

# **Improving EPA’s Consultation with Tribes: Development of the U.S. EPA’s Plan for Improving Implementation of EO 13175, Consultation and Coordination with Indian Tribal Governments**

## **Consultation Comment Summary and Response to Comment April 30, 2021**

### **I. Purpose**

On March 1, 2021, EPA’s Office of International and Tribal Affairs (OITA) American Indian Environmental Office (AIEO) initiated consultation and coordination with federally recognized tribes on how to best improve its implementation of the policies and directives of [\*Executive Order \(EO\) 13175: Consultation and Coordination with Indian Tribal Governments\*](#), in accordance with the directives of the January 26, 2021 presidential memorandum, [\*Tribal Consultation and Strengthening Nation-to-Nation Relationships\*](#). The following report summarizes consultation actions taken by EPA, EPA’s detailed plan created as a result of the presidential memorandum and informed by tribal consultation input received, and major themes emerging from the tribal consultation input.

### **II. Background**

On January 26, 2021, President Biden issued a memorandum on *Tribal Consultation and Strengthening Nation-to-Nation Relationships*, which established (1) respect for tribal sovereignty and self-governance, (2) commitment to fulfilling federal trust and treaty responsibilities to tribal nations, and (3) regular, meaningful, and robust consultation with tribal nations as priorities for the administration. The President’s memorandum affirmed these priorities as cornerstones of federal Indian policy. It also reaffirmed both *Executive Order (EO) 13175: Consultation and Coordination with Indian Tribal Governments*, which requires all federal agencies to engage in regular, meaningful, and robust tribal consultation, and the November 2009 [\*Presidential Memorandum on Tribal Consultation\*](#), which requires each federal agency to implement the policies and directives of EO 13175.

President Biden’s memorandum directed each federal agency to consult with tribes before developing a detailed plan of actions the agency will take to implement the policies and directives of EO 13175 and to submit the plan to the Office of Management and Budget (OMB) within 90 days of the issuance of the memorandum (i.e., by April 26, 2021).

### **III. Consultation**

EPA initiated the tribal consultation and coordination period on March 1, 2021. Due to the Covid-19 pandemic, consultation notification letters were emailed to the 574 federally recognized tribes, using the Bureau of Indian Affairs’ [\*tribal leaders directory\*](#), with additional email outreach conducted via EPA’s [\*Tribal Consultation Opportunities Tracking System \(TCOTS\)\*](#) website and listserv. EPA also sent emails directly to tribal environmental and natural resource directors and provided communication and outreach to EPA’s National Tribal Caucus,

Tribal Partnership Groups, and Regional Tribal Operations Committees. The EPA consultation period extended through March 31, 2021.

During the consultation and coordination period, EPA held two identical national tribal webinars and listening sessions on 3/15/21 and 3/17/21. Additionally, AIEO staff briefed several EPA Tribal Partnership Groups and Regional Tribal Operations Committees (RTOCs), at the groups' request, during the consultation and coordination period, recording any feedback provided by tribal representatives at those meetings. Those meeting included:

- 3/3/21: National Tribal Caucus meeting with AIEO
- 3/10/21: EPA Region 1 Tribal Operations Committee meeting
- 3/15/21: EPA Region 5 Tribal Environmental Program Managers meeting
- 3/24/21: Tribal Pesticide Program Council meeting

#### **IV. EPA's Submitted Plan to OMB and Consideration of Comments Received**

EPA submitted its detailed *Plan for Implementing the Policies and Directives of Executive Order 13175: Consultation and Coordination with Indian Tribal Governments* (Plan) to OMB by April 26, as required by the presidential memorandum. In the Plan, EPA outlines the extensive consultation practices the Agency currently has in place in order to meaningfully communicate and coordinate with tribal officials prior to EPA taking actions or implementing decisions that may affect tribes. The Plan identifies the [EPA Policy on Consultation and Coordination with Indian Tribes](#) (EPA Consultation Policy) as the guiding document in this process and describes it in depth. Furthermore, the Plan highlights internal steps and processes EPA takes in order to verify that the EPA Consultation Policy is properly implemented, such as the tracking, management, and reporting of consultation actions and the way in which EPA ensures compliance with EO 13175. Finally, the Plan highlights additional steps that EPA has taken to receive appropriate input, such as the February 2016 issuance of the [Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights](#) and the ongoing effort to finalize the *Guiding Principles for Consulting with Alaska Native Claims Settlement Act (ANCSA) Corporations*.

The Plan also contains actionable commitments that the Agency will take in order to review, improve upon, and better implement the Agency's consultation and coordination practices. The Plan confirms that:

1. EPA will convene an Agency workgroup to identify options and recommendations to address key comments raised by tribes during the consultation and coordination process
2. EPA will provide enhanced consultation training for EPA Tribal Consultation Advisors

These commitments were informed by the vast number of tribal comments received during the March 1-31 consultation period. EPA closely reviewed each comment provided and has summarized those comments in the section below. EPA acknowledges the range of perspectives and suggestions provided by commenters and appreciates all comments. Due to the magnitude of comments received and the strict time requirement for finalizing plans put forth in the January

26, 2021 presidential memorandum, EPA did not have time to appropriately consider each comment and make a final determination as to how they may be implemented by EPA. However, EPA will continue to review and consider each comment received and provide options and recommendations to EPA leadership by December 31, 2021, as committed to in the Plan.

## **V. Comments Received**

EPA received 28 written comment letters from tribes and tribal organizations as part of the tribal consultation and coordination process, including letters from:

1. Alaska Federation of Natives
2. Big Pine Paiute Tribe of the Owens Valley
3. Citizen Potawatomi Nation
4. Confederated Salish and Kootenai Tribes
5. Confederated Tribes of the Umatilla Indian Reservation, Department of Natural Resources
6. Federated Indians of Graton Rancheria
7. Gila River Indian Community
8. Habematolel Pomo of Upper Lake
9. Jamestown S’Klallam Tribe
10. Little Traverse Bay Bands of Odawa Indians, Natural Resource Department
11. Lower Sioux Indian Community
12. Makah Tribal Council
13. National Congress of American Indians
14. National Tribal Air Association
15. National Tribal Water Council
16. Nez Perce Tribe
17. Nottawaseppi Huron Band of the Potawatomi
18. Oneida Nation
19. Osage Nation Historic Preservation Office
20. Pueblo of San Felipe
21. Region 9 Tribal Caucus
22. Region 10 Tribal Operations Committee
23. Santa Clara Pueblo
24. Sault Ste. Marie Tribe of Chippewa Indians
25. Sokaogon Chippewa Community
26. The Chickasaw Nation
27. United South and Eastern Tribes Sovereignty Protection Fund
28. Ute Indian Tribe of the Uintah and Ouray Reservation

Additional comment letters received:

1. State of Hawaii, Office of Hawaiian Affairs

EPA staff also recorded comments from tribal representatives during the March 15 and March 17 national tribal informational webinars and listening sessions, as well as during briefings by AIEO staff to the Tribal Partnership Groups and RTOCs identified above.

