



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

March 29, 2022

Re: Notification of Consultation and Coordination on Potential EPA Actions to Increase Tribal Capacity to Maintain and Expand Nonpoint Source Management Programs

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally recognized Indian tribes to inform potential EPA actions the Clean Water Act section (§) 319 national Nonpoint Source (NPS) program could take to better support §319-eligible tribes in their efforts to manage NPS pollution.

As outlined in EPA's September 27, 2021 national policy memorandum, [Near-term Actions to Support Environmental Justice in the Nonpoint Source Program](#), in fiscal year (FY) 2022 EPA will be engaging the national NPS community, including state, tribal, and territorial §319 grantees, in a dialogue on advancing equity and environmental justice in the national NPS program. As part of this engagement effort, EPA has initiated this consultation and coordination process with tribes to help identify potential §319 program actions to address challenges facing tribal NPS programs. Potential program actions could include revisions to EPA's §319 grant guidelines, changes to EPA's tribal §319 grant allocation formula, and new approaches for providing EPA technical assistance and training support to tribal NPS programs.

This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (<https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>). This consultation period will remain open for the remainder of FY 2022 (through September 30, 2022) as EPA's national NPS program works to identify and implement actions to advance equity in the program.

EPA invites you and/or your designated consultation representative(s) to participate in this process. As outlined below, EPA will hold informational webinars and two 60-day comment periods to provide opportunities for seeking tribal input:

1. EPA will hold two identical informational webinar and listening sessions for tribal leaders and staff on Tuesday, April 19, 2022 from 2 – 3pm Eastern Daylight Time (EDT) and on Wednesday, April 27, 2022 from 2 – 3pm EDT. You can register for the first webinar [here](#) or the second webinar [here](#).
2. As part of the initial 60-day comment period, EPA is seeking tribal feedback on the questions listed in the attached Consultation and Coordination Plan. In addition, tribes are invited to share their experiences, including successes and challenges, building and sustaining Tribal NPS program capacity. Tribal comments are welcome by May 27, 2022.
3. Once EPA evaluates and considers tribal comments from the initial 60-day comment period, we plan hold a second 60-day comment period as part of the consultation and coordination process

in summer 2022 to seek tribal input on any subsequent proposed reforms to the §319 program based on the input received.

Enclosed is a consultation and coordination plan for this action that includes a description of the action under consultation and the process EPA intends to follow, including a timeline for the consultation and coordination period and information on how you can provide input on this action. This information is also available on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at <https://tcots.epa.gov>.

Please contact our official EPA representative for this consultation and coordination process, Steve Epting, EPA's Office of Wetlands, Oceans and Watersheds by email at tribal319grants@epa.gov or phone at (202) 566-1074 if you have any questions or would like to request alternate arrangements to the process outlined in the consultation and coordination plan. We look forward to hearing from you.

Sincerely,

John Goodin, Director
Office of Wetlands, Oceans and Watersheds

cc: Tribal Environmental Directors
CWA Section 319 Tribal Coordinators

Enclosures:

1. Consultation and Coordination Plan: Potential EPA Actions to Increase Tribal Capacity to Maintain and Expand Nonpoint Source Management Programs
2. Supplement: Additional Background Information on the Clean Water Act Section 319 Tribal Program

Consultation and Coordination Plan: Potential EPA Actions to Increase Tribal Capacity to Maintain and Expand Nonpoint Source Management Programs

Background Information

Section 319 of the Clean Water Act (CWA) authorizes EPA to provide financial assistance to states, territories, and eligible tribes and intertribal consortia to implement EPA-approved nonpoint source (NPS) management programs to prevent or reduce the water quality impacts of NPS pollution. Tribes have communicated to EPA the challenges they face in their efforts to manage NPS pollution. For example, at current CWA §319 funding levels many tribes struggle to recruit, train, and retain staff to lead NPS management efforts. Today's tribal land areas often follow complex landownership patterns that present challenges in adopting watershed-based approaches to managing NPS pollution. Additionally, many tribal NPS programs work within communities where competing needs, such as the lack of access to wastewater services and clean drinking water, put stress on limited available resources.¹

