64</sup> It has been suggested that liaisons should meet with commanders monthly.<sup>65</sup> Since liaisons offer the only opportunity for continuity in DoD staff working with Tribes on a government-to-government basis, these should be dedicated staff positions.

**4. DoD should establish policy and procedures to ensure that local installation commanders take an active role in the government-to-government relationship when responsibility for implementing GtG with an Alaskan Tribe lies with out-of-state military/civilian staff.** Irrespective of how conscientiously out-of-state staff implement the GtG guidance and procedures, they are generally less familiar with local issues, day-to-day events in villages, and the GtG issues of primary importance in the Alaskan context. In addition, environmental projects are sometimes designed and implemented by private contractors, who are not able to engage in consultation. It is particularly important in such cases that local military leadership get necessary project information to Tribes and act as a POC.

**V. Recommend that Tribes and DoD agencies further institutionalize government-to-government procedures to assist staff responsible for implementation.** Tribes and DoD can implement a number of complementary approaches to orient and educate new staff and build institutional memory.

**1. Suggest that DoD develop procedures for incoming installation commanders directed at building relationships with Tribes. Included would be required visits to villages as part of their orientation and GtG training.** ALCOM and several DoD agencies offer comprehensive training for incoming military, but first-hand experience of village life offers a more complete understanding of Alaska Native concerns. Findings suggest that not all commanders understand governance in Native communities, nor the extent to which rural communities rely on subsistence. Seeing how past military activities affect villages today may also influence decision-making and commitment to GtG.

Other studies<sup>66</sup> have recommended that GtG be conducted “on-site,” when possible. In one study, 30 out of 66 participants attributed importance to “walking the area together for fostering a mutual understanding of the circumstances and concerns facing the consulting partners.”<sup>67</sup> This was the highest response given to any of the possible choices for assessing whether the location of a consultation was a factor in success.<sup>68</sup>

Since time efficiencies are important for both DoD and Tribes, strategies for streamlining these visits would be useful. An initial visit might include several commanders and their tribal liaisons (e.g., USACE, USAG-AK, USAF).

**2. Suggest that Tribes/TCC develop a presentation on military history and contemporary impacts.** It is important for incoming DoD leadership to learn about Alaska’s military history from

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<sup>64</sup> Also see Shearer (2005:125).

<sup>65</sup> *Ibid.*

<sup>66</sup> Institute for Tribal Government 2005; Hutt, Sherry and Jaime Lavallee, *Tribal Consultation: Best Practices in Historic Preservation*, National Association of Tribal Historic Preservation Officers, May 2005; Shearer 2005.

<sup>67</sup> Hutt and Lavallee (2005:29).

<sup>68</sup> *Ibid.*, pp. 28-29.

the perspective of Native communities, in particular the public health concerns that subsistence-based cultures have about contamination. Rather than addressing this in consultation, Tribes/TCC working with DoD could develop a presentation or video on military history and contemporary impacts. Jointly developing this presentation would benefit the educational effectiveness of the product, enabling Tribes to present their unique perspectives in a way that engages military personnel.

**3. Suggest that Interior Tribes develop regional protocols & standard operating procedures for GtG with DoD.** As appropriate, individual Tribes could amend these protocols and SOPs, but it would be better to incorporate the interests of all Tribes in the regional documents in order to simplify information for DoD. There are several available models to review.<sup>69</sup> Regional protocols would provide guidance for DoD and would stimulate tribal discussion about regional priorities and objectives.

**4. Suggest that Tribes and DoD agencies develop MOAs, when relevant.** This initiates an important process of defining mutual objectives, defining roles and responsibilities, timelines, funding commitments, and an implementation plan. Such agreements offer continuity in approach when staff changes take place.

**5. Suggest that Tribes and agencies develop standard procedures for documenting consultations, meetings, and follow-up.** Frequent staff turnover at Tribes and DoD agencies suggests that project status reports with supporting documentation (e.g., brief, but thorough, meeting summaries that include purpose, actions decided, results of actions, follow-up) would assist new staff in implementing more efficient follow-up. Agencies and Tribes should exchange their respective summaries to ensure accuracy and “full-circle” communication.

**6. Suggest that DoD agencies and Tribes jointly develop agreed-upon criteria and standard procedures for assessing whether ongoing or future military activities have the potential to impact the protected interests of Tribes.** Many Tribes and DoD agencies lack standard procedures for assessing potential impacts to Tribes. Assessors suggest that DoD and TCC work together to develop a template to aid Tribes and DoD project managers to identify potential impacts.

**VI. Recommend that TCC and DoD consider funding additional personnel to enhance government-to-government consultations.** While assessors are not fully knowledgeable about TCC and DoD budget constraints, funding for tribal staff working exclusively on government-to-government DoD issues seems necessary in light of the long-term need for consultation on military impacts.

**1. Suggest that TCC fund two full-time dedicated positions (program manager and environmental scientist) for DoD program.** Two key positions could be created at TCC to support the region’s GtG efforts: a program manager and an environmental scientist for TCC’s DoD program. If possible, these should be dedicated positions since the scope of work for grant-funded positions is too narrowly defined and intermittent funding makes it hard (or impossible) to build capacity in a sustained, progressive way. These positions represent the minimum staff needed at the regional level to support Tribes in addressing short and long-term issues related to military activities.

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<sup>69</sup> For example, see Aleutian/Pribilof Islands Association, *Inc.*, *Tribal Policy for Restoration of Federal Sites: Aleutian/Pribilof Region*, Aleutian/Pribilof Islands Association, *Inc.*, June 2004, and U. S. Army Garrison, *Alaska Standard Operating Procedures (SOP): Government-to-Government Consultation and Tribal Coordination*, March 16, 2005, 17 pages.

The primary role of the environmental scientist would be to support Tribes on technical matters, evaluate and “translate” Environmental Impact Statements and Environmental Assessments, and work with villages to develop a relevant training plan and funding strategies to augment the minimal resources available for cleanup and environmental management (i.e., NALEMP, IGAP, ANA, perhaps Brownfields). Technical support, either through the program manager or environmental scientist, might include training in grant writing.<sup>70</sup>

The program manager could facilitate tribal communications with DoD; work with villages concerning FUDS and NALEMP; coordinate with other regions and statewide on DoD matters to include joint trainings, information sharing, participation in DoD SOCs (statement of cooperation committees), and organizing to advocate for sustainable funding to support tribal infrastructure.