### **Themes Emerging from Consultation Comments**

Key themes that emerged from tribal input received during the consultation and coordination period are summarized below.

#### **Comments Specific to This Consultation Opportunity**

- **EPA’s consultation period on the *Improving EPA’s Consultation with Tribes: Development of the U.S. EPA’s Plan for Improving Implementation of EO 13175, Consultation and Coordination with Indian Tribal Governments* was too short:** While tribal representatives generally appreciated the opportunity to consult on how to best improve EPA’s implementation of the policies and directives of EO 13175, in accordance with the directives of the January 26 presidential memorandum, a number of tribes commented that having only a 30-day consultation period and only two-week notification period prior to the first informational webinar/listening session was insufficient to provide for a meaningful consultation. Two commenters requested that EPA extend its consultation period. Unfortunately, EPA was unable to extend the consultation beyond March 31, as it needed the time between the close of the consultation period and OMB submission to consider the input, discuss considerations with EPA leadership, and write the plan.
- **Most federal agency consultations responding to the Biden memo’s direction do not meet the memo’s standard for “regular, meaningful, and robust” consultation:** A commenter indicated that consultations scheduled by federal agencies to respond to the directives of the Biden memo do not appear to meet the memo’s stated standard of “regular, meaningful, and robust” consultation, noting that they are being “reduced to a “check the box” exercise.”
- **EPA should communicate with tribal leaders and organizations to discuss the formulation of new consultation procedures:** Several commenters indicated that they wished to communicate and/or consult further on the development and implementation of EPA’s plan.

#### **General Comments re: Consultation**

- **EPA’s definition of consultation should be broadened and clarified:** Many commenters indicated that EPA should recognize the perspective of consultation as presented in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (i.e., free and prior informed consent, or FPIC) and that this definition should be applied across the Agency. Additionally, it was recommended that EPA develop a plan to support UNDRIP and incorporate the principles of UNDRIP in the Agency’s programs. Several commenters indicated that given the directives of Biden memorandum and EOs, they believe that free, prior and informed consent of Indigenous Peoples should be a requirement for project or agency decisions that would impact tribal resources. A

commenter highlighted instances and cases where they felt tribal consent and not just “sharing information” is critical, including proposals involving: (a) storage or disposal of hazardous materials on their lands; (b) large-scale development or investment plans that could have a major impact on tribal territories or resources; or (c) natural resource extraction projects that have significant social, cultural, and/or environmental impacts. Other commenters indicated that through the consultation process, tribes should have the opportunity to collaboratively be involved in the decision-making process and/or reach common agreement, consensus, or consent on actions through the consultation process and/or the ability through the consultation process to shape the outcome of every government action in which it is invoked. Additionally, a commenter indicated that a different substantive standard that could be used in conjunction with consensus, or separately as a step short of consensus, is a commitment to minimize or mitigate adverse impacts on tribal interests. When EPA decides to act despite tribal concerns, it could and should use its discretion to protect tribal interests. Consultation then would focus on specific tribal interests and ways to minimize adverse impacts on them. Identification and consideration of mitigation measures often leads to improvements in proposed actions.

- **EPA does not provide a sufficient amount of time for tribal consultation:** A majority of commenters indicated that, in general, EPA does not provide sufficient time to allow tribes to meaningfully and effectively consult on Agency actions. Commenters noted that, generally, more time is needed during the consultation period for tribes to effectively research, analyze, and organize comments regarding EPA’s action that best represents tribes’ interests. Commenters noted that time is needed not only for tribal staff to become educated on an action or issue and coordinate among tribal departments (e.g., cultural specialists, environmental departments, social departments and tribal attorneys), but also for them to then inform their tribal council. A commenter explained that many tribal councils meet monthly or may only work part time, which does not allow sufficient time for those tribes to effectively participate in many consultations. With respect to how much time is needed for sufficient consultation, some commenters indicated that they have been provided less than a week to respond to consultation opportunities, and several indicated that 30-day consultation periods are too short for many tribes to be able to effectively participate. One commenter indicated that a minimum of 60 days for consultation periods is needed. Others noted that the length of the consultation period and what constitutes sufficient advance notice will depend on the complexity of the action or issue. The more complex an issue, the more time tribes will need to digest the materials and formulate feedback and guidance. A commenter noted that, generally, any notice that is less than four weeks before the consultation session will be insufficient for tribal review and vetting prior to consultation.
- **Agencies must prepare in advance for consultation that must be accelerated due to emergency legislation:** Whether the result is delivery of funding or some other federal action, the accompanying legislation will undoubtedly impose both a tight schedule as well as the responsibility to consult. EPA must have a plan in place that allows for full consultation in these situations, even if the turnaround time is limited. Tribes are more

than capable of working within an emergency timeline, especially when the associated processes are developed using consultation.

