



Government-to-Government Consultation with Federally Recognized Tribes/Nations: An ONMS Field Guide

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Government-to-government consultation is a two-way, Nation-to-Nation exchange of information and dialogue between official representatives of the **United States** and **federally recognized Tribes** regarding federal policies that may have Tribal implications. Consultation recognizes Tribal sovereignty, self-determination, and the Nation-to-Nation relationship between the United States and Tribes. The consultation acknowledges that the United States maintains trust—and in many cases, treaty—responsibilities to federally recognized Tribes (hereinafter called Tribe/Nation).¹

The NOAA Office of National Marine Sanctuaries (ONMS) is responsible for conducting timely and meaningful government-to-government consultations with federally recognized Tribes as described in [Executive Order 13175](#). This responsibility is further elaborated in [Secretarial Order 3206](#) on American Indigenous Tribal Rights, Trust Responsibilities, and the Endangered Species Act.

While the consultation process includes specific requirements for documentation, reporting, and disclosure of information, ONMS staff and leadership must also exercise flexibility to support meaningful, timely, and robust consultation. A meaningful consultation process may require a range of formal and informal activities such as meetings, letters, conference calls, webinars, on-site visits, virtual meetings, and participation in regional and national events; ONMS staff should strive for work to be rooted in free, prior, and informed consent (FPIC) from the Tribe/Nation.²

¹The term Nation shows respect for Indigenous Peoples' sovereignty and that Native Nations each have their own systems of governance. This document will use Tribe/Nation to refer to federally recognized Tribes and Nations. Within this document, we capitalize Tribe and Nation in recognition of the Tribes/Nations' status as sovereign nations. Indigenous Peoples and Indigenous Knowledge are capitalized with respect for the identities, governments, institutions, and collective rights held by Indigenous Peoples.

² See the United Nations Declaration on the Rights of Indigenous Peoples ([UNDRIP](#)) for additional information on the concept of FPIC.



This guide summarizes best practices for government-to-government consultation with federally recognized Tribes/Nations for ONMS staff.³ It includes key points from [NOAA Procedures for Government-to-Government Consultation with Federally Recognized Tribal Governments](#) (hereby referred to as the Handbook), the White House Memorandum on [Unified Standards for Consultation](#), the [Tribal Treaty Rights Consultation Best Practices](#), Executive [Secretarial Order 3206](#). These specific documents and policies should be consulted for more detailed information. The [White House Guidance on Indigenous Knowledge](#) and the [NOAA Guidance and Best Practices for Engaging and Incorporating Indigenous Knowledge in Decision-Making](#) are valuable tools to aid in the **Inclusion and Involvement** of Indigenous Peoples' Knowledges.

Key values to exercise: Accountability, Trust and Respect, Reciprocity, Listening, Honesty, Humility, Patience, Helping, Kindness, Humor, Responsibility, Self-awareness, Teamwork, and Welcoming.

Key principles: Tribe/Nation sovereignty and self-determination and sovereign-to-sovereign Nation.

³ This Field Guide is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or inequity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sovereign-to-Sovereign

The relationship between federally recognized Tribes/Nations and the federal government is **sovereign-to-sovereign** and referred to in federal law as promoting Tribal/Nation **self-determination** and **self-governance**. All actions, language, and behaviors should respect the Tribe/Nations' sovereignty, self-determination, and self-governance. Tribes/Nations are sovereign and should be treated with **diplomatic courtesy and respect**.

Take steps to ensure that Tribes/Nations have adequate avenues for meaningful engagement with ONMS' work. This document highlights key concepts such as the early establishment of a relationship with the Tribe/Nation, timely communication, co-production of knowledge, free, prior, and informed consent (FPIC), and honoring Tribe/Nation sovereignty. ONMS staff and leadership must prioritize robust communication, coordination, collaboration, and agency meetings that support and enhance NOAA's relationship with Tribes/Nations before, during, and after consultation.

