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Date: 22-Nov-19 8:44:00 AM

Subject: Fwd: West Coast Ocean Alliance: Draft Tribal Consultation Guidance Document for Review

Attachments: WCOA Updated Timeline as of Oct. 10 2019.docx
Tribal Consultation Guidance_WCOA Review Draft.pdf

Good morning WCOA Executive Committee,

A friendly reminder about our call this morning at 9am (Pacific) to discuss the draft Tribal Consultation Guidance document that was distributed last week; see the document and associated info below.

For those unable to make the call, we'll do our best to provide a recap of what's discussed on the call, and summarize next steps planned for before/during our meeting in Tacoma.

Thanks!

WCOA ExComm: Tribal Consultation Guidance Doc Review

Fri Nov 22 @ 9am

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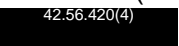
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----- Forwarded message -----

From: **John Hansen** <john@westcoastcoceanalliance.org>

Date: Fri, Nov 15, 2019 at 2:00 PM

Subject: West Coast Ocean Alliance: Draft Tribal Consultation Guidance Document for Review

To: John Hansen <john@westcoastcoceanalliance.org>

Cc: Katie Wrubel <katie.wrubel@makah.com>, Dana Goodson <goodson@udall.gov>, Stephanie Lucero <lucero@udall.gov>

Dear WCOA members,

On behalf of our West Coast Tribal Caucus and Udall Foundation, please see the following:

As you may know, since the spring, a working group of the Tribal Caucus has been developing a draft of a Tribal consultation guidance document intended for agencies who are working with West Coast Tribes on marine/coastal issues.

The working draft is attached for your review. Please note that Tribal Caucus members have already had two rounds of review on this document and their edits have been incorporated; some pieces that are still in development are highlighted. There will be an opportunity to discuss this document during the Tribal engagement training on Thursday (Dec 5) of the upcoming WCOA meeting in Tacoma, WA.

At this point, the Tribal Guidance Working Group is not seeking major content edits. They are inviting you to provide framing considerations, incorporate brief additions to facilitate understanding and implementation, share challenges for implementation, and identify any major content gaps needed to improve understanding and implementation.

The Working Group will focus on the following discussion questions with the WCOA:

1. *\pn\pnlvlbody\pndec\pnstart1\pnindent360\pnql\pntxta.How can this document be implemented throughout agencies, beyond the staff that are already working closely with WCOA Tribes?
2. *\pn\pnlvlbody\pndec\pnstart2\pnindent360\pnql\pntxta.How can this tool better facilitate understanding of Tribal Governments' expectations relating to government-to-government consultation?
3. \sa0*\pn\pnlvlbody\pndec\pnstart3\pnindent360\pnql\pntxta.Do you have examples of effective Tribal consultation or lessons learned to highlight or integrate?

After gathering input during the WCOA meeting, the Working Group will revise and finalize the document, which will then be submitted to the leadership of Tribal Caucus members to request their review and approval.

In addition to the draft document, the Working Group's timeline is attached for your reference. If you have any comments you would like to share with the Working Group ahead of the meeting, please send them to Dana Goodson (goodson@udall.gov) and Stephanie Lucero (lucero@udall.gov).

With thanks,

West Coast Tribal Caucus, Udall Foundation & WCOA staff

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Proposed Revised Timeline
(as of October 10, 2019)

Timeline

The working group will hold approximately eight calls between April and December 2019. Some members may also attend the BC Tribal Exchange Summit. A proposed schedule for the calls/meetings is as follows:

- **Call #1 – April 4, 2019 (*completed*):** Review, revise, approve WG charge and timeline; review and comment on consultation guidance summary; identify documents sections and principles to include in guidance document
- **Call #2 – May 2019 (*completed*):** Review and revise report outline; continue identifying principles and questions on implementation for discussion with agencies
- **Call #3 – June 2019 (*completed*):** Check in on draft assignments; discuss definitions of consultation & TK.
- **Call #4 – July 2019 (*completed*):** Review and comment on first draft of guidance document
- **Call #5 – Tuesday, August 27, 9:00 am Pacific (*completed*):** To review and finalize draft before sending it to the Tribal Caucus for first review.
- **September 5, 2019:** Distribute draft to Tribal Caucus for initial review, request comments.
- **September 26, 2019:** Deadline for Tribal Caucus comments
- **BC Tribal Exchange Summit – Sept 30 – Oct 4** (not an official WG meeting): Hold session on consultation guidance and gather input for consideration in document development and share with full working group
- **Call #6 – week of October 7, 2019:** Incorporate comments from Tribal Caucus and BC Tribal Exchange and revise draft to share with Tribal Caucus for tribal council/leadership review and approval; review draft cover letter for dissemination to tribal leadership; develop questions for WCOA Executive Committee input
- **Call # 7 – October 15, 2019:** Continue incorporating comments from Tribal Caucus and BC Tribal Exchange and revise draft to share with Tribal Caucus for tribal council/leadership review and approval; Finalize cover letter for dissemination to tribal leadership; develop questions for WCOA Executive Committee input. Confirm process for formal approval of Guidance document
- **October 18, 2019 – Disseminate Draft for Approval to Share with WCOA EC:** Share revised guidance document with Tribal Caucus for tribal council/leadership review and approval
- **November 8, 2019:** Deadline for Tribal Caucus tribal council/leadership input and approvals
- **Call #8 – week of November 11, 2019:** Call to review and respond to tribal council/leadership input; review and comment on draft agenda for December workshop
- **November 15, 2019:** Share draft with full WCOA
- **Between November 22 and 26, 2019 – EC Call:** Schedule call with WCOA Executive Committee to present draft and request input; capture their input for discussion at Tribal Caucus workshop
- **November 22, 2019:** Share workshop agenda and near-final draft with Tribal Caucus
- **December 2-6, 2019 – WCOA Fall Meeting:** Workshop near-final draft with Tribal Caucus and discuss WCOA EC input; present draft document to WCOA and discuss input on implementation, ideas for dissemination strategy
- **Call #9 – December 2019:** Incorporate comments from workshop into draft; discuss and finalize (as feasible) proposed dissemination strategy; if possible, approve final draft for submittal to West Coast Tribal Caucus

The working group will sunset when the dissemination strategy is completed and the final guidance document is approved by the West Coast Tribal Caucus.

WCOA Tribal Caucus

Guidance and Responsibilities for Effective Tribal Consultation, Communication, and Engagement

A Guide for Agencies Working with West Coast Tribes on Ocean & Coastal Issues

I. Executive Summary

In 2019, the Tribal Caucus of the West Coast Ocean Alliance (WCOA) developed this document to serve as a guide to federal and state agencies seeking to engage with Tribal Governments on ocean and coastal issues on the West Coast. It is intended to complement individual Tribes' consultation policies by providing background, context, best practices, and resources for working with Tribal Governments. When working with Tribes in any context, it is essential that agencies build relationships with their Tribal counterparts and learn about the policies and protocols of specific Tribal Governments; this guidance document cannot substitute for the knowledge and connections gained from such efforts.

To appropriately engage with Tribal Governments, it is of paramount importance to understand that the relationship between Tribal Governments and the U.S. federal government (and sometimes Tribal Governments and states) is a **government-to-government relationship (G2G)** between sovereigns, based on Tribes' inherent sovereignty and federal and international law. The G2G relationship is the foundation for the process of Tribal consultation. Recognizing that Tribes may have differing interpretations of consultation, for the purposes of this document, **Tribal consultation** is defined as the overall process of sharing information, coordination, engagement, and dialogue that occurs between Tribal Governments and governmental or administrative entities within the United States. Tribal consultation occurs before an agency commits itself to a path of action that will affect Tribal rights, lands, resources, governance, or interests. Consultation is a process that ultimately leads to the development of a decision. **Government-to-government consultation** is a formal component of the overall Tribal consultation process that engages Tribal leaders and incorporates their input into decisions. G2G consultation is herein defined as a stage in the larger process of Tribal consultation in order to emphasize that the full process, which may involve a series of interim meetings and steps with various Tribal counterparts, is necessary for the consultation to be meaningful and productive.

In light of Tribes' inherent sovereignty, federal - and some state - government agencies have a legal and moral obligation to consult with Tribal Governments when their rights, lands, resources, governance, or interests may be affected. This obligation is founded in the G2G relationship and articulated over a long history that includes the establishment of the federal trust responsibility to Tribes, treaty rights, executive orders, and case law. For state and federal agencies, engaging with Tribal Governments through Tribal consultation is an opportunity to honor that responsibility and build relationships based on mutual respect and understanding.

Furthermore, from the agency perspective, involving Tribal Governments in project decision-making early and in a respectful, meaningful, and appropriate manner can lead to benefits such as improved relationships, better public perception, reduced overall projects costs, and time saved.

To serve as a guide to agencies, this document lays out some of the key elements of a meaningful Tribal consultation process. These include:

- Engaging in **early and frequent communication** with Tribal Governments
- Adopting a **consensus-seeking approach** to Tribal consultation
- Having a **shared understanding of the overall Tribal consultation process** and the current stage of discussions
- Ensuring the **presence of appropriate representatives** for a given stage of the process
- Ensuring a **transparent and accountable process** that provides clarity on agency decision-making processes and the potential for Tribal Governments to affect the final decision

The document further articulates a set of principles and best practices in Tribal consultation. When engaging with Tribal Governments, it is recommended that agencies:

- determine the “potentially affected” Tribal Governments with whom to consult;
- engage in early and frequent communication with Tribal Governments when an action arises that may affect Tribal rights, lands, resources, governance, or interests;
- understand Tribal roles and appropriate Tribal and agency representation for each stage of the process;
- understand and respect Tribal decision-making processes;
- share sufficient information in a timely manner;
- engage in mutual decision-making;
- demonstrate accountability and a commitment to the G2G relationship;
- take ownership of the agency responsibility to keep staff trained and informed on Tribal consultation processes as well as the history and status of relationships and ongoing processes with individual Tribal Governments;
- determine appropriate roles for other entities such applicants and local governments in the consultation process by discussing their potential involvement with Tribal Governments;
- incorporating traditional ecological knowledge (TEK) into decision-making processes; and
- ensuring appropriate data management and maintaining confidentiality.

Finally, **some case studies** that demonstrate effective Tribal communication and collaboration in support of the G2G relationship are provided, with the goal of exploring some lessons learned from those experiences. In sharing these example cases, the Caucus hopes to offer some real-

world best practices that can be built upon for improved G2G relationships and Tribal consultation processes.

II. Introduction

A. The WCOA Tribal Guidance Working Group

In June 2018, President Trump signed Executive Order 13840, directing regional coordination in ocean planning to take place through regional ocean partnerships. State and Tribal Governments¹ who had previously participated in the West Coast Regional Planning Body and the West Coast Ocean Partnership (now defunct) announced in December 2018 that they would form a new West Coast Ocean Alliance (WCOA) to serve as the regional ocean partnership for the West Coast, building on previous regional coordination activities.

The WCOA seeks to advance regional activities focused on a range of issues by bringing together Tribal, state, and federal partners on topics such as working towards compatible and sustainable ocean uses, effective and transparent decision-making, comprehensive ocean data, and increased understanding of and respect for Tribal rights and traditional knowledge.

Tribal Government members of the WCOA set up the West Coast Tribal Caucus (Caucus) as a subgroup of the WCOA, with the goals of improving government-to-government (G2G) coordination and engagement with federal and state partners, increasing the capacity for Tribes to manage and plan for their ocean areas, and developing this guidance document on Tribal consultation processes in the West Coast region in the ocean planning context.

The Tribal Guidance Working Group is comprised of volunteers who are members of the Caucus. See [Appendix A](#) for a list of Caucus members and Working Group participants.

B. Goals of This Document

The intent of this guidance document is to serve as a guide to state and federal agency partners when working with West Coast Tribes. Tribal Governments in the region have existing consultation policies which must be honored and this document aims to complement those policies (see [Appendix A \[in development\]](#) for Tribal Caucus members with existing consultation policies). This document is intended to offer general best practices to agencies in the implementation of existing consultation policies developed by federal and state agencies and individual Tribal Governments (see [V. Guidance for Tribal Consultation Policies and Procedures](#)). Given the unique nature of every Tribal Government and the variety of circumstances warranting consultation, agencies and Tribal Governments should incorporate customs or procedures specific to each Tribal Government within the context of applying an

¹ Please note that the term Tribal Government(s) is used generally throughout this document for consistency to refer to Tribes, Native Nations, Native American Tribes, and/or indigenous governments, etc. Other terms may be used as appropriated based on individual Tribal Government names, and/or quoted documents. For additional details, please reference Box 1.

existing consultation policy based on those individual G2G relationships. Agencies should also defer to Tribal Consultation policies when these exist. It is important to emphasize that this document is not meant to be a step-by-step guide. Instead, it provides context, detailed perspectives, and examples for agencies seeking additional input and guidance on how to implement Tribal consultation policies.