Both staff would work together with Tribes to set regional priorities for cleanup, and to establish a more effective collaboration with DoD on decisions regarding ongoing or potential impacts.

**2. Suggest that DoD fund full-time consortium/village-based points-of-contact on DoD activities.** Most assessment participants indicated that not having village liaisons was an obstacle to implementing policy, particularly since the recent military build-up in the Interior has increased the need for consultation. There are currently no DoD-funded village positions for dealing exclusively with military activities. NALEMP only funds staff time to accomplish specific project tasks, and EPA’s Indian Environmental General Assistance Program (IGAP) provides very limited support for impacts assessment. A regional or subregional ANA grant through the Social and Economic Development Strategies for Native Americans Program (SEDS) could provide partial, multi-year (up to five years) support, but additional funds would be needed to build capabilities at the village/subregional consortium level. For these reasons, assessors recommend that DoD reallocate funds, if possible, to support full-time village-based coordinators. As described earlier, these coordinators could work for several villages with similar interests, concerns, and military impacts.

With village or consortium-based coordinators on DoD activities, the structure of interaction would be similar to the EPA’s Indian General Assistance Program (IGAP) which funds full-time village-based coordinators plus an assistant. Village IGAP coordinators also receive technical support from program managers based at EPA, as village DoD liaisons would interact with tribal liaisons based at DoD.

Village or consortium-based POCs would assist DoD in implementing GtG requirements, and efficiencies would increase over time if both GtG partners could maintain some level of staff continuity (i.e., village POCs and DoD tribal liaisons). A regular, continuous working relationship would enhance the efficiency of notifications, tribal response, consultations, and minimize the recurring “learning curve.” It would also facilitate information sharing and knowledge building for both partners.

IGAP’s annual budget is authorized through the Indian Environmental General Assistance Program Act of 1992. The level of support that IGAP provides for Tribes far exceeds what has been proposed here. It is suggested that, for the long-term, Tribes work together on a statewide basis to advocate for sustainable funding for consortium-based DoD liaisons. In the short term, it is strongly recommended that DoD agencies consider reallocation of available funds to support these positions.

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<sup>70</sup> The cost of committing resources to a grant-writing training has to be measured against the likely benefits. Even if village/consortium-based POCs provide Tribes with some continuity, it may be that a mentor relationship with grant-writers on contract would ultimately be more beneficial.

**3. Suggest that DoD institute Points-of-Contact at each DoD component/agency that could work with Tribes on jobs, contracts, military surplus, and training relevant to contracting and employment.** Rather than creating a new position, it may make sense to broaden the scope of a position already in place. However, there should be specialist at each component service and the Corps who coordinates information (about the contracting process, employment, and opportunities for training and military surplus) and facilitates tribal access to relevant personnel and services.

**VII. Recommend that Tribes/TCC and DoD enter into relationship-centered government-to-government discussions about strategies for more comprehensive tribal participation in the NEPA process.**

In recognition of DoD's government-to-government relationship with Tribes and consistent with DoD policy, project-specific consultations with Tribes should occur prior to the NEPA public process regarding military activities. Ideally, during these consultations tribal interests should be identified and incorporated when possible into the alternatives developed for the Environmental Assessments and Environmental Impact Statements required under NEPA.

In addition, since Interior Tribes rely on subsistence it is in their interest to work proactively with DoD to increase their knowledge of and involvement in the public NEPA process. Reviews of NEPA implementation by government agencies, task forces, and universities suggest that public education and procedural requirements are needed to enhance collaboration with the public under NEPA. For example, the 2003 NEPA Task Force Report to the Council on Environmental Quality suggested that collaboration with stakeholders could be improved by agencies' sharing and developing methods to educate tribal, state and local partners about the "principles of NEPA, partner agencies' missions, communications skills and public involvement skills."<sup>71</sup> The Task Force also recommended that a Federal Advisory Committee be formed to develop guidance to address "the components of successful collaborative agreements."<sup>72</sup>

Tribal consultations with DoD should explore ways for Tribes to increase opportunities for gaining knowledge about the various NEPA processes (i.e., environmental assessments, environmental impact statements, programmatic NEPA analyses and categorical exclusions),<sup>73</sup> decision-making, and avenues for increasing tribal input.

**VIII. Recommend that Tribes/TCC work with DoD to develop and conduct joint trainings.**

Consideration of training needs illuminates the dilemma of the GtG relationship. High staff turnover creates an ongoing need for training to ensure the basic competency of incoming staff but capacity built during trainings evaporates when personnel rotate out. In addition, trainings utilize a high amount of GtG resources that are in short supply. Assessors recommend that the GtG parties along with TCC work together to develop and conduct more joint trainings, which can be implemented in several ways.

For example, GtG in relation to DoD impacts is specialized knowledge. Incoming tribal personnel are often not any more familiar with this information than incoming military personnel. Perhaps the ALCOM and DoD agency staff responsible for coordinating bi-annual trainings on GtG (i.e., legal

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<sup>71</sup>National Environmental Policy Task Force, *NEPA Task Force Report to the Council on Environmental Quality: Modernizing NEPA Implementation*, Washington, D. C., September 2003.

<sup>72</sup> *Ibid*, p.6.

<sup>73</sup> *Ibid*.

and policy foundation, unique aspects of the Alaska situation, military history, Native cultures in Alaska, etc.) could work with the Interior (and other regions) to include incoming tribal staff. Interior staff may also participate as presenters (e.g., see earlier recommendation about the Interior developing a regional presentation on military impacts). In this instance, DoD may harbor most of the cost.

Another example might be TCC coordination of a regional training on military contamination where DoD/ADEC/EPA technical experts and Tribes develop the content, i.e., presentations on military contamination and remediation strategies. Other possibilities for joint trainings may be the NEPA process, conflict prevention and resolution, and facilitation and meeting management.

Pooling resources for joint trainings on the basic knowledge required to conduct GtG would free up time and resources for additional trainings specifically geared toward Tribes or DoD staff.

**IX. Recommend that Interior Tribes coordinate politically with Tribes statewide and nationwide to promote increased funding for NALEMP and for the tribal infrastructure required to build capabilities on DoD issues.**

The initial RS study on GtG and cleanup concluded that Alaska Tribes perceived NALEMP to be the best model for working with DoD and state regulators on a GtG basis, primarily because cooperative agreements provided funds for Tribes to design and implement a cleanup plan, and access to NALEMP-supported training and project-related expertise from the Corps. This assessment reaffirmed tribal satisfaction with NALEMP. Assessors suggest that Tribes engage in a political effort to increase the annual budget for NALEMP cooperative agreements with Alaskan Tribes.

