

## MEMORANDUM

January 18, 2001

To: Niles Cesar, Bureau of Indian Affairs  
Fran Cherry, Bureau of Land Management  
David Allen, U.S. Fish and Wildlife Service  
Rob Arnberger, National Park Service  
Gordon Nelson, U.S. Geological Survey  
John Goll, Minerals Management Service

From: Marilyn Heiman  
Special Assistant to the Secretary for Alaska

Subject: Alaska Government-to-Government Policy

Almost a year ago, we embarked on an effort to develop a Government-to-Government Policy for Alaska to guide the consultation process with tribes on policies that directly affect them. The first draft was developed by Albert Barros from the Minerals Management Service in Alaska and reviewed by the Native Liaisons from all of the Interior agencies in Alaska. That draft was sent to all of the members of the Alaska Cooperative Planning Group (ACPG) for your approval to distribute to the tribes as a draft for comments. My office subsequently sent it to all 227 tribes by both e-mail and regular mail. In addition, I spoke to the BIA Tribal Provider's Conference, with an attendance of over 1000 tribal representatives, and the Alaska Inter-Tribal Council (AITC) annual meeting to inform the tribes of the draft policy and to get their feedback.

In order to get thorough review by the agencies and the tribes, we developed a working group made up of the Native Liaisons and representatives of the Alaska Inter-Tribal Council and myself. This working group met with over 75 tribal members at a workshop of the BIA Tribal Providers Conference to obtain comments and recommendations. In addition, this working group held several meetings to incorporate comments and suggestions of the tribes and agencies both in Alaska and Washington, DC. It has been a truly arduous process and many hours of blood, sweat and tears have gone into this document.

I am proud to inform you that we have finally gotten consensus from all of the bureaus on a Government-to-Government Policy for Alaska. It is attached for your signature. Also, attached is a list of non-binding recommendations that were developed by the Alaska Inter-Tribal Council.

I especially want to express my appreciation to your Native Liaisons Albert Barros, Brenda TakesHorse, Herb Anungazuk, Fred Armstrong, and Tim DeAsis. I also want to thank Larry

Merculieff and Deborah Vo from AI-TC; Dennis Hopewell from the Alaska Solicitors Office for his patience and drafting; and Michael Baffrey, Martha Vlasoff, and Ginny Kalbach from my staff for their hard work and dedication to this effort. Their collective work was invaluable.

I think this policy is an excellent first step for providing guidance on government-to-government consultations. Thank you again for making this policy a reality.

Enclosures

cc/enc: Sharon Blackwell  
Nina Hatfield  
Marilyn Nickels  
Marshall Jones  
Jerry Cordova  
Paul Kirton  
Lauri Adams  
Dennis Hopewell  
Martha Vlasoff  
Michael Baffrey  
Mike Williams  
Deborah Vo  
Larry Mercurieff  
Jeanine Kennedy  
Carol Daniel  
Lare Aschenbrenner  
Heather Kendall-Miller

**Department of the Interior-Alaska  
Policy on Government-to-Government Relations  
with Alaska Native Tribes**

**Purpose:**

To assure compliance with the Department of the Interior's national intention, dedication and commitment to work with all federally recognized Tribes as required by the President's April 29, 1994, Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments, and Executive Order No. 13175, November 6, 2000, on Consultation and Coordination with Indian Tribal Governments, on a Government-to-Government basis.

**Introduction:**

Federally recognized Tribes have a special, unique legal and political relationship with the Government of the United States as defined by the U.S. Constitution, treaties, statutes, court decisions, and executive orders. These definitive authorities also serve as the basis for the Federal Government's obligation to acknowledge the status of federally recognized Tribes in Alaska.

This Alaska policy, involving federally recognized Tribes in Alaska, is to provide guidance to all employees, officers, and agents of the Agencies involved with a Federal action(s) that will have a substantial, direct effect on federally recognized Tribes in Alaska. It is also intended to promote and reinforce the foundation for establishing and maintaining effective governmental communications, consultation, and coordination with federally recognized Tribes in Alaska, and to ensure that the consultation process is conducted in a culturally sensitive manner.

**Definitions:** For the purposes of this Policy:

1. "Federally Recognized Tribe(s) in Alaska" means Tribes with the rights and authorities as defined by the U.S. Constitution, applicable laws, statutes, court decisions, and executive orders. In addition, a federally recognized Tribe is any Tribal entity that the Secretary of the Interior acknowledges to exist as a Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. Such Tribes appear on the list published periodically in the Federal Register by the Bureau of Indian Affairs as Entities Recognized and Eligible to Receive Services from the United States.
2. "Consultation" means the timely process of meaningful intergovernmental dialogue between Departmental Bureaus and/or Offices and federally recognized Tribes in Alaska regarding a proposed Federal action(s) that will have a substantial, direct effect on the resources or rights of the Tribe(s). When assessing what is subject to consultation, the Agency shall take into account the cultural and traditional activities of the Tribe that may be affected by the proposed action.
3. "Federal action" means any Agency proposed action(s), activities, decision(s), legislation, regulation(s), plan(s), policy, procedure(s), program(s), project(s), service(s), or other Agency actions that will have a substantial, direct effect on federally recognized Tribes in Alaska.

4. “Agency” means the Department of the Interior-Alaska, its bureaus, offices, officials, and/or agents involved in the Federal action.

