

## TRIBAL ISSUES AND CONSIDERATIONS RELATED TO COLLABORATIVE NATURAL RESOURCE MANAGEMENT

Mary Adelzadeh, Todd Bryan and Steven Yaffee

Collaboration among federal agencies and Native American tribes evidences a number of unique challenges and issues. Tribal sovereignty, legal requirements associated with tribal consultation, cultural differences and longstanding tense relationships all make collaboration challenging. The following material provides a broad overview of issues associated with tribal involvement in collaborative resource management.

Tribal sovereignty. Defending tribal sovereignty is important to tribes. Sovereignty issues often make it difficult for tribes to collaborate with state and local governments, or non-governmental entities, since tribes prefer to maintain a government-to-government relationship only with the federal government. Treaty tribes are considered separate nations and, as such, consider themselves equals with the US government. Provided this status is honored, tribes are more willing to participate in collaborative processes (NW Fisheries Council). However, many federal agencies still treat tribes as one of their publics, especially in NEPA public involvement processes (BLM-Nevada). In addition, some states do not recognize tribal sovereignty and make decisions without seeking tribal involvement (Yankton Sioux landfill permit). A similar problem occurs when dealing with local governments. For example, the Yerington tribe of Nevada acquired land within the city limits of Yerington to build a gas station. Instead of filing for tax exemption, which was their prerogative, the tribal chairman continued to pay county taxes on the property to maintain a good relationship with the county. The new tribal chairman, however, filed for tax exemption, thereby severing the relationship between the tribe and county. In some cases, tribes and local governments have strong working relationships (NW Fisheries Council), based primarily on common resource and community ties.

*Lessons:* Acknowledgement of tribal sovereignty by the federal, state, and local government. Federal agencies have regulations that provide direction for dealing with American Indian and Alaska Natives on a government-to-government basis. Following these guidelines provides the tribes with the security that they can control their own destiny and some from of federal accountability. Likewise, States must be willing to recognize the sovereign status of the tribes. Memorandum of Understanding can be used as a tool to define State and tribal interest, especially in co-management arrangements.

*Examples:* The Washoe Tribe and the USFS Lake Tahoe Basin Management Unit have developed a strong working relationship based on the recognition of Washoe's sovereignty and the value of Lake Tahoe to their culture. Accordingly, the Forest Service recognizes tribal ties to Lake Tahoe and the relevance of cultural practices prior to European settlement in a cooperative agreement with the Washoe Tribe. Furthermore the Lake Washoe tribe recognizes the existence of the USFS and the federal agency charged with management of public lands. However small this may appear, collaboration is usually hindered because of the unwillingness of both parties to recognize each other's existence and relevance to resources.

### State and Tribal MOUs:

The Confederated Tribes of the Umatilla Indian Reservation and the Washington Department of Fish and Wildlife signed an MOU in recognition of their “mutual concern and responsibility for the wildlife and fisheries resources found within the state and desire to cooperate for the protection and enhancement of such valuable resources.” The agreement establishes a working relationship and purpose for their collaboration.

The Arizona Game & Fish Department has signed agreements with various tribes of Arizona. Agreements include, cooperative agreements, MOUs, and collection agreements. These agreements provide a basis to share responsibility for resource management.

Trust. Because of historical relationships between Indian tribes and the federal government, tribes have great difficulty trusting most federal programs, even when they are supposedly for their benefit. Moreover, as “trustees” of Indians, the federal government has often abused this responsibility (BIA trust fund). For example, although the Bureau of Indian Affairs has the lead role in trust responsibilities, many tribes do not trust the agency. Originally called the Office of Indian Affairs, and located in the War Department, the BIA began with policies of Indian annihilation, then moved to assimilation into white culture, and finally to self-determination (although subject to federal administrative procedures and other constraints on resource use). Tribes also have difficulty trusting federal land management agencies, especially when such agencies spend only minimal effort at tribal consultation or treat tribes as one of their publics (Nevada BLM). Most tribes respond to this lack of trust by simply not participating – which agencies usually interpret as disinterest.

Agencies have tried to alternative methods of by having tribes identify general areas of interest. Such techniques have proved to be unsuccessful, since tribes are hesitant to devalue any of their ancestral lands by showing preference.