- **EPA should provide more flexibility for tribes regarding the length of comment periods:** A commenter indicated that, in EPA Region 10 especially, some tribes do not have the same access to technology that can be expected from the general population in populated areas, particularly in rural Alaska. In certain cases, tribes in extremely rural areas cannot reasonably be expected to adhere to the same timeframes for comment periods. In these cases, we suggest that certain allowances be made, especially for projects or actions that involve or affect land or native peoples in rural Alaska and others in the Pacific Northwest.
- **Tribes often feel that consultations are a “check the box” exercise, with a decision already made by the time consultation occurs and/or that consultations can feel like an early comment period opportunity and not a consultation opportunity:** Several commenters indicated that it often appears that EPA decisions have already been made by the time consultation occurs and the consultation appears to be primarily a “check the box” exercise. Other comments highlighted that consultation can often feel like an early comment period opportunity, rather than an opportunity for meaningful consultation with tribal input and concerns considered in the Agency’s decision-making process. Consultation processes can be complicated by a number of factors. One commenter noted that consultation is complicated by the fact that EPA consults on a wide range of actions (regulations, policy, guidance, permits, etc.) and each category of actions has its own processes, timelines, and parameters, as well as departments and personalities involved, making the establishment of relationship building between EPA and a tribe difficult. Some commenters indicated that EPA should defer to the specific consultation protocols of individual tribes where they are available, whereby requesting information on preferred procedures of individual tribes should be an early step in the consultative process. Recommendations for creating more meaningful consultations included:
  - EPA should reframe the ultimate goal of consultation as being to engage tribes and tribal interest at the earliest stage of scoping and/or planning activities to identify possible solutions to avoid adverse impacts to tribal resources, governing interests, treaty rights, etc.
  - EPA should initiate tribal consultation early and within a timeframe that allows tribes to engage in a thoughtful manner, one that gives tribes the opportunity to express tribal concerns and not just answer EPA’s questions relating to an issue.
  - EPA should initiate tribal consultation before any action on a project is initiated, consulting with tribes early in EPA’s planning and decision-making process, during the “idea-making” phase.
  - When initiating consultation with a tribe, EPA should ensure that it has communicated a clear perspective of how consultation will be conducted and that an Agency decision and follow up with the tribe on the action/decision being consulted on should be expected as part of the consultation process.
  - Agencies should prepare an impact statement before considering any actions that have the potential of threatening or harming tribal interests or treaty rights.

- EPA should provide tribes adequate notice of the federal actions being considered, including any potential regulatory or jurisdictional impacts to tribes. This information should be presented in a manner and form that is understandable to tribal communities and is culturally appropriate. It was noted that too often, agencies send form consultation notice letters that do not provide enough information to inform a tribe whether the actions or policies being considered will have an impact on the tribe.
  - For federal actions that are particularly complex and/or far-reaching, EPA should meet with tribes, either virtually or in-person, early in the process to comprehensively describe the federal action or policies and their potential implications.
  - EPA should devote qualified, high-level staff to the consultation process from beginning to end. When consulting with tribes, EPA should send subject matter experts who are equipped to answer complex questions about the topic for consideration.
  - EPA should create procedures to allow for tribal input throughout the development and decision-making processes and to provide for a two-way exchange of information and continuous communications between EPA and affected tribes. It was noted that a tribe's comment letter must not solely be considered consultation.
  - EPA should provide written materials in advance of consultation meetings.
  - EPA should provide adequate time for tribes to submit their written comments for the Agency to consider before any federal actions or policies are finalized.
  - EPA should publish a notice responding to and explaining how tribal comments were addressed in the final Agency action or policy, including an explanation and justification when tribal government feedback is not incorporated into the final outcome.
- **Many tribes lack sufficient resources to effectively participate in EPA consultation opportunities:** A number of commenters indicated that many tribes lack sufficient resources to effectively participate in EPA consultation opportunities. Commenters suggested that EPA provide funding mechanisms (e.g., GAP program flexibilities to allow for research and consultation activities) to enable more tribes to engage in robust consultation with the Agency. Others indicated that tribes should be remunerated for costs associated with consultations, such as providing ready access to technical expertise, attending consultations, conducting studies, and producing reports. Another commenter indicated that additional resources should be considered for Agency Tribal Partnership Groups to help support tribal outreach and information sharing about EPA consultation opportunities and actions. NCAI recommended that EPA budget requests include adequate funding to support tribal consultation, including supporting tribal nation participation in consultation, and that federal grant and funding agreements should allow tribal nations to use funds to participate in consultations.
  - **EPA staff should receive mandatory, comprehensive tribal training:** A number of commenters indicated that federal agency staff, at both senior and career levels, should be

mandated to participate in comprehensive training on tribal governments and their unique status (as opposed to the status of states and local governments), the nation-to-nation relationship, federal trust and treaty obligations, and appropriate consultation protocols. It was noted that this training is particularly important for federal employees engaging in decision making that impacts tribal interests. It was recommended that EPA should ensure that it provides the budget and staffing to provide training, training should be provided by experts in the field, and that training should be mandatory for new staff members and decision-makers and should also be required on a regular basis for all employees. Several commenters also recommended that, at the Regional level, EPA leadership and staff receive training on an ongoing basis about the tribal nations that they regularly work with, including the tribal governments' interests, needs, cultures, and histories. A commenter requested that all training materials be made public so tribal nations can comment on them and offer suggestions for their improvement another requested that training be designed in consultation with tribal nations.

- **EPA staff should be held accountable for effectively working with and/or consulting with tribes:** A few commenters recommended that EPA include performance metrics in EPA staff evaluations to ensure accountability of EPA staff in effectively consulting with and/or working with tribes.
- **EPA should put in place additional requirements to ensure policies, rules and decisions fully consider and address the concerns of tribal nations:** Several commenters called for EPA to put in place additional requirements to ensure policies, rules and decisions fully consider and address the concerns of Tribal Nations. At a minimum, they felt that these requirements should address what meaningful and robust consultation means, what actions require consultation, when consultation should occur, and who should be involved in consultation. Another commenter indicated that agencies should create consultation policies that persist from administration to administration, establishing a permanent anchor for what constitutes successful consultation that will remain in effect for this and future administrations. Other commenters indicated that tribal consultation requirements should be codified into law and/or that all federal agencies should be statutorily required to adhere to consultation policies; one commenter indicated that this was needed with oversight from the White House and Congress.
- **There should be a forum for tribes to contest Agency decisions:** Several commenters noted that there are no remedies available to tribes when they feel that a consultation process has failed. Some suggested that there should also be a mechanism in place that allows for dispute resolution or mediation as an alternative to litigation which they indicated is presently is the only recourse available to tribes. Other commenters indicated that tribes should have the right to seek judicial review of consultation actions.
- **Given the large number of federal consultation opportunities that can occur at any one time, tribes can feel overwhelmed by the number of consultation opportunities and notifications provided:** A commenter indicated that, while tribes appreciate the opportunity to consult, often there are so many concurrent consultation opportunities, it can “feel like a fire hose.”