While in the short term DoD should consider reallocating funds to support consortium/village-based DoD liaisons, obtaining long-term financial support for consortium/village-based staff to work exclusively on DoD issues will require a sustained political effort on the part of Tribes.

## **Section 5: Conclusion**

These recommendations offer likely benefits to both Tribes and DoD: for Tribes, more effective protection of cultural and natural resources and increased assistance from DoD regarding opportunities for contracting on military projects; for DoD, a more efficient use of its resources to accomplish mission objectives, and to advance the environmental goals and processes that are legally mandated – and highly desirable in human terms – for the relationship between military services and tribal communities.

The potential exists to strengthen and streamline GtG consultations on military impacts. Both will require a joint commitment by Tribes and DoD for evaluating, funding and implementing those recommendations that hold promise for improving the government-to-government process and relationship. Consideration of these recommendations provides the opportunity for DoD and Tribes to re-evaluate together how resources can be increased and/or reallocated toward building the tribal infrastructure necessary to support consultations with DoD; how GtG interactions and working groups can be restructured to maximize expertise, continuity, and productivity; and what kinds of procedural changes, institutional mechanisms and training need to occur to enhance consultation.

The final recommendation is that Interior Tribes, DoD, and TCC hold a meeting within the next six months to identify the recommendations that have the greatest value and likelihood for success, and to clarify how they can be implemented. The leadership and management staff from all entities should be represented. Ideally, this meeting would be the first in a series of joint face-to-face discussions and learning sessions where the GtG parties and support organizations, such as TCC, can explore and implement new ideas for consultation on military activities that will more fully meet the needs of all parties.



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## Appendix 1: Assessment Team Bios

*Dee Hunt* \_\_\_\_\_

*Ms. Hunt is the principal of DCH Consulting in Anchorage, Alaska, and specializes in applied research to promote effective communication between communities and government agencies on issues of representation and policy; and to advance public education through museum exhibitions, videos, publications, interactive CDs and websites. Ms. Hunt was co-researcher for Resource Solution’s EPA-funded study, “Rural Alaska’s Participation in Contaminants Cleanup,” co-author of the project report for the government-to-government portion of the study, and lead author of the research summary distributed to participating communities. Other recent research projects include development of an archive, interviews and videotapes on the history, philosophy and contemporary practice of Alaska Native traditional medicine for Cook Inlet Tribal Council and the Alaska Native Heritage Center, and research and special project coordination for a museum exhibition titled “Looking Both Ways: Heritage and Identity of the Alutiiq People,” a project of the Smithsonian Institution’s Arctic Studies Center and The Alutiiq Museum and Archaeological Repository in Kodiak. Ms Hunt is trained in political anthropology and received a B.A. in Anthropology from George Mason University (1988), an M.A. in Museum Studies (Anthropology) from San Francisco State University (2000), and holds a Certificate of Archival Theory and Practice from Western Archives Institute (1991).*

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*Margaret (Meg) King* \_\_\_\_\_

*Ms. King is the manager of Resource Solutions, a program of the University of Alaska Anchorage. Resource Solutions offers capacity building opportunities through its workshops and other community services; applies collaborative decision making techniques to a variety of issues when it works with federal, state, local and tribal governments, private and public interests, as well as members of the general public; and conducts research in an effort to improve collaborative and participatory decision making on public issues. Resource Solutions has worked on issues ranging from contaminant clean up in rural Alaska villages to urban transportation and other land use constraints. As a legislative aide, Ms. King worked with public budgets and associated issues for the State’s natural resource agencies. Originally from Fairbanks, she received her MBA from the University of Denver in 1989, Bachelors from UAF, and holds post-graduate certificates in Basic and Environmental Mediation and Advanced Facilitation Skills.*

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**Appendix 2:  
Interview Topics for  
Situation Assessment of GtG Consultations  
Between the Department of Defense and Interior Alaska Villages**

**I. Background Information**

- Length of experience with GtG consultations, roles and responsibilities in relation to GtG
- Situations and issues relevant to GtG relationships
- How consultations were structured, topics discussed, frequency of interactions, and actions taken
- Information exchange on GtG (at DoD, in Tribes, between DoD and Tribes)

**II. Clarifying Expectations**

- Purpose of GtG consultations on military activities
- Types and levels of involvement by Tribes in addressing military activities
- Results from GtG consultations on military activities
- Level of satisfaction from GtG interactions
- GtG relationship as on-going or project-specific
- Understanding of roles and responsibilities of all parties
- Perceived goals of consultations, if goal setting was part of GtG consultations, how to set and reach mutual goals

**III. Implementation of Existing Consultation Guidelines**

- Familiarity with and usefulness of DoD's GtG policy
- Tribal protocols for GtG consultations
- DoD procedures for implementing GtG consultations with Alaskan Tribes at leadership, program and project levels
- Challenges to implementation and suggestions to effectively address obstacles
- Resources to adequately participate
- Sensitivity of DoD procedures to Alaska Native culture, and possible procedural changes
- Sensitivity of Tribes to DoD system requirements and constraints, and possible procedural changes
- Roles and responsibilities in GtG and how they are determined
- Preparation for GtG interactions
- Perceived success with GtG consultation process regarding issue of concern
- Definitions of success and failure and factors contributing to success or failure

**IV. Communication (cross-cultural, about cleanup process, and the nature of contamination)**

- Factors encouraging or hindering effective communication
- Issues where poor communication occurs

- Steps to improve communications on GtG and military impacts
- Other organizations/models where agency/tribal communications work well

## **V. Project Implementation**

- Capabilities the parties need in order to address military impacts
- Perceptions about success and level of involvement, and suggestions for improving success
- How involvement supports GtG relationship
- How Tribes are participating in GtG on military impacts
- How Tribes want to participate and capabilities needed to increase role
- Resources and training needed to support Tribes in addressing military impacts

## **VI. Resolution of Conflict**

- Issues that produce conflict and suggestions to improve communication on those issues
- Communication styles that impact the results of GtG consultations
- Resolving conflicts between Tribes and DoD

## **VII. Successful Consultations**

- Guidelines DoD and Tribes use to assess effectiveness of GtG consultations
- Definition of success for the issues of concern
- How success or failure of GtG consultations is determined

## **VIII. Improving Consultations**

- Suggested trainings
- Other contexts and benefits of DoD and tribal leadership interactions
- Tools and techniques for mutually assessing issues of concern
- How Native regional nonprofit corporations can support Tribes in the GtG relationship with DoD
- Utilizing current federal programs to access resources
- Suggested changes in order to address issues more effectively

### **Appendix 3: Military Impacts in Alaska with a Focus on the Interior**

With the passage of the Comprehensive Environmental Response, Compensation and Liability Act in 1980 and the Superfund Amendments and Reauthorization Act (SARA) in 1986, the DoD directed the U.S. Army Corps of Engineers to catalogue and conduct preliminary environmental investigations at formerly used defense sites, giving birth to the Defense Environmental Restoration Program. DERP is currently managed by the Office of the Deputy Under Secretary of Defense - Environmental Management Office (Installations and Environment) and funded through the Defense Environmental Restoration Account.

