DEPARTMENT OF THE INTERIOR
Office of the Secretary

Policy on Consultation With Indian Tribes

AGENCY: Office of the Secretary, Interior.
ACTION: Proposed policy: Request for comments.

SUMMARY: The Department of the Interior seeks comments on a proposed policy on consultation with Indian tribes. This policy would establish standards for improved consultation with Indian Tribes to the extent that a conflict does not exist with laws or regulations. It would apply to any Department action that affects Indian tribes and would require that the Department's government-to-government consultation involve appropriate Tribal and Departmental officials.

DATES: We will consider all comments received by July 18, 2011.

ADDRESSES: Submit comments by e-mail to consultation@doi.gov or by US mail to: Consultation Policy Comments, Department of the Interior, Room 5129 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kallie Hanley, Office of the Secretary, 202–208–5397 or kallie_hanley@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

The Department of the Interior proposed policy on consultation with tribes is set forth below.

Department of the Interior Policy on Consultation With Indian Tribes

I. Preamble

The obligation for Federal agencies to engage with Indian Tribes on a government-to-government basis is based on the U.S. Constitution, treaties, statutes, executive orders, and policies. Federal agencies meet that obligation through consultation with Indian Tribes. The Department of the Interior is committed to fulfilling its Tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments) or other applicable Secretarial Orders or policies—by adhering to the framework described in this Policy. This Policy reflects the Department’s highest commitment to the principles embodied in this Policy and the Secretary’s support of Tribal sovereignty.

The Department’s Bureaus and Offices shall review their existing practices and revise them as needed to comply with the Department’s Policy as described in this document. All Bureaus and Offices will report to the Secretary’s designated on their efforts to comply with this Policy and as described in a companion Secretarial Order.

II. Guiding Principles

This Policy broadly defines provisions for improving the Department’s consultation processes with Indian Tribes to the extent that a conflict does not exist with applicable law or regulations. The Department recognizes and respects the distinct, unique, and individual cultural traditions and values of each Tribe.

This Policy requires that the Department’s government-to-government consultation involve the appropriate Tribal Officials and appropriate Departmental officials. The appropriate Departmental officials are knowledgeable about the matters at hand, are authorized to speak for Interior, and have delegated authority in the disposition and implementation of an action. The appropriate Departmental official will have an obligation to identify consulting parties early in the planning process and allow a reasonable opportunity for Indian Tribes to respond and participate as described in Section VII. Department officials will make the effort to fully participate in the consultation process, ensure continuity, and demonstrate commitment to the process. Communication will be open and transparent without compromising the rights of federally recognized Indian Tribes and the government-to-government consultation process.

Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making where all parties share a goal of reaching a decision together and it creates an opportunity for equal input from all affected tribal governments. Consultation promotes an enhanced form of communication that emphasizes trust, respect, and shared responsibility and should be an open and free exchange of information. Federal officials that meaningfully, effectively, and conducted in good faith makes the Department’s operation and governance practices more efficient. To that end, Bureaus or Offices will seek and promote cooperation and participation between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding a Departmental Action with Tribal Implications. Efficiencies that derive from including Indian Tribes in all stages of the Tribal consultation process and decision-making process help to ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of Tribal input.

The United States has a long-standing and inter-governmental relationship with Indian Tribes. Appropriate consultation practices will honor the government-to-government relationship between Indian Tribes and the United States; and will comply with the Presidential Memorandum of November 5, 2009 that affirms this relationship and obligates the Department of the Interior to meet the spirit and intent of EO 13175.

The Policy creates a framework for synchronizing the Department’s consultation practices with its Bureaus and Offices.

III. Definitions

Bureau or Office—As defined in the Department of the Interior Manual.
Collaboration—The Department of the Interior working jointly with Indian Tribes to develop and implement positive solutions on Departmental Action with Tribal Implications.
Consultation Policies—Those institutionalized policies established to comply with the procedures described in Section VII of this document.
Departmental Action With Tribal Implications—Any Departmental regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial direct effect on an Indian Tribe, including but not limited to:
    1. Tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance on Federally managed lands.
    2. The ability of an Indian Tribe to govern or provide services to its members; an Indian Tribe’s relationship with the Department; or
    3. The distribution of responsibilities between the Department and Indian Tribes.

This term does not include matters that are the subject of litigation or in settlement negotiations, or matters undertaken in accordance with an administrative or judicial order where the Department has no discretion with respect to consultation.
Indian Tribe or Tribe—Any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Tribal Consultation Team—The Secretary’s designee has established and may develop a plan of action for the continued involvement of a joint Federal-Tribal Team including making recommendations on the implementation of this Policy.

Tribal Governance Officer (TGO)—An individual designated by the Department to carry out responsibilities defined in this Policy.

