

## **Federal Agency – Tribal Consultation Analysis**

In SECY-09-0180<sup>1</sup>, Nuclear Regulatory Commission (NRC) staff examined Tribal Policies in place at other Federal agencies, and found that the extent of resources and staff supporting those policies varied, depending on the size of the agency as well as the legal authority and underlying mission of each agency. In November 2009, President Obama issued an Executive Memorandum on Tribal Consultation<sup>2</sup>, underscoring the importance of President Clinton's Executive Order (EO) 13175 (2000)<sup>3</sup>, on the same topic. The 2009 Memorandum added new reporting requirements for agencies. As a result, many Federal agencies have either issued new or updated Tribal Consultation policies and implementation plans. Therefore, staff conducted another review of Federal agency policies as part of its response to COMWDM-12-0001<sup>4</sup>, to reflect current trends in policy and implementation.

Staff reviewed Tribal Policy Statements of Executive Departments, including subordinate agencies and independent agencies.<sup>5</sup> The following is a summary of staff findings, including government-wide trends regarding policy and implementation resources, along with unique programs or noteworthy considerations found among Federal agencies. The discussion also provides a more detailed summary of Tribal policies in place at agencies that are either similar in mission or organizational structure to the NRC, or who have cooperative agreements and routinely interact with the Commission.

### **Government-Wide Trends**

Staff's current analysis of Tribal Consultation policies found that policies and plans vary in substance and supporting resources, but include the following common themes: (1) enhancing government-to-government relations; (2) meeting trust responsibilities with Tribes; (3) respecting Tribal resources and properties of traditional cultural or religious significance; (4) recognizing rights of self-governance and determination; and (5) fully integrating the principle and practice of meaningful consultation and communication with Tribes. While some Tribal policy statements only identify broad principles without providing implementation details, others enumerate programmatic information. Subordinate agencies of some Executive Departments

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<sup>1</sup> Nuclear Regulatory Commission (Dec. 11, 2009), *SECY-09-0180: NRC Interaction with Native American Tribes*.

<sup>2</sup> White House (Nov. 5, 2009). *Presidential Memorandum to Department Heads on Tribal Consultation*.

<sup>3</sup> Executive Order 13175 (Nov. 6, 2000). *Consultation and Coordination with Indian Tribal Governments*.

<sup>4</sup> Nuclear Regulatory Commission (May 22, 2012), *Staff Request Memorandum (SRM-COMWDM-12-0001) from Commission to the EDO*.

<sup>5</sup> Fifteen Departments (which included many subordinate agencies) and three independent agencies' Tribal consultation policies were examined. (These Departments and independent agencies included: Departments of Agriculture, Commerce, Defense, Education, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Veterans Affairs, the Federal Communications and Federal Energy Regulatory Commissions, the Environmental Protection Agency, the Small Business Administration, and the Advisory Council on Historic Preservation.) Staff examined their consultation and implementation plans, if available. Some departments/agencies' policies/plans are only in draft form or on restricted government websites. Staff also reviewed the White House's 2012 Tribal Communities Accomplishments Report (because OMB's raw data on Departments' Tribal policies/programs is not otherwise available, it is assumed that OMB's data is reflected in the White House's report) and the National Congress of American Indians' (NCAI's) December 2012 update on Implementation of EO 13175, and its 2012 Paper entitled "Consultation and High Energy Level Engagement: Strengthening our Nation-to-Nation Relationship."

have issued their own Tribal policies, mirroring their core principles of the broader agency wide-policy. The following table provides an overview of Federal agencies, along with information regarding their respective Tribal policy statements and implementation plans.

