Sitka Tribe of Alaska Consultation Policy

PART I. PURPOSE, POLICY & DEFINITIONS

1. Purpose of procedures

These Consultation Procedures describe the consultation policy and process developed by Sitka Tribe of Alaska to carry out the goals and objectives of the government-to-government consultation process as described in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (2000) (EO 13175) in actions that affect citizens of the Sitka Tribe of Alaska and tribal activities. The intent is to facilitate a more meaningful consultation process.

2. Consultation policy

The following represents the consultation policy of Sitka Tribe of Alaska:

a) The primary objective of consultation is to promote the interests of the Sitka Tribe of Alaska in collaborations and other interactions with other governments and government agencies. Specifically, the objective of consultation is to conduct meaningful multi-party information sharing so that an understanding of perspectives is achieved and those perspectives are given meaningful consideration before agency action occurs, in order to identify, avoid, and mitigate negative impacts to the Tribe;

b) Federal agencies are responsible for initiating consultation when proposed actions may affect Alaska Native communities. Such federal actions may affect management decisions about resources upon which Tribal citizens rely. The Tribe reserves the right to initiate consultation whenever consultation is warranted under Part III of these procedures;

c) The consultation process is part of a spectrum of engagement between federal agencies and Alaska Native communities, which ranges from informal communication to co-management and cooperative decision-making. The consultation process should enhance and not undermine other types of engagement between the federal government and Alaska Natives;

d) Trust, respect, and ongoing relationships are keys to success in consultation. Meaningful dialogue between Alaska Natives and federal agencies should be ongoing;

e) Consultation with tribes is conducted on the basis of a government-to-government relationship. This relationship is based on the recognition of tribal sovereignty, and tribes and federal agencies are equal participants in the consultation process;

f) Consultation should involve parties who have decision-making authority;

g) Consultation should be initiated early at the time when actions are first contemplated, well before decisions are made, and must occur often in the decision-making process. Consultation obligations continue until the federal action is final;

h) Once consultation is initiated, there is an agency obligation to communicate if and how consultation affected agency decision-making. If consultation did not affect the decision, the agency should provide an explanation;

i) Meaningful discussions involve a two-way exchange of information and perspectives, and the information provided will be considered and incorporated in the design, development, implementation, and revision of federal government actions;

j) Exchange of information and perspectives should be conducted in a style and language appropriate for the community involved and if needed translators should be provided by the consulting agency; and

k) Appropriate meeting opportunities are critical to the success of consultation. Funding for consultation is also critical, and therefore the consulting agency should provide funding for the participation of tribal representatives and for other key expenses in consultation process, where possible.

3. Definitions

Definitions of key words or phrases included in these Procedures include the following:

"Agency" is a federal agency as defined in EO 13175, meaning "any authority of the United States that is an 'agency' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5)."

"Alaska Native Organization" is a any group designated by Sitka Tribe of Alaska, or by law or formally chartered which represents people indigenous to Alaska.

"Co-Management Organization" is an Alaska Native Organization which is authorized to and has entered into co-management or cooperative agreements with agencies of the Federal or State governments.

"Consultation" is a formal *process* involving communication between tribal officials and federal agencies, pursuant to Pub. L. 108-199, 118 Stat. 452, as amended by Pub. L. 108-447, 118 Stat. 3267, about possible federal agency action. As described by EO 13175, consultation is an agency's

"accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

"Consultation Procedures" are the detailed steps in the Sitka Tribe of Alaska consultation process and are part of the tribal standards for consultation.

"Consultation Meetings" consist of all meetings in the consultation process, including those that focus on information sharing/exchange and those that focus on the specific policies at issue. Meetings should include at least the following:

- **"Planning meetings"** establish agreed upon agenda, processes, and timelines
- **"Information sharing meetings"** include technical meetings, meetings to solicit information from parties with information directly relevant to the issue subject to consultation, and other types of meetings to share information between tribes and agencies
- **"Formal consultation meetings"** are meetings between tribal officials or authorized tribal organizations and designated federal officials

When appropriate and agreed upon by both parties, information-sharing meetings and formal consultation meetings may co-occur.

