

American Indian Environmental Office



EPA POLICY ON CONSULTATION WITH INDIAN TRIBES

January
2024

Presentation Overview

The U.S. Environmental Protection Agency (EPA) revised the *EPA Policy on Consultation with Indian Tribes* and the companion *Guidance for Discussing Tribal Treaty or Similar Rights* in December 2023.

This presentation will provide:

- Background information on EPA consultation with Tribes
- An overview of the EPA Consultation Policy and Guidance
- Online Resources

Consultation with Federally Recognized Indian Tribes

It is EPA's policy to consult on a government-to-government basis with federally recognized Tribal governments when EPA actions or decisions may affect Tribes.

EPA recognizes and works directly with federally recognized Tribes as sovereign entities with primary authority and responsibility for each Tribe's land and membership, and not as political subdivisions of states or other governmental units.



EPA Indian Policy

[The EPA Policy for the Administration of Environmental Programs on Indian Reservations](#) (EPA Indian Policy) was adopted in 1984 and is the foundational document for today's [EPA Tribal Program](#), setting forth principles that guide EPA's interactions with Tribal governments and specifying how the agency considers Tribal interests.

The EPA Indian Policy provides that EPA will:

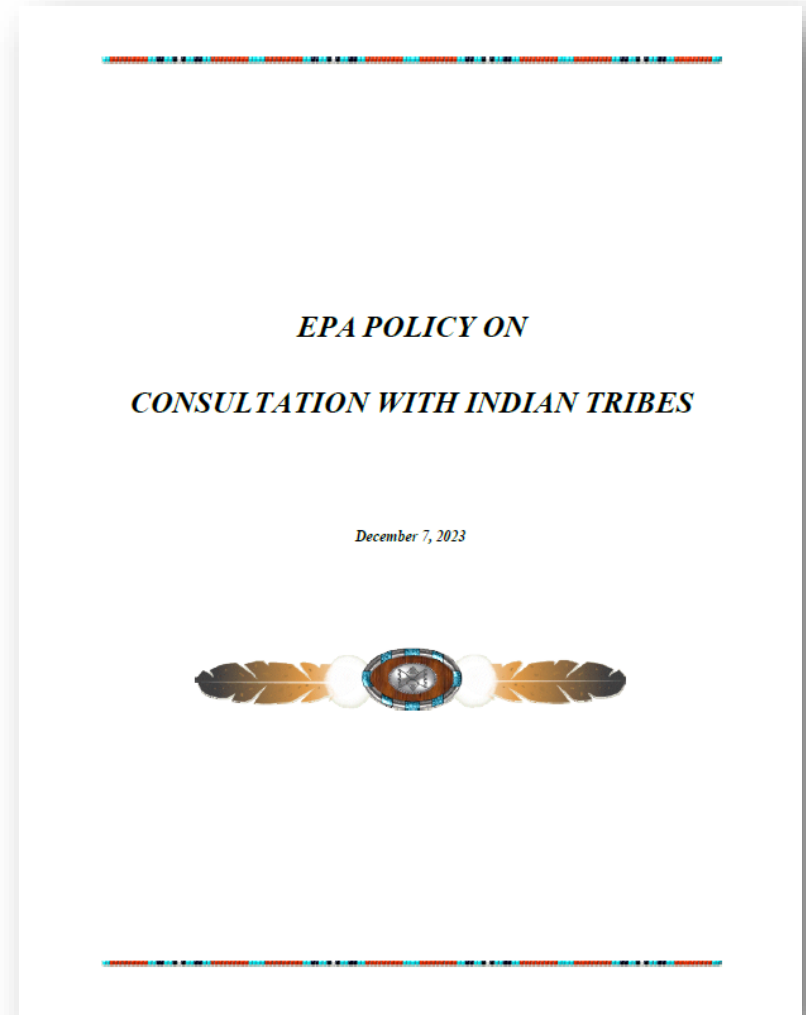
- 1 Work directly with Tribal governments
 - 2 Recognize the primary role of the Tribal government in Indian country consistent with federal authorities
 - 3 Assist Tribes in assuming regulatory and program management responsibilities
 - 4 Remove barriers to working with Tribes
 - 5 Consider Tribal concerns and interests in EPA decisions
 - 6 Encourage cooperation between Tribal, state, and local governments
 - 7 Coordinate with other federal agencies to support Tribes
 - 8 Work to ensure compliance with federal environmental laws in Indian country
 - 9 Incorporate these principles in planning and management activities
- "The agency, in keeping with the federal trust responsibility, will assure that tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect reservation environments."

