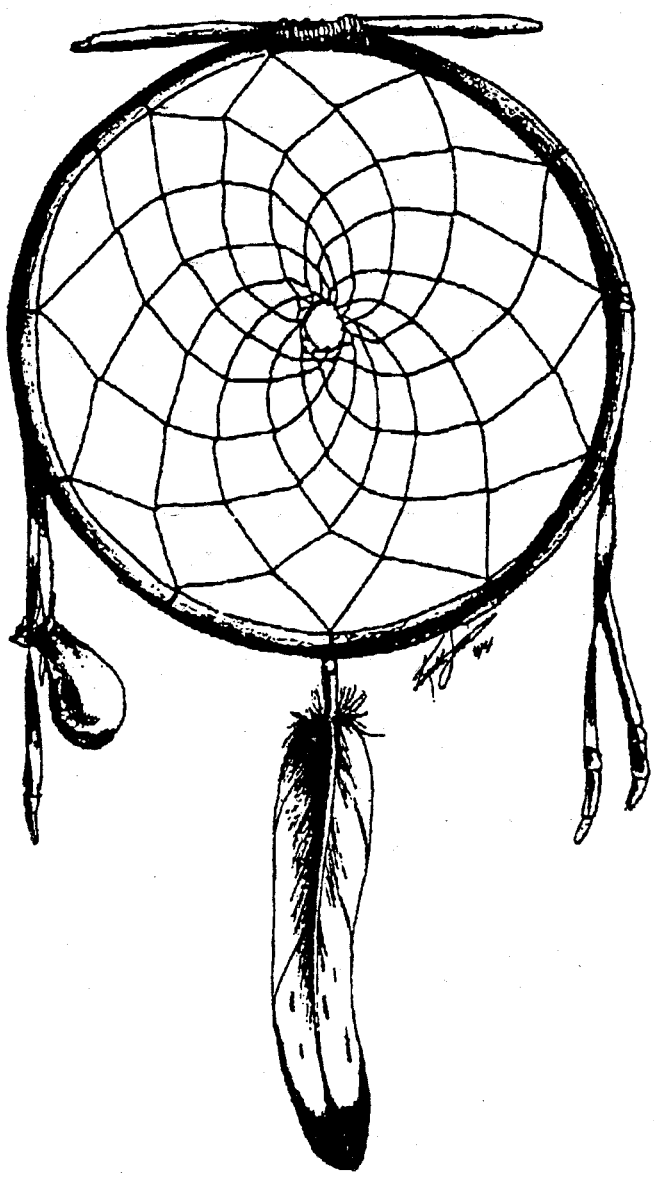
THE NATIVE AMERICAN POLICY

of the U.S. Fish and Wildlife Service



FROM THE DIRECTOR

Just as the "Dreamcatcher" catches the good dreams and allows the bad dreams to pass through the net, the Native American Policy of the Fish and Wildlife Service that follows is intended to capture only good government-to government relationships. As our relationship with the Native American people continues to evolve, we will continue to capture the good visions and add them to this Policy.

Mollie Beattie

June 28, 1994

Cover: The "Dreamcatcher"—During sleep is often when the most powerful visions occur. A dream catcher should be hung freely in the air above the head of the dreamer. Good dreams become caught in the net and directed back to the dreamer by way of the feather. Bad dreams go through the hole and beyond.

Cover Art is a pen and ink drawing by Keith C. Smith of a dreamcatcher created by Ken Poynter. Keith, a graduate of the University of Colorado is Navajo and is currently employed by the University of Colorado–Boulder. Ken, a Passamaquody, is currently the Executive Director of the Native American Fish and Wildlife Society.

INTRODUCTION

The U.S. Fish and Wildlife Service (Service), to accomplish its objectives with greater effectiveness, is seeking partnerships with Native American governments, foreign nations, States, other governmental agencies, conservation groups, and individual citizens. Such partnerships will provide opportunities to better address ecological systems as a whole and do so with maximum assistance and support.

The express purpose of this Native American Policy (Policy) is to articulate the general principles that will guide the Service's government-to-government relationship to Native American governments in the conservation of fish and wildlife resources. The Service envisions developing other Native American policy statements on more specific topics.

The Service has developed and adopted this Policy to help accomplish its mission and concurrently to participate in fulfilling the Federal Government's and the Department of the Interior's trust responsibilities to assist Native Americans in protecting, conserving, and utilizing their reserved, treaty guaranteed, or statutorily identified trust assets. This Policy is consistent with Federal policy supporting Native American government self-determination.