"Designated Consultation Official" is the "tribal official" referred to in EO 13175 with which agencies must consult, who is an elected or duly appointed official of an Alaska Native tribal government or an authorized intertribal organization.

"**Designated Federal Official"** is the federal official with decision-making authority related to the proposed federal action who participates in formal meetings and other steps in the consultation process.

"Federal Action" is any activity that is federally funded, permitted, or carried out that affects marine mammals.

"Tribal Consultation Policy" is this Sitka Tribe of Alaska policy and that includes any implementing consultation procedures that are promulgated.

"Tribal Delegation of Authority" is a written delegation of authority from Sitka Tribe of Alaska to an individual or an entity to represent the tribe in the consultation process for all consultation issues that are specified in the delegation document. The scope or timing of the delegation will be made case-by-case at the discretion of the tribe, and depending on the subject of consultation Sitka Tribe of Alaska may or may not delegate authority..

"Tribal Liaison" is a designated point of contact in a federal agency or office who supports the agency in its engagement with Alaska Natives in the consultation process, including but not limited

to notice of tribal consultation requests, meeting and agenda planning, and communication about the outcome of the consultation process.

"Tribe" is a federally-recognized tribe having a government-to-government relationship with the United States with the responsibilities, powers, limitations, and obligations attached to that designation, and possessing inherent rights of self-government as recognized by the Bureau of Indian Affairs.

PART II. AUTHORIZED TRIBAL ORGANIZATION & MULTI-PARTY CONSULTATION

4. Authorized tribal organization consultation

a) Sitka Tribe of Alaska may specifically authorize and designate tribal organizations or individuals to consult on behalf of the Tribe by tribal resolution. Authorized tribal organizations may include, but are not limited to, co-management organizations, Alaska Native Organizations, or other tribal organizations.

b) The authorized tribal organization may request consultation with the agency on any action that may impact Sitka Tribe of Alaska.

c) Consultation under this section does not preclude participation by individual tribal councils or their designees for issues that are relevant to the proposed agency action but outside of delegated authority of the authorized tribal organization.

d) Sitka Tribe of Alaska may delegate authority with any qualifications or reservations of rights that it deems necessary.

5. Multi-party approach to consultation

a) Sitka Tribe of Alaska and other tribal councils, authorized co-management organizations or other authorized tribal organizations may consult collaboratively with agencies in instances that benefit from a multi-party approach.

b) One or more agencies may consult collaboratively with tribal councils, authorized co-management organizations, and/or authorized tribal organizations in instances that benefit from a multi-party approach.

c) To establish a multi-party approach, the parties will:

i. Work collectively to identify relevant tribal councils, authorized co-management organizations, and/or authorized tribal organizations to participate in the process;

ii. Seek to develop a memorandum of understanding among the Alaska Native participants setting out the parameters of the Alaska Native collaboration in the consultation process;

iii. Once Alaska Native participants are confirmed, give notice to the agency of the process desired based on the terms of the memorandum of understanding; and

iv. Take measures to ensure ongoing communication among Alaska Native participants during the process outside of the meetings and communications with agency officials.

d) For issues under subsection (a), the parties will seek to ensure that:

i. The agency provide adequate notice to all parties during the consultation process; and

ii. A collaborative process is utilized that is inclusive of parties to the multi-party consultation.

e) For multi-party approaches, the consulting agency should include all parties on all forms of official correspondence (including hard copy letters, emails, and faxes), consultation meetings (including planning, information-sharing, and formal meetings), conference calls, and other activities undertaken in the consultation process.