Roles and Responsibilities

All ONMS staff and leadership should feel comfortable working with Indigenous Peoples, utilize points shared in this guidance, and, where possible, seek guidance from NOAA colleagues with direct experience working with Tribes/Nations, Indigenous Peoples, and communities. Specific roles and responsibilities are outlined for the consultation process. These may include, but are not limited to:

Decision-making Authority – The invitation to consult should come from the relevant decision-making authority of the U.S. Government. In most cases, the ONMS regional director may appoint a designee (such as a superintendent) as appropriate. The regional director, or appointed designee(s), conducts the government-to-government consultation to support Nation-to-Nation dialogue and the exchange of information amongst decision-making authorities regarding the proposed policy that has Tribal implications. Formal consultation under Executive Order 13175 is nation-to-nation (i.e., between the Tribal Governments and the *U.S. Government*). **Tribal Government representatives need to be cognizant of and assured that they are consulting with a formally delegated representative of the U.S. Government.** Therefore, the ONMS official with decision-making authority should identify, in writing, any delegation of the responsibility to conduct the government-to-government consultation to the Tribal Government when consultation is initiated.

Point of Contact – The ONMS decision-maker should designate a point of contact to facilitate relationship building and consultation. Within a given ONMS region, this may be the regional coordinator, the regional cultural resource coordinator, or a **designated person who** would play this role. While there may be more than one point of contact, the points of contact should be consistent throughout the consultation process. They should closely coordinate internally to foster relationship building. The point of contact works with the point of contact from the Tribe/Nation to develop and implement the consultation process and is available to answer questions and assist the Tribe/Nation.

Record Keeper and Reporter – The point of contact or another designee is responsible for maintaining organized records and timely reporting.

National Cultural Resource Coordinator – The ONMS national cultural resource coordinator is available to provide guidance and be a resource during the consultation process. This position will also keep a record of formal government-to-government consultation system-wide.

Other Roles – ONMS may sometimes, in consultation with the Tribe/Nation, involve additional personnel with the skills, knowledge, and experience required to understand and offer advice on issues arising during the consultation. They may include:

- **Scientists and Other Experts** – to provide information and co-develop processes, approaches, projects, assessments, research, etc.
- **Policy Analysts** – to clarify and interpret policy relevant to the consultation process and issues identified during the deliberations.
- **Legal Counsel** – on issues of interpreting legal mandates relevant to the consultation, the NOAA Office of General Counsel (OGC) may be engaged during the consultation. The Tribe/Nation may also be represented by their own legal counsel.³

The Indigenous Community Engagement Team (ICET) represents the collected knowledge and experience of ONMS in engagement and collaboration with Tribes/Nations across the National Marine Sanctuary System and may serve as an additional resource that can share this knowledge and experience when specific issues and challenges arise during consultation.

First Steps in a Consultation Process: Building Relationships

Consultation involves relationship and trust building through a commitment to cultivating a respectful, transparent, and open dialogue. **Before** any action, regulatory planning, or development, relationships should be developed with relevant Tribes/Nations. Ideally, a **non-transactional relationship** will be started long before formal consultation. Trust and relationships are foundational to the co-development of equitable and reciprocal⁴ collaborative approaches and processes. To begin this relationship, take the following steps:

- **Identify** Indigenous Peoples whose traditional and customary use areas, homelands, and waters are in or near current or proposed national marine sanctuaries or marine national monuments to the best of your ability. Note that this action likely requires becoming familiar with Indigenous Peoples' histories and current governance within the area.
- **Introduce** yourselves to the Tribe/Nation. Be forthright and open about your position in the organization and professional background (if you wish, you may also share relevant personal information, such as where you were raised/grew up). Provide

⁴ When the Tribe/Nation includes legal counsel in the consultation, NOAA General Council also needs to participate.

⁵ Prioritize relationship building and include reciprocity, community benefits, and giving back. Work to shift the norm from people coming to Indigenous communities and taking (i.e., knowledge, time, expertise) to a focus on reciprocity and giving back (i.e., information in accessible formats, funding, equipment, tools). This will increase the impact of plans, research, decision- and policy-making, mutually beneficial activities, and consultation.

background about the sanctuary or monument and express openness to cooperation. **Be aware** of and seek to learn about the different positions and the people in those positions within a Tribe/Nation. Reach out to those people to build relationships.

- **Be aware** of and respect the **Tribe/Nation's rules, laws, protocols, guidelines, and values**. Inquire if the Tribe/Nation has any protocols (e.g., cultural, consultation) that they would be willing to share with you.

Ask the Tribe/Nation how to best communicate with the Tribe/Nation's government officials, leaders, and employees, including if they have adopted consultation protocols or may wish to co-develop protocols for consulting with ONMS on actions identified as having "Tribal implications" (i.e., jointly develop and agree upon a "tribal consultation agreement").

