

NRC Tribal Liaison Annual Report
Fiscal Year 2016

EXECUTIVE SUMMARY

The Fiscal Year 2015/2016 Tribal Policy Implementation Plan (Agencywide Documents Access and Management System Accession No. ML15099A671) identifies planned activities consistent with the principles contained in the draft Tribal Policy Statement. One of those activities is to prepare an Annual Report of the agency's Tribal liaison activities.

This Tribal Liaison Annual Report for fiscal year 2016 (FY16) has the following objectives:

- Document agencywide Tribal interactions that occurred in FY16;
- Provide lessons learned from the Federal, State, and Tribal Liaison Branch's (FSTB) FY16 Tribal outreach activities; and,
- Present the FSTB's primary Tribal-related objectives for FY17.

As detailed in this report, FY16 Tribal interactions were for specific regulatory activities and for general liaison with Tribes. These interactions included consultation with participating Tribes in the National Historic Preservation Act, Section 106 uranium recovery license applications, communication with Tribes on the content of draft environmental impact statements, awarding a large contract to a Native American owned business, cooperative efforts with other Federal agencies to learn best practices, and over 20 outreach activities agency-wide to Tribes by the U.S. Nuclear Regulatory Commission (NRC) staff. Staff from the Office of Nuclear Material Safety and Safeguards (NMSS), Office of Nuclear Reactor Regulation, Office of New Reactors, Region II Office, Region III Office, and the Office of Small Business and Civil Rights completed 27 out of 29 Commission-approved Tribal policy implementation activities planned for FY16 with the remaining two items either cancelled or suspended pending Commission approval of the Tribal Policy Statement.

Lessons learned from NMSS/Division of Material Safety, State, Tribal, and Rulemaking Programs (MSTR)/FSTB's FY16 Tribal outreach activities include increasing the agency's awareness of the importance of Tribal involvement in NRC licensing activities; tailoring outreach messages to the needs of the various Tribal audiences; using various forms of communications when advertising agency actions, activities, or events to the Tribes; and continuing to promote relationship building to ensure effective outreach. FSTB's primary Tribal-related objectives for FY16 were to provide the final Tribal Policy Statement to the Commission for approval, initiate agency-wide Tribal policy and protocol training using a module in iLearn, conduct Tribal outreach, and support NRC staff to undertake Tribal consultations consistent with the Tribal Policy Statement. Staff met each of these objectives in FY16.

FSTB's primary Tribal-related objectives for FY17 are to implement the Tribal Liaison Activity Plan for FY2017 and FY2018 that describes planned activities for implementing the Tribal Policy Statement, update the Tribal Protocol Manual consistent with Commission direction, continue development and finalize a publicly available NRC Tribal web portal, conduct Tribal outreach, and support NRC staff in Tribal consultations consistent with the Tribal Policy Statement.

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1. INTRODUCTION:

The U.S. Nuclear Regulatory Commission's (NRC) Tribal liaison staff is organized within the Office of Nuclear Material Safety and Safeguards (NMSS), Division of Material Safety, State, Tribal, and Rulemaking Programs (MSTR), Federal, State, and Tribal Liaison Branch (FSTB). The Tribal liaison staff advance the NRC's mission by fostering effective consultation, cooperation, and communication between the NRC and governments of Federally-recognized Tribes.

One of the planned activities identified in the fiscal year 2015/2016 Tribal Policy Implementation Plan was to prepare an Annual Report of the agency's Tribal interactions and lessons learned by the Tribal liaison staff to improve future Tribal interactions. As a result, this Tribal Liaison Annual Report for fiscal year 2016 (FY16) has been prepared.

This annual report is separated into seven sections with one being the introduction. Section two of this report identifies the agency's interactions with Federally-recognized Tribes, based on the six policy principles in the Tribal Policy Statement¹. Section three provides a table of FY16 activities found in the 2015/2016 Tribal Policy Implementation Plan and the status of each. Section 4 identifies missed opportunities and the potential impacts on future NRC outreach efforts. Section 5 captures lessons learned from FY16, as directed in SRM-SECY-14-0006. Section 6 provides suggestions for objectives for fiscal year 2017 (FY17). Section 7 discusses mitigating strategies to reach objectives with limited budgets.

2. TRIBAL POLICY IMPLEMENTATION ACTIVITIES:

This section of the report identifies the agency's interactions with Federally-recognized Tribes, based on the six policy principles in the Tribal Policy Statement. The Policy statement applies to all NRC offices and regions so the activities below are a summary of all NRC activities during FY16.

Policy Principle 1:

The NRC recognizes the Federal Trust Relationship and will uphold its Trust Relationship with Indian Tribes.

The NRC exercises its Trust Responsibility in the context of its authorizing statutes including the Atomic Energy Act, the Energy Reorganization Act of 1974, the Nuclear Waste Policy Act of 1982, the Low-Level Radioactive Waste Policy Act of 1985, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended. As an independent regulatory agency that does not hold in trust Tribal lands or assets or provide services to Federally-recognized Tribes, the NRC fulfills its Trust Responsibility through implementation of the principles of the Tribal Policy Statement, by providing protections under its implementing regulations, and through recognition of additional obligations consistent with other applicable treaties and statutory authorities.

¹ Commission approval of the Tribal Policy Statement occurred in December 2016, which was in FY17. For FY16, NRC staff used policy principles in the proposed Tribal Policy Statement for guidance related to the 2015/2016 Tribal Policy Implementation Plan.

The following FY16 staff actions, consistent with recognizing the Federal Trust Relationship, are grouped into four categories: Cooperating Agency Status, Environmental Concerns, Training, and Internal NRC Coordination.

