

Tribal Protocol Manual: Guidance for NRC Staff — Comment Responses

The solicitation of comments on the NRC Tribal Protocol Manual (the Manual) and suggestions for a Tribal Policy Statement were published on October 12, 2012 in Federal Register Notice [77 FR 62269] for a 180-day public comment period. The NRC received six comment letters on the policy statement and protocol. The commenter mix included two Tribal governments, two mining associations, one inter-Tribal organization, and a Tribal college. The comments received on the October 2012 version of the Tribal Protocol Manual included in Docket ID NRC-2012-0235 are available through any of the methods:

- **Federal rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0235.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.
- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

The comments on the Manual, and NRC responses, were grouped into the following seven topics: (1) NRC Tribal Communication; (2) NRC Tribal Consultation; (3) NRC Tribal resources; (4) Terminology; (5) NRC Map of Tribal Reservations near Nuclear Reactors; (6) Federal-Tribal History; and (7) Contemporary Tribal conditions.

1. NRC Tribal Communication

Comment 1.1. Multiple comments centered on the NRC's process for engaging Tribes, underscoring a need for enhanced communication and protocol for information sharing and consultation. Commenters suggested that NRC should inform Tribes of consultation opportunities in a timely manner during the early stages of the decision-making process on regulatory actions with Tribal implications. Commenters also suggested that the NRC should provide alternative means for participation, including teleconferences and follow-up meetings before the closing of the comment period to understand Tribal input.

Response 1.1. The NRC agrees with this comment. The NRC has revised the Manual to include a definition of consultation as "meaningful and timely discussion with Tribal governments on NRC regulatory actions that have substantial direct effects on one or more Indian Tribes." The NRC adheres to the principles of good regulation — independence, openness, efficiency, clarity, and reliability. The agency puts these principles into practice with effective, realistic, and timely regulatory actions, consistent with its organizational values and open, collaborative work environment. The NRC will establish early communications and begin consultation at the earliest permissible stage.

The NRC will consult in good faith throughout the agency decision-making process, developing and maintaining effective communication, coordination, and cooperation with Indian Tribes.

The NRC conducts outreach to involved parties with respect to draft rules and proposed policy creation, which may include conference calls, open meetings, closed classified meetings (to those who have clearance and need to know) video conferences and “Webinars.” Section 1.F of the Manual has been updated and includes an example of the use of teleconferences by the NRC. The NRC strives to have an open and collaborative working environment and makes an effort to understand the concerns and positions of Tribal governments.

The NRC currently communicates with Tribes on regulatory actions that have substantial direct effects on one or more Indian Tribes, which includes regulatory activities that have Tribal implications, through the appropriate program office, and using staff from the Federal, State, and Tribal Liaison Branch (FSTB) of the Division of Materials Safety, States, Tribal, and Rulemaking; Office of Nuclear Material Safety and Safeguards (NMSS), who serve as staff-level intergovernmental contacts for Tribes. The Draft Policy Statement underscores the NRC’s commitment to communicating effectively with Indian Tribes, noting that the Commission will conduct outreach and engage in consultation, as appropriate (Principles 3 & 4). Additionally, Section 2.H was updated. This Section provides staff guidance on, “Recommended Behaviors and Other Communications Considerations.”

2. NRC Tribal Consultation

Comment 2.1. One commenter suggested that the Manual should provide a definition of consultation and details about what NRC Tribal consultation entails.

Response 2.1. The NRC agrees with this comment and has revised Section 2.B in the Manual. The Manual defines consultation for the NRC as “meaningful and timely discussion with Tribal governments on NRC regulatory actions that have substantial direct effects on one or more Indian Tribes.” The Manual also describes what NRC considers consultation to include: “the Consultation process may include, but is not limited to, providing for mutually-agreed upon protocols, timely communication, coordination, cooperation, and collaboration to provide opportunity for appropriate Tribal officials or representatives to meet with NRC management or staff.”

Government to-government consultation includes interactions between Tribal staff and to NRC staff, as well as interactions between staff and higher-level officials. When representatives of the Federal government and Tribal governments interact on issues within the scope of their authority, the interaction may be considered “government-to-government.” These interactions may include information-sharing meetings, presentations, preliminary discussions, introductory briefings, information-gathering sessions, teleconferences, written correspondence, and telephone conversations between staff-level employees. All of these interactions are important to the NRC meeting its obligation to consult effectively and meaningfully with Tribal governments.

Comment 2.2. Another commenter suggested that the Manual and Policy Statement should also define the unique relationship between the U.S. and Tribes, the Federal trust responsibility.