Trustee responsibility. Tribal self-determination means that the federal government relationship with tribes is no longer a “guardian-ward” relationship as it was in the past but a “sovereign trusteeship” wherein the federal government (according to 25 U.S.C., sec. 3601) actively protects the sovereignty of each tribal government. It is clear that the federal government’s trustee responsibility applies to reservation lands. It is not clear if it applies to non-reservation lands and resources that have tribal value. While the Trust Doctrine applies to all three branches of the federal government, BIA has primary responsibility for maintaining the trust. One way this responsibility might apply to collaboration is through a capacity building role on the part of BIA. If tribes are to actively engage in negotiations over the management of natural resources, building capacity to participate effectively in such negotiations is critical.

Consultation. Presidential Executive Order 13175, developed under the Clinton administration, requires all federal agencies to develop a consultation process with tribes. To date, both tribes and federal agencies have interpreted the EO broadly. Tribes are displeased with current federal processes for assuring adequate and meaningful consultation. According to the Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council, an advisory committee to EPA, the goal of consultation should be consensus. Further, federal agencies are encouraged to institutionalize the consultation process by developing trust and on-going working relationship with tribes to build a better process of understanding and cultural sensitivity.

From the perspective of tribal governments, consultation differs from public participation in that there must be a two-way exchange of ideas. More importantly, when tribes are asked to submit written comments on an EIS, they expect written comments in return. To further complicate this issue, some tribes have developed their own consultation models for federal agencies to follow. However, many tribes have not developed such protocols and as such are inconsistent in responding to federal attempts at consultation. Such inconsistencies make it difficult for the federal government to develop sound policies to address consultation failures.

*Lessons:* The Indigenous Peoples Subcommittee recognizes the following principles as the critical elements of consultation:

- Know the tribes. Federal agencies should know all the tribes and tribal organization in their federal jurisdiction.
- Build on-going consultative relationship with tribes. Create a consistent process that fosters trust. Prevent the government agencies from making assumptions on tribal interests.
- Institutionalize consultation and collaboration procedures. Tribes do not want to be burdened by the bureaucracies of other governments. Find out how to make the process efficient for everyone. For example, perhaps federal, state, and local agencies could coordinate on consultative issues. Some tribes have developed their own consultative models, so request this information from tribes. If tribes do not have a model, find out what works and what doesn't
- Contact tribes early and allow sufficient time to consult.
- If the tribes provide written comments, they expect written comments in return.

*Examples:* Washoe Tribe of Nevada and California Consultation Model (see attached document).

Sacred sites. Executive Order 13007 regarding Indian Sacred Sites, directs federal public land managers to, "(1) accommodate access to and ceremonial use of Indian sacred sites by religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites." The reality for many tribes, however, is that many sacred sites are located outside reservation boundaries, on federal and state managed lands that are permitted for other uses (Nevada geothermal sites). From the agency's perspective, many tribes refuse to provide information regarding the location or significance of such sites, making them difficult to manage or protect. From the tribe's perspective, some information is off-limits due to tribal customs and laws. Also, because of past abuses of sites, tribes are hesitant to provide information unless confidentially can be assured (TNC may have resolved this issue). Unfortunately, a recent Supreme Court decision prevents federal agencies from assuring strict confidentiality. In 2001, the Supreme Court ruled that Exemption 5 under the Freedom of Information Act could not be extended to protect all confidential information between the Department of Interior and Indian tribes.

Environmental Justice. According to Executive Order 12898, "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories." The economic status and the rural and remote locations of reservations make Native Americans communities a target for environmentally harmful operations. The EO also attempts to address risk associated with a subsistence lifestyle that places Native Americans at particular risk for bioaccumulation. In order to assist in identifying the need for ensuring

protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risk of those consumption patterns.

Access to ancestral lands and resources on public land. Most tribes relinquished claims to their ancestral lands when they entered treaties with the federal government. Some in the lower 48 states, and Native Alaskans, did not. Many tribes also gave up their nomadic subsistence lifestyles and tried to adopt euro-agrarian practices. Such practices have not worked well for ecological reasons and have resulted in the loss of many native customs that were tied to the land. In trying to reclaim cultural practices, many tribes have approached the federal government regarding access to public land. While some tribes view the issue as a violated treaty agreement, others, like the Maidu and Washoe, have entered stewardship and co-management agreements with federal agencies. By focusing on access and management rather than ownership, some tribes have begun to reclaim ancestral use.