Table 1: Federal Agency Tribal Policies and Implementation Plans

<b>AGENCY</b>	<b>POLICY</b>	<b>IMPLEMENTATION PLAN</b>	<b>POLICY LAST UPDATED</b>
U.S. Department of Agriculture (USDA)	YES	YES	01/18/2013
U.S. Department of Commerce (DOC)	YES	YES	05/21/2013
U.S. Department of Defense (DOD)	YES	YES	2006
U.S. Department of Education (ED)	YES (updating)	YES	12/06/2001
U.S. Department of Health and Human Services (HHS)	YES	YES	12/24/2010
U.S. Department of Homeland Security (DHS)	YES	YES	05/11/2011
U.S. Department of Housing and Urban Development (HUD)	YES (updating)	YES (final release pending)	6/28/2001
U.S. Department of Interior (DOI)	YES	YES	12/01/2011
U.S. Department of Justice (DOJ)	FINAL DRAFT	YES	10/01/2012
U.S. Department of Labor (DOL)	FINAL DRAFT	YES	12/03/2012
U.S. Department of State (DOS)	YES	YES	02/04/2011
U.S. Department of Transportation (DOT)	YES	YES	03/2010
U.S. Department of Treasury (TREAS)	INTERNAL DRAFT	NO	07/23/2010
U.S. Department of Veteran Affairs (VA)	YES	YES	02/04/2011
Small Business Administration (SBA)	INTERNAL DRAFT	DRAFT	N/A
Advisory Council on Historic Preservation (ACHP)	YES	YES	05/04/2011
U.S. Department of Energy (DOE)	YES	DRAFT	01/2006
Environmental Protection Agency (EPA)	YES	YES	05/04/2011
Federal Energy Regulatory Commission (FERC)	YES	NO	07/23/2003
Federal Communications Commission (FCC)	YES	YES	6/23/2000
United States Army Corps of Engineers (USACE)	DRAFT	YES (submitted through DoD)	11/2012

Staff noted the varied and unique characteristics of Department and agency Tribal policies and plans.

Some agency Tribal policy statements lacked programmatic details, relying instead on supplemental consultation guidance documents to outline program goals. Other agency Tribal policies were more detailed. Some unique aspects of these policies include:

- Establishing an Indian Policy training program for personnel working with Tribes (DOE);
- Incorporating Tribal consultation and coordination requirements into Senior Executive Service training (USDA);
- Fostering contract and hiring preferences for Tribal members (DOT);
- Providing Tribes with information to bid on agency contracts and share information on agency programs, policies and procedures law (USACE);
- Outlining duties of Departmental designated officials (DOL);
- Outlining the steps that staff should take when consulting with Tribes (HHS, HUD, DOL and EPA);
- Working with Tribal governments to develop case studies and best practices in transportation planning and highway safety (DOT);
- Partnering with Tribes on studies, projects, programs and permitting procedures is supported and promoted where permissible under the law (USACE);
- Consulting with Tribes on Departmental and agency budget formulation, and holding an annual budget policy and consultation session to give Tribes the opportunity to present their budget recommendations and requests (HHS);
- Developing departmental metrics to measure performance and accountability of Tribal interactions (HHS and DOD); and
- Implementing the requirement to consult with Alaska Native Corporations in a manner as close as possible to consultations with federally-recognized Tribes in Alaska (DOC).

### *Section 106 Process*

Much of the NRC's Tribal consultation occurs under Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA). Staff found that most agency-wide Tribal policies and plans include limited or no discussion of the NHPA's Section 106 process. The Advisory Council on Historic Preservation's (ACHP) Tribal policy statement, however, provides detailed discussion of the Section 106 consultation process that is found within the agency's governing regulations. In comparison, the USACE's Tribal Policy Statement does not mention Section 106 within its Tribal consultation policy, but references the Native American Graves Protection and Repatriation Act (NAGPRA). NAGPRA establishes the rights of Indian Tribes and Native Hawaiian organizations to claim ownership of certain "cultural items," and requires Federal agencies to work with appropriate Tribal organization to repatriate such holdings.<sup>6</sup> Staff review also found that guidance documents and other resources at a limited number of agencies such as the Bureau of Land Management (BLM) and the USACE, provided detailed information about the NHPA Section 106 consultation process.