Consistent with the [Biden-Harris Administration's Justice40 Initiative](#), EPA is committed ensuring there is equitable and fair access to the benefits of cleaner water provided by the CWA §319 program. As outlined in the September 27, 2021 policy memorandum [Near-term Actions to Support Environmental Justice in the Nonpoint Source Program](#), in fiscal year 2022 EPA is engaging the national NPS community, including state, tribal and territorial §319 grantees, in a dialogue on advancing equity and environmental justice in the national NPS program. As part of the engagement effort, EPA has initiated this consultation and coordination process with tribes to provide an opportunity for EPA and tribal partners to discuss the challenges facing tribal communities, how these challenges impact tribal NPS programs working within these communities, and how EPA can help address these challenges through action in the CWA §319 program. Potential program actions include revisions to EPA's §319 grant guidelines, changes to EPA's tribal §319 grant allocation formula, and new approaches for providing EPA technical assistance and training support to tribal NPS programs.

Potential Benefits to Tribes

EPA is working to pursue opportunities to advance equity and environmental justice in the national NPS program. As part of these efforts, EPA is consulting and engaging with tribes to better understand current challenges in managing NPS pollution. Tribal input will inform potential EPA actions to address these challenges, including exploring opportunities to increase §319 funding for eligible tribes.

Opportunities for Tribes to Participate

Through this consultation and coordination process, EPA seeks to better understand how the national NPS program can better support tribes through action(s) in the CWA §319 program. This consultation and coordination period will remain open for the remainder of fiscal year 2022 (through September 30, 2022) as EPA's national NPS program works to identify and implement actions to advance equity in the program. The consultation period will include two 60-day comment periods.

During the first 60-day comment period, which will be held from March 29, 2022 to May 27, 2022, EPA is seeking tribal feedback on the questions below. In addition to submitting responses to the questions

¹ https://www.epa.gov/system/files/documents/2021-10/2021-ow-tribal-action-plan_508_0.pdf

below, we invite tribes to share their experiences, including successes and challenges, building and sustaining tribal NPS program capacity. Once EPA evaluates and considers tribal comments from the initial comment period, we plan to hold a second 60-day comment period as part of the consultation and coordination process in summer 2022 to seek input on any subsequent proposed reforms to the §319 program based on the input received.

To help inform potential actions, EPA seeks input from tribal partners on the following questions. Please see the attached supplement for background information about the Tribal NPS program that may be helpful when considering these questions.

1. What are the main challenges you face in working to manage NPS pollution and its potential impacts to human health? Please prioritize among the following potential needs:
 - a. Additional funding for tribal NPS staff,
 - b. Additional funding to support NPS project implementation,
 - c. Training for tribal NPS staff,
 - d. NPS technical assistance (e.g., watershed planning, best management practice project design),
 - e. Other, please specify.
2. What change(s) would you recommend EPA's §319 program make to better support tribes in addressing these challenges?
3. What EPA §319 program requirements feel confusing, unclear, duplicative, or onerous?
4. How can EPA better support tribes in building partnerships and securing assistance beyond §319 grants to address NPS pollution?
5. Should EPA consider changes to its current approach of allocating §319 grants to tribes via base grants and competitive grants?
 - a. Should EPA remove the competitive grants and instead allocate all tribal §319 funds via base grants?
 - b. Should EPA consider changes in how base grants are currently allocated to eligible tribes? For example, should EPA consider additional land area funding tiers, and/or incorporate additional factors (e.g., water area, tribal population) in the base allocation formula?
 - c. Should EPA consider changes to tribal §319 competitive grants? For example:
 - Modifying the application scoring criteria,
 - Changing the maximum competitive grant amount (currently \$100,000),
 - Expanding the NPS project types that can be supported by competitive grants, such as NPS planning/program capacity-building activities,
 - Reserving a portion of competitive grant funding each year for 319-eligible tribes that have not received a competitive grant in recent years.

The tribal consultation and coordination process table below lays out the timeline and contact information for government-to-government consultation and coordination.

