



Bureau Interim Directive Data Sheet

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Signatory	Director Kevin M. Sligh
Materials Superseded	Instructional Memorandum NO. IM-010 BSEE Tribal Consultation Guidance, signed August 20, 2019

Originating Office Location:

- Headquarters Alaska Atlantic
- Gulf of Mexico Pacific



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

Signature Page

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Revision History

Directive Series and Part Title	Part Number 570 - Tribal Engagement
Directive Number	BID 2022-047N
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Directive Version	Effective Date	Substantive (S) or Non-Substantive (NS) Change	Summary of Revisions
1	Date of Signature	S	This BID Supersedes Instructional Memorandum NO. IM-010 BSEE Tribal Consultation Guidance, signed August 20, 2019. The purpose for this BID is to establish the Bureau’s Tribal engagement commitment and implementation, including the roles and responsibilities of Bureau program offices and personnel responsible for Tribal consultation with Federally Recognized Tribes, Native Hawaiian Communities, and Alaska Native Claims Settlement Act Corporations.



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

BUREAU INTERIM DIRECTIVE

Part Number and Title	<u>570 - Tribal Engagement</u>
Directive Number	<u>BID 2022-047N</u>
Directive Title	<u>National Tribal Engagement Program</u>

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 BID establishes 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 (DM) 512 Chapter 4 and DM 512 Chapter 5. The BID also establishes guidance on consultation, training, the tribal list, submittal of the Tribal Consultation Annual Report, and the Tribal Working Group.

AUTHORITY

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

REFERENCES

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

POLICY

BSEE’s policy is 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 will make good-faith efforts to invite Tribes, Native Hawaiian Communities (NHC) and Alaska Native Claims Settlement Act Corporations (ANCSA) 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 or a substantial and direct effect on an ANCSA Corporation or the NHC. The BSEE policy is to follow the Department of the Interior’s requirements on intergovernmental relations with Tribal governments.

Additionally, BSEE’s policy recognizes the following:

1. Establishment of National Tribal Engagement Program. The BID establishes a national policy for BSEE that ensures the Bureau’s Tribal engagement commitment and implementation throughout the Bureau.

2. Self-determination. BSEE recognizes and respects that the resolutions of challenges affecting Tribes, the NHC, and ANCSA Corporations are best informed and implemented by the Tribes, the NHC, and ANCSA Corporations.
3. Government to Government Tribal Relationships and the Responsibilities to ANCSA Corporation's and the NHC. In furtherance of its government-to-government relationship with Tribes and its responsibilities to ANCSA Corporations and the NHC, the Bureau of Safety and Environmental Enforcement -
 - a. Respects and furthers the special trust relationship with Tribes.
 - b. Will continue to work with Tribes on a government-to-government basis to address concerns related to BSEE actions having implications for Tribes.
 - c. Recognizes the right of Tribes to self-government and self-determination.
 - d. Will fulfill its obligations to consult with ANCSA Corporations and the NHC on issues affecting their interests in lands and resources.

DEFINITIONS

- a. Appropriate Bureau Officials: 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. ANCSA 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.*
- c. ANCSA Corporation Official or Designee: An official designated in writing by an ANCSA Corporation.
- d. Federal Preservation Officer (FPO): The Marine Archaeological Lead that serves under Director appointment as BSEE's FPO. The FPO serves as the Environmental Compliance Program Lead and principal advisor on National Historic Preservation Act, Section 106 consultation and coordination needs.
- 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. 5130.
- f. Indian Tribe Trustees: Tribal Officials designated by the governing body of an 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. 2701-2761.