PART III. ACTIVITIES APPROPRIATE FOR CONSULTATION

6. Types of actions

a) Agency actions that may affect citizens of the Sitka Tribe of Alaska, the ecosystem and resources, or the ability of Alaska Natives to harvest and utilize resources initiate these Consultation Procedures.

b) The following agency activities are likely to trigger the consultation process:

- Legislation, regulations, rules;
- Policies, guidance documents, directives;
- Budget and priority planning development;
- Legislative comments;
- Permits;
- Civil enforcement and compliance monitoring actions;
- Response actions and emergency preparedness;
- State or tribal authorizations or delegations;
- Activities implementing obligations under treaties, statutes, regulations, or policies; and

- Negotiation of co-management agreements

c) The following types of agency actions could trigger the consultation process in certain instances:

- Regulations and policies that affect the geographic region where citizens of Sitka Tribe of Alaska live or where use of resources occurs;
- Permits that affect the geographic region where Tribal citizens live or where use of resources occurs;
- Research projects and studies that affect the geographic region where Tribal citizens live or where use of resources occurs; and
- Communication actions, including but not limited to press releases, interviews with media, news reports, and publication in scientific or technical journals that relate to subsistence harvest or the use of resources.

7. Evaluation of interests affected

a) When determining whether a proposed agency action affects tribal interests per section 6, the Designated Federal Official should consider the following questions:

- Does the agency action have the potential to affect the geographic area where citizens of Sitka Tribe of Alaska live or may it affect hunting, harvesting, and use of resources?
- Could the agency action potentially affect harvest or sustainability of resources?
- Could the agency action affect resources that Tribal citizens depend upon?
- Could the agency action affect how communities access or utilize resources?

b) When there is substantial uncertainty whether an activity has tribal implications and is subject to the consultation process, the agency should contact the tribe to discuss whether the activity warrants consultation.

PART IV. INITIATING CONSULTATION

8. Points of contact

a) To facilitate communication with federal agencies, Sitka Tribe of Alaska will designate a Designated Consultation Official and make Designated Consultation Official contact information available to agencies in an appendix, including the following information: name, address, phone number, fax number, and email address.

b) To facilitate communication with tribes, agencies will notify the tribe of the Designated Federal Official and tribal liaison and make contact information available to tribal entities, including the following information: name, address, phone number, fax number, email address, and position.

9. Agency-initiated consultation

Sitka Tribe of Alaska requests that agencies utilize the following procedures to notify Sitka Tribe of Alaska of consultation requests:

a) As early as possible at the consultation planning stage, an agency should begin the consultation process by notifying the Chairman of Sitka Tribe of Alaska and the Designated Consultation Official or other representative of the Tribe of the request for consultation.

b) Invitation to consult should occur early enough in the agency planning stage to schedule consultation prior to substantial agency action, including but not limited to the following:

i. Consulting prior to initiation of drafting policies, regulations, guidance, or other relevant documents;
ii. Decision-making and/or substantial commitment of resources; and
iii. Public participation.

c) An agency should notify Sitka Tribe of Alaska using the contact information provided as identified in Section 8. Initial notice should be by hard copy mail, fax, and email.

d) If Sitka Tribe of Alaska does not confirm receipt of the notice within 21 days, the agency should follow up with one or more phone calls, including to the contact phone number, to ensure receipt. If the action is expected to have a significant impact, the agency should continue to make efforts to contact the tribe until the agency receives a response to the consultation request.

e) In addition to providing notice directly to Sitka Tribe of Alaska, the agency should publicize the consultation requests by using press releases, postings on agency and organization websites, and the like.

f) The request for consultation should include the following:

i. State in bold: "Request for Government-to-Government Consultation";
ii. Describe the issue or proposed action and possible impacts to be discussed in non-technical language;
iii. Provide sufficient technical detail for tribal entities to understand the scope and location of the potential impacts of the action, including providing maps and other visuals where appropriate;
iv. Include a signature by an individual with decision-making authority with respect to the proposed action;
v. Be addressed to the Chairman of Sitka Tribe of Alaska and the Designated Consultation Official or other representative of the governing body;

vi. Provide the name of the Designated Federal Official with whom further consultation arrangements can be made, including responding to the notice;
vii. Provide timelines and schedules for the proposed action; and
viii. Request dialogue with *[tribe/authorized tribal organization]* regarding the consultation plan and timeline.

g) When requesting government-to-government consultation concerning actions or policies that may affect Tribal citizens, the invitation should be sent to Sitka Tribe of Alaska and any tribal organization previously authorized by the Tribe that may be affected by the agency action.

h) The agency should provide at least 45 days for Sitka Tribe of Alaska to respond with the decision regarding the request for consultation, recognizing the need for flexibility and recognizing community schedules and other factors that may affect the ability of Sitka Tribe of Alaska to respond during the given timeframe.