- **Engage** with the Indigenous Tribe/Nation and community. Maintain awareness of events, meetings, and topics of concern to the Tribe/Nation. Identify Indigenous fishing, harvesting, hunting seasons, potential timelines, and other important annual/seasonal activities (i.e., fisheries management meetings). This will help with greater understanding, as well as when scheduling consultations.
- **Build** an annual calendar of events and activities hosted or attended by Indigenous Peoples. If invited or open to the public, attend the events and activities when possible and appropriate.
- **Communicate** consistently, continuously, and clearly with the Tribe/Nation. Share necessary information well in advance of deadlines for decision-making. **Use** culturally appropriate communications (for example, with the correct Tribal/National structures, in the correct formats, and at suitable times). **Use** plain, jargon-free language. Be **accountable, honest, and transparent** in all communications. **Ask** the Tribe/Nation whether translating documents and communications into their Indigenous language or a third language (e.g., Spanish) is necessary.
- **Build** an annual agency calendar of your site's activities and schedules that may interest the Tribe/Nation and Indigenous communities (e.g., projected management plan development, a topical meeting). The calendar will aid in communication, coordination, and collaboration.
- **Identify and work with** regional or national Indigenous organizations as appropriate. These organizations do not replace the decision-making structures of the Tribe/Nation (unless authorized to). However, they form part of Indigenous decision-making.

Do Your Homework

Tribes/Nations are diverse. There is no one-size-fits-all approach. Doing your homework **long** before consultation is critical to building a better relationship with the Tribe/Nation and aiding in meaningful and robust consultation. Avoid putting the onus and burden on the Indigenous People you are engaging with to educate you on the bulk of their history, trauma, and political and social/environmental justice activism by taking responsibility to build your capacity. Take time to learn the histories, governance structures, cultures, and priorities of the Tribes/Nations ONMS will engage, have partnerships with, will build future relationships with, and need to consult. Useful sources to build your capacity include papers, films, books, and articles written by Indigenous Peoples, the Tribes/Nations, and Indigenous organizations' websites.

While ONMS staff should prepare for a consultation in advance by building their learning capacity, it is important to recognize that the **best way** to learn is directly from the Tribe/Nation itself. **Listen more than you speak.** Observe communication norms and customs. Focus your homework on understanding:

- The Tribes/Nations' culture(s)
- The Tribes/Nations' governance and decision-making processes
- The Tribes/Nations' structure and histories
- Harvesting and hunting schedules and seasonal activities
- Cultural activities (e.g., feasts, dances)
- Management forums (i.e., regional and international fisheries management councils)
- Timing (e.g., does the Tribe/Nation schedule around the full moon or weather)

Applicable treaties, agreements, and rights – including off-reservation fishing, hunting, gathering, or other rights and interests. It is important to note that Tribe/Nation areas of interest could be broad and extend beyond traditional homelands and waters or ceded territories (e.g., migratory species along the West Coast).

Actions with Tribal/Nation Implications: Consultation

Tribal consultation is required for any policies that may have tribal implications.⁶ A Tribe/Nation is best positioned to determine what proposed ONMS actions may have implications for them. Decisions by ONMS as to what actions may have Tribe/Nation implications should be informed by the affected Tribe/Nations. ONMS is responsible for making the Tribe/Nation **aware** of all proposed actions and describing them, including the process by which it is conducted, as clearly and completely as possible. ONMS should, at the **earliest possible stage**, invite the Tribe/Nation to consult. If the Tribe/Nation decides to accept the invitation to consult, the process of consultation should be consistent with the Department of Commerce⁷ and NOAA directives for government-to-government consultation, and conform, to the extent possible, to the following:

- The Tribe/Nation's consultation policy, if they have one
- A tribal consultation protocol or agreement co-produced by ONMS and the Tribe in force and effect
- The process as described below

To aid in being aware of possible Tribe/Nation implications, ONMS must identify and evaluate legal instruments, treaties, reserved rights, or similar rights that may exist and be aware of how they are understood and interpreted by the Tribe/Nation. Similarly, the Tribe/Nation's **identification of the geographic extent** of their traditional homelands, waters, and valued resources may also be important considerations in the Tribe/Nation's decision to seek consultation. Be aware if any overlapping boundaries or disputed boundaries exist between Tribes/Nations.

Once NOAA and a Tribe/Nation decide to engage in consultation, a formal process will be initiated, providing a meaningful opportunity for the Tribe/Nation to understand the details of

⁶ As defined in Executive Order 13175: "Policies that have tribal implications' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or the distribution of power and responsibilities between the Federal Government and Indian tribes."

