

**MEMORANDUM OF AGREEMENT
FOR
NEGOTIATION OF MARINE MAMMAL
PROTECTION ACT
SECTION 119 AGREEMENTS**

between

**U.S. Department of Commerce
National Marine Fisheries Service**

**U.S. Department of Interior
Fish and Wildlife Service**

**Biological Resources Division
Geological Survey, Alaska Science Center**

and

**Indigenous People's Council for Marine
Mammals**

August, 1997

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Indigenous People's Council for Marine Mammals

I. PURPOSES: The purposes of this Memorandum of Agreement are to:

A. Provide a foundation and direction for developing agreements as provided under Section 119 of the Marine Mammal Protection Act (MMPA) between Alaska Native Organizations, including but not limited to Alaska Native Tribes and tribally authorized co-management bodies, Fish and Wildlife Service (FWS), U.S. Geological Survey, and/or National Marine Fisheries Service (NMFS). This Agreement is not intended to limit in any way Tribal governments, Tribal organizations, or Alaska Native Organizations including but not limited to Alaska Native Tribes and tribally authorized co-management bodies, from negotiating individual and specific details of their own agreements to conserve marine mammals and provide co-management of subsistence use.

B. Promote the sustained health of marine mammal species.

C. Provide a mechanism for the dispersal of funds to support efforts for the co-management of subsistence use of marine mammals in Alaska.

D. The scope of this Agreement, as it pertains to Federal management and research activities of marine mammals in Alaska, is limited to only those activities that are specified in an individual agreement under Section 119.

II. GUIDING PRINCIPLES:

A. Alaska Natives have a long history of self-regulation, based on their need to ensure a sustainable take of marine mammals for food and handicrafts. The best way to conserve marine mammal populations in Alaska is to provide full and equal participation by Alaska Natives in decisions affecting the subsistence management of marine mammals, to the maximum extent allowed by law.

B. Under Section 119 agreements, stocks should not be permitted to diminish beyond the point at which they cease to fulfill their role in their ecosystem or to levels that do not allow maximum sustainable subsistence harvests.

C. Except as governed by the provisions of Section 101(b) of the MMPA and implementing regulations and as may be allowed in any individual agreements, subsistence harvest of marine mammals under Section 101(b) of the MMPA shall not be affected.

D. Individual agreements shall incorporate the spirit and intent of co-management through close cooperation and communication between Federal agencies and the Alaska Native Organizations, including but not limited to Alaska Native Tribes and tribally authorized co-management bodies, and hunters and subsistence users.

E. It is the intent of the Parties that Section 119 Agreements be entered into only with Alaska Native Organizations, including but not limited to Alaska Native Tribes and tribally authorized co-management bodies.

F. Nothing in this Agreement is intended or shall be construed to authorize any expansion or change in the respective jurisdiction of Federal, State, or Tribal governments over fish and wildlife resources, or alter in any respect the existing political or legal status of Alaska Natives, or the governmental or jurisdictional status of Alaska Native communities or Alaska Native entities.

G. The best available scientific information, and traditional and contemporary Alaska Native knowledge and wisdom (TKW), will be used for all decisions regarding Alaska marine mammal co-management. Existing ethical principles for the conduct of research shall be applied.

H. The goal of shared decision-making for individual agreements shall be through consensus, based on mutual respect. Opportunity will be provided for all issues of concern to be heard. Any decision-making structures created as a result of this agreement for co-management shall have an equal representation of Alaska Native/Federal agency representatives unless otherwise mutually agreed upon by the Parties.

I. The Parties shall encourage the exchange of information between Alaska Native Organizations, including but not limited to Alaska Native Tribes and tribally authorized co-management bodies, and the U.S. Government, as well as with other nations, regarding the conservation, management, and utilization of marine mammals where the activities and initiatives of other nations may affect the sound conservation of marine mammals in U.S. waters in and off Alaska.

