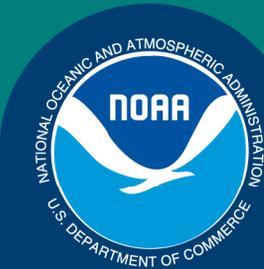


Science, Service, Stewardship



2011 Council Member Training

Federal Tribal Trust Responsibilities in the Context of the MSA

Presented By:
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Purpose

- Give an overview of federal – tribal relationships.
- Overview of obligations for fisheries management.
- Highlight some regional differences.
- Briefing book provides sources for additional information.



Federal – Tribal Relationship Overview

*Pre-Revolutionary America**

- Francisco de Victoria, 1532
- Principles related to land acquisition Later expanded.

* Largely from Felix Cohen's *Handbook of Federal Indian Law*

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Federal – Tribal Relationship Overview

Articles of Confederation

Article IX. The United States in Congress assembled shall also have sole and exclusive right and power of regulating ... the trade and managing all affairs with the Indians ...



Federal – Tribal Relationship Overview

U. S. Constitution

Article I. Section 8 – Congress shall have Power ...

*To regulate Commerce with foreign Nations, and among
the several States, and with the Indian Tribes.*

*Article 6 ... This Constitution, and the Laws of the
United States which shall be made in Pursuance
thereof; and all Treaties made, or which shall be
made, under the Authority of the United States, shall
be the supreme Law of the Land ...*



Federal – Tribal Relationship Overview

U. S. Supreme Court Decisions

The Marshall Trilogy

Johnson v M'Intosh (1823)

Cherokee Nation v Georgia (1831)

Worcester v Georgia (1832)

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Federal – Tribal Relationship Overview

Executive Memorandum

*Government-to-Government Relations with Native
American Tribal Governments (1994)*

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Federal – Tribal Relationship Overview

Executive Orders

12875 – Enhancing the Intergovernmental Partnership

*13175 – Consultation and Coordination with Indian
Tribal Governments*



Federal – Tribal Relationship Overview

Department of Commerce

American Indian and Alaska Native Policy (1995)

- Outlines principles to be followed in all DoC interactions with federally recognized Native American and Alaska Native tribal governments.
- Acknowledges the government-wide fiduciary obligations to American Indian and Alaska Native tribes.
- Ten “Policy Principles”



Federal – Tribal Relationship Overview

Definitions

- Indian Tribe
- Tribal Government
- Tribal Officials
- Agency
- Policies That Have Tribal Implications
- Trust Resources



Conservation Necessity Principles

Five Conservation Standards

- Restriction is reasonable and necessary
- Cannot be achieved by reasonable regulation of non-Indian activities.
- Least restrictive alternative.
- Restriction does not discriminate.
- Voluntary tribal measures are not adequate.



Federal Tribal Obligations

- General Federal Obligations to Tribes
- Specific obligations vary by region, depending on tribal status
 - Federally recognized treaty fishing rights.
 - Federally recognized tribes.
 - Seeking Federal recognition.
 - State recognition.
- Tribal and indigenous involvement most active in PFMC, WPFMC, and NPFMC

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North **P**acific **F**isheries **M**anagement **C**ouncil



North Pacific Fisheries Management Council

Status

- Like other FMCs, under current practice NMFS is responsible for formal government-to-government consultation requirements described in EO 13175.
- However, NPFMC has established a policy priority to reach out to Native Alaska Villages and Corporations.
- 220+ federally recognized tribes (1971).
- The Consolidated Appropriations Act of 2004 extended the obligations for NMFS under EO 13175 to include to the 100+ Alaska Native Corporations.



North Pacific Fisheries Management Council

Primary Council-Tribal Issues

- Halibut Subsistence Program
- Salmon Bycatch
- Arctic Fishery Management Plan
- Northern Bering Sea Research Area
- Habitat Conservation Area Boundaries

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MSA Provisions (section 305(i))

Alaskan Community Development Programs



MSA Provisions (section 305(j))

WP and NP Regional Marine Education and Training

- Regionally-based marine education and training programs in the Western Pacific and the Northern Pacific.
- Programs or projects that improve communication, education, and training on marine resource issues throughout the regions.

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Pacific Fisheries Management Council



Pacific Fisheries Management Council

Status

- Over 30 tribes with Federally recognized treaty/tribal fishing rights (Puget Sound, Washington Coast, Columbia River, Oregon, and Idaho).
- Many other Federally recognized tribes (who have had lost access to salmonids).

All FMPs involve tribal fishing rights.

Council fisheries managed as part of larger group of fisheries

Council membership provision for treaty tribal member and alternate (302(b)(5)(D))



Pacific Fisheries Management Council

Federal court mandated tribal/non-tribal allocations.