*Lessons:* Considering the innovative agreements that allow tribal input and discretions over resources and areas of interest.

*Examples of co-management:*

- The Blackfeet tribe and the Montana Department of Wildlife collaborated to complete a five-year swift fox reintroduction program. With funding from the national group Defenders of Wildlife, the tribe has so far reintroduced 76 animals, and estimates survival rates as high as 60 percent.
- In cooperation with several federal and state agencies, the Pyramid Lake Paiutes have helped to recover the endangered cui-ui fish in northwestern Nevada's Pyramid Lake. The terminal lake suffers from upstream diversions, but Congress approved a compromise between irrigators and the tribe in 1990. The Paiutes now have the lead role in scheduling water releases from two upstream reservoirs.
- The Gros Ventre and Assiniboine tribes manage a herd of 600 bison on northeastern Montana's Fort Belknap Reservation. In cooperation with the Fish and Wildlife Service, they have reintroduced endangered black-footed ferrets to the bison range and are working to protect the black-tailed prairie dog.

Tribal politics and government. Becoming familiar with local tribal politics is crucial for effective consultation. Under the Indian Reorganization Act of 1934, tribes were forced to organize into a system that the federal government could recognize and negotiate with. Consequently, many traditional leaders, who rejected reorganization, were marginalized. As a result, many tribal officials do not truly represent the tribe, and have difficulty attaining support from traditional leaders. By consulting with elected leaders, which in some cases represent non-traditional values, the federal government fails to be inclusive of traditional tribal concerns and further threatens tribal traditions.

Tribal Representation. Political structures vary from tribe to tribe. Some have tribal councils under the guidance of an elected chairman, president, or chief. Some operate on term limits, ranging from 2-4 years, while others have no limits. Such realities, make it difficult to develop consistent policies and relationships with federal, state, and local agencies. Also, some tribal

councils better represent and are more responsive to their members and therefore are a more sustainable form of government.

*Lessons:* Developing on going relationships with environmental staff will ensure some degree of continuity. Consider hiring a tribal liaison can help exchange information in both directions. Many federal agencies are moving in this direction.

*Examples:* Nevada BLM, Elko District recently hired a tribal liaison to coordinate efforts between the Western Shoshone and BLM. The role includes facilitation of informational meeting and visit tribes to provide on-going updates on BLM activities. Informational meeting are not considered a consultative process.

Tribal distinctiveness. It is important to remember that tribes are culturally and administratively distinct. Although several tribes might live in the same region, they may not share similar practices or beliefs. Moreover, uncomfortable feelings can be experienced when sharing decision-making/information with tribes that are traditional enemies.

*Lessons:* Cultural values and customs differ between tribes. What may be sacred to one tribe may be of little importance to another.

*Examples:* The Navajo hold four animals very sacred and are not allowed to speak their names, otherwise spirits will be offended, however not all tribes have the same connection to the same animals. Furthermore, tribal identity is strongly based on clans. For instance, one Hopi may not be offended at the suggestion of solar power, however, another Hopi that is a member of the sun clan may be very offended.

Limited resources. Tribal environmental staffs are small with very limited budgets. Constrained resources make collaboration necessary to accomplish work on the ground, especially in managing entire ecosystems. However collaborative processes are also time consuming. In consideration of the constrained tribal resources, federal and state agencies should contact tribes as early as possible so tribes may plan projects accordingly. Also, states and federal agencies should develop on-going relationships with the environmental staff, but also know that they do not make tribal decisions. In most cases, the environmental staff is charged with providing technical knowledge and recommendations to the tribal council, however the decision is left to the tribal council. EPA does have some funding available through its General Assistance Program (GAP), however, funds can be used only for program development not implementation.

Tribal customs related to collaboration. Some tribal councils do not have the authority to bind their tribes to agreements that might emerge through collaborative processes (Yankton Sioux landfill). In such circumstances, the general council – all tribal members – must vote to select a course of action. In some cases, the tribal council must present several options to the general council for agreement. In such instances there may be no way to distinguish hard-fought negotiated agreements from other kinds of alternatives.

On a more subtle level, some tribal customs prevent tribal negotiators from “inventing options” in interest-based negotiations (Yankton Sioux landfill). This may be partially a consequence of historic concessions. Tribal negotiators are generally more comfortable responding to proposals made by others. If accommodations are not made to address this characteristic, the outcome of

negotiations could be that tribal interests are satisfied only minimally while other interests are satisfied more fully.