EPA will hold two identical tribal informational webinar and listening sessions on Tuesday, April 19, 2022 from 2 – 3pm EDT and on Wednesday, April 27, 2022 from 2 – 3pm EDT. The webinars will provide tribal representatives an opportunity to ask questions and learn more about this consultation opportunity and potential EPA actions to advance equity in the national NPS program. You can register for the first webinar [here](#) or the second webinar [here](#).

At any point in the tribal consultation and coordination process, tribes may submit written comments to:

1. Email comments to Steve Epting (tribal319grants@epa.gov), or
2. Provide comments electronically by using [this form](#).

Additionally, tribal governments may request one-on-one consultation meetings with EPA. If you are interested in requesting consultation with EPA during the consultation and coordination period, please contact Steve Epting at tribal319grants@epa.gov.

Tribes may access this letter and related consultation information in EPA's *Tribal Consultation Opportunities Tracking System (TCOTS)*, located at <https://www.tcots.epa.gov>.

Tribal Consultation and Coordination Process and Timeline

Date/Time	Event	Contact Information
March 29, 2022	Initiation of the tribal consultation period. Consultation notification letters are emailed to tribal leaders. Also initiates first 60-day comment period to solicit input on the questions in the <i>Consultation and Coordination Plan</i> .	EPA Contact: Steve Epting (202) 566-1074 (tribal319grants@epa.gov)
April 19, 2022	Tribal Leader Informational Webinar #1: Successes and challenges building and sustaining Tribal NPS program capacity.	EPA Contact: Steve Epting (202) 566-1074 (tribal319grants@epa.gov) Registration link for Webinar #1
April 27, 2022	Tribal Leader Informational Webinar #2 (repeat of #1): Successes and challenges building and sustaining Tribal NPS program capacity.	EPA Contact: Steve Epting (202) 566-1074 (tribal319grants@epa.gov) Registration link for Webinar #2
May 27, 2022	End of the first 60-day comment period. EPA then evaluates and considers comments received.	Comments can be emailed to: Steve Epting (tribal319grants@epa.gov) Comments can be submitted electronically using this form .
Summer 2022 (estimate)	Second 60-day comment period on proposed EPA actions to increase tribal capacity to maintain and expand NPS programs.	TBD
Summer 2022 (estimate)	Tribal Leader Informational Webinar #3:	TBD

	Proposed EPA actions to increase tribal capacity to maintain and expand NPS programs.	
Summer 2022 (estimate)	Tribal Leader Informational Webinar #4 (repeat of #3): Proposed EPA actions to increase tribal capacity to maintain and expand NPS programs.	TBD
Fall 2022 (estimate)	Consultation closes and EPA implements NPS program actions.	

Supplement: Additional Background Information on the Clean Water Act Section 319 Tribal Program

Background

Clean Water Act (CWA) section (§) 319 authorizes EPA to award grants to eligible tribes, states, and intertribal consortia to implement EPA-approved NPS management programs developed pursuant to §319(b). The primary goal of an NPS management program is to control or prevent NPS pollution. This is accomplished by implementing best management practices that reduce pollutant loadings to waterbodies from each NPS category or subcategory identified in the tribe's NPS assessment report. The NPS assessment report is developed pursuant to §319(a). CWA §518 authorizes EPA to treat federally recognized Indian tribes in a similar manner as states ("treatment as a state," or TAS). In FY2022, there are 210 federally recognized tribes and intertribal consortia with TAS status under CWA §319 (Figure 1).