The Service has a long history of working with Native American governments in managing fish and wildlife resources. These relationships will be expanded, within the Service's available resources, by improving communication and cooperation, providing fish and wildlife management expertise, training and assistance, and respecting and utilizing the traditional knowledge, experience, and perspectives of Native Americans in managing fish and wildlife resources.

This Policy is intended to be flexible and dynamic to provide for evolution of the partnerships between the Service and Native American governments. Working relationships between the Service and Native American governments will be generally consistent nationwide, however, they will vary according to the legal basis and management requirements of each relationship. For example, the Service's interaction with Alaska Natives is largely directed by the provisions of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act. Outside of Alaska, the Service's involvement with Native Americans is guided primarily by reserved right doctrines, Executive Orders, judicial mandates, and specific treaties between the Federal Government and Native American governments. This Policy applies to all Service employees in discharging official duties that affect Native American governmental interests.

This Policy is adopted pursuant to and consistent with existing law and does not preempt or modify the fish and wildlife management authorities of the Service, other Federal agencies, Native American governments, or States. The Policy does not suggest recognition of tribal authority that does not currently exist, however, the Service need not wait for judicial recognition of tribal authority over fish and wildlife when such authority is already supported by law. The Policy will not be used to arbitrate differences in opinion between government agencies or to interpret any authorities, laws or judicial findings. Unless specific judicial rulings or Acts of Congress indicate otherwise, this Policy should not be construed as validating the authority of any Native American government in Alaska over lands, fish and wildlife, or non-tribal members.

This Policy does not negate or supersede the diverse mandates and priorities of the Service. Accomplishing the intent of this Policy is contingent upon prevailing legal, procedural, workforce, and monetary constraints.

POLICY PRINCIPLES

The following policy statements provide the framework within which the Service will cooperate with Native American governments to conserve fish and wildlife resources.

I. SOVEREIGNTY

Native American governments are recognized as governmental sovereigns and have been referred to as quasi-sovereign domestic dependent nations by the courts. The Service recognizes the sovereign status of Native American Governments.

II. CONSERVATION

While the major components of this Policy are aimed at cultivating and maintaining effective partnerships between the Service and Native American governments, the ultimate goal is to effect long-term conservation of fish and wildlife resources. This goal is eloquently expressed in the following statement:

> *"We did not inherit this Earth or its natural resources from our ancestors, we are only borrowing them from our childrens' children and their children. Therefore, we are duty-bound and obligated to protect them and use them wisely until such time that they get here, and then they will have the same obligations."*
>
> *Anonymous*

III. GOVERNMENT TO GOVERNMENT RELATIONS

General Statement

There is a unique and distinctive political relationship between the United States and Native American governments, as defined by treaties, statutes, court decisions and the United States Constitution, that differentiates Native American governments from other interests and constituencies, and that extends to all Federal agencies. The Service will maintain government-to-government relationships with Native American governments. The Service will work directly with Native American governments and observe legislative mandates, trust responsibilities, and respect Native American cultural values when planning and implementing programs. Successful implementation of this Policy will be accomplished through working relationships and mutual partnerships with Native American governments. The Service will rely on Native American governments to identify formal and informal contacts to represent them when coordinating with the Service. Working relationships, in many cases, will be with Native American fish and wildlife departments. For major joint initiatives, the Service will offer to enter into formal agreements, developed by both parties, that clearly identify the roles, responsibilities, and obligations of the Service and each involved Native American government.

Reservation Lands

The Service recognizes the authority that Native American governments have for making fish and wildlife resource management policy and for managing fish and wildlife resources on trust lands within their Native American reservations. Under certain circumstances, a Native American government may have fish and wildlife authority affecting nonmember reservation lands. In such cases, the Service will give proper recognition to the relative rights of both the Native American government and the affected State(s), according to the specific nature of the case.

Non-Reservation Lands

The Service recognizes and supports the rights of Native Americans to utilize fish and wildlife resources on non-reservation lands where there is a legal basis for such use. The Service recognizes that as a result of treaties, statutes, and judicial decrees, certain Native American governments, along with State governments, may have shared responsibilities to co-manage fish and wildlife resources. In such cases, the Service will cooperate with Native American governments and affected resource management agencies to help meet objectives of all parties. While the Service retains primary authority to manage Service lands, affected Native American governments will be afforded opportunities to participate in the Service's decision-making processes for those lands.