Although the BLM does not have a Tribal policy statement, Section 106 is discussed in great detail within BLM's *Manual 8100 - Foundations for Managing Cultural Resources* which provides staff guidance for Tribal interaction. Notable Federal guidance documents providing detailed

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<sup>6</sup> The Secretary of the Interior's implementing regulations for NAGPRA can be found at 43 CFR Part 10. Detailed information regarding NAGPRA and its implementation can be found on the National Park Service Web site at: <http://www.nps.gov/nagpra/mandates/25usc3001etseq.htm>.

information on Section 106 include the March 2013 Council on Environmental Quality and ACHP: “Handbook for Integrating [the National Environmental Policy Act of 1969 (NEPA)] and Section 106.” Also noteworthy is ACHP’s Tribal consultation handbook entitled “Tribal Consultation in the Section 106 Review Process: A Handbook,” which is specific to the 106 process.

### *Reducing Regulatory Burden and Increasing Federal Partnerships*

President Obama’s 2009 Executive Memorandum on Tribal Consultation not only required Federal agencies to develop Tribal Policies and implementation plans, but also encouraged them to reduce regulatory overlap that causes undue burden on Tribes. Subsequently, departments and agencies have sought to coordinate with Federal partners on activities that may have Tribal implications or require Tribal consultation and coordination, including activities related to: education, farming, health care, environmental protection, military training, commerce, and housing.

The White House’s 2012 Tribal Communities Accomplishments report outlined the following seven areas of Federal success: protecting the environment, investing in Tribal education, contributing to public safety, combatting violence against women, promoting healthcare, promoting economic development, and strengthening government-to-government relations. Federal cooperation on behalf of Tribal welfare was identified in each of the aforementioned areas.

In December 2012, the Departments of Defense, Interior, Agriculture and Energy and the ACHP entered into a five-year Memorandum of Understanding (MOU) regarding interagency coordination and collaboration for the protection of Indian Sacred sites. The MOU is effective until December 2017. Other Federal agencies may join the MOU at any time before its expiration.

The Administration continues to encourage multi-agency collaborations with Tribal governments to develop comprehensive policy for Indian Country. In June 2013, President Obama issued Executive Order 13647, “Establishing the White House Council on Native American Affairs.”<sup>7</sup> The Order establishes the White House Council on Native American Affairs and outlines a national policy for engaging Tribes. The Order seeks engagement by Federal government agencies in true and lasting Nation-to-Nation relationships with Tribes that result in coordinated and effective efforts by an agency in carrying out its legal obligations and trust responsibilities.

### ***Tribal Policy Implementation Resources***

*Office of Intergovernmental Affairs* – In most cases, Tribal consultation responsibilities were assigned to the agency’s Office of Intergovernmental Affairs (OIA), with varying resources and dedicated Tribal staff. In many instances, Tribal liaisons were tasked with the responsibility for overseeing the consultation process. Agencies with Tribal liaisons include DHS, DOC, DOE, DOI, DOL, and DOT. Other agencies designated a Tribal official within OIA, who reports to the Assistant Secretary for Congressional Affairs and Tribal correspondence is treated as Congressional correspondences (DOE, DOL and DOT).

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<sup>7</sup> See 78 FR 39539. <http://www.gpo.gov/fdsys/pkg/FR-2013-07-01/pdf/2013-15942.pdf>.

HHS has established a Tribal office within OIA and assigned a Principal Advisor on Tribal Affairs to the Office of the Secretary. Tribal Affairs staff works with the Tribal representatives of its subordinate agencies and they coordinate Annual Tribal Consultation Sessions. HHS also established the Intradepartmental Council on Native American Affairs to coordinate activities related to Indian Country, which meets no less than twice a year. In 2010, HHS established the first cabinet level advisory committee composed of Tribal leaders from across the country, the Secretary’s Tribal Advisory Committee (STAC). STAC’s primary mission is to seek consensus, exchange views, share information, provide advice, provide recommendations, and facilitate interaction on intergovernmental responsibilities and the administration of HHS programs that involve applicable statutes, regulations and Executive Orders. STAC conducts forums and meetings, and holds conversations between Federal officials and elected Tribal leaders in their official capacity.

