

Tribal Co-Management of Federal Lands: Overview and Selected Issues for Congress

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Tribal Co-Management of Federal Lands: Overview and Selected Issues for Congress

Many of today's federal lands are located on the ancestral homelands of federally recognized Tribes ("Tribes"). Many Tribes maintain ongoing physical, cultural, spiritual, and economic relationships with their ancestral homelands. Tribes may seek access to federal lands or input into federal land management decisions because of the large amount of land currently owned by the federal government that once was tribal land. In addition, Tribes with lands close to federal lands also may seek to influence federal land management. These tribal interests may complement, or they may conflict with the preferences of other stakeholders' preferences for land management.

Tribes have historically had the opportunity to provide input on federal land management decisions through a variety of mechanisms. Historically, Congress ratified treaties in which Tribes reserved rights to access resources on their ceded lands (which are now federal lands), forming the basis for partnerships. In certain instances, Congress has required federal-tribal consultation. Congress also has passed site-specific laws encouraging cooperation or co-management on particular federal lands, such as national monuments. More broadly, Congress has authorized federal land management agencies to partner with nonfederal entities including Tribes using various legal instruments and has provided tribal-specific authorities such as Indian Self-Determination and Education Assistance Act contracts or compacts.

In recent decades, many Tribes have advocated for a more robust, long-term, and formal role in managing federal lands to which they have a connection. This type of tribal involvement in federal land management is referred to as *federal-tribal co-management*. Although there is no statutory definition, generally, co-management refers to the sharing of management power and responsibility between the federal government and nonfederal entities, typically through a formal agreement. In general, tribal co-management involves varying degrees of tribal influence in federal decisionmaking, as shown below:



Source: Congressional Research Service.

The U.S. Departments of the Interior, Agriculture, Commerce, and Defense are among the federal executive agencies that have implemented tribal co-management of natural, historical, and cultural resources on federal lands. This co-management has ranged from upholding tribal treaty fishing rights in the Pacific Northwest to managing subsistence wildlife in Alaska to restoring watersheds within national forests. These departments and Tribes have also co-managed historic and cultural resources on national monuments.

Congress may continue to consider the suitability and effectiveness of federal-tribal co-management of federal lands. Federal-tribal co-management on federal lands may help federal agencies achieve congressional priorities. It can provide an opportunity to integrate unique Indigenous knowledge with contemporary resource management policies to meet mutual objectives. At the same time, Congress and agencies may also find it challenging to weigh various tribal interests, such as protecting tribal sacred sites, with other statutory mandates and interests. Congress also may consider the scope of activities allowed under co-management agreements on federal lands, including whether agencies may delegate certain activities to Tribes. Finally, Congress may consider the administrative and financial benefits and challenges facing agencies and Tribes in implementing these agreements.

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Introduction

Many of today's federal lands are located on the ancestral homelands of *federally recognized Tribes* ("Tribes").¹ Many Tribes maintain ongoing physical, cultural, spiritual, and economic relationships with their ancestral homelands. Tribes may seek access to federal lands or input into federal land management decisions because of the large amount of land currently owned by the federal government that once was tribal land.² In addition, Tribes with tribal lands close to federal lands also may seek to influence federal land management.³

Tribes have historically had the opportunity to provide input on federal land management decisions through a variety of mechanisms. Historically, Congress ratified treaties in which Tribes reserved rights to access resources on ceded lands (which are now federal lands), forming the basis for partnerships. In certain instances, Congress has required federal-tribal consultation. Congress also has passed site-specific laws encouraging cooperation or co-management on particular federal lands, such as national monuments. More broadly, Congress has authorized federal land management agencies to partner with nonfederal entities including Tribes using various legal instruments, such as cooperative agreements, memoranda of agreement and understanding, or other arrangements. Whereas some laws provide broad authority to agencies to partner with nonfederal entities on a range of management areas, others provide for partnering with entities or Tribes to perform particular activities.