- g. Native Hawaiian Community (NHC): The distinct Native Hawaiian indigenous political community that Congress, exercising its plenary power over Native American affairs, has recognized and with which Congress has implemented a special political and trust relationship as defined in 43 CFR 50.4.
- h. Native Hawaiian Organization (NHO): Any organization that: (1) Serves and represents the interests of Native Hawaiians; (2) Has as a primary and stated purpose the provision of services to Native Hawaiians; and (3) Has expertise in Native Hawaiian affairs, and includes but is not limited to: a. Native Hawaiian organizations registered with the Department of the Interior's Office of Native Hawaiian Relations; and b. HHCA Beneficiary Associations and Homestead Associations as defined under 43 CFR 47.10 and 48.6.
- i. Regional Tribal Liaison (RTL): A BSEE employee who is responsible for assisting the Tribal Liaison Officer (TLO) in carrying out the duties outlined in Executive Order (E.O.) 13175 and Departmental policies related to government-to-government consultation requirements within their regions.
- j. Tribal Coordinator (TC): 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. The Tribal Coordinator ensures BSEE programs and offices are informed of the Bureau's responsibilities, coordinates all actions with the policy goals of this BID, and provides education and guidance on Tribal government-to-government relationships.
- k. Tribal Governance Officer (TGO): A DOI official who is appointed by the Office of the Secretary to oversee all Tribal activities within the DOI. The 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 Chapter 4.
- l. Tribal Liaison Officer (TLO): A BSEE employee officially designated to carry out the Bureau's responsibilities described in 512 DM Chapter 4 and 512 DM Chapter 5.
- m. Tribal Official: An elected or appointed Tribal leader or official designated in writing by the governing body of an Indian Tribe to represent the Tribe in government-to-government consultations.
- n. Tribal Working Group (TWG): Collectively includes the TC, TLO, RTLs, FPO, BSEE Environmental Compliance Division (ECD) staff, and any other BSEE staff designated to assist with Tribal matters, as necessary.

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, NHO, and ANCSA Corporation officials.
- d. Ensure that the TLO is responsible and accountable to carry out consultation activities of BSEE and that NTEP is fully resourced.
- e. Ensure that NTEP has 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 that provides an adequate level of knowledge for that purpose before conducting any consultations.
- g. Include appropriate performance measures consistent with this BID in future annual performance plans of their employees.

2. The **Deputy Director** will:

- a. Act and represent BSEE as the appropriate Bureau official with the appropriate Tribal, NHO, and ANCSA Corporation officials in the absence of the Director through the delegation of authority, as circumstances warrant and speak on behalf of BSEE in such circumstances (219.3 MC).

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

- a. Serve as the National TLO for BSEE and the principal point of contact for Tribal consultation matters.
- b. Lead the development of and maintain updates of BSEE's national Tribal consultation policy, guidance, and procedures, including the BSEE NTEP Consultation handbook.
- c. Represent BSEE leadership as the appropriate Bureau official in consultations and meetings with the appropriate Tribal, NHO, and ANCSA Corporation officials as circumstances warrant and speak on behalf of BSEE in such circumstances.
- d. Oversee Bureau implementation and compliance with 512 DM 4, 512 DM 5, and E.O. 13175, BSEE procedures regarding Tribal consultation, applicable statutes, and administrative actions including:
 - i. Determining whether BSEE's planned actions may have Tribal implications for any Tribe or a substantial and direct effect on ANCSA Corporations or NHO's, considering all applicable laws, including but not limited to any applicable treaty rights, and memorializing that determination in writing.

- ii. Providing responses to issues raised by Tribes, NHO's or ANCSA Corporations in consultations on the Bureau's decision making and doing so by means discussed with Tribes or ANCSA Corporations at the consultations.
- e. The TLO will conduct regular/re-occurring meetings with RTLs to maintain ongoing awareness of activities within the Bureau.
- f. Supervise the RTLs and the TC.
- g. Lead preparation and complete submission of the Tribal Consultation Annual Report to the DOI TGO.
- h. Fulfill all obligations as a member of the TWG.

4. The **Tribal Coordinator (TC)** will:

- a. Serve as a facilitator of the Division, Bureau, or the Department at meetings with other divisions, bureaus, or agencies, states, Tribes, lessees, and other interested parties to discuss complex Tribal and related regulatory issues.
- b. Serve as the Lead for the TWG.
- c. Support and advise the Bureau TLO on issues related to government-to-government consultation and coordination and make recommendations on Bureau Tribal policy and consultation practices.
- d. Coordinate with the FPO on issues pertaining to historic properties, sacred sites, and areas of religious importance to Tribes to ensure proper consideration is given to impacts of Outer Continental Shelf (OCS) activities on Tribal communities.
- e. Assist the TLO in the development and updating of national Tribal consultation policy, guidance, and procedures, including the BSEE NTEP Consultation Handbook.
- f. 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.
- g. Based on review of the documents provided by the Chief, Office of Offshore Regulatory Programs pursuant to Section 7.b. below, the TC may assist decision makers with determining whether proposed actions have Tribal implications or a substantial and direct effect on an ANCSA Corporation or NHO.
- h. Coordinate resources for consultation activities with the Regional Directors.
- i. Maintain and update a Tribal list for BSEE of all registered Federal Recognized Tribes, NHO, and ANCSA Corporations.