Tribal staff and representatives are often required to clarify for their federal and state partners the definition of “consultation” and the activities required to conduct meaningful consultation. This document seeks to provide guidance and best practices to avoid reinventing the wheel in discussions relating to G2G consultation, in order to ensure that conversations occur in the most meaningful, respectful manner without undue strain on Tribal, state, and federal resources and staff time.

In creating this document, the authors sought to incorporate the experience, knowledge, and policies of West Coast Tribes in their consultation processes, in the hopes that the final product would serve as a useful tool for any local, state, or federal representative involved in G2G consultation with West Coast Tribes. The authors further hope that this document serves to reinforce and support the important obligation and proven value of G2G consultation for both Tribal governments and non-Tribal governments. Agencies are encouraged to read this document alongside any existing individual Tribal consultation policies, as well as their own state and federal policies, using it to inform how they approach communication and conversations with Tribal governments.

III. The Obligation and Value of Tribal Consultation

A. What Is Consultation?

Within this document, a number of terms are used to define processes and interactions between federal/state entities and Tribal Governments. Individual Tribal consultation policies and the terms as defined therein should always take precedence. For the purposes of this guidance document, however, these terms are used as follows:

- The **G2G relationship** refers to the overarching sovereign-to-sovereign relationship that exists between Tribal Governments and the U.S. federal government (and sometimes Tribal Governments and states), including the legal obligations of state and federal governments to Tribal Governments in light of their inherent sovereignty, as well as federal and international laws. The processes of Tribal consultation and G2G consultation are founded on this relationship.
- **Tribal consultation** is the overall process of sharing information, coordination, engagement, and dialogue that occurs between Tribal Governments and governmental or administrative entities within the United States. Tribal consultation occurs before an agency commits itself to a path of action that will affect Tribal rights, lands, resources,

governance, or interests. Consultation is a process that ultimately leads to the development of a decision.²

- **G2G consultation** is a formal component of the Tribal consultation process that engages Tribal leaders and incorporates their input into decisions. A formal G2G meeting, between Tribal leaders and similarly high-level federal or state decision-makers, is customarily part of this process, and may include multiple meetings, discussions, and the back-and-forth sharing of information. More than one formal G2G meeting among decision-makers may be required in a G2G consultation.

It is worth noting that some Tribal consultation policies do not distinguish between Tribal consultation and G2G consultation. For the purposes of this document, the authors are referring to the entire Tribal consultation process as based on the G2G relationship and its accompanying obligations to clarify that all the components of the process are necessary. This helps to avoid an inappropriate focus on solely the formal G2G meeting(s) with Tribal Government leaders and decision-makers. In order to ensure G2G meeting(s) between decision-makers are meaningful and productive, it is essential for agencies to understand the need for the full Tribal consultation process, which may involve a series of interim discussions/meetings. Please see [Appendix B](#) for an illustration of the Tribal consultation process.³

Tribal Governments, agencies, and organizations have developed consultation policies through several different mechanisms. Approaches can range from formal policies with foundations in law to best practices guidance and can carry varying levels of legal ramifications. Likewise, they may range from guidance at technical levels to more policy-level discussions. These types are described below:

- **Guidance-based:** Non-legal documents that typically include best practices, minimum requirements, and the history of consultation with U.S. Tribal Governments. If they are Tribally-developed or are specific to one Tribal Government, they may contain additional examples or preferred processes. Examples include the National Association of Tribal Historic Preservation Officers' (NATHPO) "Tribal Consultation: Best Practices in Historic Preservation" and the Bureau of Ocean Energy Management's (BOEM) "Guidance Document for Characterizing Tribal Cultural Landscapes."
- **Ordinance-based:** Tribal laws that formally define consultation requirements between the Tribal Government and outside agencies. Not all Tribal Governments have consultation ordinances, and those who do may also have additional policy or guidance documents to provide details and step-by-step processes. The Rincon Band of Luiseño Indians, for example, has a Tribal consultation ordinance.

² Nez Perce Tribe, "Nez Perce Tribe Guidance on Government-to-Government Consultation," 1.

³ While the Caucus is setting forth an example of Tribal consultation process for illustrative purposes, it is important to remember that the steps and components of this formal decision-making process should be defined by the individual sovereigns that an agency is consulting.

- **Formal Policies:** Formal documents that define consultation procedures and policies for a Tribal Government, government, agency, or organization. These policies may be tied to a Tribal ordinance, state law, or federal executive order, and in these cases, they may include sections that define strict legal requirements for consultation. In the case of Tribal policies, they will usually include triggers for consultation and preferred processes for consultation. Agency-developed policies typically follow the most recent requirements defined by state laws or executive orders and will include step-by-step procedures and triggers for consultation. Agency policies do not always match up with Tribal policies, however, which sometimes lead to conflicts during the consultation process. In these instances, it is recommended that federal and state agencies defer to Tribal Consultation policies. It is worth noting that agency-developed policies do not always have mechanisms for ensuring flexibility in the process or for making it easy for Tribal Governments to participate.

Examples of agency-developed policies include the U.S. Department of the Interior's "Policy on Consultation with Indian Tribes" (in development) and the National Oceanic and Atmospheric Administration's (NOAA) "Procedures for Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations."

B. The Obligation to Consult for Federal and State Agencies

Tribal Governments maintain inherent sovereignty. They remain as the first nations of the United States. Within the overall Tribal consultation process, G2G consultation is a functional exercise of inherent Tribal sovereignty. The meaningful exercise of Tribal consultation is an essential obligation for federal and some state governments to honor Tribal sovereignty and the unique role Tribal Governments hold in U.S. policy and decision-making. Likewise, G2G consultation, when conducted correctly and appropriately, provides a respectful and efficient mechanism for federal and state agencies to meet their legal and moral obligations to Tribal Governments. These legal obligations include honoring the trust responsibility, treaty rights, executive orders, case law, and a myriad of additional requirements all supporting the G2G relationship between federal agencies and Tribal Governments, or between Tribal Governments and states (see [Appendix H](#) for a list of laws and resources).

Tribal Governments retain and seek to formally affirm rights to protect their traditional homelands, waters, natural and cultural resources. The impacts associated with these rights can best (and in some cases only) be defined by Tribal Governments. Speaking, discussing, and engaging with Tribal Governments through G2G consultation is a meaningful way to develop state and federal actions that ensure Tribal rights are protected and that the federal trust responsibility is upheld.

C. The Value of Consultation for Federal and State Agencies

Tribal values, cultures, and appropriate processes are unique for each Tribal Government and often differ from those of the federal and state agencies. Tribal consultation offers an opportunity for federal and state agencies to learn about these unique differences and approach

discussions in culturally appropriate and respectful ways that can build lasting relationships with Tribal Governments.

From the state and federal agency perspective, early, meaningful, and ongoing communication and consultation ensures that Tribal Governments have the ability to inform decisions, projects and processes early, before time, money, and effort is invested. Case studies and the news provide significant examples of the negative impacts of intentionally or unintentionally excluding important parties in decision making that impacts their lives and resources. A failure to engage necessary parties breeds distrust, negatively impacts public perception, and potentially results in project delays, additional costs, and general uncertainty regarding project integrity. This dynamic is the most prevalent when addressing processes or projects that may impact Tribal resources, all of which can be alleviated through the existing processes of meaningful Tribal consultation. Agencies maintaining ongoing communication and partnerships with Tribal Governments have seen the demonstrated positive results of improved relationships, better public perception, reduced overall projects costs, and time saved.

IV. History of Tribal Consultation Policies

A. Tribal Consultation Policies

Although Tribally developed consultation policies are often disregarded in favor of guidance developed by agencies or other entities, Tribal policies should be a primary resource for agencies seeking to engage with Tribal Governments. It is important to note that consultation policies can vary between Tribal Governments and are often influenced by their agency recognition standing (see Box 1 below - Types of Agency Recognition). Similarly, Tribal consultation policies also may be shaped by the capacity of the Tribal government to respond to or request consultation. This does not mean, however, that consultation on a project is not important to them or that consultation is not required.

Consultation guidance from Tribal governments does not always take the form of formal policies or laws. Some Tribal Governments have guidance documents which they can provide to outside organizations requesting consultation, while other Tribal Governments have specific ordinances regarding consultation procedures. Although federal and state agencies should approach Tribal Governments for consultation early in project planning, it is often Tribal Governments who are forced to request consultation when news of the project reaches them. Early involvement of Tribal Governments typically benefits all parties involved, as it can lead to more efficient and informed decision-making upfront.

Tribal consultation guidance typically includes language defining which lands require consultation procedures, when consultation should begin, and which positions within the Tribal government should be involved in consultation procedures. Agencies should approach Tribal Governments at the beginning of the planning process to enquire about existing consultation policies and to share their own internal consultation procedures. Tribal Caucus members that have existing consultation policies are indicated in [Appendix A \(under development\)](#).

Box 1. Types of Recognition

All Tribal Governments, as indigenous peoples, retain inherent sovereignty, rights to self-determination, and autonomy in matters relating to their internal affairs (see [United Nations Declaration on the Rights of Indigenous Peoples](#)). As discussed in Section X, the U.S. Constitution, Congress, and courts have created a legal framework for the legal standing of Tribal Governments. Federal and state governments have established specific definitions and legal standings for Tribal Governments. Notwithstanding Tribal Government's inherent sovereignty, the legal frameworks created by Federal and state governments impact Tribal Governments' G2G relationships and the processes used for Tribal consultation with federal and state agencies. The following summarizes these distinctions but does not address all the potential legal and political realities of individual Tribal Governments in their working relationships with federal and state agencies.

A **federally recognized Tribe** is an American Indian or Alaska Native Tribal Government that is recognized by the federal government as sovereign nation having a G2G relationship with the United States and is eligible for funding and services from the federal government. The United States recognizes these Tribes' inherent rights of self-government (i.e., Tribal sovereignty). These Tribes are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States. (The current list is maintained by the Bureau of Indian Affairs in the *Federal Register*.)

Non-federally recognized Tribes are Tribal Governments exercising and claiming inherent sovereignty, but are not currently recognized as Tribal sovereign nations by the United States government. Thus, the federal government does not recognize a trust responsibility or government-to-government relationship with non-federally recognized Tribes. Some non-federally recognized Tribes may have previously been recognized by the United States, but that status was revoked or terminated. Many non-federally recognized Tribes are currently seeking federal recognition status or reinstatement of their federal recognition status.

State-recognized Tribes are Tribal Governments that are recognized by individual states. State recognition does not impose any obligations on the federal government, unless federal law authorizes such obligations. Typically, state-recognized Tribes exist in those states that have legislation for a formal Tribal recognition process documented in state statute, although other processes may apply.

Treaties and Other Ocean Planning Interests: In addition to the G2G relationship, a number of individual and groups of Tribal Governments within the lower 48 have rights through treaties, laws, and executive orders on the federal government level, as well as agreements with state governments. These treaties, executive orders, laws, and agreements specify or clarify a range of reserved rights, which were reserved by Tribal Governments either at the time the treaties were created or through the laws, executive orders, and agreements. These affirm additional rights to those Tribal Governments, beyond rights generally acknowledged by the federal and state governments as part of the G2G relationship.

Tribal Governments on one hand, and federal and state agencies on the other, may have differing interpretations in terms of the scope of rights reserved and retained pursuant to treaties, executive orders, laws, and agreements. For example, rights reserved retained through treaties between Tribal Governments and the federal government are defined as the supreme law of the land, which may only be compromised by an act of Congress. Individual Tribal Government treaties, executive orders, rights, and agreements should be reviewed and discussed on a case-by-case basis. Given that each Tribal Government has a distinct history and legal background, each Tribal Government's rights should be understood and acknowledged. The following examples illustrate some of the reserved rights that may be of interest in ocean planning discussions. This document does not provide, however, a legal opinion or analysis of those rights.

For example, within the WCOA, four Coastal Treaty Tribes (Hoh, Makah, Quileute Tribes, and the Quinault Nation), through treaties, reserved hunting, fishing and gathering rights within usual and accustomed areas that extend off-reservation sovereign jurisdictions within both federal and state jurisdictions. In Oregon, Tribal Governments retain fishing and other rights to coastal resources. In California, Tribal Governments retain all hunting, fishing, and gathering rights within marine waters; these rights were never ceded and have never been explicitly revoked by Congress. In recognition of those retained rights, California law affirms the right of federally recognized Tribes to utilize marine resources within specific marine protected areas for subsistence, cultural, and other related purposes. Federal law likewise has acknowledged some California Tribal Governments' rights to fish in-river. [See additional details in [Appendix C](#)]. As another example, [Placeholder: Some Tribes have expressed an interest in providing more detailed language to spell out types of rights and interests reserved via Executive Order]

B. Federal Consultation Policies

The United States – as its legal relationship with Tribal Governments has developed over its history through treaties, the Constitution, case law and congressional acts – “has charged itself with moral obligations of the highest responsibility and trust toward Indian Tribes.”⁴ This obligation continues and extends to all federal executive branch agencies. Justice John Marshall, the first Chief Justice of the Supreme Court of the United States, laid the legal foundation for the modern federal trust relationship with Tribal Governments in three cases often referred to as the “Marshall trilogy”:

- *Johnson v. McIntosh*, 21 U.S. 543 (1823), concluding that the United States had the exclusive right to divest Tribal Governments of original possession of their land and that this right was derived from international law concepts of discovery and conquest
- *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), characterizing the Tribal Governments as “domestic dependent nations” and their relation to the United States as that of “ward and guardian,” articulating the trust relationship between the United States and Tribal Governments; and
- *Worcester v. Georgia*, 31 U.S. 515 (1832), further articulating the sovereign governmental status of Tribal Governments as “distinct political communities.”