It is important to distinguish between the way DoD interacts with communities today as opposed to the past. Until the late 1970's, few regulations existed to manage or prevent military impacts to people and the environment. Today, DoD is subject to environmental regulations under statutes like the Clean Air Act and the Marine Mammal Protection Act and is mandated to work with the public concerning potential or existing environmental impacts resulting from military activities (e.g., NEPA, Restoration Advisory Boards). As detailed in the report, DoD is also required to initiate and implement government-to-government consultations when impacts have the potential to affect Tribes and has developed a number of programs to support the government-to-government relationship.

At the same time, DoD can be subject to swift and dramatic policy changes generated by new political administrations and/or political climates. These policy changes present significant challenges for tribal and DoD representatives “on the ground” who are working together to clean up or prevent harmful military impacts. Recent examples involve the Bush administration’s sustained effort (2002-2006) to exempt military installations from environmental regulations under CERCLA, RCRA, and the Clean Air Act in order to expedite military readiness and training. As of 2002, Congress had exempted DoD training operations from parts of the Endangered Species Act and the Marine Mammal Protection Act.<sup>74</sup> Such exemptions can have negative consequences for the health of subsistence-based cultures and could particularly affect Alaska Native communities.

Following is a brief description of environmental impacts resulting from military activities in Alaska with a focus on effects to the Interior.

#### **Environmental Impacts: Pre-World War II**

Early impacts to the Interior included stationing permanent troops and development of transportation and communications systems. In 1899, bases at Fort Egbert and Fort Gibbon were established to help maintain order when people flooded the area in search of gold. That same year the trans-Alaska highway was constructed to link the Yukon River to Prince William Sound, and in 1904, the Washington-Alaska Military Cable and Telegraph System (WAMCATS) connected Alaska to the Lower 48. Abandoned WAMCATS cable remains in the region, posing hazards to people and wildlife.<sup>75</sup>

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<sup>74</sup> Barringer, Felicity, “Pentagon is Pressing to Bypass Environmental Laws for War Games and Arms Testing,” *New York Times*, December 28, 2004.

<sup>75</sup> Simon, Jim, 1999, *Tanana Chiefs Conference and the U. S. Department of Defense: The Role of Oral History in Mitigating Military Impacts on Interior Alaska Athabaskan Tribes*. A paper presented at the 1999 annual meeting of the Oral History Association, Anchorage, Alaska, October 7, 1999, p. 7.

## Environmental Impacts: World War II and the Cold War

The most significant impacts to date result from World War II and Cold War activities. Due to its geographic location and diverse environment, Alaska has figured prominently as a strategic military site for defense, training operations, and the testing of biological, chemical, nuclear and conventional weapons. Beginning in the 1940's, the U.S. War Department initiated the systematic development of a national defense system in Alaska, which was designated "a separate theatre of war" in 1943.<sup>76</sup> The building of army bases, naval bases, and cold weather testing and training stations were some of the first steps taken to consolidate Alaska's position as a strategic military center. Construction related to the World War II Lend-Lease program included the Alaska-Siberia ferry route, a series of airfields that passed through Alaska to transport U.S. aircraft to Soviet allies from 1942-45. Five of these airfields were located in the Interior villages of McGrath, Galena, Tanacross, Northway and Big Delta. Additional construction included work on the Tok Cutoff road, the ALCAN (Alaska) Highway, the Canadian Oil (CANOL) pipeline corridor, and the Haines-Fairbanks Pipeline, all of which produced contamination in Interior Alaska.<sup>77</sup> Debris from these military construction activities and the subsequent oil and fuel pollution of land and groundwater persist to this day.<sup>78</sup>

The postwar years saw the continuation of a massive military build-up in Alaska. The Korean War and national concerns about the possibility of Soviet aggression produced intense construction that topped \$1 billion, with much of it spent from 1951 to 1955. Rather than defense aimed at protecting individual installations, an integrated and coordinated warning system was developed and completed by 1958 to protect "American airspace in general."<sup>79</sup> The White Alice communications network (1955-79) linked numerous radar scanning stations both along the coast and in the interior<sup>80</sup> to distant early warning sites (DEW Line) that extended from the Aleutian Chain along the northern Alaskan coast to Greenland. White Alice provided the capacity needed to effectively transmit over the long distances between Alaskan installations, ultimately routing information to Elmendorf and Eielson Air Force bases. Eventually two White Alice routes also linked the Ballistic Missile Early Warning System site in Clear, Alaska to the North American Air Defense headquarters in Colorado. Interior White Alice sites were located at Galena, Fort Yukon, Murphy Dome, and Kalakaket Creek.<sup>81</sup>

While the 1960's brought further development of missile tracking systems and construction for the purposes of supporting U.S. forces in Vietnam, relative to the 1950's, activity was minimal and bases at some Alaskan installations were closed. However, the testing and development of weapons continued with an emphasis on nuclear, chemical and biological weapons. The Department of Energy's largest underground nuclear explosion to date occurred in the Aleutian Islands in 1971. This was one of three nuclear tests conducted on Amchitka Island between 1965 and 1971. Chemical

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<sup>76</sup> Jacobs, W. A. and Lyman Woodman, *The Alaska District, United State Army Corps of Engineers, 1946-1974: A History, Elmendorf Air Force Base*, Anchorage, Alaska, 1976, p. 14.

<sup>77</sup> ALCAN Highway and CANOL pipeline constructed soon after Japanese attack at the Aleutian Islands to create an inland route to Alaska and a reliable source of oil. Plan was to transport oil from Norman Wells field, NWT, Canada to Whitehorse and then via a smaller pipeline to Ladd Field in Fairbanks.