⁷ See Department of Commerce Department Administrative Order 218-8; NOAA Administrative Order 218-8A; and the NOAA Procedures for Government-to-Government Consultation with Federally Recognized Indian Tribal Governments ("NOAA Tribal Consultation Handbook").

the proposed action, the process by which the Tribe/Nation's comments and recommendations will be shared, and any required timelines for the process which may be imposed by law or policy. It will be noted that this is not a "public comment timeline." Tribes/Nations are sovereign governments and therefore not part of the "public," **nor are they "stakeholders."**

Where,

- ONMS discretion is possible, comment deadlines⁸ (consultation schedule) must be established and implemented by agreement with the Tribe/Nation, either conforming to their consultation policy or within a co-produced Tribe/Nation consultation agreement; and
- deadlines are established under law or policy, ONMS must clearly communicate in advance any applicable deadlines and strive for this communication to be clearly understood and acknowledged by the Tribe/Nation and ONMS.

ONMS has engaged in government-to-government consultation on many actions, such as management plan development and review, site designations, permits and authorizations, condition reports, and various proposed rulemaking actions. If the Tribe/Nation demonstrates that the proposed action may have Tribal/Nation implications consistent with NOAA's consultation policy, ONMS should proceed with a consultation. Even if NOAA determines that an issue of interest to a Tribe/Nation likely does not have implications, ONMS should make reasonable efforts to meet or engage with the Tribe/Nation about the issues and may, as appropriate, elect to engage in consultation.

Achieving effective and meaningful consultation can only be ensured when the Tribe/Nation is provided the opportunity to determine if they consider the action appropriate for consultation. U.S. Government and NOAA guidance offer considerations as to when federal actions and policies may have Tribal/Nation implications. These include when the proposed action:

- potentially affects a natural or cultural resource, the habitat, or the ecosystem supporting the natural or cultural resource (i.e., Indigenous food security or sovereignty, spiritual activities); or
- involves effects on Tribe/Nation self-governance, Tribal/Nation trust resources, Tribal/Nation treaty, special use rights to natural resources, and other rights).

Given the necessity to ensure **consultation is meaningful, robust, and timely**, ONMS should not initiate any process with deadlines for comment unless these timelines are explicitly **understood** and, when possible, **agreed to** by the Tribe/Nation.

- Invitations to consult should be transmitted to the Tribe/Nation as soon as possible.
- Communication with the Tribe/Nation should be ongoing once the invitation has been offered to ensure both parties fully understand the action and the process by which the Tribe/Nation will be conducted, including appropriate, agreed-upon timelines for their review and developing recommendations regarding the proposed action.

⁸ Comment deadlines may refer to receiving comments on proposed language within proposed work, actions, management, and decisions.

- Within ONMS, listening sessions and other open webinars/meetings are good tools for sharing information and soliciting input. These communication tools should not be considered consultation or methods for reaching a formal consensus with the Tribe/Nation. Above all, both the Tribe/Nation and ONMS must clearly understand if the meeting is a formal consultation.

Examples of When to Consult

Activities that ONMS has conducted consultation with Tribes/Nations on include, but are not limited to, sanctuary designation, management plan reviews, condition reports, climate vulnerability assessments, and permits. For example, Olympic Coast National Marine Sanctuary (OCNMS) has protocols for permitting and 304(d) consultations. The protocols were developed with the Makah Tribe and are followed with each of the Coastal Treaty Tribes (Hoh Tribe, Quileute Tribe, and Quinault Indian Nation), with the understanding that each tribe could develop tribally-specific protocols that OCNMS would adhere to. For all permit applications received, OCNMS shares the application with identified points of contact within the Tribes. The points of contact are primarily tribal staff who provide the initial permit review and may elevate the proposed activity to Tribal Leadership. During permit reviews, tribal staff typically ask questions, recommend alterations or adjustments to the proposal to avoid fisheries interactions or other tribal impacts, and request notification and data sharing.

Under 304(d), OCNMS consults with the Makah Tribe on ONMS recommendations to the action agency to determine if sanctuary recommendations could impact the Tribe following jointly developed protocols. Once a sufficiency determination is made on the sanctuary resource statement (SRS), OCNMS shares the SRS with each Tribe. Given the protocols have been co-developed by the Makah Tribal Council and ONMS, under 304(d), OCNMS sends a formal letter to the Tribal Chair and identifies points of contact, timeline, and works to set an initial meeting given the 45-day requirement under NMSA. While OCNMS is focused on assessing impacts to sanctuary resources under 304(d) consultation, it is important to understand how the sanctuary recommendations may have Tribal implications.