In *Cherokee Nation*, Justice Marshall rejected the notion that Tribal Governments are conquered peoples without rights of self-determination, drawing on principles of international law to describe Tribal Governments as “domestic dependent nations.” This characterization of Tribal Governments in the international context ensured Tribal Governments could retain their status as sovereign governments, even though dependent on the larger national government for certain protections from other international forces, while also retaining rights to services and goods from the United States government pursuant to treaties. This unique blend of legal principles and political theory forms the basis of a federal trust relationship between the United States and Tribal Governments today, which is reflected in legislation, treaties, court decisions, and executive orders recognizing the unique rights of Tribal Governments in the U.S.

The legal aspect of the trust relationship is the U.S. government’s substantive duty to protect “to the fullest extent possible” the Tribal Government’s trust resources and other rights. The United

⁴ *Seminole Nation v. United States*, 316 U.S. 286, 297 [1942]

States' trust responsibility toward Tribal Government trust assets operates in a manner similar to the principles of the common law of trusts, in which the United States as the trustee has the obligation to conserve the "assets held in trust, for the benefit of the beneficiary Tribes."⁵ The trustee is required to consult with its Tribal beneficiaries to obtain their views of actions that may affect their own interests.⁶ While the Supreme Court has not developed a detailed articulation of the trust relationship between the U.S. government and Tribal Governments, it is clear that the trust obligation extends to the affirmative protection of treaty rights as well as Indian lands and resources.⁷

The political aspect of the trust relationship between the United States and Tribal Governments is expressed in the commitment to G2G consultation, which acknowledges and respects the sovereignty and self-determination of federally recognized Tribal governments. Executive Order 13175 (issued November 6, 2000) is the most detailed instruction to federal agencies on how and when to conduct G2G consultation. Consultation at the federal level is required to be meaningful, in good faith, and entered into on a G2G basis. This principle has been codified in multiple executive orders and memoranda and has been upheld by the Supreme Court. There are some laws that specify a specific type of consultation with Tribal Governments.⁸

The federal government is required by law to consult with federally recognized Tribal Governments, including Alaska Natives, and, in some cases, Native Hawaiian organizations. The federal government is not required to enter into formal G2G consultations with non-federally recognized Tribal Governments or other indigenous organizations, as they lack the same legal status. Under the National Historic Preservation Act⁹, however, a federal agency may invite a non-federally recognized Tribal Government to participate as a consulting party based on that Tribal Government's "demonstrated interest" in the undertaking's effects on historic properties.¹⁰ In other cases, such as in California, determining with whom an agency should consult can be complex because there are more than 100 federally recognized Tribal Governments and more than 100 non-federally recognized Tribal Governments, as a result of historical circumstances.

Per Executive Order 13175, each federal agency is required to develop its own consultation policy, which has resulted in some inconsistency between federal agencies. This inconsistency manifests in many ways, from lack of a common definition of consultation to differing levels of Tribal input in consultation and outreach policies. For all agencies, however, consultation follows some basic guidelines:

⁵ *Cobell v. Norton*, 240 F. 3d 1081, 1099 (D.C. Cir. 2001); *United States v. Mitchell*, 463 U.S. 206, 224–25 (1983); *White Mountain Apache Tribe v. United States*, 11 Cl. Ct. 614 (1987).

⁶ *Winnebago Tribe of Nebraska v. Babbitt*, 915 F.Supp157 (D. S.D. 1996).

⁷ *Parravano v. Babbitt*, 70 F.3d 539, 546 (9th Cir. 1995), cert. denied, 518 U.S. 1016 (1996).

⁸ The G2G relationship is referenced and discussed in multiple legal cases, laws, executive orders and memoranda. [Appendix H](#) offers a summary of some of these resources.

⁹ Section 106 regulations at 36 CFR Section 800.2(c)(5)

¹⁰ "Advisory Council on Historic Preservation Consultation with Indian Tribes in the Section 106 Review Process: A Handbook" (November 2008).

1. Consultation is required before federal action is taken on reservations or affecting off-reservation reserved rights. Consultation may be required on ceded lands and traditional-use areas if legal precedent exists.
2. If a federal action will impact a Tribal Government, the agency must enter into consultation with affected Tribal Governments on a government-to-government basis.

Beyond this, each agency has the discretion to develop consultation policies that fulfill the federal trust responsibility to Tribal Governments. Although federal agencies must consult with Tribal Governments, they are not required to develop their consultation policies in collaboration with Tribal Governments.

C. West Coast State Consultation Policies

Some states have passed legislation providing for the recognition of Tribal Governments. Washington, Oregon, and California have legal consultation policies and requirements that apply to Tribes, but even these vary between each state. California's Tribal Consultation Policy includes both federally recognized Tribal Governments and non-federally recognized Tribal Governments that are listed on the California Native American Heritage Commission's Contact List.¹¹ It should be noted, however, that California only mandates G2G consultation with non-federally recognized Tribal Governments with respect to Native American sacred places and Tribal cultural resources.¹² Oregon's Senate Bill 770 institutionalizes Tribal consultation policies, but only includes federally recognized Tribal Governments. The Centennial Accord and Millennium Agreement in Washington includes language that mirrors the federal trust responsibility doctrine and establishes G2G relationships between the state of Washington and Tribal Governments in Washington. Furthermore, a policy developed between Washington Tribal Governments and the state's attorney general's office in 2019 calls on the state to obtain "free, prior, and informed consent" before taking actions affecting Tribal lands and resources (see [Box 2](#)).

Common elements in the West Coast states' Tribal consultation policies and legislation include the establishment of Tribal liaison offices, directives to state agencies to develop internal consultation policies, and initiatives to improve the cultural and legal competency of employees who interact with Tribal Governments. These state-level policies all include the principles of early and open communication, as well as the same triggers for on- and off-reservation consultation. As these laws and executive orders, however, do not carry the authority of federal treaties, they do not always have the same legal ramifications for neglecting to consult with Tribal Governments. For more information on each state's consultation policies, see [Appendix C](#) for details on [California](#), [Oregon](#), and [Washington](#).

¹¹ California Government Code Section 65352.4, also known as SB 18, Governor Brown's Executive Order B-10-11 (2011).

¹² California Public Resources Code Section 21074(a).

Box 2. Free, Prior, and Informed Consent

In 2007, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) set forth the key principle that governments should obtain free, prior, and informed consent (FPIC) from indigenous peoples before enacting policies or actions that may affect their rights, lands, and resources. While the United States has declared support for UNDRIP, it has not been ratified by the Senate and therefore does not carry the force of U.S. law.

The elements of FPIC establish the conditions of consent as a decision-making process that respects the rights, sovereignty, time, and resources of the potentially affected Tribal Government(s). The intent of each element is described below:

- **Consent:** the decision will be taken by the proper body of the rights-holders. It may be “yes,” “no,” or “yes with conditions.” Consent can be given or withheld and may change over the course of a project or with changes in a proposed action.
- **Free:** the process and consent are voluntary, without coercion or other pressures imposed on Tribal Governments. The process is conducted under a structure and timeline acceptable to the Tribal Government(s). Meetings are held according to Tribal customs or procedures and information is freely given as requested through a transparent process.
- **Prior:** consent may only be sought, and information presented, well before any proposed activities are initiated and there must be enough time for the rights-holders to understand and analyze proposed actions. It is the responsibility of those seeking consent to understand the time and resources needed by the Tribal Governments for their decision-making process.
- **Informed:** information for decision making must be presented clearly, completely, and accurately with no omissions. It must be accessible and in formats as requested by Tribal Governments. Meaningful, accurate, preliminary assessments of all possible impacts - economic, cultural, social and environmental - both positive and negative, are required as a part of any supplied information. Information must be updated continuously as changes occur to it or the proposed action.

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V. Guidance for Tribal Consultation Policies and Procedures

A. Key Elements of Consultation / What Constitutes Consultation?

A definition for Tribal consultation is set out in the “[What Is Consultation?](#)” section above. It is equally important to understand what consultation is *not*. Consultation is not simply notice of an action occurring or the equivalent of a written comment process. Tribal consultation is not an agency with a preconceived or predetermined plan holding a meeting with Tribal Governments to see how they fit into the agency’s plans. Consultation does not assume that an agency can or will proceed with a prospective action without taking into consideration and changing that prospective action based on Tribal input.¹³ Likewise, though Tribal Governments have a right to consultation as sovereign governments, a Tribal Government may elect not to conduct G2G consultation or may decide to limit the scope of their consultation as needed to meet their internal resource capacity and needs.¹⁴

Therefore, Tribal consultation means the process of seeking, discussing, and considering the views of the Tribal government(s), at the earliest possible time in the state or federal government’s decision-making process. Key elements of consultation include:

- **Early and frequent communication:** Consultation means respectful, meaningful, and effective two-way communication before the agency makes its decision or moves forward with its action.
- **Consensus-seeking approach:** Consultation works towards the goal of consensus, reflecting the concerns of the affected Tribal Government(s). The objective is to promote cooperative decision-making on activities that may impact treaty trust resources, executive order rights, the exercise of Tribal rights, or Indian lands.
- **Appropriate representation:** Tribal consultations take place as planned, structured meetings, either in person or via phone/video teleconference (as mutually agreed upon), between state or federal officials and representatives of the affected Tribal Government(s) or their designees. For formal G2G consultation, the appropriate leadership and decision-makers need to be present.
- **Shared recognition of the stage of consultation:** Given that Tribal consultation is a multi-step process, it is essential that both parties agree when they are in G2G stage. Communications outside of G2G consultation meetings may be part of the overall Tribal consultation process, but these communications cannot be interpreted as formal G2G consultations in themselves (see diagram in [Appendix B](#)).
- **Transparent and accountable processes:** It is important for agencies to provide clarity around their own decision-making processes and the potential for Tribal Government input to affect the final decision. Furthermore, both parties should ensure accountability

¹³ The Confederated Tribes of the Umatilla Indian Reservation, “Consultation: Government to Government (or otherwise),” 1.

¹⁴ Nez Perce Tribe, 1.

to the agreements made during Tribal consultation by documenting and sharing the results of those discussions.

B. Principles for Tribal Consultation

This section sets forth principles and best practices for engaging in meaningful Tribal consultation. As mentioned above, individual Tribal Governments may have their own defined consultation procedures. In any consultation process, it is important for the agency to reach out to the potentially affected Tribal Governments to determine whether consultation is desired and what specific consultation procedures and/or requirements they may have. The recommendations outlined in this document reflect key elements discussed above and set forth a basic process to consider, while allowing for individual Tribal and G2G consultation procedures to be defined by an affected Tribal Government.

Determining with Whom to Consult

As agencies are charged with consulting with “potentially affected” Tribal Governments, the agency’s first step is identifying the Tribal Governments with whom it should engage. It is important to consider possible impacts to Tribal Governments broadly, recognizing that “potentially affected” does not mean only those Tribal Governments currently in close proximity to the proposed impacted area, but also all Tribal Governments who consider the impacted area as part of their traditionally and culturally affiliated territory.

Due to the complexity of Tribal rights and history surrounding marine and shoreline areas on the West Coast, this undertaking will vary significantly depending on the location of the proposed project. Agencies could begin by consulting resources detailing current and past habitation of the area, as well as the use of and rights to territory within the proposal area.¹⁵ The agency’s survey of potential impacts should extend to resources as well, meaning that resources that pass through the proposal area could have Tribal rights associated with them (e.g., treaty rights, or executive order rights), which broadens the scope beyond simply the geographic area and its cultural and uses history.

Early and Frequent Communication

Tribal Governments should be engaged early and often in any permitting, funding, rule change, or other action an agency undertakes that may affect Tribal treaty rights, executive order rights, reserved rights, resources, lands, or the habitats and ecosystems upon which Tribal Governments depend. Communication with federal or state entities must be frequent and initiated before a process of decision-making starts. If Tribal Governments are not notified of a proposed action early, they cannot adequately consult, nor can the agency satisfactorily or sufficiently weigh the potential negative impacts that their proposal may have on Tribal

¹⁵ For example, land-based resources include maps from the U.S. Department of Housing and Urban Development (https://www.hud.gov/program_offices/public_indian_housing/ih/codetalk/onap/map/nationalmap) and the U.S. Department of Agriculture (<https://usfs.maps.arcgis.com/apps/webappviewer/index.html?id=fe311f69cb1d43558227d73bc34f3a32>).