IV. SELF-DETERMINATION

Support for Self-Determination

The Service favors empowering Native American governments and supporting their missions and objectives in assuming program management roles and responsibilities through contracting and other mechanisms. Therefore, the Service supports the rights of Native Americans to be self-governing, and further supports the authority of Native American governments to manage, co-manage, or cooperatively manage fish and wildlife resources, and to protect their Federally recognized authorities.

Indian Self Determination and Education Assistance Act
(Public Law 93-638, as amended)

The Service is committed to entering into contracts, cooperative agreements, or grants with Native American governments at their request for the administration of fish and wildlife conservation programs under the terms, conditions, and to the extent provided by the Indian Self Determination and Education Assistance Act (Act). The Service will work with Native American governments in developing effective policies, plans, and operating standards that are consistent with the Service's obligation under the Department of the Interior's rules and regulations for implementing the provisions of the Act.

V. COMMUNICATION

Consultation

The Service will consult with Native American governments on fish and wildlife resource matters of mutual interest and concern to the extent allowed by law. The goal is to keep Native American governments involved in such matters from initiation to completion of related Service activities.

Communication with other Agencies

Upon the request of a tribe, the Service will encourage and facilitate communication and cooperation among Native American governments, States, Federal agencies and others to identify and delineate respective roles and responsibilities and to ensure that issues of common interest and concern are discussed. This may include such activities as taking the initiative to provide the biological or managerial expertise necessary for resolution of conflicts about fish and wildlife resource issues.

VI. FUNDING

Funding Sources

The Service will assist Native American governments in identifying Federal and non-Federal funding sources that are available to them for fish and wildlife resource management activities.

VII. CULTURE/RELIGION

Consultation

The Service will involve Native American governments in all Service actions that may affect their cultural or religious interests, including archaeological sites. The Service will be guided in this respect by such legislation as the American Indian Religious Freedom Act, the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the Archaeological Resources Protection Act. The Service will take appropriate precautions to ensure that locations of protected sites remain confidential.

Reasonable Access

The Service will provide Native Americans reasonable access to Service managed or controlled lands and waters for exercising ceremonial, medicinal, and traditional activities recognized by the Service and by Native American governments. The Service will permit these uses if the activities are consistent with treaties, judicial mandates, or Federal and tribal law and are compatible with the purposes for which the lands are managed.

Animal Parts

The Service will expedite processing and distributing certain animal parts, such as eagle feathers, for recognized religious, ceremonial, and cultural purposes in accordance with Federal laws. Timeliness of processing and distributing animal parts will be contingent upon animal part availability and on the needs of the Service to conduct required scientific and law enforcement investigations. The Service will strive to ensure the dignity of its custodial process in recognition of the solemn nature of Native American uses of such animal parts.

VIII. LAW ENFORCEMENT

Cooperation

Service law enforcement agents will assist with the cooperative enforcement of Federal wildlife laws. The Service will encourage the use of cooperative law enforcement as an integral component of Native American, Federal, and State agreements relating to fish and wildlife resources. The Service will assist in the formulation of the law enforcement elements of those agreements. Upon request, the Service will evaluate Native American law enforcement capabilities and, if warranted, provide recommendations for improving such capabilities.

Coordination

The Service will coordinate with law enforcement officers of Native American governments regarding Service law enforcement operations on or adjacent to Native American lands, as appropriate. The Service will assist Native American governments in the coordination of appropriate fish and wildlife law enforcement investigations that require the use of the Federal court system. If requested, the Service will also provide liaison between Native American governments and the U.S. Department of the Interior Solicitor on fish and wildlife matters.

Development of Fish and Wildlife Codes

The Service will assist Native American governments with the development of comprehensive fish and wildlife conservation codes.

IX. TECHNICAL ASSISTANCE

Technical Expertise and Assistance

The Service will make available technical expertise from all Service program areas to assist Native American governments in the management of fish and wildlife resources, and to assist the Native American governments in developing their own technical expertise in fish and wildlife conservation and management where requested. The Service will advise Native American governments about the kinds of technical assistance that it can provide. Technical assistance priorities will be developed with input from affected Native American governments.

Agreements

The Service will develop partnership agreements with Native American governments to work together and to exchange technical expertise regarding matters of mutual interest, such as the conservation and recovery of threatened and endangered species, migratory birds, and anadromous fish.