EPA Consultation Policy: Overview

The [EPA Policy on Consultation with Indian Tribes](#) (EPA Consultation Policy) establishes national guidelines for consultation across the Agency. It implements the principles of the EPA Indian Policy and [Executive Order \(EO\) 13175, Consultation and Coordination With Indian Tribal Governments](#) issued in 2000.

The ultimate goal of the EPA Consultation Policy is to strengthen government-to-government relationships between Tribal governments and EPA.

Originally established in 2011, the EPA Consultation Policy was revised in 2023, incorporating standards outlined in the 2022 Presidential [Memorandum on Uniform Standards for Tribal Consultation](#) and input received from Tribal governments.



EPA Consultation Policy: Tribal Consultation and Coordination

The EPA Consultation Policy outlines a process to ensure meaningful and timely input by Tribal officials prior to EPA taking actions or implementing decisions that may affect Tribes. The consultation process may include several methods of interaction that occur at different levels between EPA and Tribal governments.

“Coordination” is communication among EPA and Tribal officials, Tribal environmental staff, or other Tribal representatives that can support the consultation process.

“Consultation” is a two-way, government-to-government exchange of information and dialogue between official representatives of EPA and Tribes.



EPA Consultation Policy: Guiding Principles

EPA Mission

EPA's fundamental objective in carrying out its responsibilities in Indian country is to protect human health and the environment.



Government to Government Relationship

EPA recognizes and works directly with federally recognized Tribes as sovereign entities with primary authority and responsibility for each Tribe's land and membership, and not as political subdivisions of states or other governmental units.



Federal Trust Responsibility

EPA recognizes the federal government's trust responsibility, which derives from the historical relationship between the federal government and Indian Tribes as expressed in certain treaties, statutes, executive orders, and other sources of federal Indian law. Consistent with the federal trust responsibility, EPA consults with and considers the interests of Tribes when taking actions that may affect them.



EPA Indian Policy

EPA ensures the close involvement of Tribal governments and gives special consideration to Tribal input whenever EPA's actions or decisions may affect Tribes.



EPA Consultation Policy: Guiding Principles (cont.)

Tribal Treaty or Similar Rights

EPA recognizes the importance of respecting Tribal treaty or similar rights and its obligation to do so. In situations where Tribal treaty or similar rights may be affected by a proposed EPA action or decision, EPA seeks information and recommendations regarding such rights during consultation.



Effective Consultation

Effective consultation means that information obtained from Tribes be given meaningful consideration and EPA should strive for consensus or a mutually desired outcome.



Joint Agency Actions

When EPA actions or decisions involve other federal agencies, EPA carries out its consultation responsibilities consistent with this Policy, working jointly with other agencies, as appropriate.



Indigenous Knowledge

EPA considers and values Indigenous Knowledge for potential use in federal actions. EPA seeks input based upon Indigenous Knowledge during consultation.