- **EPA consultations should be implemented and interpreted consistently among EPA offices and Regions:** A few commenters indicated the need for all offices and divisions within EPA to be aware of their responsibility to meaningfully engage with tribal nations in their decision-making and the need for consistency among EPA offices and divisions in the consultation and coordination process.
- **Tribes should be able to initiate consultation with EPA:** Several tribes commented that they should be able to initiate consultation with the Agency. A commenter recommended that tribal governments be recognized as having the right to initiate consultation with the Agency, alone or in conjunction with other tribes, on any significant level of government action or generally to set the direction for some new policy initiative not yet contemplated by the federal government.
- **There should be no delegation of federal consultation obligations:** A commenter indicated that because the trust relationship exists between the federal government and tribal nations exclusively, the federal government must not delegate its consultation obligation to third party entities, which include non-profit organizations, industries/corporations, hired consultants and contractors, non-tribal archaeologists and anthropologists, and other units of government. When other entities are party to or involved in federal actions, the federal government must exercise appropriate oversight in ensuring tribal interests are not adversely impacted.
- **EPA's Consultation Policy should make clear that tribal interests may be affected not just by on-reservation but also by off-reservation actions.**
- **Greater effort should be made to consult with and meet with tribal nations on an individual basis:** Several commenters indicated that greater effort must be made to consult with tribal nations on an individual basis. A commenter noted that due to the COVID-19 pandemic, virtual and teleconference consultations have had to take the place of in-person, face-to-face, consultations and, while this is not a preferred method of consultation, it does offer the federal government another opportunity to engage, communicate, and consult at a leader-to-leader level. Another commenter indicated that once the Centers for Disease Control COVID-19 protocols allow, agencies should make an effort to visit tribal nations in their Region on a quarterly basis, or at a minimum, once a year.
- **EPA should hold regularly scheduled meetings between tribal leaders and EPA leadership:** In addition to consultation meetings on individual Agency actions, several commenters recommended that EPA meet with tribal governments annually, biannually, or every four years (at the start of a presidential term), holding a listening session to help guide information exchange and decisions making. The meetings could serve as listening sessions between EPA senior leadership (Administrator) and tribal government leaders around sectoral (e.g., agency) and thematic (e.g., climate change) issues where EPA can review broad sectoral and thematic strategies; share background, data, evidence, narrative that will help guide decision making; discuss existing and future policy development; and define priorities and goals. It was also recommended that EPA hold annual or biannual Regional listening sessions between EPA (Regional Administrator) and tribal leadership to review thematic strategies and share data to help define priorities and goals. The

regional leadership meetings would be an opportunity to have an honest discussion of capacity, with a focus on efficiency and effectiveness throughout the system. Discussions at these levels will identify future policy developments, define priorities, and goals and give all parties ample time to work on both.

- **EPA lacks consideration of EJ considerations:** A commenter indicated that in their experience (located in South Florida), EPA lacks taking a role or position in environmental justice issues and concerns.
- **EPA should revisit EO 13175, section 6 (Flexibility for Tribal Waivers) to ensure widespread operationalization:** A commenter indicated that EO 13175, Section 6 encourages the federal government to facilitate and streamline tribal applications for waivers of statutory and regulatory requirements. It was noted that, with some notable exceptions, this section does not appear to be actively implemented across the federal government. The commenter recommended that EPA and the Biden Administration revisit this section and examine what further Executive action is necessary to ensure its widespread operationalization.
- **EPA and the Biden Administration Should Better Operationalize EO 13175, Section 3, Providing “Maximum Administrative Discretion” to Tribes When Formulating and Implementing Policies That Have Tribal Implications:** A commenter noted that EO 13175, Section 3 lays out a set of policymaking criteria that have been implemented unevenly, particularly the directive to grant the “maximum administrative discretion” possible to tribes when formulating and implementing policies that have tribal implications and encouraging tribal nations to develop our own policies and standards to achieve objectives, as well as to consult with tribes on the necessity of any federal standards. The commenter also indicated that “the Indian Canons of Construction” should always be applied during tribal consultation, the policymaking process, and beyond; namely, that any ambiguities in law or policy should be interpreted in favor of tribal nations.
- **Better coordination and communication among multi-agency consultation actions is needed, with improved tribal involvement:** Several commenters indicated that better coordination and communication among tribes, EPA, state, and other federal agencies is needed for multi-agency actions, with tribal involvement beginning in the initial planning stages of an action. It was noted that the “siloes” nature of various agencies makes communication, coordination, and consultation challenging. A commenter indicated that interagency coordination would ensure a holistic approach to addressing complex policy matters by bringing together different perspectives and different areas of expertise to improve the quality of outcomes. It will also allow for cost savings for both the tribal and federal government. Another commenter indicated that EPA should be required to bring in other agencies and conduct one consultation per project even if some project components lie outside of EPA's purview. Tribes are entitled to deal with one federal government, and because of the federal government's trust responsibility to tribes, it is the responsibility of the federal government to integrate the consultation process.
- **EPA should consult on tribal issues even when there is no federal requirement for consultation:** One example provided was for the state of Oklahoma's 2020 request to the

EPA Administrator to grant authority to Oklahoma to administer environmental regulatory programs in certain areas of Indian country. Another example cited was in cases where the federal government provides funding to states to implement environmental programs. A commenter felt that the federal money should come with requirements for the state to consult with affected tribes according to policies at least equivalent to federal consultation policies.

- **EPA should avoid the use of the term “tribal communities”:** A commenter indicated that federal agencies should minimize the use of the term “Tribal communities” in all communication and instead refer to tribal “nations.” The commenter indicated that over the last few years, the term “tribal communities” has come into increasing use in communications with Indian country, indicating that this has the effect of devaluing the inherent sovereignty and treaty rights of tribal nations since all American citizens are members of “communities,” but only indigenous peoples are citizens of their own nations in a government-to-government relationship with the United States. The use of the term “tribal nations” recognizes that reality and should be the preferred term in federal communications.
- **EPA should define the term “environment” within its Consultation Policy, and the definition should include cultural considerations:** A few commenters indicated that EPA should define the term “environment” within its Consultation Policy to include cultural considerations, whether the culture is Western or Indigenous or some combination. Commenters indicated that EPA should acknowledge that it brings its “culture” to every single meeting and action, noting that it may be impossible to make progress in consultation where EPA dismisses tribal concerns about the environment categorizing them as tribal cultural values.