*Separate Tribal Affairs Offices* – Some Departments or agencies have established a designated office of Tribal Affairs. USDA and HUD are prominent examples. USDA’s Office of Tribal Relations concurs on clearance processes, reviews regulations, and provides guidance on Tribal Impact Statements (which are required by its regulations, much like USDA’s Civil Rights Statement). The office coordinates Tribal consultation within six subordinate agencies. HUD’s Office of Native American Programs leads Tribal consultation for the department with a staff of 170 at headquarters and six regional offices.

The 21 agencies reviewed by NRC staff have a designated staff member as a Tribal point of contact and 14 have Tribal offices, as presented in the table below.

Table 2: Agencies with Tribal Office or Staff

<b>AGENCY</b>	<b>TRIBAL POC</b>	<b>TRIBAL OFFICE</b>
USDA	YES	YES
DOC	YES	NO
DOD	YES	NO
ED	YES	YES
HHS	YES	YES
DHS	YES	NO
HUD	YES	YES
DOI	YES	YES
DOJ	YES	YES
DOL	YES	NO
DOS	YES	YES
DOT	YES	NO
TREAS	YES	NO
VA	YES	YES
SBA	YES	YES
ACHP	YES	YES
DOE	YES	YES
EPA	YES	YES
FERC	YES	NO
FCC	YES	YES
USACE	YES	YES

*Tribal Coordination and Outreach, and Listening Sessions* – All Departments and agencies, including those with draft policies/plans, coordinate with and outreach to Tribes. The Department of Commerce conducted two Tribal webinars during September 2012 to receive final input and comments on the proposed Tribal Consultation and Coordination Policy for the Department of Commerce.<sup>8</sup> Other agencies experimented with webinars and other online technology to permit Tribal leaders to participate in consultations without incurring the travel costs and time commitments of in-person meetings. Although teleconferences and webinars may suffice for consultation, most Tribal liaisons at Departments and agencies expressed the opinion that face-to-face meetings with Tribes were essential. They suggest that agency budgets include annual funding for Tribal meetings, similar to funding meetings with foreign governments.

### ***Agencies of Similar Function, Mission or Independent Nature to NRC***

Staff closely examined the Tribal consultation policy statements at the following agencies because of their regulatory function, mission, independent nature, or working relationship with NRC: DOE, FERC, FCC, EPA, DOI/BLM, and DOD/USACE.

#### *Department of Energy*

DOE issued its first American Indian Policy in 1992, along with an order that established the responsibilities and roles of DOE management in carrying out its policy. In 1998, at the request of Indian Tribes, the American Indian Policy was revised. In 2000, DOE issued the American Indian and Alaska Natives Tribal Government Policy (as amended in 2006). This Policy was intended to ensure an effective implementation of a government-to-government relationship with American Indian and Alaska Native Tribal governments. The policy recognizes the Federal trust relationship to Tribes, as well as other Federal responsibilities. The policy demonstrates a commitment to: establishing government-to-government relations with Tribes, ensuring Indian Tribes are involved into the decision making process, and ensuring DOE's compliance with Federal laws and Executive Orders that assist in the preservation and protection of historic and cultural sites and religious practices.<sup>9</sup> In 2008, DOE issued Order 144.1, "Department of Energy American Indian Tribal Government Interactions and Policy," as well as a framework on how to interact with Tribes.<sup>10</sup>

Tribal Official – The Deputy Assistant Secretary for the Office of Intergovernmental Affairs is the designated Tribal official for DOE. The Deputy Assistant Secretary carries out the decisions and resolutions of the Tribal Steering Committee and coordinates Tribal consultation with agency programmatic Tribal liaisons. The Deputy Assistant Secretary also submits an annual

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<sup>8</sup> The final *Tribal Consultation and Coordination Policy for the U.S. Department of Commerce* can be found online at: <http://www.commerce.gov/office-secretary/native-american-affairs> (and see 78 FR 33331). The U.S. Census Bureau, a subordinate agency, has a designated tribal liaison and has developed a *Handbook for Consultation with Federally-Recognized Indian Tribes*. Also, the National Oceanic and Atmospheric Administration (NOAA), a subordinate agency, designated a tribal liaison and is developing a handbook, *NOAA Procedures for Government-to-Government Consultation with Federally-Recognized Indian Tribes and Alaska Natives*.