10. Response to request for consultation

a) Within 45 days of the receipt of notice of a federal consultation opportunity or notice that a federal action or decision may affect tribal interests, the Designated Consultation Official or other designated tribal official will undertake the following actions:

i. Acknowledge receipt of the request for consultation as soon as possible or within 21 number of days;
ii. Evaluate if and how the proposed federal action may affect tribal interests;
iii. Based on tribal interests affected, determine if consultation is recommended and provide such recommendation to the Tribal Council, relevant delegated tribal authorities, and other relevant tribal authorities; and
iv. Within 14 days of a determination by the Tribal Council or delegated tribal authority that consultation is needed, submit an official consultation request to the appropriate federal official.

b) Within 45 days of receipt of consultation recommendation from the Designated Consultation Official, the Tribal Council or delegated tribal authority will notify the Designated Consultation Official of its determination that consultation is warranted or not warranted.

c) If after 45 days, a decision has not been made, the Designated Consultation Official will contact the federal agency to indicate that the tribe is still considering the action.

d) If consultation invitations arrive during a time of year when the opportunity to make internal decisions is limited, including but not limited to times of year with subsistence activities and significant local events, Sitka Tribe of Alaska may extend the decision-making schedule. If this

occurs, the Designated Consultation Official will contact the federal agency inviting consultation to provide notice of the longer timeline.

e) Failure to request consultation within 45 days of receipt of federal notice of consultation request does not preclude future determinations by Sitka Tribe of Alaska that consultation is required.

11. Tribe or tribal entity initiation of consultation

a) Sitka Tribe of Alaska may initiate a consultation process at any time by request to the relevant agency.

b) Sitka Tribe of Alaska will send a written request for consultation signed by the Designated Consultation Official or other tribal government representative to the head of the relevant agency or a Designated Federal Official and include the tribal liaison if known.

c) The request will set out the reasons for and scope of the requested consultation.

d) The agency should respond within 30 days to consultation request.

PART V. INFORMATION SHARING

12. Information-sharing and information-sharing meetings

a) Information-sharing meetings alone do not constitute formal consultation. They are designed to exchange any potentially relevant information that may be important during the consultation process, including technical information.

b) During information-sharing meetings, Sitka Tribe of Alaska expects the agency to supply appropriate information in order to understand the proposed federal action and its potential impacts on Sitka Tribe of Alaska and its citizens.

c) Information-sharing meetings should occur as early as possible in the consultation process so that they are able to inform the consultation process, including formal consultation.

d) Information-sharing should occur throughout the consultation process as needed.

e) Sitka Tribe of Alaska may notify the agency of particular information-sharing and communication methods that are preferred.

13. Participants in information sharing process

a) The information-sharing process should include all relevant parties, included but not limited to:

i. Tribal entity with which consultation is taking place
ii. Technical staff, cultural experts, and traditional knowledge holders designated by Sitka Tribe of Alaska
iii. Co-management organizations, Alaska Native organizations, or other tribally authorized entities with expertise on the proposed action
iv. Technical staff of agency proposing action
v. Other persons whom tribe, authorized tribal organization, or agency deem necessary to appropriately inform the consultation process.

14. Type of information

a) The types of information to share during the consultation process may include but are not limited to the following:

i. Technical and scientific information from the agency about the proposed action and its potential impacts, conveyed in an understandable manner;
ii. Information, including traditional knowledge, held by Sitka Tribe of Alaska, its citizens, and other relevant parties; or
iii. Information related to the consultation process and scheduling.

