



Crow Country

CROW TRIBE EXECUTIVE BRANCH

Post Office Box 159 -BACHEEITCHE Ave.
Crow Agency, Montana 59022
P: 406.638.3732 F: 406.638.3773

Cedric Black Eagle, Chairman
Calvin Coolidge Jefferson, Vice-Chairman
Scott Russell, Secretary
Darrin Old Coyote, Vice-Secretary

HAND DELIVERED
January 16, 2012

RECEIVED
JAN 17 2012

Hon. Kenneth G. Shane, Speaker of the House
Hon. Rudolph K. Old Crow, Secretary
Crow Tribal Legislature

BY:

Re: Request for Committee Meetings on New and Vetoed Legislation

Dear Mr. Speaker and Mr. Secretary:

Congratulations on your elections as the Constitutional Officers of the Legislature. We look forward to working with you during the coming year on legislation to benefit the Crow people.

This is to request the opportunity for representatives of the Executive Branch to meet with the appropriate Legislative Committees to discuss alternatives to overriding my veto of the following legislation, *prior* to it coming to the floor for votes on overriding the veto:

- 1) CLB No. 11-05: Repeal of CLB 02-17 which authorized limited waivers of sovereign immunity in contracts not exceeding \$1.00; and
- 2) CLB11-06: Request to USF&W to establish MOA for violations of Eagle Protection laws.

We would also appreciate the opportunity to meet with the appropriate Committees on the new legislation submitted by the Executive Branch for the January Session, i.e., Appendix B of the Mining Code, and the Stray Animal protection law.

Please convey my requests above to the Chairs of the appropriate Committees when they have been selected. Thanks for your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cedric Black Eagle".

Cedric Black Eagle, Chairman



Crow Country

LEGISLATIVE BRANCH OF THE CROW TRIBAL GOVERNMENT

P.O. Box 309 – 144 MAKAWASHA Avenue
Crow Agency, Montana 59022
Phone: (406) 638-2023/2025 ~~ Fax: (406) 638-2030
EMAIL: www.crowlegislativebranch.org

HAND DELIVERED

January 27, 2012

Pryor:

Arrow Creek

Carlson Goes Ahead
Lawrence DeCrane
Bryce J. Hugs

Big Horn:

Valley of the Give Away

Patrick Alden, Jr.
Marlin D. Not Afraid
Vincent Crooked Arm

Dunmore:

Black Lodge

Conrad J. Stewart
V. Jeannie Pretty Paint
H. Noel Two Leggings

Reno:

Center Lodge

Shawn E. Backbone, Sr.
Kenneth G. Shane
Speaker of the House
Arnold Coyote-Runs, Sr.

Lodge Grass:

Valley of the Chief

Manuel Covers Up, Sr.
Rudolph K. Old Crow
Secretary of the House
Leroy Not Afraid

Wyola:

Mighty Few

Dana Wilson
Gordon Real Bird, Jr.
M. Tye Backbone

Staff

G. Jay Harris
Staff Attorney

Leslie Plainfeather
Legal Assistant

Jackie Blacksmith
Administrative Officer

William Old Crow
Finance Officer
Admin. Asst.

Sheri Chandler
Office Assistant

Kenny Pretty On Top
Maintenance/Custodian
Sergeant at Arms

CLB11-06

**A BILL FOR AN ACT TITLED: A FORMER REQUEST TO THE UNITED STATES
FISH AND WILDLIFE SERVICE TO ESTABLISH A MEMORANDUM OF
AGREEMENT WITH THE CROW TRIBE FOR THE PURPOSE OF
INVESTIGATING AND CORRECTING VIOLATIONS OF FEDERAL AND TRIBAL
LAW INTENDED TO PROTECT AGAINST ILLEGAL HARVESTING AND
TRAFFICKING OF EAGLES AND EAGLE PARTS.**

(2) Sets of Originals Attached with Veto Override Bill

1. Notice of Veto Override - Certificate of Services (1pg.)
2. 1/17/2012 Veto Override Roll Call Vote (1 pg)
3. 1/16/2012 Chairman's Statement on VETO Legislation CLB11-06
4. 10/20/2011 CLB11-06 – (Pages 1-5)
5. Attachments
5. 10/20/2011 Roll Call Vote – (1pg.)
6. 10/27/2011 Official Certificate of Delivery to Attorney William Watt
7. Attached Petition Signature

Senator R. Knute Old Crow, Sr.
Secretary of the House
Legislative Branch of the
Crow Tribal Government



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NOTICE OF VETO OVERRIDE

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Sergeant at Arms*

THIS IS AN OFFICIAL NOTICE AS AUTHORIZED BY LAW, CLB06-08 and "An Act to Establish a Time Limit for Executive Veto, A Veto Override Process and Referendum Process."

The Crow Legislature in Regular Session on January 17th, 2012 took the following:
VETO OVERRIDE Action relative to **CLB11-06 A BILL FOR AN ACT TITLED: A FORMER REQUEST TO THE UNITED STATES FISH AND WILDLIFE SERVICE TO ESTABLISH A MEMORANDUM OF AGREEMENT WITH THE CROW TRIBE FOR THE PURPOSE OF INVESTIGATING AND CORRECTING VIOLATIONS OF FEDERAL AND TRIBAL LAW INTENDED TO PROTECT AGAINST ILLEGAL HARVESTING AND TRAFFICKING OF EAGLES AND EAGLE PARTS.**

BILL IS ATTACHED, INCOPRATED BY REFERENCE AND MADE A PART HERETO.

Done and dated this day of 17TH Day of January 2012.

Senator Kenneth G. Shane

Speaker of the House

Senator R. Knute Old Crow, Sr.

Secretary of the House

CERTIFICATE OF SERVICE

I , Legal Counsel for the Crow Executive Branch

Was served:

1. NOTICE OF VETO OVERRIDE ACTION REGARDING **CLB11-06 A BILL FOR AN ACT TITLED: A FORMER REQUEST TO THE UNITED STATES FISH AND WILDLIFE SERVICE TO ESTABLISH A MEMORANDUM OF AGREEMENT WITH THE CROW TRIBE FOR THE PURPOSE OF INVESTIGATING AND CORRECTING VIOLATIONS OF FEDERAL AND TRIBAL LAW INTENDED TO PROTECT AGAINST ILLEGAL HARVESTING AND TRAFFICKING OF EAGLES AND EAGLE PARTS.**

Senator R. Knute Old Crow, Sr.

Secretary of the House

Crow Legislative Branch

at Approx. 1:29 a.m. (p.m.)

Done and dated this 27 day Jan., 2012.



A BILL FOR AN ACT TITLED: A FORMER REQUEST TO THE UNITED STATES FISH AND WILDLIFE SERVICE TO ESTABLISH A MEMORANDUM OF AGREEMENT WITH THE CROW TRIBE FOR THE PURPOSE OF INVESTIGATING AND CORRECTING VIOLATIONS OF FEDERAL AND TRIBAL LAW INTENDED TO PROTECT AGAINST ILLEGAL HARVESTING AND TRAFFICKING OF EAGLES AND EAGLE PARTS.

Bill or Resolution: CLB11-06 **Introduced by:** Sen. Dana Wilson **Date of Vote:** 1/17/2012
Number

<u>Representative:</u>	Yes	No	Abstained
H. Two Leggins	<u>X</u>	<u> </u>	<u> </u>
V. Pretty Paint	<u>X</u>	<u> </u>	<u> </u>
C. J. Stewart	<u>X</u>	<u> </u>	<u> </u>
S. Backbone	<u>X</u>	<u> </u>	<u> </u>
A. Coyote-Runs, Sr.	<u>X</u>	<u> </u>	<u> </u>
L. Not Afraid	<u>X</u>	<u> </u>	<u> </u>
M. Covers Up, Sr.	<u>X</u>	<u> </u>	<u> </u>
P. Alden, Jr.	<u>X</u>	<u> </u>	<u> </u>
M. Not Afraid	<u>X</u>	<u> </u>	<u> </u>
V. Crooked Arm	<u>X</u>	<u> </u>	<u> </u>
L. DeCrane	<u>X</u>	<u> </u>	<u> </u>
C. Goes Ahead	<u>X</u>	<u> </u>	<u> </u>
B. Hugs	<u> </u>	<u> </u>	<u> </u>
G. Real Bird, Jr.	<u>X</u>	<u> </u>	<u> </u>
M. Backbone	<u>X</u>	<u> </u>	<u> </u>
D. Wilson	<u>X</u>	<u> </u>	<u> </u>
R. K. Old Crow, Sr. <i>Secretary of the House</i>	<u>X</u>	<u> </u>	<u> </u>
K. Shane <i>Speaker of the House</i>	<u>X</u>	<u> </u>	<u> </u>
Totals:	<u>17</u>	<u>0</u>	<u>0</u>

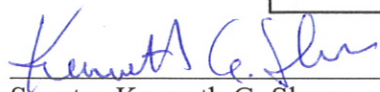
Result of Vote:

Passed

Not Passed

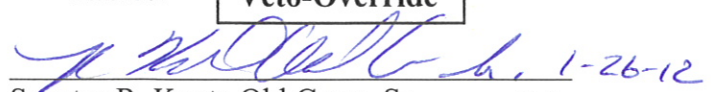
Tabled

Veto-Override



Senator Kenneth G. Shane
Speaker of the House

Date



Senator R. Knute Old Crow, Sr.
Secretary of the House

Date

OCTOBER 2011 REGULAR SESSION OF THE CROW TRIBAL LEGISLATURE

CLB No. 11-06

Introduced by Senator Dana Wilson
Mighty Few District

A Bill for an Act Titled:

A Formal Request to the United States Fish and Wildlife Service to Establish a Memorandum of Agreement with the Crow Tribe for the Purpose of Investigating and Correcting Violations of Federal and Tribal Law Intended to Protect Against Illegal Harvesting and Trafficking of Eagles and Eagle Parts

Legislative Findings:

WHEREAS, pursuant to Article V, Section 2(a) of the 2001 Constitution the Crow Tribal Legislature (“Legislature”) is vested with the power and duty to promulgate and adopt laws, resolutions, ordinances, codes, regulations, and guidelines in accordance with the 2001 Crow Constitution and federal laws; and

WHEREAS, pursuant to Article IV, Section 3(j) of the 2001 Constitution the Crow Tribal Executive Branch (“Executive Branch”) is vested with the power and responsibility to protect and preserve the property, wildlife, and natural resources of the Tribe in accordance with ordinances adopted by the Legislative Branch; and