Developing Consultation Protocols: Partnership with Tribes/Nations

The consultation process is a formal means of communication between ONMS and the federally recognized Tribe/Nation. Consultation can be initiated by the federal government or requested by the Tribe/Nation's government. Every situation is different, and every Tribe/Nation is unique. Below are key points and guidance steps. However, additional steps will likely need to be taken for meaningful, robust, and timely consultation with the Tribe/Nation.

Considerations

- Be aware of the positions and the people that fill those positions within the Tribe/Nation.
- If the Tribe/Nation communicates that they do not have time, consider adjusting timelines to accommodate their availability if they can provide a preferred time to engage.
- Understand the Tribe/Nation's decision-making processes and timelines.

- Ensure your correspondence was received by the appropriate representative of the Tribe/Nation.
- A lack of response is **not consent** for any proposed consultation process and should be viewed as not having consent at this point in time.
- The Tribe/Nation can request to initiate consultation at any time.

Overall Guidance

- The process must be understood by both the Tribe/Nation and ONMS to be a formal government-to-government consultation.
- Consultation should occur at an **early stage** and in a **timely manner**. “At an early stage” means consultation should generally occur at the equivalent of the “scoping” stage, and “timely” means that consultations should be continuous and informative throughout the process. Communications should occur well before any decision-making inflection points and before the Federal Register Notice (or other similar notifications) is published for the general public.
- Respect Indigenous Data sovereignty (see the section on page 11).

Actions

- Identify all Tribes/Nations who should be invited to consult. Consider that Tribes/Nations may hold off-reservation fishing, hunting, gathering, or other rights or whose customary and historical homelands and waters are inclusive of the area affected by the agency action.
- Identify appropriate contact(s) for the invitation (leadership and appropriate staff) through the [BIA Tribal Leaders Directory](#) or similar and in relationship building with the Tribe/Nation. Many Indigenous organizations and Tribe/Nation offices have a listing of points of contact, including leadership and support staff. Referencing the materials and resources provided by a Tribe/Nation and relevant Indigenous organization will aid your communications. Ensure that the relevant support staff are included in the communication of the invitation and follow-up.
- Determine whether the consultation is expected to result in a decision by either party and whether decision-makers will be present at the consultation or whether the consultation participants will be reporting to decision-makers after consultation meetings are held. While not always the case, some Tribes/Nations may not consider a meeting consultation unless the agency decision-maker is present.
- Invite the affected Tribe/Nation to consult and share all relevant public information on the proposed action.

Timing

All efforts should be made to work with the Tribe/Nation on a timeline that they have communicated and accommodates their worldview, cultural needs, activities, and priorities. ONMS should be clear with Tribe/Nation contacts about any exigent circumstances driving the agency’s timing for action. Constrained consultation timelines can generally be avoided through long-term relationships, strong partnerships between the Tribe/Nation and ONMS, and co-developing, in advance, a consultation process. Flexibility and agreed timelines will support the most constructive outcome.

- **Provide** notice of at least 120 days to the Tribe/Nation of any planned consultations unless required by law (i.e., 304(d) consultation) or exigent circumstances. NOAA generally requires 30 days' notice to the Tribe/Nation for any planned consultation. However, as a best practice, **120 days** is recommended to support meaningful responses from the Tribe/Nation.
- **Be aware** of seasonal and cultural activities or other events that may affect the Tribe/Nation from receiving the notification (e.g., weather, harvesting/hunting, feasts, priorities within the community) and account for the timing. Make all efforts to agree upon the timing with the Tribe/Nation.