<sup>78</sup> Denfeld, D. Colt, *The Cold War in Alaska: A Management Plan for Cultural Resources, 1994-1999*. U. S. Army Corps of Engineers, Alaska District, August 1994, p. 8; Jacobs and Woodman (1976:13-18); Simon (1999:5).

<sup>79</sup> Jacobs and Woodman (1976: 31).

<sup>80</sup> Construction began in 1950 and was completed by 1958. Coastal sites: Northeast Cape on St. Lawrence Island, Cape Lisburne, Tin City, Cape Newenham, Cape Romanzov. Interior sites: Bethel, Campion, Chiniak, Fort Yukon, Galena, King Salmon, Indian Mountain, Kotzebue, Sparrevohn, Tatalina, and Unalakleet; later Middleton Island, Ohlson Mountain, Chiniak, Sitkinak, Fire Island near Anchorage and Murphy Dome near Fairbanks. Each site represented an intensive effort as illustrated by a description of Cape Newenham which consisted of "barracks, administration and dispensary facilities, an operations building, a recreation building, transmitter and receiver facilities, a tramway, an antenna system, storage for ammunition, an airstrip, and all the necessary supporting utilities" (Jacobs and Woodman 1976:35-36).

<sup>81</sup> Jacobs and Woodman (1976:22-41); Denfeld (1994:14-28).



and biological weapons were tested and disposed of at several locations, with buried chemical weapons subsequently leaking into adjacent soils and waters. In the Interior, chemical-weapons testing at Gerstle River near Fort Greely from 1954-1967 contaminated a nearby lake<sup>82</sup> and residents of villages in the region have raised questions concerning the disposal of radioactive waste produced by the nuclear reactor in operation at Fort Greely from 1958-1973. There were also questions about the possibility of unexploded ordnance (UXO) in the Gerstle River Expansion, but recent investigations by the USACE found no evidence of UXOs.<sup>83</sup>

While military activities produced extensive and various types of environmental contamination, the most common source is petroleum, the result of numerous fuel tank spills and leaks from above-ground or underground tanks and pipeline leaks, and from improper disposal of the oils and lubricants used to maintain vehicles and machinery. In the more extreme cases, fuels have heavily contaminated groundwater or acres of soil. Further contamination came about when the military abandoned sites, leaving equipment and supplies in place or buried in shallow pits that were subsequently vandalized or deteriorated due to the severe climate in Alaska. This included scrap metal and metal structures, abandoned buildings sometimes contaminated with asbestos and lead paint, above and underground fuel tanks containing fuel; and drums of anti-freeze, brake fluid, and petroleum products. Containers filled with 100% polychlorinated biphenyls (PCBs) were left behind in addition to transformers that leaked cooling oils containing PCB's onto the ground.<sup>84</sup>

### **Social, Cultural and Economic Impacts**

Military activities have produced social, cultural and economic changes for Alaska Natives in Interior villages, some beneficial and others not.<sup>85</sup> While the construction of roads, airfields and communication networks benefited civilians as well as supported military objectives, it also left pollution. As documented in oral history interviews conducted by TCC, there was a shift to a more cash-based economy and permanent residence when people relocated to be near bases and construction projects in order to take advantage of jobs, particularly in relation to military buildup during World War II and the Cold War. Newspaper articles<sup>86</sup> and interviews conducted for this assessment and the previous RS study reveal that military contamination of land, water and wild foods has caused concern about personal health and the potential risks of living off the land.

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<sup>82</sup> Simon (1999:9-10).

<sup>83</sup> Fairbanks Daily News-Miner, "Residents Can Comment on Cleanup Report," August 4, 2005.

<sup>84</sup> Denfeld (1994:2-5).

<sup>85</sup> Simon, Howdeshell, Sattler *et al* (2001:244-257).

<sup>86</sup> Rozell, Ned, "Radioactivity is Monitored on Amchitka," *Anchorage Daily News*, December 19, 2004; Campbell, Diana, "A Toxic Legacy? Many Alaska Natives Believe Environmental Contamination Is Behind Outbreaks of Cancer," *Fairbanks Daily News-Miner*, December 8, 2004; Campbell, Diana, "Tiny Community Devastated by Cancer," *Fairbanks Daily News-Miner*, December 8, 2004.

## **Appendix 4: The Legal Basis of the Government-to-Government Relationship between Tribes and Federal Agencies**

### **Foundation**

When Article 1, Section 8 of the U.S. Constitution authorized Congress to regulate trade with Indian Tribes, the United States explicitly recognized the sovereign status of Indian nations. Over time, the political and legal nature of the federal government's relationship with Native Americans has been defined through treaties, statutes, federal policies and judicial decisions. The concept of tribal sovereignty, first elaborated by Chief Justice Marshall in the 1830's, became the cornerstone for development of federal Indian law and for shaping the parameters of the government-to-government relationship. In *Cherokee Nation v. Georgia* (30 U.S. (5 Pet.)I(1831)), Marshall stated that Indian societies were "domestic dependent nations" with the legal and political authority to govern internal matters. As inherently sovereign nations, tribal governments possessed legislative, judicial and regulatory powers over tribal membership and within Indian country, but were still subject to the protection and control of the federal government. Further, Native American lands and resources were held "in trust" and could not be alienated without federal approval.

Only federally recognized Tribes, as acknowledged by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a), can interact with the federal government on a government-to-government basis.<sup>87</sup> Currently there are 229 federally recognized Tribes in Alaska, organized under the Indian Reorganization Act (IRA) or governing through traditional tribal councils. These Tribes have inherent rights to self-government with political authority over people and property subject to their jurisdiction.<sup>88</sup> They are also eligible for services through the Department of Health and Human Services, the Department of the Interior, and other federal agencies.

While, historically, the U.S. government has wavered in its support for tribal sovereignty, since the 1970's both legislation and judicial opinions have produced an increase in federal programs intended to support self-determination and tribal sovereignty. Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975 (with amendments), has proved to be a watershed for social and economic development by promoting maximum participation by Tribes in self-government, education, and service delivery. Through P.L. 93-638, contracting tribal entities provide many of the services formerly administered by the U.S. Department of Health and Human Services and the Department of the Interior. In Alaska, this includes managing health care systems and delivering services pertaining to cultural and natural resources.