WHEREAS, pursuant to Article IV, Section 4(a) of the 2001 Constitution the Executive Branch has the general duty to implement all laws, resolutions, codes and policies duly adopted by the Legislative Branch; and

WHEREAS, the federal Bald and Golden Eagle Protection Act, codified at Title 16 United States Code Section 668, *et. seq.*, prohibits the taking of eagles without a federal permit anywhere within the jurisdiction of the United States, including the Crow Reservation; and

WHEREAS, the federal Migratory Bird Treaty Act, codified at Title 16 United States Code Section 703, is an international agreement with Canada and Mexico which prohibits the taking, possession, trafficking, offering of sale, or bartering of eagles or eagle parts without a federal permit anywhere within the jurisdiction of the United States, including the Crow Reservation; and

October 2011 Regular Session

A Formal Request to the United States Fish and Wildlife Service to Establish a Memorandum of Agreement with the Crow Tribe for the Purpose of Investigating and Correcting Violations of Federal and Tribal Law Intended to Protect Against Illegal Harvesting and Trafficking of Eagles and Eagle Parts

WHEREAS, the Crow Fish and Game Code as contained in Title 12, Chapter 7, Section 110 of the 2005 Crow Law and Order Code provides that “It shall be unlawful for any person to take, attempt to take, kill, hunt, sell, purchase, possess, pursue, shoot at, disturb, or destroy any raptor, Golden or Bald Eagle, Owl, Falcon or other species of protected migratory birds or its nest or eggs on any lands of the Crow Reservation;” and

WHEREAS, the Crow Fish and Game Code as contained in Title 12, Chapter 11, Section 101 of the 2005 Crow Law and Order Code provides that “Any provision of this code may be enforced by...duly authorized Federal Officers as provided for by tribal or Federal law or by cooperative agreement;” and

WHEREAS, eagles are of the highest order of importance and sacredness in Crow tribal custom and tradition, both historically and modern, and the cultural and religious uses of eagles and eagle parts is vital to the Crow Tribe; and

WHEREAS, all non-captive bald and golden eagles which are located within and which can be found upon the Crow Reservation are the common property of the Crow Tribe pursuant to the 1868 Fort Laramie Treaty, which provides in Article II that the Crow Reservation was set aside for the “absolute and undisturbed use and occupation” of the Crow Tribe and are subject to concurrent federal and Crow tribal jurisdiction; and

WHEREAS, punishment of tribal violators of the federal and Crow tribal law protecting eagles should be in accordance with the customary principle of restorative justice which would require the defendant to pledge and carry out supervised efforts to enhance eagle habitat and population viability instead of paying fines or spending time incarcerated; and

WHEREAS, Interior Department Secretarial Order 3206, dated June 1997 and signed by Secretary of the Interior Bruce Babbitt, addresses the issue of American Indian tribal rights and federal-tribal trust responsibilities and specifically sets out that “because of the unique government-to-government relationship between Indian tribes and the United States, the Departments and affected Indian tribes need to establish and maintain effective working relationships and mutual partnerships to promote the conservation of sensitive species and the health of ecosystems upon which they depend” and that “the Departments shall, when appropriate and at the request of an Indian tribe, pursue intergovernmental agreements to formalize arrangements involving sensitive species such as, but not limited to...cooperative law enforcement;” and

WHEREAS, Secretarial Order 3206 also specifically provides that the United States Fish and Wildlife Service shall coordinate with affected Indian tribes in order to fulfill the Services’ trust responsibilities and shall, at the request of an Indian tribe, “enter into cooperative law enforcement agreements as integral components of tribal...efforts to conserve species” and to “discuss new techniques and methods for the detection and apprehension of violators of...tribal conservation laws, and exchange law enforcement information in general;” and

WHEREAS, in 1994 then-U.S. Fish and Wildlife Service Director Mollie Beattie established the Native American Policy of the U.S. Fish and Wildlife Service which recognized the sovereign status of Indian tribal governments and established policy wherein “the Service will encourage the use of cooperative law enforcement as an integral component of Native American, Federal, and State agreements relating to fish and wildlife resources. The Service will assist in the formulation of the law enforcement elements of those agreements. Upon request, the Service will evaluate Native American law enforcement capabilities and, if warranted, provide recommendations for improving such capabilities;” and

WHEREAS, in 1975 Secretary of the Interior Rogers Morton issued a policy statement recognizing the problems associated with past federal non-recognition of Indian cultural use of migratory bird feathers and established an Interior Department policy in which he announced that “I can assure American Indians that our policy is to permit them to engage in the following activities without fear of Federal prosecution, harassment, or other interference:

1. American Indians may possess, carry, use, wear, give, loan, or exchange among other Indians, without compensation, all federally protected birds, as well as their parts or feathers;” and

WHEREAS, the Mountain-Prairie Region (Region 6) of the U.S. Fish and Wildlife Service, which includes Montana and Wyoming, recognizes the Morton policy of 1975 as governing their investigative activities and guidance from Crow tribal members would be helpful for federal officials to implement federal law in light of the Morton policy; and

WHEREAS, it is in the best interests of the Crow Tribe to establish policy by which the Crow tribal government will be directly engaged in the investigation and traditional correction of unlawful activities arising upon the Crow Reservation and which involve tribally-owned eagles taken or trafficked in violation of federal law so as to help differentiate accepted tribal traditional uses of eagles and unlawful activities.

**NOW, THEREFORE, BE IT HEREBY ENACTED AS CROW TRIBAL LAW AND
POLICY BY THE CROW TRIBAL LEGISLATURE IN REGULAR SESSION:**

Section 1. Directive to Executive Branch.

The Crow Tribal Executive Branch, under the supervision and direction of the four elected Executive Branch officials, is hereby directed to consult with the United States Fish and Wildlife Service for the purpose of establishing a proposed memorandum of agreement which would create a long-term intergovernmental program wherein the Fish and Wildlife Service will incorporate meaningful and substantive participation of Crow tribal officers in the investigation and correction of all unlawful activities arising upon or occurring within the Crow Reservation and which implicate the loss of eagles or illegal trafficking of eagles or eagle parts.

October 2011 Regular Session

A Formal Request to the United States Fish and Wildlife Service to Establish a Memorandum of Agreement with the Crow Tribe for the Purpose of Investigating and Correcting Violations of Federal and Tribal Law Intended to Protect Against Illegal Harvesting and Trafficking of Eagles and Eagle Parts

Section 2. Final Approval by Legislature.

Prior to taking effect as a binding memorandum of agreement between the Crow Tribe and the United States Fish and Wildlife Service, the Crow Tribal Legislature shall review the proposed agreement and give a final approval resolution. The Crow Tribal Legislature reserves the right to deny the proposed memorandum of agreement with instructions to the Executive Branch to make changes as appropriate.

Section 3. Federal Documents Incorporated by Reference.

The following federal documents are attached to this bill and incorporated by reference to be considered part of this legislation with the excerpts cited in the Legislative Findings section of this bill highlighted for emphasis:

1. Article II of the 1868 Fort Laramie Treaty between the United States of America and the Crow Tribe of Indians
2. The 1975 Policy Statement on Indian Use of Bird Feathers by Secretary of the Interior Rogers Morton
3. The 1994 Native American Policy of the United States Fish and Wildlife Service
4. 1997 Interior and Commerce Department Secretarial Order 3206

Section 4. Reporting to Legislature and General Council.

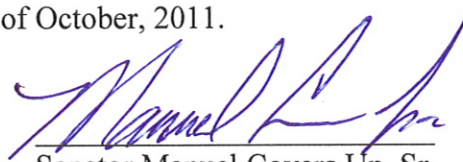
Upon final approval by the Crow Tribal Legislature of a proposed memorandum of agreement-the Executive Branch shall provide a written semi-annual report to the Fish, Wildlife, Parks, and Recreation Committee of the Crow Tribal Legislature detailing the implementation of any such agreement. The Tribal Secretary shall provide that any such report also be made to the Crow Tribal General Council at the same time and in the same manner as biannual financial reports. These semi-annual reports shall be required for a total of five (5) years from the effective date of the memorandum of agreement.

CERTIFICATION

I hereby certify that this bill was with a vote of

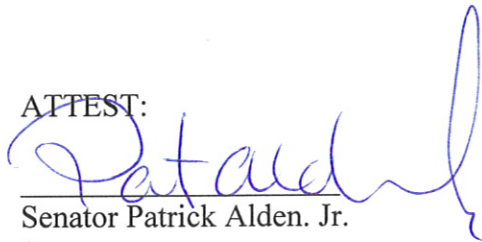
17 in favor
0 opposed, and
0 abstained

and that a quorum was present on this 20th day of October, 2011.



Senator Manuel Covers Up, Sr.
Speaker of the House
Crow Tribal Legislature

ATTEST:



Senator Patrick Alden, Jr.
Secretary
Crow Tribal Legislature

Executive Action

I hereby:

___ approve
___ veto

this bill titled pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 and Article IV, Sections 3(f) and 3(k) of the Constitution and Bylaws of the Crow Tribe of Indians on this _____ day of October, 2011.