In recent decades, many Tribes have advocated for a more robust, long-term, and formal role in managing federal lands to which they have a connection.⁴ This type of tribal involvement in federal land management is referred to as *federal-tribal co-management*, though different entities use the term to refer to different types of involvement. Tribal co-management of federal lands differs from federal partnerships with other entities, in part due to Tribes' unique, government-to-government relationship with the federal government. The federal government may have certain responsibilities with respect to Tribes that affect co-management, such as the federal trust responsibility, consultation, and certain tribal treaty hunting, fishing, and gathering rights.

Federal-tribal co-management on federal lands may help federal land management agencies achieve federal priorities.⁵ It can provide an opportunity to integrate Indigenous knowledge into contemporary resource management policies to address issues and meet mutual objectives. At the

¹ A *federally recognized Tribe* (Tribe) is an entity that is formally recognized as having a government-to-government relationship with the United States, entailing special rights, immunities, and privileges as well as eligibility for certain federal programs and services (25 C.F.R. §83.1).

² As of 2024, the federal government owned more than a quarter of the land in the United States (CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Carol Hardy Vincent et al.).

³ For reference, in 2021, the Department of the Interior (DOI) managed roughly 6.5 million acres of land within 50 miles of tribal lands, and the U.S. Department of Agriculture's (USDA's) Forest Service (FS) and Tribes shared approximately 4,000 miles of contiguous boundaries (DOI, "Interior Department and Intertribal Timber Council Strengthen Wildland Fire Management Collaboration," press release, September 15, 2021, <https://www.doi.gov/pressreleases/interior-department-and-intertribal-timber-council-strengthen-wildland-fire-management>). For more information about tribal lands, see CRS Report R48360, *Tribal Lands: Overview and Issues for Congress*, by Mariel J. Murray.

⁴ See Kevin Washburn, "Facilitating Tribal Co-management of Federal Public Lands," *Wisconsin Law Review*, vol. 263 (April 2022), p. 266 (hereinafter Washburn, "Facilitating"), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3951290.

⁵ Statement of Charles F. Sams III, Director, National Park Service (NPS), DOI, in U.S. Congress, House Committee on Natural Resources, *Oversight: Examining the History of Federal Lands and the Development of Tribal Co-management*, 117th Cong., 2nd sess., March 8, 2022, <https://www.doi.gov/ocl/tribal-co-management-federal-lands> (hereinafter Sams, "NPS Co-Management").

same time, Congress and agencies may find it challenging to weigh various tribal interests, such as protecting tribal sacred sites, with other statutory mandates and interests. For example, some Tribes may want to co-manage a federal land area to limit development or limit access to non-tribal members, whereas other stakeholders, such as those interested in resource, mineral, and recreational development, may want to access and/or develop the area.⁶

This report provides an overview of federal-tribal co-management by explaining the historical underpinnings of tribal interest in, and potential rights to, co-managing federal lands; the spectrum of co-management types and their underlying authorities; and examples of how co-management has been used with respect to certain natural and cultural resources.⁷ The report concludes with an overview of issues and options for Congress regarding the suitability and effectiveness of federal-tribal co-management of federal lands.

Co-Management: Historical Foundation

Tribes have inhabited North America for millennia, developing deep cultural, spiritual, and subsistence ties to the landscape, which many Tribes have attempted to maintain.⁸ Tribal support for increased co-management of federal land generally stems from this history of tribal connection to lands now owned by the federal government and Tribes' unique relationship to the federal government. These historical foundations inform how Tribes may claim access to, or inform the management of, resources on federal lands in a co-management arrangement.

The federal government removed many Tribes from their ancestral homelands in the 18th and 19th centuries through treaties and other means. From 1774 to about 1871, the United States negotiated 375 tribal treaties.⁹ In some of these treaties, Tribes ceded lands but reserved their rights to hunt, fish, trap, and gather on those lands.¹⁰ In addition, Tribes may retain rights, including rights of access, on ceded lands even if they are not currently located near their ceded lands.¹¹ Whether or the degree to which a specific treaty provides a basis for co-management is a matter of legal interpretation for federal agencies and courts. The federal government no longer