Cooperating Agency Status:

- In January, the Seneca Nation of Indians became the first Tribe to opt into the NRC's Advance Notification Rule (ANR). The Seneca Nation's Cattaraugus Reservation is intersected by an NRC-approved Spent Nuclear Fuel (SNF) transportation route (10CFR 71 and 73).
- In August, the Morongo Band of Mission Indians became the second Tribe to opt into the NRC's ANR. The Morongo Band of Mission Indians' Reservation is intersected by an NRC-approved SNF transportation route (10 CFR 71 and 73).
- The NRC Region III Regional State Liaison Officer, the Region III resident inspectors for Prairie Island, the Office of Nuclear Reactor Regulation (NRR), and FSTB staff have a long-standing relationship with the President of the Prairie Island Indian Community (PIIC) and in FY16 continued to build upon this relationship with meetings, training sessions and general outreach.

Environmental Concerns:

- In April, NRC staff participated with members of a Community Outreach Network to disseminate information in support of the "Five-Year Plan 2014-2018: Federal Actions to Address Impacts of Uranium Contamination on the Navajo Nation". The Community Outreach Network members represent several Federal agencies in addition to the Navajo Nation who are working together on outreach and education objectives in the Five-Year Plan.
- The NRC's Office of General Counsel (OGC) participated in the Oglala Sioux Tribe Crow Butte license renewal proceeding, where the Atomic Safety Licensing Board issued a partial initial decision on May 26, 2016, which encompassed issues relating to Tribal consultation and the National Historic Preservation Act (NHPA)/National Environmental Policy Act (NEPA) compliance. The Board concluded that the staff complied with its consultation obligations under the NHPA, but the cultural resources surveys did not meet the identification obligations under the NHPA with respect to traditional cultural properties. The Board did not direct the staff to take any specific actions in order to achieve compliance with the NHPA and NEPA, but suggested that the staff publicly supplement the environmental assessment (EA) with additional analyses, findings and corrections addressing possible (traditional cultural properties (TCPs) or historic properties in the Crow Butte license area. This project is related to the issuance of a renewed license to Crow Butte for its In-Situ Recovery (ISR) operation in Crawford, Nebraska.
- NMSS, Division of Fuel Cycle Safety, Safeguards and Environmental Review (FCSE), Environmental Review Branch (ERB) participated in NHPA/NEPA Tribal consultations with the Oglala Sioux Tribe in the Powertech/Dewey Burdock (May 18-20, 2016) and Crow Butte (August 1-3, 2016) proceedings in response to the Board's ruling while awaiting the Commission's ruling on issuance of a new materials license for ISR operations to Powertech. A hearing was held in 2014, and the Board issued a partial initial decision on April 30, 2015, which was later appealed by the staff.
- During FY16, the NMSS/FCSE/ERB staff continued to implement its obligations in the Programmatic Agreement (PA) (ML14079A478) among the NRC, the Advisory Council

on Historic Preservation (ACHP), the Wyoming State Historic Preservation Office (SHPO), the Bureau of Land Management (BLM) and Strata Energy. Obligations were executed in accordance with the Section 106 process of the NHPA for the Strata Ross ISR project in Wyoming. The PA requires consultation, determinations of eligibility for historic properties identified on the project site, determination of effects to those properties and mitigation of adverse effects identified.

Training:

- In June, NRC's Office of Nuclear Security and Incident Response (NSIR) staff provided Safeguards Information (SGI) training to members of the Tribal caucus at U.S. Department of Energy's (DOE) yearly National Transportation Stakeholders Forum (NTSF) meeting. This training was in support of NMSS's Advance Notification Rule and provided key concepts to Tribes interested in receiving notifications.
- In July, Region III staff delivered a science, technology, engineering, and mathematics career session webinar for high school students and parents of the PIIC. The session was requested by the PIIC education director. Participating Region III staff represented a variety of backgrounds (civil engineering (structural), health physics, mechanical engineering, physics, and electrical engineering) and described their current role within the agency.
- The Office of New Reactors (NRO) staff attended external training in FY16 entitled, "Cultural and Natural Resources: An Integrated Management Strategy," and "Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA): Review the historical context and intent of the NAGPRA and the ARPA." This training provided information on how laws apply to the treatment, repatriation, and disposition of Native American cultural items and to the protection of archaeological resources on Federal and Tribal lands. Staff examined differences in legal definitions, when and how regulations apply, and permit requirements.
- During FY16, NMSS/MSTR/FSTB led the agencywide training of approximately 140 NRC staff that were identified by their respective offices as having a potential of interacting with Tribal representatives while performing their duties. Staff completed the FSTB developed training entitled "Cultural Sensitivity Training: Engaging Native Americans in the NRC's Mission."

Internal NRC Coordination:

- In March, NMSS/MSTR/FSTB staff briefed the Office of the Executive Director for Operations (OEDO) on the Tribal Policy Statement prior to submission to the Commission for approval.
- In March, NMSS/MSTR/FSTB staff coordinated with the organizers of the NRC's Regulatory Information Conference (RIC). Tribal liaison staff participated in the Conference by hosting a booth to promote industry awareness of NRC Tribal policy initiatives.
- In July, NMSS/MSTR/FSTB staff attended an NRC/ DOE/ Federal Railroad Administration (FRA) meeting to discuss DOE shipments of SNF and what plans DOE has for complying with NRC regulations. During this meeting, NRC staff identified potential issues that may impact Tribes receiving advance notifications of shipments. NMSS, NSIR and OGC staff are actively working together to determine if any regulatory gaps exist.