Response 2.2. The NRC agrees with the comment. The Manual addresses the unique relationship between the U.S. Federal government and Tribes. The Manual included information on how the NRC views its trust responsibility. The draft Tribal Policy Statement includes a discussion of the Federal trust responsibility and the how the NRC exercises its trust responsibility in the context of its authorizing statutes, including Atomic Energy Act (AEA), as amended. The NRC implements any fiduciary responsibility by assuring that Tribal members receive the same protections under its implementing regulations that are available to other persons. The Federal-Indian trust relationship is addressed in Sections 1.A and 1.D of the Manual. In Section 1.D, the manual emphasized the Federal government’s trust responsibility as described in the Supreme Court decision of *Seminole Nation v. United States* (1942). In Section 1.A, the Manual directs the reader to a more detailed analysis of the “Duty of Protection” and the “Federal-Indian Trust Relationship.” A preamble to the Manual has been added that states that the NRC exercises its fiduciary duty in the context of its authorizing statutes, including the AEA. The NRC implements any fiduciary responsibility by assuring that Tribal members receive the same protections under implementing regulations that are available to other persons.

Comment 2.3. Commenters noted that consultation is the cornerstone of the government-to-government relationship between Tribes and the Federal government and that the NRC should recognize the right of each Tribe to set its own priorities and goals in developing, protecting and managing its natural and cultural resources and defer to Tribal policies on confidentiality and management of cultural resources. Commenters also suggested that the NRC should engage in meaningful consultation with Tribes that allows Tribal input in the decision-making process and complies with cultural resource protection laws and Executive Orders. Commenters stated that NRC allow opportunities for Tribes to provide input before final decisions are made on matters that may have Tribal implications, noting that Tribes should be allowed to request consultations. The process for Tribal consultations, according to commenters, should be more transparent.

Response 2.3. The NRC agrees with the comment on the importance of government-to-government consultation and the importance of meaningful consultation and has made changes to the Manual to better address the issues raised in the comments. The NRC voluntarily complies with the spirit of Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments” to strengthen Government-to-Government relationships. The NRC seeks to meet the underlying goals and objectives of the Executive Order during its interactions with Tribal governments. As discussed in response 2.1, the NRC has added a definition of consultation that indicates that the discussions should be meaningful and timely. Section 1.E in the Manual states:

The U.S. government recognizes Tribes as domestic sovereign nations, that is, the United States has acknowledged the inherent authority of Native American Tribes to govern themselves. Absent Congressional action, Tribes possess the right to self-government. The NRC exercises its regulatory authority in a manner

consistent with the fundamental precepts expressed in Executive Order 13175, and supports meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications. Chapter 4 of this Manual at Section 4.G defines and discusses the term Federally-recognized Tribes.

In establishing a government-to-government relationship with federally-recognized Tribal governments, the NRC acknowledges the status of Tribes as domestic dependent sovereign nations, as distinct from that of special interest groups, stakeholders, non-governmental organizations, or members of the general public.

Section 2.C in the Manual, “Protecting Tribal Historic and Cultural Resources,” provides a brief description of Federal statutes that require Federal agencies to consult with Native American Tribes in the areas of historic preservation, natural resource protection and cultural resource protection. The NRC addresses Tribal confidentiality concerns consistent with the National Historic Preservation Act and other relevant statutory authorities. The NRC complies with cultural resource protection laws and the spirit of Executive Order 13175. The NRC recognizes the importance of NHPA [the National Historic Preservation Act], NEPA, and other statutes designed to protect cultural resources. The Manual has been updated to add a discussion of the Nuclear Waste Policy Act of 1982, as Amended. The NRC has regulations, policies and procedures to ensure that agency actions and assisted activities incorporate, as appropriate, actions in compliance with these authorities. The NRC is committed to regular, timely, meaningful and collaborative consultation with Tribal governments and the maintenance and enhancement of productive NRC-Tribal relationships. The NRC considers Tribal input in its decision making process. As an independent regulatory agency that prides itself on openness, the NRC takes an active role in President Obama’s Open Government Initiative, with its focus on open, accountable, and accessible government. Input from Tribal governments is necessary and appropriate in the NRC’s regulatory activities, especially in actions potentially impacting Tribal resources.

3. NRC Tribal Resources

Comment 3.1. Multiple commenters suggested that the NRC should develop Tribal resources for both staff and Tribal use. Commenters suggested that the NRC should appoint an official Tribal liaison and develop outreach and training tools. Comments identified Tribal contact lists, maps and template consultation letters as tools that may enhance the NRC’s Tribal engagement.

Response 3.1. The NRC agrees with the comments; however, these comments do not require changes to the Manual. The NRC continually seeks to expand Tribal resources available to both staff and Tribes. In 2006, the NRC created the position of Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs. The position encompasses many different responsibilities including serving as the NRC’s central point of contact for Tribes. The designated official is supported by NMSS staff who have functional responsibility to serve as intergovernmental liaisons to

Indian Tribes. The Draft Policy Statement notes the role of the aforementioned Deputy as the NRC's Designated Tribal Official, and identifies dedicated Tribal liaisons.