⁶ National Congress of American Indians (NCAI), "Supporting Legislation to Improve Protections and Authorize Restoration of Native Sacred Places on Federal Lands," NCAI Resolution DEN-18-035, October 21-26, 2018, p. 2, <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=546>. See also Statement of Suzan Shown Harjo, President, Morning Star Institute, in U.S. Congress, Senate Committee on Indian Affairs, *Native American Sacred Places*, hearings, 108th Cong., 1st sess., June 8, 2003, S. Hrg. 108-197 (GPO, 2003), p. 8. See also Testimony of R. Timothy McCrum, Partner, Crowell & Moring LLP, on behalf of Glamis Imperial Corp., in U.S. Congress, House Resources Committee, *Regarding H.R. 5155, A Bill To Protect Sacred Native American Federal Lands*, 107th Cong., 2nd sess., September 25, 2002, S.Hrg. 107-153 (GPO, 2003).

⁷ This report is limited to examining co-management agreements between DOI's Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), and National Park Service (NPS); the FS; the U.S. Department of Commerce's (DOC's) National Oceanic and Atmospheric Administration (NOAA); and the U.S. Army Corps of Engineers (USACE) civil works. Due to the Bureau of Reclamation's (BOR's) unique authorities, many of which are project-specific, a discussion of BOR projects is beyond the scope of this report. In addition, because this report focuses on the incorporation of Tribes into federal land management, it will not address tribal trust lands managed by the DOI's Bureau of Indian Affairs (BIA) on behalf of Tribes.

⁸ Monte Mills and Martin Nie, "Bridges to a New Era: A Report on the Past, Present, and Potential Future of Tribal Co-management on Federal Public Lands," *Public Land & Resources Law Review*, vol. 44 (June 2021), p. 1, <https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1741&context=plrlr> (hereinafter Mills and Nie, "Bridges").

⁹ See National Archives, "Native American Heritage: American Indian Treaties," <https://www.archives.gov/research/native-americans/treaties>.

¹⁰ Cohen's Handbook of Federal Indian Law § 20.03[2] (2024).

¹¹ See the Indian Removal Act of 1830, Act of May 28, 1830, 4 Stat. 411.

enters into treaties with Tribes, so any co-management authority derived from treaty rights would be based on existing treaties.

In addition to treaty rights influencing co-management of federal lands, some Tribes assert that federal land management agencies should obtain tribal consent, or at least consult, on federal actions due to the *federal trust responsibility*.¹² The *federal trust responsibility* is a legal obligation under which the United States, through treaties, acts of Congress, and court decisions, “has charged itself with moral obligations of the highest responsibility and trust” toward Tribes.¹³ It can include obligations to protect tribal treaty rights, lands, assets, and resources on behalf of Tribes and tribal members. Regardless of treaty or trust obligations, many Tribes maintain ongoing physical, cultural, spiritual, and economic relationships with their ancestral homelands now under the jurisdiction of the federal government. Tribes may seek access to federal lands or input into federal land management decisions to continue using the lands for historic cultural, religious, or subsistence purposes.

Co-Management Framework

Federal land management agencies can collaborate with Tribes in different ways. As a result, the concept of co-management has been used to refer to a wide variety of federal-tribal collaborations on federal lands. Although there is no statutory definition, generally, *co-management* refers to the sharing of management power and responsibility between the federal government and nonfederal entities, typically through a formal agreement.¹⁴ This section presents a framework or spectrum for understanding the various types of arrangements and agreements categorized as co-management, as illustrated in **Figure 1**.

Figure 1. Federal-Tribal Co-Management Spectrum



Source: CRS.

Note: These categories are not defined in statute and are meant to be illustrative of different types of co-management activities, ranging from less to more tribal involvement. The categories are not mutually exclusive.

No Tribal Influence

Historically, federal agencies generally had discretion regarding how much to involve Tribes in federal decisionmaking. Many Tribes assert that, in practice, there was generally little to no tribal

¹² For example, NCAI, a national organization of Tribes, has argued that obtaining tribal consent for federal actions that affect them is “the clearest way to uphold the trust responsibility.” NCAI, “NCAI Comments on Tribal Trust Compliance and Federal Infrastructure Decision-Making,” November 30, 2016, p. 11, <https://www.bia.gov/sites/default/files/dup/assets/as-ia/raca/pdf/idc2-055647.pdf>.