Chairman Cedric Black Eagle
Crow Tribal Executive Branch

October 2011 Regular Session

A Formal Request to the United States Fish and Wildlife Service to Establish a Memorandum of Agreement with the Crow Tribe for the Purpose of Investigating and Correcting Violations of Federal and Tribal Law Intended to Protect Against Illegal Harvesting and Trafficking of Eagles and Eagle Parts

Bill or Resolution: CLB11-06 **Introduced by:** Senator Dana Wilson **Date of Vote:** 10/20/2011
Number

<u>Representative:</u>	Yes	No	Abstained
H. Two Leggins	<u>X</u>	<u> </u>	<u> </u>
V. Pretty Paint	<u>X</u>	<u> </u>	<u> </u>
C. J. Stewart	<u>X</u>	<u> </u>	<u> </u>
K. Shane	<u>X</u>	<u> </u>	<u> </u>
S. Backbone	<u>X</u>	<u> </u>	<u> </u>
O. Half, Jr.	<u>X</u>	<u> </u>	<u> </u>
W. Plainfeather	<u>X</u>	<u> </u>	<u> </u>
R. Old Crow, Sr.	<u>X</u>	<u> </u>	<u> </u>
M. Not Afraid	<u>X</u>	<u> </u>	<u> </u>
V. Crooked Arm	<u>X</u>	<u> </u>	<u> </u>
L. DeCrane	<u>X</u>	<u> </u>	<u> </u>
C. Goes Ahead	<u>X</u>	<u> </u>	<u> </u>
B. Hugs	<u>X</u>	<u> </u>	<u> </u>
G. Real Bird, Jr.	<u> </u>	<u> </u>	<u> </u>
M. Backbone	<u>X</u>	<u> </u>	<u> </u>
D. Wilson	<u>X</u>	<u> </u>	<u> </u>
P. Alden, Jr.	<u>X</u>	<u> </u>	<u> </u>
<i>Secretary of the House</i>			
M. Covers Up, Sr.	<u>X</u>	<u> </u>	<u> </u>
<i>Speaker of the House</i>			
Totals:	<u>17</u>	<u>0</u>	<u>0</u>

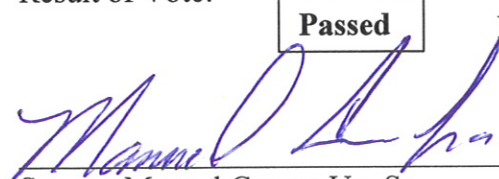
Result of Vote:

Passed

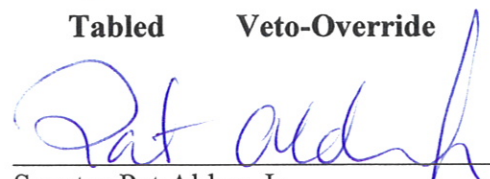
Not Passed

Tabled

Veto-Override



Senator Manuel Covers Up, Sr. Date
Speaker of the House



Senator Pat Alden, Jr. Date
Secretary of the House



LEGISLATIVE BRANCH OF THE CROW TRIBAL GOVERNMENT

P.O. Box 309 – MAKAWASHA Avenue

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Legislative Branch

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Finance Officer/Admin. Assist.

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Office Assist./Receptionist /Editor

Kenny Pretty On Top

Maintenance/Custodian

Sergeant at Arms

OFFICIAL CERTIFICATE OF DELIVERY

I, Patrick Alden, Jr., Secretary of the Legislative Branch of the Crow Tribal Government hereby this Transitional Action do deliver a True and Correct Official copy Of the Final Approval for the following Bill:

INTRODUCED BY SENATOR DANA WILSON
MIGHTY FEW DISTRICT

A BILL FOR AN ACT ENTITLED:

"A Former Request to the United States Fish and Wildlife Service to Establish a Memorandum of Agreement with the Crow Tribe for the Purpose of Investigating and Correcting Violations of Federal and Tribal Law Intended to Protect Against Illegal Harvesting and Trafficking of Eagles and Eagle Parts"

CLB11-06 To

William C. Smith

in the Position of:

Attorney

for the

Crow Executive Branch.

Done and dated this

27th

day of

October

, 2011 @

10:20

a.m./p.m.

Patrick Alden, Jr.

Secretary of the House
Legislative Branch of the
Crow Tribal Government

Served by:

Jackie M. Blacksmith

Legislative Branch Staff

Cc: file

(Publication page references are not available for this document.)

Native American

Treaty between the United States of America and the Crow Tribe of Indians;

Concluded May 7, 1868;
Ratification advised July 25, 1868;
Proclaimed August 12, 1868.

ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA, TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

ARTICLE I.

ARTICLE II.

ARTICLE III.

ARTICLE IV.

ARTICLE V.

ARTICLE VI.

ARTICLE VII.

ARTICLE VIII.

ARTICLE IX.

ARTICLE X.

ARTICLE XI.

ARTICLE XII.

ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES OF AMERICA, TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS a Treaty was made and concluded at Fort Laramie, in the Territory of Dakota, on the seventh day of May, in the year of our Lord one thousand eight hundred and sixty-eight, by and between Lieutenant-General W. T. Sherman, Brevet Major-General William S. Harney, Brevet Major-General Alfred H. Terry, Brevet Major-General C. C. Augur, John B. Sanborn, and S. F. Tappan, commissioners, on the part of the United States, and Che-Ra-Pee-Ish-Ka-Te, Chat-Sta-He, and other chiefs and headmen of the Crow tribe of Indians, on the part of said Indians, and duly authorized thereto by them, which treaty is in the words and figures following, to

(Publication page references are not available for this document.)

wit:-

Articles of a treaty made and concluded at Fort Laramie, Dakota Territory, on the seventh day of May, in the year of our Lord one thousand eight hundred and sixty-eight, by and between the undersigned commissioners on the part of the United States, and the undersigned chiefs and headmen of and representing the Crow Indians, they being duly authorized to act in the premises.

ARTICLE I.

From this day forward peace between the parties to this treaty shall forever continue. The government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they hereby pledge their honor to maintain it. If bad men among the whites or among other people, subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington city, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Indians herein named solemnly agree that they will, on proof made to their agent and notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws; and in case they refuse wilfully so to do the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgment may be proper. But no such damages shall be adjusted and paid until thoroughly examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss while violating, or because of his violating, the provisions of this treaty or the laws of the United States shall be reimbursed therefor.

ARTICLE II.

The United States agrees that the following district of country, to wit: commencing where the 107th degree of longitude west of Greenwich crosses the south boundary of Montana Territory; thence north along said 107th meridian to the mid-channel of the Yellowstone river; thence up said mid-channel of the Yellowstone to the point where it crosses the said southern boundary of Montana, being the 45th degree of north latitude; and thence east along said parallel of latitude to the place of beginning, shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United

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States now solemnly agrees that no persons, except those herein designated and authorized so to do, and except such officers, agents, and employés of the government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use of said Indians, and henceforth they will, and do hereby, relinquish all title, claims, or rights in and to any portion of the territory of the United States, except such as is embraced within the limits aforesaid.

ARTICLE III.

The United States agrees, at its own proper expense, to construct on the south side of the Yellowstone, near Otter creek, a warehouse or storeroom for the use of the agent in storing goods belonging to the Indians, to cost not exceeding twenty-five hundred dollars; an agency building for the residence of the agent, to cost not exceeding three thousand dollars; a residence for the physician, to cost not more than three thousand dollars; and five other building, for a carpenter, farmer, blacksmith, miller, and engineer, each to cost not exceeding two thousand dollars; also a school-house or mission building, so soon as a sufficient number of children can be induced by the agent to attend school, which shall not cost exceeding twenty-five hundred dollars.

The United States agrees further to cause to be erected on said reservation, near the other buildings herein authorized, a good steam circular saw-mill, with a grist-mill and shingle machine attached, the same to cost not exceeding eight thousand dollars.

ARTICLE IV.

The Indians herein named agree, when the agency house and other buildings shall be constructed on the reservation named, they will make said reservation their permanent home, and they will make no permanent settlement elsewhere, but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts.

ARTICLE V.

The United States agrees that the agent for said Indians shall in the future make his home at the agency building; that he shall reside among them and keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint, by and against the Indians, as may be presented for investigation under the provisions of their treaty stipulations, as also for the faithful discharge of other duties enjoined on him by law. In all cases of depredation on person or property, he shall cause the evidence to be taken in writing and forwarded, together with his finding, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties to this treaty.

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ARTICLE VI.

If any individual belonging to said tribes of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding three hundred and twenty acres in extent, which tract, when so selected, certified, and recorded in the "Land Book," as herein directed, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Any person over eighteen years of age, not being the head of a family, may in like manner select and cause to be certified to him or her, for purposes of cultivation, a quantity of land not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

For each tract of land so selected a certificate, containing a description thereof and the name of the person selecting it, with a certificate endorsed thereon that the same has been recorded, shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the "Crow Land Book."

The President may at any time order a survey of the reservation, and, when so surveyed, Congress shall provide for protecting the rights of settlers in their improvements, and may fix the character of the title held by each. The United States may pass such laws on the subject of alienation and descent of property as between Indians, and on all subjects connected with the government of the Indians on said reservations and the internal police thereof, as may be thought proper.

ARTICLE VII.

In order to insure the civilization of the tribe entering into this treaty, the necessity of education is admitted, especially by such of them as are, or may be, settled on said agricultural reservation; and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children, between said ages, who can be induced or compelled to attend school, a house shall be provided, and a teacher, competent to teach the elementary branches of an English education, shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for twenty years.

ARTICLE VIII.

(Publication page references are not available for this document.)

When the head of a family or lodge shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of three years more, he shall be entitled to receive seeds and implements as aforesaid in value twenty-five dollars per annum.

And it is further stipulated that such persons as commence farming shall receive instructions from the farmer herein provided for, and whenever more than one hundred persons shall enter upon the cultivation of the soil, a second blacksmith shall be provided, with such iron, steel, and other material as may be required.

ARTICLE IX.

In lieu of all sums of money or other annuities provided to be paid to the Indians herein named, under any and all treaties heretofore made with them, the United States agrees to deliver at the agency house, on the reservation herein provided for, on the first day of September of each year for thirty years, the following articles, to wit:

For each male person, over fourteen years of age, a suit of good substantial woolen clothing, consisting of coat, hat, pantaloons, flannel shirt, and a pair of woolen socks.

For each female, over twelve years of age, a flannel skirt, or the goods necessary to make it, a pair of woolen hose, twelve yards of calico, and twelve yards of cotton domestics.

For the boys and girls under the ages named, such flannel and cotton goods as may be needed to make each a suit as aforesaid, together with a pair of woollen hose for each.

And in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent, each year, to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based.

And, in addition to the clothing herein named, the sum of ten dollars shall be annually appropriated for each Indian roaming, and twenty dollars for each Indian engaged in agriculture, for a period of ten years, to be used by the Secretary of the Interior in the purchase of such articles as, from time to time, the condition and necessities of the Indians may indicate to be proper. And if, at any time within the ten years, it shall appear that the amount of money needed for clothing, under this article, can be appropriated to better uses for the tribe herein named, Congress may, by law, change the appropriation to other purposes; but in no event shall the amount of this appropriation be withdrawn or discontinued for the

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period named. And the President shall annually detail an officer of the army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery; and it is expressly stipulated that each Indian over the age of four years, who shall have removed to and settled permanently upon said reservation, and complied with the stipulations of this treaty, shall be entitled to receive from the United States, for the period of four years after he shall have settled upon said reservation, one pound of meat and one pound of flour per day, provided the Indians cannot furnish their own subsistence at an earlier date. And it is further stipulated, that the United States will furnish and deliver to each lodge of Indians, or family of persons legally incorporated with them, who shall remove to the reservation herein described, and commence farming, one good American cow and one good, well-broken pair of American oxen, within sixty days after such lodge or family shall have so settled upon said reservation.