Governments. Ongoing communication, transparency, pre-notification, or early consultation are ways to ensure Tribal input is considered in the decision making and is more likely to result in a mutually agreed-upon solution. Tribal Governments prefer that the agency reach out as early in the process as possible (i.e., a project proponent has submitted a proposal/request, the agency is considering a rule change, or the agency is interested in answering a research question).

I'm sorry, but a lack of planning on your part does not constitute an emergency on my part.

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The frequent agency practice of giving Tribal Governments notice after activities have begun feels from the Tribal perspective as if the agency is “checking the box,” the planning and permitting are already complete, and Tribal input or concerns do not matter or cannot affect a change in action or decision. This approach limits Tribal input into a project’s development and can result in opposition to the proposal and/or delays. Furthermore, Tribal Governments should not be required to speed their government decision-making processes to adjust to an agency’s failure to provide early notification. Meaningful consultation includes adequate time for Tribal staff to get technical information and content prepared to brief their decision makers. This does not work within 30- or 60-day comment periods.

For example, a Tribal Government may have a concrete schedule in which any items to come before the Tribal Council on a given month must be in council packets by the first Monday of the month. The relevant staff would need to review the information before then. Council then meets for approvals on the third Friday of the month. Therefore, if a request for consultation comes up with a 60-day window, the agency would need to get it into the system during the first month. If there are any delays or questions raised by staff, however, the request may not be able to be introduced to the council within the agency’s 60-day window.

In addition, it is important to recognize that Tribal staff are often charged with tracking several different issues areas. They must attempt to stay abreast of all federal and state activities that could affect their Tribal Government, and, as a result, staff are frequently responding to not just a single agency proposal, but multiple ones. Agency staff should be aware that their request may be one among many and allow for sufficient response time from the Tribal Government.

Early communication is built into some federal agency processes. For example, the Bureau of Ocean Energy Management’s (BOEM) offshore oil and gas leasing plan has several stages of development with opportunities for Tribal and public comment throughout the process.

Consultation with BOEM at each stage of the plan development is available. Other agencies may also exercise ongoing communication and scoping discussions to keep Tribal Governments informed of potential projects before they are initiated.

Determining Appropriate Roles

As a first step, it is important to define some common roles in a consultation process. When consultation is planned and undertaken, it is important that the appropriate representatives from all parties are engaged in the matter under discussion. Doing so ensures that communication is efficient between those personnel who have commensurate responsibilities, either in implementation or delegation. It also shows mutual respect for each party's leadership, acknowledging that the discussion includes the most valuable players, or the players who are essential to the most well-founded decision achievable.

Typical Tribal roles are the following:

- **The Tribal Council** - Tribal Council is the official point of contact for G2G consultation.
- **Tribal delegates, points of contact** - Tribal Council may choose to designate a point of contact for communication regarding specific issues, concerns, opportunities, impending projects, and other technical expertise.
- **Alternate point of contact** - Tribal Council may designate an alternate point of contact by issuing a written statement signed by Tribal Council Chairperson or Vice Chair. This does not preclude including the Tribal Council in communication for specific cultural or archaeological concerns. Being familiar with appropriate points of contact for specific issues, however, is essential to the efficacy of communication. For example, a Tribal department director could serve as an appropriate Council-designated point of contact for a large range of specific issues.
- **Tribal technical expertise** - Tribal staff and representatives that offer technical expertise regarding specific issues, concerns, opportunities, impending projects, etc. For example, if the Tribal Government employs a Tribal Historic Preservation Officer, this person would serve as the technical expertise for cultural and/or archaeological concerns. These technical staff offer opinions, recommendations, and other guidance to points of contact, delegates, and Tribal Council for the decision-making process.

It is the agency's responsibility to make sure it is contacting the proper Tribal representatives. It is important to be aware that often a conversation needs to begin at technical level and requires time to move to the policy level. Proper timing and sequencing are needed. Furthermore, the presence of a Tribal Council member does not necessarily mean the meeting is a policy-level or G2G one. It is also important to understand that coincidentally meeting Tribal leadership, staff, or Tribal Council members at a meeting where pertinent issues are discussed does *not* constitute G2G consultation.

Tribal representation will be different depending on the level of conversation (national vs. more technical or emergency response). A designated gatekeeper who can help determine what

constitutes an emergency can often be a local or technical staff person. Being familiar with the appropriate Tribal staff or representative, especially concerning specific technical expertise, assists the agency in more efficient communication with relevant staff and appropriate leadership. Often, the conversation must begin at the technical level not only to engage the appropriate relevant leadership within the Tribal government, but also to facilitate responses within the timeframe that the issue needs to be addressed by all parties involved.

In order to identify the most appropriate Tribal representatives or Tribal technical expertise, a number of options are available. An agency representative could:

- Reach out to the Tribal liaison within their own agency
- Attend or host topic-relevant information meetings to meet Tribal technical staff
- Contact the Tribal government administrative offices to find the most appropriate department contact information for the topic
- Visit the website listing technical staff, if applicable and accessible¹⁶

Understanding and Respecting Tribal Decision-Making Processes

Federal agencies must respect the process by which Tribal governments operate. Each Tribal Government has its own established system of government, equipped with constitutions, codes, policies, laws, and ordinances, and are not under the jurisdiction of federal, state, or local regulation. Tribal government is structured upon departments that exist to ensure the government efficacy, function, and to meet Tribal concerns for health, longevity, and prosperity. As such, Tribal government structures are unique and culturally appropriate with decision-making processes that may not be similar to structures at other Tribal Governments or agencies. To achieve effective communication with each Tribal government, it is paramount to acknowledge each Tribal Government's unique structure and recognize there can be a variety of decision-making processes.

As described in the [“What Is Consultation?”](#) section, formal G2G consultation, along with confirmation by the Tribal Government that consultation is complete, is the last step in a series of conversations. There could be staff meetings leading up to formal G2G consultation to facilitate frequent communications and support meaningful consultation agreements between sovereign leaders and decision makers. As noted, agency and Tribal staff may require early meetings to work out technical details in order to adequately inform Tribal decision-makers in advance of more formal meetings. The agency's approach to the process should incorporate flexibility, with attention to making it easy for Tribal Governments to participate.

To convey a sense of the range of decision-making processes, two examples are offered below. The first example, an excerpt from the consultation policy of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, can be described as a “top down” approach:

¹⁶ In California, for example, the Office of the Tribal Advisor to the Governor of California publishes a Tribal Government Directory. This directory contains information on California Native American Tribes, including contact information and general information about the Tribe.

- a. The federal agency contacts the Tribal Council to notify the Tribal Government of an impending project proposal or to conduct an activity that may or may not affect a Tribal resource.
- b. The Tribal Council responds to the agency that the issue is important and that it would like to initiate consultation.
- c. Tribal Council requests that federal agency technical experts meet with Tribal technical staff or Tribal Council requests a policy-level meeting, initiating Tribal consultation.
- d. Technical staffs meet to discuss technical and legal issues. Tribal staff understands the proposal. Federal agency staff understands at a technical level why the proposed activity is of concern to the Tribal Government.
- e. Tribal staff briefs Tribal Council and provides opinions and recommendations.
- f. Tribal Council contacts the federal agency to initiate G2G consultation between policy-level decision-makers from the Tribal Government and the federal agency.
- g. Additional meetings are held if necessary.
- h. The federal agency and the Tribal Government formulate a decision. Assurances are made that the decision is consistent with applicable federal and Tribal laws and policies.

A second example process describes a “trickle up” procedure, in which agency representatives are familiar with the Tribal technical points of contact:

- a. The federal agency contacts relevant Tribal technical staff regarding opportunities or issues, impending project proposals, or to conduct an activity that may or may not affect a Tribal resource.
- b. Tribal technical staff responds to the agency that the issue is important.
- c. Tribal technical staff meet with federal agency technical experts to discuss key points surrounding the issues.
- d. The federal agency contacts the Tribal Council on the issue, including the appropriate Tribal staff or department supervisor in the communication.
- e. Tribal staff briefs Tribal Council and provides opinions and recommendations.
- f. Tribal Council contacts the federal agency to initiate G2G consultation between policy-level decision-makers from the Tribal Government and the federal agency.
- g. Additional meetings are held if necessary.
- h. The federal agency and the Tribal Government formulate a decision. Assurances are made that the decision is consistent with applicable federal and Tribal laws and policies.

Sufficient and Timely Information-Sharing

In order for Tribal Governments to make informed decisions, agencies need to provide accurate, complete, and accessible information about the proposal and its potential impacts. Receiving this type of information early on in the process – and through the appropriate channels – allows the decision-making process to move forward efficiently. Information necessary for Tribal

leadership to understand the scope and potential impact of an action should therefore be shared with appropriate representatives in advance of any formal G2G consultation. It is also important that the agency provide timely updates to Tribal governments as relevant new information emerges throughout the consultation process, which helps to build trust between the parties. Moreover, agencies should be aware that information Tribal Governments share during consultation may be confidential in nature. Agencies should take appropriate measures to ensure such information is treated as confidential, unless otherwise indicated by the specific Tribal Government.

Mutual Decision-Making

Tribal consultation involves making mutual decisions. Meaningful consultation acknowledges that Tribal Governments are sovereign governments, not stakeholders. For a Tribal consultation process to honor the principle of mutual decision making, it must include these aspects:

- The Tribal Government determines the impact the proposed action will have, not the agency.
- Tribal concerns are included in the final decision.
- There is consideration and respect for the principles of FPIC throughout the process (see [Box 2](#)).
- The Tribal Government determines if and when consultation on an action is complete.

Agency Accountability and Commitment to Governmental Relationship

Tribal Governments often find that while Tribal representatives are required to follow consultation laws and policies, agencies do not necessarily do so. This discrepancy can undermine the governmental relationship and make it difficult to build trust. In order to create a positive working relationship, therefore, agency staff should be attentive to demonstrating their commitment to that relationship.

Following a consultation, for instance, it is important for the agency to maintain open and honest communication with the Tribal Government. Meeting summaries support accountability, and by sharing these summaries with Tribal Governments, federal and state agencies take responsibility for commitments and can better ensure a shared understanding of those agreements and commitments. In one example, BOEM's consultation policy directs the agency to provide a meeting summary that includes the Tribal Government's position, clearly stated, as well as any actionable items identified during consultation. The Tribal Government is able to review and provide any edits or corrections to the meeting summary. Having the agency provide tangible outcomes and takeaways from Tribal consultation helps to ensure accountability, transparency, and assurances that the Tribal Government's concerns were heard and understood. For the sake of continuity and the ongoing governmental relationship, it is important that both agencies and Tribal Governments keep these records on hand for future reference and as background materials to provide to new staff and leaders in times of transition. Furthermore, these records may provide a base of information that allows agencies and Tribal Governments to periodically review their relationship and consultation efforts and identify possible areas for improvement.

Although accurate and complete record-keeping of consultation meetings is essential, it is not sufficient to honor the G2G relationship. To build a genuine governmental relationship founded on trust, agencies must demonstrate a commitment to mutual decision-making and to incorporating Tribal concerns into agency decisions. Demonstrating commitment to the governmental relationship may include following through on action items discussed in meetings, responding promptly to questions posed during consultation, or demonstrating how Tribal comments were incorporated into the agency's decision making.

To continue building a respectful G2G relationship post-consultation, the agency should engage in ongoing communication with the Tribal Government, which includes keeping the Tribal Government informed on the implementation of the proposed action and notifying the Tribal Government as early as possible if there are any modifications to the proposal that might warrant reopening consultation on the action.

It is important to note that Tribal Governments can reinitiate consultation on an action at any time. Consultation is not complete until the project is complete. Even though the agency and Tribal Government may have worked out procedures and protocols for the project to begin or move forward, this does not constitute the end of consultation on that project. Tribal Governments need to know if an issue arises or an event takes place that was not foreseen during consultation. Tribal Government can then reopen consultation to deal with this new and unforeseen event.

Agency Ownership of Responsibilities

As mentioned above, Tribal staff are often required to train agency staff on the G2G relationship. With some agencies, staff can change every two to three years, and the burden of educating them often falls to Tribal Governments. This may include reiteration of preferred communication protocols, directing agency staff on Tribal history, issues, concerns, and relationship with the agency. Similarly, Tribal members meeting with multiple levels of an agency's personnel throughout the decision-making process may be required to repeat conversations already conducted in early discussions. This can lead to frustration on the part of Tribal representatives and a waste of Tribal staff resources. Effective Tribal consultation includes agencies taking ownership and responsibility to inform all of their staff and leadership of ongoing discussions with Tribal Governments and ensure adequate training of new staff. Furthermore, to ensure accuracy of the agency's training materials with respect to Tribal Governments, it is a best practice to share those materials with Tribal representatives for review and comment.