III. PROVISIONS FOR IMPLEMENTATION OF SECTION 119: (MMPA Section 119 is attached as Appendix A.)

A Upon signature, the Parties shall each designate an individual and an alternate, with contact information for the respective organization, who will serve as the principal contact and liaison for implementation of this Agreement and individual agreements.

B There shall be held on a regular basis a jointly-developed statewide summit for the specific purposes of:

1. Reviewing and assessing progress toward implementation of agreements to conserve marine mammals and provide co-management of subsistence use;
2. identifying challenges to achieving the goals of such agreements;
3. recommending solutions to any identified challenges; and
4. identifying future courses of action.

C This Agreement shall be reviewed and, if agreed necessary by the Parties, updated within one year of the reauthorization of the MMPA.

D Amendments may be made to this Agreement upon mutual consent.

IV. SCOPE FOR INDIVIDUAL AGREEMENTS:

A. Individual agreements should, at a minimum:

1. Identify the Parties to the agreement.
2. Identify the subject or topic of the agreement (e.g., species, stocks).
3. Define the geographic area to be covered.
4. Define the term or time frame of agreement.
5. Identify proposed actions (see topics under IV.B.).
6. Provide justification for actions (see topics under IV.B).
7. Define performance requirements.
8. Define the mechanism which will be used for review and oversight.

B. Individual agreements may consider, but are not limited to, the following:

1. Collecting and analyzing population data.

2. Developing infrastructure.

- a. personnel costs
- b. travel costs
- c. operational costs
- d. other costs deemed appropriate by the Parties.

3. Enforcement. Effective enforcement of the MMPA and provisions of individual agreements to conserve marine mammals and provide co-management of subsistence use requires cooperation between local Native communities and Federal agencies. Participation by Alaska Native Organizations including but not limited to Alaska Native Tribes and tribally authorized co-management bodies in joint activities with Federal agency personnel to ensure compliance should be developed to the maximum extent possible.

4. Harvest practices

- a. guidelines for setting harvest levels
- b. managing efficiency of take
- c. monitoring and reporting

5. Information and education activities

6. Management Plans

7. Research. Understanding of marine mammals requires incorporation of scientific knowledge and TKW. The gathering of scientific knowledge requires cooperation and should be conducted using existing ethical principles.

8. Training

- a. cross-cultural
- b. technical (e.g., Potential Biological Removal workshop)

V. SECTION 119 FUNDING:

A. All Parties agree that long-term funding for sustained co-management programs is important for the health of the resource. Consistent with the provisions of the MMPA, as amended, Federal agencies will implement this paragraph through the regular agency budget process. No financial commitment on the part of any party is required by this Agreement. Funding for individual agreements will be obligated under agreements executed under section 119 of the Marine Mammal Protection Act. Any requirement of this Agreement for the obligation or expenditure of funds by the Federal agency parties, or for the use of staff or agency resources that are provided by specific appropriations, shall be subject to the availability of appropriated funds.

B. The Parties shall establish two panels, one to address issues concerning marine mammals under the jurisdiction of the Department of the Interior and another to deal with marine mammals under the jurisdiction of the Department of Commerce. Each panel will be comprised of Alaska Native tribal government officials representing their governments and Alaska Native Organizations, and officials representing the applicable Federal agency. Each panel will confer to:

1. Develop a protocol and timetable for the application, review, and awarding of Section 119 funds;
2. Establish co-management priorities;
3. Establish criteria to evaluate proposals; and
4. Evaluate the proposals for funding.

VI. CONFLICT/DISPUTE RESOLUTION:

All conflicts and/or disagreements shall be resolved in a timely fashion through peaceful means, reasonably, honorably, and in good faith, by the signatories of this Agreement.

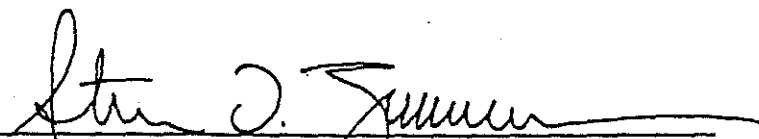
VII. TERMINATION OF AGREEMENT:

A. This Agreement may be terminated by any Party within 45 days of receipt of a written Notice of Termination by the Parties receiving notice. Such notice shall be addressed to the principal contact for the receiving party.