ARTICLE X.

The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of the Secretary of the Interior, as will be sufficient to employ such persons.

ARTICLE XI.

No treaty for the cession of any portion of the reservation herein described, which may be held in common, shall be of any force or validity as against the said Indians unless executed and signed by, at least, a majority of all the adult male Indians occupying or interested in the same, and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his right to any tract of land selected by him as provided in Article VI. of this treaty.

ARTICLE XII.

It is agreed that the sum of five hundred dollars annually, for three years from the date when they commence to cultivate a farm, shall be expended in presents to the ten persons of said tribe who, in the judgment of the agent, may grow the most valuable crops for the respective year.

W. T. SHERMAN,

Lt. Genl.

WM. S. HARNEY,

Bvt. Majr. Gen. & Peace Commissioner.

(Publication page references are not available for this document.)

ALFRED H. TERRY,

Bvt. M. Genl.

C. C. AUGUR,

Bvt. M. Genl.

JOHN B. SANBORN.

S. F. TAPPAN.

ASHTON S. H. WHITE,

Secretary.

CHE-RA-PEE-ISH-KA-TE, Pretty Bull, his x mark, [SEAL.]

CHAT-STA-HE, Wolf Bow, his x mark, [SEAL.]

AH-BE-CHE-SE, Mountain Tail, his x mark, [SEAL.]

KAM-NE-BUT-SA, Black Foot, his x mark, [SEAL.]

DE-SAL-ZE-CHO-SE, White Horse, his x mark, [SEAL.]

CHIN-KA-SHE-ARACHE, Poor Elk, his x mark, [SEAL.]

E-SA-WOOR, Shot in the Jaw, his x mark, [SEAL.]

E-SHA-CHOSE, White Forehead, his x mark, [SEAL.]

---- ROO-KA, Pounded Meat, his x mark, [SEAL.]

DE-KA-KE-UP-SE, Bird in the Neck, his x mark, [SEAL.]

ME-NA-CHE, The Swan, his x mark, [SEAL.]

Attest:

GEORGE B. WILLIS,

Phonographer.

JOHN D. HOWLAND.

ALEX. GARDNER.

DAVID KNOX.

CHAS. FREEMAN.

(Publication page references are not available for this document.)

JAS. C. O'CONNOR.

And whereas the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the twenty-fifth day of July, one thousand eight hundred and sixty-eight, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES, July 25, 1868.

Resolved, (two thirds of the senators present concurring,) That the Senate advise and consent to the ratification of the treaty between the United States and the Crow Indians of Montana Territory, made the seventh day of May, eighteen hundred and sixty-eight.

Attest:

GEO. C. GORHAM,

Secretary.

By W. J. McDONALD,

Chief Clerk.

Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the twenty-fifth of July, one thousand eight hundred and sixty-eight, accept, ratify, and confirm the said treaty.

In testimony whereof, I have hereto signed my name, and caused the seal of the United States to be affixed.

Done at the City of Washington, this twelfth day of August, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third.

ANDREW JOHNSON.

[SEAL.]

By the President:

W. HUNTER,

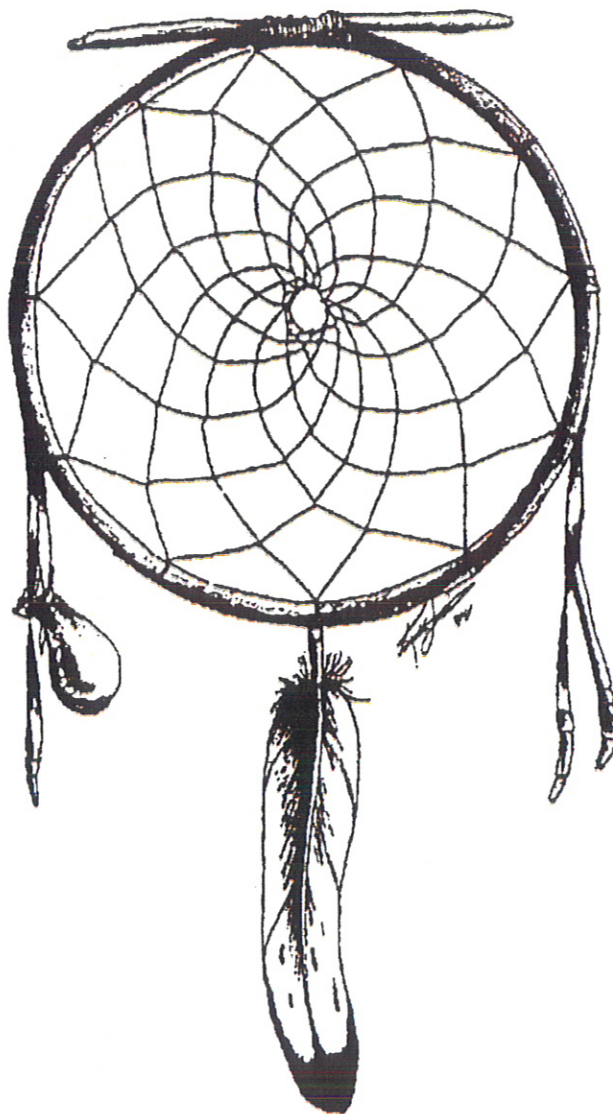
Acting Secretary of State.

15 Stat. 649

END OF DOCUMENT

U.S. Fish & Wildlife Service

Secretarial Order 3206





SECRETARIAL ORDER

Subject: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

Sec. 1. Purpose and Authority. This Order is issued by the Secretary of the Interior and the Secretary of Commerce (Secretaries) pursuant to the Endangered Species Act of 1973, 16 U.S.C. §1531, as amended (the Act), the federal-tribal trust relationship, and other federal law. Specifically, this Order clarifies the responsibilities of the component agencies, bureaus and offices of the Department of the Interior and the Department of Commerce (Departments), when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights, as defined in this Order. This Order further acknowledges the trust responsibility and treaty obligations of the United States toward Indian tribes and tribal members and its government-to-government relationship in dealing with tribes. Accordingly, the Departments will carry out their responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to tribes, tribal sovereignty, and statutory missions of the Departments, and that strives to ensure that Indian tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation.

Sec. 2. Scope and Limitations. (A) This Order is for guidance within the Departments only and is adopted pursuant to, and is consistent with, existing law.

(B) This Order shall not be construed to grant, expand, create, or diminish any legally enforceable rights, benefits or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this Order be construed to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of any Indian tribe, or to preempt, modify or limit the exercise of any such rights.

(C) This Order does not preempt or modify the Departments' statutory authorities or the authorities of Indian tribes or the states.

(D) Nothing in this Order shall be applied to authorize direct (directed) take of listed species, or any activity that would jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat. Incidental take issues under this Order are addressed in Principle 3(C) of Section 5.

(E) Nothing in this Order shall require additional procedural requirements for substantially completed Departmental actions, activities, or policy initiatives.

(F) Implementation of this Order shall be subject to the availability of resources and the requirements of the Anti-Deficiency Act.

(G) Should any tribe(s) and the Department(s) agree that greater efficiency in the implementation of this Order can be achieved, nothing in this Order shall prevent them from implementing strategies to do so.

(H) This Order shall not be construed to supersede, amend, or otherwise modify or affect the implementation of, existing agreements or understandings with the Departments or their agencies, bureaus, or offices including, but not limited to, memoranda of understanding, memoranda of agreement, or statements of relationship, unless mutually agreed by the signatory parties.

Sec. 3. Definitions. For the purposes of this Order, except as otherwise expressly provided, the following terms shall apply:

(A) The term "Indian tribe" shall mean any Indian tribe, band, nation, pueblo, community or other organized group within the United States which the Secretary of the Interior has identified on the most current list of tribes maintained by the Bureau of Indian Affairs.

(B) The term "tribal trust resources" means those natural resources, either on or off Indian lands, retained by, or reserved by or for Indian tribes through treaties, statutes, judicial decisions, and executive orders, which are protected by a fiduciary obligation on the part of the United States.

(C) The term "tribal rights" means those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and which give rise to legally enforceable remedies.

(D) The term "Indian lands" means any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Sec. 4. Background. The unique and distinctive political relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, and differentiates tribes from other entities that deal with, or are affected by, the federal government. This relationship has given rise to a special federal trust responsibility, involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights.

The Departments recognize the importance of tribal self-governance and the protocols of a government-to-government relationship with Indian tribes. Long-standing Congressional and Administrative policies promote tribal self-government, self-sufficiency, and self-determination, recognizing and endorsing the fundamental rights of tribes to set their own priorities and make decisions affecting their resources and distinctive ways of life. The Departments recognize and respect, and shall consider, the value that tribal traditional knowledge provides to tribal and federal land management decision-making and tribal resource management activities. The Departments recognize that Indian tribes are governmental sovereigns; inherent in this sovereign authority is the power to make and enforce laws, administer justice, manage and control Indian lands, exercise tribal rights and protect tribal trust resources. The Departments shall be sensitive to the fact that Indian cultures, religions, and spirituality often involve ceremonial and medicinal uses of plants, animals, and specific geographic places.

Indian lands are not federal public lands or part of the public domain, and are not subject to federal public land laws. They were retained by tribes or were set aside for tribal use pursuant to treaties, statutes, judicial decisions, executive orders or agreements. These lands are managed by Indian tribes in accordance with tribal goals and objectives, within the framework of applicable laws.

Because of the unique government-to-government relationship between Indian tribes and the United States, the Departments and affected Indian tribes need to establish and maintain effective working relationships and mutual partnerships to promote the conservation of sensitive species (including candidate, proposed and listed species) and the health of ecosystems upon which they depend. Such relationships should focus on cooperative assistance, consultation, the sharing of information, and the creation of government-to-government partnerships to promote healthy ecosystems.

In facilitating a government-to-government relationship, the Departments may work with intertribal organizations, to the extent such organizations are authorized by their member tribes to carry out resource management responsibilities.

Sec. 5. Responsibilities. To achieve the objectives of this Order, the heads of all agencies, bureaus and offices within the Department of the Interior, and the Administrator of the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce, shall be responsible for ensuring that the following directives are followed:

Principle 1. THE DEPARTMENTS SHALL WORK DIRECTLY WITH INDIAN TRIBES ON A GOVERNMENT-TO-GOVERNMENT BASIS TO PROMOTE HEALTHY ECOSYSTEMS.