- *US v WA, US v OR*
- *Hoh v Baldrige*

Pacific Salmon Treaty

ESA Standards and “Secretarial Order”

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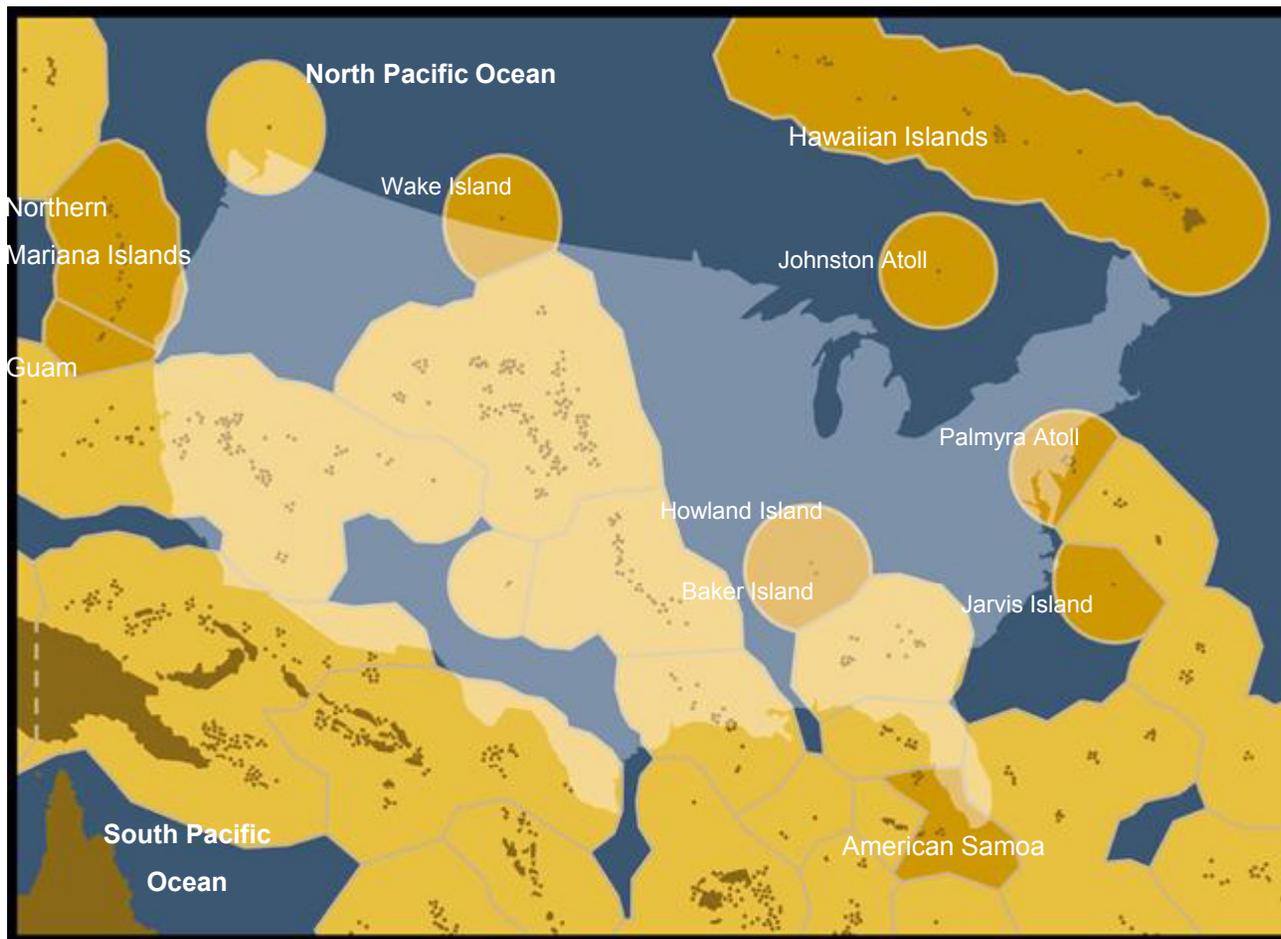
Coastwide: Pacific Salmon Treaty covers fisheries and protects stocks in Southeast Alaska, Canada, Wa., Or., & Idaho

Ocean: Pacific Fisheries Mgmt. Council schedules fisheries and protects stocks in Wa., Or. & Ca.

“Terminal” & “Extreme Terminal”: Wa. & tribes manage stocks and fisheries on the Washington Coast, Columbia River and in Puget Sound



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**Western
Pacific
Fisheries
Mgmt
Council**

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Western Pacific Fisheries Management Council

Hawaii, American Samoa, Guam, Northern Mariana Islands (NMI) and the uninhabited U.S. islands of the Pacific.

Indigenous people defined differently.

Seven of 13 voting Council members are people of indigenous descent from communities of American Samoa, Guam, and NMI



Western Pacific Fisheries Management Council MSRA Provisions

Indigenous Provisions

Pacific Insular Area Fishing Agreements

Western Pacific Community Development Program (305(i))

- Provide access ... to fisheries.
- Develop criteria ...
- ... take into account traditional indigenous fishing practices ...



Western Pacific Fisheries Management Council MSRA Provisions

Western Pacific Community Development Program Eligibility (305(j))

- Location and criteria
- Aboriginal (fishing) people indigenous to the area ...
- No previous harvesting or processing capability ...
- Community Development Plan



Western Pacific Fisheries Management Council MSRA Provisions

Western Pacific Community Development Program Demonstration Project Program (305, note)

- Direct grants to eligible western Pacific communities.
- \$500,000/fiscal year.
- CDPP Advisory Panel
- Appropriate Federal agencies may provide technical assistance.



In Summary

- **Unique and distinctive relationship.**
- **Right of tribes to set own priorities and make decisions affecting their resources and distinctive ways of life.**
- **Individual tribal circumstances differ.**
- **Effective working relationships and consultations processes are key.**

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In Closing

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In Closing

Thank-you