Invitation to Consult

Invite the Tribe/Nation to participate in government-to-government consultation through written correspondence. Following transmission of the invitation, follow up with the Tribe/Nation to ensure receipt of the invitation to engage in a consultation process. The follow-up can occur through phone calls, emails, or visits. Include the following in the invitation letter:

- Address the letter to the Tribe/Nation Leader by name (e.g., avoid “Dear Tribal Leader” salutation).
- Include sufficient information on the topic(s) to be discussed in an accessible language, format, and context.
- Provide appropriate, publicly-available information on the subject of consultation, including, where consistent with applicable law, framing paper, and other relevant documents to assist in the consultation process.
- When appropriate, use terms or words representing the Tribe/Nation’s language.
- While timing should be addressed with the Tribe/Nation, if possible, before the letter is sent, the letter should include and explain any time constraints known to the agency, such as statutory deadlines (i.e., 45 days for 304(d) consultations).
- Highlight deadlines for any written comments on the topic.
- Provide names and contact information for agency staff who can provide more information.
- Request a response regarding if the Tribe/Nation would or would not like to participate in government-to-government consultation. Under extraordinary circumstances, if necessary (e.g., to accommodate a statutory deadline for the underlying ONMS action), the letter may include a statement that a lack of response by a certain date will be deemed a decision by the Tribe/Nation not to consult on the subject action.
- Inquire if the Tribe/Nation has any consultation policies, protocols, guidelines, or rules that ONMS should be aware of.
- Request a point of contact to correspond with from within the Tribe/Nation to coordinate the consultation process, co-develop a consultation process, or ensure information receipt. The point of contact for the Tribe/Nation may engage extensively or may be able to provide limited guidance (e.g., communicate a preferred date for consultation or confirmation of receipt of correspondence).
- Welcome the Tribe/Nation to collaborate in co-developing a consultation process, including developing an agenda for a consultation meeting.

- Transmit the notice of consultation using the agency's standard communication method to each affected Tribe/Nation. Consider posting it to the agency's website or any centralized federal government website to notify or coordinate Tribe/Nation consultations.
- Copy the ONMS national cultural resource coordinator on invitations sent and all follow-up responses.

Co-develop Consultation Process

To support ONMS' strategy to engage with Tribes/Nations meaningfully and to respect Native Nations' self-determination and self-governance, the invitation letter will include a welcome to collaborate in co-developing a consultation process. The following goals should apply to all consultation processes:

- The ONMS and Tribe/Nation points of contact should work together early in the process to clarify what issues concern each party. Identifying the issues will aid in identifying the appropriate participants, support staff, and information needed for the consultation.
- Agree upon a communications approach to be utilized throughout the consultation process.
- Inquire about any Tribe/Nation processes, rules, guidelines, and protocols for its consultation process that ONMS should be aware of.
- Agree on how the formal consultation meeting(s) will be held (e.g., in person, virtually, or by telephone). If the consultation is held in person, efforts should be made to hold the consultation where the Tribe/Nation prefers. If the consultation is held virtually, agree upon the virtual platform to host the meeting. If the meeting is hosted through Google Meet, confirm that all parties are comfortable using the platform or an agreed-upon process to walk attendees through the process before the meeting begins.
- Agree upon any protocols and processes for taking notes, recordings, or other ways in which the conversation will be captured (more direction is provided below).
- Agree on the facilitation process (i.e., if the Tribe/Nation prefers to facilitate or lead the discussion). If the Tribe/Nation hosts the meeting, defer to them as hosts and follow their protocols whenever possible.
- Agree on additional documents or information that may aid the consultation process.
- Develop a consultation calendar to ensure enough meetings are planned for adequate, meaningful consultation. This includes informal, staff-to-staff, or other meetings throughout the consultation process.

Decline to Consult or No Response

A Tribe/Nation may decline an invitation to have a formal consultation or not respond to the invitation. If the Tribe/Nation **does not respond** to the invitation:

- Lack of an affirmative response or no response is **not agreement**. Ensure timely and thorough efforts are made to ensure receipt of the invitation. If there continues to be no response, ONMS staff should, beyond the consultation process, continue efforts to build relationships and engage with the Tribe/Nation through sharing information and additional efforts.

- **Building relationships and trust** with the Tribe/Nation before agency action can aid ONMS' communications and follow-up in this process.

Engage in Meaningful Consultation

- Every effort should be made to ensure consultation times and locations are accessible and convenient for the Tribe/Nation.
- Listen actively (i.e., listen to understand) and reflect on what is shared.
- Work to co-develop a meeting platform that freely supports activities to exchange information (presentations, meetings, etc.).
- Exchange information with Tribe/Nation and be transparent in consultation.
- Protect the confidentiality of any sensitive Indigenous Knowledges consistent with the Tribe/Nation's direction through the implementation of FPIC and to the fullest extent permitted by the Freedom of Information Act and other applicable laws. Data agreements should be co-developed with the Tribe/Nation when applicable.
- Respect Tribe/Nation processes, rules, guidelines, protocols, and values during the consultation process.