The Departments shall recognize the unique and distinctive political and constitutionally based relationship that exists between the United States and each Indian tribe, and shall view tribal governments as sovereign entities with authority and responsibility for the health and welfare of ecosystems on Indian lands. The Departments recognize that Indian tribes are governmental sovereigns with inherent powers to make and enforce laws, administer justice, and manage and control their natural resources. Accordingly, the Departments shall seek to establish effective government-to-government working relationships with tribes to achieve the common goal of promoting and protecting the health of these ecosystems. Whenever the agencies, bureaus, and offices of the Departments are aware that their actions planned under the Act may impact tribal trust resources, the exercise of tribal rights, or Indian lands, they shall consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable. This shall include providing affected tribes adequate opportunities to participate in data collection, consensus seeking, and associated processes. To facilitate the government-to-government relationship, the Departments may coordinate their discussions with a representative from an intertribal organization, if so designated by the affected tribe(s).

Except when determined necessary for investigative or prosecutorial law enforcement activities, or when otherwise provided in a federal-tribal agreement, the Departments, to the maximum extent practicable, shall obtain permission from tribes before knowingly entering Indian reservations and tribally-owned fee lands for purposes of ESA-related activities, and shall communicate as necessary with the appropriate tribal officials. If a tribe believes this section has been violated, such tribe may file a complaint with the appropriate Secretary, who shall promptly investigate and respond to the tribe.

Principle 2. THE DEPARTMENTS SHALL RECOGNIZE THAT INDIAN LANDS ARE NOT SUBJECT TO THE SAME CONTROLS AS FEDERAL PUBLIC LANDS.

The Departments recognize that Indian lands, whether held in trust by the United States for the use and benefit of Indians or owned exclusively by an Indian tribe, are not subject to the controls or restrictions set forth in federal public land laws. Indian lands are not federal public lands or part of the public domain, but are rather retained by tribes or set aside for tribal use pursuant to treaties, statutes, court orders, executive orders, judicial decisions, or agreements. Accordingly, Indian tribes manage Indian lands in accordance with tribal goals and objectives, within the framework of applicable laws.

Principle 3. THE DEPARTMENTS SHALL ASSIST INDIAN TRIBES IN DEVELOPING AND EXPANDING TRIBAL PROGRAMS SO THAT HEALTHY ECOSYSTEMS ARE PROMOTED AND CONSERVATION RESTRICTIONS ARE UNNECESSARY.

(A) The Departments shall take affirmative steps to assist Indian tribes in developing and expanding tribal programs that promote healthy ecosystems.

The Departments shall take affirmative steps to achieve the common goals of promoting healthy ecosystems, Indian self-government, and productive government-to-government relationships under this Order, by assisting Indian tribes in developing and expanding tribal programs that promote the health of ecosystems upon which sensitive species (including candidate, proposed and listed species) depend.

The Departments shall offer and provide such scientific and technical assistance and information as may be available for the development of tribal conservation and management plans to promote the maintenance, restoration, enhancement and health of the ecosystems upon which sensitive species (including candidate, proposed, and listed species) depend, including the cooperative identification of appropriate management measures to address concerns for such species and their habitats.

(B) The Departments shall recognize that Indian tribes are appropriate governmental entities to manage their lands and tribal trust resources.

The Departments acknowledge that Indian tribes value, and exercise responsibilities for, management of Indian lands and tribal trust resources. In keeping with the federal policy of promoting tribal self-government, the Departments shall respect the exercise of tribal sovereignty over the management of Indian lands, and tribal trust resources. Accordingly, the Departments shall give deference to tribal conservation and management plans for tribal trust resources that: (a) govern activities on Indian lands, including, for the purposes of this section, tribally-owned fee lands, and (b) address the conservation needs of listed species. The Departments shall conduct government-to-government consultations to discuss the extent to which tribal resource management plans for tribal trust resources outside Indian lands can be incorporated into actions to address the conservation needs of listed species.

(C) The Departments, as trustees, shall support tribal measures that preclude the need for conservation restrictions.

At the earliest indication that the need for federal conservation restrictions is being considered for any species, the Departments, acting in their trustee capacities, shall promptly notify all potentially affected tribes, and provide such technical, financial, or other assistance as may be appropriate, thereby assisting Indian tribes in identifying and implementing tribal conservation and other measures necessary to protect such species.

In the event that the Departments determine that conservation restrictions are necessary in order to protect listed species, the Departments, in keeping with the trust responsibility and government-to-government relationships, shall consult with affected tribes and provide written notice to them of the intended restriction as far in advance as practicable. If the proposed conservation restriction is directed at a tribal activity that could raise the potential issue of direct (directed) take under the Act, then meaningful government-to-government consultation shall occur, in order to strive to harmonize the federal trust responsibility to tribes, tribal sovereignty and the statutory missions of the Departments. In cases involving an activity that could raise the potential issue of an incidental take under the Act, such notice shall include an analysis and determination that all of the following conservation standards have been met: (i) the restriction is reasonable and necessary for conservation of the species at issue; (ii) the conservation purpose of the restriction cannot be achieved by reasonable regulation of non-Indian activities; (iii) the measure is the least restrictive alternative available to achieve the required conservation purpose; (iv) the restriction does not discriminate against Indian activities, either as stated or applied; and, (v) voluntary tribal measures are not adequate to achieve the necessary conservation purpose.

Principle 4. THE DEPARTMENTS SHALL BE SENSITIVE TO INDIAN CULTURE, RELIGION AND SPIRITUALITY.

The Departments shall take into consideration the impacts of their actions and policies under the Act on Indian use of listed species for cultural and religious purposes. The Departments shall avoid or minimize, to the extent practicable, adverse effects upon the noncommercial use of listed sacred plants and animals in medicinal treatments and in the expression of cultural and religious beliefs by Indian tribes. When appropriate, the Departments may issue guidelines to accommodate Indian access to, and traditional uses of, listed species, and to address unique circumstances that may exist when administering the Act.

Principle 5. THE DEPARTMENTS SHALL MAKE AVAILABLE TO INDIAN TRIBES INFORMATION RELATED TO TRIBAL TRUST RESOURCES AND INDIAN LANDS, AND, TO FACILITATE THE MUTUAL EXCHANGE OF INFORMATION, SHALL STRIVE TO PROTECT SENSITIVE TRIBAL INFORMATION FROM DISCLOSURE.

To further tribal self-government and the promotion of healthy ecosystems, the Departments recognize the critical need for Indian tribes to possess complete and accurate information related to Indian lands and tribal trust resources. To the extent consistent with the provisions of the Privacy Act, the Freedom of Information Act (FOIA) and the Departments' abilities to continue to assert FOIA exemptions with regard to FOIA requests, the Departments shall make available to an Indian tribe all information held by the Departments which is related to its Indian lands and tribal trust resources. In the course of the mutual exchange of information, the Departments shall protect, to the maximum extent practicable, tribal information which has been disclosed to or collected by the Departments. The Departments shall promptly notify and, when appropriate, consult with affected tribes regarding all requests for tribal information relating to the administration of the Act.

Sec. 6. Federal-Tribal Intergovernmental Agreements. The Departments shall, when appropriate and at the request of an Indian tribe, pursue intergovernmental agreements to formalize arrangements involving sensitive species (including candidate, proposed, and listed species) such as, but not limited to, land and resource management, multi-jurisdictional partnerships, cooperative law enforcement, and guidelines to accommodate Indian access to, and traditional uses of, natural products. Such agreements shall strive to establish partnerships that harmonize the Departments' missions under the Act with the Indian tribe's own ecosystem management objectives.

Sec. 7. Alaska. The Departments recognize that section 10(e) of the Act governs the taking of listed species by Alaska Natives for subsistence purposes and that there is a need to study the implementation of the Act as applied to Alaska tribes and natives. Accordingly, this Order shall not apply to Alaska and the Departments shall, within one year of the date of this Order, develop recommendations to the Secretaries to supplement or modify this Order and its Appendix, so as to guide the administration of the Act in Alaska. These recommendations shall be developed with the full cooperation and participation of Alaska tribes and natives. The purpose of these recommendations shall be to harmonize the government-to-government relationship with Alaska tribes, the federal trust responsibility to Alaska tribes and Alaska Natives, the rights of Alaska Natives, and the statutory missions of the Departments.

Sec. 8. Special Study on Cultural and Religious Use of Natural Products. The Departments recognize that there remain tribal concerns regarding the access to, and uses of, eagle feathers, animal parts, and other natural products for Indian cultural and religious purposes. Therefore, the Departments shall work together with Indian tribes to develop recommendations to the Secretaries within one year to revise or establish uniform administrative procedures to govern the possession, distribution, and transportation of such natural products that are under federal jurisdiction or control.

Sec. 9. Dispute Resolution. (A) Federal-tribal disputes regarding implementation of this Order shall be addressed through government-to-government discourse. Such discourse is to be respectful of government-to-government relationships and relevant federal-tribal agreements, treaties, judicial decisions, and policies pertaining to Indian tribes. Alternative dispute resolution processes may be employed as necessary to resolve disputes on technical or policy issues within statutory time frames; provided that such alternative dispute resolution processes are not intended to apply in the context of investigative or prosecutorial law enforcement activities.

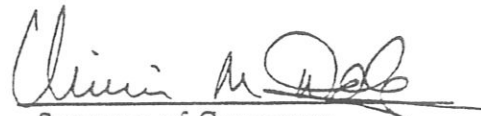
(B) Questions and concerns on matters relating to the use or possession of listed plants or listed animal parts used for religious or cultural purposes shall be referred to the appropriate Departmental officials and the appropriate tribal contacts for religious and cultural affairs.

Sec. 10. Implementation. This Order shall be implemented by all agencies, bureaus, and offices of the Departments, as applicable. In addition, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service shall implement their specific responsibilities under the Act in accordance with the guidance contained in the attached Appendix.

Sec. 11. Effective Date. This Order, issued within the Department of the Interior as Order No. 3206, is effective immediately and will remain in effect until amended, superseded, or revoked.

This Secretarial Order, entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," and its accompanying Appendix were issued this 5th day of June, 1997, in Washington, D.C., by the Secretary of the Interior and the Secretary of Commerce.


Secretary of the Interior


Secretary of Commerce



Date: JUN 5 1997

APPENDIX

Appendix to Secretarial Order issued within the Department of the Interior as Order No. 3206

Sec. 1. Purpose. The purpose of this Appendix is to provide policy to the National, regional and field offices of the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), (hereinafter "Services"), concerning the implementation of the Secretarial Order issued by the Department of the Interior and the Department of Commerce, entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act." This policy furthers the objectives of the FWS Native American Policy (June 28, 1994), and the American Indian and Alaska Native Policy of the Department of Commerce (March 30, 1995). This Appendix shall be considered an integral part of the above Secretarial Order, and all sections of the Order shall apply in their entirety to this Appendix.