The NRC has developed the Manual as a resource to train the NRC staff that participate in Tribal interactions. The NRC staff maintains a database of Tribal contacts and coordinates with the Bureau of Indian Affairs to make periodic updates. The Tribal Phonebook referenced in the Manual was intended for internal use only and contains personal information which is prohibited from being disseminated to the public. The Manual has been updated to provide reference a link to the National Congress of American Indians Tribal Directory Contact List <http://www.ncai.org/tribal-directory>. The NRC recommends that interested parties visit the Bureau of Indian Affairs (BIA) or U.S. Census websites to locate the most current maps of Tribal reservations and trust lands.

Comment 3.2. One commenter suggested that the NRC should require that staff participating in consultations should attend training on Tribal cultural awareness prior to beginning the consultation. Another commenter recommended that the NRC implement permanent workshops and programs on cultural awareness and Tribal governance.

Response 3.2. The NRC agrees with the importance of increasing cultural awareness and awareness of Tribal governance. However, these comments do not require changes to the Manual.

The NRC does not require its staff to attend training prior to interacting with Tribal representatives. However, training and resources to assist the staff are available to the staff, which may include workshops as necessary to increase cultural awareness and the understanding of Tribal governance. The Manual also is a resource for the NRC staff, in particular Section 2.F discusses Tribal Meeting Etiquette and highlights the communication challenges that may arise from cultural differences and suggests ways such as Cross-Cultural Awareness training that staff can utilize to address these challenges. Additionally, The NRC staff seeks out and attends training on Tribal consultation from other organizations, including the Advisory Council on Historic Preservation, the U.S. Institute for Environmental Conflict Resolution, and Duke University's Nicholas School for the Environment. Cultural awareness is one of many Tribal issues covered in the aforementioned training.

Comment 3.3. Two commenters requested that the NRC develop a trustworthy resource for Tribes to understand the NRC and the NRC processes.

Response 3.3. The NRC agrees with the comment. The comment does not apply to the Manual, so no changes were made to the Manual. The NRC has a number of references that provide background information on the NRC, NRC processes, and public involvement in the NRC's regulatory process. Information about the NRC and NRC processes include the following: 1) NUREG/BR-0099, Fact Sheet, Revision 13, "United States Nuclear Regulatory Commission" ([ML12152A293](#); March 2010), 2) NUREG/BR-0164, Revision 9, "NRC: Independent Regulator of Nuclear Safety" ([ML12335A261](#); June 2012), 3) NUREG/BR-0215, Revision 2, "Public Involvement in the Nuclear Regulatory Process" ([ML052640471](#); October 2004), and 4) NUREG/BR-0297, "NRC Public Meetings"

(ML030140334; August 2002). The NRC Manual provides information related to NRC's interactions with Tribes. Additional information is also available from the NRC web site: www.nrc.gov or from the NRC's Public Document Room, Room O1-F21, One White Flint North, 111555 Rockville Pike, Rockville, Maryland 20852, or by phone at:301-415-4737 or 1-800-397-4209.

Comment 3.4. One commenter commented on issues relating to financial and technical assistance. They commented that the NRC should consider the approach taken with respect to the proposed waste repository at Yucca Mountain when developing the Manual. They also commented that the NRC should work with other Federal agencies wherever possible in assisting Tribes and the NRC should identify ways for Tribes to obtain financial assistance for participating.

***Response 3.4.* The NRC agrees in part with the comment. The NRC updated the Manual to include information on technical and financial assistance available to Tribes. The NRC is an independent agency with a narrowly-defined regulatory mission, and does not typically provide financial or technical assistance to Tribes or Tribal members to participate in its activities. As described in Section 1.F, the NRC has worked with other Federal agencies on matters relating to Tribal participation in NRC-regulated activities, such as the proposed repository at Yucca Mountain. Section 118 of the Nuclear Waste Policy Act of 1982, as Amended (42 U.S.C. 10138) addresses the participation of Indian Tribes in repository siting decisions. However, this does not apply to other NRC activities.**

The Commission provides limited opportunities for Tribes in the form of grants or technical assistance. Limited funding opportunities are available through the Office of Small Business and Civil Rights (SBCR) and the Office of the Chief Human Capital Officer (OCHCO). The OCHCO conducts outreach and provides technical assistance to Tribes to increase participation in the agency's contracting opportunities. The SBCR has educational grants available to Minority Serving Institutions, including Tribal colleges and universities. With respect to technical assistance, the NRC maintains a public Web site and documents library that assist Tribes and others in acquiring information on and participating in the agency's public activities. The NRC added Section 3.C, "NRC's Technical and Financial Assistance to Tribes" to provide additional information on the assistance that the NRC can provide to Tribes.