B. Individual agreements between Alaska Native Organizations, including but not limited to Alaska Native Tribes and tribally authorized co-management bodies, and the Federal agency(ies) developed under the provisions of this Agreement shall remain in force until terminated according to provisions in such agreements.

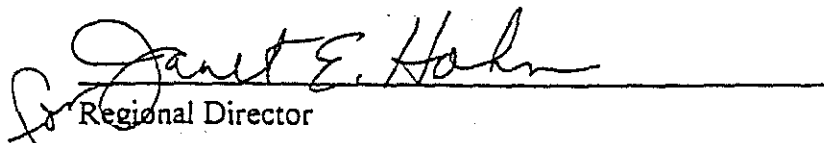
VIII. SIGNATORIES:

In Witness Whereof, the Parties hereto have executed this Agreement as of the last written date below:

for: 

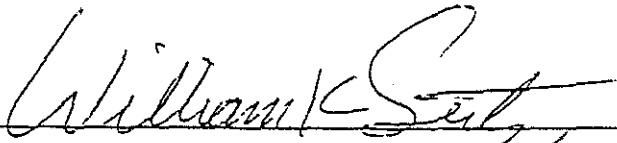
Regional Administrator
National Marine Fisheries Service
U.S. Department of Commerce
Juneau, Alaska

AUGUST 27, 1997
Date



Regional Director
Fish and Wildlife Service
U.S. Department of Interior
Anchorage, Alaska

August 27, 1997
Date



Alaska Science Center Director
Biological Resources Division
Geological Survey
U.S. Department of Interior
Anchorage, Alaska

8/27/97

Date



Ataneq
Indigenous People's Council for Marine Mammals
Anchorage, Alaska

8/27/97

Date

Attachments:

- Appendix A: MMPA Section 119
- Appendix B: The White House Executive Order of April 29, 1994
- Appendix C: The Native American Policy of the U.S. Fish and Wildlife Service
- Appendix D: The Native American Policy of the Department of Commerce.

Marine Mammal Cooperative Agreements in Alaska⁹¹

16 U.S.C. 1388

Sec. 119. (a) IN GENERAL. — The Secretary may enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.

(b) GRANTS. — Agreements entered into under this section may include grants to Alaska Native organizations for, among other purposes—

(1) collecting and analyzing data on marine mammal populations;

(2) monitoring the harvest of marine mammals for subsistence use;

(3) participating in marine mammal research conducted by the Federal Government, States, academic institutions, and private organizations; and

(4) developing marine mammal co-management structures with Federal and State agencies.

(c) EFFECT OF JURISDICTION. — Nothing in this section is intended or shall be construed—

(1) as authorizing any expansion or change in the respective jurisdiction of Federal, State, or tribal governments over fish and wildlife resources; or

(2) as altering in any respect the existing political or legal status of Alaska Natives, or the governmental or jurisdictional status of Alaska Native communities or Alaska Native entities.

(d) AUTHORIZATION OF APPROPRIATIONS. — There are authorized to be appropriated for the purposes of carrying out this section—

(1) \$1,500,000 to the Secretary of Commerce for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999; and

(2) \$1,000,000 to the Secretary of the Interior for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999. The amounts authorized to be appropriated under this subsection are in addition to the amounts authorized to be appropriated under section 116.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release April 29, 1994

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-to-Government Relations with Native American Tribal Governments

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally-recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally-recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