Sec. 2. General Policy. (A) **Goals.** The goals of this Appendix are to provide a basis for administration of the Act in a manner that (1) recognizes common federal-tribal goals of conserving sensitive species (including candidate, proposed, and listed species) and the ecosystems upon which they depend, Indian self-government, and productive government-to-government relationships; and (2) harmonizes the federal trust responsibility to tribes, tribal sovereignty, and the statutory missions of the Departments, so as to avoid or minimize the potential for conflict and confrontation.

(B) **Government-to-Government Communication.** It shall be the responsibility of each Service's regional and field offices to maintain a current list of tribal contact persons within each Region, and to ensure that meaningful government-to-government communication occurs regarding actions to be taken under the Act.

(C) **Agency Coordination.** The Services have the lead roles and responsibilities in administering the Act, while the Services and other federal agencies share responsibilities for honoring Indian treaties and other sources of tribal rights. The Bureau of Indian Affairs (BIA) has the primary responsibility for carrying out the federal responsibility to administer tribal trust property and represent tribal interests during formal Section 7 consultations under the Act. Accordingly, the Services shall consult, as appropriate, with each other, affected Indian tribes, the BIA, the Office of the Solicitor (Interior), the Office of American Indian Trust (Interior), and the NOAA Office of General Counsel in determining how the fiduciary responsibility of the federal government to Indian tribes may best be realized.

(D) **Technical Assistance.** In their roles as trustees, the Services shall offer and provide technical assistance and information for the development of tribal conservation and management plans to promote the maintenance, restoration, and enhancement of the ecosystems on which sensitive species (including candidate, proposed, and listed species) depend. The Services should be creative in working with the tribes to accomplish these objectives. Such technical assistance may include the cooperative identification of appropriate management measures to address

concerns for sensitive species (including candidate, proposed and listed species) and their habitats. Such cooperation may include intergovernmental agreements to enable Indian tribes to more fully participate in conservation programs under the Act. Moreover, the Services may enter into conservation easements with tribal governments and enlist tribal participation in incentive programs.

(E) Tribal Conservation Measures. The Services shall, upon the request of an Indian tribe or the BIA, cooperatively review and assess tribal conservation measures for sensitive species (including candidate, proposed and listed species) which may be included in tribal resource management plans. The Services will communicate to the tribal government their desired conservation goals and objectives, as well as any technical advice or suggestions for the modification of the plan to enhance its benefits for the conservation of sensitive species (including candidate, proposed and listed species). In keeping with the Services' initiatives to promote voluntary conservation partnerships for listed species and the ecosystems upon which they depend, the Services shall consult on a government-to-government basis with the affected tribe to determine and provide appropriate assurances that would otherwise be provided to a non-Indian.

Sec. 3. The Federal Trust Responsibility and the Administration of the Act.

The Services shall coordinate with affected Indian tribes in order to fulfill the Services' trust responsibilities and encourage meaningful tribal participation in the following programs under the Act, and shall:

(A) Candidate Conservation.

(1) Solicit and utilize the expertise of affected Indian tribes in evaluating which animal and plant species should be included on the list of candidate species, including conducting population status inventories and geographical distribution surveys;

(2) Solicit and utilize the expertise of affected Indian tribes when designing and implementing candidate conservation actions to remove or alleviate threats so that the species' listing priority is reduced or listing as endangered or threatened is rendered unnecessary; and

(3) Provide technical advice and information to support tribal efforts and facilitate voluntary tribal participation in implementation measures to conserve candidate species on Indian lands.

(B) The Listing Process.

(1) Provide affected Indian tribes with timely notification of the receipt of petitions to list species, the listing of which could affect the exercise of tribal rights or the use of tribal trust resources. In addition, the Services shall solicit and utilize the expertise of affected Indian tribes in responding to listing petitions that may affect tribal trust resources or the exercise of tribal rights.

(2) Recognize the right of Indian tribes to participate fully in the listing process by providing timely notification to, soliciting information and comments from, and utilizing the expertise of, Indian tribes whose exercise of tribal rights or tribal trust resources could be affected by a particular listing. This process shall apply to proposed and final rules to: (i) list species as endangered or threatened; (ii) designate critical habitat; (iii) reclassify a species from endangered to threatened (or vice versa); (iv) remove a species from the list; and (v) designate experimental populations.

(3) Recognize the contribution to be made by affected Indian tribes, throughout the process and prior to finalization and close of the public comment period, in the review of proposals to designate critical habitat and evaluate economic impacts of such proposals with implications for tribal trust resources or the exercise of tribal rights. The Services shall notify affected Indian tribes and the BIA, and solicit information on, but not limited to, tribal cultural values, reserved hunting, fishing, gathering, and other Indian rights or tribal economic development, for use in: (i) the preparation of economic analyses involving impacts on tribal communities; and (ii) the preparation of "balancing tests" to determine appropriate exclusions from critical habitat and in the review of comments or petitions concerning critical habitat that may adversely affect the rights or resources of Indian tribes.

(4) In keeping with the trust responsibility, shall consult with the affected Indian tribe(s) when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights. Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.

(5) When exercising regulatory authority for threatened species under section 4(d) of the Act, avoid or minimize effects on tribal management or economic development, or the exercise of reserved Indian fishing, hunting, gathering, or other rights, to the maximum extent allowed by law.

(6) Having first provided the affected Indian tribe(s) the opportunity to actively review and comment on proposed listing actions, provide affected Indian tribe(s) with a written explanation whenever a final decision on any of the following activities conflicts with comments provided by an affected Indian tribe: (i) list a species as endangered or threatened; (ii) designate critical habitat; (iii) reclassify a species from endangered to threatened (or vice versa); (iv) remove a species from the list; or (v) designate experimental populations. If an affected Indian tribe petitions for rulemaking under Section 4(b)(3), the Services will consult with and provide a written explanation to the affected tribe if they fail to adopt the requested regulation.

(C) ESA §7 Consultation.

(1) Facilitate the Services' use of the best available scientific and commercial data by soliciting information, traditional knowledge, and comments from, and utilizing the expertise of, affected Indian tribes in addition to data provided by the action agency during the consultation process. The Services shall provide timely notification to affected tribes as soon as the Services are aware that a proposed federal agency action subject to formal consultation may affect tribal rights or tribal trust resources.

(2) Provide copies of applicable final biological opinions to affected tribes to the maximum extent permissible by law.

(3)(a) When the Services enter formal consultation on an action proposed by the BIA, the Services shall consider and treat affected tribes as license or permit applicants entitled to full participation in the consultation process. This shall include, but is not limited to, invitations to meetings between the Services and the BIA, opportunities to provide pertinent scientific data and to review data in the administrative record, and to review biological assessments and draft biological opinions. In keeping with the trust responsibility, tribal conservation and management plans for tribal trust resources that govern activities on Indian lands, including for purposes of this paragraph, tribally-owned fee lands, shall serve as the basis for developing any reasonable and prudent alternatives, to the extent practicable.

(b) When the Services enter into formal consultations with an Interior Department agency other than the BIA, or an agency of the Department of Commerce, on a proposed action which may affect tribal rights or tribal trust resources, the Services shall notify the affected Indian tribe(s) and provide for the participation of the BIA in the consultation process.

(c) When the Services enter into formal consultations with agencies not in the Departments of the Interior or Commerce, on a proposed action which may affect tribal rights or tribal trust resources, the Services shall notify the affected Indian tribe(s) and encourage the action agency to invite the affected tribe(s) and the BIA to participate in the consultation process.

(d) In developing reasonable and prudent alternatives, the Services shall give full consideration to all comments and information received from any affected tribe, and shall strive to ensure that any alternative selected does not discriminate against such tribe(s). The Services shall make a written determination describing (i) how the selected alternative is consistent with their trust responsibilities, and (ii) the extent to which tribal conservation and management plans for affected tribal trust resources can be incorporated into any such alternative.

(D) Habitat Conservation Planning.

(1) Facilitate the Services' use of the best available scientific and commercial data by soliciting information, traditional knowledge, and comments from, and utilizing the expertise of, affected tribal governments in habitat conservation planning that may affect tribal trust resources or the exercise of tribal rights. The Services shall facilitate tribal participation by providing timely notification as soon as the Services are aware that a draft Habitat Conservation Plan (HCP) may affect such resources or the exercise of such rights.

(2) Encourage HCP applicants to recognize the benefits of working cooperatively with affected Indian tribes and advocate for tribal participation in the development of HCPs. In those instances where permit applicants choose not to invite affected tribes to participate in those negotiations, the Services shall consult with the affected tribes to evaluate the effects of the proposed HCP on tribal trust resources and will provide the information resulting from such consultation to the HCP applicant prior to the submission of the draft HCP for public comment. After consultation with the tribes and the non-federal landowner and after careful consideration of the tribe's concerns, the Services must clearly state the rationale for the recommended final decision and explain how the decision relates to the Services' trust responsibility.

(3) Advocate the incorporation of measures into HCPs that will restore or enhance tribal trust resources. The Services shall advocate for HCP provisions that eliminate or minimize the diminishment of tribal trust resources. The Services shall be cognizant of the impacts of measures incorporated into HCPs on tribal trust resources and the tribal ability to utilize such resources.

(4) Advocate and encourage early participation by affected tribal governments in the development of region-wide or state-wide habitat conservation planning efforts and in the development of any related implementation documents.

(E) Recovery.

(1) Solicit and utilize the expertise of affected Indian tribes by having tribal representation, as appropriate, on Recovery Teams when the species occurs on Indian lands (including tribally-owned fee lands), affects tribal trust resources, or affects the exercise of tribal rights.

(2) In recognition of tribal rights, cooperate with affected tribes to develop and implement Recovery Plans in a manner that minimizes the social, cultural and economic impacts on tribal communities, consistent with the timely recovery of listed species. The Services shall be cognizant of tribal desires to attain population levels and conditions that are sufficient to support the meaningful exercise of reserved rights and the protection of tribal management or development prerogatives for Indian resources.

(3) Invite affected Indian tribes, or their designated representatives, to participate in the Recovery Plan implementation process through the development of a participation plan and through tribally-designated membership on recovery teams. The Services shall work cooperatively with affected Indian tribes to identify and implement the most effective measures to speed the recovery process.