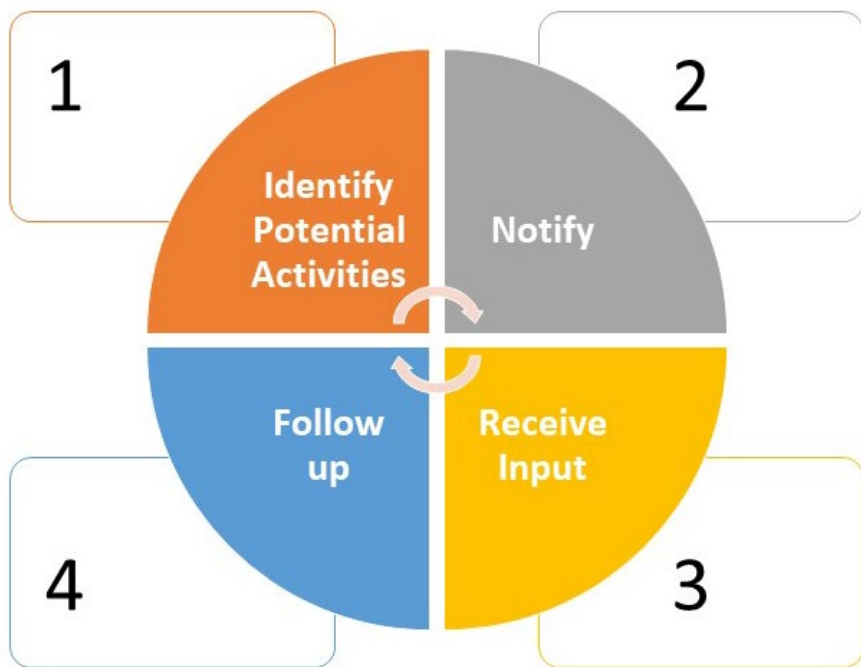
Sacred Sites

EPA honors and acknowledges the importance of sacred sites. In situations where sacred sites may be affected by a proposed EPA action or decision, EPA seeks input regarding sacred sites during consultation.



EPA Consultation Policy: The Consultation Process

The Consultation Process at EPA Consists of 4 Phases



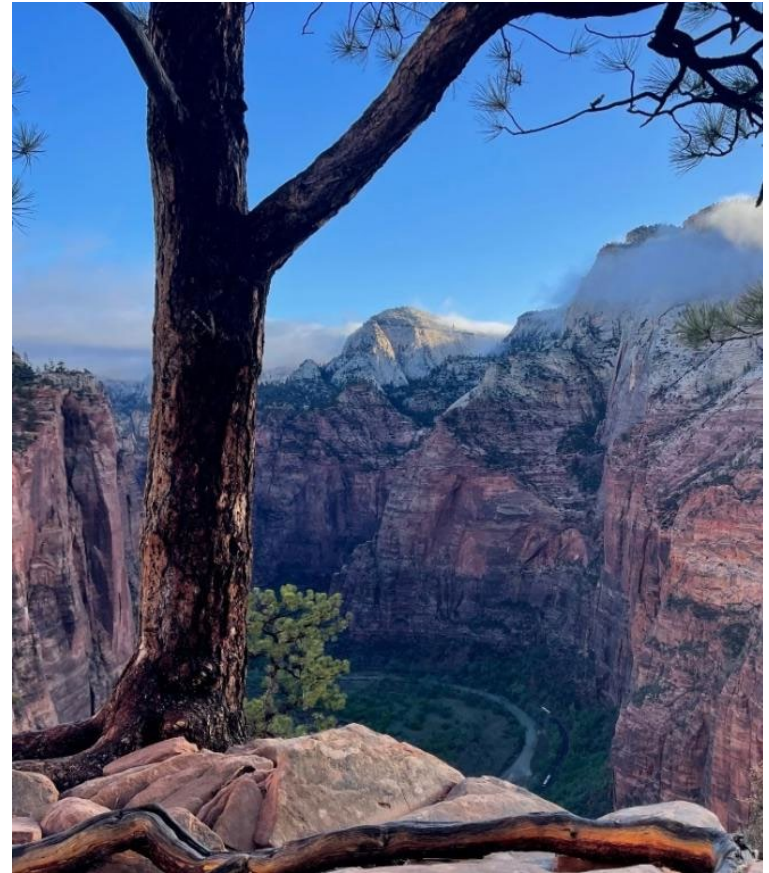
1. Identification

- EPA can identify potential consultation need or Tribe(s) can request consultation
- Identify any time and/or resource constraints that may affect consultation process
- Identify potentially affected Tribe(s) and Tribal treaty or similar rights (see [Guidance for Discussing Tribal Treaty or Similar Rights](#))
- Assess potential impacts to ANCSA Corporations (see [Guiding Principles for Consulting with Alaska Native Claims Settlement Act Corporations](#))

EPA Consultation Policy : Consultation Appropriate Categories

The Consultation Policy includes a non-exclusive list of general categories that *may* be appropriate for consultation:

- Regulations or rules
- Policies, guidance documents or directives
- Budget and priority planning development
- Legislative comments
- Permits
- Civil administrative enforcement
- Response actions and emergency preparedness
- State or Tribal program authorizations or delegations
- EPA activities in implementation of U.S. obligations under an international treaty or agreement



EPA Consultation Policy : Tribal Treaty or Similar Rights



EPA developed the [EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty and Similar Rights](#) to enhance EPA's consultations in situations where Tribal rights may be affected by an EPA action or decision.

