

**UNITED STATES DEPARTMENT OF AGRICULTURE
PLAN OF ACTION 270 DAY REPORT**

TRIBAL CONSULTATION AND STRENGTHENING NATION-TO-NATION RELATIONSHIPS

INTRODUCTION

In response to President Biden’s January 26, 2021 Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, the USDA Office of Tribal Relations (OTR) submitted its Consultation Action Plan to OMB on April 26, 2021. This document is an update on the more than 30 action items from the USDA plan as well as changes that have been made. The document lists an action item, and then in a sub-bullet state where the item stands now.

PREVIOUS ACTION ITEMS

EXPAND USDA STAFF TRIBAL EXPERTISE

- **Goal:** USDA will ensure existing positions and job descriptions incorporate Indian law and tribal cultural knowledge, reconsidering requests for additional FTEs, and providing more training to all staff.
 - **Update:** OTR established an agencywide subcommittee on hiring practices through its Native American Working Group (NAWG), as a result:
 - Office of Human Resource Management (OHRM) and OTR issued a joint hiring advisory for tribal facing positions, requiring specific steps to increase the tribal expertise and skill sets of tribal facing hires. Five positions have been through this new process.
 - The Working Group is drafting sample Performance Measurements on tribal related responsibilities for various job levels to be incorporated.
 - USDA has met with OPM regarding challenges on balancing equity goals and Veteran’s preferences.

Education & Training for USDA Staff

- **Goal:** The Department intends to incorporate more flexible and less structured means of consultation, communication, and collaboration with Tribal governments and communities.
 - **Update:** Because of COVID, there has been a need to adapt to not having in person consultations. This has led to greater use of online platforms like Zoom and Microsoft Teams for consultations, listening sessions, and meetings. The new consultation departmental regulation (DR) and departmental manual (DM) have drafted to replace the current DR will have new sections regarding these new flexibilities and best practices. OTR has completed the drafts of these two documents and will put them into the clearance process.
- **Goal:** USDA OTR will expedite the process of finalizing four new tribal training modules: 1) History of Federal Indian Relations, 2) Trust Responsibility, 3) Tribal Sovereignty, and 4) Tribal Consultation.

- **Update:** OTR finalized these trainings and launched them on the USDA employee training site AgLearn in November to coincide with Native American Heritage Month.
- **Goal:** As soon as possible in 2021, USDA will instruct all staff to take the present OPM “Working Effectively with Tribal Governments” learning module and one of the new Tribal Consultation training modules housed in USDA’s internal training system, AgLearn.
 - **Update:** OTR’s new Departmental Regulation (DR) and Departmental Manual (DM) will outline the training requirements for staff that interact with tribes and serve as consulting officials, as well as the new Performance Measurements.
- **Goal:** Regular training briefings will be required of Senior Policy staff. Additional training and education will be provided to senior managerial staff and senior policy staff at the local/field office level.
 - **Update:** In addition to the DR and DM, OTR has provided a series of briefings and PowerPoints to senior leadership, and has engaged in pre-meetings with consulting officials to ensure that they know the appropriate best practices and proper cultural awareness.
- **Goal:** OTR will lead the compiling of educational resources, the crafting of cultural competency training and educational modules, and will work with the AgLearn staff to update the module if necessary, and craft additional training, education, and cultural competency opportunities suitable for USDA staff nationwide.
 - **Update:** The biggest step for this action item was the posting of the four trainings mentioned above. In 2022, OTR will continue to evaluate what trainings agencies are using and compile.
- **Goal:** Within the first year, USDA will issue an internal guidance and provide educational resources to its personnel to assist agencies in understanding the meeting methodology and protocol for conducting effective consultation activities. Compliance with these educational resources and internal guidance will be monitored throughout 2021 and beyond to ensure program staffs across the Department are conducting consultation within acceptable frameworks. Annual training will be required by all consulting officials. Consulting officials will be required to take training prior to serving as a consulting official.
 - **Update:** Internal guidance has been drafted, a new DR and DM, and are in the clearance and approval process.

UPDATE POLICIES AND PROCESSES WITH THE TRIBAL FEEDBACK

Updated Departmental Regulation and New Manual

- **Goal:** During 2021, USDA will develop, clear, and issue an updated DR and DM.
 - **Update:** OTR has developed a final draft of the Consultation Departmental Regulation and Manual and they are now in the review and clearance process.