¹³ *Seminole Nation v. U.S.*, 316 U.S. 286, 296-297 (1942).

¹⁴ Sibyl Diver, “Co-management as a Catalyst: Pathways to Post-colonial Forestry in the Klamath Basin, California,” *Human Ecology*, vol. 44 (October 7, 2016), pp. 533-546, <https://link.springer.com/article/10.1007/s10745-016-9851-8>.

influence in many federal land management decisions.¹⁵ Others assert that several laws adequately provide for “careful consideration” of tribal values in federal land management.¹⁶ For the purpose of this framework, the absence of tribal influence in federal land management is the baseline against which other types of co-management arrangements are compared.

Consultation¹⁷

One way Congress and agencies have provided for tribal input in agency decisionmaking is through federal-tribal consultation requirements for federal land management decisions. In certain instances, Congress has required federal-tribal consultation. For example, the National Historic Preservation Act (NHPA, 54 U.S.C. §§300101 et seq.) requires federal agencies to take into account the effects of projects they carry out, license, or financially assist (collectively referred to as *undertakings*) on historic properties.¹⁸ As part of that consideration, federal agencies must consult with any Tribe that “attaches religious and cultural significance” to historic properties that may be affected by the undertaking.¹⁹

Some federal land management agencies, such as the Department of the Interior (DOI) and U.S. Department of Agriculture (USDA), have entered into formal agreements with Tribes to endeavor that agency decisionmaking complies with the NHPA. Consultation-related agreements have the potential to both support statutory compliance and increase collaboration between Tribes and federal land management agencies in decisionmaking. For example, the Forest Service’s (FS’s) Ozark-St. Francis National Forests and Ouachita National Forest have entered into a series of NHPA Programmatic Agreements with nonfederal entities (including Tribes) that provide a framework for managing cultural resources, including a process for addressing the discovery of human remains and any associated funerary objects.²⁰

In other instances, the executive branch has directed agencies—through executive orders, regulations, agency guidance, and other administrative actions—to consult with Tribes in the development of federal policies with tribal implications.²¹ This has included requiring some federal agencies responsible for administering federal lands and waters to establish consultation procedures with Tribes. For example, both USDA and DOI have tribal consultation policies that direct their agencies to provide Tribes the opportunity for consultation and coordination in policy

¹⁵ See NCAI, “Calling for the Advancement of Meaningful Tribal Co-management of Federal Lands,” NCAI Resolution PDX-20-003, November 8-13, 2020, p. 2, <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=454> (hereinafter NCAI, “Calling for Advancement”).

¹⁶ See, e.g., Testimony of R. Timothy McCrum, Partner, Crowell & Moring LLP, on behalf of Glamis Imperial Corp., in U.S. Congress, House Resources Committee, *Regarding H.R. 5155, A Bill To Protect Sacred Native American Federal Lands*, hearings, 107th Cong., 2nd sess., September 25, 2002, S.Hrg. 107-153 (GPO, 2003).

¹⁷ See generally CRS Report R48093, *Federal-Tribal Consultation: Background and Issues for Congress*, coordinated by Mariel J. Murray.

¹⁸ 54 U.S.C. §306108. See also CRS Report R45800, *The Federal Role in Historic Preservation: An Overview*, by Mark K. DeSantis.

¹⁹ 54 U.S.C. §302706(b).

²⁰ David H. Journey et al., “Lessons from a Programmatic Agreement and Heritage-Based Consultations between Tribes and the National Forests of Arkansas and Oklahoma,” *Journal of Forestry*, vol. 115, no. 5 (September 2017), pp. 458-467, <https://doi.org/10.5849/jof.16-040>.