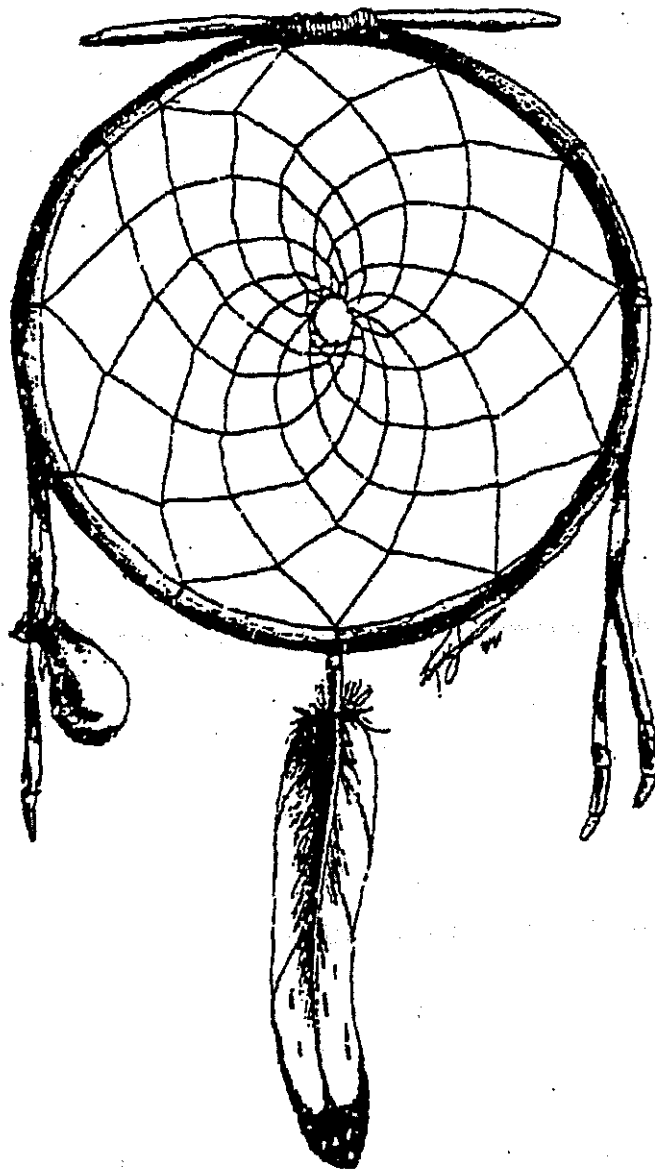
(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

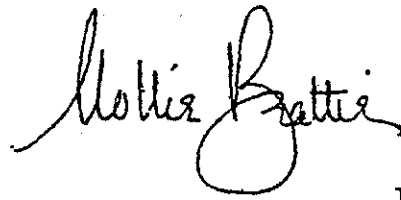
THE NATIVE AMERICAN POLICY

of the U.S. Fish and Wildlife Service



FROM THE DIRECTOR

Just as the "Dreamcatcher" catches the good dreams and allows the bad dreams to pass through the net, the Native American Policy of the Fish and Wildlife Service that follows is intended to capture only good government-to government relationships. As our relationship with the Native American people continues to evolve, we will continue to capture the good visions and add them to this Policy.



June 28, 1994

Cover: The "Dreamcatcher"—During sleep is often when the most powerful visions occur. A dream catcher should be hung freely in the air above the head of the dreamer. Good dreams become caught in the net and directed back to the dreamer by way of the feather. Bad dreams go through the hole and beyond.

Cover Art: is a pen and ink drawing by Keith C. Smith of a dreamcatcher created by Ken Poynter. Keith, a graduate of the University of Colorado is Navajo and is currently employed by the University of Colorado—Boulder. Ken, a Passamaquody, is currently the Executive Director of the Native American Fish and Wildlife Society.

INTRODUCTION

The U.S. Fish and Wildlife Service (Service), to accomplish its objectives with greater effectiveness, is seeking partnerships with Native American governments, foreign nations, States, other governmental agencies, conservation groups, and individual citizens. Such partnerships will provide opportunities to better address ecological systems as a whole and do so with maximum assistance and support.

The express purpose of this Native American Policy (Policy) is to articulate the general principles that will guide the Service's government-to-government relationship to Native American governments in the conservation of fish and wildlife resources. The Service envisions developing other Native American policy statements on more specific topics.

