



Bureau Interim Directive Data Sheet

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United States Department of the Interior
BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT

Signature Page

Part Number and Title

XXX and BSEE National Tribal Engagement
Program

Directive Number

X

Directive Title

BSEE National Tribal Engagement Program

[Signatory Name]
[Signatory Title Line 1]

Date

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United States Department of the Interior
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Revision History

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Directive Version	Effective Date	Substantive (S) or Non-Substantive (NS) Change	Summary of Revisions
1	Date of Signature	<i>Write S for substantive changes, write NS if the changes were non-substantive such as grammatical or revising a point</i>	<i>This is the first version of BID BSEE National Tribal Engagement Program Policy. The purpose for this Bureau Interim Directive is to establish responsibilities and expectations for personnel that participate in Tribal Consultation for Federally Recognized Tribes and Alaska Native Claims Settlement Act Corporations.</i>



United States Department of the Interior
BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT

BUREAU INTERIM DIRECTIVE

Part Number and Title	XXX and BSEE National Tribal Engagement Program
Directive Number	X
Directive Title	BSEE National Tribal Engagement Program

PURPOSE AND OBJECTIVES

The purpose of this Bureau Interim Directive (BID) is to establish a National Tribal Engagement Program (NTEP) for the Bureau of Safety and Environmental Enforcement (BSEE or the Bureau). The NTEP will establish roles and expectations for the Bureau's responsibilities to Federally Recognized Tribes for BSEE employees as laid out in the Department of the Interior (DOI) Departmental Manual 512 Chapter 4 and Department Manual 512 Chapter 5. The BID will also establish procedures and guidance on consultation, training, national database management, and submittal of the annual consultation report.

AUTHORITY (STATUTE AND REGULATION)

See Appendix A for a list of existing policy and guidance where specific aspects of Tribal Consultation are addressed.

REFERENCES (AGENCY GUIDANCE)

See Appendix B for a list of existing BSEE directives and non-monetary coordination agreements where specific aspects of Tribal Consultation are addressed.

POLICY

1. Policy. It is the policy of BSEE to recognize and fulfill its legal obligations to identify, protect, and conserve Tribal trust resources; carry out its trust relationship with federally recognized Indian Tribes and Tribal members; and invite Tribes to consult on a government-to-government basis whenever BSEE plans, or has actions with Tribal implications. The Bureau and offices shall make good-faith efforts to invite Tribes to consult early in the planning process and throughout the decision-making process and engage in robust, interactive, pre-decisional, informative, and transparent consultation when planning actions with Tribal implications.

As a Bureau of the DOI, BSEE shall engage in meaningful consultation with Federally Recognized Tribes and Alaska Native Claims Settlement Act (ANCSA) Corporations whenever a Bureau policy or activity with Tribal implications is considered. The BSEE policy is to follow the Departmental requirements on intergovernmental relations with Tribal governments.

2. Self-determination. BSEE recognizes and respects that the resolutions of challenges affecting the Tribes and ANCSA Corporations are best informed and implemented by the Tribes and ANCSA Corporations.
3. Government-to-Government relationship:
 - a. In furtherance of the government-to-government relationship between BSEE and the Tribes and ANCSA Corporations:
 - i. The Bureau of Safety and Environmental Enforcement -
 1. Respects and furthers the special trust relationship with the Tribes and ANCSA Corporations.
 2. Will continue to work with the Tribes and ANCSA Corporations on a government-to-government basis to address concerns related to implications to the Tribes and ANCSA Corporations
 3. Recognizes the right of the Tribes and ANCSA Corporations to self-government and self-determination.

DEFINITIONS

- a. Appropriate Bureau Official: Those individuals who are knowledgeable about the matters at hand, are authorized to speak for the Bureau, and exercise delegated authority in the disposition and implementation of an agency action.
- b. Appropriate Tribal Official: An official that is knowledgeable and authorized to speak as the ANCSA Corporation Official or Designee, Indian Tribe Trustee, Tribal Official, Indian Tribe or Tribe.
- c. Alaska Native Claims Settlement Act Corporation: Any Alaska Native village corporation, urban corporation, or regional corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*
- d. ANCSA Corporation Official or Designee: An official or ANCSA member designated in writing by an ANCSA Corporation.
- e. Indian Tribe or Tribe: Any American Indian or Alaska Native Tribe, band, nation, pueblo, village, or 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.
- f. Indian Tribe Trustees: Tribal Officials designated by the governing body of any Indian Tribe who may act on behalf of the Tribe or its members as a trustee for natural resources under the Oil Pollution Control Act of 1990, 33 U.S.C. 2791-2761.