<sup>9</sup> The U.S. Department of Energy American Indian and Alaska Native Tribal Policy can be found online at: [http://apps1.eere.energy.gov/tribalenergy/pdfs/doe\\_indian\\_policy2006.pdf](http://apps1.eere.energy.gov/tribalenergy/pdfs/doe_indian_policy2006.pdf)

<sup>10</sup> DOE Order 144.1 can be found online at: <https://www.directives.doe.gov/directives/0144.1-BOrder-AdmChg1/view>.

report detailing DOE's interactions with Tribal governments to the Office of Management and Budget (OMB).

Tribal Affairs Office – DOE's Tribal Affairs Office serves as the Department liaison to Tribal governments and organizations. DOE's Tribal Steering Committee organizes agency consultation for program offices. The Committee (1) coordinates on Tribal energy issues across affected DOE programmatic offices; (2) provides a formal mechanism to help DOE Tribal liaisons deal promptly with Tribal energy concerns, to identify opportunities for synergy across programmatic sectors within DOE, and to ensure that Tribal rights, including concerns regarding cultural resources management, are considered; (3) shares information among members and resolves problems affecting members; (4) makes recommendations directly to the Deputy Assistant Secretary on implementing Tribal energy policies, procedures, or requirements; (5) conducts regular conference calls or meetings with headquarters and Tribal government points of contact; and (6) reduces regulatory, statutory, and/or procedural impediments to the Department working directly with Tribes.

Tribal Program – The Energy Policy Act of 2005 (Public Law 109-58, Title V) authorized DOE to establish the Office of Indian Energy. The Office is responsible for energy planning, education, management, and programs that assist Tribes with energy development on Indian lands. The Office of Indian Energy Director is also authorized to provide grants, including formula grants or grants on a competitive basis to eligible Tribal entities, that has to date been implemented by DOE's Office of Energy Efficiency and Renewable Energy's Tribal Energy Program.

Resources – The Department offers a variety of resources for both Tribes and staff, including Web-based materials, publications, site-specific training and outreach. The management of nuclear waste falls within DOE's jurisdiction and involves government-to-government interaction with Tribes. The Office of Environmental Management (EM) oversees the cleanup of nuclear waste at sites and facilities throughout the country. EM frequently interacts with Tribal communities located near nuclear weapons production sites. The EM program includes Tribes in pertinent cleanup decisions through cooperative agreements, agreements-in-principle and memoranda-of-understanding. EM engages in several cooperative agreements and special initiatives with Tribes.<sup>11</sup>

Outreach – The Department of Energy's Office of Indian Energy Policy and Programs held eight Tribal Roundtables from March 16, 2011, to April 14, 2011. The Udall Foundation's U.S. Institute for Environmental Conflict Resolution facilitated the roundtable discussions. The Senior Advisor for EM held two Tribal Policy Leader Dialogues in conjunction with meetings of the State and Tribal Government Working Group in 2012 to address key issues at EM sites.

### *Federal Energy Regulatory Commission*

The Federal Energy Regulatory Commission (FERC) issued its Policy Statement on Consultation with Indian Tribes (FERC Policy Statement) in 2003, to facilitate Tribal involvement in areas within FERC's regulatory jurisdiction. The FERC Policy Statement stemmed from Tribal issues related to hydroelectric licensing. The FERC Policy Statement recognizes the unique relationship between the federal government and Indian tribes and acknowledges the

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<sup>11</sup> Additional information regarding the DOE's Office of Environmental Management's tribal programs can be found online at: <http://www.em.doe.gov/tribalpages/initiatives.aspx>.

agency's trust responsibility to Indian Tribes. FERC established a Tribal Liaison position and announced principles for the hydroelectric licensing program in the policy. FERC follows a case-by-case approach in interacting with Tribes, much like NRC.

Tribal Liaison – FERC has one Tribal liaison responsible for educating FERC staff about Tribal governments and cultures, educating Tribes about FERC's various statutory functions and programs, working with Tribes during FERC proceedings, ensuring Tribal views are appropriately considered at every step of the process, serving as a guide for the Tribes to Commission processes, and meeting consultation requirements.