- In October, NMSS/MSTR/FSTB staff collaborated with the Office of Small Business and Civil Rights (SBCR) to share information regarding the NRC's Tribal Liaison activities with attendees of the Minority Serving Institutions Program and the Small Business Program at the National Congress of American Indians (NCAI) 72nd Annual Convention.
- The Commission-approved FY15-FY16 Tribal Policy Implementation Plan directed NMSS/MSTR/FSTB staff to work with the Operations Center to expand communications to Tribes from the previous standard of 10-mile radius to within 50 miles of operating power reactors in the event of an emergency. During FY16, liaison staff was successful in working with NSIR Operations Center staff to implement tools for identifying Tribes within 50 miles.
- During FY16, NMSS/MSTR/FSTB staff continued to maintain a database of all 567 Federally-recognized Tribal Leaders with contact information that is available to NRC staff.
- During FY16, NMSS/MSTR/FSTB continued to maintain a list of NRC staff Tribal outreach activities in SharePoint. Activities are mapped to the six Tribal Policy Principles, which supports timely and effective metrics reporting. This information informs the development of this annual report.

Policy Principle 2:

The NRC Recognizes and is Committed to a Government-to-Government Relationship with Indian Tribes.

The NRC recognizes the right of each Indian Tribe to self-governance and supports Tribal sovereignty and self-determination. The NRC recognizes Tribal governments as dependent domestic sovereign nations, independent from State governments, with separate and distinct authorities with inherent sovereign powers over their members and territory, consistent with applicable statutes and authorities.

In addition to consultations, the 2015/2016 Tribal Policy Implementation Plan identifies supporting actions as internal guidance development and revision, certain types of information exchanges and development of Consultation Agreements. The NRC staff completed the following activities that supports its commitment to government-to-government relationships in FY16:

- In February 2016, NMSS/MSTR/FSTB staff attended an information exchange meeting with the Seneca Nation in Washington, DC, at the request of Seneca Nation leadership.
- In June 2016, NMSS staff from the Division of Spent Fuel Management (DSFM) and MSTR/FSTB supported the coordination of and presentations by staff from NSIR as they provided training at the NTSF. The training focused on the topic of SGI and was developed specifically for the Tribes in support of their interest in participating in the NRC's Advance Notification Rule for certain radioactive material shipments and shipments of SNF.
- In July 2016, NMSS/MSTR/FSTB staff met with Seneca Nation leadership as a "pre-visit" for Radiation 101 Seminars and a planned government-to-government meeting.
- In FY16, NRO began the process of updating Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations and NUREG-1555 Environmental Standard Review Plan to include guidance on Tribal consultation.

- In FY16 NMSS/FCSE/ERB staff led various consultations meeting with Tribal representatives, the Wyoming SHPO, BLM, and Strata Energy, Inc. at the Ross ISR site.
- NMSS/FCSE/ERB staff conducted various government-to-government meetings with the Oglala Sioux Tribe in support of staff's activities to comply with the Atomic Safety and Licensing Board's Orders regarding the staff's NEPA and NHPA review of historic and cultural resources of significance to Tribes for the Powertech Dewey-Burdock ISR license and the Crow Butte ISR license renewal.

Policy Principle 3:

The NRC will Conduct Outreach to Indian Tribes.

The NRC will conduct outreach to keep Indian Tribes informed about the agency's actions and plans, as appropriate, related to its regulatory actions that have substantial direct effects on one or more Indian Tribes. The NRC will participate in national and regional Tribal conferences and summits hosted by Federal agencies, Tribal governments, and Tribal organizations, as appropriate. The NRC will encourage Tribal governments to communicate their preferences to NRC staff during outreach activities and will seek to provide information about opportunities for Tribal participation in NRC meetings and advisory committees concerning NRC regulatory actions that have substantial direct effects on one or more Indian Tribes, as appropriate. The following outreach activities are listed for FY16 by office:

Office of New Reactors:

NRO Interacts with Tribal governments during environmental reviews for licensing and other regulatory actions involving new reactor license applications, including licensing matters related to NEPA and NHPA. NRO's Division of Safety and Environmental Analysis (DSEA) supports this policy principle by conducting outreach with Federally-recognized Tribal governments having a cultural interest in license applications under NEPA and NHPA review.

- In FY16, DSEA supported general outreach efforts to Tribes via participation in meetings sponsored by States, Tribal organizations and Federal partners. NRO invited the Eastern Band of Cherokee Indians of North Carolina for Clinch River Public Outreach meetings.

Office of Nuclear Reactor Regulation:

The Office of Nuclear Reactor Regulation (NRR) Interacts with Tribal governments during environmental reviews for licensing and other regulatory actions involving operating nuclear reactors, including licensing matters related to NEPA and NHPA.

NRR's Division of License Renewal (DLR) supports this policy principle by conducting outreach with Federally-recognized Tribal governments having a cultural interest in license renewal applications under NEPA and NHPA review.

- In FY16, DLR sent letters to Tribal governments initiating NHPA Section 106 consultation and inviting them to participate in the NEPA process including scoping and public comment meetings. Interested Tribes were provided copies of both draft and final environmental impact statement (EIS) documents and were encouraged to provide

comments. In a few instances, Tribal governments replied to NRC's requests, usually concerning NHPA Section 106 issues through their Tribal Historic Preservation Officer (THPO). Most replies indicated a desire to be informed of inadvertent discoveries of human remains on the site. No formal consultations under NHPA were triggered by these responses. This was conducted for the following projects, grouped by the type of license application, with an Agencywide Documents Access and Management System (ADAMS) reference number in FY16. Participating Tribes can be found in each document.