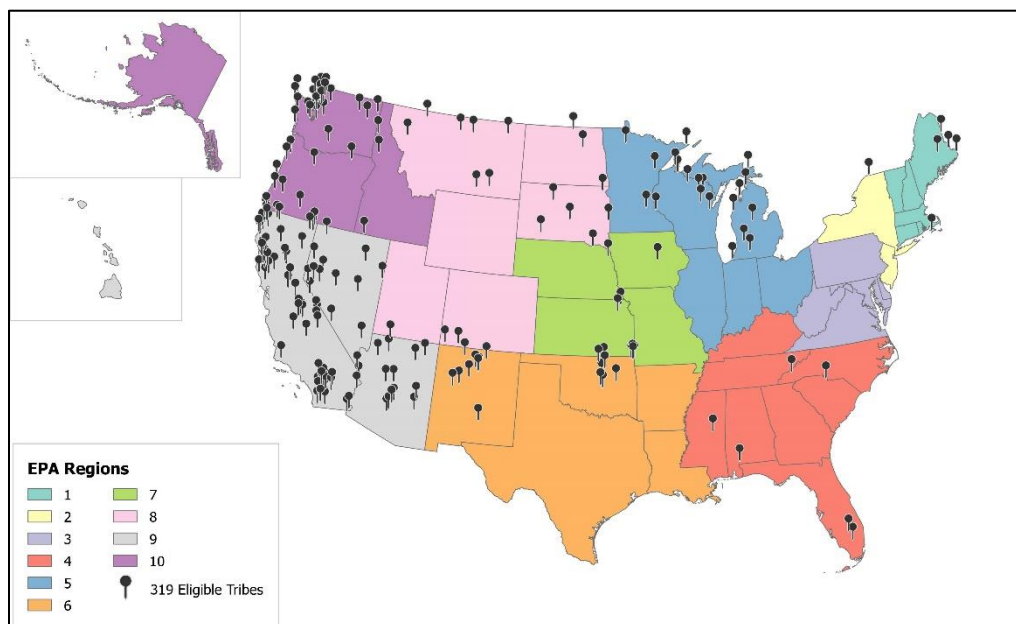


Figure 1. In FY2022, there are 210 §319-eligible tribes (black pins on map) in all EPA regions except Region 3.

Since FY2015, on average four new tribes have become eligible under CWA §319 each year (Table 1). The program is likely to see continued growth in tribal participation in future years. There are more than 270 tribes currently eligible under CWA §106; tribes typically first obtain TAS for §106, then use their §106 grant to develop a NPS program and become eligible for §319 grants. In total, there are approximately 330 federally recognized tribes that could meet the eligibility requirements (i.e., have jurisdictional land) for TAS status under CWA §319.

CWA §518(f) states that no more than one-third of one percent of the total amount of §319 funds appropriated for any fiscal year may be used to make grants to tribes. However, in light of the increasing number of §319-eligible tribes and effects of the statutory cap in limiting tribes' ability to establish and maintain NPS programs, Congress has authorized removal of the cap in §518(f) on grants to tribes each year since FY2000. Since FY2015, EPA policy has been to set the annual tribal set-aside at the greater of \$8 million or 5 percent of the national §319 appropriation (Table 1).

Table 1. Annual CWA section 319 appropriation, including Tribal set-aside, FY1996-2021.

Fiscal Year	National 319 Total	Tribal 319 Total	% Tribal Set-Aside	# Eligible Tribes	\$ per eligible Tribe ²
1996	\$100,000,000	\$330,000	0.3%	10	\$33,000
1997	\$100,000,000	\$330,000	0.3%	11	\$30,000
1998	\$105,000,000	\$346,500	0.3%	14	\$24,750
1999	\$200,000,000	\$660,000	0.3%	21	\$31,429
2000	\$200,000,000	\$2,500,000	1.3%	22	\$113,636
2001	\$237,476,400	\$6,000,000	2.5%	51	\$117,647
2002	\$237,477,000	\$6,000,000	2.5%	63	\$95,238
2003	\$238,440,000	\$6,000,000	2.5%	70	\$85,714
2004	\$237,300,000	\$7,000,000	2.9%	83	\$84,337
2005	\$207,328,000	\$7,000,000	3.4%	95	\$73,684
2006	\$204,278,000	\$6,897,000	3.4%	114	\$60,500
2007	\$199,175,000	\$6,897,000	3.5%	126	\$54,738
2008	\$200,857,000	\$8,000,000	4.0%	137	\$58,394
2009	\$200,857,000	\$8,000,000	4.0%	150	\$53,333
2010	\$200,857,000	\$8,000,000	4.0%	159	\$50,314
2011	\$175,505,000	\$7,984,000	4.5%	167	\$47,808
2012	\$164,493,000	\$7,987,000	4.9%	170	\$46,982
2013	\$155,915,000	\$7,570,000	4.9%	175	\$43,257
2014	\$159,252,000	\$7,500,000	4.7%	180	\$41,667
2015	\$158,207,800	\$8,070,000	5.1%	182	\$44,341
2016	\$163,415,000	\$8,170,000	5.0%	186	\$43,925
2017	\$167,950,000	\$8,661,000	5.2%	191	\$45,346
2018	\$167,011,000	\$8,351,000	5.0%	199	\$41,965
2019	\$165,347,000	\$8,267,000	5.0%	203	\$40,724
2020	\$172,348,000	\$8,618,000	5.0%	206	\$41,835
2021	\$177,000,000	\$8,852,000	5.0%	209	\$42,354
2022	NA	NA	NA	210	NA