²¹ See Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 *Federal Register* 67249 (2000) (hereinafter EO 13175); U.S. President (Obama), “Memorandum of November 5, 2009: Tribal Consultation,” 74 *Federal Register* 57879, November 5, 2009; U.S. President (Biden), “Tribal Consultation and Strengthening Nation-to-Nation Relationships,” 86 *Federal Register* 7491, January 29, 2021; and U.S. President (Biden), “Memorandum of November 30, 2022: Uniform Standards for Tribal Consultation,” 87 *Federal Register* 74479, December 5, 2022 (hereinafter Biden, “Standards for Tribal Consultation”).

development and program activities that have tribal implications.²² However, each agency has different consultation policies and processes, which can result in inconsistent levels and types of tribal consultation in federal decisionmaking on federal lands.²³

CRS searched the United States Government Publishing Office’s Compilation of Presidential Documents website and found no evidence that the Trump Administration has rescinded any presidential directives related to tribal consultation as of October 5, 2026.²⁴ Therefore, it appears that the presidential directives related to tribal consultation from prior Administrations remain in effect. However, offices within the Executive Office of the President, such as the Office of Management and Budget (OMB), have directed federal agencies to limit tribal consultation in certain contexts. For example, OMB Memorandum M-25-36, “Streamlining the Review of Deregulatory Actions,” states that federal agencies should consider deregulatory actions as “presumptively not triggering” consultation requirements. Furthermore, it states that “[i]f there exists a particular reason for specific government-to-government consultations,” agencies should presume that these consultations “should take place as part of the normal opportunity for stakeholder participation.”²⁵

Formal Agreements

A co-management approach with more direct tribal involvement in the decisionmaking process entails agencies entering into agreements with Tribes to enable Tribes to conduct specific activities on federal lands. Congress has both mandated this type of co-management and provided agencies with discretion to engage in this type of co-management on federal lands. For example, when Congress established the Grand Portage National Monument in 1958, it provided a specific preference for employing tribal members in construction, maintenance, visitor services, “or any other service within the monument for which they are qualified.”²⁶ Congress has also allowed DOI and FS to contract or compact with Tribes to manage certain federal programs under the Indian Self-Determination and Education Assistance Act, as outlined in the textbox below.

Indian Self-Determination and Education Assistance Act (ISDEAA)

Pursuant to ISDEAA (P.L. 93-638), Congress allowed certain federal agencies to delegate some of their administrative and programmatic authority to Tribes to manage certain programs or regulate certain activities. Under this authority, Tribes can request the authority to conduct certain programs or activities—including activities related to federal land management—that otherwise would be conducted by the federal agencies. Tribes must demonstrate specific qualifications to be eligible to perform the activity, and the federal agency retains some

²² USDA, “Departmental Regulation, Tribal Consultation, Coordination, and Collaboration,” April 30, 2024, <https://www.usda.gov/directives/dr-1350-002>; See also DOI, *Departmental Manual- Department of the Interior Policy on Consultation with Indian Tribes*, November 30, 2022, p. 3, https://www.doi.gov/sites/doi.gov/files/elips/documents/512-dm-4_2.pdf.

²³ Mills and Nie, “Bridges,” pp. 57, 89, and 94; and U.S. Government Accountability Office (GAO), *Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects*, GAO-19-22, March 2019, p. 20, <https://www.gao.gov/assets/gao-19-22.pdf>. President Biden issued a 2022 presidential memorandum establishing uniform minimum standards for tribal consultation across all agencies (Biden, “Standards for Tribal Consultation”).

²⁴ United States Government Publishing Office, “Compilation of Presidential Documents,” <https://www.govinfo.gov/app/collection/cpd/>. CRS used the following search terms: (tribe OR tribal) NEAR/25 (consult OR consultation); Consultation and Coordination with Indian Tribal Governments; EO 13175; and Uniform Standards for Tribal Consultation.

²⁵ Office of Management and Budget, “Memorandum M-25-36, Streamlining the Review of Deregulatory Actions,” October 21, 2025, <https://www.whitehouse.gov/wp-content/uploads/2025/10/M-25-36-Streamlining-the-Review-of-Deregulatory-Actions.pdf?cb=1761144575>.

²⁶ P.L. 85-910, §5.

oversight. If granted, Tribes manage the programs or activities through self-determination contracts or self-governance compacts, hereinafter referred to as *ISDEAA agreements*.