- License Renewal Environmental Reviews
 - Fermi 2 Nuclear Power Plant (ADAMS Accession No. ML15293A442)
 - LaSalle County Nuclear Generating Station, Units 1 and 2 (ADAMS Accession No. ML16006A157)
 - Waterford Steam Electric Station, Unit 3 (ADAMS Accession No. ML16146A730)
- Moly-99 Construction Permit Applications
 - SHINE Medical Radioisotope Production Facility (ADAMS Accession No. ML15281A230)
 - Northwest Medical Isotopes, LLC Radioisotope Production Facility (ADAMS Accession No. ML15316A036)

Office of Small Business and Civil Rights:

The Office of Small Business and Civil Rights (SBCR) supports this policy principle by subcontracting opportunities for Tribal owned businesses, and to allow for meaningful and equal access to agency-conducted and financially-assisted programs. SBCR supported this policy principle with the following activities:

- In October, SBCR along with NMSS staff, attended the NCAI conference, which included developing talking points for an NMSS presentation at the NCAI Conference Economic Development Committee meeting. Staff manned an exhibit booth promoting NRC's Small Business Program, and NMSS Tribal outreach activities.
- In January, SBCR and the Minority Serving Institutions Program co-sponsored the Native Nation Events' Sixth Annual Native American Human Resources Conference.
- In July, SBCR provided information on NRC's Tribal Colleges and Universities Program, American Indian and Alaska Native Education Serving Institutions Program, and NRC's other educational investment programs for inclusion in outreach efforts conducted by Region II and the U.S. Federal Emergency Management Agency.
- In August, the SBCR Grants program dispensed \$191,877 in grant funds to Tribal colleges and universities. As a result, the College of Menominee Nations received \$120,800 and Nebraska Indian Community College received \$71,077.
- In FY16, with assistance from SBCR, the NRC awarded \$10,205,365 and obligated \$4,998,765 in contract funding to companies that are American Indian owned, Native American owned, and to Tribal governments.

Regional Offices:

The NRC's regional offices coordinate with NMSS, as needed, on draft Tribal Policy Statement and Tribal Protocol Manual implementation and confer on Tribal issues related to activities and actions. The regional offices supported this policy principle with the following activities:

- In December, there was a change in the Presidency of the PIIC Tribal Council. Allan Barker, Region III Regional State Liaison Officer was invited to Ms. Shelley Buck's Tribal Council President Swearing-in ceremony. Communications between Ms. Buck and Region III continue to be the primary relationship and communication path between Region III liaison and PIIC.
- In May, Region III staff met to introduce, and broaden the regional liaison communications between Ms. Buck, the Region III Regional Administrator, the Prairie Island Resident Inspector, and the Division of Reactor Projects Director.

Office of Nuclear Material Safety and Safeguards:

NMSS leads the NRC's program to maintain effective communications and working relationships with Tribal governments and interacts with Tribal governments on materials safety matters related to NEPA and NHPA. NMSS supported this policy principle with the following activities:

- In October, the NMSS/MSTR Director presented to the NCAI Economic Development Committee at the 72nd Annual Convention. This opportunity marked the first time NRC had been offered time on the agenda in 5 years of attending this meeting.
- In February, MSTR/FSTB staff gave a presentation to the Rocky Mountain Tribal Leaders Annual Board Meeting on the NRC's regulation of the nuclear industry and the affect that has on Indian country.
- In February, MSTR/FSTB staff met with the Northern Cheyenne Tribe to discuss Uranium Recovery/Legacy issues and Environmental Law.
- In April, MSTR/FSTB staff met with representatives from the NCAI, Navajo Nation and Morongo Band of Mission Indians regarding training for advanced notification of SNF to Tribes at NRC headquarters.
- In April, MSTR/FSTB staff participated with NMSS, Division of Decommissioning, Uranium Recovery, and Waste Programs (DUWP), Materials Decommissioning Branch (MDB) in a DOE-sponsored scoping meeting for Tuba City as part of "Five-Year Plan 2014-2018: Federal Actions to Address Impacts of Uranium Contamination on the Navajo Nation" activities.
- In May, MSTR/FSTB conducted outreach in coordination with the NMSS/ DUWP/ Uranium Recovery Licensing Branch (URLB) while visiting Montana THPOs on NRC's communications and consultation practices.
- In June, MSTR/FSTB staff presented before the NTSF caucus. The presentation focused on the NRC's Tribal Policy Statement status, the ANR enrollment process and highlighted NRC's SGI training that was to be held during convention breakout sessions.
- In July, MSTR/FSTB staff presented on the ANR and high burnup fuel to PIIC President Shelly Buck at NRC headquarters.
- Throughout FY16, MSTR/FSTB staff made various calls to Tribal members in efforts to hear Tribal concerns, communicate on NRC activities and build relationships.
- In FY16, FCSE/ERB staff met with representatives from the Northern Cheyenne Tribe and presented an overview of the environmental review and information on NRC-licensed uranium recovery facilities.

Office of the Secretary:

The Office of the Secretary (SECY) of the Commission provides executive management services to support the Commission and to implement Commission decisions. SECY advises and assists the Commission and the NRC staff in conducting Commission business. SECY supported this policy principle with the following activities:

- In July, SECY invited Shelly Buck, President of PIIC to a public meeting entitled, “Meeting with NRC Stakeholders” where she presented on NRC regulated activities and how they impact PIIC.
- In September, the Office of the Secretary (SECY) reached out to commenters of the draft Tribal Policy Statement and invited them to an external panel before the Commission to provide their assessment of the draft policy. Tribal participation included representatives from PIIC and the NTSF Tribal Caucus co-chair.