Current Tribal 319 Allocation Approach

EPA currently awards §319 grants to eligible tribes each year in two parts: base grants and competitive grants. Each year EPA first awards base grants non-competitively to eligible tribes; the remaining funds from the tribal set-aside are then awarded competitively among §319-eligible tribes to support on-the-ground NPS projects. From FY2017-2021, EPA awarded approximately two-thirds of the tribal set-aside via base grants and the remaining one-third of funds via competitive grants (Figure 2).

² Not actual dollar amounts awarded to each tribe. Column calculated by dividing Tribal 319 Total by # §319-eligible tribes. Included to demonstrate the effect of an increasing # of §319-eligible tribes on funding available each year.

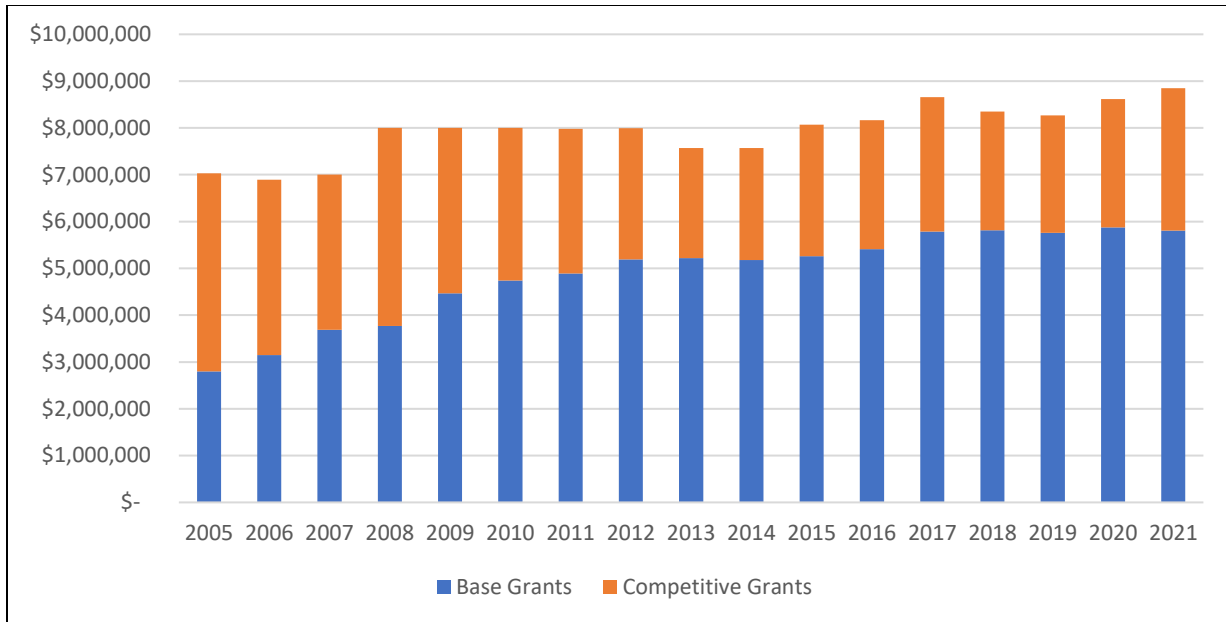


Figure 2. Annual CWA section 319 tribal set-aside, FY2005-2021.