Tribal Liaison Officer (TLO)—One or more individuals designated by their Bureaus or Offices to carry out responsibilities defined in this Policy.

Tribal Official—An Elected or appointed Tribal leader or official delegate designated in writing by an Indian Tribe.

IV. Accountability and Reporting

Methods that ensure accountability and reporting are essential to regular and meaningful consultation. The heads of Bureaus and Offices will include in future annual performance plans their employees appropriate performance measures consistent with this Policy.

On an annual basis, Bureaus and Offices shall report to the Secretary the results of their efforts to promote consultation with Indian Tribes. Reporting is intended to be comprehensive and may include, but is not limited to, the scope of consultation efforts, the cost of these efforts, and the effectiveness of consultation activities. Bureaus and Offices should provide a comprehensive listing of the topics on which consultations were held, training, innovations, and the engagement of senior leadership in these efforts. Such reports should include feedback from Tribes with whom the Bureau or Office has consulted. Reports will account for the documents and correspondence with Indian Tribes to satisfy the Implementation of the Final Federal Action Stage described in Section VII or alternatively, summaries of such documents and correspondence with information concerning how the complete documents might be obtained.

Methods of reporting may be a description of budget expenditures in the execution of consultation efforts, narratives describing significant consultation efforts, and anticipation of forthcoming consultation opportunities. The Secretary of the Interior will provide an annual report to Indian Tribes and may use the Department’s website to share the reporting information, where appropriate.

For Federal block grants that only Indian Tribes are eligible to receive and in compliance with Federal statutes, a Bureau or Office will take special care to disclose actions it has taken to consult with Indian Tribes in the development of formulas to administer the block grants.

V. Training

Training will aim to improve the Department’s capacity for prioritizing collaboration with Tribes and executing the consultation provisions of Section VII.

- The training will:
  A. Promote consultation, communication, collaboration, and other interaction with Tribes;
  B. Outline and reinforce the Department’s duties concerning tribal interests;
  C. Describe the legal trust obligation of a Federal-Tribal relationship; and
  D. Transfer the knowledge, skills, and tools necessary for collaborative engagement to Tribal and Departmental staff engaged in the consultative process.

The Department, through the Department of the Interior University (DOIU), in collaboration with Bureaus, Offices, Tribal colleges and universities, and other entities with Indian expertise, will develop and deliver training. The Department, through the DOIU, will develop required core competencies, which Bureaus and Offices may enhance through other appropriate sources of tribal expertise.

This training will seek to enhance mutual understanding of cultural perspectives and administrative requirements between Tribal and Federal officials and to promote inter-governmental relationships. Tribal representatives are encouraged to participate in training along with federal employees.

VI. Innovative and Effective Consultation Practices

The Department’s leadership will strive to advance Federal consultation practices and to offer examples for innovation across the Administration. The Department will identify and seek to address impediments, both external and internal, to improving its consultation processes.

In consultation with Tribes, the Department will develop a plan of action for the continued improvement of this policy and its implementation. This plan may include:

A. Annual meetings between the Secretary and Tribes;

B. Communicating through a regular gathering of Tribes to discuss improving consultation practices and procedures;
C. Institutionalizing a joint Tribal-Federal consultation team that would meet periodically to identify improvements;
D. Soliciting Tribes’ evaluation of consultation practices and procedures.

VII. Consultation Guidelines

Consultation guidelines are meant to establish uniform practices and common standards, which all Bureaus and Offices will use except when otherwise agreed to in writing by a Bureau or Office and Indian Tribe through an individual protocol conforming, to the extent possible, to the guidelines in this Section.

Consultation and individual protocols will provide greater efficiency and transparency in Department practices in order to maximize Indian Tribes’ participation. Departmental Actions with Tribal Implications that are regional or impact a limited number of Indian Tribes should be carried out in a manner consistent with this Policy while allowing discretion to employ only appropriate parts of this Section.

A. Initiating Consultation. A Bureau or Office must notify the appropriate Indian Tribe(s) of the opportunity to consult when considering a Departmental Action with Tribal Implications. The Bureau or Office will strive to ensure that a notice is given at least 30 days prior to a scheduled consultation. If exceptional circumstances prevent notice within 30 days of the consultation, explanation for the abbreviated notification will be provided in the invitation letter. An Indian Tribe may request an extension for timelines associated with this Policy. Adequate notice entails providing a description of the topic(s) to be discussed, a timeline of the process, and possible outcomes. Notification of a consultation should include sufficient detail of the topic to be discussed to allow Tribal leaders an opportunity to fully engage in the consultation.

Beginning at the Initial Planning Stage, see Section VII, Part E, Subsection 1, a Bureau or Office will consult with Indian Tribes on a Departmental Action with Tribal Implications.