#### **Suggested Revisions to 2011 Consultation Policy:**

- **EPA should develop a process to continually review and update its 2011 Consultation Policy:** A commenter indicated that the EPA’s current Consultation Policy has been in use since 2011 and was in development even before that. They indicated that 10 years is too long to rely on a single policy iteration given the rate of change in both Indian Country as well as within EPA. They recommended that EPA update the policy and include a plan for continual improvements as a part of that process.
- **The goal of EPA's Consultation Policy should be restated:** EPA’s current Consultation Policy states EPA’s “ultimate” goal is “strengthening consultation, coordination and partnerships between tribal governments and EPA.” (p. 2). It was noted that while this is an important goal, stronger consultation for its own sake is not the true objective. What EPA should seek, and what tribes desire, is for the Agency to genuinely consider expressed tribal concerns and interests and modify proposed actions to avoid or minimize adverse impacts.
- **EPA should define and provide additional context to the following terms within its Consultation Policy:**
  - **Consultation Definition:** It was noted that the current Consultation Policy does not define consultation, describing it as “a process of meaningful communication

and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes” (p. 1), but not explaining what constitutes meaningful communication or coordination; providing inconsistent implementation across the Agency instead of serving as a coordinated agency policy.

- **Federal Trust Responsibility** -- The policy should not only recognize the federal trust responsibility (p.3), but also explain what this is and how it relates to EPA’s work.
- **Tribal Sovereignty** -- The policy's Guiding Principles (page 3) say EPA recognizes tribes are “sovereign entities” with primary authority over their lands and members. However, the policy should provide additional detail to ensure EPA staff do not treat tribes as public interest groups.
- **EPA should correct citation errors in Consultation Policy:** A commenter indicated that there are several errors in the definition of “tribe” in subsection A, noting that the reference to the Federally Recognized List Act “of 1944” should actually be “of 1994.” Additionally, this section of the code was transferred from 25 U.S.C. § 479a to 25 U.S.C. § 5131, so the citation should be updated accordingly.
- **EPA should revise its tribal consultation policy to remove language indicating that EPA “attempts” to honor tribal consultation requests:** A few commenters indicated that Section V.B.2.a of EPA’s 2011 consultation policy (*EPA’s Mechanisms for Identifying Matters for Consultation/Tribal Government-Requested Consultation*) should be revised. The policy language currently reads: “EPA attempts to honor the tribal government’s request with consideration of the nature of the activity, past consultation efforts, available resources, timing considerations, and all other relevant factors.” Commenters indicated that the word “attempts” does not meet EPA’s consultation responsibility to tribes. Another commenter indicated that EPA should provide more discussion in its Consultation Policy of the procedures it will implement when a tribe initiates a request for consultation, and state that EPA will make every effort to do so, barring only certain limited, enumerated exceptions (e.g., timing issues due to court-ordered deadlines for rulemaking actions).

### **Comments re: Consultation – Identification Phase**

- **EPA should clarify how it determines which actions it consults on and/or EPA should consult on more actions:** Several commenters expressed concerns that EPA was not consulting on enough actions and that it was not clear how EPA determines which actions “may affect tribes” and, therefore, undergo consultation.
- **EPA’s Consultation Policy should make clear that identification and notification must occur before any substantive federal decisions have been made and/or before there has been a substantial commitment of resources to the decision or project at issue.**
- **EPA should revise its Consultation Policy to Include Initial Screening Questions:** A commenter recommended that the policy should specify that EPA personnel answer

certain “screening questions” prior to initiating consultation, and that the results of the screening should be presented to the tribes. It was suggested that tribes should work with EPA to develop the screening questions or criteria.

### **Comments re: Consultation – Notification Phase**

- **EPA should consider modifications to improve its Tribal Consultation Opportunities (TCOTS) website and email listserv:** While commenters were overall supportive of EPA’s TCOTS system and listserv, they provided a few suggested modifications for EPA to consider and noted that EPA should not rely on TCOTS for the initiation of communications with tribes on consultation. Recommendations included:
  - EPA should include all the relevant documents and information necessary to review and consider the action under consultation be included in TCOTS, so that tribes do not have to search for additional documents.
  - EPA should more prominently feature the Tribal Consultation Opportunity Tracking System (TCOTS) website and link on its website and improve the Agency’s EPA website search function to more readily identify the “TCOTS” website when someone types in “TCOTS” as a search term.
  - EPA should tailor the TCOTS email listserv notifications that tribes receive so that tribes only receive consultation opportunities relevant to tribes in their Region.
  - EPA should provide a mechanism via its central consultation website for tribal leaders to update or add additional tribal representatives to serve as contacts for tribal consultation.
- **Consultation and listening session notices should be published concurrently in the following manner:** Commenters recommended that consultation notification should be provided via the following approaches: (1) A regular section of the Federal Register dedicated to tribal consultation and listening session notices; (2) via TCOTS; (3) on a White House Council on Native American Affairs consultation and listening session webpage; (4) via letters to tribal leaders (sent both electronically and via U.S. post); and sent for distribution to the National Congress of American Indians and any additional inter-tribal organizations recommended by tribal governments.
- **EPA should provide adequate time for consultation notification prior to the start of consultation meetings and listening session:** A commenter indicated that two weeks is not enough time to post information and notify tribes of an upcoming consultation opportunity. Such timing does not provide sufficient time for tribal government staff to reach out to their tribal council about the consultation opportunity and provides a narrow window for tribes to effectively engage with EPA. Other commenters indicated that a minimum of 30 days notification prior to a consultation session is needed; still others indicated that consultation timeframes should be dependent on the complexity of the consultation action.
- **EPA should do a better job of explaining technical and regulatory issues on which it is consulting with tribes in plain language:** Commenters recommended that EPA do a

better job of explaining technical and regulatory issues as well as rule preambles in plain language and in a way that tribes can understand.