The Service has developed and adopted this Policy to help accomplish its mission and concurrently to participate in fulfilling the Federal Government's and the Department of the Interior's trust responsibilities to assist Native Americans in protecting, conserving, and utilizing their reserved, treaty guaranteed, or statutorily identified trust assets. This Policy is consistent with Federal policy supporting Native American government self-determination.

The Service has a long history of working with Native American governments in managing fish and wildlife resources. These relationships will be expanded, within the Service's available resources, by improving communication and cooperation, providing fish and wildlife management expertise, training and assistance, and respecting and utilizing the traditional knowledge, experience, and perspectives of Native Americans in managing fish and wildlife resources.

This Policy is intended to be flexible and dynamic to provide for evolution of the partnerships between the Service and Native American governments. Working relationships between the Service and Native American governments will be generally consistent nationwide, however, they will vary according to the legal basis and management requirements of each relationship. For example, the Service's interaction with Alaska Natives is largely directed by the provisions of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act. Outside of Alaska, the Service's involvement with Native Americans is guided primarily by reserved right doctrines, Executive Orders, judicial mandates, and specific treaties between the Federal Government and Native American governments. This Policy applies to all Service employees in discharging official duties that affect Native American governmental interests.

POLICY PRINCIPLES

The following policy statements provide the framework within which the Service will cooperate with Native American governments to conserve fish and wildlife resources.

I. SOVEREIGNTY

Native American governments are recognized as governmental sovereigns and have been referred to as quasi-sovereign domestic dependent nations by the courts. The Service recognizes the sovereign status of Native American Governments.

II. CONSERVATION

While the major components of this Policy are aimed at cultivating and maintaining effective partnerships between the Service and Native American governments, the ultimate goal is to effect long-term conservation of fish and wildlife resources. This goal is eloquently expressed in the following statement:

"We did not inherit this Earth or its natural resources from our ancestors, we are only borrowing them from our childrens' children and their children. Therefore, we are duty-bound and obligated to protect them and use them wisely until such time that they get here, and then they will have the same obligations."

Anonymous

III. GOVERNMENT TO GOVERNMENT RELATIONS

General Statement

There is a unique and distinctive political relationship between the United States and Native American governments, as defined by treaties, statutes, court decisions and the United States Constitution, that differentiates Native American governments from other interests and constituencies, and that extends to all Federal agencies. The Service will maintain government-to-government relationships with Native American governments. The Service will work directly with Native American governments and observe legislative mandates, trust responsibilities, and respect Native American cultural values when planning and implementing programs. Successful implementation of this Policy will be accomplished through working relationships and mutual partnerships with Native American governments. The Service will rely on Native American governments to identify formal and informal contacts to represent them when coordinating with the Service. Working relationships, in many cases, will be with Native American fish and wildlife departments. For major joint initiatives, the Service will offer to enter into formal agreements, developed by both parties, that clearly identify the roles, responsibilities, and obligations of the Service and each involved Native American government.

V. COMMUNICATION

Consultation

The Service will consult with Native American governments on fish and wildlife resource matters of mutual interest and concern to the extent allowed by law. The goal is to keep Native American governments involved in such matters from initiation to completion of related Service activities.

Communication with other Agencies

Upon the request of a tribe, the Service will encourage and facilitate communication and cooperation among Native American governments, States, Federal agencies and others to identify and delineate respective roles and responsibilities and to ensure that issues of common interest and concern are discussed. This may include such activities as taking the initiative to provide the biological or managerial expertise necessary for resolution of conflicts about fish and wildlife resource issues.

VI. FUNDING

Funding Sources

The Service will assist Native American governments in identifying Federal and non-Federal funding sources that are available to them for fish and wildlife resource management activities.

VII. CULTURE/RELIGION

Consultation

The Service will involve Native American governments in all Service actions that may affect their cultural or religious interests, including archaeological sites. The Service will be guided in this respect by such legislation as the American Indian Religious Freedom Act, the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the Archaeological Resources Protection Act. The Service will take appropriate precautions to ensure that locations of protected sites remain confidential.