BETTER IDENTIFY CONSULTATION TRIGGER EVENTS

- **Goal:** Departmental Regulations and agency policies will specifically identify critical events which absolutely require Tribal consultation and participation. These “trigger events” will be specifically described within the new DR for USDA and all agencies will

examine their areas of responsibility and authority and craft specific triggering events that will guide consultation events at the agency level. These agency-level triggers will be incorporated into agency policies, and employees will be notified and trained to recognize these critical events.

- **Update:** The “trigger events” policy is one that is included within the DR and DM.

CREATE REPORTING, ACCOUNTABILITY, AND PERFORMANCE MEASUREMENTS

Reports on Consultation

- **Goal:** OTR will design and work throughout all agencies of the Department to incorporate evaluation components and tools in any large consultation activities it implements.
 - **Update:** The consultation DR has reporting elements that agencies will have to adhere to. Agencies can also develop their own consultation policies in coordination with OTR.
- **Goal:** The previously existing programs and services guide for Tribal leaders and communities will be updated along with the Youth Guide during 2021 and provided on the USDA OTR website.
 - **Update:** The guides have been completed. OTR is working with our Office of Communications to have them posted on our website.

Accountability & Measurement: Performance Plans & Public Follow Up

- **Goal:** We will publish on our consultation website notes from the meetings, action items, and progress.
 - **Update:** OTR continues to house meeting information and notes on its consultation website.
- **Goal:** USDA will establish Department-wide guidance on performance measurements relating to Tribal consultation and collaboration which will be incorporated into individual personnel performance reviews and plans, particularly at the senior management level, which is the level at which effective formal consultation occurs. In addition, each USDA employee will have incorporated into the performance plans a measure important to their level of responsibility regarding Tribal collaboration and program service delivery. Finally, all employees will be required to incorporate into their training plans specific training modules for working effectively with Tribal governments.
 - **Update:** This is a topic the NAWG HR group will be looking at. The certain issues the group examined took up more time than anticipated.

Reporting and Accountability Platform: Consultation Platform

- **Goal:** Within the first year, OTR will establish and deploy a Department-wide reporting and accountability platform to capture all consultation and collaboration activities occurring throughout and across the entire Department, its various agencies, and mission areas.
 - **Update:** OTR is working with USDA’s Forest Service on a consultation database. The database was initially constructed by Forest Service but will transition to

OTR for management. Currently, OTR and Forest Service are working on technological updates to it.

EXPAND INPUT THROUGH WORKING GROUPS

Consultation Advisory Working Group

- **Goal:** In year one, USDA will evaluate the creation of a Secretary’s Tribal Consultation Advisory Group (made up elected Tribal leaders and federal departmental personnel) to advise the Secretary concerning Tribal consultation needs and emerging issues of concern.
 - **Update:** This evaluation is still ongoing. OTR has also been tasked with creating a Tribal Advisory Committee in the 2018 Farm Bill so it is important to ensure there is not redundancies in the groups. The TAC had inconsistent direction that must be sorted out.

USDA Native American Work Group Expansion

- **Goal:** OTR will work to expand the role of NAWG so that Tribal issues are better institutionalized at USDA.
 - **Update:** In addition to the monthly meetings already in place, OTR has expanded the role of the NAWG in two ways. First, OTR has established multiple subcommittees including HR, Food Sovereignty, and Self-Determination to leverage NAWGs expertise. Second, OTR has established quarterly meetings with all USDA tribal liaisons. This is to ensure that the state and local levels know about national level initiatives and issues while also making sure that the national level knows about state and local level initiatives and issues.

ADJUSTMENTS TO CONSULTATION STRUCTURES

Streamline USDA-Wide Processes & Inter-Federal Agency Coordination

- **Goal:** There needs to be one federal agency-wide calendar for all consultations, and that there needs to be consistency in format and expectations. USDA will work to review our agencies policies and work towards consistency and create a shared calendar. We will share with OMB and the DPC the request by Tribal leaders for more inter agency consistency.
 - **Update:** While there is not yet a shared calendar, OTR has made an effort to notify stakeholders of events hosted by other agencies as well as let agencies know about OTR events. OTR has also held events jointly in collaboration with different agencies, such as DOI.
- **Goal:** USDA will also increase its efforts at inter-federal agency coordination, and, for example, hold joint consultations on shared subject matters when appropriate.
 - **Update:** OTR held a series of joint listening sessions with the Department of Interior dealing with bison. They covered an array of topics such as market development, contracting, and brucellosis. USDA continues to seek to do joint consultations internally and externally where appropriate to consolidate and streamline from the tribal perspective. OTR also participates on multiple committees of the White House Council on Native American Affairs.