- **Recommendations were provided regarding what information should be included in EPA’s consultation notification letter, plan, and associated materials:** It was recommended that, at a minimum, the notification letter and plan should specify the nature of the proposed action (e.g. rulemaking, permitting, policy guidance), the subject-matter of the proposed action (including reference to the applicable law and regulations), the geographic location of the proposed action (if there is one), the anticipated impacts on tribal communities, specifically what EPA is considering in its decision-making process, how tribal input will be utilized, all relevant information (e.g., copies of any FRNs, scoping documents, Agency analyses, if available), and any known unknowns. Additionally, the notice should provide tribes with a consultation timeline that is well thought-out with commitments of when consultation is initiated to the timing of draft documents, comments, scoping sessions, and how the agency will meet its requirements for any individual tribal government consultation (if required by the National Historic Preservation Act or other applicable law). Whenever possible, administrative, regulatory, and legislative histories should be included.
- **EPA should look into opportunities to connect different tribes to support each other on a given consultation action and utilize the RTOCs and other tribal consortia to provide information and seeking feedback on tribal consultation opportunities:** A commenter recommended that that EPA consider ways to connect tribes with an interest on a given consultation action, specifically connecting those tribes that may lack resources to effectively consult with tribes that are better able to undertake consultation. Another commenter recommended that EPA’s practice of sending official consultation notification letters to the leadership of tribal governments be supplemented by increasing interaction between the regional tribal offices and tribal consortia and tribal programs. They indicated that this, along with constant interaction with the Regional Tribal Operations Committees, can increase knowledge and feedback on tribal consultation opportunities.
- **EPA should look at processes for ensuring that it maintains updated tribal contact information:** A commenter indicated that the EPA, and other federal agencies that utilize the tribal contacts from the Bureau of Indian Affairs, should ensure that there is a mechanism in place with the BIA for updating Tribal Leadership and Environmental Directors contact information. Another commenter recommended that there should be an agencywide clearinghouse that is tasked with updating the contact information for all tribal nations, including appropriate contact person, email, mailing address and telephone number, that is updated annually.

#### **Comments re: Consultation – Input Phase**

- **EPA should have senior EPA decisionmakers participate in consultation meetings:** Several commenters indicated that when tribes consult with EPA, it is critical that EPA leadership with decision-making authority participate in the consultation meeting, especially when tribal leadership participates in a consultation meeting. It was noted a

meeting with a person unable to make decisions or provide answers is not consultation. It was also noted that if EPA staff conducting tribal consultations do not have the necessary authority to leverage tribal comments, the integrity of the consultation and coordination process is weakened and that may be reflected in the final decision. Commenters indicated that these decisionmakers should be prepared to the best of their ability to respond to tribal feedback during the consultation session, rather than simply listening and taking notes.

- **When meeting with EPA, it is important that tribes know who from EPA is participating in the consultation meeting:** A few commenters noted that it is important that tribes know who from EPA is participating in the consultation meeting, particularly when EPA legal counsel participates. A commenter indicated that EPA should not bring an attorney to consultation the meeting sessions unless requested by the Tribe(s).
- **EPA should provide copies of consultation meeting and listening session notes summaries to tribes for review/comment.**
- **Consultation sessions should utilize as many forms of communication as necessary:** Several commenters indicated that, whenever possible, face-to-face consultation must be offered. A commenter indicated that additional forms of communication must also be made available, including virtual, online, and teleconferencing options. Other commenters indicated that EPA should not consider webinars or other virtual presentations consultations and that while virtual meetings have proven effective during the pandemic, but they should not replace in-person meetings. It was noted that EPA should also be cognizant of the challenges many Tribes have with broadband/internet connectivity and costs and should offer additional modes of communication, such as, teleconference call options.
- **When considering whether to hold group or regional consultation sessions or meetings, EPA should carefully consider whether tribes in those groupings or areas share sufficient interest:** A commenter indicated that EPA's Consultation Policy should flag the consideration of whether grouping tribes together for certain consultation sessions is appropriate, which will often hinge on whether there are sufficient shared interests. The example provided was for California tribes, which it was indicated have a unique history and face unique challenges that simply do not mirror the situation of tribes located elsewhere in the country. The commenter indicated that they felt given these shared interests, consultation sessions involving California tribes should often be limited to those tribes within the state of California.
- **EPA should utilize tribal liaisons and/or a professional facilitator for consultations:** A commenter recommended that EPA allow a person agreeable to the tribe to serve as an unbiased liaison between the Agency and tribe. If this is not possible, then a professional facilitator agreed to by the tribe should be brought in.

#### **Comment re: Consultation - Follow-up Phase**

- **EPA should strengthen its follow up with tribe after consultation:** Many commenters indicated that EPA lacks adequate, timely follow-up and response to comments from tribes as part of the consultation process. Some commenters expressed frustration that

EPA may not make a decision relating to an action a tribe has consulted on until month(s) after the consultation has occurred or not be notified by EPA when a decision is made. Also, commenters indicated that the Agency often does not communicate with the tribes regarding the decision and/or tribes does not see a reflection of their comments, suggestions, and/or objections in the Agency's final action. Commenters indicated that EPA should follow up with tribes in a timely manner and clearly explain (1) what took place during the consultation process, (2) why a comment was or was not considered by the Agency, (3) how EPA's decision was made, (4) how a tribe's comments were taken into consideration, including explanations and justifications when Tribal Government feedback is not incorporated into the final outcome, and (5) what next steps, if any, in the consultation process look like.

- **EPA should provide annual progress reports on tribal consultation with tribal governments:** Several commenters recommended that EPA develop annual consultation reporting provided to tribes. One commenter recommended that EPA provide to tribes an annual tribal affairs report that summarizes the consultation processes conducted that year and the outcome of those consultations, similar to what is already done by the Department of Health & Human Services. Another commenter indicated that EPA should publish any reports on consultation provided to OMB and/or Congress and ensure that tribes are informed of the availability of such reports.
- **Outcomes from Tribal Consultations Should be Reported to Entities Such as the White House Tribal Nations Conference:** EPA should collaborate with tribes to develop strategies to report outcomes from consultations. One forum that could be used to report outcomes would be the White House Tribal Nations Conference. These reports could include accomplishments tied directly to consultation recommendations. It will show tribes the federal government values their input and they will be able to see how their input is reflected in federal policies.
- **The follow-up phase of consultation should include certification process where by EPA and tribe(s) agree that appropriate consultation has occurred:** A few commenters indicated that EPA should implement a certification process at the completion of consultation for both parties to agree that meaningful consultation occurred and/or formal documentation at the end of the process about how the outcome/action may affect tribes.
- **EPA's follow-up process should be built around coming to a consensus-based decision:** A commenter indicated that EPA should discuss with the Tribe its preliminary decision. When a tribe disagrees with part or all of an EPA decision, the Tribe should be invited to suggest alternatives and/or mitigation measures. EPA should continue to refine its decision based on this tribal input, and EPA should work to pursue the alternatives or incorporate the mitigations. EPA should be accountable for keeping track of the steps taken while working with the tribe to reach a mutually agreed-upon resolution. Another commenter indicated that, in situations in which consultation sessions do not end in consent, a dispute resolution mechanism should be engaged.