### *Federal Communications Commission*

In June of 2000, the FCC adopted a policy statement on its government-to-government relationship with Indian Tribes. The FCC *Tribal Policy Statement* (FCC Policy Statement) recognizes Tribal sovereignty, federal trust principles, and the importance of FCC consultation with federally-recognized Tribes. It acknowledges the principles of Tribal self-governance and recognized the rights of Tribal governments to set their own communications priorities and goals for the welfare of their membership. The FCC's *Tribal Policy Statement* enumerated goals and principles and also guides the FCC's government-to-government relationship with Indian Tribes. The FCC has made progress to address the lack of communications services throughout Indian Country.

Office of Native Affairs and Policy – The FCC created its Office of Native Affairs and Policy in 2010, defining the Office's role and responsibilities as: (1) ensuring robust government-to-government consultation with Federally-recognized Tribal governments and other Native organizations; (2) working with Commissioners, Bureaus, and Offices within the FCC, as well as with other government agencies and private organizations, to develop and implement policies for assisting Native communities; and (3) ensuring that Native concerns and voices are considered in all relevant FCC proceedings and initiatives.

Tribal Agenda – The FCC created the Office of Native Affairs and Policy to more fully realize the FCC's long-standing commitment to the trust relationship between the federal government and Indian Tribes. FCC's comprehensive universal service reform has developed policies and new programs for Indian Tribes including Tribal-specific provisions in the Connect America Fund, and the Lifeline and Link Up programs. The extension of the established Tribal Priority rules is also intended to enable Indian Tribes to obtain full power commercial FM radio licenses more easily.

The Office of Native Affairs and Policy has made FCC's consultation and training seminar initiatives in Indian Country more responsive to stated needs and requests. In 2012, for example, the FCC hosted six training and consultation seminars on broadband and telecommunications on Tribal lands and in remote regions. As part of these seminars, the Office of Native Affairs and Policy also introduced its Native Learning Lab, which provides interactive, computer-based online tutorials to help people access FCC data and information and comment on FCC regulatory proposals.

In March of 2011, the FCC Chairman appointed Tribal and senior FCC staff to the FCC-Native Nations Broadband Task Force. The Task Force brings Native concerns to FCC rulemaking proceedings on broadband and promotes the development of broadband infrastructure on Tribal lands.

Resources – The FCC is currently revising its public Web site to provide an overview of Tribal initiatives.<sup>12</sup>

Outreach – The FCC conducts consultation and training, individual meetings, and listening sessions with Tribes on communications policy issues affecting Indian Country, including wire line siting, wireless telecommunications, and radio broadcast.

### *Environmental Protection Agency*

The EPA established its Indian policy in 1984 and reaffirmed its commitment to Tribes on May 4, 2011, with release of its “*Policy for Consultation and Coordination with Tribes.*”<sup>13</sup> The agency’s policy recognizes the Federal Trust responsibility and commits to protecting the environmental interests of Indian Tribes. The policy underscores the importance of working with Tribes on a government-to-government basis, and making policy and managing programs for Tribal reservations consistent with EPA standards. EPA’s comprehensive Tribal program maintains designated staff in both headquarters and regional offices.

NRC MOU – In 2002, NRC and EPA signed an MOU related to the decommissioning and decontamination of NRC-licensed sites which identifies the responsibilities of each agency. The MOU, although not exclusive to Tribal interactions, demonstrates the close working-relationship between NRC and EPA. Except for Section VI, which addresses corrective action under the Resource Conservation and Recovery Act (RCRA), this MOU is limited to the coordination between EPA, when acting under its Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) authority, and NRC, when a facility licensed by the NRC is undergoing decommissioning, or when a facility has completed decommissioning, and the NRC has terminated its license.