5. The **Regional Tribal Liaison (RTLs)** will:

- a. Serve as the Regional Leads for BSEE for Tribal consultation matters.
- b. Execute regional government-to-government consultation requirements.
- c. Coordinate with their respective Regional Director and the Bureau TLO on regulations, policies, procedures, decisions, and activities that have Tribal implications.
- d. Attend national and regional conferences and conventions of Native organizations to represent BSEE and to provide awareness and build relationships.

- e. Maintain Tribal point of contact lists for their assigned region.
 - f. Assist the TLO in preparing the DOI Tribal Consultation Annual Report and provide status of consultation planning and progress for their respective regions.
 - g. Fulfill all obligations as members of the TWG.
6. The **Chief, Environmental Compliance Division** will:
- a. Coordinate with the Bureau's TLO and TC on Environmental Compliance Program consultation needs.
 - b. Provide the NTEP with administrative support services.
7. 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 an affected region or program of any rulemaking action, interpretive rules, Regulation Identification Number requests, externally facing guidance documents, policies, or procedures, and provide relevant documentation.
 - c. Attend Tribal consultations and meetings to provide expertise in the rulemaking process.
8. The other **Office and Division Chiefs (Oil Spill Preparedness Division, Safety and Incident Investigations Division, Office of Congressional and International Affairs, and Safety Enforcement Division, Office of Public Affairs, and Office of Policy and Analysis)** will:
- a. Designate a programmatic representative as the appropriate point of contact for Tribal consultations.
 - b. Notify the Tribal Coordinator of any actions with Tribal implications or a substantial and direct effect on an ANCSA Corporation or NHO.
 - c. Provide expertise during Tribal consultations and meetings.
9. The **Regional Directors** will:
- a. Inform potentially affected Tribes, NHO, and ANCSA Corporations early in the development of offshore energy activities and determine their interest in consultation with the Bureau.
 - b. Provide invitations to consult with public notices and, as appropriate, to those Tribes, NHO, and ANCSA Corporations that have expressed concerns or interest through individual communications.
 - c. Notify the RTL when any Tribe, NHO, or ANCSA Corporation requests consultation.
 - d. Ensure the RTL is furnished with appropriate regional resources to complete NTEP activities.

- e. Engage in Tribal consultation activities for regional energy actions on the OCS in coordination with the RTL.
- f. Represent BSEE as the appropriate Bureau official in consultations and meetings with the appropriate Tribes, NHO, 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.

GUIDANCE

1. **BSEE Consultation Guidance.** When taking Bureau action that has Tribal, NHC, or ANCSA Corporation implications, BSEE will initiate consultation with Tribes, NHO's or ANCSA Corporations in accordance with this BID on the NTEP. In undertaking this consultation, BSEE will use the procedures for consultation included in 512 DM 4 and 512 DM 5, the forthcoming 513 DM 1 and 2 (Department of the Interior Policy on Consultation with the Native Hawaiian Community), as well as guidance laid out in relevant BSEE directives. Through the self-determination of Tribes, NHO's, and ANCSA Corporations, BSEE's implementation of the resolutions of challenges are best informed during the engagement and consultation process. Tribal self-determination is a predicate for consultation, which BSEE relies on to inform its decision making.
2. **Training.** Any BSEE staff who will represent the Bureau in consultation must complete training to promote positive relations with Federally Recognized Tribes, NHO's, and ANCSA Corporations, including a review, as applicable, of:
 - a. The general history of the government-to-government relationship between the Federal Government and Tribes;
 - b. The principles behind Federal trust and treaty obligations to Tribes;
 - c. The history of ANCSA and ANCSA Corporations;
 - d. The history of the NHC and NHO's; and
 - e. The relevant culture and history of the Tribes, NHO, or ANCSA Corporations participating in a particular consultation.
3. **BSEE Tribal List.** The Tribal Coordinator will maintain a Tribal list for all listed Federally Recognized Tribes, ANCSA Corporations, and NHO's to ensure it is current for the Bureau. The Secretary of the Interior is required to publish an annual list of federally recognized Tribes, as such the TC will ensure annual review of the BSEE Tribal list for accuracy. A non-exhaustive list of NHO's can be found on the Department's Office of Native Hawaiian Relations website. The TC will also maintain and develop a list of upcoming and completed engagements and consultations with Tribes, ANCSA Corporations, and NHO's.