Reasonable Access

The Service will provide Native Americans reasonable access to Service managed or controlled lands and waters for exercising ceremonial, medicinal, and traditional activities recognized by the Service and by Native American governments. The Service will permit these uses if the activities are consistent with treaties, judicial mandates, or Federal and tribal law and are compatible with the purposes for which the lands are managed.

Animal Parts

The Service will expedite processing and distributing certain animal parts, such as eagle feathers, for recognized religious, ceremonial, and cultural purposes in accordance with Federal laws. Timeliness of processing and distributing animal parts will be contingent upon animal part availability and on the needs of the Service to conduct required scientific and law enforcement investigations. The Service will strive to ensure the dignity of its custodial process in recognition of the solemn nature of Native American uses of such animal parts.

X. TRAINING AND EDUCATION

Cultural Awareness Training

The Service will work with Native American governments to help Service employees improve their understanding of Native American traditional, cultural, and religious values and practices, natural resource values, treaty and other Federally reserved rights, and appropriate law enforcement policy issues.

Native American Access to Service Training

The Service will provide Native American governments the same access to fish and wildlife resource training programs as provided to other government agencies.

Law Enforcement Training

The Service, as resources permit, will make its law enforcement expertise and capabilities available to Native American governments. The Service will provide guidance and assistance in developing, maintaining, or improving Native American fish and wildlife law enforcement programs. The Service's basic and refresher fish and wildlife law enforcement training courses that are provided to other governmental agencies will also be available to Native Americans.

Professional Development

The Service will facilitate the education and development of Native American fish and wildlife professionals by providing innovative educational programs and on-the-job training opportunities. The Service will establish partnerships and cooperative relationships with Native American educational institutions to assist in such areas as developing natural resources curricula or implementing cooperative education programs. The Service will also ensure that Native American schools and children are included in its environmental education outreach programs.

Work Force Diversification

The Service will develop active, innovative, and aggressive recruitment programs to attract qualified personnel to the Service so that its workforce can be representative of the cultural diversity of the nation. Qualified Native Americans will be actively encouraged to apply for jobs with the Service. These recruitment efforts will be focused especially where the Service is involved in managing fish and wildlife resources for which Native Americans have management authority or where they have cultural or religious interests.

Education of the General Public

The Service will work with Native American governments to inform and educate the public about Native American treaty and Federally reserved rights, laws, regulations, and programs, and programs related to fish and wildlife.

Trust Responsibility—The fiduciary obligations that attach to the United States as trustee of the assets and resources that the United States holds in trust for Native American governments and their members, the treaty and statutory obligations of the United States toward Native American governments and their members, and other legal obligations that attach to the United States by virtue of the special relationship between the Federal Government and Native American governments. The identification and quantification of trust assets is recognized as an ongoing and evolving process.

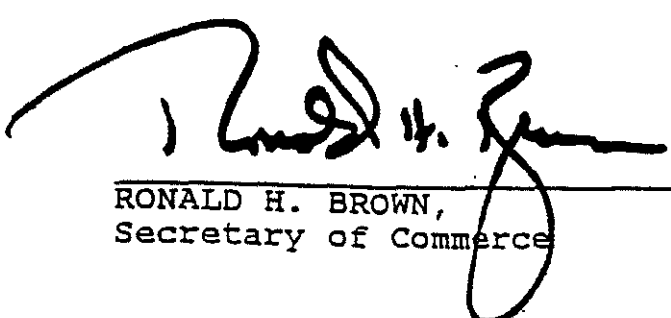
AMERICAN INDIAN AND ALASKA NATIVE POLICY
OF THE
U.S. DEPARTMENT OF COMMERCE

"All men were made by the Great Spirit Chief. They are all brothers. The earth is the mother of all people, and all people should have equal rights upon it....Let me be a free man-free to travel, free to stop, free to work, free to trade, where I choose, free to choose my own teachers, free to follow the religion of my fathers, free to think and talk and act for myself and I will obey every law, or submit to the penalty."

