

NOAA FORM 58-5 (4-04)

	National Oceanic and Atmospheric Administration	NOAA Administrative Order 218-8A	
	NOAA ADMINISTRATIVE ORDER SERIES	DATE OF ISSUANCE March 10, 2023	EFFECTIVE DATE June 27, 2023
	SUBJECT: The National Oceanic and Atmospheric Administration (NOAA) Policy on Government-to-Government Consultation with Federally Recognized Indian Tribal Governments		

SECTION 1. PURPOSE.

This Order establishes The National Oceanic and Atmospheric Administration (NOAA) Policy on Government-to-Government Consultation with Federally Recognized Indian Tribal Governments.

SECTION 2. SCOPE.

The purpose of this Order: strengthens the government-to-government relationship between NOAA and Indian Tribal governments; acknowledges that Indian tribes exercise inherent sovereign powers over their members and territory; and establishes a policy of regular and meaningful consultation and collaboration with tribal officials to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

SECTION 3. DEFINITIONS.

Federally recognized Indian Tribe ("Indian Tribe" or "Tribe"): As defined in Section 1(b) of E.O. 13175, is an 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. § 5131.

Consultation: As defined in Section 5 of E.O. 13175, refers to an accountable process ensuring meaningful and timely input from tribal officials on NOAA policies that have tribal implications.

Consultation protocol: An agreement between NOAA and a Federally recognized Indian Tribe describing the elements and procedures for implementing government-to-government consultation and E.O. 13175.
Policies that have tribal implications: All regulations, legislative comments, proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Tribes, or on the distribution of power and responsibilities between the Federal government and tribes.

Tribal officials: An elected or duly appointed official of Indian tribal governments or authorized intertribal organizations.

SECTION 4. POLICY.

This Order follows the guidelines established in the Department of Commerce (DOC) Administrative Order (DAO) 218-8 requiring the heads of operating units to implement all provisions of the DOC Tribal Consultation Policy, designate an appropriate official to ensure implementation of the DOC Tribal Consultation Policy at the operating unit level, and work with the DOC Tribal Consultation Official to ensure that an accountable process for meaningful and timely consultation on policies with tribal implications is in place.

NOAA will further strengthen its consultation and collaboration with Indian tribes through the policies contained in Executive Order (E.O.) 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000; Presidential Memorandum, Tribal Consultation, 74 FR 57881, dated November 5, 2009; Office of Management and Budget Memorandum, Guidance for Implementing E.O. 13175, dated July 30, 2010; Tribal Consultation and Coordination Policy for the U.S. Department of Commerce, 78 FR 33331, dated June 4, 2013; and the 2021 White House Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (Appendix C), which reaffirmed the policy and requirements of the 2009 Presidential Memorandum. In November 2021, DOC and 16 other federal agencies entered into the Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights.

To the extent required by P.L. 108-199 and P.L. 108-447, NOAA will also provide procedures for consultation with Alaska Native Corporations.

This policy is intended only for NOAA internal management purposes and does not create any right or benefit, substantive or procedural, enforceable against the United States, its agencies, entities, or instrumentalities, its officers or employees or any other person.

SECTION 5. RESPONSIBILITIES.

Each NOAA Line/Staff Office and Regional Office is responsible for implementing procedures and best practices consistent with the NOAA Handbook titled NOAA Procedures for Government-to-Government Consultation With Federally Recognized Indian Tribes and Alaska Native Corporations, and other procedures or guidance established by the NOAA Tribal Liaison. The NOAA Handbook will be updated as necessary.

The NOAA Administrator will appoint and maintain a "NOAA Tribal Liaison" position in the Office of Legislative and Intergovernmental Affairs (OLIA) to whose functions will include:

1. Developing, adopting, and publishing to the public, guidance and procedures for government-to-government consultation with Federally-recognized Indian Tribes and Alaska Native Corporations (including handbooks, guidances, and procedures);
2. Ensuring the availability of on-line training and other resources for NOAA personnel assisting with tribal consultations;
3. Maintaining documentation of tribal consultation conducted by NOAA and its Line/Staff Offices and Regional Offices as well as those conducted by NOAA headquarters offices; and
4. Meeting reporting requirements established by the Department of Commerce Tribal Liaison and the President's Office of Management and Budget.

To further these policies, NOAA Line/Staff Offices and Regional Offices will establish such internal procedures as necessary to implement E.O. 13175, DAO 218-8, and the DOC Tribal Consultation and Coordination Policy consistent with the guidance, handbook(s) and procedures developed by the NOAA and DOC Tribal Liaisons. Responsible officials include NOAA Assistant Administrators and NOAA Regional Administrators.

SECTION 6. REFERENCES.

Existing documents referenced in this Order are as follows:

1. E.O. 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249, 2000.
2. Presidential Memorandum, Tribal Consultation, 74 FR 57881, 2009.
3. Office of Management and Budget Memorandum, Guidance for Implementing E.O. 13175, 2010.
4. Department of Commerce Administrative Order 218-8, Consultation and Coordination with Indian Tribal Governments, 2012.
5. Tribal Consultation and Coordination Policy for the U.S. Department of Commerce, 78 FR 33331, 2013.
6. White House Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, January 2021
7. Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights, November 2021

SECTION 7. EFFECT ON OTHER ISSUANCES.

This Order supersedes NOAA Administrative Order (NAO) issued on June 30, 2014, in its entirety.

The Under Secretary of Commerce for Oceans and Atmosphere signs because there is no delegation of authority for this NAO. An electronic copy of this Order will be posted on the NOAA Office of the Chief Administrative Officer website under the NOAA Administrative Issuances Section.

An electronic copy of this Order will be posted in accordance with Chapter 100 of the NOAA Records Control Schedule on the NOAA Office of the Chief Administrative Officer website under the Administrative Programs' NOAA Administrative Issuances Section. <https://www.noaa.gov/organization/administration/noaa-administrative-orders>



Under Secretary of Commerce for Oceans and
Atmosphere

Offices of Primary Interest:

1. Office of the Under Secretary of Commerce for Oceans and Atmosphere
2. NOAA General Counsel
3. NOAA Office of Legislative and Intergovernmental Affairs