Native Americans tend to be more respectful of elders than other American cultures, which tend to worship youth and expertise more than elderly wisdom and experience. Tribal negotiators may defer to elders (both their own and others) in collaborative processes, while non-native Americans may rely more on expertise and youthful exuberance.

Existing public land paradigms. Most land management agencies pay greater attention to commodity and recreation-based uses of public lands than other uses. Land management agencies are responding to pressure and demand for resources. This situation is exacerbated by the recruitment of experts who represent these uses in public agencies. As a result, tribal issues and demands are seen as not as important as other demands. Agencies may have small staffs and budgets to manage tribal issues, however the agencies still tend to make decisions that favor resource users who place the greatest demand on the agency, often damaging tribal interests. This is a natural resource justice issue. Title 9 directed resources and priorities more equitably in public school athletic programs. There is no similar directive in public land management and may become a barrier to collaboration.

Separation of church and state. Tribal use of land often contains a spiritual component. While this is no longer an issue on reservation lands, it remains a contentious issue on public lands. Public agencies like the National Park Service have attempted to restrict recreational use of some areas that are known tribal sacred sites. While most recreational users have voluntarily complied with restrictions, others have sued over church/state separation. Collaboration might be a better means of addressing these issues than litigation.

TEK and conventional science. Traditional ecological knowledge (TEK) and conventional science can sometimes clash. Western science fails to acknowledge the value of indigenous knowledge and values. More importantly, tribes are being more proactive at insisting on reintroducing and managing indigenous plants for medical and ceremonial uses. Assuring that they have access to collect healthy, pesticide free plants. Sharing resources and collaboration may serve as a way to overcome strained budgets and staff. Also, many federal agencies are becoming aware of the benefits of TEK for prescribed burning and wildlife management. The development of innovative institutions, agreements and practices that incorporate the strengths of the both management systems can increase the effectiveness of collaboration. See attached chart for the fundamental differences between Western Science and TEK.

*Examples:* Scientific surveys indicated the Beaufort Sea bowhead whale population was very depleted, with only about 800 whales surviving in 1977. Local hunters stated the whale population was about 7000. They also took issue with assumptions underlying scientists' population estimates (e.g., that whales only migrated in open water leads, and were incapable of swimming under the ice offshore and did not feed during migration). On the other hand, Inuit hunters believe whales migrate hundreds of miles offshore under the ice and therefore cannot be censused by visual means alone. On the basis of these methodological criticisms, a sophisticated survey technique was developed, incorporating Inuit assumptions (later verified). Using the new census methods the 1991 bowhead population was conservatively estimated to be in excess of 8000 whales, despite an annual harvest of between 20 and 40 whales over the past decade. The

findings tended to confirm the Inuit 1977 population assessment of about 7000 animals (Freeman 1989a).

In 1979 biologists warned, from the results of aerial censuses, that the barren-ground caribou west of Hudson Bay were seriously depleted and over hunted. The Inuit hunters disputed these findings and the prognosis that the herds were about to become extinct. Scientists claimed a decrease of approximately 100 000 animals had occurred in just a few years. Inuit countered that the census techniques were deficient and that recent changes in seasonal caribou distribution also contributed to the low census figures. To resolve the conflict, surveys were carried out by census techniques suggested by Inuit hunters. The result was that population estimates increased by approximately 100 000 caribou, thus confirming that the herds were not threatened by "over hunting" and extinction (Freeman 1989b).

Communication. Communication styles vary widely between non-Indians and Indians. Such differences can create barriers to effective communication.

*Lessons:* Never make assumptions that the tribe agrees just because they do not respond. Try different techniques that tribes will be more responsive to.

*Examples:* Native Americans rarely interrupt conversations, even if they disagree with what you are saying. Likewise, one should be respectful by not interrupting when an Indian is speaking. Non-verbal responses such as a head nods are also usually absent during conversations. While the dominant society uses such indicators in communication, many Native Americans do not recognize the nuances. See attached chart for more examples.