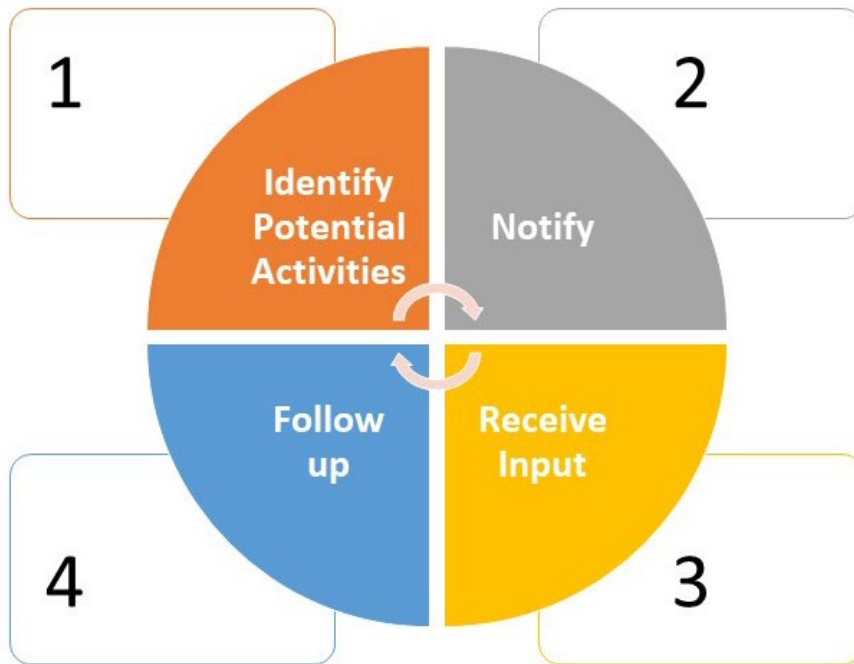
The Guidance identifies three questions that EPA should ask in connection with consultations:

1. Do Tribal treaty or similar rights apply in the area likely to be affected by the action?
2. What are the specific Tribal treaty or similar rights that apply in, or the protected resources that rely upon, the affected area?
3. How may Tribal treaty or similar rights be affected by the Agency action or decision?

EPA considers all relevant information obtained to help ensure that EPA actions and decisions do not conflict with reserved rights, and to further protect reserved rights and resources when the Agency has discretion to do so.

EPA Consultation Policy: The Consultation Process (cont.)

The Consultation Process at EPA Consists of 4 Phases



2. Notification

- EPA notifies Tribal governments of identified opportunities to consult
- Notification should occur early in activity planning or development to allow for meaningful input by the Tribe(s)
- Includes sufficient information in plain language for Tribal officials to understand the agency activity, know how to provide input, and decide whether to engage in government-to-government consultation
- Clearly identify any known limitations

EPA Consultation Policy : TCOTS

Tribal Consultation Opportunities Tracking System tcots.epa.gov/

The screenshot displays the EPA website's Tribal Consultation Opportunities Tracking System (TCOTS) interface. At the top, the EPA logo is visible on the left, and navigation links for 'Environmental Topics', 'Laws & Regulations', and 'About EPA' are in the center. A search bar on the right contains 'Search EPA.gov'. Below the navigation is the title 'Tribal Consultation Opportunities' and social media sharing icons for Facebook, Twitter, Pinterest, and Email. A descriptive paragraph explains the system's purpose: to publicize upcoming and current EPA consultation opportunities for tribal governments and Alaska Native Corporations, with a goal of providing early notification and transparency. It includes a link to join the TCOTS Listserv: join-epa_tcots@lists.epa.gov.