15. Confidentiality and record-keeping

a) Prior to providing tribal informationSitka Tribe of Alaska and agency will determine what, if any, information shared during the consultation process should be held confidential to the extent allowable under the law.

b) Prior to information-sharing meetings,Sitka Tribe of Alaska and the agency will agree on the method of recording the information that is shared in information meetings and how meeting proceedings and information will be shared after the consultation process is concluded.

c) At all times, the agency shall use and share information in an ethical manner.

PART VI. MEETING PROCEDURES

16. Location of consultation meetings

a) Initial consultation meetings should take place in the community or communities consulting whenever practicable.

b) For some issues, Sitka Tribe of Alaska may request that consultation take place in face-to-face meetings.

c) The parties will jointly decide when it is appropriate to conduct consultation by telephone or video conference or meet in a location other than the location of Sitka Tribe of Alaska.

17. Planning for the consultation process

a) Sitka Tribe of Alaska and the Designated Federal Official will establish a process for how the consultation meeting(s) will be conducted.

b) A consultation plan or a memorandum of understanding between Sitka Tribe of Alaska and consulting agency may be developed for complex consultation processes.

c) Sitka Tribe of Alaska and consulting agency will discuss and strive to agree on the following items during the planning process:

i. Timing and location of the consultation meeting(s);
ii. Participants in the consultation meeting(s);
iii. Funding provided by the agency, if any, to support the consultation process, and the best use of those funds;
iv. Agenda and issues to be discussed in the consultation meeting(s);
v. Protocol to be followed in the Consultation meeting;
vi. Method of recording the meeting(s);
vii. Periods of time and locations reserved for the tribe or authorized tribal organization and the consulting agency to meet separately during consultation meetings;
viii. Issues pertaining to confidentiality, balanced by the importance of transparency and relevant legal requirements. However, no agreement made prior to a consultation meeting will precludeSitka Tribe of Alaska from requesting confidentiality to the extent allowable by law at any other time during the consultation process.

PART VII. ACCOUNTABILITY

18. Documentation following consultation meeting

a) Sitka Tribe of Alaska requests that the agency provide the following documents within 30 days of any consultation meeting:

i. Final list of consultation participants;

ii. Draft minutes of the consultation meeting to be reviewed and revised by the parties to the consultation;
iii. List of agreed upon next steps and items for action discussed in the consultation meeting;
iv. Timeline for completion of each of the action items;
v. Brief description of how input received during the consultation meeting may influence the management decision or policy discussed; and
vi. Responses to questions and concerns raised by the parties during the consultation process.

19. Meeting minutes

a) Meeting minutes will be considered final and valid only upon review and agreement by all parties to the consultation.

b) Draft meeting minutes will only be shared with parties to the consultation meeting to the extent allowable by law.

20. Documentation following final agency action

a) Sitka Tribe of Alaska requests that the agency provide a document with the following information within 30 days after the final agency action is made or policy issued that was the subject of the consultation process:

i. Explanation of how the consultation process informed the management decision, including how any recommendations developed during the consultation process were incorporated into the final agency decision;
ii. If recommendations were not incorporated into the final agency decision, an explanation of why it did not address the recommendations.

21. Reporting and record-keeping requirements

a) Sitka Tribe of Alaska shall share relevant documents or meeting summaries with appropriate tribal citizens following a consultation meeting.

b) Sitka Tribe of Alaska requests that the agency send semi-annual summary reports to Sitka Tribe of Alaska of all consultations conducted during the specified period of time.

c) Summary reports should include an explanation of the proposed agency action triggering the consultation process, a list of the parties in the consultation, and a short explanation of the major issues addressed.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council of Sitka Tribe of Alaska hereby ....

CERTIFICATION

The foregoing resolution was adopted at a duly convened meeting of the Tribal Council of Sitka Tribe of Alaska, held on June 15, 2016, and at which a quorum was present, by a vote of 9 IN FAVOR, 0 AGAINST, 0 ABSTAINING, and 0 ABSENT.

Sitka Tribe of Alaska - Tribal Chairman

Attest:

Sitka Tribe of Alaska - Tribal Secretary