

**Department of Defense Plan of Action to
Implement the Policies and Directives of
Executive Order 13175, Consultation and Coordination with
Indian Tribal Governments
January 2010**

Introduction

The Department of Defense (DoD) joins other Federal agencies in accepting the challenge to continually improve on policies and practices designed to promote effective consultation with Federally recognized tribes on a government-to-government basis. Since the 1994 Presidential Memorandum called on Federal agencies to work more closely with tribes, DoD has strived to ensure that consultation provides a framework for Department actions that respect tribal sovereignty and self-governance and optimize opportunities for tribal input.

DoD adopted its American Indian and Alaska Native Policy (Policy) on October 20, 1998. The Policy was the result of hard work, dedication, and a strong spirit of cooperation among DoD and tribal representatives engaged in the policy development process. Everyone involved believed the Policy would enhance DoD's government-to-government relationships with Federally recognized tribes on matters of mutual concern. Executive Order 13175, signed by President Clinton on November 6, 2000, provided additional direction and momentum for collaboration when it charged Federal agencies to engage in regular and meaningful consultation and collaboration with tribal officials.

This document will recap the significant steps DoD has already taken to address the requirements of EO 13175 and will outline DoD's action plan for the next 270 days. DoD welcomes the opportunity to receive additional comments on our proposed plan from tribal leaders.

Development of the DoD American Indian and Alaska Native Policy (Policy)

Several Federal laws, regulations, and policies acknowledge an obligation to consult with Federally recognized tribes when Federal activities may affect tribal lands and resources. There are also responsibilities to tribes resulting from the Federal Trust Doctrine, as well as from treaties, Executive Orders, and agreements between the United States Government and tribal governments. DoD developed its policy to clarify how these existing obligations and responsibilities applied to DoD activities and operations.

DoD consulted closely with tribes to obtain their knowledge, guidance, and recommendations in developing a policy that would be meaningful and effective for both tribes and DoD. Key to this effort was the formation in February 1997 of both an internal DoD Policy Working Group and a Tribal Steering Committee. The Tribal Steering

Committee included representatives from the National Congress of American Indians (NCAI) and nine tribes and Alaska Native villages.

From February 1997 to October 1998, DoD and tribes cooperated in crafting the Policy. DoD held fifteen meetings to gather tribes' input at national and regional conferences of tribal organizations, including NCAI. As a result of the feedback from these discussions, the DoD formulated the final Policy and then Secretary of Defense Cohen signed it on October 20, 1998; it was announced at the NCAI annual conference held that same month.

Implementation of the DoD Policy and Assessment of Its Effects

The four principles that guide DoD as it implements the Policy are the Department's pledge to:

- meet its trust responsibilities;
- build stable and enduring relationships with tribes through government-to-government contact;
- fully integrate down to the installation level the principle and practice of meaningful consultation with tribes; and
- protect natural and cultural resources.

From the start, Federal and tribal partners in the Policy development process recognized that effective government-to-government consultation typically occurs between installation commanders and the head of tribal nations. The Policy and its emphasis on installation-level action prompted actions that together have helped embed throughout the Department the commitment to effective relationships with and responsibilities to Indian tribes.

One outcome of the Policy was the creation in late 1998 of the Senior Tribal Liaison position within the Office of the Secretary of Defense. The key point of contact for tribes with concerns regarding potential DoD activities that may affect tribes, the Tribal Liaison coordinates DoD's response to tribal concerns. The Tribal Liaison helps ensure that tribal issues and concerns are appropriately considered before DoD takes action. The Tribal Liaison also makes certain the DoD Components are consulting in accordance with the principles of the Policy, and responds to inquiries from Military Services and DoD agencies seeking information about tribes. Since 2002, the position has been held by a Native American.