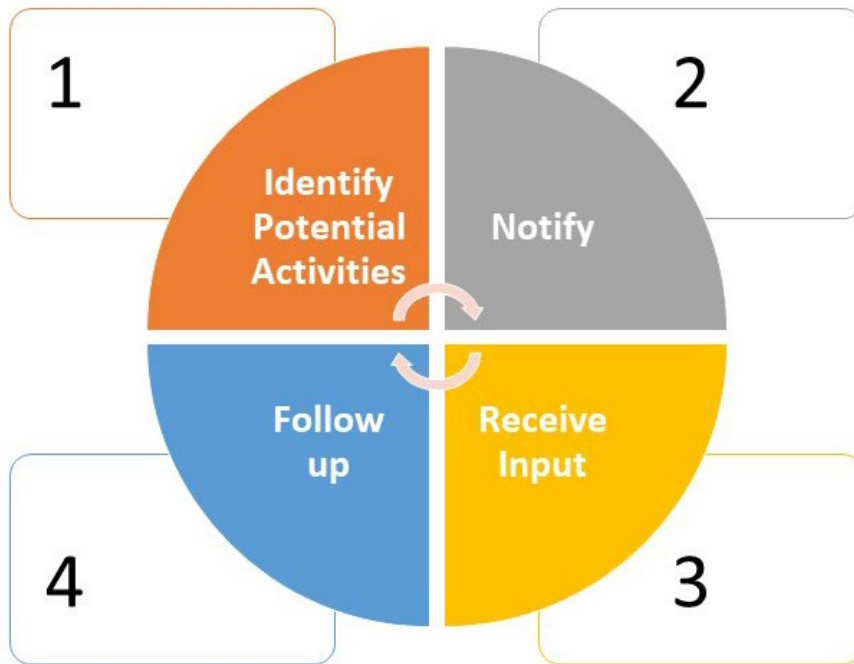
Below the text, there are filter options for 'View By' with radio buttons for 'Most Recent' (selected), 'Topic', 'Start Date', 'End Date', 'Office', 'Superfund', 'ANC', and 'Archives'. A 'Meeting Calendar' button is also present.

The main content area features a search bar with a magnifying glass icon and a 'Go' button, followed by an 'Actions' dropdown menu. Below this, it indicates '1 - 29 of 29' items. A table lists the consultation opportunities with the following columns: Topic, Start, End, Scope, and Lead Office.

Topic	Start	End	Scope	Lead Office
Colorado River Sand & Rock Permit Application, Colorado River Indian Tribes	14-MAR-23	17-APR-23	Regional	Region 09
NPDES Permit for Lytton Wastewater Treatment Plant	29-MAR-23	28-APR-23	Regional	Region 09
Proposed Reissuance of EPA General Permit for Ocean Disposal of Marine Mammal Carcasses Under MPRSA	22-FEB-23	30-APR-23	National	OW
Proposed Improvements to the Klettsch Park Dam, Glendale, Milwaukee County, Wisconsin - EPA consu...	02-DEC-19	30-APR-23	Multi Regional	Region 05
South Carolina's combined 2020 and 2022 303(d) list	10-AUG-22	01-MAY-23	Regional	Region 04
Lake Istokpoga TMDL and Site-Specific Numeric Interpretations of the Narrative Nutrient Criterion	23-AUG-21	01-MAY-23	Regional	Region 04
Reinstatement of Fair Share Objectives (FSO) Requirement Under DBE Rule (40 CFR 33 Subpart D)	05-APR-23	05-MAY-23	National	OMS
Effluent Limitations Guidelines and Standards for the OCPSP Point Source Category	09-MAR-23	08-MAY-23	National	OW
Human Health Criteria in Florida	09-FEB-23	09-MAY-23	Regional	Region 04
Washington's Nonpoint Source Management Plan Five Year Update	31-MAR-23	19-MAY-23	Regional	Region 10

EPA Consultation Policy: The Consultation Process (cont.)

