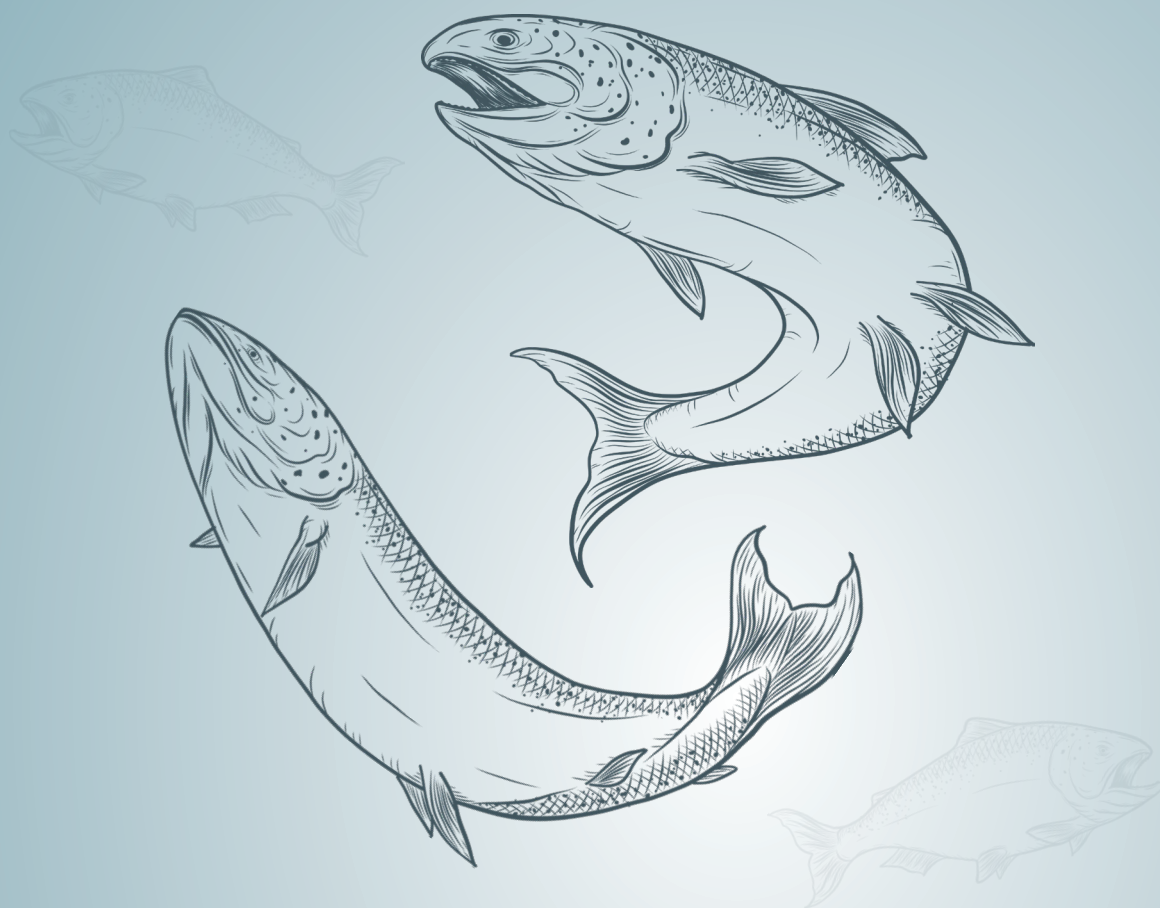


CNRA TRIBAL CONSULTATION POLICY



APPENDIX 1

DEFINITIONS

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Agency or Department Actions: May include, but are not limited to, the “development of policies, regulations, guidelines, processes, programs, and projects,” (Government Code Section 11019.81 (b)(1)) rulemakings, strategic plans, planning documents, projects undergoing California Environmental Quality Act (CEQA) review (including projects that may otherwise be categorically excluded or exempted), funding and grant opportunities, memorandums of understanding, and as required by legislation, with tribal implications.

Bilateral Consultations: occur between one tribe and one department. Bilateral consultations should be the default unless tribes request or agree to a multilateral consultation.

California Native American tribe: California Native American tribes are those that are either recognized by the federal government pursuant to the annual list published under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. Sec. 5131) in the Federal Register or non-federally recognized tribes located in California. Per Public Resources Code Section 21073 and for the purposes of the California Environmental Quality Act (CEQA), a California Native American tribe “means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of the purposes of Chapter 905 of the Statutes of 2004.”