From the beginning, the Tribal Liaison has promoted the importance of consultation with tribes throughout the Department and to the DoD Components. In particular, the DoD Components have been encouraged to establish tribal liaisons to coordinate tribal issues related to military actions that could affect a tribe's interest in protecting cultural and

natural resources. Within just a few years, each Military Service had each created a tribal liaison position or identified appropriate points-of-contact to coordinate outreach and ongoing consultation with tribes in connection with the military mission of the Service's installations and activities. In 2001, the Alaska Command also issued its Alaska Implementation Guidance to underscore the unique land status issues, trust responsibilities, and the challenging logistics of government-to-government consultation in a state with rugged terrain and 229 tribes.

In November 2002, DoD chartered the DoD Native American Integrated Product Team (Native American Team). The Native American Team facilitates coordination and communication among parts of DoD on tribal issues and helps DoD meet its responsibilities under Federal law and policy related to tribal issues. Its members include representatives of each of the DoD Components and Army Civil Works.

The quarterly meetings of the Native American Team promote the exchange of information and encourage members to combine program resources. Members also review pending legislative, regulatory, and policy proposals concerning Native American issues, especially those related to DoD's responsibilities under the Native American Graves Protection and Repatriation Act (NAGPRA), the National Historic Preservation Act, and other statutes.

In 2002, DoD requested the Institute for Tribal Government (ITG) of the Hatfield School of Government at Portland State University in Oregon conduct a review of DoD's 5-year old Policy. Meetings held with tribes throughout 2003 provided DoD with a tribal perspective on the effectiveness of the Policy. The study revealed how aware tribal governments were of the Policy; it recapped issues and problems from individual tribal government perspectives; and it outlined ways DoD could improve how it implements the Policy with tribal decision makers. In addition, researchers highlighted the need for practical tools and training to support the capacity of tribal governments and DoD installations to consult effectively, and they recommended increased outreach to tribal governments and organizations to build even greater awareness of the Policy.

The ITG study recommendations prompted DoD to launch a more aggressive outreach campaign to promote the Policy and DoD's commitment to fulfilling its trust responsibilities. DoD has also created enhanced outreach materials and resources about consultation and related DoD programs and expanded the DoD training course for military personnel on cultural communications.

In September 2006, DoD issued Department of Defense Instruction (Instruction) 4710.02. The Instruction assigns Department-wide responsibilities for implementing the Policy and outlines procedures for interactions with Federally recognized tribes. The Instruction directs DoD to integrate fully the requirements of related Presidential Memoranda and Executive Orders.

The Instruction also outlines compliance Measures of Merit the DoD components must report on annually. The DoD Components must report how they are implementing the DoD Policy, complying with NAGPRA requirements, and consulting with relevant tribes in developing installation-specific Integrated Natural Resources Management Plans and Integrated Cultural Resources Management Plans for those military installations that have stewardship responsibilities for lands containing tribal resources. The number of Measures of Merit has been increased for Fiscal Year (FY) 2009 and now includes requirements to report information on installation-level ground-disturbing activities, inadvertent discoveries, and 11 Measures related to collections of items subject to NAGPRA.

Outreach to Tribes Conducted by the Senior Tribal Liaison of the DoD

The extensive DoD outreach campaign to tribes includes presentations and/or exhibits annually at nearly a dozen national and regional conferences of tribal leaders and tribal environmental officials. The conferences include NCAI, the Affiliated Tribes of Northwest Indians, the United Southeast Tribes, and the Alaska Forum on the Environment, among others. Each year, several thousand newly elected tribal officials and tribal environmental managers learn about the DoD Policy and various DoD programs of interest to tribal governments. Outreach materials outline environmental and other DoD programs of interest to tribes. DoD presentations and exhibits explain how tribes can report online potential impacts to tribal health, safety, and/or economic or cultural welfare from past DoD activities.

In addition, the Tribal Liaison manages outreach using online resources. DoD's Environment, Safety, and Occupational Health Network Information Exchange (DENIX) is the online source of information about DoD environmental programs, activities, and initiatives. DoD Native American activities and initiatives are included in the Native American Affairs pages of DENIX, which was redesigned and updated in late 2009 (www.denix.osd.mil/portal/page/portal/NA). DENIX recaps DoD's outreach to tribes, provides opportunities for tribes to share input with DoD, and promotes to DoD personnel upcoming sessions of the DoD-sponsored cultural communications courses. These pages also link to the Native American Management System for Environmental Impacts (www.namsei.com), the online DoD database where tribes can report potential impacts to tribal lands from past DoD activity and track updates on cleanup efforts on Indian lands.