- g. Tribal Official: An elected or appointed Tribal leader or official designated in writing by an Indian Tribe to represent the Tribe in government-to-government consultations.
- h. Tribal Governance Officer (TGO): A DOI official that is appointed by the Office of the Secretary to oversee all Tribal activities within the DOI; TGO conducts regular meetings of all Bureau TLOs to ensure awareness, messaging and details of activities, and to carry out responsibilities as described in 512 DM 4.
- i. Tribal Coordinator: A BSEE employee who is responsible for supporting the TLO in carrying out the duties outlined in E.O. 13175 and departmental policies related to government-to-government consultation requirements at the national level; Ensure BSEE programs and offices are informed of the Bureau's responsibilities; The Tribal Coordinator coordinates all actions with the policy goals of this BID. Provides education and guidance on Tribal government-to-government relationships.
- j. Tribal Liaison Officer (TLO): A BSEE employee officially designated to carry out responsibilities described in 512 Departmental Manual Chapters 4 and 5.
- k. Regional Tribal Liaison Officer (RTLO): A BSEE employee who is responsible for assisting the TLO in carrying out the duties outlined in E.O. 13175 and departmental policies related to government-to-government consultation requirements within their regions.

RESPONSIBILITIES

1. The **Director** will:
 - a. Designate in writing the Bureau TLO.
 - b. Comply with Departmental requirements on intergovernmental relations with Tribal governments.
 - c. Represent BSEE as the appropriate Bureau official in consultations and meetings with the appropriate Tribal and ANCSA Corporations officials.
 - d. Ensures that the TLO is responsible and accountable to carry out consultation activities of BSEE.
 - e. Ensure that offices and officials have the necessary resources to carry out their consultation responsibilities.
 - f. Ensure that BSEE representatives whose responsibilities include consultation with Tribal officials have training, education or equivalent experience providing an adequate level of knowledge for that purpose before conducting any consultations.
2. The **Deputy Director** will:

- a. Act and represent BSEE as the appropriate Bureau official with the appropriate Tribal and ANCSA Corporations officials in the absence of the Director through the redelegation of authority.

3. The **Tribal Liaison Officer (TLO)** will:

- a. Serve as the National Lead for BSEE and the principal point of contact for Tribal consultation matters.
- b. Leads the development and maintains updates of national Tribal consultation policy, guidance, and procedures, including a national Tribal consultation handbook.
- c. Represents BSEE leadership as the appropriate Bureau official in consultations and meetings with the appropriate Tribal and ANCSA Corporations official as circumstances warrant and speak on behalf of BSEE in such circumstances.
- d. Implement 512 DM 4 and 512 DM 5 and BSEE procedures regarding Tribal consultation, that are in accordance with this BID on the National Tribal Engagement Program.
- e. Comply with 512 DM 4, 512 DM 5, and E.O. 13175, applicable statutes, and administrative actions including:
 - i. Determining whether there may be Tribal implications for any Tribe or ANCSA Corporation, considering all applicable laws, including but not limited to any treaty rights, and memorializing that determination in writing.
 - ii. Providing Tribes or ANCSA Corporations with follow up as indicated by consultations. In the course of each consultation, BSEE will discuss with the Tribe or ANCSA Corporation the means for BSEE to provide feedback on how the bureau is taking the issues that the Tribe or ANCSA Corporation raised into account in its decision making.
- f. The TLO will conduct regular/re-occurring meetings with RTLOs to maintain constant awareness of activities within the Bureau.

4. The **Tribal Coordinator** will:

- a. Serve as a facilitator of the Division/Bureau/Department at meetings with other divisions/bureaus/agencies, states, Tribes, lessees, and other interested parties to discuss complex and controversial Tribal and related regulatory issues.
- b. Supports and advises the Bureau TLO on issues related to government-to-government consultation and coordination and makes recommendations on Bureau Tribal policy and BSEE's consultation practices.
- c. Coordinates with Federal Preservation Officer on issues pertaining to historic properties, sacred sites, and areas of religious importance to tribes to ensure proper consideration is being given to impacts of OCS activities on Tribal communities.
- d. Assist the TLO in the development and update of national Tribal consultation policy, guidance, and procedures, including a national Tribal consultation handbook.