ISDEAA allows federal employees to retain their jobs and federal personnel benefits after a Tribe takes over a federal program or service under an ISDEAA agreement. Tribes can offer existing federal employees jobs with the newly transitioned program, either as tribal employees or through an Intergovernmental Personnel Act (IPA) agreement. IPA agreements are generally limited to two years, although the agency head (or designee) may extend the period of assignment to any length of time “where it is determined that the assignment will continue to benefit both the Federal agency and the Indian tribe or tribal organization.”

Many Tribes have used ISDEAA agreements extensively to manage certain federal programs. As of March 2024, 526 out of 574 Tribes (92%) had self-determination contracts, and 295 Tribes (51%) had self-governance compacts with DOI. Both DOI and USDA have entered into co-management-related ISDEAA agreements.” See “Forests and Watersheds in Washington” below.

Sources: Indian Self-Determination and Education Assistance Act (ISDEAA; P.L. 93-638, 25 U.S.C. §§5301 et. seq.); Statement of Bryan Newland, Assistant Secretary for Indian Affairs, Department of the Interior (DOI), in U.S. Congress, House Committee on Natural Resources (HNR) Subcommittee on Indian and Insular Affairs, *Advancing Tribal Self-Determination: Examining Bureau of Indian Affairs’ 638 Contracting*, 118th Cong., 2nd sess., March 6, 2024, H.Hrg. 55-061, p. 3, https://naturalresources.house.gov/uploadedfiles/testimony_newland_624.pdf; 25 U.S.C. §5323; 42 U.S.C. §4762; 5 U.S.C. §§3371-3372; U.S. Office of Personnel Management, “Inter-Governmental Personnel Act- Provisions,” <https://www.opm.gov/policy-data-oversight/hiring-information/intergovernment-personnel-act/#url=Provisions>. See also CRS Report R48256, *Tribal Self-Determination Authorities: Overview and Issues for Congress*, coordinated by Mariel J. Murray.

Long-Term Partnerships

Another type of co-management is long-term partnerships between federal agencies and Tribes, which enable more tribal influence. In certain instances, federal agencies have entered into agreements to facilitate consistent coordination and cooperative management with Tribes based on tribal treaties and Tribes’ historical ties to agency lands. On a regional scale, DOI, the Department of Commerce (DOC), and the Department of Defense (DOD) have worked with Tribes to give effect to tribal treaty fishing rights in the Pacific Northwest, and DOI has worked with Alaska Natives to manage subsistence wildlife on federal lands in Alaska (for more on these examples, see “Co-Managing Natural Resources”).²⁷ At a local level, the FS and the Tribes that are members of the Great Lakes Indian Fish and Wildlife Commission used a memorandum of understanding to establish standards by which the parties would “act consistently across national forest lands within areas ceded in the treaties of 1836, 1837, and 1842.”²⁸ In particular, the parties sought to ensure “the meaningful exercise” of tribal treaty rights, facilitate “consistent and timely communication,” and foster effective tribal participation in relevant forest plans.²⁹

Federal agencies have used the terms “co-management” and “co-stewardship” to refer to long-term partnerships, although each term has been defined slightly differently.³⁰ In a 2016 secretarial order, DOI defined *co-management* as “a situation where there is a specific legal basis that requires the delegation of some aspect of Federal decision-making” but did not define *delegation*

²⁷ Since September 5, 2025, DOD has been “using a secondary Department of War designation,” under Executive Order 14347.

²⁸ FS, “Memorandum of Understanding Regarding Tribal- USDA-Forest Service Relations on National Forest Lands Within the Territories Ceded in Treaties of 1836, 1837, and 1842,” March 1, 2012, https://www.fs.usda.gov/sites/nfs/files/r09/hiawatha/publication/VOIGT_MOU2012_1836_1837_1842_CededTerritoryNationalForest.pdf (hereinafter FS, “FS-Great Lakes MOU”).

²⁹ FS, “FS-Great Lakes MOU,” p. 5.