An Indian Tribe may request that the Department initiate consultation when the Tribe believes that a Bureau or Office is considering a Departmental Action with Tribal Implications. Requests should be made in writing to the Department’s TGO and describe the specific Departmental Action with Tribal Implications. However, the fact
that an Indian Tribe may choose not to engage the TGO does not relieve a
Bureau or Office of its obligation to engage in consultation as described by
this Policy. In the event that the Bureau or Office makes an attempt to initiate
consultation and does not receive a response, the Bureau or Office should
make reasonable and periodic efforts throughout the process to repeat the
invitation. Reasonable efforts should be made to adequately document or
memorialize these communications.

B. Role of Tribal Governance Officer and Tribal Liaison Officer in
Consultation Process.

1. The Department will designate a
TGO who will be located within the
Department so that the position shall be
accessible to Tribal Officials and so that
the TGO will have access to the
Secretary or Deputy Secretary to carry
out the responsibilities defined in this
Policy. These responsibilities shall include:

a. Monitoring compliance with this
Policy, EO 13175, and other
Consultation Policies pertaining to
government-to-government consultation;
b. Serving as the Secretary’s
representative when requested to do so
in matters pertaining to consultation;
c. Promoting government-to-
government consultation;
d. Communicating and coordinating
with TLOs concerning Bureau and
Office compliance with this Policy;
e. Encouraging Indian Tribes to
request consultation directly with the
appropriate Bureau or Office
representative or the TLO, and helping
to ensure the resolution of all requests;
f. Implementing, in coordination with
the TLOs, a reporting system to ensure
that consultation efforts are documented
and reported to the Secretary and to the
Department’s TGO for EO 13175; and
g. Facilitating a government-to-
government relationship that is honored
by all parties in tribal consultations of
national significance or involving
multiple Bureaus or Offices.

2. Each Bureau or Office will
designate one or more TLOs whose
responsibilities shall include:

a. Working with their Bureaus or
Offices to achieve compliance with this
Policy, the Consultation Policies of their
Bureaus or Offices, and any future
policies related to EO 13175 or other
government-to-government consultation
policies;
b. Promoting and facilitating
consultation and collaboration between
Tribes and the TLOs’ Bureau or Office;
c. Advocating for opportunities for
and consideration of positions of Indian
Tribes, consistent with Bureau and
Office missions;
d. Serving as the principal point of
contact for the TGO concerning
compliance with this Policy, including
Bureau and Office reporting
requirements;
e. Striving to enhance trusting and on-
going relationships with Tribes,
consistent with applicable law and
executive orders;
f. Serving as an initial contact for
Tribes requesting or inquiring about
consultation when it is unclear whom to
touch the Bureau or Office; and
g. Carrying out other responsibilities
as assigned by Bureau or Office
Consultation Policies.

3. Publicize TLOs and TGO—Each
Bureau or Office shall take appropriate
measures to publicize the name of the
TGO and the names and contact
information of their TLO(s) to facilitate
contacts by tribal officials.

C. Guidelines for Response to Request
for Consultation. The TGO or
appropriate representative will confirm
receipt of a request for consultation from
a Tribal Official. When the request is
directed to the TGO, the request is to be
forwarded to the appropriate Bureau or
Office. The TGO or appropriate representative will treat an official
request for consultation in an expedited
fashion and respond in writing, using
the most expedient methods to
communicate to the Tribe, that the
Department has received their request.

D. Consultation Process Support. The
Office of Collaborative Action and
Dispute Resolution can assist in
planning or facilitating an effective
consultation process, negotiated
rulemaking or other collaborative
approach to decision-making. In
planning consultation processes as
outlined below in Paragraph E, Bureaus
and Offices are encouraged to consider
best practices for engagement, including
but not limited to the use of neutral
facilitation and other collaborative
problem-solving approaches to promote
effective dialogue and conflict
resolution.

E. Stages of Consultation. Bureaus
and Offices will carry out the stages
described below in order to satisfy
consultation for a Departmental Action
with Tribal Implications.

1. Initial Planning Stage.

Each Bureau or Office will consult as
early as possible when considering a
Departmental Action with Tribal
Implications. A Bureau or Office may
conduct a meeting or other forms of
interaction with Indian Tribes in order
to receive and evaluate comments
received as part of the Initial Planning
Stage.

2. Proposal Development Stage.
The Proposal Development Stage
begins once the Department discloses
the scope of a Departmental Action with
Tribal Implications. Indian Tribes
should be considered as appropriate
collaborative partners, particularly
where negotiated rulemaking or a Tribal
Leader Task Force is created.