Outreach to tribes also involves interagency liaison efforts. As an example, DoD participates in the activities of the Tribal Solid Waste Interagency Workgroup (Workgroup) of the Environmental Protection Agency (EPA). Along with the Departments of Agriculture and the Bureau of Indian Affairs, Department of Interior, DoD helps EPA coordinate efforts to strengthen public health and environmental

protection in Indian Country and establish effective integrated solid waste management and enforcement programs. DoD annually provides input on EPA decisions regarding the Tribal Solid Waste Management Assistance Grant program to close or clean up high-threat open dumps on tribal lands.

Training to Support the Capacity of the DoD Components to Consult with Tribes

Government-to-government consultation with tribes is mandated by Executive Orders, Presidential Memorandums, the DoD Policy, and the DoD Instruction. Consultation with tribes occurs at the installation level between the installation commander and tribal leaders. The need to provide installation commanders and their staff information and the skills needed to initiate effective consultation prompted DoD to create in 1999 its first cultural communications course for DoD personnel. The 3-day American Indian Cultural Communications Course includes instruction and exercises related to the Federal trust doctrine, federal preservation laws, military history with tribes, and insight into Indian cultural issues that affect consultation. On request, the session also includes a one-day Executive Session geared to focus on consultation skills and information for the installation commander and other key installation-level leaders.

Currently offered 3 times each year, the course is tailored to focus on Indian cultures and military history in the region where it is held. Training sessions offered include a course tailored to Alaska and a course designed to highlight how to use consultation to address conflicts with tribes over environmental issues. In addition to the Tribal Liaison, course instructors include other high level Office of Secretary of Defense officials, expert Native American consultants, and military experts in consultation. Dialog with leaders of local tribes helps participants learn more about cultural practices and unique tribal interests that may interact with the military mission. Since the course was launched, nearly 1,000 military and civilian personnel have been trained, with the course consistently securing high marks for providing practical, ready-to-use information and skills.

DoD Programs That Support and Enhance Consultation with Tribes

The DoD operates several programs of particular interest to tribes. In recognition of the need to address tribal concerns with DoD environmental programs, Congress has inserted, since 1993, a provision in the DoD Appropriations Act requiring the DoD to devote funds to clean up of environmental impacts resulting from past DoD activities to Indian Lands and Alaska Native Claims Settlement Act (ANCSA)-conveyed lands.

Certain DoD activities – such as weapons testing, practice bombing, and field maneuvers – have had effects on Indian lands, tribal environmental health and safety, and the economic, subsistence, social, and cultural welfare of tribes. Previously, DoD's environmental programs did not always consider these factors when they evaluated and assessed sites. Some effects of DoD activities, such as abandoned buildings and debris,

can rank lower or be ineligible for assistance under the Defense Environmental Restoration Program, partly because these impacts are located in remote areas with low population densities.

In response to the Congressional mandate, DoD in 1997 created the **Native American Lands Environmental Mitigation Program (NALEMP)**. Mitigation projects are eligible for NALEMP funding if they involve environmental impact(s) to Federally recognized tribal lands and ANSCA-conveyed properties. DoD oversees efforts to gather information concerning potential environmental impacts, assess each impact for eligibility in the program, prioritize impacts for mitigation, and consult with the affected tribe(s). The NALEMP Manual outlines the mitigation process and provides federal and tribal partners guidance on program operations and best practices in consultation.

DoD partners with tribes involved in NALEMP through Cooperative Agreements (CAs). As a prerequisite for developing a CA, DoD and tribes consult closely on the development of a Memorandum of Agreement (MOA) that formally establishes the tribal-DoD relationship. The MOA is followed by consultation and negotiation of specific terms and actions each party will take to mitigate the environmental impacts, including the necessary funding arrangements.