Following Consultation and Communicating Decisions

- Ensure enough agreed-upon time for the Tribe/Nation to respond with information that may inform ONMS decision-making and allow for a written comment period following the consultation with a goal of providing at least 60 days or as agreed upon with the Tribe/Nation.
- **Highly consider** information, knowledge, guidance, views, and desired outcomes provided by the Tribe/Nation in any decision-making. Any decisions not agreed upon between the Tribe/Nation and ONMS should be documented in writing with a clear explanation for the ultimate decision reached.
- Follow the Tribe/Nation's desired type and format of follow-up after the consultation.
- Send written correspondence thanking the Tribe/Nation for their time and sharing. If no defined format is agreed upon, include in the letter:
 - Share a draft summary of agreed-upon points and key points heard during the consultation. Invite the Tribe/Nation to discuss any points they understand differently. After agreeing upon points, adjust the correspondence.
 - Provide a summary of comments received and any ONMS response. Invite the Tribe/Nation to continue discussing the issue to strive for consensus with the Tribe/Nations or a mutually desired outcome.
 - Seek a mutual understanding of the information or direction provided by the Tribe/Nation transmitted to the decision-makers.
 - Ensure transparency through clear communications and documentation about how information received during the consultation has or has not been included in the final decision and why.
 - Explain how Tribe/Nation rights, consultation information, and any Indigenous Knowledge were considered in decision-making. It is important to note that it is the Tribe/Nation's right to determine if, how, and when to share and use their knowledge.

Record Keeping and Reporting

The ONMS point of contact or designee should:

- In addition to other applicable record retention requirements, keep a consultation record, including all letters, emails, meeting minutes, agendas, and pertinent information, in an electronic folder that can be shared with the national cultural resource coordinator and others as needed.
- Copy the ONMS national cultural resource coordinator on invitations sent and all follow-up responses.
- Fill out the [Sharing Form](#) agreed upon by ICET. One form should be used to report each Tribe/Nation consultation.
Or
- Fill out the NOAA Tribal Tracker [form](#). One form should be used to report each Tribe/Nation interaction.

Data Sovereignty

- Tribes/Nations may require that their information related to some places, land, people, knowledge, cultural resources, and other information not be shared beyond ONMS. Although NOAA's ability to prevent disclosure of information shared with the agency is limited, ONMS will strive to take all appropriate steps, consistent with applicable law, to respect Tribal requests that information not be shared. These steps included:
 - Prior to providing Tribal information, the Tribe/Nation, or an authorized Tribal/Nation organization, and ONMS will determine what information shared during the consultation process, if any, the Tribe/Nation or authorized Tribal/Nation organization believes should not be publicly disclosed.
 - **Inform** the Tribe/Nation when any information shared is subject to the Freedom of Information Act.
 - Discuss ways to **protect sensitive information**. Prior to information-sharing and following coordination with the NOAA Office of General Counsel, the Tribe/Nation and ONMS should discuss NOAA's applicable information disclosure requirements and determine which information the Tribe/Nation may be willing to share with ONMS in light of those requirements. To the extent there are ways to **protect sensitive information** shared by the Tribe/Nation, those methods should be discussed in advance of information sharing.
 - For any information shared, the Tribe/Nation and ONMS should first agree on the manner of recording the information shared and how meeting proceedings and information will be shared after the consultation process is concluded.

Data sovereignty and agreements also apply to information/data derived from sources outside of Indigenous Knowledge, such as technical science. Across all knowledge/data sources, apply the following:

- Ensure that the Tribe/Nation has access to data to inform decision-making.
- To the extent possible and consistent with applicable law, follow [CARE](#) and [FAIR Principles for Indigenous data sovereignty](#) and any protocols put forward by the Tribe/Nation.
- Provide continuous communication with transparency and honesty.

Special Considerations in Alaska

Consultation within Alaska has unique attributes from other areas within the United States. The primary difference is that, in addition to federally recognized Tribes/Nations, NOAA also consults with Alaska Native Corporations on the same basis as federally recognized Tribes. A “Native Corporation” is any regional, village, urban, or group corporation⁷ defined in, or established pursuant to, [Alaska Native Claims Settlement Act](#) (ANCSA). Consultations with Alaska Native Corporations occur on a “government-to-corporation” basis rather than a “government-to-government” basis to reflect the distinction between sovereign governments and corporate entities.