**Policy:**

Consistent with the national policy regarding Government-to-Government consultation and relationships with Tribes, the Agencies are committed to consulting as early in the Agency’s decision making process as practicable as permitted by law, with federally recognized Tribes in Alaska prior to taking action or undertaking activities that will have a substantial, direct effect on federally recognized Tribes, their assets, rights, services, or programs. Agency actions shall favor maximum participation of federally recognized Tribes in Alaska, with a goal of informed decision making through consultation and collaboration.

**RESPONSIBILITIES, PROCESS, AND PROCEDURES**

To ensure that the Agency’s processes and procedures in Alaska are generally uniform and consistent, while maintaining Agency flexibility, the following steps will be adhered to by the Agency when consulting with federally recognized Tribes:

1. Pre-decision Notification and Initiation of Consultation Tribes should be notified at the earliest practicable time to fully inform Tribes of proposed Agency actions that will have a substantial, direct effect on the Tribes. When circumstances permit, Tribes should be afforded reasonable time to respond to any notification. Consultation should be initiated as early in the decision making process as practicable. Consultation should continue throughout the Agency’s pre-decision making process, except where expressly prohibited by law. If the Agency determines that the Administrative Procedures Act or other Federal law(s) expressly prohibits continued consultation at a specified point in the decision making process, the Agency shall so inform the Tribe(s) at the outset of the consultation process, or as soon as possible after it becomes aware of the prohibition.
2. Information Dissemination At the outset of the consultation process, prior to the first consultation meeting, the Agency should provide the Tribe(s) being consulted with sufficient information about the proposed action(s) to ensure that the Tribe(s) can properly assess and respond to such action(s).
3. Identification of the Participants The Agency and the Tribe will identify their respective participants to be involved in the consultation process. The Agency should work with Tribes or designated representatives to identify any additional participants outside the Agency that should be involved in the consultation.
4. Communication The consultation should incorporate processes for ongoing communications between the parties that will be established by mutual agreement whenever possible.
5. Consultation Process The Agency shall, at the outset of the consultation, work with the affected Tribe(s) to develop a mutually agreed upon process for the consultation.
6. Post Consultation Process Tribes shall be notified of any final decisions on a proposed action in a reasonable time period, whenever possible, prior to the decision going into effect.

7. Tribal Request for Consultation The Agency shall notify all federally recognized Tribes in Alaska of where and to whom to send any initial unsolicited request for Government-to-Government consultation.
8. Interagency Cooperation The Agency shall work cooperatively, as appropriate, with other Federal and State agencies to accomplish the goals and responsibilities of this policy.
9. Removing Procedural Impediments The Agency shall strive to remove procedural impediments to working directly with Tribal governments in the areas contained in this section.

**General Provisions:**

1. This policy is intended to assure consistency within the different Agencies and to improve the internal management of the Agency and is not intended to create or diminish any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its Agencies or instrumentalities, its officers or employees or any other person.
2. This policy clarifies the Agency's position on Government-to-Government relations and consultation with federally recognized Tribes in Alaska. This policy is intended to supplement the requirements contained in the Executive Memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments and Executive Order No. 13175, Consultation and Coordination with Indian Tribal Governments. This document is not intended to supercede or replace any existing Agency policy affecting federally recognized Tribes in Alaska.
3. This policy shall be effective upon signature of the authorized representatives of the Agencies and the Special Assistant to the Secretary for Alaska.
4. Nothing in this Agreement is intended to expand, contract, or otherwise limit the sovereignty held by each Tribe.

Dated: January 18, 2001

\_\_\_\_\_  
Special Assistant to the Secretary for Alaska

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Regional Director  
Minerals Management Service

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Regional Director  
U.S. Fish and Wildlife Service

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Regional Director  
Bureau of Indian Affairs

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State Director  
Bureau of Land Management

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Regional Director  
Minerals Management Service



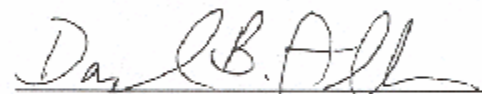
Regional Director  
Bureau of Indian Affairs



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National Park Service



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Regional Director  
U.S. Fish and Wildlife Service



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## RECOMMENDATIONS TO THE AGENCIES

In the working sessions and meetings conducted with representatives of federally recognized Tribes in Alaska, much concern was expressed over agency accountability for implementation of this policy. The agencies should consider taking the following steps to increase internal and external accountability:

- \* Develop an internal policy to provide on-going orientation for all employees, officers, and agents (who are involved with Agency activities that may uniquely or significantly affect federally recognized Tribes in Alaska) on Federal Trust responsibilities towards Tribes, legal authorities of Tribes, relevant case law and statutes, cross cultural communications and relations, executive orders, policies and procedures involving Tribes, and subsistence way of life.
- \* Review job descriptions of agency personnel who may or will have contact, or involvement with, Federally Recognized Tribes in Alaska for possible modifications of the job descriptions to include specific duties and responsibilities with respect to Federally Recognized Tribes. This may include such personnel as refuge managers, park supervisors, etc.
- \* Develop internal processes to annually evaluate the Agency's consultation efforts and develop strategies for improvement.
- \* In addition to any formalized process, continue to seek input and guidance from Tribes or their representatives and consortia on an ad hoc basis to improve the Agency's performance under this policy.
- \* Agencies are encouraged to work with the Tribes to define "substantial, direct effect" as it is referred to in the Policy document.
- \* Agencies are encouraged to identify key contact personnel to within their Agency responsible for Government-to-Government consultation and distribute the names and contact information to all federally recognized Tribes in Alaska.
- \* Agencies are encouraged to assign the same key contact personnel throughout the year or as long as possible to ensure consistency.