Early: consultation means from the onset of a department action, when tribal input may be effectively incorporated, inform department actions and decisions, and before any major or irreversible decisions have been made or finalized. CNRA and departments should offer consultation as early as possible in the planning process to provide the maximum time available for tribes to consider the invitation to consult and learn about and provide feedback on an action. Consulting as early as possible also gives CNRA and departments adequate time and flexibility to collaborate with tribes and incorporate and address tribal priorities, interests, and concerns into department decision-making.

Formal or Informal Consultations: Consultations may be “formal” or “informal” depending on the topic and objectives of consultation as well as the pre-existing relationships between department and tribal representatives. The level of formality in the context of this policy refers to the number and status of decision-making attendees. All input and feedback received during consultations shall be meaningfully considered regardless of the level of “formality.”

Government-to-Government Consultation: Government-to-government consultation is a formal consultation process that occurs between federally recognized tribes and state or federal governments. This process recognizes the sovereign-to-sovereign relationship and unique responsibilities that exist between federally recognized tribes and the United States and the states within it. Such legal obligations include, but are not limited to, trust responsibility, treaty rights, executive orders, and federal Indian law.

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Meaningful: consultation requires that the department prioritize listening with the intent to fully hear, understand, respect, and consider tribal feedback and comments. Accordingly, consultation must happen well in advance of any major department decisions. Meaningful consultation should help prevent or mitigate potential conflicts by addressing concerns proactively and should actively endeavor to build trust between departments and tribes.

“Meaningful” should include a process of reciprocal communication and consideration but does not imply that both parties will come to consensus and reach agreement. However, a consensus-seeking approach should be sought throughout the consultation process where feasible. If consensus is not reached, CNRA and departments should provide a clear explanation of why tribal recommendations were not fully integrated and explore alternative solutions in collaboration with tribal leadership and representatives.

Meaningful consultation also requires that CNRA and departments provide tribes with a clear understanding of how their feedback will be used in the development of final decisions, actions, or policies following consultation.

Multilateral Consultations: occur between multiple tribes and/or more than one department or one tribe and multiple departments. Multilateral consultations may be appropriate if the proposed action or activity impacts multiple tribes or multiple departments; however, multilateral consultations are not appropriate in all circumstances. The individual tribal priorities, laws, histories, tribal representative preferences, and department needs should all be considered before requesting a multilateral consultation. All tribes involved must agree to a multilateral consultation before it takes place.

Often: CNRA and departments should be building and maintaining relationships with California Native American tribes on an ongoing basis, before consultation is needed. However, for any CNRA or department actions with potential tribal implications, CNRA and department should offer consultation at a frequency that is conducive to allowing tribes multiple opportunities to provide input throughout the development process of a department’s decision-making and as new information becomes available.

Sovereignty: In respect of federal Indian law principles and federal law, federally recognized tribes are sovereign nations who pursue self-determination through enactment and enforcement of tribal law, regulatory and adjudicatory authority, provide services for their members and surrounding communities, control and management of federal trust lands, and many other actions.

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Staff-to-Staff Consultations: occur between tribal staff and department staff, though tribal and department leadership may also attend. These consultations often involve preliminary information sharing and an opportunity to ask questions so that tribal staff can brief their tribal council and decide whether to continue the consultation process.

Traditional Knowledge: The term knowledge may include, but is not limited to, Traditional Knowledge, Traditional Ecological Knowledge, and Indigenous Knowledge. Traditional Knowledge may be generally summarized as observations, practices, and beliefs unique to a particular group of people that are obtained through millennia of interactions and experience with a specific place or environment. Each tribe may have its own definition of Traditional Knowledge. CNRA considers best available science to include all forms of Traditional Knowledge.

Tribal Consultation: California Native American tribes may have their own unique definitions of tribal consultation. For the purposes of this Policy and under Government Code Section 65352.4, tribal consultation “means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation shall also recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance.”

Tribal Cultural Resource: California Native American tribes may have their own definition of tribal cultural resources. Per Public Resources Code Section 21074, tribal cultural resources include “sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe.”

Tribal Implications: Per Government Code Section 11019.81 (b)(3), tribal implications are “actions that impact one or more federally recognized tribes or nonfederally recognized tribes or tribal organizations, the government-to-government relationship between the state and federally recognized tribes, or the distribution of power and responsibilities between the state and federally recognized tribes.” Tribal implications also include actions that are of interest to tribes, including but not limited to, tribal cultural resources, sacred sites, cultural viewsheds and landscapes, natural resources, representation or depiction of tribal communities by those other than the community itself, economic development, access to and use of ancestral lands, ancestral land return, and increasing the availability of public resources and services to tribes and their communities.

Tribal Liaison: Designated CNRA personnel who act as an intermediary, facilitate coordination and communication, and endeavor to build trust and establish good working relationships between CNRA departments and California Native American tribes.