NOAA implements the requirement to consult with Alaska Native corporations in a manner as close as possible to the requirement to consult with federally recognized Tribes in Alaska while recognizing the important differences between the federal trust responsibility to the sovereign governments of federally recognized Tribes and the corporate entities created by ANCSA. Consider consultation when an ONMS policy or action will have a substantial and direct effect on Alaska Native corporations, which could include their corporate governance or the lands they own. Consultation with Alaska Native corporations follows the above process as a “government-to-corporation” consultation. **Key Considerations:**

- Alaska Native corporations were established to operate as for-profit or non-profit enterprises to benefit the regional shareholders or the Native village, Native group, or urban community of Natives. Alaska Native corporations may not necessarily represent the same perspective or interests as the Tribes and adjacent Native communities, which may have distinct and individual cultural traditions and values of Alaska Native peoples and their representative Tribal governments.
- To the extent that concerns expressed by Alaska Native peoples and Tribes and Alaska Native corporations substantively differ, NOAA gives due consideration to the sovereignty and self-governance of federally recognized Alaska Native Tribes.

⁷ Village, group, and urban corporations are for-profit or non-profit organizations established to hold, invest, manage, or distribute lands, property, funds, and other rights and assets for the Native village, Native group, or urban community of Natives. There are currently 174 Alaska Native village corporations, which are owned by Alaska Native shareholders and hold title to 17 million acres of land in Alaska. Village corporations generally represent shareholders in villages associated with federally recognized tribes in Alaska. Consultations with village, group, or urban corporations occur on a “government-to-corporation” basis.

Additional Consideration – Other Mandated Tribal Consultation (NHPA S. 106)

While this guidance is focused on consultation with Tribes/Nations pursuant to Executive Order 13175, other consultations may be necessary and appropriate with the Tribe/Nation depending on the action proposed by the agency. Under Section 106 of the National Historic Preservation Act (NHPA), ONMS is required to invite consultation with Tribes/Nations on actions considered to be a “federal undertaking,” defined as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those:

- carried out by or on behalf of a federal agency;
- carried out with federal financial assistance;
- requiring a federal permit, license, or approval; and
- subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.

ONMS must ensure that any “federal undertaking” proposed that may affect “Tribal cultural properties” or landscapes, as well as any property to which Tribes/Nations attach religious and cultural significance, is conducted in a manner that avoids unnecessary impact. Detailed information on Section 106 consultations with Tribes/Nations can be found in [Consultation with Indian Tribes in the Section 106 Review Process Handbook](#), prepared by the Advisory Council on Historic Preservation.

Under Section 106 reviews, Tribes/Nations not “recognized” by the U.S. Government may be consulted as “additional consulting parties” at the agency’s discretion and for information on consulting with state-recognized or otherwise non-federally recognized Tribal/Indigenous communities: [ACHP Guide to Working with Non-Federally Recognized Tribes in the Section 106 Process, S. 106 Flowchart](#), and [ACHP Handbook for Consultation with Native Hawaiian Organizations in the Section 106 Process](#).

Moving Forward

As we collectively move forward, we can implement government-to-government consultation with federally recognized Tribes/Nations as a team focused on equity and developing long-term relationships established before and fostered after a formal consultation process. Relationship building outside of formal consultation aids in equitable partnerships. Below are a few resources provided by Indigenous Peoples. Contact the Indigenous Communities Engagement Team for more information and additional resources.

Engagement Resources

Many Indigenous communities, organizations, and governments have documented and provided protocols for engaging and working with them. These are gifts to aid in our collective success. Below are a **few** of these resources.

- **Circumpolar Inuit Protocols for Equitable and Ethical Engagement.** Inuit Circumpolar Council. 2022. Circumpolar Inuit Protocols for Equitable and Ethical Engagement.
- **Guidance and Responsibilities for Effective Tribal Consultation, Communication, and Engagement.** A Guide for Agencies Working with West Coast Tribes on Ocean & Coastal Issues.
- **Kūlana Noi‘i.** Kūlana Noi‘i Working Group. 2021. Kūlana Noi‘i v. 2. University of Hawai‘i Sea Grant College Program, Honolulu, Hawai‘i.
- **Tribal Adaptation Menu Team.** Tribal Adaptation Menu Team. 2019. Dibaginjigaadeg Anishinaabe Ezhitwaad: A Tribal Climate Adaptation Menu. Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin. 54 p.



Orca petroglyph on the Olympic Coast