4. **Tribal Consultation Annual Report.** On an annual basis, the BSEE TLO will develop a report of the results of their efforts to promote consultation with Tribes, NHO's 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 consultation efforts. The report should highlight significant consultation efforts conducted one-on-one with Tribes, NHO's and ANCSA Corporations and should also include proposed plans and recommendations. The report template can be found in 512 DM 4, Attachment 1.

5. **Tribal Working Group.** The BSEE TWG is to provide guidance about the NTEP to BSEE staff regarding activities that may potentially impact Federally Recognized Tribal Governments, NHO's, and ANCSA Corporations. The BSEE TWG will:
 - a. Collaborate in carrying out the responsibilities associated with the RTLs and any other BSEE staff designated to assist with Tribal matters, including the responsibility to assist decision makers with determining whether proposed actions have Tribal implications or a substantial and direct effect on an ANCSA Corporation or a NHO, based on the documents provided in Section 7. b.
 - b. Identify and advance relationships and effective paths for communication with Tribes, NHO's, and ANCSA Corporations that may be affected by actions that the region or program plans to take.
 - c. Identify steps to advance implementation of Secretary's Order 3342 and Joint Secretarial Order 3403.
 - d. Provide input on the Tribal Consultation Annual Report in accordance with the reporting provisions of 512 DM 4 and 512 DM 5 that address planning and progress.

ATTACHMENT(S)

APPENDIX A AUTHORITY (STATUTE AND REGULATION)

APPENDIX B REFERENCES (AGENCY GUIDANCE)

APPENDIX A AUTHORITY

- a. Executive Order (E.O.) 13175: Consultation and Coordination with Indian Tribal Governments (November 6, 2000)
- 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. Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130)
- g. Joint Secretarial Order 3403: Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (November 15, 2021)
- h. Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361)
- i. Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-712)
- j. National Environmental Policy Act (NEPA) of 1970 (42 U.S.C. 4321 *et seq.*)
- k. National Historic Preservation Act (NHPA) of 1966 (54 U.S.C. 300101)
- l. Native American Graves and Repatriation Act (NAGPRA) of 1990 (25 U.S.C. 32)
- m. Oil Pollution Control Act (OPA) 1990 (33 U.S.C. 2701-2761)
- n. Procedures for Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community (October 14, 2016)
- o. Public Law 108-199, 118 Statute as amended by Public Law 108-477, 3267
- p. Congressional Act requiring Federal Agencies to consult with Alaska Native Corporations on the same basis as Federally recognized Indian Tribes under E.O. 13175, (December 8, 2004)
- q. Secretarial Order 3317: DOI Policy on Consultation with Indian Tribes (December 1, 2011)
- r. 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

- a. BSEE Environmental Compliance Handbook (550.1-H Version 2), December 7, 2020
- b. BSEE Delegations of Authority – Office of the Director (219.3 MC Version 1) September 11, 2015
- c. Department Manual (DM) Part 512, Chapter 2: Department of the Interior Policy on Department Responsibilities for Indian Trust Resources, issued on December 1, 1995
- d. 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
- e. Departmental Manual (DM) Part 512, Chapter 5: Procedures for Consultations with Indian Tribes, issued on November 9, 2015.
- f. DOI Policy on Consultation with ANCSA Corporations, signed August 10, 2012
- g. OMB 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 1, 2018)
- i. Memorandum Of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights Related to Natural Resources (November 2016)
- j. Memorandum Of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights (November 2021)