

*Science, Service, Stewardship*



# 2010 Council Member Training Federal Tribal Trust Responsibilities in the Context of the MSA

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## Purpose

- Give an overview of federal – tribal relationships.
- Overview of obligations for fisheries management.
- Highlight some regional differences.
- Briefing book provides sources for additional information.



## Federal – Tribal Relationship Overview

### ***Pre-Revolutionary America\****

- Francisco de Victoria, 1532
- Principles related to land acquisition .... Later expanded.

\* Largely from Felix Cohen's *Handbook of Federal Indian Law*



## Federal – Tribal Relationship Overview

### **Articles of Confederation**

***Article IX. The United States in Congress assembled shall also have sole and exclusive right and power of regulating ... the trade and managing all affairs with the Indians ...***



## Federal – Tribal Relationship Overview

### ***U. S. Constitution***

*Article I. Section 8 – Congress shall have Power ...*

*To regulate Commerce with foreign Nations, and among  
the several States, and with the Indian Tribes.*

*Article 6 ... This Constitution, and the Laws of the  
United States which shall be made in Pursuance  
thereof; and all Treaties made, or which shall be  
made, under the Authority of the United States, shall  
be the supreme Law of the Land ...*



## Federal – Tribal Relationship Overview

### **U. S. Supreme Court Decisions**

#### ***The Marshall Trilogy***

*Johnson v M'Intosh (1823)*

*Cherokee Nation v Georgia (1831)*

*Worcester v Georgia (1832)*

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## Federal – Tribal Relationship Overview

### **Executive Memorandum**

*Government-to-Government Relations with Native  
American Tribal Governments (1994)*



## Federal – Tribal Relationship Overview

### **Executive Orders**

*12875 – Enhancing the Intergovernmental Partnership*

*13175 – Consultation and Coordination with Indian  
Tribal Governments*





## Federal – Tribal Relationship Overview

### **Department of Commerce**

#### ***American Indian and Alaska Native Policy (1995)***

- Outlines principles to be followed in all DoC interactions with federally recognized Native American and Alaska Native tribal governments.
- Acknowledges the government-wide fiduciary obligations to American Indian and Alaska Native tribes.
- Ten “Policy Principles”



## Federal – Tribal Relationship Overview

### **Definitions**

- Indian Tribe
- Tribal Government
- Tribal Officials
- Agency
- Policies That Have Tribal Implications
- Trust Resources



## Federal Tribal Obligations

- General Federal Obligations to Tribes
- Specific obligations vary by region, depending on tribal status
  - Federally recognized treaty fishing rights.
  - Federally recognized tribes.
  - Seeking Federal recognition.
  - State recognition.
- Tribal and indigenous involvement most active in PFMC, WPFMC, and NPFMC



## Conservation Necessity Principles

### Five Conservation Standards

- Restriction is reasonable and necessary
- Cannot be achieved by reasonable regulation of non-Indian activities.
- Least restrictive alternative.
- Restriction does not discriminate.
- Voluntary tribal measures are not adequate.

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# **N**orth **P**acific **F**isheries **M**anagement **C**ouncil



## North Pacific Fisheries Management Council

### **Status**

- 220+ federally recognized Native Villages (1971).
- Metlakatla fishing rights established by E.O. (pre-statehood).
- Consultation obligations expanded with E.O. 13175



## North Pacific Fisheries Management Council

### **Primary Council-Tribal Issues**

- Halibut Subsistence Program
- Salmon bycatch
- Most issues indirectly Council-related.
- No specific Council membership provisions.

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MSA Provisions (section 305(i))

## **Alaskan Community Development Programs**





## MSA Provisions (section 305(j))

### **WP and NP Regional Marine Education and Training**

- Regionally-based marine education and training programs in the Western Pacific and the Northern Pacific.
- Programs or projects that improve communication, education, and training on marine resource issues throughout the regions.

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# Pacific Fisheries Management Council



## Pacific Fisheries Management Council

### Status

- Over 30 tribes with Federally recognized treaty/tribal fishing rights (Puget Sound, Washington Coast, Columbia River, Oregon, and Idaho).
- Many other Federally recognized tribes (who have had lost access to salmonids).

**All FMPs involve tribal fishing rights.**

**Council fisheries managed as part of larger group of fisheries**

**Council membership provision for treaty tribal member and alternate (302(b)(5)(D))**



## Pacific Fisheries Management Council

### **Federal court mandated tribal/non-tribal allocations.**

- *US v WA, US v OR*
- *Hoh v Baldrige*

### **Pacific Salmon Treaty**

### **ESA Standards and “Secretarial Order”**

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**Coastwide:** Pacific Salmon Treaty covers fisheries and protects stocks in Southeast Alaska, Canada, Wa., Or., & Idaho

**Ocean:** Pacific Fisheries Mgmt. Council schedules fisheries and protects stocks in Wa., Or. & Ca.

**“Terminal” & “Extreme Terminal”:** Wa. & tribes manage stocks and fisheries on the Washington Coast, Columbia River and in Puget Sound





# Western Pacific Fisheries Mgmt Council

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## Western Pacific Fisheries Management Council

**Hawaii, American Samoa, Guam, Northern Mariana Islands (NMI) and the uninhabited U.S. islands of the Pacific.**

**Indigenous people defined differently.**

**Seven of 13 voting Council members are people of indigenous descent from communities of American Samoa, Guam, and NMI**



## Western Pacific Fisheries Management Council MSRA Provisions

### **Indigenous Provisions**

### **Pacific Insular Area Fishing Agreements**

### **Western Pacific Community Development Program (305(i))**

- Provide access ... to fisheries.
- Develop criteria ...
- ... take into account traditional indigenous fishing practices ...





## Western Pacific Fisheries Management Council MSRA Provisions

### **Western Pacific Community Development Program Eligibility (305(j))**

- Location and criteria
- Aboriginal (fishing) people indigenous to the area ...
- No previous harvesting or processing capability ...
- Community Development Plan



## Western Pacific Fisheries Management Council MSRA Provisions

### **Western Pacific Community Development Program Demonstration Project Program (305, note)**

- Direct grants to eligible western Pacific communities.
- \$500,000/fiscal year.
- CDPP Advisory Panel
- Appropriate Federal agencies may provide technical assistance.



## In Summary

- **Unique and distinctive relationship.**
- **Right of tribes to set own priorities and make decisions affecting their resources and distinctive ways of life.**
- **Individual tribal circumstances differ.**
- **Effective working relationships and consultations processes are key.**



## In Closing

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**In Closing**

**Thank-you**