- e. Develop a training plan to ensure that BSEE representatives whose responsibilities include consultation with Tribal officials have an adequate level of knowledge for that purpose before conducting any consultations.
 - f. The Tribal Coordinator may determine, based on the documents provided in Section 6. b., to assist decision makers with determining whether proposed actions have Tribal implications.
5. The **Chief, Environmental Compliance Division** will:
- a. Coordinate with the Bureau's Tribal Liaison Officer and Tribal Coordinator on Environmental Compliance Program consultation needs.
 - b. Provides the TLO with program management and administrative support.
6. The **Chief, Office of Offshore Regulatory Programs (OORP)** will:
- a. Designate an OORP representative as the appropriate point of contact for Tribal consultations.
 - b. Notify the Tribal Coordinator and the regional director or program manager of affected region or program of any rulemaking action, interpretive rules, Regulation Identification Number requests, externally facing; guidance documents, policies, or procedures, and provides relevant documentation.
 - c. Provide expertise in the rulemaking process during Tribal consultations and meetings.
7. The other **Office and Division Chiefs** will:
- a. Serve as a subject matter expert for their specific office or program as the appropriate Bureau official for BSEE in consultations and meetings with appropriate Tribal or ANCSA Corporations officials.
 - b. Ensure that respective office and division regulations, policies, procedures, decisions, and activities are fully compliant with the Authorities listed in Appendix A, other applicable guidance, and this directive.
8. The **Regional Directors** will:
- a. Designate one or more RTLO's and ensure the position is fully resourced.
 - b. Inform potentially affected Tribes and ANCSA Corporations early in the development of offshore energy activities and to determine their interest in consultation with government
 - c. Provide invitations to consult to those Tribes and ANCSA Corporations who have expressed concerns or interest through individual communications in combination with public notices, as appropriate.
 - d. Notify the RTLO and the TLO if any Tribe or ANCSA Corporation requests consultation and ensure the RTLO and the TLO have the appropriate resources to proceed in accordance with the Consultation Authorities.

- e. Conduct Tribal consultation activities for regional energy actions on the OCS in conjunction with the TLO and RTLO.
 - f. Represents BSEE as the appropriate Bureau official in consultations and meetings with the appropriate Tribes and ANCSA Corporations officials as circumstances warrant and speak on behalf of BSEE in such circumstances.
 - g. Ensure that BSEE representatives whose responsibilities include consultation with Tribal officials have training, education or equivalent experience providing an adequate level of knowledge for that purpose before conducting any consultations.
9. The **Regional Tribal Liaison Officers (RTLO)** will:
- a. Serve as the Regional Lead for BSEE for Tribal consultation matters.
 - b. Execute regional government-to-government consultation requirements.
 - c. Coordinate with the Regional Director of their respective region and the Bureau TLO on regulations, policies, procedures, decisions, and activities that have Tribal implications.
 - d. Attend national and regional native conferences and conventions to represent BSEE and to provide awareness and build relationships.
 - e. Maintain Tribal point of contact lists for assigned region: Gulf of Mexico, Pacific, Alaska, and Atlantic.
 - f. Assist in preparing the DOI Annual Tribal Consultation Report for the TLO and provide status of consultation planning and progress for the region.

PROCEDURE OR GUIDANCE

1. **BSEE Consultation Procedures.** When taking Bureau action that has Tribal or ANCSA Corporations implications BSEE will initiate consultation with Tribes or ANCSA Corporations in accordance with this BID on the National Tribal Engagement Program. In undertaking this consultation, BSEE shall use the procedures for consultation 512 DM 4 and 512 DM 5, as well as the guidance forthcoming in the BSEE Tribal consultation handbook. Implementation of resolutions from consultations are best informed through the self-determination of Tribes and ANCSA Corporations.
2. **Training.** Any BSEE staff who will represent the Bureau or office in consultation may complete training to promote positive relations with Federally Recognized Tribes and ANCSA Corporations, including a review, as applicable, of:
 - a. The general history of the government-to-government relationship and government-to-corporation relationship between the Federal Government and the Tribes or ANCSA Corporations;
 - b. The Federal trust obligation owed to the Tribes or ANCSA Corporations; and
 - c. The culture and history of the Tribes or ANCSA Corporations.