Base 319 Grants

EPA awards base grants consistent with the current [Guidelines for Awarding Clean Water Act Section 319 Base Grants to Indian Tribes](#). Base grants are awarded using a formula based on tribal land area held in trust by the federal government (reservation plus non-reservation trust lands).³ Tribes with less than 1,000 sq. mi. (less than 640,000 acres) of land receive a base amount of \$30,000/year, and tribes with over 1,000 sq. mi. (over 640,000 acres) receive a base amount of \$50,000/year.⁴ In FY2022, there are 191 tribes eligible at the \$30,000 base funding level and 19 tribes eligible at the \$50,000 base funding level (Table 2).

Base grants serve as the primary source of support for tribal NPS management programs. These funds may be used for a range of activities that implement the tribe’s approved NPS management program. Base grants are primarily used to fund a portion of a tribal staff position to lead NPS program work. At current funding levels, base grants can support a portion of a tribal staff position, typically less than 0.5 full time equivalent (FTE). Common staff-led activities include NPS monitoring activities, NPS project planning, conducting NPS training and outreach activities, and establishing NPS program priorities (e.g., via regular updates to NPS management program plans). Tribes may also implement on-the-ground projects with these funds if adequate funding exists.

³ CWA section 319 tribal guidance does not cite a data source for tribal land area data. Section 106 tribal grant program allocation formula uses tribal land areas reported through the US Census.

⁴ According to EPA’s *FY2011 Guidelines for Awarding Clean Water Act Section 319 Base Grants to Indian Tribes*, “EPA continues to rely upon land area as the deciding factor for allocation of funds because NPS pollution is strongly related to land use; thus, land area is a reasonable factor that generally is highly relevant to identifying tribes with the greatest needs (recognizing that many tribes have needs that significantly exceed available resources).”

Table 2. Count of 319-eligible tribes at \$30K and \$50K base 319 funding levels in FY2022.

EPA Region	Count of tribes at \$30K base grant level	Count of tribes at \$50K base grant level	Total Count of 319-eligible Tribes
1	5	0	5
2	1	0	1
3	0	0	0
4	6	0	6
5	19	1	20
6	20	1	21
7	5	0	5
8	8	8	16
9	99 ⁵	5	103
10	28	4	32
Total	191	19	210

Competitive 319 Grants

In addition to awarding §319 base grants, each year EPA manages a national competitive grant process to solicit applications from §319-eligible tribes and intertribal consortia for on-the-ground projects that will directly protect or restore water quality from NPS pollution. The primary focus of competitive projects must be on implementing best management practices. In addition, applicants may include other eligible activities that support BMP implementation work, such as watershed-based planning and NPS monitoring activities. Prior to FY2014, tribes could apply for up to \$150,000 in competitive grant funding. Beginning in FY2014, the competitive grant project cap was decreased to \$100,000 in order to increase the number of tribes receiving grants to support NPS implementation projects each year. From FY14-21 EPA awarded, on average, 29 competitive grants per year (Figure 3).

From FY2005 to 2021 approximately two-thirds of all §319-eligible tribes applied for at least one competitive grant. Over this time period 106 tribes were successful in receiving one or more competitive grant (Figure 4). Among the 106 tribes that received one or more competitive grant between FY2005 and FY2021, 35 tribes received one competitive grant, 42 tribes received two to five competitive grants, and 29 tribes received six or more competitive grants.

⁵ The Klamath Water Quality Consortium, located in EPA Region 9, is currently the only intertribal consortium eligible for CWA §319 grants. Based on 2020 Census data, Consortium member tribes collectively have 225 square miles of tribal land area (Yurok – 84 mi², Hoopa Valley – 140 mi², Karuk – 0.7 mi², Resighini Rancheria – 0.4 mi², Quartz Valley – 0.55 mi²). The Consortium has not yet applied to EPA for base 319 grant funding. Per current tribal 319 base grant guidelines, an intertribal consortium may not apply for a base 319 grant if the consortium member tribes have also applied for base grants.