(4) Solicit and utilize the expertise of affected Indian tribes in the design of monitoring programs for listed species and for species which have been removed from the list of *Endangered and Threatened Wildlife and Plants* occurring on Indian lands or affecting the exercise of tribal rights or tribal trust resources.

(F) Law Enforcement.

(1) At the request of an Indian tribe, enter into cooperative law enforcement agreements as integral components of tribal, federal, and state efforts to conserve species and the ecosystems upon which they depend. Such agreements may include the delegation of enforcement authority under the Act, within limitations, to full-time tribal conservation law enforcement officers.

(2) Cooperate with Indian tribes in enforcement of the Act by identifying opportunities for joint enforcement operations or investigations. Discuss new techniques and methods for the detection and apprehension of violators of the Act or tribal conservation laws, and exchange law enforcement information in general.

U.S. Fish & Wildlife Service
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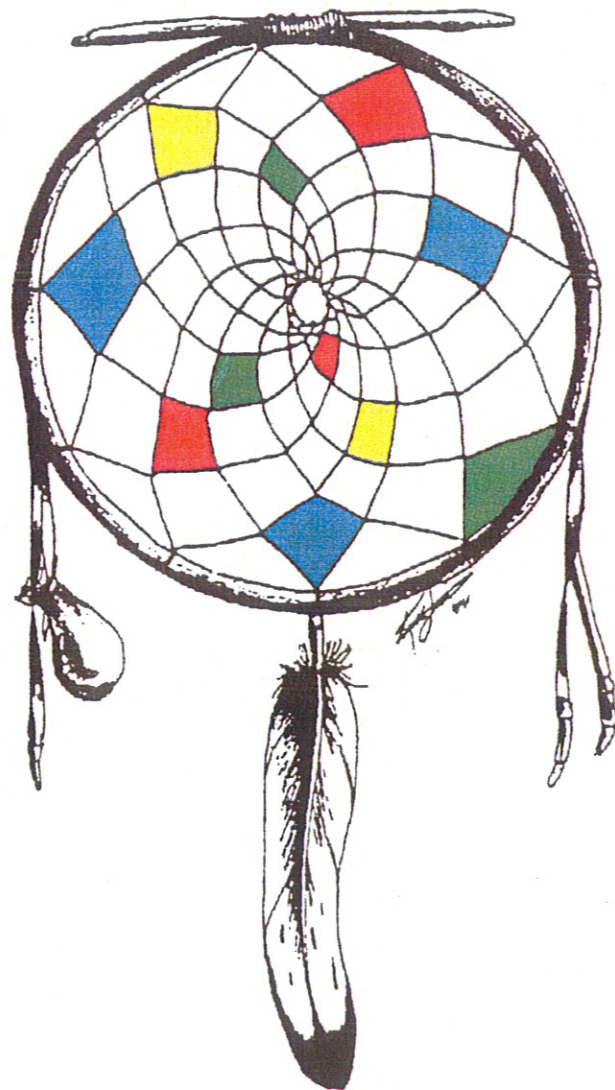
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THE NATIVE AMERICAN POLICY

of the U.S. Fish and Wildlife Service



FROM THE DIRECTOR

Just as the "Dreamcatcher" catches the good dreams and allows the bad dreams to pass through the net, the Native American Policy of the Fish and Wildlife Service that follows is intended to capture only good government-to government relationships. As our relationship with the Native American people continues to evolve, we will continue to capture the good visions and add them to this Policy.



June 28, 1994

Cover: The "Dreamcatcher"—During sleep is often when the most powerful visions occur. A dream catcher should be hung freely in the air above the head of the dreamer. Good dreams become caught in the net and directed back to the dreamer by way of the feather. Bad dreams go through the hole and beyond.

Cover Art is a pen and ink drawing by Keith C. Smith of a dreamcatcher created by Ken Poynter. Keith, a graduate of the University of Colorado is Navajo and is currently employed by the University of Colorado—Boulder. Ken, a Passamaquody, is currently the Executive Director of the Native American Fish and Wildlife Society.

INTRODUCTION

The U.S. Fish and Wildlife Service (Service), to accomplish its objectives with greater effectiveness, is seeking partnerships with Native American governments, foreign nations, States, other governmental agencies, conservation groups, and individual citizens. Such partnerships will provide opportunities to better address ecological systems as a whole and do so with maximum assistance and support.

The express purpose of this Native American Policy (Policy) is to articulate the general principles that will guide the Service's government-to-government relationship to Native American governments in the conservation of fish and wildlife resources. The Service envisions developing other Native American policy statements on more specific topics.

The Service has developed and adopted this Policy to help accomplish its mission and concurrently to participate in fulfilling the Federal Government's and the Department of the Interior's trust responsibilities to assist Native Americans in protecting, conserving, and utilizing their reserved, treaty guaranteed, or statutorily identified trust assets. This Policy is consistent with Federal policy supporting Native American government self-determination.

The Service has a long history of working with Native American governments in managing fish and wildlife resources. These relationships will be expanded, within the Service's available resources, by improving communication and cooperation, providing fish and wildlife management expertise, training and assistance, and respecting and utilizing the traditional knowledge, experience, and perspectives of Native Americans in managing fish and wildlife resources.

This Policy is intended to be flexible and dynamic to provide for evolution of the partnerships between the Service and Native American governments. Working relationships between the Service and Native American governments will be generally consistent nationwide, however, they will vary according to the legal basis and management requirements of each relationship. For example, the Service's interaction with Alaska Natives is largely directed by the provisions of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act. Outside of Alaska, the Service's involvement with Native Americans is guided primarily by reserved right doctrines, Executive Orders, judicial mandates, and specific treaties between the Federal Government and Native American governments. This Policy applies to all Service employees in discharging official duties that affect Native American governmental interests.

This Policy is adopted pursuant to and consistent with existing law and does not preempt or modify the fish and wildlife management authorities of the Service, other Federal agencies, Native American governments, or States. The Policy does not suggest recognition of tribal authority that does not currently exist, however, the Service need not wait for judicial recognition of tribal authority over fish and wildlife when such authority is already supported by law. The Policy will not be used to arbitrate differences in opinion between government agencies or to interpret any authorities, laws or judicial findings. Unless specific judicial rulings or Acts of Congress indicate otherwise, this Policy should not be construed as validating the authority of any Native American government in Alaska over lands, fish and wildlife, or non-tribal members.

This Policy does not negate or supersede the diverse mandates and priorities of the Service. Accomplishing the intent of this Policy is contingent upon prevailing legal, procedural, workforce, and monetary constraints.

POLICY PRINCIPLES

The following policy statements provide the framework within which the Service will cooperate with Native American governments to conserve fish and wildlife resources.

I. SOVEREIGNTY

Native American governments are recognized as governmental sovereigns and have been referred to as quasi-sovereign domestic dependent nations by the courts. The Service recognizes the sovereign status of Native American Governments.

II. CONSERVATION

While the major components of this Policy are aimed at cultivating and maintaining effective partnerships between the Service and Native American governments, the ultimate goal is to effect long-term conservation of fish and wildlife resources. This goal is eloquently expressed in the following statement:

"We did not inherit this Earth or its natural resources from our ancestors, we are only borrowing them from our childrens' children and their children. Therefore, we are duty-bound and obligated to protect them and use them wisely until such time that they get here, and then they will have the same obligations."

Anonymous

III. GOVERNMENT TO GOVERNMENT RELATIONS

General Statement

There is a unique and distinctive political relationship between the United States and Native American governments, as defined by treaties, statutes, court decisions and the United States Constitution, that differentiates Native American governments from other interests and constituencies, and that extends to all Federal agencies. The Service will maintain government-to-government relationships with Native American governments. The Service will work directly with Native American governments and observe legislative mandates, trust responsibilities, and respect Native American cultural values when planning and implementing programs. Successful implementation of this Policy will be accomplished through working relationships and mutual partnerships with Native American governments. The Service will rely on Native American governments to identify formal and informal contacts to represent them when coordinating with the Service. Working relationships, in many cases, will be with Native American fish and wildlife departments. For major joint initiatives, the Service will offer to enter into formal agreements, developed by both parties, that clearly identify the roles, responsibilities, and obligations of the Service and each involved Native American government.

Reservation Lands

The Service recognizes the authority that Native American governments have for making fish and wildlife resource management policy and for managing fish and wildlife resources on trust lands within their Native American reservations. Under certain circumstances, a Native American government may have fish and wildlife authority affecting nonmember reservation lands. In such cases, the Service will give proper recognition to the relative rights of both the Native American government and the affected State(s), according to the specific nature of the case.

Non-Reservation Lands

The Service recognizes and supports the rights of Native Americans to utilize fish and wildlife resources on non-reservation lands where there is a legal basis for such use. The Service recognizes that as a result of treaties, statutes, and judicial decrees, certain Native American governments, along with State governments, may have shared responsibilities to co-manage fish and wildlife resources. In such cases, the Service will cooperate with Native American governments and affected resource management agencies to help meet objectives of all parties. While the Service retains primary authority to manage Service lands, affected Native American governments will be afforded opportunities to participate in the Service's decision-making processes for those lands.

IV. SELF-DETERMINATION

Support for Self-Determination

The Service favors empowering Native American governments and supporting their missions and objectives in assuming program management roles and responsibilities through contracting and other mechanisms. Therefore, the Service supports the rights of Native Americans to be self-governing, and further supports the authority of Native American governments to manage, co-manage, or cooperatively manage fish and wildlife resources, and to protect their Federally recognized authorities.

Indian Self Determination and Education Assistance Act (Public Law 93-638, as amended)

The Service is committed to entering into contracts, cooperative agreements, or grants with Native American governments at their request for the administration of fish and wildlife conservation programs under the terms, conditions, and to the extent provided by the Indian Self Determination and Education Assistance Act (Act). The Service will work with Native American governments in developing effective policies, plans, and operating standards that are consistent with the Service's obligation under the Department of the Interior's rules and regulations for implementing the provisions of the Act.

V. COMMUNICATION

Consultation

The Service will consult with Native American governments on fish and wildlife resource matters of mutual interest and concern to the extent allowed by law. The goal is to keep Native American governments involved in such matters from initiation to completion of related Service activities.

Communication with other Agencies

Upon the request of a tribe, the Service will encourage and facilitate communication and cooperation among Native American governments, States, Federal agencies and others to identify and delineate respective roles and responsibilities and to ensure that issues of common interest and concern are discussed. This may include such activities as taking the initiative to provide the biological or managerial expertise necessary for resolution of conflicts about fish and wildlife resource issues.

