



Alaska Regional Response Team and Area Committee Guidelines for Consultation and Coordination with Federally Recognized Tribes and Alaska Native Corporations

I. Purpose

These guidelines describe the circumstances and processes for consultation and coordination with Alaska tribal entities, to include federally recognized Tribes and Alaska Native Claims Settlement Act¹ (ANCSA) regional and village corporations, for Alaska Regional Response Team (ARRT) and Area Committee activities. These guidelines are intended to enhance, not replace, member agency internal guidance and to assist in ensuring tribal input is an integral part of ARRT and Area Committee planning and other activities. These guidelines do not preclude or prevent any member agency from engaging in consultation activities with federally recognized Tribes or ANCSA corporations at any time and in a manner consistent with their respective tribal consultation and coordination policies, procedures, and guidance.

In addition to formal consultation, member agencies regularly coordinate with federally recognized tribes and ANCSA corporations to exchange information and improve response planning and preparedness. These communications and interactions with tribal partners are an integral component of ARRT and Area Committee activities.

II. Background

The United States has a unique, legally affirmed relationship with American Indian and Alaska Native Tribal Nations (hereafter 'Tribes'). This relationship is recognized under the Constitution of the United States as well as by treaties, statutes, and court decisions. The basis of consultation is rooted in meaningful dialogue where viewpoints are shared, discussed, and analyzed². Government-to-government consultation is a process based on a bilateral recognition of sovereignty and is generally focused on a given issue or set of issues, including compliance with a variety of statutes, policies, and administrative activities that direct the federal government to consult with Tribes.³

The obligations of federal agencies of the executive branch⁴ for government-to-government consultation with Tribes were outlined in a Presidential Memorandum in 1994. It stated, in part, that as federal agencies undertake activities affecting tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Identified principles included:

- Federal department and agency heads shall be responsible for ensuring their operations occur within a government-to-government relationship with federally recognized tribal governments.
- To the extent practicable and permitted by law, federal departments and agencies shall consult openly and candidly with tribal governments before activities are taken that affect them.
- Departments and agencies shall assess the impact of federal plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during their development.

Executive Order 13175 (2000) further affirmed tribal self-government, sovereignty and federal agency

¹ Public Law 92-203, 85 Stat. 688 (December 18, 1971)

² Department of the Interior 512 DM 5

³ Department of the Interior 512 DM 4

⁴ Essentially all federal agencies with few exceptions (hereafter "federal agencies")

requirements for consultation. It directed agencies to have an accountable process to ensure meaningful and timely input for Tribes on activities that have tribal implications. Federal agencies regularly report on agency procedures to initiate, conduct, and document tribal consultations.

III. Introduction

The ARRT is made up of representatives from federal agencies and the State of Alaska, Alaska Department of Environmental Conservation (ADEC), and ARRT activities are subject to state and federal laws, regulations, and policy directives. Area Committees are comprised of qualified personnel from federal, state, tribal and local agencies and are responsible for developing Area Contingency Plans.

The ARRT and Area Committees are interagency entities that exist (among other reasons) to develop and maintain federal, regional, and area contingency plans to coordinate timely, effective response by various federal agencies and other organizations, to discharges of oil, releases of hazardous substances, pollutants, or contaminants, or threats of such discharges or releases.

The ARRT provides:

- The regional mechanism for the development and coordination of preparedness activities before a response action is taken;
- Coordination of assistance and advice to Federal On-Scene Coordinators (FOSCs) during such response activities;
- Guidance to Area Committees to ensure consistency among Area Contingency Plans (ACPs); and,
- Coordination for consistency of individual ACPs with the Regional Contingency Plan and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

The primary role of an Area Committee is to act as a preparedness and planning body. The primary objective of Area Committees is to develop, maintain, and exercise ACPs. Area Committees provide a forum for bringing together federal, state, tribal, and local response stakeholders for the purpose of planning and preparing for responses to major incidents that affect multiple jurisdictions. FOSCs, State On-Scene Coordinators (SOSCs), and Tribes can serve as co-chairs to the Area Committee. It is important to note that state government responsibilities may differ from those of federal agencies, and that these Guidelines apply only to the federal ARRT and Area Committee activities. This document serves as a guide to implement the laws, regulations, and policies related to federal interactions with federally recognized tribal governments during emergency responses.