### **Executive Orders, Statutes and Policies**

During the 1990's, President Clinton issued several Executive Orders that proved to be a turning point in the relationship between Tribes and federal agencies. All of these orders reaffirmed the government-to-government relationship and specified actions to be taken by agencies when their activities had the potential to affect a Tribe's protected interests.

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<sup>87</sup> Many federal agencies also work with non-federally recognized Tribes, just not on a government-to-government basis.

<sup>88</sup> Case, David S., *Alaska Natives and American Indian Laws*, University of Alaska Press, Fairbanks, 1984, p. 467.

Executive Order 12875<sup>89</sup> (1993) stipulated that federal agencies “establish regular and meaningful consultation and collaboration with State, local, and tribal governments on Federal matters that significantly or uniquely affect their communities. ...” Clinton’s April 29, 1994 Executive Memorandum<sup>90</sup> stated that GtG consultations with Tribes were required prior to any federal action that could potentially impact tribal rights and resources. Executive Order 12898<sup>91</sup> (1994) directed agencies to ensure that environmental justice requirements were taken into account when working with minority and low-income communities. It also requires that agencies determine how proposed activities might affect subsistence, including any adverse impacts to plants, fish and other wild foods (Section 4-4). Executive Order 13007<sup>92</sup> requires the federal government to protect sacred sites on federal land and to provide access to these sites for ceremonial purposes.

Most recently President Bush issued Executive Order 13352,<sup>93</sup> which instructs the departments of Interior, Commerce, Agriculture, Defense and the Environmental Protection Agency to include federal, state, local and tribal governments, and private institutions (profit and nonprofit) in decision-making about the implementation of laws relating to environment and natural resources. Accompanying EO 13352 was the Memorandum on Environmental Conflict Resolution, issued by the Office of Management and Budget and the President’s Council on Environmental Quality, which directs agencies to increase institutional capacity in environmental conflict resolution and collaborative problem solving.

In Alaska, government-to-government consultations on military activities substantially increased in the late 1990s, largely due to Executive Order 13084,<sup>94</sup> which strengthened the GtG relationship by requiring agencies to consult when developing regulatory policies that would affect Tribes. Agencies were directed to initiate timely consultations to allow for meaningful input from tribal governments. E.O. 13084 also encouraged consensual decision-making with Tribes, including negotiated rulemaking. Finally in November 2000, Executive Order 13175<sup>95</sup> directed agencies to develop a standard consultation process and to submit their policies to the Office of Management and Budget by January 2001.

Several statutes apply to the government-to-government relationship and generate the need for consultation when federal undertakings have the potential to affect tribal lands, rights or resources:

- The National Historic Preservation Act (NHPA) (16 USC 470a-470w and 300 CFR 800) requires consultation with federally recognized Tribes concerning historical property of cultural or religious significance that may be impacted by federal action. NHPA also mandates consultation in connection with any federal activities on tribal lands, where a representative from the Tribe rather than the state can act as the Historic Preservation Officer once approved by the Secretary of the Interior. In Alaska, only Metlakatla Indian Community has this option.<sup>96</sup>

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<sup>89</sup> *Enhancing the Intergovernmental Partnership*, Executive Order 12875, dated October 26, 1993.

<sup>90</sup> *Government-to-Government Relations with Native American Tribal Governments*, Executive Memorandum dated April 29, 1994.

<sup>91</sup> *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, Executive Order 12898 dated February 11, 1994.

<sup>92</sup> *Indian Sacred Sites*, Executive Order 13007 (1996).

<sup>93</sup> *Facilitation of Cooperative Conservation*, Executive Order 13352, dated August 30, 2004.

<sup>94</sup> *Consultation and Coordination with Indian Tribal Governments*, Executive Order 13084 (1998).

<sup>95</sup> *Consultation with Indian Tribal Governments*, Executive Order 13175, 2000 – superseded Executive Order 13084.

<sup>96</sup> Alaskan Command (2001:4).

- The National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4335) requires consultation with Tribes when federal action may impact the “human environment, which includes the social and cultural relationship of people to the physical environment. Under this law there is an obligation to consult with Tribes concerning impacts to sacred sites and on the mitigation of actions to sites of concern to Tribes that is not limited by the National Register eligibility criteria (36 C.F.R.60.4).”<sup>97</sup>
- The Native American Graves Protection and Repatriation Act (NAGPRA 25 USC 3002-3005 and 3010) protects tribal rights to determine the disposition of ancestral remains found on federal and trust lands. NAGPRA also affirms a protected interest by Tribes in objects of cultural patrimony and sacred and funerary objects found on federal or Indian lands. This includes materials stored in museums that obtain federal funding.
- American Indian Religious Freedom Act of 1978 (Public Law 95-341, 42 USC 1996 and 1996a) protects the inherent right of Native Americans to “believe, express, and exercise their traditional religions.” This may require access to sacred sites or objects and the practice of traditional ceremonies and rites.
- The Archaeological Resources Protection Act (ARPA 16 USC 470cc) requires agencies to notify Tribes about permits issued to excavate on federal land when the archaeological sites may be of cultural or religious importance to them. For excavation on tribal lands, the Tribe must authorize issuance of an ARPA permit.
- Statutes that protect wildlife will exempt Tribes from some provisions in recognition of cultural and religious practices. Examples pertaining to Alaska include the use of marine mammals for food, clothing and artwork (Marine Mammal Protection Act) and the use of eagle feathers for cultural and religious purposes (Bald Eagle Protection Act).<sup>98</sup>

Other statutes relevant to Alaskan Tribes are the Alaska Native Claims Settlement Act (ANCSA) and the Alaska National Interest Lands Conservation Act (ANILCA). How they further direct the consultation process is described in Section 2 of the report.

Federal agencies have also developed numerous policies that apply to the government-to-government relationship with Tribes, including DoD’s American Indian and Alaska Native Policy and the Alaska Implementation Guidance for the DoD American Indian/Alaska Native Policy.<sup>99</sup>

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<sup>97</sup> Hutt and Lavalley (2005:7).

<sup>98</sup> Alaskan Command (2001:4).

<sup>99</sup> See pages 9-10 for a description of DoD’s American Indian and Alaska Native Policy and the Alaska Implementation Guidance for the DoD American Indian/Alaska Native Policy. For a list of additional policies developed by federal agencies to guide the consultation process with Tribes, see Hutt and Lavalley 2005: 9-10.