**Comments re: EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights and Its Implementation**

- **EPA should revisit, revise, and strengthen its Guidance for Discussing Tribal Treaty Rights:** A commenter recommended that EPA reconfirm the guidance, put it into common practice, and potentially revisit and revise it following appropriate tribal consultation. Areas cited for improvement included: (1) incorporating language to acknowledge that EPA has a responsibility to not only “recognize the importance of honoring tribal treaty rights” but an affirmative obligation to do so, and (2) incorporate language indicating that tribal treaty rights are a required consideration under all EPA decisions, not just those in a local geographic scope. In addition, the commenter indicated that the policy should be specific as to the sensitivity of and necessity for consultation on the issue of potential impacts to cultural resources, and all EPA regions need specialized staff who are either archaeologists or qualified cultural resource managers who can identify and understand when cultural resource concerns are going to arise.
- **Training for EPA staff is needed specific to tribal treaty rights and resources:** It was recommended that more training can increase and promote awareness within EPA of the impacts of not adequately considering tribal treaty rights.
- **EPA should incorporate tribal treaty rights into its Consultation Policy:** A commenter recommended that EPA update its Consultation Policy to incorporate tribal treaty rights as a subject of consultation, rather than addressing them in a separate EPA document.
- **EPA should address how treaty rights may apply to ceded territories:** A few commenters indicated that EPA should explain how treaty rights may apply to ceded territories.

**Comments re: Broader Consultation Efforts at the Federal Level:**

- **A Cabinet-level Tribal Advisory Committee should be formed:** A commenter indicated that there should be Cabinet-level Tribal Advisory Committees at each federal agency and the senior leadership of the respective agencies should engage with these Advisory Committees on a frequent basis, allowing for tribal input.
- **Reengagement of the White House Council on Native American Affairs:** A commenter recommended that EPA should urge the White House Council on Native American Affairs to meet quarterly and publish transcripts of its meetings, establish and maintain a webpage that publishes notices of all federal tribal consultation and listening sessions, and ensure tribes have the ability to effectively communicate with the federal family.
- **The Biden Administration Should Consider the Following Actions to Support UNDRIP and FPIC:**
  - Appoint an ambassador on indigenous affairs and engage with tribal elected leaders to develop a policy on the minimum principles and requirements of FPIC as a policy within the United States. Engaging with elected tribal leaders is needed to develop a mutually agreeable framework for how the United States will implement FPIC in

- specific areas. These considerations must be addressed by tribally elected leaders and United States agency heads prior to engaging the public about how these policies will be implemented on a national level.
- After arriving at a consensual framework, issue executive orders, memoranda, rulemakings, and policies, explaining, normalizing, and promoting these mutually agreed upon concepts of FPIC that are enforceable, and provide remedies when violated.
  - Create a commission to implement UNDRIP, which should then direct agency heads to develop a policy on how they will deploy concepts of FPIC in their interactions with tribal governments.
  - Urge Congress to adopt legislation codifying UNDRIP and FPIC based on input from tribal nations

**Comments re: Consultation with ANCSA Corporations & Native Hawaiians & Non-federally Recognized Tribes**

- **President Biden’s January 26 memorandum incorrectly excludes Alaska Native Corporations from the tribal consultation process, EPA’s current tribal consultation policies do not fully include Alaska Native Corporations (ANCs), EPA Region 10’s tribal consultation policy should include ANCs, and that EPA’s definition of “Indian lands” be broadened to include Indian lands owned by ANCs:** The Alaska Federation of Natives commented that because President Biden’s incorporates by reference the definition of “Tribal Officials” from the EO 13175, and because ANCs are not included in that definition of “Tribal Officials,” the memorandum incorrectly excludes Alaska Native Corporations. AFN indicated that this drafting oversight violates Congressional language from two Consolidated Appropriations Acts from 2004 and 2005, which require federal agencies to consult with ANCSA corporations “on the same basis as Indian tribes under Executive Order No. 13175.” AFN comments further that EPA’s tribal consultation policy does not fully include ANCs, noting that pursuant to Government Accountability Office (GAO) recommendations presented in a 2019 report, *Tribal Consultation Additional Federal Action Needed for Infrastructure Projects (GAO-19-22)*.” EPA had committed to clarifying its engagement practices with ANCs through the development of a best practices guide for consulting with Alaska Native Corporations; anticipating finalization of the best practices guide by the end of calendar year 2019. Finally, AFN comments also indicate that both EPA’s national policy and its Region 10 policy should include a definition of ANCs found in Section 3(m) of ANCSA, and the policies should further be amended by including references to ANCs whenever there is a reference to a tribe, with the exception that ANCs need not be consulted with respect to treaty rights or obligations. Finally, it was indicated that definition of “Indian country” in EPA’s Consultation Policy does not include Indian lands owned by ANCs. AFN indicated that both the EPA national policy and the Region 10 policy must include consultation on any regulations and policies affecting ANC lands. AFN recommended the inclusion of a definition of “Indian lands” that has been crafted in partnership with U.S.

Senator Lisa Murkowski's office re: legislation to reauthorize the Office of Indian Energy.

- **Establish Separate Consultation Policies for Tribal Governments and Alaska Native Corporations:** Another commenter indicated that EPA should make clear in all policies and regulations that ANCs are not federally recognized tribal governments and there is no trust obligation or government-to-government relationship. The Agency should develop a separate consultation policy for ANCs.
- **EPA should create a formal consultation policy with Native Hawaiian organizations (NHOs) either as part of the EPA's current Policy on Consultation and Coordination with Indian Tribes or in parallel with that Policy:** To improve the Consultation Policy, the State of Hawaii, Office of Hawaiian Affairs urged the EPA to either a) include Native Hawaiians in the existing framework for Tribal consultation or b) create a standalone consultation process. The EPA can ensure meaningful consultation by including appropriate and relevant NHOs, including the State of Hawaii, Office of Hawaiian Affairs, in its consultations that impact our community. Further, to ensure Native Hawaiians are meaningfully included in its consultation and coordination policy and process, the EPA should engage the Native Hawaiian community in planning and consultation to formalize an effective plan to serve the Native Hawaiian community.
- **EPA should consult with all tribes, not just those that are federally recognized:** A commenter indicated that EPA has a trust responsibility to all tribes, including those that are not federally recognized and that separate consultations should take place between all non-federally recognized tribes and state-recognized tribes and the federal government.
- **EPA should maintain separately environmental justice principles, which must never be instituted in place of government-to-government consultation with Indian tribes:** A commenter indicated that for any EPA action taken, EPA must treat tribes as self-governing co-regulating agencies. They indicated that there must be a clear difference tribes and indigenous people, since a federally recognized tribe can be a co-regulator under many federal environmental laws, but indigenous peoples cannot. The commenter noted that the terms "tribes" and "indigenous peoples" should not be used synonymously.