3. **BSEE National Database.** The Tribal Coordinator will develop and maintain the national database for all properly registered Federally Recognized Tribes and ANCSA Corporations.
4. **Annual Tribal Consultation Report.** On an annual basis the BSEE TLO shall develop a report of the results of their efforts to promote consultation with the Tribes and ANCSA Corporations. The report is due to the TGO by December 31 of each year. Reporting is intended to be a comprehensive list of all consultation efforts undertaken that year and may include, but is not limited to, the scope, cost, and activities of the consultation efforts. The report should also highlight significant consultation efforts conducted one-on-one with the Tribes and ANCSA Corporations. The report should also include proposed plans and recommendations. The report template can be found in 512 DM 4, Attachment 1.

ATTACHMENT(S)

APPENDIX A AUTHORITY (STATUTE AND REGULATION)

APPENDIX B REFERENCES (AGENCY GUIDANCE)

APPENDIX A AUTHORITY (STATUTE AND REGULATION)

The authorities include, but are not limited to, the list provided. Discovery of additional authorities and/or establishment of new authorities do not necessitate the reissuance of this policy.

- a. 43 CFR Part 50, Procedures for Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community, issued on October 14, 2016
- b. Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (16 U.S.C. 3101)
- c. Alaska Native Claims Settlement Act (ANCSA) of 1971 (43 U.S.C. 1601 *et seq.*)
- d. American Indian Religious Freedom Act (AIRFA) of 1978 (42 U.S.C. 1996)
- e. Archeological Resources Protection Act (ARPA) of 1979 (16 U.S.C. 1B)
- f. Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531-1544)
- g. Executive Order (E.O.) 13175: Consultation and Coordination with Indian Tribal Governments, issued on November 6, 2000
- h. Federally Recognized Indian Tribe List Act of 1994, November 2, 1994 (25 U.S.C. 479a)
- i. Joint Secretarial Order 3403 Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (November 15, 2021)
- j. Marine Mammal Protection Act, (MMPA) of 1972 (16 U.S.C. 1361)
- k. Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-712)
- l. National Environmental Policy Act of 1970 (NEPA) (42 U.S.C. 4321 *et seq.*)
- m. National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. 300101)
- n. Native American Graves and Repatriation Act (NAGPRA) of 1990 (25 U.S.C. 32)
- o. Oil Pollution Control Act (OPA) 1990 (33 U.S.C. 2791-2761)
- p. Public Law 108-199, 118 Statute as amended by Public Law 108-477, 3267
- q. Congressional Act requiring Federal Agencies to consult with Alaska Native Corporations (ANCSA) on the same basis as Federally recognized Indian Tribes under E.O. 13175, issued on December 8, 2004
- r. Secretarial Order (S.O.) 3317: DOI's Policy on Consultation with Indian Tribes, signed on December 1, 2011
- s. Secretarial Order 3342, Identifying Opportunities for Cooperative and Collaborative Partnerships with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources (October 16, 2016)

APPENDIX B REFERENCES (AGENCY GUIDANCE)

The references include, but are not limited to, the list provided. Discovery of additional references and/or establishment of new references do not necessitate the reissuance of this policy.

- a. BSEE Environmental Compliance Handbook (550.1-H Version 2), December 7, 2020
- b. Department Manual (DM) Part 512, Chapter 2: Department of the Interior Policy on Department Responsibilities for Indian Trust Resources, issued on December 1, 1995
- c. Departmental Manual (DM) Part 512, Chapter 4: Department of the Interior Policy on Consultation with Indian Tribes and Alaska Native Corporations, issued on November 9, 2015
- d. Departmental Manual (DM) Part 512, Chapter 5: Procedures for Consultations with Indian Tribes, issued on November 9, 2015.
- e. DOI S.O. 3317, Department of the Interior Tribal Consultation Policy, signed December 1, 2011
- f. DOI Policy on Consultation with ANCSA Corporations, signed August 10, 2012
- g. M-10-33: Memorandum for the Heads of Executive Departments and Agencies and Independent Regulatory Agencies, Subject: Guidance for Implementing E.O. 13175, Consultation and Coordination with Indian Tribal Governments, issued July 30, 2010
- h. Memorandum of Agreement (MOA) Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement NEPA and Environmental Compliance (October 2018)
- i. Memorandum Of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights Related to Natural Resources (November 2016)