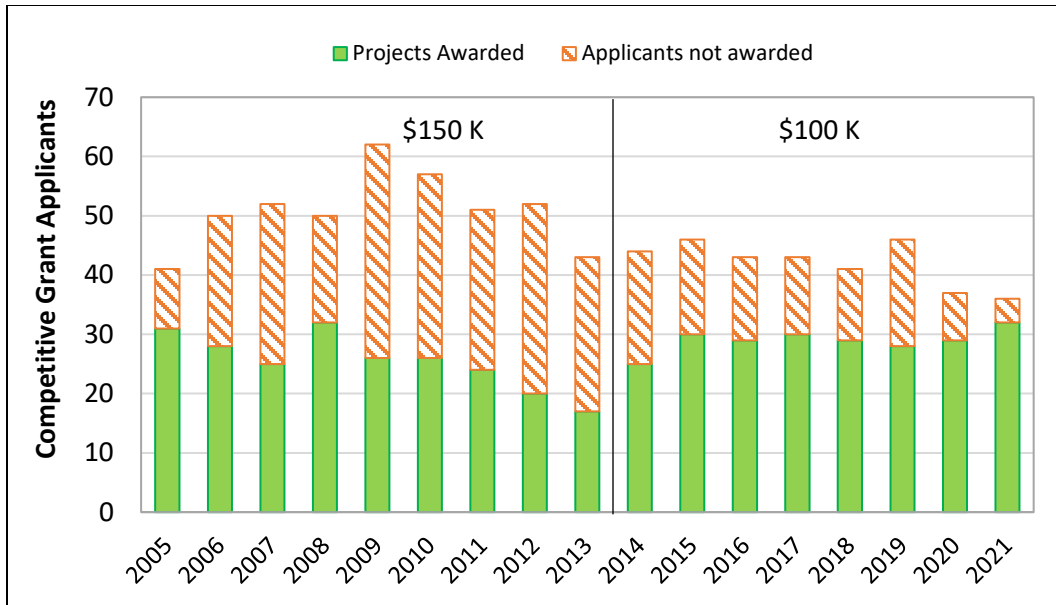


Figure 3. Competitive applications and projects awarded per year (FY2005 – 2021).

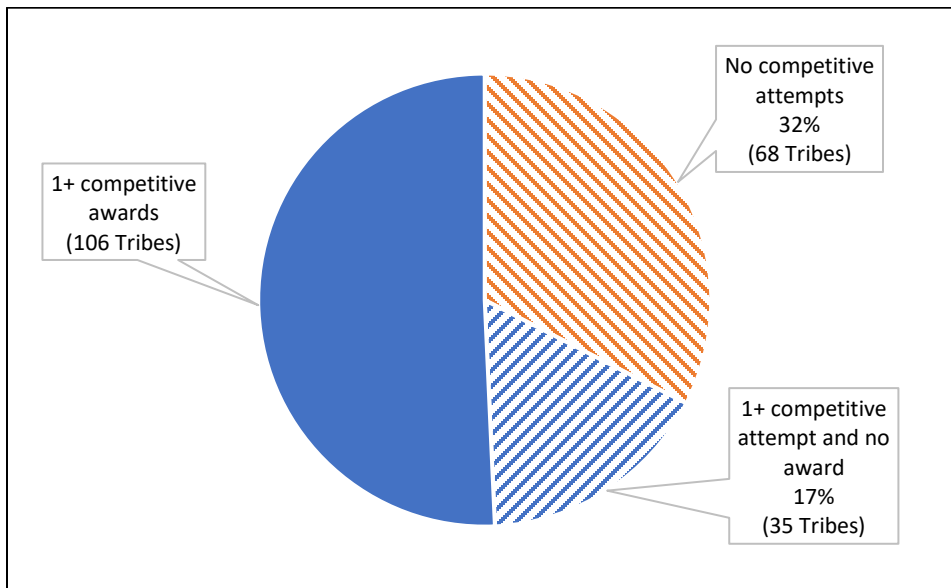


Figure 4. Competitive grant applications and award distribution (FY2005 – 2021). 209 §319-eligible tribes included in analysis.