Chief Joseph, Nez Perce Nation

From the Secretary of Commerce:

In the great mosaic of our country, we all know it takes work, cooperation, and knowledge to make our dreams reality. This policy offers cooperation, access to information, which is knowledge, and my pledge to create an environment that will foster dreams, free will, and productivity. It is time for our nations to realize that we are interdependent. With that wisdom, we must work together to build a strong future for all of us.



RONALD H. BROWN,
Secretary of Commerce

Date: March 30, 1955

AMERICAN INDIAN AND ALASKA NATIVE POLICY
of the
U.S. DEPARTMENT OF COMMERCE

INTRODUCTION

In recognition of the unique status of American Indian and Alaska Native tribal governments, the Department of Commerce hereby proclaims its American Indian and Alaska Native Policy. This policy outlines the principles to be followed in all Department of Commerce interactions with American Indian and Alaska Native tribal governments. This policy is based on the United States Constitution, Federal treaties, policy, law, court decisions, and the ongoing political relationship among the tribes and the Federal government.

Acknowledging the government wide fiduciary obligations to American Indian and Alaska Native tribes but also supporting tribal autonomy, the Department of Commerce espouses a government-to-government relationship between the Federal government and American Indian and Alaska Native tribes.

This policy pertains to Federally recognized tribes and provides guidance to Commerce personnel for issues affecting American Indians and Alaska Natives. This policy does not apply to Commerce interactions with state recognized tribes, Indians, or Alaska Natives who are not members of tribes with respect to matters provided for by statute or regulation.

This policy is for internal management only and shall not be construed to grant or vest any right to any party in respect to any federal action not otherwise granted or vested by existing law or regulations.

DEFINITIONS

Indian tribe (or tribe). Any Indian tribe, band, nation, Pueblo, or other organized group or community, including any Alaska Native village (as defined in, or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is acknowledged by the Federal government to constitute a tribe with a government-to-government relationship with the United States and eligible for the programs, services, and other relationships established by the United States for Indians because of their status as Indians and tribes.

Tribal government. The recognized government of an Indian tribe and any affiliated or component Band government of such tribe that has been determined eligible for specific services by Congress or officially recognized by inclusion in 25 CFR part 83, "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs," as printed in the Federal Register.

POLICY PRINCIPLES

The following policy statements provide general guidance to U.S. Department of Commerce employees for actions dealing with American Indian and Alaska Native governments.

1. THE DEPARTMENT RECOGNIZES AND COMMITS TO A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH AMERICAN INDIAN AND ALASKA NATIVE TRIBAL GOVERNMENTS.

Commerce recognizes that the tribal right of self-government flows from the inherent sovereignty of tribes and nations and that Federally recognized tribes have a unique and direct relationship with the Federal government. Commerce further recognizes the rights of each tribal government to set its own priorities and goals for the welfare of its membership and that Commerce will deal with each tribal government, when appropriate, to meet that tribe's needs.

2. THE DEPARTMENT ACKNOWLEDGES THE POLICY COMMITMENTS OF THE U.S. CONGRESS AND THE CHIEF EXECUTIVE AS PRECEDENCE.

Commerce recognizes the U.S. Congress passed House Concurrent Resolution #331, in 1988, declaring the Policy "To Acknowledge the Contribution of the Iroquois Confederacy of Nations to Reaffirm the Continuing Government-to-Government Relationship between Indian Tribes and the United States Established in the Constitution." And, additionally, incorporates the Policy Memorandum of the White House, issued April 29, herein, as so much guides the Executive Departments and Agencies in the "Government-to-Government relations with Native American tribal Governments."

3. THE DEPARTMENT ACKNOWLEDGES THE TRUST RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND AMERICAN INDIAN AND ALASKA NATIVE TRIBES AS ESTABLISHED BY SPECIFIC STATUTES, TREATIES, COURT DECISIONS, EXECUTIVE ORDERS, REGULATIONS, AND POLICIES.