To date, over 900 potential environmental impacts have been reported to DoD and recorded in NAMSEI, the online database. The DoD has reviewed well over 700 of these impacts to determine eligibility for NALEMP. Since the program began, nearly 300 sites have been found eligible, 48 sites have been successfully mitigated, partial mitigation has been completed at nearly 150 sites, and mitigation activities are underway at nearly 50 sites. Through NALEMP, DoD has executed over 160 new or continuing CAs to partner with nearly 50 tribal governments, at a total funding level in excess of \$68 million.

The DoD Office of Small Business Programs has provided tribes with economic opportunities through its Indian Incentive Program (IIP). The IIP motivates DoD Prime contractors to use Indian organizations and Indian-owned economic enterprises by providing a 5 percent rebate to Prime contractors on subcontracted work performed by an Indian organization.

DoD's Innovative Readiness Training (IRT) Program was established in 1997 to provide a military-civilian partnership where Military Units and personnel with specific training requirements help meet the needs of an underserved civilian community. IRT has served tribal populations in Alaska and other regions by providing free medical care, engineering infrastructure projects, constructing roads and bridges, and offering other vital services not easily accessed in remote villages.

DoD's Innovative Readiness Training Program (IRT) has provided medical care and engineering infrastructure projects to over 50 tribes in CA, AK, MT, NV, ND, SD, AZ, NM, and MN since the inception of the program. IRT was established in 1997 to provide real world training opportunities for military service members and units to prepare them for their wartime missions while supporting the needs of America's underserved communities. DoD has approved 32 IRT projects for FY10 and 18 of these projects will provide vital services not easily accessed in remote tribal villages – medical, dental, veterinary, and optometry care, as well as construction of roads and bridges and other infrastructure support.

DoD's IRT program has a senior-level Advisory Council whose purpose is to provide awareness, outreach, and education throughout several levels of community and government leadership. The DoD Senior Tribal Liaison is a member of the IRT Advisory Council and assists in identifying worthwhile projects for submission to the Office of the Secretary of Defense for Reserve Affairs. DoD's IRT program reviewed its mission and efforts on Native American lands at the June 2009 meeting of the EPA's Tribal Solid Waste Interagency Workgroup. In addition, in August 2009, IRT information was presented at the US Department of Agriculture's Conference on Rural Development and representatives of several tribal nations were in attendance.

**Department of Defense Plan of Action to Implement the Policies and Directives of
Executive Order 13175
Consultation and Coordination with Indian Tribal Governments
January 2010**

DoD will continue to enhance its capacity for effective consultation with tribal nations by June 2010, by

Policy Implementation

- Gathering annually DoD-wide data to demonstrate compliance with the DoD Instruction, the NHPA, and NAGPRA;
- Monitoring DoD-wide compliance with the DoD Instruction requiring DoD Components' consultation with tribes related to the development or revision of integrated cultural and natural resource management plans for installations that have stewardship responsibilities for tribal resources;
- Continuing to promote and offer two American Indian Cultural Communications courses to DoD personnel;
- Analyzing in detail comments tribal officials and leaders submit on the DoD Plan of Action and DoD's progress in implementing Executive Order;

Outreach

- Working with the DoD Components to help them gather tribal input on the effectiveness of their policies, guidances, and initiatives related to consultation with tribes;
- Promoting to tribes the revamped Native American Affairs pages of the DENIX website and related online resources;
- Disseminating to contacts in tribal governments and among DoD components an update to the NALEMP Manual—the NALEMP Manual provides information to tribal and DoD representatives regarding administration of the NALEMP program, including consultation requirements;
- Reprinting and promoting to tribal governments and Military Departments the booklet, *American Indian and Alaska Native Policy and Department of Defense Instruction Number 4710.02: DoD Interactions with Federally Recognized Tribes*. The reprint will include the November 5, 2009, Presidential Memorandum on Tribal Consultation; and

Coordination

- Continuing to develop Cooperative Agreements with tribes through the Native American Lands Environmental Mitigation Program (NALEMP) and monitor progress on open NALEMP Cooperative Agreements, pending the availability of FY10 funding.