In one example from British Columbia, the provincial government addressed this issue through incorporation of performance standards specifically geared to ensure capacity and training to staff working with First Nations (beyond solely tribal liaisons). All provincial staff that may interact with First Nations are expected to work effectively and respectfully with First Nations and are required to have training and education to improve their ability to meet these standards.

Appropriate Roles for Other Entities

It is important to recognize the appropriate roles for other entities in a Tribal consultation process, such as local agencies, applicants, etc. While states and local governments do not have the same legal relationship with Tribal Governments, they are often the closest neighbors and governing bodies located near individual Tribal Governments. Prior to inviting non-governmental entities to a Tribal consultation meeting, it is a best practice for a government agency to first ask permission to invite non-government actors. Maintaining confidentiality during Tribal consultations is of paramount importance and inviting others to a consultation without first notifying and/or requesting permission from the Tribal Government could result in an immediate loss of trust between the two sovereigns.

Incorporating Traditional Ecological Knowledge¹⁷

In most Tribal consultation discussions, Tribal Governments will incorporate or reference Traditional Knowledge or Traditional Ecological Knowledge (hereafter referred to as TEK). TEK is a highly credible and valuable source for informing more effective and holistic policy and project decisions. TEK can inform adaptive management approaches by state and Tribal managers. It should not solely be utilized to as supplemental information used simply to corroborate “Western science.” TEK is an important component of discussions. Federal agencies should understand what TEK is and how it relates to the topic at hand. The only way to effectively incorporate TEK into decision-making is through discussions and consultation with Tribal Governments. (See [Appendix G](#) for more details on TEK and how it can be used in an ocean planning context).

Appropriate Data Management and Maintaining Confidentiality

Data confidentiality is of the utmost concern in working with Tribal Governments and there are many legal and cultural challenges to sharing indigenous knowledge (including TK and TEK).¹⁸ Concerns with sharing indigenous knowledge and identifying use areas must be addressed and should be a consistent message in communications with non-tribal groups, state and federal agencies and other entities working with Tribal Governments. Privacy issues arise for individuals sharing culturally sensitive information, as well as for the Tribal Governments that may be sharing this information on behalf of their membership and Tribal organizations sharing this information on behalf of their member Tribal Governments.

Dealing appropriately with data confidentiality, while still developing a valuable dataset based on indigenous knowledge that can inform Tribal projects, baselines, and long-term monitoring needs to be at the forefront of any project or proposal development. The best way to resolve

¹⁷ Note Traditional Knowledge or Traditional Ecological Knowledge are both non-native derived terms utilized to describe traditional Tribal knowledge systems and bodies of knowledge. Native nations may define these terms as wisdom, knowledge, or life-ways. Traditional Knowledge, Indigenous Traditional Knowledge or ITK may be preferred terms as this area of knowledge and wisdom extend beyond the ecological sideboards implied by the term

TEK. TEK is utilized herein due to the prevalence of that term in existing agency resources and understanding.

¹⁸ Hardison 2005.

some of these challenges is to involve each Tribal Government in a manner that allows it to collect the particular information within its respective Tribal community (i.e., membership). This allows the Tribal Government to determine what is appropriate to share with entities outside of the Tribal Government.

Many Tribal Governments have individual policies and procedures relating to data confidentiality and management. Agencies should refer to these policies, laws, procedures, etc., when working with Tribal Governments to gather, manage, and use data. The following suggestions demonstrate a range of options to ensure data confidentiality:

- *Policies, forms, and agreements:* Work with Tribal Governments to determine if they have a policy or, if appropriate, develop a Traditional Knowledge Policy that may be used by each Tribal Government as a means to enforce Tribal law to protect culturally sensitive information. All project leads and associated staff will be required to sign Confidentiality Agreements. Data-sharing agreements (e.g., MOUs) can be developed between the participating agencies or entities and each Tribal Government, as well as between Tribal Governments, as needed.
- *Data coding/classification:* Information garnered through community-based participatory research can be coded/classified and grouped into descriptive categories. These categories are then used to organize and prioritize information and levels of sensitivity. For example, all information related to trees, shrubs, and grass would be grouped into one category: vegetation. Additionally, any personal information about interviewees and other information deemed sensitive (e.g., locations of endangered species) will be coded and/or classified accordingly
- *Data aggregation:* Specific point data garnered through community-based participatory research can be aggregated by collecting similar, usually adjacent, information or features to form a single larger entity. For example, gathering locations of a specific species will be aggregated into one polygon for the area rather than numerous specific points.

C. Case Studies and Approaches [in development – suggestions welcome]

While each interaction between Tribal Governments and their federal and state partners is unique, following the Tribal and G2G consultation principles and best practices discussed above from the beginning to the end of the process is important to success. While the Caucus has not been able to identify a comprehensive consultation process that embodies all of these principles, it did identify some examples that demonstrate effective Tribal communication and collaboration in support of the G2G relationship that have met with a certain level of success. While these examples do *not* illustrate G2G consultation itself, they do demonstrate Tribal engagement that ensures Tribal Governments are participants in governing bodies that have the potential to impact Tribal interests and resources. The Caucus recognizes, however, that the success achieved in these cases was not unmitigated and there are lessons to extract from them. In sharing these example cases, the Caucus hopes to offer some real-world best

practices that can be built upon for improved G2G relationships and G2G consultation processes. These are listed in [Appendix I](#).

[placeholder for effective G2G Consultation with effective outcome (i.e. final decision was based on G2G Consultation)]

VI. Conclusion

The Tribal Caucus’s goal in developing this document was to provide a companion guide to individual Tribal Governments’ consultation protocols and processes that gives overall guidance, context, and resources to state and federal agencies in their interactions with West Coast Tribes on ocean and coastal issues. The Caucus hopes it can serve as a useful tool for building improved governmental relationships; creating more appropriate, timely, and collaborative Tribal and G2G consultation processes; and producing project outcomes that meaningfully incorporate Tribal Government input and decisions. To that end, the Caucus invites state and federal agency partners to work with Caucus members in disseminating this document within their agencies and in developing plans to implement its principles and best practices.

This document was circulated to the members of the Tribal Caucus for leadership review. Those Tribal Governments that have approved the document as of **DATE** are listed in [Appendix J \[in development\]](#).

VII. Appendices (In Development)

- A. List of Tribal Caucus Members and Working Group Participants
- B. Diagram of Tribal Consultation Process
- C. Overview of West Coast State Consultation Policies
- D. Glossary of Terms
- E. List of Acronyms
- F. References
- G. Overview of Traditional Ecological Knowledge
- H. List of Laws and Resources
- I. Case Studies
- J. **[PLACEHOLDER]** – List of Tribal Governments Approving the Guidance Document
- K. **[PLACEHOLDER]** -- Recommended Dissemination Strategy
- L. **[PLACEHOLDER]** Acknowledgements

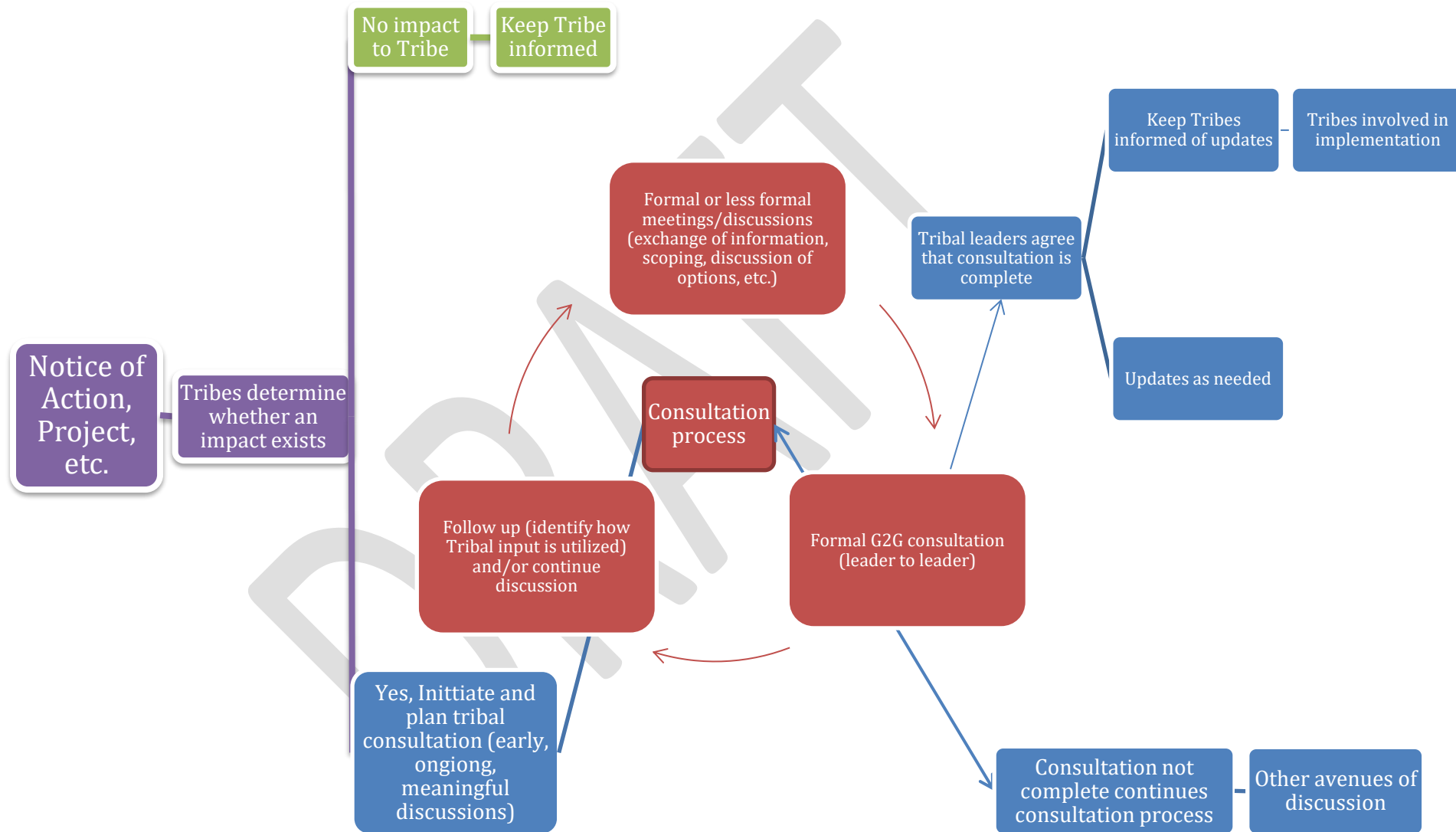
Appendix A: List of Invited Tribal Caucus Members & Participants in the Tribal Guidance Working Group

* Indicates participation in the Tribal Guidance Working Group.

Tribe	Noticing Consultation Policies	POC for Consultation
Acjachemen Nation (and Juaneno Band of Mission Indians)		
Acjachemen Nation Band of Pit River		
Amah Mutson Tribal Band		
Barbareno Chumash Council		
Big Valley Band of Pomo Indians		
California Valley Miwok Tribe		
Cher-Ae Heights Indian Community of the Trinidad Rancheria		
Coastal Band of the Chumash Nation		
Confederated Tribes of Grand Ronde		
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw*		
Confederated Tribes of Siletz Indians		
Confederated Tribes of the Umatilla Indian Reservation		
Coquille Indian Tribe		
Coyote Valley Band of Pomo Indians		
Elk Valley Rancheria		
Hoh Tribe		
Hopland Band of Pomo Indians		
Inter-Tribal Council of California Inc.		
InterTribal Sinkyone Wilderness Council		
Jamestown S'Klallam Tribe		
Kashia Band of Pomo Indians of Stewarts Point Rancheria		
Lower Elwha		
Makah Indian Tribe*		
Ohlone Costanoan Esselen Nation		
Pit River Tribe		
Point No Point Treaty Council (Jamestown S'Klallam and Port Gamble S'Klallam Tribes)		
Port Gamble S'Kallam Tribe		
Potter Valley Tribe		
Quileute Tribe*		
Quinault Indian Nation*		
Redwood Valley Little River Band of Pomo Indians		

Resighini Rancheria		
Robinson Rancheria of Pomo Indians		
Samish Indian Nation		
San Luis Rey Band of Mission Indians*		
Santa Ynez Band of Chumash Indians		
Sherwood Valley Rancheria of Pomo Indians		
Shoalwater Bay Tribe		
Stillaguamish Tribe of Indians		
Suquamish Tribe		
Swinomish Tribe		
Sycuan Band of the Kumeyaay Nation		
Tolowa Dee-ni' Nation		
Tongva		
Trinidad Rancheria*		
Wiyot Tribe		
Xolon Salinan Tribe		
Yurok Tribe		
Fernandeno Tataviam & Chumash		

Appendix B: Diagram of Tribal Consultation Process



Appendix C: West Coast State Tribal Consultation Policies

California

In California, “California Native American Tribes” are defined as both federally recognized Tribes and non-federally recognized Tribes that are listed on the California Native American Heritage Commission's Contact List. Tribal Governments retain all hunting, fishing, and gathering rights within marine waters; these rights were never ceded and have never been explicitly revoked by Congress. In recognition of those retained rights, California law affirms the right of federally recognized Tribes to utilize marine resources within specific marine protected areas for subsistence, cultural, and other related purposes. Federal law likewise has acknowledged some California Tribal Governments' rights to fish in-river. G2G consultation with California Native American Tribes includes consultation between Tribal Governments and local agencies (cities and counties regarding planning and zoning issues),¹⁹ between Tribes and state agencies on policies and projects that may impact Tribal issues and/or resources,²⁰ and Lead Agencies acting under the authority of the California Environmental Quality Act.^{21,22} California's Environmental Quality Act was also revised to incorporate California Native American Cultural Resources as part of project impact analysis, which requires consultation with California Native American Tribes.