Policy Principle 4:

The NRC will engage in Timely Consultation.

The NRC will provide timely notice and consult in good faith with Tribal governments on NRC’s regulatory actions that have substantial direct effects on one or more Indian Tribes as well as those regulatory actions for which Tribal consultation is required under Federal statute. Tribal officials may also request that the NRC engage in consultation with them on matters that have not been identified by the NRC to have substantial direct effects on one or more Indian Tribes as well as those regulatory actions for which Tribal consultation is not required under Federal statute. The NRC will make efforts to grant such requests, taking into consideration the nature of the activity at issue, past consultation efforts, available resources, timing issues, and other relevant factors.

The NRC will establish early communications and begin consultation as soon as practicable. The NRC will consult in good faith throughout the agency decision-making process and develop and maintain effective communication, coordination, and cooperation with Indian Tribes. The NRC representatives for consultations with Tribal officials or representatives will be of an appropriate rank and the level of interaction will be commensurate with the circumstances. The appropriate level of interaction will be determined by a discussion between the NRC and Tribal governments, and program office consultation procedures and guidance. Participating Tribal and NRC representatives will serve as respective decision makers, based on the established agenda and to the extent possible.

This section uses the following definition for consultation: “Efforts to conduct meaningful and timely discussions between the NRC and Tribal governments on the NRC’s regulatory actions that have substantial direct effects on one or more Indian Tribes and those regulatory actions for which Tribal consultation is required under Federal statute. The NRC’s Tribal consultation allows Indian Tribes the opportunity to provide input on regulatory actions with Tribal implications and those where Tribal consultation is required, and is different from the outreach and public comment periods. The consultation process may include, but is not limited to, providing for mutually-agreed protocols, timely communication, coordination, cooperation, and collaboration. The consultation process provides opportunities for appropriate Tribal officials or

representatives to meet with NRC management or staff to achieve a mutual understanding between the NRC and the Tribes of their respective interests and perspectives.”²

As noted in the 2014 NRC Tribal Protocol Manual,³ the consultation process should begin early in the NRC’s consideration of an action or project and as a result there may be a number of preliminary supporting activities leading to discussions. These activities can also be considered “consultation,” and NRR, NRO and NMSS had a number of these preliminary activities that were described in Section 2.3, Outreach to Indian Tribes.

- In September NMSS/MSTR/FSTB staff submitted a Tribal web portal proposal to the NRC’s external web design contractor. This effort was identified in the FY15-16 implementation plan as an activity that will allow the NRC to consolidate information of interest to Tribes and give website visitors the ability to access publically available correspondence related to Tribal consultation in a single location.
- In FY16, NRO staff pursued consultations related to NHPA/NEPA alongside the U.S. Army Corps of Engineers (USACE) ongoing Section 106 consultation with the Seminole Tribe of Florida and the Miccosukee Tribe on Turkey Point combined license review.
- In FY16, NMSS/FCSE/ERB staff continued carrying out its obligations under the NHPA Section 106 consultation as part of its licensing review of the license application for the Strata Kendrick ISR expansion project by sending letters to Tribes initiating the Section 106 consultation process and requested comments on the licensee’s Class III archaeological survey report via separate letters. Staff also conducted a site visit and consultation meeting with Tribes to gather input about historic and cultural resources that could be affected by the proposed expansion.
- In FY16, NMSS/FCSE/ERB staff sent letters to a number of Tribes to continue carrying out its obligations under the NHPA Section 106 consultation as part of its licensing review of the license application for the Uranerz Jane Dough In-Situ Recovery (ISR) expansion project. Section 106 consultation included a webinar to share information about the proposed project, and a site visit with the Tribes to gather input about historic and cultural resources that could be affected by the proposed expansion.
- In FY16, NMSS/FCSE/ERB staff sent letters to a number of Tribes carrying out its obligations under the NHPA Section 106 consultation as part of its licensing review of the license application for the Uranium One Ludeman ISR expansion project. Staff initiated the Section 106 consultation process and held a site visit with Tribes to gather input about historic and cultural resources that could be affected by the proposed expansion.
- In FY16, NMSS/FCSE/ERB sent letters to Tribes in support of its Section 106 consultation process and requested input from Tribes on historic and cultural resources that could be affected by: North Anna independent spent fuel storage installation (ISFSI) license amendment to add one storage dry cask for storing high burnup fuel; Lost Creek ISR license amendment regarding changes to the disposal well classification; Ft. St. Vrain ISFSI license amendment to revise the response time for certain maintenance activities; and, Zion Nuclear Power Station license termination plan.
- In FY16, NMSS/FCSE/ERB satisfied its obligations under the NHPA Section 106 consultation process for the Humboldt Bay License Termination Plan.
- NMSS/MSTR/FSTB staff continues to develop and maintain Tribal contacts that inform the State and Tribal Communication (STC) letters.

² NRC Tribal Consultation Policy Statement and Protocol *Federal Register* notice Docket ID NRC–2012–0235, published January 9, 2017, page 2404.

³ NUREG-2173, December 2014, page 14.

Policy Principle 5:

The NRC will coordinate with Other Federal Agencies.