Information Transfer

The Service will provide access to technical information from such sources as technical assistance offices, other field offices, and fish health laboratories. As requested, the Service will assist Native American governments in identifying other agencies that might provide technical assistance. Information obtained by the Service from Native American governments will not be shared or released without their consent or as required by law. Information generated by the Service through technical assistance to Native American governments will be released only with their consent or as required by law.

X. TRAINING AND EDUCATION

Cultural Awareness Training

The Service will work with Native American governments to help Service employees improve their understanding of Native American traditional, cultural, and religious values and practices, natural resource values, treaty and other Federally reserved rights, and appropriate law enforcement policy issues.

Native American Access to Service Training

The Service will provide Native American governments the same access to fish and wildlife resource training programs as provided to other government agencies.

Law Enforcement Training

The Service, as resources permit, will make its law enforcement expertise and capabilities available to Native American governments. The Service will provide guidance and assistance in developing, maintaining, or improving Native American fish and wildlife law enforcement programs. The Service's basic and refresher fish and wildlife law enforcement training courses that are provided to other governmental agencies will also be available to Native Americans.

Professional Development

The Service will facilitate the education and development of Native American fish and wildlife professionals by providing innovative educational programs and on-the-job training opportunities. The Service will establish partnerships and cooperative relationships with Native American educational institutions to assist in such areas as developing natural resources curricula or implementing cooperative education programs. The Service will also ensure that Native American schools and children are included in its environmental education outreach programs.

Work Force Diversification

The Service will develop active, innovative, and aggressive recruitment programs to attract qualified personnel to the Service so that its workforce can be representative of the cultural diversity of the nation. Qualified Native Americans will be actively encouraged to apply for jobs with the Service. These recruitment efforts will be focused especially where the Service is involved in managing fish and wildlife resources for which Native Americans have management authority or where they have cultural or religious interests.

Education of the General Public

The Service will work with Native American governments to inform and educate the public about Native American treaty and Federally reserved rights, laws, regulations, and programs, and programs related to fish and wildlife.

DEFINITIONS

The following definitions help to clarify the guidance encompassed by this Policy:

Agreements—Documents approved by two or more parties that identify their roles and responsibilities in achieving mutual objectives (e.g. Memoranda of Agreement, Memoranda of Understanding, Cooperative Agreements, Grants, and Contracts).

Co-Management—Two or more entities, each having legally established management responsibility, working together to actively protect, conserve, enhance, or restore fish and wildlife resources.

Cooperative Management—Two or more entities working together to actively protect, conserve, enhance, or restore fish and wildlife resources.

Fish and Wildlife Resources—All fish and wildlife (including invertebrates), plants and their habitats.

Fish and Wildlife Resource Management—All activities that are intended to contribute directly or indirectly to the preservation, utilization, maintenance, mitigation and enhancement of fish and wildlife resources.

Lands—Includes all uplands, wetlands, and open waters such as streams, lakes, estuaries, and bays.

Native American Law Enforcement Officers—Enforcement personnel of Native American governments specifically empowered primarily or secondarily to enforce fish and wildlife laws (e.g. rangers, conservation officers, game wardens, fire chiefs, and police officers).

Native Americans—American Indians in the conterminous United States and Alaska Natives (including Aleuts, Eskimos, and Indians) who are members of Federally recognized tribes.

Native American Governments—Governing bodies, including executive and legislative branches, of Federally recognized tribes as regarded by Federal law and formally identified by the Department of the Interior. Does not include other entities representing Native interests such as corporations, societies, commissions, committees, associations or other groups not officially designated by the Secretary of the Interior as a "Government."

Reservations—Generally, reservations are "trust assets" that were set aside for Native American use, pursuant to treaties, statutes and executive orders. Properties located outside the contiguous boundaries of reservations, as well as lands conveyed under the Alaska Native Claims Settlement Act, that are held in fee title by Native Americans as private property generally are not considered to be reservations.

Trust Responsibility—The fiduciary obligations that attach to the United States as trustee of the assets and resources that the United States holds in trust for Native American governments and their members, the treaty and statutory obligations of the United States toward Native American governments and their members, and other legal obligations that attach to the United States by virtue of the special relationship between the Federal Government and Native American governments. The identification and quantification of trust assets is recognized as an ongoing and evolving process.