

TRIBAL TREATY RIGHTS CONSULTATION BEST PRACTICES FLOWCHART

CONSULTATION INVOLVES RELATIONSHIP BUILDING well in advance of any agency action or regulatory planning. Field staff should

INTRODUCE themselves to their Tribal counterparts

DEVELOP CONSULTATION PROTOCOLS and treaty and cultural training in consultation with affected Tribes

ASK THE TRIBES how to best communicate with tribal government officials, leaders, and employees

ASK ABOUT TRIBALLY DEVELOPED CONSULTATION LAWS AND POLICIES

TREATIES ARE LAWS

Field staff should **HAVE A LIST** of relevant treaties in their service areas and be familiar with them well in advance of any agency actions or decisions

DEVELOP A LIST OF RELEVANT TREATIES AND ASSOCIATED RIGHTS through consultation with local Tribes

1 IDENTIFY
Identify agency action, decision, or rulemaking
EO 13175
TRIBAL IMPACTS

Does the proposed action have the potential to affect a natural or cultural resource, the habitat or ecosystem supporting a natural or cultural resource?

ASK THREE THRESHOLD QUESTIONS:
ONE: Do treaties, reserved rights, or other similar rights exist that are implicated by proposed agency action?

TWO: What treaty rights, reserved rights, or other similar rights may exist in, or- what treaty-protected resources rely upon the area affected by the proposed action?

THREE: How might treaty rights, reserved rights, or other similar rights potentially be affected by the proposed action?

2 IDENTIFY
Identify applicable treaties

IDENTIFY APPLICABLE TREATIES

Potential databases include the Oklahoma State Tribal Treaty Database tool (<https://treaties.okstate.edu/>) or the National Archives Digital Tribal Treaty Database (<https://www.archives.gov/research/native-americans/treaties/catalog-links>)

IDENTIFY Tribes with treaty, reserved, or other rights related to the project area, regardless of the Tribe's current location. Treaty-ceded lands may be located far from a Tribe's existing reservation

3 IDENTIFY
Identify affected Tribes and agency decision maker

IDENTIFY AFFECTED TRIBES AND AGENCY DECISION MAKER

4 INVITE
Invite affected Tribes to consult

ONE: Draft "Dear Tribal Leader" letter
TWO: Plan to send to recognized governing leadership of the Tribe(s) with at least 30 days notice

THREE: Plan to provide a minimum 30-day time for written comments as permitted
FOUR: Plan to provide written summary of comments received and agency response

SCHEDULE consultation to allow timely, adequate notice to Tribe(s), absent extenuating circumstances, and prior to federal decision point(s)

DEVELOP consultation protocols ahead of time to recommend procedures for how consultation will occur. Federal agencies should communicate relevant federal legal obligations, e.g., FOIA, as they pertain to information like sensitive Indigenous knowledge

5 INITIATE
Initiate consultation

INITIATE CONSULTATION

PROVIDE CONSULTATION that will be accessible and convenient to Tribal participants

6 CONSIDER
Consider treaty rights and statutory law in consultation with Tribes

PROVIDE DETAILED INFORMATION to permit the Tribal participants to review the agency's proposed understanding of the treaty right, reserved right, or other similar rights that may be implicated

ALLOW TIME for the Tribe(s) to respond with information that may inform agency decision-making

The existence, nature, or scope of an asserted Tribal right may not be clearly established, or may be disputed by other Tribes, third parties, or others

Agencies should **CAREFULLY CONSIDER** information and views provided by Tribes

7 SPEAK
Communicate decision to Tribe

EXPLAIN HOW treaty rights were considered and how consultation information was utilized in the decision

PROVIDE A WRITTEN SUMMARY of all Tribal comments received and how comments were considered and resolved

Federal agencies should take measures to **PROTECT THE CONFIDENTIALITY** of any sensitive Indigenous knowledge consistent with Tribal direction and to the fullest extent permitted by the FOIA and other applicable law