## Tenets of Indigenous and Western Scientific Knowledge and Management Systems

(adapted from Berneshawi, 1997:124)

	Indigenous	Western Scientific
Dominant Mode of Thinking	Intuitive, holistic, general	Analytical, Segmented, Specialized
Communication and Learning	Oral: storytelling, learn by doing Observational	Literate: academic, reading and interpretation, Experimental
Characteristics	Holistic, subjective and spiritual	Reductionist, objective and physical
Data Creation	Slow and inclusive	Fast and selective
Prediction Abilities	Cyclical, vague	Linear, accurate
Type of Explanation	Spiritual, includes the inexplicable	Scientific hypothesis, theory and laws
Classification System	Ecological and interconnected	Genetic and hierarchical
Principles	-Every aspect of the ecosystem has a Spirit -Environmentally based	Only humans possess a Spirit Anthropocentric Cultural distinction Separation of belief from fact
Management Systems	-Long-term -Decentralized -Consensus-based -Relies heavily on Traditional Ecological Knowledge	-Short-term, -Centralized authority, -Bureaucratic and heavily regulated, -Based on Science, and modern technology

Berneshawi, Suzanne. "Resource Management and the Mik'maq Nation." *Canadian Journal of Native Studies*. XVII 1(1997):115-148.



# Normative Communication Styles & Values

## For Cross-Cultural Collaboration

Communication Style (Review of Literature)	Very little	Little	Medium	Much	Very Much
Animation/Emotional Expression	Asian,* Native*	Hispanic*	Anglo*		African*
Gestures	Asian, Native		Anglo	Hispanic	African
Range of Pitch between words	Hispanic, Native	Asian	Anglo		African
Volume of speech	Asian	Hispanic	Native	Anglo	African
Directness of questions	Native, Asian	Hispanic			African, Anglo
Directness of answers	Native, Asian	Hispanic			African, Anglo
Directness of rhetorical style, "getting to the point"	Asian	Hispanic, Native			African, Anglo
Accusations require a direct response	Native, African, Asian	Anglo		Hispanic	
Directness of eye contact	Native, Asian	Hispanic			Anglo, African,
Firm, long handshaking	Native, Asian		Hispanic	African	Anglo
Touching	Native, Asian		Anglo		African, Hispanic
Concern with clock time	Native, Hispanic	African		Asian	Anglo
Hierarchical membership in group	Native, African	Anglo			Asian, Hispanic
Individualism more than lineal identity	Native	Hispanic, Asian, African			
Individualism more than collateral group identity	Asian	Hispanic, African	Native		Anglo
Awareness of unearned "white" privilege	Anglo				Native, African, Asian, Hispanic
Closeness when standing	Native, Asian	Anglo	African		Hispanic

\*Asian American, African American, Anglo or European American, Native American, Hispanic American or Latino

<b>Communication Style</b> (Focus Groups)	Very little	Little	Medium	Much	Very Much
<b>Task-Based Purpose vs. Relationship</b>	Native, Hispanic, Asian	African			Anglo
<b>Written vs. verbal</b>	Native, Hispanic, African			Asian	Anglo
<b>Long term history between groups is important</b>	Anglo				Native, Hispanic, Asian, African
<b>Perceived right to set rules and agenda for meeting</b>	Native, Hispanic, Asian	African			Anglo
<b>Perceived right to speak freely at meeting</b>	Native, Hispanic, Asian	African			Anglo
<b>Authority of the person more important than the logic</b>	Native, African		Hispanic, Anglo		Asian
<b>Formal dress</b>		Hispanic, Native, African			Anglo, Asian
<b>Perceived right to represent or speak for the group</b>	Native Asian	African, Hispanic			Anglo
<b>Collaboration based on authority</b>	Native African				Anglo, Asian, Hispanic
<b>Self-Identity, how one describes oneself, related to skin color or ethnicity</b>	Anglo			Asian	Native, African, Hispanic
<b>Ignoring "turns"</b>	Native, Asian	Hispanic		Anglo	African
<b>Self-promotion</b>	Native, Asian	Hispanic		Anglo	African
<b>Use first names vs. titles (Mr., Ms., Reverend)</b>	African, Asian			Hispanic	Anglo, Native
<b>Spiritual elements included in meetings</b>	Anglo	Asian, Hispanic			Native, African
<b>Defer to older persons in group</b>	Anglo		African, Hispanic	Native	Asian
<b>Speed of Response</b>	Native		Hispanic, Asian		African, Anglo
<b>Collaborators must have community respect and support</b>	Anglo				Native, Hispanic, Asian, African