When the Commission's action involves other Federal agencies, the NRC will perform its Tribal consultation jointly with other Federal agencies as appropriate and to the extent possible. Staff observes other Federal agency actions including Tribal consultations to learn techniques and practices for Tribal engagement. The staff coordinated with the following Federal agencies in FY16:

U.S. Department of Commerce:

- In August, NMSS/MSTR/FSTB staff began participating in the U.S. Census monthly webinar titled: "Tribal Boundaries Subgroup of the National Boundaries Group." Using this forum, the NRC coordinates with participants from the National Park Service, the Bureau of Indian Affairs (BIA), BLM and the U.S. Department of the Interior to identify potential enhancements to the NRC's Tribal Map. This map was developed and is maintained by FSTB to identify approved shipping routes of SNF and Tribal reservation lands and confirm the distances of reservation lands to operating power reactors and other NRC regulated activities.

U.S. Department of Homeland Security:

- NMSS/MSTR/FSTB staff met in January with the Director of Tribal Affairs at the U.S. Department of Homeland Security (DHS), David Munro, to continue discussions on a plan for government-wide "Tribal Affairs Specialist" training.
- In April the NRC hosted a DHS meeting at NRC headquarters. Attendees included NCAI, Navajo Nation and Morongo Band of Mission Indians. The focus of this meeting was the shipment of SNF across Tribal reservation lands related to the NRC's ANR.
- NMSS/MSTR/FSTB staff participated in reoccurring monthly conference calls with the Tribal Assistance Coordination Group National Conference by BIA's Division of Emergency Management, Office of Justice Services. Participants included representatives from DHS, DOE, BIA, BLM, Red Cross, Customs and Border Patrol and over 65 Tribal governments with a focus on weather-related issues, and effects on Tribal emergency management programs.

U.S. Department of Energy:

- In June, NRC staff attended the DOE's National Transportation Stakeholders Forum (NTSF) yearly conference. NMSS and other NRC staff met three times over the fiscal year with DOE staff to prepare for the conference and discuss NRC regulations for providing Tribes advance notification of SNF and certain waste shipments. NMSS staff was part of the 2016 NTSF planning committee. Many of the sessions offered during this conference were developed in collaboration with NRC staff that serve on various planning committees.
- At the June NTSF conference, NSIR staff participated in a transportation panel at a breakout session which included speakers from the DOE's National Nuclear Security Administration (NNSA), Secure Transport Services and the State of South Carolina Emergency Management Division. This panel presented on the NNSA's shipping

campaign from the perspective of the shipper, the regulator and the State emergency response officials.

- At the June NTSF conference, NSIR and NMSS staff hosted two training sessions on SGI. The sessions had 15 attendees, eight of which were Tribal participants. This training provided a critical component of the NRC's ANR which facilitated the NRC's second Tribe, the Morongo Band of Mission Indians, to begin receiving advance notification of SNF shipments when crossing Morongo Band Reservation lands.
- In July NMSS and NSIR staff attended a NRC/DOE/Federal Railroad Administration meeting at DOE headquarters focused on DOE's shipping campaign of SNF from commercial power reactors to proposed storage facilities.

U.S. Environmental Protection Agency:

- In October 2015 and April 2016, NMSS/MSTR/FSTB and other NMSS staff collaborated with the U.S. Environmental Protection Agency (EPA) in the implementation of the "Five-Year Plan 2014-2018: Federal Actions to Address Impacts of Uranium Contamination on the Navajo Nation". The NRC provides oversight of DOE (under the Uranium Mill Tailings Radiation Control Act) as the long-term care custodian for the following Navajo Nation sites: Shiprock, NM; Monument Valley, NV; Mexican Hat, UT; and Tuba City, AZ. Collaborations included the BIA, DOE and the EPA.
- In May, NMSS/MSTR/FSTB staff met with the EPA Region 8 Tribal Assistance Program.
- In June, NMSS/MSTR/FSTB staff participated in the EPA's National Tribal Science Council Meeting.

Advisory Council on Historic Preservation:

- In September, the ACHP was invited to present their assessment of the draft Tribal Policy Statement before the Commission. The ACHP provided comments in 2015. The ACHP submitted a follow up letter after the brief requesting that the NRC address the role of Native Hawaiian Organizations in the Tribal Policy Statement.
- NMSS/FCSE/ERB staff continued its partnership with the ACHP which established a dedicated ACHP/NRC liaison who provides assistance to the NRC staff with project-specific NHPA Section 106 reviews, as well as training and guidance on the Section 106 consultation process.

U.S. Army Corps of Engineers:

- NRO has a Memorandum of Understanding with the USACE to cooperate on environmental impact statements for new reactors. The NRC has been working with the USACE on the Turkey Point combined license application and has coordinated its Tribal interactions with the USACE.

Multi-Agencies:

- In March, with the funding assistance of \$10,000 from the SBCR, NRC co-sponsored the Annual 2016 National Environmental Justice Conference & Training Program (NEJC&TP) along with other Federal agencies (e.g., EPA, DOE, U.S. Fish and Wildlife Service; and the US Department of Agriculture's Forest Services, Natural Resources Conservation Service), State agencies, public-private sectors, and other interested stakeholders. The NEJC&TP focused on presenting the needs and challenges of

communities, governments, municipalities, Tribes, faith-based organizations, and others with an interest in the health and safety of people and the environment. The NEJC&TP allowed NRC staff and external participants to engage in a broad range of networking, identify resources, and gain exposure to best practices.

- IN FY16, NMSS/DUWP routinely worked with DOE and EPA to coordinate cleanup of uranium contamination on Navajo sites as part of the NRC's involvement in the "Five-Year Plan 2014-2018: Federal Actions to Address Impacts of Uranium Contamination on the Navajo Nation."