4. Terminology

Comment 4.1. Multiple comments were made regarding the style and substance of the NRC Manual. Commenters noted that the Manual is inconsistent when describing Native people and suggested that certain terminology should be used, including Native Nations. Commenters also noted that the term "Sacred Sites" should be added to the Manual. In addition to stylistic suggestions, commenters also noted substantive updates that should be made to the Manual regarding the map of Reservation lands, summary of Federal and Tribal history, and inclusion of information about the contemporary impact of natural resource extraction on Indian Tribes.

Response 4.1. The NRC disagrees that the Manual should adhere to a single term when describing Native people, because there is no generally recognized name to do so. The NRC acknowledges that there are multiple acceptable terms used to identify Indian Tribes. Section 2.H, “Recommended Behaviors and Other Communication Considerations” addresses the importance of understanding Tribal history and current concerns. Understanding the prevailing preference for referring to Tribal members is a part of becoming familiar with the Tribe.

Executive Orders and Memoranda use varying terms, including Native Americans, First Nations, Tribal Nations, Alaska Natives, Indian Tribes, American Indian and Native American. The Manual addresses this issue in the Introduction, and primarily uses Federally-recognized Tribes and Tribal governments. In some instances, the term “Indian Tribe” has a specific meaning and will need to be used appropriately. As used in the manual, “Indian Tribe” includes, and is reserved for, any American Indian or Alaska Native Tribe, Band, Nation, Pueblo or other organized group of community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally-Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a) and does not refer to Tribes that are not Federally-recognized. Section 2.C addresses Federal statutes related to historic preservation, natural resource protection, and cultural resource protection. This section of the Manual has been updated to include the term “sacred sites.”

5. NRC Map of Tribal Reservations near Nuclear Reactors

Comment 5.1. One commenter suggested that the NRC should consider not only the proximity of Tribal Reservations to nuclear reactors, but also the distance from nuclear reactors to other Tribal lands and territories.

Response 5.1. The NRC agrees with this comment. However, no changes were made to the Manual. The caption to the map in Section 3.E already states that “additional Tribes may have historical and cultural connection” to lands within a 50 mile radius of a licensed nuclear reactor. The map is illustrative; opportunities for consultation are not limited to Tribes with reservations and trust land identified on the map.

6. Federal-Tribal History

Comment 6.1. Multiple comments centered on the nature of the relationship that exists between the Federal government and Federally-recognized Tribes, noting the importance of depicting an accurate historical overview in the Manual. Commenters suggested that the Manual should be revised to reflect the complexity of the Federal-Tribal relationship, and should incorporate Tribal perspectives or references. Commenters suggested that the Manual should provide a discussion of Manifest Destiny and its repercussions on Native people, and suggested that the historical account should be enhanced to include more recent Treaties and examples of specific incidents that may impact Native views of the NRC and other Federal agencies. Commenters noted that the historical overview should acknowledge that the Federal-Tribal relationship is based on the U.S. Constitution, Federal treaties, policy, law, court decisions, executive orders, and the ongoing political relations.

Response 6.1. The NRC agrees in part with the comment. Several changes were made to the Manual to reflect input from commenters related to the NRC’s historical account of the Federal and Tribal relationship in the Manual. Chapter 2 has been updated to reflect the complexity of the Federal-Tribal relationship and sensitivity to Native perspectives on designated eras, including Treaties, Reservations, and Assimilation. Chapter 2 has also been revised to better address Alaska Native Tribes in the discussion of the Federal-Tribal relationship. Additionally, the revised Manual notes that the historical and contemporary actions of the NRC and other Federal agencies also influence the Federal-Tribal relationship. The Manual was designed to be a staff guidance document and not intended to be a detailed historical resource. The NRC recognizes the uniqueness of each Tribe and its history and encourages staff to research Tribal history when working with Tribal governments. Therefore, reference to detailed historical information related to specific Tribes has not been included in the Manual. The Manual has been updated to acknowledge the contributions of the U.S. Constitution, Treaties, policy, law, court decisions, and Executive Orders to Federal Indian law, which shapes Federal-Tribal interactions.

7. Current Tribal Conditions

Comment 7.1. Comments noted the importance of including information in the Manual regarding the current socioeconomic struggles that Tribes face based on historical experiences that may impact their views of energy development.

Response 7.1. The NRC agrees in part with the comment. The Manual encourages staff to research the Tribal governments with which they are consulting. The NRC believes in the importance of becoming familiar with the specific history and current Tribal concerns, as described in Section 2.H. The NRC recognizes the importance Tribes may place on natural resources and this is reflected in Manual Section 3.G. As part of its Environmental Review, the NRC staff evaluates impacts to natural resources, socioeconomic impacts, and Environmental Justice concerns that a proposed project might cause before granting a license.