The Bureau or Office will select a
process for the Proposal Development
Stage that maximizes the opportunity
for timely input by Tribes and is
consistent with both Tribal and Bureau
schedules. The Bureau or Office should
work with Indian Tribes to structure a
process, which to the extent feasible,
considers specific Indian Tribal structures, traditional needs, and
schedules of the Tribes and may
proceed with the expectation that
interested Indian Tribes will respond
within a reasonable time period. If
litigation or legal requirements impact a
Bureau’s or Office’s schedule for
conducting consultation, then the
Bureau or Office should explain these
constraints to the Indian Tribe.

Examples of appropriate processes for the Proposal Development Stage include
but are not limited to the following:

• Negotiated Rulemaking. Where
appropriate, the Bureau or Office should
consider using negotiated rulemaking for
developing significant regulations or
other formal policies in accordance with
the Federal Advisory Committee Act
(FACA) and the Negotiated Rulemaking
Act.

• Tribal Leader Task Force. A Tribal
Leader Task Force may be used, in
appropriate circumstances, on regional
or issue-specific (e.g., timber) matters. In
each instance, the composition of the
Task Force shall be collaboratively
determined by the Tribes, provided that
the Task Force shall be a process open
to all Tribes and, to the extent possible,
represent a cross-section of Tribal
interests with respect to the matter at
issue. The location and number of
meetings to be held will conform to the
expressed views of the Tribes, to the
extent practicable and permitted by law
and in accordance with FACA.

• Series of Open Tribal Meetings. The
Bureau or Office may provide open
invitations to Tribal leaders as part of a
series of open meetings to consider
action(s). Open meetings can be used for
national, regional or subject-matter-
specific issues.

• Single Meetings. The Bureau or
Office may host Tribal Officials in a
single meeting to discuss the
Departmental Action with Tribal
Implications under consideration.
Single meetings are particularly
appropriate for local, regional, or single Tribe issues.

The Bureau or Office will solicit the views of affected Tribes regarding the process timeline to meaningfully consider a Departmental Action with Tribal Implications. The Bureau or Office should make all reasonable efforts to comply with the expressed views of the affected Tribes regarding the process timeline at this Stage, taking into account the level of impact, the scope, and the complexity of the issues involved in the Departmental Action with Tribal Implications, along with the other factors driving the schedule. The process will be open and transparent.

If the Bureau or Office determines that the Administrative Procedure Act or other Federal law or regulation expressly prohibits continued discussion at a specified point in the decision-making process, the Bureau or Office should so inform the Tribes at the outset of this Stage in the process.

3. Implementation of Final Federal Action Stage

In addition to any formal notice required by law or regulation, final decisions on Departmental Action with Tribal Implications should be communicated in writing to affected Tribes, with a summarized explanation of the final decision.

A Bureau or Office may consider implementing a post-consultation review process where it is consistent with law, regulations, and EO 13175. Any review process shall not limit the Department’s deliberative process privilege regarding internal considerations or any other applicable privilege. The Bureau or Office at this Stage will consider the need for training or technical assistance.

F. Impact of Consultation Guidelines.

Consultation as described in this Section is not a basis for the Department to preclude requests or recommendations by Bureaus, Offices, or Indian Tribes to collaborate and foster trusting relationships between the Department and Indian Tribes outside of the processes described in this Section. Exigent circumstances may allow the Department to take measures that deviate from this Policy, but the Department should make every effort to comply and should explain to Indian Tribes as soon as exigent circumstances arise.

VIII. Supplemental Policies

Bureaus and Offices, in collaboration with the TGO, are to review existing policies that may be impacted by this Policy. All Bureau and Office policies are to conform to this Policy. Where necessary, a Bureau or Office may develop a new policy in order to conform to this Policy.

Consistent with Federal appropriations law, the Department shall develop a policy for consultation with Alaska Native Corporations. The Policy will address how a Department action impacts an Alaska Native Corporation’s interest. The Policy will not conflict with the requirements of this document. The Secretary’s designee will provide a Plan of Action for developing the Alaska Native Corporation consultation policy. Other entities that are not Bureaus or Offices as defined in this Policy may develop policies that conform to this Policy. Other entities may develop such policies in coordination with the TGO.

IX. Disclaimer

Except to the extent already established by law, this Policy is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the Department or any person. The Department also does not waive any applicable privilege that it may hold by virtue of this Policy.

Dated: May 11, 2011.
Laura Daniel Davis,
Chief of Staff.

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE)

Notice on Outer Continental Shelf Oil and Gas Lease Sales


ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Bureau of Ocean Energy Management, Regulation and Enforcement by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period May 1, 2011, through October 31, 2011. The List of Restricted Joint Bidders published in the Federal Register on January 24, 2011, covered the period November 1, 2010, through April 30, 2011.

DEPARTMENT OF THE INTERIOR

Geological Survey

Announcement of National Geospatial Advisory Committee Meeting


ACTION: Notice of meeting.