## **Appendix 5: Department of Defense Programs and Initiatives in Support of the Government-to-Government Relationship with Tribes**

### **Native American Lands Environmental Mitigation Program (NALEMP)**

In the early 1990's, Congress noted that mitigation programs failed to adequately address military impacts to Indian/ANCSA-conveyed lands. Contaminated sites were often assigned low priority for remediation, largely due to risk assessment models that did not take into account important cultural and demographic factors in Native American communities, such as higher health risks resulting from the consumption of wild foods. In 1993, Congress directed DoD to relegate a portion of its annual appropriations budget to contaminant cleanup on Native lands. In fact, responding to the extent of military contamination in Alaska, U.S. Senator Ted Stevens was instrumental in forwarding a program that would exclusively address the remediation of Indian and Alaska Native lands.<sup>100</sup> DoD was also directed by Congress to assess DoD impacts in Indian country, summarized in 1996 in a report titled, "Survey Report to Congress Regarding Department of Defense Environmental Impacts on Native American Lands."<sup>101</sup> This survey has provided the foundation for site characterizations and for developing programs to address impacts.<sup>102</sup>

In 1996, USACE (as DoD's agent) began developing NALEMP cooperative agreements with tribal entities to forward environmental restoration. Prior to NALEMP, no program had focused exclusively on environmental restoration of Indian/ANCSA-conveyed lands, despite the cultural, social and economic importance of the land to many Tribes. NALEMP was designed to operate in partnership with Tribes and to utilize tribal knowledge and expertise. Under NALEMP, Tribes develop a Strategic Project Implementation Plan (SPIP) that details the military impacts on their lands and provides a structure for identifying available resources to address those impacts. Both a memorandum of agreement (MOA) and a cooperative agreement (CA) are developed between the Tribe and USACE: the MOA outlines the principles that inform the government-to-government relationship and the CA details the Tribe's scope of work, the contract amount, and how the monies will be disbursed.<sup>103</sup> More recent CAs also include reporting requirements for expenditures.

Currently funded at \$10 million annually, NALEMP has supported cooperative agreements with tribal entities for training, site assessment and cleanup; technical assistance to Tribes; information gathering; site assessments to confirm reported impacts; training of DoD and tribal staff on issues pertaining to the GtG relationship; technology demonstration projects where innovative mitigation methods are introduced and applied to cleanup; and policy implementation demonstration projects designed to address barriers to implementation of the DoD policy. A small percentage of annual funding is allocated to program development and policy support, and government/administrative expenses.<sup>104</sup> Allocation to these various program components changes yearly in response to program development and needs, but most of the funding directly addresses mitigation. For example, the

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<sup>100</sup> Simon, Howdeshell, Sattler *et al* (2001:9).

<sup>101</sup> U. S. Department of Defense, Fiscal Year 1996 Annual Report to Congress, Defense Environmental Quality Program, Washington, D. C.

<sup>102</sup> *Ibid*, Chapter 5.

<sup>103</sup> Richardson, Pat and Johnny Duplantis, "District Works in Largest, Coldest State." *Engineer Update*, Vol. 24, No. 7, July 2000.

<sup>104</sup> U. S. Department of Defense, Fiscal Year 2002 Annual Report to Congress, Defense Environmental Quality Program, Washington, D. C., p.72.

FY2005 allocation included: 68% to cooperative agreements/policy implementation demonstration projects; 19% technical support; 11% USACE field support; 2% government administration.<sup>105</sup>

### **Native American Environmental Tracking System**

In January 2000, the Native American Environmental Tracking System (NAETS) was developed to provide an important tool for Tribes and agencies involved in addressing DoD impacts to Indian/ANCSA-conveyed lands. Developed through the Office of the Deputy Under Secretary of Defense for Installations and Environment, the primary purpose of NAETS is to document and make accessible to the public information about past, present and potential DoD impacts including all research, assessment, and mitigation activities at impacted sites. NAETS provides a direct means for Tribes and agencies to submit claims concerning military impacts for review and assessment. Ultimately, a NAETS record represents an archive of all site-specific information gained from historical research; field investigations; environmental assessment reports; and important correspondence between the Tribe, DoD staff and other relevant agencies/private companies. NAETS also supports NALEMP through compiling the type of information needed for making program and funding decisions.<sup>106</sup> Military sites on Indian/ANCSA-conveyed lands are not eligible for NALEMP funding unless information about suspected contamination is recorded in NAETS and subsequently verified.

### **Technology Demonstrations**

The objective of this program is to test the effectiveness of new innovative technologies for remediating military contamination. Some examples for Alaska include demonstration of the RangeSafe System at Adak Naval Air Station for cleaning up firing ranges; and bioremediation of organically contaminated soils at Annette Island, Galena and Barrow using plants. DoD claims this technique is cost effective for remote sites and may be particularly applicable to fragile ecosystems in cold climates.<sup>107</sup>

### **Cultural Communication Training**

DoD sponsors staff training in federal Indian law including statutes and policies that govern the government-to-government relationship with Tribes. Trainings also provide information about tribal cultures, and skills in cross-cultural communication and conflict resolution.

### **DoD Mentor-Protégé Program**

Established in 1997, DoD's Mentor-Protégé promotes partnerships between DoD prime contractors and minority-owned businesses interested in managing remediation projects. Mentors implement a development assistance plan to help protégés develop the technical and business skills required to compete successfully for DoD contracts.<sup>108</sup> This program is administered through the Office of Small and Disadvantaged Business Utilization.

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<sup>105</sup>U. S. Department of Defense, Fiscal Year 2005 Annual Report to Congress, Defense Environmental Quality Program, Appendix N: American Indian and Alaska Natives – Compliance, N-2, Washington, D. C.

<sup>106</sup> For more information, see [www.denix.osd.mil/denix/public/native/mitigation/naets.html](http://www.denix.osd.mil/denix/public/native/mitigation/naets.html).

<sup>107</sup>U. S. Department of Defense, Fiscal Year 1997 Annual Report to Congress, Defense Environmental Quality Program, Washington, D. C.

<sup>108</sup> For more information about DoD's Mentor-Protégé Program, see [http://www.acq.osd.mil/sadbu/mentor\\_protégé/](http://www.acq.osd.mil/sadbu/mentor_protégé/).

### **Native American Integrated Product Team (IPT)**

The IPT functions to coordinate DoD personnel and components that are addressing overlapping policy issues pertaining to Native Americans. Alaska is the only state with representation on the IPT. Other participants are nationwide service representatives from the DoD component services and other DoD staff. IPT helps to clarify policy implementation through creating guidance and other implementation tools. IPT also coordinates tribal consultations.<sup>109</sup>

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<sup>109</sup>U. S. Department of Defense (2002:68-69).