Consultation has been defined by the California through Government Code Section 65352.4 and has been continually incorporated throughout California law. California has defined G2G consultation to mean “the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Tribal Governments shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional Tribal cultural significance.”²³ The Governor's Office of Planning and Research provided the following additional guidance regarding G2G consultation, “effective consultation is an ongoing process, not a single event. The process should focus on identifying issues of concern to tribes pertinent to the cultural place(s) at issue – including cultural values, religious beliefs, traditional practices, and laws protecting California Native American cultural sites.”²⁴

[placeholder for Tribal Caucus additions: examples of California reserved rights, discussions of 50 lost Treaties]

¹⁹ SB 18 - California Government Code Section 65352.3. The intent behind SB 18 Consultation is for local governments to work with Tribal Governments to preserve and/or to mitigate the impacts to cultural places.

²⁰ Executive Order B-10-11

²¹ All of California's laws mandating G2G consultation emphasize the benefits of early communication between the government agency and the California Native American Tribes.

²² AB52 also requires California agencies to consult Tribal Governments.

²³ California Government Code Section 65352.4

²⁴ State of California, Tribal Consultation Guidelines, April 15, 2005, page 16.

Placeholder for Tribal Caucus additions: information regarding California and retained tribal rights]

Oregon

There are currently nine sovereign Tribal Governments in Oregon. In 1954, the federal government terminated Tribal sovereignty. This eliminated federal services for Oregon Tribal Governments, and assets previously dedicated to federal administration of Indian Affairs were sold. Due to substantial efforts through the 1970s and 1980s, many Tribal Governments successfully restored their sovereignty. In 1996, Governor Kitzhaber signed Executive Order EO-96-30 to establish the consultation process between sovereign Tribal Governments and the state of Oregon. The Executive Order recognizes the need and purpose for consultation and sets forth general stipulations on what the process for consultation should involve. In 2001, Oregon passed Senate Bill 770 (ORS 182.162-.168), making it a legal requirement for the state to exercise G2G consultation with sovereign Tribal Governments when state policies will impact those Tribal Governments. Moreover, this regulation mandates annual training on G2G consultation policies and process for state agency managers and employees who communicate with Tribal Governments.

During the 1970s and 1980s when Tribal Governments regained their sovereignty, the federal government restricted restoration of lands along the edge of the state coastline, and further restricted provisions for restoring rights to hunting, fishing, and collecting of resources throughout the state. Thus, the state of Oregon manages coastal lands, waters, and resources in public trust. As such, Tribal Governments must use G2G consultation to work with federal and state agencies to protect ocean and coastal resources. Only a select number of Tribal Governments have established mutual agreements with state agencies to redefine the means to continue traditional activities (e.g., hunting, fishing, collecting) without continuous consultation.

[placeholder for Tribal Caucus additions: fishing rights in Oregon, etc.]

Washington

Tribal Governments in Washington have a rich history both in terms the number of Tribal Governments with lands and interest within Washington and the legal dynamics of their interactions with federal and state partners. The following summarizes interactions related to ocean planning and G2G consultation with respect to treaty Tribes. There are various other relationship dynamics among Washington Tribes and federal and state partners, however, including those federally recognized Tribes without recognized treaties.

[placeholder for Tribal Caucus additions: other examples of Washington G2G Relationships and interactions relating to federally recognized Tribes without Treaties.]

73 Tribal Governments and the state of Washington have had a contentious history that culminated
74 with the landmark case *United States v. Washington* in 1974.²⁵ That case reaffirmed the
75 reserved treaty rights of Tribal Governments that were forced to stop or limit their fishing
76 practices by the state.

77
78 In subsequent years, contentious issues continued to arise and, as a result, steps were taken by
79 the state and Tribal Governments to improve communications and respect for Tribal sovereignty
80 and treaty rights. The state of Washington now requires consultation with federally recognized
81 Tribal Governments through state law, accords, and agreements. In 1989, the governor and
82 leaders of 26 federally recognized Tribal Governments signed the [Centennial Accord](#) as a
83 framework for G2G relationships, improved communications, and dispute resolution. Under
84 state law [RCW 43.376](#), the G2G relationship is recognized and state agencies are directed to
85 “make reasonable efforts to collaborate with Indian Tribes in the development of policies,
86 agreements, and program implementation that directly affect Indian Tribes and develop a
87 consultation process that is used by the agency for issues involving specific Indian Tribes”
88 [RCW 43.376.020(1)]. The [Millennium Agreement](#) enhances the G2G relationship recognized
89 under the Centennial Accord and focuses on areas of mutual concern.

90
91 Even with the framework of the Centennial Accord, disputes still occurred and the state and
92 Tribal Governments found themselves in numerous legal actions that may have been settled in
93 other ways. On May 10, 2019, an historic ceremony took place at the Intellectual House, a
94 Tribal longhouse-style facility at the University of Washington. At that meeting, leaders from
95 Washington Tribal Governments joined with Washington State Attorney General Bob Ferguson
96 to announce a new policy for respecting the sovereignty of Tribal Governments in Washington.
97 Specifically, the new policy requires the attorney general’s office to obtain “Free, Prior and
98 Informed Consent” (see Box 2) before initiating a program or project that directly or tangibly
99 affects Tribal Governments, Tribal rights, Tribal lands, and sacred sites. This new policy also
100 requires the state attorney general’s office to refrain from filing any litigation against a Tribal
101 government or tribally owned business without first engaging in meaningful consultation to
102 resolve the dispute, provided doing so does not violate the rules of professional conduct. The
103 attorney general’s office will propose that this policy be preserved by statute in the 2020
104 Washington state legislative session.

105
106 In the marine planning context, four Coastal Treaty Tribes (Hoh, Makah, Quileute Tribes, and
107 the Quinault Nation), through treaties with the United States, reserved hunting, fishing, and
108 gathering rights to access and use the plants, mammals, fish, and other resources of the
109 Olympic Peninsula in perpetuity.²⁶ Those rights are exercised in each Tribe’s “usual and
110 accustomed areas (U&A), which collectively extend into the open ocean from Point Chehalis on
111 the south to the U.S./Canada border on the north. Rights secured by treaties are protected as
112 the supreme law of the land by the U.S. Constitution (Article 1, Sections 2 and 8 and the

²⁵ *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff’d* 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976).

²⁶ The 1855 Treaty of Neah Bay with the Makah Indian Tribe and the 1855 Treaty of Olympia with the Hoh Indian Tribe, Quileute Indian Tribe, and the Quinault Indian Nation.

Fourteenth Amendment, Section 2). The four Coastal Treaty Tribes have treaties that reserve off-reservation sovereign jurisdiction in areas overlapping both state and federal jurisdictions. (

Under the treaties and case law, the coastal Tribes are co-managers of shared ocean resources, along with federal and state governments. The United States has the legal obligation and a profound trust responsibility to protect treaty rights and ensure that Tribal access and use of the resources necessary to sustain their cultures, economies, and lifeways are maintained in perpetuity.

Appendix D: Glossary of Terms

A **federally recognized Tribe** is an American Indian or Alaska Native Tribal Government that is recognized by the federal government as sovereign nation having a G2G relationship with the United States and is eligible for funding and services from the federal government. The United States recognizes these Tribes' inherent rights of self-government (i.e., Tribal sovereignty). These Tribes are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States. (The current list is maintained by the Bureau of Indian Affairs in the *Federal Register*.)

Free, Prior, and Informed Consent (FPIC): The principle of governments obtaining free, prior, and informed consent (FPIC) from native peoples before enacting policies or actions that may affect their rights, lands and resources is a key component of the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Government-to-government (G2G) consultation is a formal component of the Tribal consultation process that engages Tribal leaders and incorporates their input into decisions. A formal G2G meeting, between Tribal leaders and similarly high-level federal or state decision-makers, is customarily part of this process, and may include multiple meetings, discussions, and the back-and-forth sharing of information. More than one formal G2G meeting among decision-makers may be required in a G2G consultation.

The **government-to-government (G2G) relationship** refers to the overarching sovereign-to-sovereign relationship that exists between Tribal Governments and the U.S. federal government (and sometimes Tribal Governments and states), including the legal obligations of state and federal governments to Tribal Governments in light of their inherent sovereignty, as well as federal and international laws. The processes of Tribal consultation and G2G consultation are founded on this relationship.

Non-federally recognized Tribes are Tribal Governments exercising and claiming inherent sovereignty but are not currently recognized as Tribes by the United States government. Non-federally recognized Tribes are Tribes that claim and/or exercise their inherent Tribal sovereignty. Some non-federally recognized Tribes may have previously been recognized by the United States, but that status was revoked or terminated. Many non-federally recognized Tribes are currently seeking recognition status or reinstatement of their recognition status.

State-recognized Tribes are Tribal Governments that are recognized by individual states. State recognition does not impose any obligations on the federal government, unless federal law authorizes such obligations. Typically, state-recognized Tribes exist in those states that have legislation for a formal Tribal recognition process documented in state statute, although other processes may apply.

Tribal consultation is the overall process of sharing information, coordination, engagement, and dialogue that occurs between Tribal Governments and governmental or administrative entities within the United States. Tribal consultation occurs before an agency commits itself to a

168 path of action that will affect Tribal rights, lands, resources, governance, or interests.
169 Consultation is a process that ultimately leads to the development of a decision.²⁷

170
171
172
173

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²⁷ Nez Perce Tribe, “Nez Perce Tribe Guidance on Government-to-Government Consultation,” 1.

Appendix E: List of Acronyms

BOEM - Bureau of Ocean Energy Management
CEQA - California Environmental Quality Act
FPIC - Free, Prior, and Informed Consent
G2G – government-to-government
MLPAI - Marine Life Protection Act Initiative
MPA - Marine Protected Area
MOU – Memorandum of Understanding
NATHPO - National Association of Tribal Historic Preservation Officers
NOAA - National Oceanic and Atmospheric Administration
PSC - Pacific Salmon Commission
TEK – Traditional Ecological Knowledge
THPO - Tribal Historic Preservation Officer
WCOA – West Coast Ocean Alliance

Appendix F: References

- “Advisory Council on Historic Preservation Consultation with Indian Tribes in the Section 106 Review Process: A Handbook” (November 2008).
- Berkes 1999; Berkes et al. 2000.
- Berkes and Berkes 2009; Drew 2005) (Jones and Williams-Davidson 2000; Jones et al. 2010; Mymrin et al. 1999; Noongwook et al. 2007; Alcorn 1989; Gadgil et al. 1993; Berkes 1999; and Schmink et al. 1992.
- Berkes and Berkes 2009; Foale 2006; and Knopp 2010
- Carter and Nielsen 2011
- Cinner and Aswani 2007; Hunn et al. 2003; Menzies and Butler 2007
- Cirone 2005; Flaster 2005; Hunn et al. 2003; Hunn et al. 2005; Jollands and Harmsworth 2007; Jones et al. 2010; Lazrus and Sepez 2005; McIntosh 2005; Mitchell 2005; and Wheeler 2005
- Berkes and Berkes 2009; Foale 2006; and Knopp 2010
- Cobell v. Norton, 240 F. 3d 1081, 1099 (D.C. Cir. 2001); United States v. Mitchell, 463 U.S. 206, 224–25 (1983); White Mountain Apache Tribe v. United States, 11 Cl. Ct. 614 (1987).
- The Confederated Tribes of the Umatilla Indian Reservation, “Consultation: Government to Government (or otherwise).”
- Hardison 2005
- Nez Perce Tribe, “Nez Perce Tribe Guidance on Government-to-Government Consultation.”
- Parravano v. Babbitt, 70 F.3d 539, 546 (9th Cir. 1995), cert. denied, 518 U.S. 1016 (1996).
- Rocha, Megan and Hawk Rosales, et al. *Informing the North Coast MPA Baseline: Traditional Ecological Knowledge of Keystone Marine Species and Ecosystems*. March 2017.
- Thorton and Kitka Sr. 2010
- Thornton et al. 2010
- Seminole Nation v. United States, 316 U.S. 286, 297 [1942]
- United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), aff’d 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976).
- Winnebago Tribe of Nebraska v. Babbitt, 915 F.Supp157 (D. S.D. 1996)

Appendix G: Overview of Traditional Ecological Knowledge

This section is based on the language in the following report: *Informing the North Coast MPA Baseline: Traditional Ecological Knowledge of Keystone Marine Species and Ecosystems*.²⁸

What is TEK?