VI. FUNDING

Funding Sources

The Service will assist Native American governments in identifying Federal and non-Federal funding sources that are available to them for fish and wildlife resource management activities.

VII. CULTURE/RELIGION

Consultation

The Service will involve Native American governments in all Service actions that may affect their cultural or religious interests, including archaeological sites. The Service will be guided in this respect by such legislation as the American Indian Religious Freedom Act, the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the Archaeological Resources Protection Act. The Service will take appropriate precautions to ensure that locations of protected sites remain confidential.

Reasonable Access

The Service will provide Native Americans reasonable access to Service managed or controlled lands and waters for exercising ceremonial, medicinal, and traditional activities recognized by the Service and by Native American governments. The Service will permit these uses if the activities are consistent with treaties, judicial mandates, or Federal and tribal law and are compatible with the purposes for which the lands are managed.

Animal Parts

The Service will expedite processing and distributing certain animal parts, such as eagle feathers, for recognized religious, ceremonial, and cultural purposes in accordance with Federal laws. Timeliness of processing and distributing animal parts will be contingent upon animal part availability and on the needs of the Service to conduct required scientific and law enforcement investigations. The Service will strive to ensure the dignity of its custodial process in recognition of the solemn nature of Native American uses of such animal parts.

VIII. LAW ENFORCEMENT

Cooperation

Service law enforcement agents will assist with the cooperative enforcement of Federal wildlife laws. The Service will encourage the use of cooperative law enforcement as an integral component of Native American, Federal, and State agreements relating to fish and wildlife resources. The Service will assist in the formulation of the law enforcement elements of those agreements. Upon request, the Service will evaluate Native American law enforcement capabilities and, if warranted, provide recommendations for improving such capabilities.

Coordination

The Service will coordinate with law enforcement officers of Native American governments regarding Service law enforcement operations on or adjacent to Native American lands, as appropriate. The Service will assist Native American governments in the coordination of appropriate fish and wildlife law enforcement investigations that require the use of the Federal court system. If requested, the Service will also provide liaison between Native American governments and the U.S. Department of the Interior Solicitor on fish and wildlife matters.

Development of Fish and Wildlife Codes

The Service will assist Native American governments with the development of comprehensive fish and wildlife conservation codes.

IX. TECHNICAL ASSISTANCE

Technical Expertise and Assistance

The Service will make available technical expertise from all Service program areas to assist Native American governments in the management of fish and wildlife resources, and to assist the Native American governments in developing their own technical expertise in fish and wildlife conservation and management where requested. The Service will advise Native American governments about the kinds of technical assistance that it can provide. Technical assistance priorities will be developed with input from affected Native American governments.

Agreements

The Service will develop partnership agreements with Native American governments to work together and to exchange technical expertise regarding matters of mutual interest, such as the conservation and recovery of threatened and endangered species, migratory birds, and anadromous fish.

Information Transfer

The Service will provide access to technical information from such sources as technical assistance offices, other field offices, and fish health laboratories. As requested, the Service will assist Native American governments in identifying other agencies that might provide technical assistance. Information obtained by the Service from Native American governments will not be shared or released without their consent or as required by law. Information generated by the Service through technical assistance to Native American governments will be released only with their consent or as required by law.

X. TRAINING AND EDUCATION

Cultural Awareness Training

The Service will work with Native American governments to help Service employees improve their understanding of Native American traditional, cultural, and religious values and practices, natural resource values, treaty and other Federally reserved rights, and appropriate law enforcement policy issues.

Native American Access to Service Training

The Service will provide Native American governments the same access to fish and wildlife resource training programs as provided to other government agencies.

Law Enforcement Training

The Service, as resources permit, will make its law enforcement expertise and capabilities available to Native American governments. The Service will provide guidance and assistance in developing, maintaining, or improving Native American fish and wildlife law enforcement programs. The Service's basic and refresher fish and wildlife law enforcement training courses that are provided to other governmental agencies will also be available to Native Americans.

Professional Development

The Service will facilitate the education and development of Native American fish and wildlife professionals by providing innovative educational programs and on-the-job training opportunities. The Service will establish partnerships and cooperative relationships with Native American educational institutions to assist in such areas as developing natural resources curricula or implementing cooperative education programs. The Service will also ensure that Native American schools and children are included in its environmental education outreach programs.

Work Force Diversification

The Service will develop active, innovative, and aggressive recruitment programs to attract qualified personnel to the Service so that its workforce can be representative of the cultural diversity of the nation. Qualified Native Americans will be actively encouraged to apply for jobs with the Service. These recruitment efforts will be focused especially where the Service is involved in managing fish and wildlife resources for which Native Americans have management authority or where they have cultural or religious interests.

Education of the General Public

The Service will work with Native American governments to inform and educate the public about Native American treaty and Federally reserved rights, laws, regulations, and programs, and programs related to fish and wildlife.

DEFINITIONS

The following definitions help to clarify the guidance encompassed by this Policy:

Agreements—Documents approved by two or more parties that identify their roles and responsibilities in achieving mutual objectives (e.g. Memoranda of Agreement, Memoranda of Understanding, Cooperative Agreements, Grants, and Contracts).

Co-Management—Two or more entities, each having legally established management responsibility, working together to actively protect, conserve, enhance, or restore fish and wildlife resources.

Cooperative Management—Two or more entities working together to actively protect, conserve, enhance, or restore fish and wildlife resources.

Fish and Wildlife Resources—All fish and wildlife (including invertebrates), plants and their habitats.

Fish and Wildlife Resource Management—All activities that are intended to contribute directly or indirectly to the preservation, utilization, maintenance, mitigation and enhancement of fish and wildlife resources.

Lands—Includes all uplands, wetlands, and open waters such as streams, lakes, estuaries, and bays.

Native American Law Enforcement Officers—Enforcement personnel of Native American governments specifically empowered primarily or secondarily to enforce fish and wildlife laws (e.g. rangers, conservation officers, game wardens, fire chiefs, and police officers).

Native Americans—American Indians in the conterminous United States and Alaska Natives (including Aleuts, Eskimos, and Indians) who are members of Federally recognized tribes.

Native American Governments—Governing bodies, including executive and legislative branches, of Federally recognized tribes as regarded by Federal law and formally identified by the Department of the Interior. Does not include other entities representing Native interests such as corporations, societies, commissions, committees, associations or other groups not officially designated by the Secretary of the Interior as a “Government.”

Reservations—Generally, reservations are “trust assets” that were set aside for Native American use, pursuant to treaties, statutes and executive orders. Properties located outside the contiguous boundaries of reservations, as well as lands conveyed under the Alaska Native Claims Settlement Act, that are held in fee title by Native Americans as private property generally are not considered to be reservations.

Trust Responsibility—The fiduciary obligations that attach to the United States as trustee of the assets and resources that the United States holds in trust for Native American governments and their members, the treaty and statutory obligations of the United States toward Native American governments and their members, and other legal obligations that attach to the United States by virtue of the special relationship between the Federal Government and Native American governments. The identification and quantification of trust assets is recognized as an ongoing and evolving process.



U.S. Department of the Interior
Fish and Wildlife Service

DEPARTMENT of the INTERIOR

news release

OFFICE OF THE SECRETARY

For Release February 5, 1975

McGarvey 202/343-5634

MORTON ISSUES POLICY STATEMENT ON INDIAN USE OF BIRD FEATHERS

Secretary of the Interior Rogers C. B. Morton today issued a policy statement concerning Indian cultural and religious use of migratory bird feathers and parts. Following is the text of the statement.

"I am aware that American Indians are presently experiencing uncertainty and confusion over the application of Federal bird protection laws to Indian cultural and religious activities. Apparently, this confusion and concern may have resulted, in part, from this Department's enforcement activities under such laws. This statement is intended to clarify the Department of the Interior's responsibilities and intentions, and to ease the minds of American Indians.

"The Department of the Interior recognizes the unique heritage of American Indian culture. It also recognizes that American Indians have a legitimate interest in expressing their cultural and religious way of life. At the same time, both the Department of the Interior and American Indians share an additional responsibility to conserve wildlife resources, including federally protected birds.

"As a result of meetings between agencies of the Department of the Interior, the Association for American Indian Cultural and Traditional Activities, and others, I can assure American Indians that our policy is to permit them to engage in the following activities without fear of Federal prosecution, harassment, or other interference.

(over)

"1. American Indians may possess, carry, use, wear, give, loan, or exchange among other Indians, without compensation, all federally protected birds, as well as their parts or feathers.

"2. American Indians who wish to possess bird feathers or parts to be worked on by tribal craftsmen for eventual use in Indian religious or cultural activities may transfer such feathers or parts to tribal craftsmen without charge, but such craftsmen may be compensated for their work.

"However, the Department of the Interior will continue to enforce against all persons those Federal laws prohibiting the killing, buying or selling of eagles, migratory birds, or endangered species, as well as those laws prohibiting the buying or selling of the parts or feathers of such birds and animals.

"I encourage American Indians to express their identity and to freely pursue their cultural and religious practices. At the same time, I encourage them to support the purposes of the Federal bird protection laws. There is much work to be accomplished to further clarify the rights and obligations of American Indians with respect to Federal bird protection laws, and special efforts will be made to conduct a two-way education process between Government employees and Indian communities. In addition, we have agreed to work in a spirit of cooperation with the Association for American Indian Cultural and Traditional Activities, and other interested Indian representatives, in order to harmonize the policies, practices, and procedures for enforcement of the Federal bird protection laws with the legitimate needs of Indians. This includes review of Federal regulations, with probable changes where the legitimate needs of American Indians can be legally recognized without harming federally protected birds.

"In this regard, one area of discussion should be the possibility of American Indians sharing with Federal officials the responsibilities of wildlife management and enforcement through the adoption of tribal ordinances designed to conserve federally protected birds.

"In the past, one problem has been that legitimate sources of feathers which might have been available to the Department for distribution to American Indians, have not been fully utilized. We are presently developing better procedures to collect and distribute eagle feathers from the Fish and Wildlife Service repository at Pocatello, Idaho, where feathers of eagles found dead are stored. In addition, we will make an effort to distribute the feathers and parts of other migratory birds to Indians.

"I hope that this statement will help to take away the uncertainty and confusion presently experienced by American Indians. I hope also that our efforts will encourage tradition, culture, and religious activities among American Indians, while at the same time promoting a mutual effort to protect and conserve federally regulated birds.