Commerce, in keeping with the fiduciary relationship, recognizes its trust responsibility and will consult and work with tribal governments prior to implementing any action when developing legislation, regulations, and/or policies that will affect tribal governments; their development efforts, and their lands and resources.

4. THE DEPARTMENT ACKNOWLEDGES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION IS ALSO KNOWN AS THE "INDIAN COMMERCE CLAUSE."

Commerce recognizes the "Commerce Clause" of the United States Constitution (Article I, Section 8, Clause 3) is also known as the "Indian Commerce Clause" and states: "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;". Commerce

understands that trade and commerce were the original building blocks that established government-to-government relationships with the Indian Tribes. Commerce pledges to honor the constitutional protections secured to Indian Commerce.

5. THE DEPARTMENT WILL CONSULT AND WORK WITH TRIBAL GOVERNMENTS BEFORE MAKING DECISIONS OR IMPLEMENTING POLICY, RULES OR PROGRAMS THAT MAY AFFECT TRIBES TO ENSURE THAT TRIBAL RIGHTS AND CONCERNS ARE ADDRESSED.

Commerce recognizes that as a sovereign government, the tribe is responsible for the welfare and rights of its membership and has the right to regulate commerce within its tribal boundaries. Therefore, Commerce will involve tribes and seek tribal input at the appropriate level on policies, rules, programs, and issues that may affect a tribe.

6. THE DEPARTMENT WILL IDENTIFY AND TAKE APPROPRIATE STEPS TO REMOVE ANY IMPEDIMENTS TO WORKING DIRECTLY AND EFFECTIVELY WITH TRIBAL GOVERNMENTS.

Commerce recognizes there may be legal, procedural, organizational, and other impediments that affect its working relationship with tribes. Commerce will apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") and the "Regulatory Flexibility Act" to design solutions and tailor Federal programs, when appropriate, to address specific or unique needs of tribal communities. Commerce will use the National Performance Review and government reorganization to implement effective means for direct cooperation with tribal governments.

7. THE DEPARTMENT WILL WORK COOPERATIVELY WITH OTHER FEDERAL DEPARTMENTS AND AGENCIES, WHERE APPROPRIATE, TO FURTHER THE GOALS OF THIS POLICY.

Commerce recognizes the importance of interagency cooperation. Therefore, Commerce will encourage and strive for communication, coordination, and cooperation among all governmental agencies to ensure that the rights of tribal governments are fully recognized and upheld.

8. THE DEPARTMENT WILL WORK WITH TRIBES TO ACHIEVE THEIR GOAL OF ECONOMIC SELF-SUFFICIENCY.

Commerce recognizes the importance of economic independence to tribal self-determination and tribal self-sufficiency and pledges to assist tribes with developing strong and stable economies to participate in today's national and global marketplace. Therefore, Commerce will make every effort to ensure that eligible tribes have access to Commerce programs that will help them meet their economic goals.

9. THE DEPARTMENT WILL INTERNALIZE THIS POLICY TO THE EXTENT THAT IT WILL BE INCORPORATED INTO ONGOING AND LONG-TERM PLANNING AND MANAGEMENT PROCESSES, AS WELL AS DAY-TO-DAY OPERATIONS.

Commerce recognizes that policies are not relevant or successful unless they are acted upon and properly implemented. Commerce will effectively and fully incorporate all of the principles of this policy into all operations and basic tenets of its mission. Commerce will identify the office or individual to coordinate this policy and act as liaison with American Indian and Alaska Native tribes in implementing and working with the policy and principles.

10. THE EFFECTIVE DATE OF THIS DEPARTMENTAL POLICY IS UPON SIGNING BY THE DEPARTMENT OF COMMERCE AFTER CONSULTATION WITH TRIBAL GOVERNMENTS.

Therefore, the Secretary of the Department of Commerce hereby directs all Commerce agencies, bureaus, and their components to implement this policy by incorporating all the above principles in their planning and management activities, their legislative and regulatory initiatives, as well as their policy development.