TEK is defined as a cumulative body of scientific knowledge, passed through cultural transmission, that evolves adaptively through time as a result of Indigenous peoples living in and observing the local environment for many generations; it is a form of adaptive management.²⁹ TEK can contribute significantly to understanding the complexity of an entire ecosystem, providing, for example, location-specific knowledge, place names, ecological features, knowledge of environmental linkages and processes, species taxonomies, species geographic patterns, the role of humans, conservation of biodiversity, and sustainable resource use. It also provides the worldview, including ethics, values, and social institutions of a particular indigenous group.³⁰ Areas of new scientific research and management can also be informed by TEK, which can document areas where ecological changes and threats are evident.³¹ In the words of one Tribal representative, “TEK helps to keep Indigenous centered in this eco-system of life and guides us in our understanding that we are a part of this circle and not the focus. We are here to do our part in maintaining this perfect balance that the creator has made and stewardship role.”

TEK is what informs customary management by Indigenous peoples, (i.e., spatial, temporal, gear, effort, species, catch, morphological), which has been developed over countless generations and ensures sustainable resource use.³² This includes interrelated values, ethics, and ceremony tied to the integral role of humans in the environment, which provides a conservation/stewardship framework.³³

Value and Use of TEK

Uses of traditional ecological knowledge include creating a baseline of ecological features and species observations; identifying areas of concerns/threats for long-term monitoring (i.e., marine protected areas (MPAs), essential fish habitat (EFH), research stations); and informing West Coast ocean policy and adaptive management.

For MPA placement considerations, TEK can serve as a baseline and may be used to measure and assess the effectiveness of MPAs; it can provide a deeper context to assessing the “health” of the baseline itself. The condition and presence of marine species at given locations can be monitored, thereby providing a better understanding of how Tribal stewardship and use practices have influenced the occurrence and condition of marine and estuarine species. This

²⁸ Rocha, Megan and Hawk Rosales, et al. *Informing the North Coast MPA Baseline: Traditional Ecological Knowledge of Keystone Marine Species and Ecosystems*. March 2017.

²⁹ Berkes 1999; Berkes et al. 2000.

³⁰ Berkes and Berkes 2009; Drew 2005) (Jones and Williams-Davidson 2000; Jones et al. 2010; Mymrin et al. 1999; Noongwook et al. 2007; Alcorn 1989; Gadgil et al. 1993; Berkes 1999; and Schmink et al. 1992.

³¹ Carter and Nielsen 2011

³² Cinner and Aswani 2007; Hunn et al. 2003; Menzies and Butler 2007

³³ Thorton and Kitka Sr. 2010

can avoid and/or inform what is commonly referred to as the “shifting baseline syndrome.”³⁴ As defined by Pauly (1995), the shifting baseline syndrome

has arisen because each generation of fisheries scientists accepts as a baseline the stock size and species composition that occurred at the beginning of their careers, and uses this to evaluate changes. When the next generation starts its career, the stocks have further declined, but it is the stocks at that time that serve as a new baseline. The result obviously is a gradual shift of the baseline, a gradual accommodation of the creeping disappearance of resource species, and inappropriate reference points for evaluating economic losses resulting from overfishing, or for identifying targets for rehabilitation measures.

TEK can also identify possible shifts and changes in habitats over long periods. The location, size, composition, presence/absence, and/or species of a given habitat can shift, particularly over great lengths of time, which may be recorded through oral history. Examples are the changing locations of bay sloughs, seaweed distribution and composition on a stretch of rocky coastline, changes in gravel distribution necessary for smelt spawning along a sandy beach, and the distance of tidal influence upstream in particular rivers. Having this deeper historical perspective could inform future benchmarks and/or goals that should be set as part of an adaptive management approach and should include parameters for determining when an ecosystem is considered healthy and biologically diverse.

TEK is increasingly becoming a recognized form of science by those outside of the indigenous community, and a source of valuable information used by non-Tribal governmental agencies to inform conservation management and decision-making.³⁵ Many researchers have concluded that both the more qualitative (TEK) and quantitative (Western science) ways of knowing are together more powerful to understanding ecological features and systems than either are independently.³⁶

TEK and Policy Making

TEK is a highly credible and valuable source for informing more effective and holistic monitoring of ocean health and biodiversity, and to inform adaptive management approaches by state and Tribal managers. TEK cannot serve as a mere footnote; nor can it be relegated to the category of supplemental information used simply to corroborate “Western science.” Rather, TEK must be examined in a meaningful and contextualized way. The gathering of TEK will not be effective if it is not driven by the Tribes on behalf of their respective members/communities. In order to do this, it is essential that each

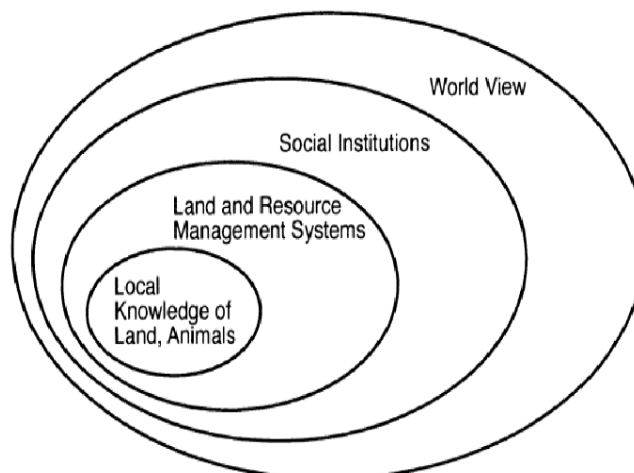


Figure SEQ Figure * ARABIC 1. Levels of Analysis in Traditional Knowledge and Management Systems (Berkes et al. 2000, adapted from Berkes 1999).

³⁴ Thornton et al. 2010

³⁵ Cirone 2005; Flaster 2005; Hunn et al. 2003; Hunn et al. 2005; Jollands and Harmsworth 2007; Jones et al. 2010; Lazrus and Sepez 2005; McIntosh 2005; Mitchell 2005; and Wheeler 2005

³⁶ Berkes and Berkes 2009; Foale 2006; and Knopp 2010

participating Tribe be empowered to gather the information and work within its own community. TEK information and usage must be gathered and organized using a standardized methodology that will be consistent among all participating Tribes and implemented across the West Coast region.

TEK Case Study: California Marine Life Protection Act

An opportunity for utilizing TEK and Tribal community perspectives occurred in the North Coast region of California with the state's Marine Life Protect Act and the potential effects the new "Tribal Take" regulation may have on traditional subsistence, ceremonial, and customary Tribal gathering, harvesting and fishing within MPAs in order to directly inform policy, long-term stewardship, and adaptive management.

During the California Marine Life Protection Act Initiative (MLPAI) process, North Coast Tribes strongly advocated for the recognition of TEK as a science that informs sustainable management, their integral relationship within marine ecosystems, and the cultural and political importance of continued customary uses as inherent rights. North Coast Tribes have never lost the capability to manage, govern, and otherwise use the coastal, marine, and estuarine ecosystems. The North Coast Marine Protected Area (MPA) Baseline Program provides an opportunity for a tribally driven project that looks to TEK as a highly credible source for understanding ecological features, documenting observations of keystone species, identifying areas of concern and related threats, and informing policy and adaptive management in the North Coast Study Region of California.

TEK and Data Management

TEK should be collated and maintained in a manner that is culturally appropriate, ensures the protection of sensitive information, and provides analyses that can inform the baseline. Methods of gathering TEK are through published archival and gray literature research, as well as Tribal community participatory research. TEK-informed data can be used to establish a baseline of ecological features, species observations, and areas of concerns/threats.

Furthermore, Tribes should lead projects that involve data collection, as well as any projects that include the collection, analysis, interpretation, and application of traditional knowledge to collected data.

Appendix H: List of Laws & Resources

(Note: This list of selected laws and resources is not comprehensive.)

Echo-Hawk, Walter R., In the Courts of the Conqueror: The Ten Worst Indian Law Cases Ever Decided (2010)

Jorgensen, Miriam, (Ed.), Rebuilding Native Nations: Strategies for Governance and Development, Univ. of Arizona Press, (2007)

National Museum of the American Indian, Do all Indians Live in Tipis?, Smithsonian Institute (2007)

National Congress of American Indians, Tribal Nations and the United States: An Introduction (2015)

Newton, Nell Jessup (Ed.), Felix S. Cohen's Handbook of Federal Indian Law, LexisNexis (2012)

Segwalise, The Hau De No Sau Nee: A Nation since Time Immemorial, in R. O. Porter, Sovereignty, Colonialism and the Indigenous Nations 101 (2005)

Wilkinson, Charles & The American Indian Resources Institute, Indian Tribes as Sovereign Governments (2nd ed.) American Indian Lawyer Training Program, Inc. (2004)

Case Law³⁷

- *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823)
- *Cherokee Nation v. Georgia*, 30 U.S. (5. Pet.) 1 (1831)
- *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832)
- *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942)
- *US v. Washington*, 384 F. Supp.312 (W.D. Wash. 1973)
- *Morton v. Mancari*, 417 U.S. 525 (1974)
- *Washington v. Washington State Commercial passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979)
- *United States v. Mitchell*, 463 U.S. 206 (1983)

Legislation and Executive Orders

[Executive Order \(E.O.\) 13175, Consultation and Coordination with Indian Tribal Governments](#)
(November 6, 2000)

[President Obama's November 5, 2009 Memorandum for the Heads of Executive Departments and Agencies](#)

³⁷ Federal Indian Law is a very complex area of law. The cases presented are not exhaustive in relation to the government-to-government relationship and trust obligations.

- 394
395 Consultation with Alaska Native Corporations, Public Law 108-199, Div. H, Sec. 161, Jan. 23,
396 2004, 118 Stat. 452, as amended by Public Law 108-447, Div. H, Title V, Sec. 518, Dec.
397 8, 2004, 118 Stat. 3267
398 [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#)
399 Appropriations Act of March 3, 1871, 25 U.S.C. § 71
400
401 Indian Self Determination and Education Assistance Act, 43 U.S.C. 450b(e)).
402
403 Apology to Native Americans Public Law No. 111-118, § 8113, 123 Stat. 3409, 3453-54 (2009)
404
405 National Historic Preservation Act (NHPA) 16 U.S.C. 470f
406
407 **Agency Policies on Government to Government Consultation**
- 408 Advisory Council for Historic Preservation. (2000) ACHP Policy Statement Regarding ACHP's
409 Relationship with Indian Tribes.
- 410 Bureau of Land Management. (2016). BLM Tribal Consultation Guidance.
- 411 Bureau of Ocean Energy Management (2018). BOEM Tribal Consultation Guidance.
- 412 Bureau of Reclamation. (2014 with minor revisions in 2016, 2018). Indian Policy of the Bureau
413 of Reclamation.
- 414 Department of Defense. American Indian and Alaska Native Policy.
- 415 Department of Energy. (2000). A Guide for DOE Employees Working with Indian Tribal Nations.
- 416 Department of Energy. (2009). American Indian & Alaska Native Tribal Governance Policy.
- 417 Department of Energy. Office of Environmental Management. Office of Intergovernmental and
418 Public Accountability. Tribal Nations Website
- 419 Department of the Interior, Departmental Manual, Part 512: American Indian and Alaska Native
420 Programs. Chapter 5: Procedures for Consultation with Indian Tribes.
- 421 Department of the Navy. (2005). Department of the Navy Policy for Consultation with Federally
422 Recognized Indian Tribes.
- 423 Federal Aviation Administration. (2004). American Indian and Alaska Native Tribal Consultation
424 Policy and Procedures.
- 425 Federal Energy Regulatory Commission. (2003). Policy Statement on Consultation with Indian
426 Tribes in Commission Proceedings.
- 427 National Park Service. Native American Consultation Database.

428 National Oceanic and Atmospheric Administration (2013) NOAA procedures for Government-to-
429 Government Consultation with Federally Recognized Indian Tribes and Alaska Native
430 Corporations

431 Office of Natural Resources Revenue. (2018). ONRR Tribal Consultation Policy.

432 U.S. Environmental Protection Agency. (2011). EPA Policy on Consultation and Coordination
433 with Indian Tribes.

434 U.S. Environmental Protection Agency. (1984). EPA Policy for the Administration of
435 Environmental Programs on Indian Reservations.

436 U.S. Fish and Wildlife Service. (2011, updated 2018). U.S. Fish & Wildlife Service Tribal
437 Consultation Handbook.

438 U.S. Geological Survey. Office of Tribal Relations.

439 U.S. Geological Survey. (1997). U.S. Geological Survey Manual, Section 500.6 American Indian
440 and Alaska Native Sacred Sites.