Creation of Regional, Inter-Agency, and Issue Specific Consultations

- **Goal:** USDA will convene regional consultations around the entirety of the Department's mission areas and responsibilities. The topics for consultation in these regional settings will be solicited from tribes located in those regions and include upcoming regulations calendar and discussion. USDA will also have interagency consultations on topics of interest.
 - **Update:** OTR will focus more on this priority in 2022 because of the continued likelihood that most meetings will be virtual. The interagency aspect has already started through listening sessions in areas such as bison with success. OTR will continue to proactively identify areas for collaboration, including with OTR's new Indigenous Food Sovereignty Initiative that the Secretary announced during the White House Summit in November.

Regularly Occurring Consultation and As-Needed Consultation

- **Goal:** USDA and its agencies will take advantage of national meetings sponsored by different units of the Department and seek to utilize those venues to engage with Tribal leaders in consultation.
 - **Update:** OTR has worked with organizations such as the National Congress of American Indians (NCAI) and the Intertribal Agriculture Council (IAC) to schedule consultations during these events to promote awareness and foster larger participation since tribal leaders would already have their schedules free for the conferences.
 - **Update:** The next major event is NCAI's Executive Winter Session in February where OTR is helping FNS with a consultation related to FDPIR.
- **Goal:** Departmental consultation policies will encourage face-to-face consultation as the most important means of conducting most consultation events. However, many Tribal leaders have expressed a desire that other means are explored as well, including web conferencing, video conferencing, webinars, and other electronic means for communicating.
 - **Update:** This priority has shifted due to the continuance of COVID. OTR can consult in person when safe and appropriate but has also developed policies and best practices for virtual consultation.
 - **Update:** OTR has invested heavily into IT infrastructure in our conference room to transition to hybrid meetings going forward.
- **Goal:** Tribal governments, communities, and individuals will be given a specific and reasonable time to respond to developing policies and feedback and responses will be provided to consulting parties within a reasonable time frame. Experience has shown that response periods need to be ample in length.
 - **Update:** When reviewing policies, OTR has emphasized the importance to agencies of being proactive in determining if a policy has tribal implications that trigger consultation.
 - **Update:** OTR has in place a Tribal Impact Statement template during regulatory review that indicates if there are tribal implications and keeps a record of consultations that have taken place. Agencies have become much more diligent in

reaching out in OTR to the last year and has led to events like consultations and listening sessions that may not have occurred without this increased emphasis.

Farm Bill Consultation

- **Goal:** The Department commits to conducting a series of Tribal consultation venues in all regions of the country in the time period leading up to the next major piece of farm legislation – the Farm Bill. As the next Farm Bill approaches, USDA will encourage and support through its own hosted regional consultation venues, the opportunities for Tribal governments and intertribal organizations to provide input and focus to the Department in the ramping up period to the next Farm Bill. The Department anticipates this effort will begin in 2021 and continue throughout 2022.
 - **Update:** This is a priority for 2022 as the Farm Bill discussions begin to ramp up. COVID travel restrictions will dictate how much will occur in person versus virtual. OTR will collaborate with other tribal organizations to discuss issues and solutions.

Mechanisms for Additional Consultation

- **Goal:** USDA will continually explore different avenues to reach out to Tribal governments, including but not limited to: paper and visual media, electronic communications via the Internet (twitter, Facebook, blogs, etc.) and the use of teleconference, video conference, and webinars.
 - **Update:** OTR started a Facebook page as another avenue for tribal leaders to interact with USDA as it is a popular social medium in Indian Country. OTR also acquired its own package of Zoom licenses for virtual consultations and listening sessions. These licenses are not just for OTR staff, but for other mission areas that interact with tribal issues and these staff members have utilized them frequently.
 - **Update:** OTR also regularly updates its website and meets weekly with its Office of Communications liaison to ensure synchronization of strategies and goals.
- **Goal:** OTR will work and collaborate with other key offices within the Department: the Assistant Secretary for Civil Rights, Office of Partnerships and Public Engagement, the Office of General Counsel, the Office of External and Intergovernmental Affairs, 1994 Tribal Colleges Program, and others to ensure that maximum coordination in consultation activities occurs.
 - **Update:** OTR meets weekly with its Office of Congressional Relations Liaison to learn about issues on the Hill that impact Indian Country and if OTR needs to provide any technical assistance.
 - **Update:** OTR also meets weekly with the 1994 Tribal Colleges staff, which is part of the Office of Partnerships and Public Engagement, to learn about any issues that require OTR's attention or assistance.
 - **Update:** OTR meets bi-monthly with the Office of General Counsel lead for the OGC Indian Law Working Group.
- **Goal:** OTR will also participate in key American Indian and Alaska Native meetings, such as the Intertribal Agriculture Council, the National Congress of American Indians, Regional tribal leader groups, and many others as a means of continually fostering consultation and collaboration.