Executive Office of the President:

- In August 2016, staff responded to a request for significant program accomplishments to support the 2016 White House Tribal Nations Conference. SBCR provided input to the Domestic Policy Council to the Executive Office of the President. The Tribal Nations Conference was held in September.

Policy Principle 6:

The NRC will Encourage Participation by State-Recognized Tribes.

The NRC recognizes the distinction between Indian Tribes who are Federally-recognized and those who are not. The NRC will reach out to States to identify the appropriate State-recognized Tribes to invite to participate in NRC's regulatory process, including opportunities related to rulemaking, licensing and decommissioning.

As part of the Section 106 consultation process, NRC staff routinely contact SHPOs to identify Tribes that have historic ties to an area or that have expressed interest in previous NRC-regulated activities. In FY16, NMSS/MSTR/FSTB directly encouraged State-recognized Tribal participation in NRC regulatory activities at the following venues:

- In October 2015, the NRC attended the NCAI's 72nd Annual Convention which is attended by various State-recognized Tribes. This outreach opportunity allowed the NRC to communicate with State-recognized Tribes that may not have been aware of NRC activities.
- In May 2016, NRC staff met with the Tribal Caucus at the NTSF. The Tribal Caucus includes both Tribes that are Federally-recognized and Tribes that are not Federally-recognized in its membership. The NRC encourages all members of the Tribal Caucus to participate in various NRC activities.
- NMSS/DUWP staff, as part of their outreach for a license application for depleted uranium at U.S. Army Sites (ADAMS Accession No. ML16039A225) included outreach to various SHPOs (ADAMS Accession No. ML16032A531) to encourage State-recognized Tribal participation. Outreach also included THPOs as well (ADAMS Accession No. ML16033A109).
- NRC staff, in the development of the environmental impact statement for the combined license for the Levy Nuclear Plant Units 1 and 2. (NUREG-1941, Vol. 3, "Environmental Impact Statement for Combined Licenses for Levy Nuclear Plant Units 1 and 2: Final Report: Appendices;" ADAMS Accession No. ML12100A070)

3. 2015/2016 TRIBAL POLICY IMPLEMENTATION PLAN MATRIX

The following table lists NMSS/MSTR/FSTB FY15/FY16 Implementation Plan commitments and their status.

	2015/2016 Implementation Plan Commitments	Status
1	Collaborate with all other NRC offices and regions interacting with Indian Tribes to review their current practices and policies for consistency with the draft Tribal Policy Statement. (Page 3)	Complete
2	Foster a meaningful relationship with Indian Tribes by participating in consultations, national Tribal conferences, Tribal/State meetings, summits, and conferences discussing Tribal matters. (Page 3)	Complete
3	Facilitate informal consultations between NRC staff and Tribal representatives by the following actions: (1) Directing Tribal officials and members to the appropriate NRC office or staff regarding programmatic inquiries; (2) Assisting with the exchange of information between Tribal officials and NRC staff; (3) Improving Tribal knowledge of NRC's regulatory jurisdiction and Commission processes; and (4) Working with NRC staff to implement the principles in the NRC draft Tribal Policy Statement. (Page 4)	Complete
4	Development of an annual report to capture lessons learned. (Page 4)	Complete
5	Training of all necessary NRC staff and Tribal liaisons on Tribal protocols. (Page 4)	Complete
6	Consider approaches to assure consistency in communication with Tribal governments through appropriate use of NRC staff (potential models include the Regional State Liaison Officers). (Page 4)	Complete
7	Develop and maintain a web portal (public page) to capture upcoming Tribal meetings and planned schedules. (Page 4)	In progress
8	Develop and support 2-day training sessions on basic radiation to be offered at community colleges for Tribes. (Page 4)	Complete
9	Develop methods to conduct cultural surveys in a more efficient manner. (Page 4)	Complete
10	Training sessions for Tribes providing information on issues that may have direct effects on Tribal health and safety (e.g., health physics, NRC regulations, NEPA and procedures in environmental sampling). (Page 6)	Complete
11	External Cultural Training for NRC staff. (Page 6)	Complete
12	Partnership with other agencies, for example DHS, in developing a government-wide core competency training that would be mandatory for all Federal employees that work with Tribes. (Page 6)	Complete
13	Engage interested Tribes to promote and potentially develop formal agreements prior to NRC licensing activities.	Complete

	Agreements will memorialize the process for communication and consultations between the NRC and the individual Tribes. (Page 7)	
14	Revise the Tribal Protocol Manual (ADAMS Accession No. ML14274A014) as needed, and seek comments from members of the public and interested Tribal governments on an on-going basis for consideration to improve the relationship between the agency and Tribes. (Page 7)	Was on hold pending the finalization of the Tribal Policy Statement.
15	Continue to develop agency-level guidance that describes the NRC Tribal liaison function and its roles and responsibilities with NRC offices that interact with Tribes, and begin development of agency guidance supporting consistent application of NHPA Section 106 consultations. (Page 7)	In progress
16	Develop and implement a SharePoint-based database to track interactions with Tribes on different topics to enhance knowledge management. (Page 7)	Complete
17	Meet with specific Tribes that have a demonstrated interest in NRC regulatory actions to encourage the Tribes to comment on the draft Tribal Policy Statement and Tribal Protocol Manual. (Page 8)	Complete
18	Continue to conduct general outreach to Indian Tribes through participation in standing meetings sponsored by States, Tribal organizations, and Federal partners by maintaining regular communications with Tribal government offices. NRC staff will initiate sending routine correspondence of Tribal interest to Tribes. These may include relevant press releases, notices of Commission meetings, and notices of documents available for public comment periods, notices of NEPA document publication, or newsletters. (Page 9)	Complete
19	Evaluate the benefits of hosting webinars on current topics for Tribes by monitoring Tribal participation and engagement, and by reaching out to Federal partners on the effectiveness of this tool. (Page 9)	Complete
20	As part of NRC's Incident Response Program, expand this focus to include Tribes located within the 50 mile of reactor facilities to enhance communications with Tribes potentially affected by a nuclear or radiological emergency. (Page 9)	Complete
21	Engage in timely consultation with Indian Tribes on regulatory actions that have substantial direct effects on one or more Indian Tribes. (Page 11)	Complete
22	Develop and maintain a public internet portal to centralize items of interest to Tribes. (Page 11)	In progress
23	Enhance the timeliness of consultations with Tribal governments by developing systematic and routine outlets to communicate topics of general interest. (Page 11)	Complete
24	Seek to obtain a "generic" Office of Management and Budget clearance for ongoing requests to Tribes for information. (Page 11)	Cancelled