#### **Other Comments:**

- **EPA should reaffirm and update the principles of the 1984 EPA Indian Policy:** A commenter indicated that EPA should consider reaffirming the important principles outlined in its 1984 Indian Policy and amend and/or expand that policy to address the important role Alaska Native Villages play in the management and stewardship of resources in and around their communities. They indicated that the nine policies set out in the Indian Policy by Administrator Ruckelshaus are just as important and relevant today as they were 37 years ago. These policies deserve to be updated and reaffirmed by the agency to set bedrock policy for the next 30 years to come
- **EPA should utilize FACAs to obtain tribal input:** A commenter indicated that the usage of advisory committees can be a useful tool for tribal input, noting that federal advisory committees are critical to tribal nations because they educate agencies on their trust responsibilities; increase agency compliance with congressional support for tribal

self-governance; and because they advise on tribal rights and resources. Such committees are necessary because they advise on complex jurisdictional issues that impact the delivery and funding of essential tribal services and programs across federal agencies. These committees may also assist in the distribution of timely consultation notices, recognizing potential impacts in advance or preventing actions being taken without any tribal awareness.

- **Dissatisfaction was expressed for consultation and rulemaking efforts under the previous administration:** Several commenters discussed concerns that they had about regulatory and policy changes made under the previous administration (including the Navigable Water Protection Rule, the National Environmental Policy Act (NEPA), the operations at Los Alamos National Lab (LANL), terms of settlement following the Kalamazoo River oil spill, and a nationwide permit for gas dispensing facilities), and about difficulty they experiences in consulting with EPA under the previous administration, feeling that their comments and inputs were not considered and/or acted upon. Another commenter asked that EPA not just focus on what may have been lacking with respect to its interactions with tribes under the previous administration, but to really work to improve and elevate tribal issues and concerns moving forward.
- **EPA should provide more direct and flexible funding to tribes in order to build the capacity to better protect the health and environment of its citizens:** Recommendations included: (1) providing increased GAP funding and increased flexibility for tribes to use GAP funding for program implementation, (2) providing tribes funding/capacity to complete environmental justice analyses for EPA actions, and (3) the ability for tribes to redesign/reprogram and reallocate programs, services, functions and activities (PSFAs) without interference or approval by federal agencies.
- **EPA should educate the federal legislature and the Office of Management and Budget about Tribal program funding:** EPA should advocate and educate the federal family of the Tribal needs and of the federal obligations to the Tribes. The funding that makes its way to Tribes is relatively inconsequential to the overall budget. A federal balanced budget will not be made or broken on the backs of Tribal programs. The federal trust responsibility and the treaty obligations require mandated funding. This is something the Agency must teach the U.S. legislature and the OMB.
- **EPA should implement a conflict resolution process that supports tribal nations in NEPA and NHPA Section 106 reviews:** There should be a process in place that empowers tribal nations to challenge regulatory decisions by EPA, especially when conducting environmental and cultural reviews on tribal lands. EPA's Conflict Prevention and Resolution Center (CPRC) currently supports the agency's regulatory, enforcement, and voluntary programs by providing alternative dispute resolution services to the entire agency. However, we are not aware of a conflict resolution process designed specifically for tribal nation concerns. EPA should implement a conflict resolution process that empowers tribal nations to halt or deny the approval of projects that threaten our resources, communities, or sovereignty.

- **EPA should do a better job of identifying where an action may affect a tribe’s ancestral territory notifying potentially affected tribes of potential action, as required by NHPA.**
- **Re: Proclamation on the Termination of Emergency with Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction:** The federal governments should: (1) develop courses of actions to: a) mitigate damage; and b) ensure that the actions of the Customs and Border Patrol (CBP) and the Army Corps of Engineers are not allowed to happen again, and (2) provide mitigation for damages to cultural resources and to environmental resources.
- **Re: Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government:** It was recommended that EPA establish an Equitable Data Working Group to study and provide recommendations to the Assistant to the President for Domestic Policy (APDP) that identify inadequacies in existing Federal data collection programs, policies, infrastructure and hiring practices across agencies, and strategies for addressing any deficiencies identified.
- **Re: President Biden’s Executive Order on Protecting Public Health and the Environment and Restoring Science to the Climate Crisis, E.O. 13990, 86 Fed. Reg. 7037 (Jan. 20, 2021):** Several tribes commented that they would like to know how EPA intends to address existing regulations, orders, policies, and agency actions that are inconsistent with the Administration’s efforts to combat climate change, and how EPA will weigh decisions that impact the environment and tribal interests (including cultural and spiritual). Specifically, what steps will EPA take to ensure decisions that are currently in process, particularly those involving greenhouse gas emissions and fossil fuel infrastructure, will incorporate climate change objectives?
- **Re: Tackling the Climate Crisis at Home and Abroad, E.O. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021):** A few commenters indicated that they wished to discuss how EPA intends to carry out the following directive: “[i]t is the policy of my Administration to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy.” It was noted that Executive Order 14008 also directs that agencies’ approach to climate change shall protect public health, conserve land, waters, and biodiversity, and deliver environmental justice. Several tribes indicated that they would like to discuss with the EPA opportunities to preserve tribal resources and the environment while fulfilling its mission. Given the short timeframe, the NHBP has not had an opportunity to identify specific regulations and policies that are inconsistent with these directives. However, the NHBP seeks a continuing dialogue with EPA about these issues in order to help identify specific problems and find solutions.
- **EPA’s Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples, (July 24, 2014) should be revisited in light of the recent Executive Orders to determine how Traditional Ecological Knowledge could be better integrated into its actions.**