Tribal Program – The EPA established the American Indian Environmental Office to manage the EPA National Indian Program. The American Indian Environmental Office resides in the Office of International and Tribal Affairs (OITA). The Assistant Administrator for OITA is the designated Tribal Consultation Official for EPA. The Deputy Assistant Administrator for OITA executes the responsibilities of the Indian Program Policy Council (IPPC). The IPPC is comprised of Senior Executive Service level employees. The IPPC ensures EPA senior management is involved in identifying and resolving agency-wide Indian program policy issues and to implement tribal consultation at an early stage. Senior Executive Service membership of OITA is also responsible for submitting the annual report of interactions with Tribal governments to OMB.

The agency’s Tribal program provides grant funding for Tribal environmental programs and provides policy guidance and training to both EPA employees and Tribal governments on Tribal-related issues. The EPA also established the National Tribal Operations Committee (NTOC), which is composed of the EPA Administrator and senior-level employees and 19 elected Tribal leaders. The NTOC is a forum to discuss policy and resource matters related to Tribal capacity building, and environmental program development and implementation in Indian Country.

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<sup>12</sup> The FCC’s Tribal homepage can be viewed at: [www.fcc.gov/native](http://www.fcc.gov/native).

<sup>13</sup> The final EPA policy on consultation and coordination with Tribes can be found at <http://www.epa.gov/indian/pdf/cons-and-coord-with-indian-tribes-policy.pdf>.

Tribal Office – The 10 EPA Regions have designated Tribal Offices responsible for Tribal issues that arise within the region. Many of the regions have published practices and protocols specific to the region that govern interaction with Tribal governments. Regional Tribal Operations Committees exist to serve as regional equivalents of the NTOC. EPA has developed specific tribal partnership programs, for example the National EPA-Tribal Science Council, Tribal Water Council, and the National Tribal Air Council.

Tribal Resources – The EPA offers a wide array of resources related to Tribal issues. The agency developed the online American Indian Tribal Portal, offering information to Tribes regarding EPA contacts, environmental laws and regulations, Tribal organizations, maps, grants and training opportunities. Online and classroom training opportunities are available to EPA staff and Tribal members. To support Tribes consultation efforts, EPA developed the Tribal Consultation Opportunities Tracking System (TCOTS) as a one-stop resource for tribes. This system publicizes upcoming, current, and archived EPA Tribal consultations on its Tribal Portal webpage <http://tcots.epa.gov>.

In 2012, EPA launched the Tribal ecoAmbassadors program to develop local solutions to environmental issues and to expand research opportunities at Tribal Colleges and Universities (TCUs). Professors at TCUs work with students, Tribal governments, and EPA scientists to solve environmental and public health issues.

Outreach – According to EPA data, it has conducted Tribal consultation outreach 121 times from August 2011-2012 (including teleconference and in-person meetings). EPA solicits feedback from Tribes during consultations.

### *Bureau of Land Management*

BLM has a Tribal consultation Web site and Tribal vision statement, similar to a Tribal Policy Statement.<sup>14</sup> BLM defers to DOI's "Policy on Consultation with Indian Tribes."<sup>15</sup>

NRC MOU – NRC and BLM entered a cooperative agreement supporting common goals in furthering each agency's mission and responsibilities related to the development of uranium or thorium resources on public lands, including Federal mineral estates under the administration of the BLM. The cooperating agency relationship established through the MOU is governed by the applicable statutes, regulations, and policies of both agencies and is intended to provide an efficient means for both agencies to fulfill their NEPA requirements; to increase communication; to provide an avenue for the exchange of information for concurrent reviews; and to establish the respective agency roles and responsibilities.

BLM guidance – BLM guidance to its employees can be found in BLM manuals and handbooks that cover a variety of issues. Guidance related to BLM Tribal interactions is contained in

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<sup>14</sup> BLM's Tribal consultation page can be found at: <http://www.blm.gov/mt/st/en/prog/tribal.html> and its vision statement page can be found at:

[http://www.blm.gov/pgdata/etc/medialib/blm/mt/blm\\_programs/tribal\\_consultation.Par.63063.File.dat/MT-DK%20Tribal%20Vision%20Statement.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/mt/blm_programs/tribal_consultation.Par.63063.File.dat/MT-DK%20Tribal%20Vision%20Statement.pdf).

