



## Indian Health Service Tribal Consultation Policy Tribal Consultation Summary Report

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**Overview:** On July 26, 2023, the Indian Health Service (IHS) initiated Tribal Consultation on the updated draft of the IHS Tribal Consultation Policy. On August 11, 2023, the IHS issued an additional Tribal Leader Letter with a summary document of key items that the IHS Director’s Advisory Workgroup on Tribal Consultation addressed after reviewing comments received from the first Tribal Consultation on April 27, 2021. On November 27, 2023, the Co-Chairs of the IHS Director’s Advisory Workgroup on Tribal Consultation initiated Tribal Consultation on one issue for which the Workgroup could not reach consensus—which definition of Indian Tribe should be included in the updated IHS Tribal Consultation Policy: Option 1, the List Act definition (25 U.S.C. § 5130); or Option 2, the Indian Self-Determination and Education Assistance Act (ISDEAA) definition (25 U.S.C. § 5304(e)).

Below is a summary of feedback the IHS received on this one, outstanding issue during the Tribal Consultation open comment period, which spanned 88 days from November 27, 2023, to February 23, 2024. Feedback generally indicated that Tribes in the lower 48 preferred Option 1, while Alaska entities (Tribes, Tribal Organization, and Alaska Native Corporations (ANCs)) preferred Option 2.

- **Virtual Tribal Consultation Sessions Summarized:** During the open comment period, the IHS hosted 4 virtual Tribal Consultation sessions (on January 9, 11, 17, and 18, 2024) with an average of approximately 100 attendees at each session. Tribal Leaders from the Portland, Oklahoma City, and Nashville IHS Areas preferred Option 1, emphasizing the value of forums for input from entities like ANCs, Tribal Organizations, Intertribal Organizations and Intertribal Consortia, while stressing the importance of maintaining the government-to-government relationship. They acknowledged that Tribal governments have the sovereign right to delegate representation. In contrast, Alaska entities preferred Option 2, advocating for including “Intertribal Organizations and Intertribal Consortium” in the IHS Tribal Consultation Policy to avoid choosing between options. They also highlighted the Congressional mandate for Federal agencies to consult with ANCs.
- **Written Comments Summarized:** During the open comment period, the IHS received 52 letters from 7 IHS Areas (Alaska, Bemidji, California, Nashville, Navajo, Oklahoma City, and Portland) representing 33 Tribes, 14 Tribal Organizations, 3 ANCs, 1 Urban Indian organization (UIO), and 1 other (individual). The commenters in support of Option 1 were represented by 9 Tribes, 1 Tribal Organization, and 1 UIO, and emphasized the unique government-to-government relationship that Tribal governments have with the U.S. and expressed strong support for preserving the inherent right of Tribal governments. They called for separate forums for feedback from other entities like ANCs, UIOs, Tribal Organizations, suggesting these entities should not be conflated with Tribal governments in Tribal Consultation processes. In contrast, 24 Tribes, 13 Tribal Organizations, and 3 ANCs unanimously supported Option 2, objecting to the removal of “Intertribal Consortium and Intertribal Organizations” from the draft IHS Tribal Consultation Policy. They urged the IHS

to reinsert this language or otherwise preferred Option 2. They further expressed that IHS must avoid segregating out ANCs for consultation purposes because separate is not equal. One individual commented that the IHS should refer to Indians as they identify themselves.

**Decision:** After the open comment period concluded, the IHS entered an internal deliberation process reviewing all feedback received and analyzing all available options in contemplating which definition of Indian Tribe to include in the updated IHS Tribal Consultation Policy. The IHS retained the ISDEAA definition of Indian Tribe in its updated IHS Tribal Consultation Policy for reasons including the following: 1) the Indian Health Care Improvement Act (IHCIA) and the ISDEAA are the primary statutory authorities under which IHS operates, and their definitions apply directly to the Agency; 2) the IHCIA and the ISDEAA mandate consultation with, and participation of, Indian Tribes and Tribal Organizations in carrying out the IHCIA and in the development of the IHS budget; and 3) Congress requires all Federal agencies, including the IHS, to consult with ANCs on the same basis as federally recognized Indian Tribes under Executive Order 13175. ANCs are included in the ISDEAA definition, therefore, using the ISDEAA definition does not require a separate policy on consulting with ANCs. Additionally, the IHS updated the IHS Tribal Consultation Policy to ensure that the highest-ranking official from each Tribe has the opportunity to address the Tribal Consultation first, followed by other elected/appointed officials, their designated representatives, and Tribal or Indian Organization representatives.