It is the responsibility of the Environmental Protection Agency (EPA) and the U.S. Coast Guard (USCG) to ensure that activities of the ARRT, Area Committees, and their associated working groups are conducted in a manner consistent with these Guidelines. In coordination with the affected Tribes, the EPA and USCG will work to determine and support the appropriate level of tribal engagement.

As described in 40 CFR 300.115, the ARRT may function as a standing RRT for policy-making and interagency coordination, or as an incident-specific response team activated to support a discharge or release.

IV. Tribal Consultation and Coordination: Framework

When a project is proposed or undertaken by the ARRT or Area Committees, the EPA and USCG should determine as early as possible whether the proposed project or activity has the potential to impact tribal interests. In making this determination, the EPA and USCG will engage representatives from Tribes, tribal consortia, ANCSA Corporations, members of the ARRT and Area Committees, member agencies' tribal liaisons, and Area Committee working groups.

Tribes may contact the ARRT or appropriate Area Committee at any time to request engagement or raise

concerns about potential impact to their people, lands, or resources. In addition, the following factors should be considered when determining a potential impact to tribal resources. Table 1 below provides guidance for consideration on when to engage directly with tribal entities.

Table 1. Consideration for Tribal Engagement

Geographic Considerations	<ul style="list-style-type: none"> • Activity on or adjacent to Alaska Native lands, reservation, Village, or community (or within the same airshed or watershed). • Activity may affect a Tribe's health, resources, rights, or traditional way of life. • Activity within the traditional use areas of a Tribe that may affect a Tribe's resources, rights, or traditional way of life.
Tribal Resources	<ul style="list-style-type: none"> • Activity that may affect the treaty-reserved resources of a Tribe. • Activity that may affect public health in the tribal community. • Activity that may affect the cultural, traditional, or subsistence resources of a tribe or a tribe's traditional way of life.
Tribal Ownership	<ul style="list-style-type: none"> • Activity related to a facility owned or managed by a tribal government.

V. Tribal Consultation and Coordination: The ARRT and Area Committees will seek to identify opportunities to ensure consistent and ongoing meaningful engagement with Tribes whether that be through consultation or coordination. Coordination could include, but is not limited to direct communications, education, outreach, and coordination and collaboration. The table below identifies several methods for coordination.

Table 2. Methods for Coordination

Meeting Notices (Website & Email):	<p>The ARRT and Area Committees will ensure that the time, place, and agenda for meetings are posted to the ARRT and/or ADEC Area Committee websites.</p> <p>The ARRT and Area Committees will email Tribes and tribal notices to notify them of upcoming meetings.</p> <p>Meeting notices will be posted, when practicable, at least 3 weeks prior to meetings, and will include how to obtain further meeting information and remote participation options.</p>
Remote Meeting Participation - Teleconference & Web Conference Services:	<p>ARRT meetings will have remote participation capability to encourage and enable tribal participation. When practical, meeting presentations will be available for live viewing via web conferencing (e.g. Adobe Connect) or download, along with audio participation via a teleconference bridge. Area Committees are encouraged to similarly arrange for remote participation capability.</p>
Meeting Summaries:	<p>Meeting summaries will be posted on the ARRT website and/or ADEC Area Committee websites.</p>

ARRT Newsletter:	<p>The ARRT will produce a bi-annual (twice a year) ARRT newsletter, which will contain information regarding the composition and function of the ARRT, a list of plan updates and other initiatives that the ARRT intends to undertake during the upcoming year, and an explanation of how and when Tribes may participate in ARRT incident-specific activations. The newsletter will also contain information related to important Area Committee activities such as upcoming meetings and plan updates.</p> <p>This newsletter is distributed via email to all federally recognized Tribes in Alaska and made available upon request to ANCSA Corporations and other interested Indigenous organizations.</p>
Letters and Emails:	<p>The ARRT and Area Committees will communicate with Tribes via letter and/or email on issues of concern to Tribes and welcomes Tribes to contact them regarding any issues or concerns they may have related to ARRT or Area Committee business.</p>
Teleconferences:	<p>In addition to regular meetings, the ARRT and Area Committees may organize teleconference calls to discuss issues of concern to Tribes. This may also occur as part of an ARRT or Area Committees government-to-government consultation effort.</p>
Information Sessions:	<p>The ARRT or Area Committees may host informational sessions at conferences (e.g. Alaska Forum on the Environment, BIA Providers Conference or Alaska Tribal Conference on Environmental Management) or other similar venues where many Tribes are gathered. The number of outreach events each year will depend on available agency resources.</p>