<sup>15</sup> DOI's "Policy on Consultation with Indian Tribes" can be found at:

<http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=269697>

multiple documents, including the 8100 manual, “The Foundations for Managing Cultural Resources,” and H-8120-1 handbook, “General Procedural Guidance for Native American Consultation.”<sup>16</sup>

BLM Programmatic Agreement (PA) - In 2012, the BLM Director, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers (SHPO) signed a national PA explicitly framed "to emphasize the common goal of planning for and managing historic properties under the BLM's jurisdiction or control in the public interest." Section 5.b. of the PA calls for cooperation and enhanced communication among State Historic Preservation Officers and BLM State offices as well as "a protocol specifying how they will operate and interact under this agreement." Each BLM State office operates under the PA (Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming) and has a State-specific BLM-SHPO Protocol. The MOU seeks to improve interagency communication, facilitate sharing of special expertise and information, and coordinate the preparation of studies, reports, and environmental documents associated with NRC licensing actions and BLM regulation of public lands.

Tribal Office – The primary DOI point of contact for Tribal consultations lies within the Secretary of Interior’s Office of Intergovernmental Affairs. The Office engages Tribal representatives at each of its dependent agencies, including BLM.

Consultation Activity – BLM held 100 Tribal consultation sessions in 2011 and 2012 collectively.

#### *United States Army Corps of Engineers*

The USACE submitted its implementation plan to OMB through DoD on January 7, 2010, and is developing a second draft. The USACE’s program incorporates DoD and Department of the Army policies, along with its own guidance documents. The primary goals of USACE’s Tribal program are to consult with Tribes that may be affected by USACE projects or policies and to partner with Tribes on water resources projects. It has over 20 MOUs, MOAs, and PAs with Tribal governments.

USACE and NRC have a standing MOU on environmental reviews related to the issuance of authorizations to construct and operate nuclear power plants. The MOU was intended to streamline respective related regulatory processes of each agency. Cooperation between the USACE and the NRC ensures each agency’s review responsibilities under the NEPA and other related statutes are met in connection with the authorizations required to construct and operate nuclear power plants licensed by the NRC. The NRC licenses reactors according to its regulations such that the utilization of special nuclear material will be in accordance with the common defense and security and will provide adequate protection to the health and safety of the public. USACE administers a regulatory program to protect the Nation’s aquatic resources, including wetlands, under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.<sup>17</sup>

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<sup>16</sup> Information related to BLM Manuals and Handbooks can be found on the BLM Web site at: [http://www.blm.gov/wo/st/en/prog/planning/planning\\_overview/guidance/manuals\\_and\\_handbooks.html](http://www.blm.gov/wo/st/en/prog/planning/planning_overview/guidance/manuals_and_handbooks.html) .

<sup>17</sup> Sections [check citations 10 and 404] may in certain instances require proposed nuclear power plants to submit more than one permit application.

Tribal Office/ Liaison – USACE has a senior Tribal liaison stationed at its headquarters (established in 2003) with over 70 division and regional liaisons stationed throughout the country.

Outreach – Since 2009, the USACE has held a significant number of ongoing consultation meetings along the Columbia River. The USACE has held national consultations on reissuance of nationwide permits in 2006 and 2011. The USACE’s largest regional consultations routinely take place along the Missouri River with all Lakota, Dakota and Nakota Nations, as well as upriver participating Tribes. Regional consultations on Missouri River flooding in Montana, North Dakota, South Dakota, Nebraska, and Kansas and on fires and flooding in New Mexico, Missouri, Kentucky and Tennessee have been held. In 2012, USACE logged more than 1400 Tribal consultations nationwide.

### ***Conclusion***

A comparative analysis of Tribal consultation policies and plans from several federal agencies shows that policies vary in substance and supporting resources. Differences stem primarily from the identified mission and priority of each agency. During the development of the NRC’s draft Tribal Policy Statement, the staff has considered policies and implementation strategies of other Federal agencies, particularly those agencies that have cooperating relationships with or similar missions to the NRC.