25	Continue coordinating with other Federal agencies by inviting them to make presentation on their best practices and developing efficient ways to communicate with the Tribes. (Page 13)	Ongoing
26	In support of seeking further interagency coordination in Tribal interactions, compile an annual report of the agency's Tribal interactions, including outreach, consultation, coordination and lessons learned to inform future coordination opportunities. (Page 13)	Complete
27	Work with States to identify the appropriate State-recognized Tribes to invite to participate in NRC's regulatory activities that have Tribal implications. (Page 14)	Complete

4. FY16 MISSED OPPORTUNITIES

In FY16, staff was limited by various factors that impacted the ability to perform outreach. This section highlights missed opportunities and potential impacts.

- NRC did not attend the National Congress of American Indian's 73rd Annual Convention in October 2016 due to budget constraints. NRC's absence may adversely impact the established relationship with NCAI. FSTB staff recommends attending the next NCAI conference if resources are available.
- The pursuit of Protocol Agreement development was not a priority over FY15 and 16 due to competing priorities. The Catawba and Seneca Nation of Indians will be considered for developing a draft framework for a Protocol Agreement to support the NRC's commitment to government-to-government consultations.
- NRC staff did not use STC letters as a systematic and routine outlet to communicate topics of general interest to the Tribes. Applying resources to this effort would support the agency's commitment to Tribal outreach in Policy Principle 3.
- Staff was not able coordinate as many external presentations from other Federal agencies in FY16 due to competing priorities. A renewed effort in future fiscal years to coordinate these types of exchanges of information will benefit the NRC and should be continued indefinitely as resources permit.

5. FY16 LESSONS LEARNED

In Staff Requirements Memorandum SRM-SECY-14-006 the Commission directed the staff to consider the development of an Annual Report to capture lessons learned. Tribal Liaison staff, in adherence to this direction considered its FY16 activities and committed to improve liaison effectiveness based on the following lessons learned:

- Increasing the agency awareness of the importance of Tribal involvement in NRC licensing activities by providing internal training and inviting other Federal Agency speakers will aid project managers in the review of license applications and help avoid potential delays and other problems arising from insufficient Tribal involvement.

- Flexibility in terms of scheduling and attending Tribal meetings continues to be a lesson learned from FY15. NRC staff needs to be aware that Tribal leaders and members may have different priorities than those held by the NRC. Understanding Tribal priorities by working with the Tribal Liaison team and engaging in early outreach is key to productive interactions.
- Tailoring messages to the needs of the audience and pursuing effective general outreach using multiple forms of communication when advertising agency actions, activities, or events to the Tribes will better bring NRC regulatory activities to the attention of Tribal communities and generate greater participation.
- Developing communication plans on Tribal outreach activities and developing consultation agreements, when appropriate, with the Tribes will facilitate effective interaction and discussion.
- Continue to avoid the use of acronyms and NRC jargon and present messages using plain language will enhance understanding and promote open communication.
- Continuing internal and external training on Tribal issues for NRC staff will promote understanding and sharpen sensitivities when working with Tribal governments.
- To promote awareness and understanding of NRC regulatory issues staff should continue NRC-sponsored training courses for Tribes. These have proven to be very effective in promoting understanding on NRC regulatory purview and creates a foundation for relationship building.

6. FY17 OBJECTIVES:

FSTB's primary Tribal-related objectives for FY 2017 are to implement the Tribal Liaison Activity Plan for FY 2017 and FY 2018 (ADAMS Accession No. ML16319A272) that describes planned activities for implementing the Tribal Policy Statement, update the Tribal Protocol Manual consistent with Commission direction, continue development and finalize a publicly available NRC Tribal web portal, conduct Tribal outreach, and support NRC staff in Tribal consultations consistent with the Tribal Policy Statement.

7. MITIGATING STRATEGIES:

Over the next few years, implementing activities that support the NRC Tribal Policy Statement will be dynamic. Staff will be required to identify high priority activities and implement alternative strategies to reach as many lower priority objectives as possible within available resources.

NRC staff will need to maintain effectiveness in a time of decreasing budgets by: (1) monitoring internal training needs for NRC staff and identify low cost training options; (2) using technology in lieu of travel to maintain relationships with Tribes that have demonstrated interest in NRC regulatory activities; (3) developing and maintaining internal liaison infrastructure, knowledge management and operational effectiveness to ensure liaison staff are able to add value to NRC regulatory activities. Although Tribal outreach and intergovernmental coordination may be limited, staff can remain effective by developing creative approaches to reach as many objectives as possible within available budgets.