- **Update:** OTR has continued collaboration through the aforementioned events and participated in regional or tribal organization events, including keynote speaking, recruiting, and outreach. Events are also brought to OTR's attention through the monthly NAWG meetings.

Federal/Tribal/State Consultations

- **Goal:** USDA will coordinate, through each agency program leadership, a means by which states can be encouraged and assisted in developing mechanisms for consultation with American Indian and Alaska Native governments and Indian organizations existing within their borders.
 - **Update:** OTR has begun conversations with OGC and agencies about what this might look like in practice, and specifically what are state's legal obligations to tribes when implementing federal programs which carry a trust responsibility.

Budget, Legislative, and Policy Consultation

- **Goal:** During the first year, USDA will examine what might be the best venues to hold multiple consultations in a single venue.
 - **Update:** This has been put on hold because of COVID.
- **Goal:** OTR will work across USDA in providing venues for legislative consultation to Tribal governments, perhaps in coordination with venues created for budgetary consultation.
 - **Update:** OTR will continue to facilitate consultations on all topics, including legislative ones. This will become increasingly important when the Farm Bill discussions ramp up.
- **Goal:** OTR will create opportunities for those working with Tribal governments, communities, and individuals to identify specific policy and legislative efforts that would improve Tribal program delivery and collaboration.
 - **Update:** OTR has used forums like consultations and listening sessions for this. In 2022, OTR will continue to find ways through events and stakeholders to gather these opinions.
- **Goal:** OTR will work with USDA Office of General Counsel and through the NAWG to conduct a comprehensive analysis of all USDA mission and agency related legislation for impact on programs and services important to Tribal governments, communities, and individuals and impact on the Tribal consultation policies and will provide this analysis to the Secretary and all agencies of the Department. OTR will coordinate this effort and work closely with OGC in the conduct of such review during 2021.
 - **Update:** This has been delayed until 2022 and will likely overlap with the Farm Bill discussions to take place at USDA.

COMMUNICATIONS: INCREASE & BETTER TARGET

- **Goal:** The OTR web page for Tribal consultation-related information for the Department and all agencies (across all 18 agencies and 7 mission areas and through Departmental offices web pages) will be linked to the OTR web page and updated with meeting schedules, upcoming consultation events, and related consultation information as well as on other agency websites. Information will also be linked to other relevant social media (Facebook, Twitter, and other locations the department is linking to for expansion of

communication messages). The Department's consultation policy will be posted throughout and linked with other important federal pages relating to Tribal consultation and/or Tribal programs.

- **Update:** OTR has all of this information on its website and works to keep it updated. OTR either works with the consultations occurring or receives information through the NAWG or subject matter experts. Once information is received, it's posted.
- **Update:** OTR also provides updates via its Facebook page. OTR is one of the few agencies at USDA with its own Facebook page which emphasizes the importance the Department has placed on this communication.
- **Goal:** OTR will continually maintain the tribalrelations@usda.gov email address to enable and encourage ongoing input from Tribal governments and communities; regularly communicate with Tribal leaders through written, telephonic, and related communication; and explore the ability to use video-conferencing, webinar, and related electronic means to facilitate communication and information-gathering (using appropriately accessible facilities such as field offices of USDA mission areas and agencies and partner field offices such as the Extension service offices located in almost all counties of the country and 1994 Tribal college venues).
 - **Update:** OTR has continued to interact with everybody from tribal leaders to tribal organizations to tribal stakeholders through a variety of means.

ADDITIONAL CONSULTATION ACTION ITEMS

- Multiple tribal leaders have identified the waiver provision of EO 13175 "Consultation and Coordination with Indian Tribal Governments" as an underutilized way for tribal governments to request enforcement of the canons of construction and the trust responsibility. OTR has developed a draft process to include in the DR and is sending it to OGC to ensure its legal sufficiency.
- OTR will hold a Farm Bill consultation to discuss potential issues and solutions for the upcoming Farm Bill.
- OTR will also hold a follow up consultation to its 2021 consultation on consultation and consultation on racial barriers and equity to update tribal leaders on progress and obtain additional input on remaining outstanding issues.