## **Appendix 6: Brief Characterization of Assessment Villages: Military Impacts and Interactions**

In order to maintain confidentiality, the villages, military impacts at these villages, and their consultation and environmental restoration efforts are characterized in general terms.<sup>110</sup>

The three villages in this sample do not represent all of the variability in the TCC region. For example, there are more remote locations with fewer adjacent<sup>111</sup> military impacts although, in general, one does not follow from the other. This sample does highlight issues central to Interior Alaska's GtG relationship with DoD: the cultural and economic importance of subsistence in all parts of rural Alaska; the prevalence of environmental impacts due to military activities; and the exercise of self-governance and self-determination by some Tribes in relation to military activities.

All three villages have populations of fewer than 200 people, although Village 3 is located within a town of about 550 people. All villages are located in rural Alaska. GtG consultations with DoD encompass ongoing activities related to the Army Transformation and the Missile Defense System, as well as past impacts resulting from formerly used defense sites (FUDS). Due to land transfers, federal agencies other than DoD are responsible for some of the cleanup of past impacts. Most of the FUDS impacts under discussion resulted from World War II and Cold War activities (Appendix 3).

### **Village 1 (V-1)**

Village 1 is a remote subsistence community with a population of almost 100. The village covers 2.5 square miles and is part of a dispersed settlement that includes two other small communities. Located on a river, there is emergency access by highway, helicopter, and air. Residents hunt for moose, rabbit, geese, ducks, and ptarmigan. Whitefish and berries are also important foods. The village includes tribal offices, a local health clinic run by the Tribe, and a school.

V-1 has been addressing remediation issues on Native allotments and ANCSA-conveyed properties since the early 1990's. Through TCC's TERP, Village 1 identified 11 military impacts on restricted lands<sup>112</sup> that had resulted from activities associated with the CANOL (Canadian Oil) Pipeline, Haines-Fairbanks Pipeline, and a Staging Area utilized as part of the WW II Lend-Lease program. Impacts include buried and unburied debris from buildings; abandoned vehicles, drums, fuel tanks, and piping; a concrete pad; asbestos; a military dump; and possible soil and groundwater contamination. V-1 was successful in obtaining an exemption from FUDS regulations that were preventing the Tribe from forwarding cleanup on Native allotments.

Over 52 sites eligible for remediation through FUDS were identified in V-1. In consultation with the Tribe and the Alaska Department of Environmental Conservation, over 30 of these sites have been

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<sup>110</sup> The following characterizations draw from village websites, Community Information Summaries on the Alaska Community Database (Alaska Department of Commerce, Community and Economic Development), village reports from the Alaska Department of Fish and Game, the Department of Defense's NAETS database, and TCC's Tribal Environmental Restoration Program report, 2001.

<sup>111</sup> Contamination can equally affect villages downriver, or extend even further since many subsistence species are migratory.

<sup>112</sup> Simon, Howdeshell, Sattler *et al* 2001.



closed. An additional 11 sites are now under discussion for closure, and those remaining are in the planning or implementation remediation stages.<sup>113</sup>

V-1 has developed a community action plan for remediation, completed three NALEMP projects, and has recently negotiated a fourth NALEMP cooperative agreement to further address debris and subsistence issues. Tribal members have helped to document some of the military activities in the area through an oral history project initiated by TCC. V-1 participated in TERP, in the cross-cultural communications workshops facilitated by the Kluckhohn Center, and in the Dené Steering Committee that was formed subsequent to the communications workshops. With respect to FUDS near the village, V-1 initially chose to incorporate discussions with the USACE into monthly tribal council meetings so that all tribal members had the opportunity to address their concerns directly with the USACE project manager.

### **Village 2 (V-2)**

Village 2 is a relatively remote community encompassing 80.0 square miles of land. There is highway and air access to the village, which includes business offices for the tribal council and the Tribe's 8a business, a washeteria, a health clinic and school. The Tribe's 8a business has contracts for environmental restoration, building construction, upgrades of water and sewer systems, hazardous materials supply management, demolition, security, and other types of construction and service delivery.

Most residents rely on subsistence activities. Important to subsistence are whitefish, moose, porcupine, rabbit, ptarmigan, ducks and geese.

Through participation in TERP, V-2 has identified 23 military sites on restricted lands in or adjacent to the village that are contaminated by building debris; remains of abandoned vehicles, storage drums, fuel tanks and piping; and three military dumps.<sup>114</sup> V-2 has developed a Strategic Project Implementation Plan, completed three NALEMP cooperative agreements, and is implementing the fourth NALEMP through its 8A business. Military impacts on FUDS in or near V-2 result from activities associated with the Washington-Alaska Military Cable and Telegraph System (WAMCATS), the Haines-Fairbanks Pipeline, the CANOL Pipeline Tank Farm, a Lend-Lease airfield, and from large-scale training maneuvers and projects during the 1950's and 60's. The fact that many federal agencies are responsible for contamination at or near V-2 has presented many obstacles to implementing cleanup.

V-2 has participated in TERP and in the cross-cultural communications workshop facilitated by the Kluckhohn group. V-2 has also drawn on local knowledge of military impacts in developing its SPIP. Along with V-1, V-2 is part of a subregional consortium that addresses the economic and environmental concerns of the participating four villages.

### **Village 3 (V-3)**

Village 3 is located in a town of 550 residents, most of whom practice subsistence. The town, which incorporated as a city in 1921 and encompasses 6.0 square miles, is classified by the state of Alaska as a subregional center with good access by road, air, train and river. V-3's federally recognized Tribe operates a health clinic and school, and is in the process of building a Youth Center.

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<sup>113</sup> Confidential interview with assessment participant.

<sup>114</sup> Simon, Howdeshell, Sattler *et al* 2001.

Documentary and oral history research suggests that past military impacts may have occurred at V-3 when the military used the area as a redistribution center, stockpiling fuel drums that were then floated downriver to other locations. Suspected impacts have been reported on NAETS but no decision has been reached about further investigation by the USACE. The Tribe continues to investigate these issues through its environmental staff person. The Tribe's GtG interactions to date have regarded ongoing activities at active installations.

V-3 was also asked to take part in TERP. However, those members selected by the tribal council to represent V-3 were employed full time on local construction projects and were, therefore, unable to participate. V-3 has been an active member of the Yukon River Inter-Tribal Watershed Council.