



1. DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
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SECNAVINST 11010.14A
ASN (I&E)
11 Oct 2005

SECNAV INSTRUCTION 11010.14A

From: Secretary of the Navy

Subj: DEPARTMENT OF THE NAVY POLICY FOR CONSULTATION WITH
FEDERALLY RECOGNIZED INDIAN TRIBES

Ref: (a) National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.)
(b) American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996)
(c) Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa et seq.)
(d) Native American Graves Protection and Repatriation Act of 1990, as amended (25 U.S.C. 3001 et seq.)
(e) Executive Memorandum: "Government-to-Government Relations with Native American Tribal Governments", of 29 April 1994
(f) Executive Order 13007, "Indian Sacred Sites", of 24 May 1996
(g) SECNAVINST 4000.35A
(h) DOD Instruction 4715.3
(i) Department of Defense American Indian and Alaska Native Policy, of 21 October 1998, and implementing instruction

Encl: (1) Department of the Navy (DON) Guidance for Consultation with Federally Recognized Indian Tribes

1. Purpose. To update Department of the Navy (DON) policy, procedures and responsibilities under references (a) through (i) when consulting with representatives of federally recognized Indian tribes, including Alaska Native governments, on issues with the potential to impact protected tribal resources, tribal rights, or Indian lands. This Instruction has been administratively revised and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 11010.14.

3. Definitions.

11 Oct 2005

a. Alaska Native governments. Those entities as defined by the most current DOI/BIA list of tribal entities published in the Federal Register pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994.

b. Consultation. The process of seeking, discussing, and considering the views of others, and, where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed.

c. Indian Tribe. The governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.].

4. Scope and Applicability. The policies and responsibilities assigned in this instruction apply to the DON shore establishment and the active and reserve operating forces.

5. Background.

a. The federal trust responsibility between American Indians and the Federal government is an outgrowth of the Federal treaty period where tribes ceded lands in return for protection and certain assurances. Among these assurances were reserved rights, which often included the use of their ancestral lands for fishing, hunting, and gathering in usual and accustomed places and tribal sovereignty. Consultation with Tribal Governments concerning actions on or undertaken by DON installations will therefore be a recurring requirement under references (a) through (i) regarding proposed actions, including but not limited to land-disturbing activities, construction, training, low level over-flights, ecosystem management of sites with religious or cultural significance, protection of sacred sites from vandalism and other damage, access to sacred sites, access to subsistence and medicinal natural resources, disposition of American Indian human remains and cultural items under the purview of reference (d), and land use decisions, including development of Integrated Cultural Resource Management Plans (ICRMP) and Integrated Natural Resource Management Plans (INRMP).

b. The consultation mandated by references (a) through (i) is an ongoing requirement, and should be incorporated into all project and mission planning. Consent, approval, or formal agreement is not necessary to satisfy consultation requirements, however, it is in the DON'S best interest to build a permanent working relationship of respect, trust, and openness with Tribal Government representatives.

6. Policy. It is DON policy to:

a. Consult with representatives of federally recognized Tribal Governments as provided by law on all issues impacting Indian lands, protected tribal resources or rights under treaties, and issues of concern to Tribal Governments on DON lands,

b. Conduct consultation on a government-to-government basis in recognition of Tribal Government sovereignty and in accordance with reference (e) and enclosure (1),

c. Conduct consultation openly and in good faith, using written, electronic, telephonic and face-to-face consultation formats, as appropriate,

d. Initiate consultation at the earliest possible juncture in the planning process, in accordance with references (a) through (i) and enclosure (1),

e. Retain final decision-making authority over DON assets and actions,

f. Protect culturally sensitive information from public disclosure, including but not limited to Freedom of Information Act exemptions in references (a) and (c), and withholding sensitive information from written summaries and transcripts, and,

g. Consult with non-federally recognized Indian tribes, traditional cultural leaders and other Native Americans on the

h. same basis as other interested parties when particular statutes and regulations require such consultation.

7. Responsibilities

a. The Assistant Secretary of the Navy (Installations and Environment) (ASN(I&E)) shall:

(1) In accordance with reference (g), act as the principal advisor to the Secretary of the Navy for issues pertaining to Indian tribes,

(2) Establish policy and specific policy guidance for issues pertaining to Indian tribes,

(3) Act as principal liaison with the Secretary of Defense, other Military Departments, other Federal agencies, Congress, Tribal Governments, and the public with respect to significant Tribal issues affecting DON,

(4) Provide oversight for DON consultation with representatives of Indian tribes, and

(5) Provide oversight for training of DON personnel regarding cultural sensitivity and legal responsibilities in consultation with Indian tribes.

b. The Chief of Naval Operations (CNO), Commander of Naval Installations (CNI) and the Commandant of the Marine Corps (CMC) shall:

(1) Implement references (a) through (i) throughout their respective Services,

(2) Ensure that Regional Commanders or Installation Commanding Officers (ICO) with consultation responsibilities develop and issue written guidance that identifies local and regional concerns of Indian tribes and points of contact, and specifically applicable procedures for routine consultation,

(3) Ensure that such written guidance has been developed in consultation with federally recognized Indian tribes who have rights under treaties on DON lands or have a concern regarding historic or cultural properties on DON lands, so that consultation procedures recognize and accommodate Tribal Government jurisdictional boundaries and tribal regional cultural variations,

11 Oct 2005

(4) Provide fiscal support for implementation of DON Indian tribe consultation policy and ensure that subordinate commands plan, program and budget for studies, mitigation, access, training and all necessary consultation actions,

(5) Provide for necessary staffing to assist commanders, commanding officers, regional commanders and chain of command to carry out consultation responsibilities with Indian tribes,

(6) Provide training for all levels of command regarding the traditions, cultures, and issues of Indian tribes, in coordination with existing inter-service training opportunities, and

(7) Bring to the attention of ASN (I&E) matters that involve significant issues or controversies affecting Indian tribes.

8. Delegation of Authority. ASN (I&E), CNO, and CMC may delegate responsibilities assigned in this instruction, as appropriate.

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DEPARTMENT OF THE NAVY (DON) GUIDANCE FOR CONSULTATION WITH
INDIAN TRIBES

Consultation is always a dialogue, with information and opinion respectfully exchanged in both directions. The following guidance is consistent with reference (i). It is designed to facilitate the consultation process and to make it more productive.

1. Identify official points-of-contact prior to initiating consultation with all tribes (or lineal descendants in the case of reference (d) actions) who may have an interest in the matter under consultation. Tribal boundaries have shifted and tribes have migrated, so that tribes, which seem far removed geographically, may have a traditional interest in assets and actions at specific present-day DON installations.
2. Commanders and commanding officers are expected to play a prominent role in government-to-government consultation. Commander/commanding officer presence and signature is appropriate at significant milestones such as formal initiation of consultation, notification of final DON decisions about proposed actions under consultation, and any agreement document that may result from consultation.
3. Commanders and commanding officers may delegate follow-up consultation functions. Designated DON staff at the local or regional level may negotiate details and engage in routine consultation with tribal government staff persons or others delegated by tribal authorities.
4. It may be necessary to negotiate the time and place for consultation, recognizing that many tribes do not have an operating budget that will pay for representatives' transportation and per diem, and tribal representatives may have existing work, community, and family commitments. Consultation should take place at a time and in a location convenient for tribal representatives.
5. Scheduling of consultation is dependent upon several factors. Consultation may require multiple meetings over a period of months or it may be dependent upon culturally specific circumstances such as religious ceremonies conducted only at certain times of the year, availability of information sources, or certain natural resources cycles. Start early, and allow plenty of time. If the Navy has an urgent need for expeditious consultation, let this fact be known to tribal contacts and negotiate an expedited timetable.

Enclosure (1)

11 Oct 2005

6. Participating members of a particular culture are in the best position to provide the most up-to-date and accurate information about that culture; therefore culturally specific information obtained from a member of a particular culture is to be respected as expert testimony.

7. It is necessary to take into consideration and respect each tribal protocol, including:

a. Tribal representatives may want to open a meeting with a traditional ceremony, although government representatives are under no obligation to participate.

b. The installation may need to schedule meetings well in advance to enable the tribe to decide upon appropriate attendees such as tribal elder(s), traditional religious leader(s), and translators.

c. Tribal representatives may be reluctant to discuss culturally sensitive information outside of the tribe, or at certain times of year, or information may need to be cleared with traditional religious leader(s) or tribal council members prior to commitments.

d. Tribal governments differ from each other in their organizational structures and corporate cultures. DON representatives should be mindful that this affects formal titles and forms of address such as "Chief", "Governor", "Chairman", and adhere to other forms of protocol. Tribal representatives may be female or male, elected or not elected, political or spiritual leaders, and exhibit other variations from tribe to tribe.

8. Each tribe should be consulted separately, unless they choose to act collectively.

9. Proof of consultation should be documented in writing (with sensitive information omitted) and placed in the administrative record. Although consent, approval, or formal agreement from tribal governments is not required to conclude the consultation process and to proceed with a project on Federal land, the record must show that DON has given careful consideration to all the available evidence and points of view, before making the final decision.

10. The decision should be placed into the administrative record and circulated to all consulting parties. It should explain the reasoning as well as the data compiled, but exclude any direct reference to culturally sensitive information provided by tribes or information sensitive to the naval mission.

Enclosure (1)