441 **Other resources not available electronically:**

442 U.S. Environmental Protection Agency. (2000). *Working Effectively with Federally Recognized*
443 *Indian Tribes: A Practical Guide for EPA Employees.* EPA 305-K-99-006

444 White House Council on Environmental Quality. (February 4, 2003). *Memorandum for Tribal*
445 *Leaders: Cooperating Agencies in Implementing the Procedural Requirements of the National*
446 *Environmental Policy Act.*

- 447 • Executive Materials on Government-to-Government Consultation
448 • Agency Orders on Government-to-Government Consultation

449 **Collaboration Skills for Environmental Professionals**

450 Avruch, Kevin. 2003. "Type I and Type II Errors in Culturally Sensitive Conflict Resolution
451 Practice." Conflict Resolution Quarterly. Vol. 20(3). P 351-373.

452 Bacon, Terry R. 1994. Interpersonal and Interactive Skills. Durango, CO: Self Management
453 Institute.

454 Bacon, Terry R. 1996. High Impact Facilitation. Durango, CO: International Learning Works,
455 Inc.

456 Beyerlein, M. M. (2003). The collaborative work systems fieldbook: strategies, tools, and
457 techniques. San Francisco, Jossey-Bass.

458 Bingham, G. (1986). Resolving environmental disputes: a decade of experience. Washington,
459 D.C., Conservation Foundation.

460 Brown, John Seely & Paul Duguid. 2000. The Social Life of Information. Boston: Harvard
461 Business School Press.

462 Carlson, Chris. "Trainer's Manual: Getting the Most Out of Consensus Processes." Portland,
463 OR: The Policy Consensus Institute.

- 464 Carpenter, Susan, and W.J.D. Kennedy. 1998. Managing Public Disputes. San Francisco, CA:
465 Jossey-Bass Publishers.
- 466 CDR Associates, 1998. Mediating Environmental and Public Policy Disputes. Boulder, CO:
467 CDR.
- 468 CDR Associates. 2005. Theory Practice in Collaborative Problem Solving. Boulder, Co: CDR.
- 469 Chrislip, D. D. (2002). The collaborative leadership fieldbook: a guide for citizens and civic
470 leaders. San Francisco, Jossey-Bass.
- 471 Conca, Ken, and Geoffrey Dabelko. 2002. Environmental Peacemaking. Washington, D.C.:
472 Woodrow Wilson Center Press.
- 473 Council on Environmental Quality. 2007. Collaboration in NEPA: A Handbook for NEPA
474 Practitioners. Executive Office of the President of the United States.
- 475 Crump, Larry. 2003. "Goal Achievement and Inter-Organizational Team Dynamics." Griffith
476 University. Presented for Melbourne, Australia: International Association for Conflict
477 Management.
- 478 De Bono, Edward. 1985. Six Thinking Hats. Boston: Little, Brown and Company.
- 479 D'Estree, Tamra P. 2002. "Dynamics". In Cheldin, S., Druckman, D. and Fast, L., Human
480 Conflict: From Analysis to Action. London: Cassell.
- 481 D'Estree, Tamra P. 2005. "The Role of Voice in Conflict Escalation and Resolution". In M.
482 Fitzduff and C.E. Stout (Eds.), The Psychology of Resolving Global Conflicts: From War
483 to Peace. NH: Greenwood Publishing Group.
- 484 Deutsch, M. and Coleman, P.T. (Eds.). 2000. The Handbook of Conflict Resolution. San
485 Francisco: Jossey-Bass.
- 486 Docherty, Jane. 2004. "Culture and Negotiation: Symmetrical Anthropology for Negotiators."
487 Marquette Law Review. Vol. 87(4). P 711-722.
- 488 Donahue, John D. and Richard J. Zeckhauser. (2011) Collaborative Governance: Private Roles
489 for Public Goals in Turbulent Times. Princeton University Press.
- 490 Emerson, Kirk and Tina Nabatchi. (2015) Collaborative Governance Regimes. Washington,
491 DC: Georgetown University Press
- 492 Ertel, Danny. 2004. "Getting Past Yes: Negotiating as if Implementation Mattered." Harvard
493 Business Review. Nov. P 60-69.
- 494 Fairhurst, Gail T, and Robert A. Sarr. 1996. The Art of Framing: Managing the Language of
495 Leadership. San Francisco, CA: Jossey Bass, Inc.
- 496 Faure, Guy Oliver, and Jeffrey Rubin. 1993. Culture and Negotiation. Thousand Oaks, CA:
497 SAGE Publications Inc.
- 498 Federal Emergency Management Agency. 1996. Guide for All Hazard Emergency Operations
499 Planning: State and Local Guide SLG 101. Jessup, MD. FEMA.
- 500 Federal Highway Administration and U.S. Institute for Environmental Conflict Resolution. 2005.
501 "Improving Transportation Project Development and Environmental Reviews Through
502 Collaborative Problem Solving: A Facilitated Workshop." FHWA Office of Project
503 Development and Environmental Review in collaboration with the U.S. Institute for
504 Environmental Conflict Resolution.
- 505 Fisher, Roger and Danny Ertel. 1995. Getting Ready to Negotiate. New York, NY: Penguin
506 Books.

- 507 Fisher, Roger and William Ury. 1991. Getting to Yes: Negotiating Agreement without Giving In.
508 New York, NY. Penguin Books.
- 509 Fisher, Roger, Elizabeth Kopelman and Andrea Kupfer. 1994. Beyond Machiavelli: Tools for
510 Coping with Conflict. Boston, MA: President and Fellows of Harvard College.
- 511 Freund, James. 1992. Smart Negotiating: How to Make Good Deals in the Real World. New
512 York, NY: FIRESIDE.
- 513 Frydman, B., I. Wilson, et al. (2000). The power of collaborative leadership: lessons for the
514 learning organization. Boston, Butterworth-Heinemann.
- 515 Glanz, J. (2006). Facilitator's guide: What every principal should know about leadership.
516 Thousand Oaks, CA, Corwin Press.
- 517 Gordon, John C. and Joyce K. Berry. (2006) Environmental Leadership Equals Essential
518 Leadership: Redefining Who Leads and How. Yale University.
- 519 Guthrie, Chris. 2004. "Principals of Influence in Negotiation." Marquette Law Review. Vol. 87(4).
520 P 829-837.
- 521 Hall, Lavinia. 1993. Negotiation: Strategies for Mutual Gain. Newbury Park, CA. SAGE
522 Publications.
- 523 Harrison, Jo-Ann, Kathleen Young, Amy Pate, and Victor Asal. 2003. "Cultural Differences and
524 Crisis Negotiations: An Experimental Investigation." College Park, MD: University of
525 Maryland.
- 526 Harvard Business School. 2000. "Negotiation Analysis: A Synthesis." Boston, MA: Harvard
527 Business School Publishing.
- 528 Harvard Law School. 1992. "Managing International Business Relationships." Boston, MA:
529 Program on Negotiation at Harvard Law School.
- 530 Heifetz, Ronald, Alexander Grashow, and Marty Linsky. (2009) Leadership in a (Permanent)
531 Crisis. Harvard Business Review.
- 532 Heifetz, Ronald A. (1994) Leadership Without Easy Answers. Cambridge, MA: The Belknap
533 Press of Harvard University Press.
- 534 Imperial, Mark T., Sonia Ospina, Erik Johnston, Rosemary O'Leary, Jennifer Thomsen, Peter
535 Williams, and Shawn Johnson. (2016) Understanding Leadership in a World of Shared
536 Problems: Advancing Network Governance in Large Landscape Conservation. *Frontiers*
537 *In Ecology*.
- 538 Kegan, Robert and Lisa Laskow Lahey (2009) Immunity to Change. Harvard Business School
539 Publishing Corporation.
- 540 Kelly, Kip. (2012) Leadership Agility: Using Improv to Build Critical Skill. UNC Kenan-Flagler
541 Business School.
- 542 Kaner, Sam. 1996. Facilitator's Guide to Participatory Decision-Making. Gabriola Island,
543 Canada: New Society Publishers.
- 544 Kinlaw, Dennis C. 1993. Team Managed Facilitation: Critical Skills for Developing Self-Sufficient
545 Teams. San Diego, CA. Pfeiffer and Company Publishing.
- 546 Kuzstal, Iwona. 2002. "Discourses in the Use and Emergence of Organizational Conflict."
547 Conflict Resolution Quarterly. Vol. 20(2). P 231-249.
- 548 Kolko, Jon (2012) Wicked Problems: Problems Worth Solving. Stanford Social Innovation
549 Review. ssir.org.

- 550 Lax, David A. and James K. Sebenius. 1986. The Manager as Negotiator: Bargaining for
551 Cooperative and Competitive Gain. New York, NY: The Free Press.
- 552 Lewicki, Roy, Barbara Gray and Michael Elliott. 2003. Making Sense of Intractable
553 Environmental Conflicts. Washington, DC: Island Press.
- 554 Lewicki, Roy, Joseph Litterer, John Minton, and David Saunders. 1994. Negotiation. The
555 McGraw-Hill Companies.
- 556 Linden, R. M. (2002). Working across boundaries: making collaboration work in government and
557 nonprofit organizations. San Francisco, Calif., Jossey-Bass.
- 558 McLagan, Patricia, and Christo Nel. 1995. The Age of Participation: New Governance for the
559 Workplace and the World. San Francisco, CA: Berret-Koehler Publishers Inc.
- 560 McKinney, Matthew J. and Shawn Johnson. (2009) Working Across Boundaries. Cambridge,
561 MA: Lincoln Institute of Land Policy.
- 562 Scarlett, Lynn and Matthew McKinney (2016) Connecting People and Places: The Emerging
563 Role of Network Governance in Large Landscape Conservation. *Frontiers in Ecology*.
- 564 Tamm, James W. and Ronald J. Luyet, 2005), *Radical Collaboration*, Harper
565

Appendix I: Case Studies

The following case studies demonstrate qualities of effective Tribal consultation processes, specifically the information sharing, communication, and collaboration that support G2G consultation meetings between sovereigns. These case studies do not, however, illustrate G2G consultation itself.

Tribal Representation: Pacific Salmon Commission

The natural and cultural resources indigenous peoples depend on to maintain their livelihoods and culture do not know modern boundaries. Cross-jurisdictional agreements between governments regarding resources are better served by recognition of Tribal sovereignty and by Tribal participation in these processes. An example of successful inclusion of Tribal Governments within an international resource management framework is that of the Pacific Salmon Commission (PSC). The PSC acts as a forum for the United States and Canada to reach agreements that support the Pacific Salmon Treaty signed in 1985. Both parties work within this forum to develop recommendations for annual regulatory actions by each government to sustain trans-boundary salmon stocks.

The PSC consists of the Commission and a number of panels that represent different geographic areas. The Commission's membership consists of four Canadian and four U.S. voting members. In its Charter for the U.S. Section, the U.S. recognized the treaty Tribal Governments as resource owners and managers, rather than stakeholders. The four U.S. Commissioners in the PSC are nominated and chosen to represent the following interests: a federal fishery; residents of Alaska; residents of the states of Oregon or Washington; and members of treaty Indian Tribes of Idaho, Oregon or Washington (Charter for the U.S. Section PSC, October 4, 1985). Treaty Tribal Governments are also represented by two voting members appointed to the Southern Panel of the PSC that makes recommendations to the Commission.

The PSC process is complex and often contentious, yet it has successfully represented the interests of the U.S. and Canada under the Pacific Salmon Treaty and maintained fisheries for salmon stocks harvested throughout their migratory area. Meaningful Tribal participation in this process has not only aided decision making; it has also proven to be a necessary and integral part of the annual international negotiations. This trans-boundary process benefits from having voting representation from Tribal Governments. There is no doubt that other processes and entities can benefit as well.

A Forum for Information Exchange: Northwest Navy Tribal Council

In Washington State, the Navy and federally-recognized Tribal Governments in western Washington have established the Northwest Navy Tribal Council. This forum was created to facilitate meaningful exchange of information and to create a mechanism for collaboration. Originally, the Navy Tribal Council met biannually and during those meetings Tribal leadership and Tribal staff would meet with the Navy Region Commander and Navy staff to discuss regional issues and mutual concerns. The importance of these meetings was the development

of relationships between staff and leadership of the respective governments. Early on, a consultation document was developed for Navy personnel that was inclusive of Tribal input, which resulted in a document that recognized the value of conversation between governments.

Despite a promising initial format for discussions, however, recently the Navy unilaterally decided to only meet once a year and to limit attendance solely to Tribal Council/leadership. These changes do not allow for the meaningful exchange of information and prevent relationship-building, as Navy personnel and Tribal leadership often change. Furthermore, as discussed above, it is not sufficient for agencies to simply hold meetings with Tribal representatives. To truly respect the governmental relationship, it is essential for agencies to honor the principle of mutual decision making and to incorporate Tribal concerns into the agency's decisions. Tribal Governments are currently working to update the charter and realign the mission of this forum to be more meaningful.

622 **Appendix J: List of Tribal Governments Approving the Guidance Document**
623 **[in development]**

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