SECNAV INSTRUCTION 11010.14B

From: Secretary of the Navy

Subj: DEPARTMENT OF THE NAVY POLICY FOR CONSULTATION WITH FEDERALLY RECOGNIZED INDIAN TRIBES, ALASKA NATIVE TRIBAL ENTITIES, AND NATIVE HAWAIIAN ORGANIZATIONS

Ref: (a) 54 U.S.C. §300101 et seq.
(b) 42 U.S.C. §1996
(c) 16 U.S.C. §470aa et seq.
(d) 25 U.S.C. §3001 et seq.
(e) Public Law 103-454
(f) Memorandum on Government-to-Government Relations With Native American Tribal Governments of 29 April 1994
(g) E.O. 13007
(h) E.O. 13175
(i) Department of Defense Plan of Action to Implement the Policies and Directives of E.O. 13175
(j) SECNAVINST 4000.35A
(k) DoD Instruction 4715.16 of 21 November 2017
(l) DoD Instruction 4710.02 of 14 September 2018
(m) DoD Instruction 4710.03 of 31 August 2018
(n) Department of Defense American Indian and Alaska Native Policy of 20 October 1998
(o) Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights of 9 November 2016

Encl: (1) Department of the Navy Guidance for Consultation with Federally Recognized Indian Tribes, Alaska Native Tribal Entities, and Native Hawaiian Organizations
(2) Department of the Navy Responsibilities for Consultation with Federally Recognized Indian Tribes, Alaska Native Tribal Entities, and Native Hawaiian Organizations
1. **Purpose.** To update Department of the Navy (DON) policy, procedures and responsibilities under references (a) through (o) when consulting with representatives of federally recognized Indian tribes, including Alaska Native tribal entities, and Native Hawaiian Organizations (NHOs).

2. **Cancellation.** SECNAVINST 11010.14A.

3. **Definitions**

   a. **Alaska Native Tribal Entities.** Native villages or corporations recognized as eligible for special programs and services pursuant to Section 104 of reference (e). Hereinafter, references to Indian tribes include these Alaska Native tribal entities.

   b. **Consultation.** The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement.

   c. **Cultural items.** In accordance with reference (d), cultural items include human remains, funerary objects, sacred objects, and objects of cultural patrimony relating to a people or culture indigenous to the United States, including Alaska and Hawaii.

   d. **Indian Lands.** Any lands the title to which is either held in trust by the United States for the benefit of any Indian tribe or Indian, or held by an Indian tribe or Indian subject to restrictions by the United States against alienation.

   e. **Indian Tribe.** Any federally recognized Indian tribe, band, nation, or other organized group or community; including Alaska Native tribal entities (see reference (e)).

   f. **Federal Trust Responsibility.** A legally enforceable fiduciary obligation under which the United States has charged itself with moral obligations of the highest responsibility and trust toward Indian tribes to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to Indian Tribes and Alaska Native tribal entities.
g. Native Hawaiian Organization. Any organization which serves and represents the interests of Native Hawaiians; has a primary and stated purpose to provide services to Native Hawaiians; and has demonstrated expertise in Native Hawaiian affairs.

4. **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 Indian tribes and the Federal government is an outgrowth of the Federal treaty period when Congress provided certain assurances in return for ceded lands. Among these are reserved rights, which often include the use of their ancestral lands for fishing, hunting, and gathering in usual and accustomed places and tribal sovereignty. Consultations with Indian tribes concerning actions taken on DON installations or undertaken by the DON are recurring requirements. Consultations regarding proposed DON actions may include, but are not limited to ground-disturbing activities, construction, training, low level overflights, management of sites with religious or cultural significance, protection of sacred sites, access to sacred sites, access to subsistence and medicinal natural resources, disposition of cultural items under the purview of reference (d), and land use decisions, including development of Integrated Cultural Resource Management Plans and Integrated Natural Resource Management Plans.

   b. Planning and consultation to comply with this instruction is an ongoing requirement that will be incorporated into all DON actions.

   c. Consent, approval, or formal agreement is not necessary to satisfy consultation requirements; however, the DON is committed to developing and maintaining long-term working relationships of respect, trust, and cooperation with Indian tribes and NHOs. DON commands should also consider the impact of reaching (or not reaching) agreement on project permitting requirements.
6. **Policy.** It is DON policy to:

   a. Consult with Indian tribes and NHOs as provided by law on all issues impacting Indian lands, properties of traditional religious and cultural importance to Indian tribes or NHOs, cultural items subject to reference (d), rights protected under treaties, and issues of concern to Indian tribes and NHOs;

   b. Conduct consultation on a government-to-government basis in recognition of Tribal 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 (o) and enclosure (1);

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

   f. Protect culturally sensitive information from public disclosure in accordance with references (a) and (c), and consult in good faith with Indian tribes and NHOs to take all available steps to protect sensitive information; and

   e. Consult with non-federally recognized Indian tribes, traditional cultural leaders, and other Native Americans under reference (a) and other applicable statutes and regulations.