The Consultation Process at EPA Consists of 4 Phases

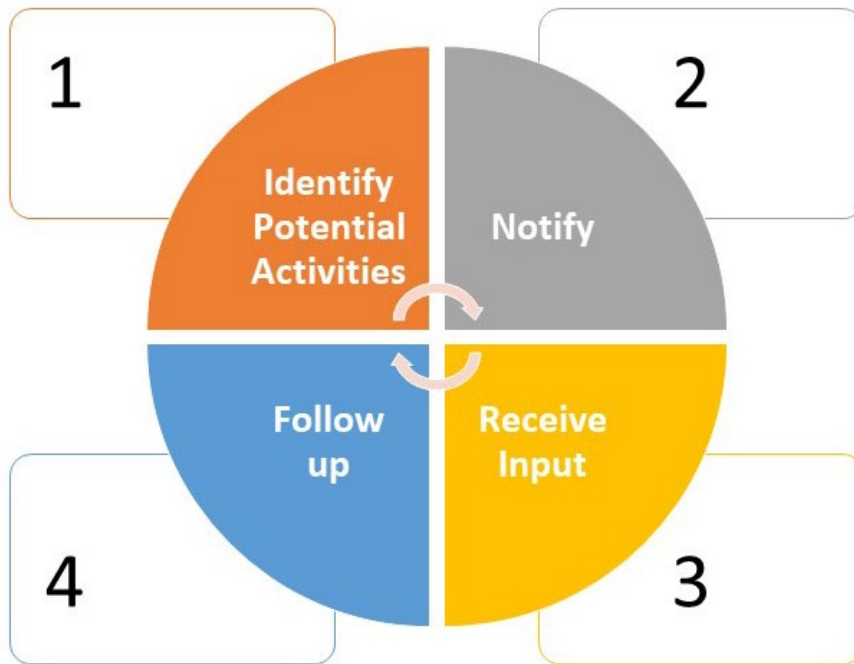


3. Input

- EPA receives and considers input from federally recognized Tribes on the identified agency activity or decision
- Can consist of:
 - In-person or virtual government-to-government consultation meetings
 - Written submission from Tribal officials
 - Other appropriate means
- During consultation meetings, EPA should be represented by the Headquarters Office Director or Regional Division Director level of management, or higher.

EPA Consultation Policy: The Consultation Process (cont.)

The Consultation Process at EPA Consists of 4 Phases



4. Follow-up

- EPA provides feedback to Tribe(s) explaining how input was considered
- Formal, written communication from senior EPA official involved in the agency action/decision

EPA Consultation Policy: Oversight and Implementation

The EPA Consultation Policy is designed to provide the necessary flexibility to allow meaningful input to happen. This means exactly how consultation occurs may vary – BUT the goal always remains the same and any program and regional office consultation plans and practices must be consistent with the Consultation Policy.

The Office of International and Tribal Affairs (OITA) is responsible for national oversight and coordination of the EPA Consultation Policy. Program and regional offices are responsible for undertaking most EPA consultation activities, including identifying EPA activities that may be appropriate for consultation and offering the opportunity for consultation.



EPA Consultation Policy: Consultation Process Review

A Tribal official may identify an instance where they believe that the EPA Consultation Policy was not properly implemented.

Concerns regarding the substance of the action or decision are not addressed by this Policy.

Process:

1. Tribal official raises concern regarding implementation of the Policy to the decision-making program or regional office.
2. In the event that a resolution is not reached, the respective Assistant Administrator (AA) or Regional Administrator (RA) will notify the EPA Designated Consultation Official.
3. The EPA Designated Consultation Official will identify the appropriate response to the Tribal official in coordination with the AA/RA.



Related Guidance, Policies, and Best Practices

EPA

- [Guiding Principles for Consulting with Alaska Native Claims Settlement Act Corporations](#) (2022)
- [Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy](#) (2001)
- [Guidance on Restrictions on Communications with Outside Parties](#) (2006)
- [EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples](#) (2014)
- [Achieving Health and Environmental Protection Through EPA's Meaningful Involvement Policy \(MIP\)](#) (Draft)

Federal Agencies

- [Best Practices for Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and Other Similar Rights in Federal Regulatory Actions and Federal Decision-making](#) (2021)
- [Guidance for Federal Departments and Agencies on Indigenous Knowledge](#) (2022)
- [Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites](#) (2023)

Resources



- [Office of International and Tribal Affairs \(OITA\)](#)
- [American Indian Environmental Office \(AIEO\)](#)
- [Consultation with Tribes](#)
- [TCOTS](#)
- [Regulatory Agendas and Regulatory Plans](#)

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