a. Government-to-Government Consultation with Federally Recognized Tribes

Government-to-government consultation is a process based on a bilateral recognition of sovereignty and is generally focused on a specific issue or set of issues⁵. Government-to-government consultation between appropriate tribal officials and federal agency representatives is an exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility. Communication will be open and transparent without compromising the rights of federally recognized Tribes or the government-to-government consultation and coordination process.

As leaders of the ARRT and Area Committees, the EPA and USCG will offer government-to-government consultation when activities are determined to potentially effect tribal resources as those are broadly defined. Additionally, government-to-government consultation may be requested by any Tribe at any time on any particular issue or set of issues. If a tribe requests consultation, a lead agency will be appointed to respond to the request. Where activities are joint, the EPA and USCG will determine a mechanism for joint consultation in collaboration with relevant agencies.

b. Tribal Government Participation with the ARRT, Area Committees and their Working Groups

Section 300.115(d) of the NCP states that “Indian tribal governments may arrange for representation with the RRT appropriate to their geographical location.” Since the ARRT covers the state of Alaska, Alaska-based Tribes may request membership on the ARRT. Section 300.180(a) of the NCP states that “Indian Tribes wishing to participate should assign one person or office to represent the tribal government on the appropriate RRT.” Any Tribe seeking representation on the ARRT may submit a written request to the ARRT Co-Chairs (EPA and USCG). As defined in Section 300.5, Area Committees are another appropriate venue for Tribal participation as Area Committees address preparedness and response topics in a localized region where considerations for tribal engagement from Table 1 may exist.

VI. References

Table 3 lists some documents that guide federal departments and agencies in working with Tribes and ANCSA Corporations on a government-to-government basis and define the responsibilities of the ARRT and Area Committees.

Table 3. Guidance Documents and Resources

Year ⁶	Document	Internet Address
2009	Presidential Memorandum on Tribal Consultation (November 5, 2009)	https://obamawhitehouse.archives.gov/the-press-office/memorandum-Tribal-consultation-signed-president
2000	Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (November 9, 2000)	https://www.gpo.gov/fdsys/pkg/FR-2000-11-09/pdf/00-29003.pdf
1994	Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments (April 29, 1994) (59 FR 22951)	https://www.govinfo.gov/content/pkg/WCPD-1994-05-02/pdf/WCPD-1994-05-02-Pg936.pdf
	National Contingency Plan (40 CFR 300)	

⁵ Department of the Interior 512 DM 4 (Sec. C)

⁶ For documents: indicates year of most recent revision

2020	ARRT Charter	https://alaskarrt.org/PublicFiles/ARRTCharter2020_FINAL.pdf
2022	Alaska Regional Contingency Plan	https://alaskarrt.org/PublicFiles/Alaska_RCP_V2_2022FEB.pdf
	Alaska Area Contingency Plans	Alaska Area Contingency Plans
	State of Alaska	
	State of Alaska Department of Environmental Conservation	ADEC References and Tools
	Department of the Interior - Departmental Manuals	
2015	512 DM 4 Policy on Consultation with Indian Tribes and Alaska Native Corporations	https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-4.pdf
2015	512 DM 5 Procedures for Consultation with Indian Tribes	https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-5.pdf
2022	512 DM 6 Policy on Consultation with Alaska Native Claims Settlement Act Corporations	https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-6.pdf
2022	512 DM 7 Procedures for Consultation with Alaska Native Claims Settlement Act Corporations	https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-7.pdf
	EPA	
2023	Environmental Protection Agency Policy on Consultation with Indian Tribes	Consultation with Tribes US EPA
2022	Environmental Protection Agency's Guiding Principles for Consulting with Alaska Native Claims Settlement Act Corporations	Guiding Principles for Consulting with ANCSA Corporations US EPA
	Other Federal References	
	List of Federally Recognized Tribes	https://www.federalregister.gov