7. **Responsibilities.** See enclosure (2).

8. **Delegation of Authority.** ASN (EI&E), Chief of Naval Operations, and the Commandant of the Marine Corps may delegate responsibilities assigned in this instruction, as appropriate.
9. Records Management

   a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page: https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx

   b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.

   PHYLLIS L. BAYER
   Assistant Secretary of the Navy
   (Energy, & Installation Environment)

Distribution:
Electronic only, via Department of the Navy Issuances Web site http://doni.documentservices.dla.mil
1. 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. Commands should establish and maintain relationships with Indian tribes and NHOs outside of project-specific consultations to build trust, establish consultation protocols, and facilitate communication and understanding.

   a. Consult tribe information clearinghouses such as the National Congress of American Indians to maintain current knowledge of federally recognized tribes.

   b. Identify official points of contact prior to initiating consultation with Indian tribes and NHOs (or lineal descendants in the case of reference (d) actions) who may have an interest in the matter under consultation. Tribal land boundaries have shifted and Indian tribes have migrated from their ancestral lands. Indian tribes that seem far removed geographically may have an interest in properties, sites, cultural items and actions at present-day DON installations or off DON installations where a DON proposed action is planned.

   c. Commanders and commanding officers fulfill prominent roles 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.

   d. Commanders and commanding officers may delegate follow-up consultation functions, but only if the Indian tribes/NHOs have also delegated those functions to their staff. Designated DON staff at the local or regional level may negotiate details and engage in routine consultation with tribal government or NHO staff persons or others delegated by tribal or NHO authorities.

   e. It may be necessary to negotiate the time and place for consultation, recognizing that many Indian tribes and NHOs do
not have an operating budget that will pay for representatives’ transportation and per diem, and representatives may have existing work, community, and family commitments. Consultation should take place at a time and in a location convenient for tribal and NHO representatives.

f. Scheduling of consultation is dependent upon several factors. Consultation may require multiple meetings over a period of months and 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 DON has an urgent need for expeditious consultation, let this fact be known to tribal and NHO contacts and negotiate an expedited timetable.

g. 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 opinions or testimony.

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

a. Tribal and NHO 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 or NHO to decide upon appropriate attendees such as tribal elder(s), traditional religious leader(s), and translators.

c. Tribal and NHO representatives may be reluctant to discuss culturally sensitive information outside of the tribe or NHO, 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. These differences may result in varying titles or forms of address such as “Chief,” “Governor,” “Chairman,” “President,” and “Madame Chair” and many 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.

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

4. 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 and NHOs is not required to conclude the consultation process and to proceed with a project or action on Federal land, the record must show that DON has followed all relevant procedures and given careful consideration to all the available evidence and points of view before making the final decision. DON commands should also consider the impact of reaching (or not reaching) agreement on project permitting requirements.

5. The decision should be placed into the administrative record. The decision should explain the reasoning as well as the data compiled, but exclude any direct reference to culturally sensitive information provided by tribes or NHOs or information sensitive to the naval mission.
Department of the Navy (DON) Responsibilities for Consultation with Federally Recognized Indian Tribes, Alaska Native Tribal Entities, and Native Hawaiian Organizations

1. The Assistant Secretary of the Navy (Energy, Installations and Environment) (ASN(EI&E)) will:

   a. In accordance with reference (j), act as the principal advisor to the Secretary of the Navy for issues pertaining to Indian tribes and NHOs;

   b. Establish policy and guidance for issues pertaining to Indian tribes and NHOs;

   c. Act as the DON’s principal liaison with the Secretary of Defense, other Military Departments, other Federal agencies, Congress, Tribal Governments, and the public with respect to significant issues involving Indian tribes or NHOs affecting DON;

   d. Provide oversight for DON consultation with representatives of Indian tribes and NHOs; and

   e. Provide oversight for training of DON personnel regarding cultural sensitivity and legal responsibilities in consultation with Indian tribes and NHOs.

2. The Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC) will:

   a. Implement references (a) through (o) throughout their respective Services;

   b. Ensure that Regional Commanders and Installation Commanding Officers with consultation responsibilities develop and issue written guidance that identifies local and regional concerns of Indian tribes and NHOs, provides points of contact, and outlines procedures for routine consultation;

Enclosure (2)
c. Ensure that such written guidance has been developed in consultation with Indian tribes and NHOs who have rights under treaties on DON lands or have an interest in historic properties or cultural items on DON lands;

d. Provide fiscal support for implementation of DON consultation policy and ensure that subordinate commands plan, program, and budget for studies, mitigation, access, training, and all required consultation actions;

e. Provide for necessary staffing to assist commanders, commanding officers, regional commanders and chain of command to carry out consultation responsibilities with Indian tribes and NHOs;

f. Provide training for all levels of command regarding the traditions, cultures, and issues of Indian tribes and NHOs, in coordination with existing inter-service training opportunities; and

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