³⁰ This report uses a single term (*co-management*) for the sake of consistency and simplicity.

in that context.³¹ In addition to co-management, during the Biden Administration, USDA and DOI encouraged *co-stewardship*, which focused on proactively identifying and entering into agreements with Tribes. For example, in November 2021, USDA and DOI issued Secretarial Order (SO) 3403, which directed agencies to collaborate with Tribes based on the treaty, religious, subsistence, and cultural interests of Tribes in the co-stewardship of federal lands and waters.³² In 2022, DOI included this direction in departmental guidance, and NPS, BLM, and FWS released a series of follow-up policy memoranda encouraging co-stewardship.³³ In December 2024, DOI reported that more than 400 co-stewardship agreements had been signed.³⁴ In addition, FS's 2023 Tribal Action Plan entitled "Strengthening Tribal Consultations and Nation-to-Nation Relationships" committed to a co-stewardship strategy.³⁵ This strategy included "expanding scope and scale of Tribal involvement in agency work, planning, and decision making, as well as Tribal self-determination."³⁶ The USDA, DOC, and U.S. Army Corps of Engineers (USACE) have not publicly defined the term *co-management*.

Co-Management of Different Resources

Federal land management agencies have entered into co-management arrangements for a variety of different resources. The type of co-management and the relevant authorization often depend on the type of resource being managed. This section provides selected examples of DOI, USDA, DOC, and DOD co-management with Tribes of natural, cultural, and historic resources on federal lands. The examples below are categorized based on the primary activity, although many co-management agreements include a range of activities.

³¹ Sally Jewell, Secretary, DOI, Secretarial Order (SO) No. 3342, "Identifying Opportunities for Cooperative and Collaborative Partnerships with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources," October 21, 2016, §2(c)(3), https://www.doi.gov/sites/doi.gov/files/uploads/so3342_partnerships.pdf.

³² DOI Secretarial Order (SO) No. 3403, "Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters," November 15, 2021, <https://www.doi.gov/sites/default/files/elips/documents/so-3403-joint-secretarial-order-on-fulfilling-the-trust-responsibility-to-indian-tribes-in-the-stewardship-of-federal-lands-and-waters.pdf>. On November 21, 2022, SO 3403 was amended to add DOC (DOC, "Order No. 3404 Amendment No. 1 (Amended material italicized)," <https://www.noaa.gov/sites/default/files/2023-08/Attachment1.pdf>).

³³ See BLM, "Co-stewardship with Federally Recognized Indian and Alaska Native Tribes Pursuant to Secretary's Order 3403," *Permanent Instruction Manual* No. 2022-011, September 13, 2022, <https://www.blm.gov/policy/pim-2022-011>; FWS, "Fulfilling the Trust Responsibility to Tribes and the Native Hawaiian Community, and Other Obligations to Alaska Native Corporations and Alaska Native Organizations, in the Stewardship of Federal Lands and Waters," Director's Order No. 227, September 8, 2022, <https://www.fws.gov/media/directors-order-no-227>; and NPS, "Fulfilling the National Park Service Trust Responsibility to Indian Tribes, Alaska Natives, and Native Hawaiians in the Stewardship of Federal Lands and Waters," September 13, 2022, https://www.nps.gov/subjects/policy/upload/PM_22-03.pdf.

³⁴ DOI, "Secretary Haaland Applauds 400 Co-Stewardship Agreements under the Biden-Harris Administration," <https://www.doi.gov/pressreleases/secretary-haaland-applauds-400-co-stewardship-agreements-under-biden-harris>.

³⁵ USDA, "Strengthening Tribal Consultations and Nation-to-Nation Relationships," p. 19, February 2023, <https://nativelawgroup.com/wp-content/uploads/2023/03/FS-Strengthening-Tribal-Relations-Feb-2023.pdf> (hereinafter USDA, "Strengthening"). In May 2026, the FS indicated that it plans to update the Tribal Action Plan (FS, "Tribal Action Plan Forum Presentation," <https://www.fs.usda.gov/sites/default/files/updated-tribal-action-plan-tribal-forum-presentation-20260521.pdf>).

³⁶ USDA, "Strengthening," p. 19.

Co-Managing Natural Resources

Many Tribes maintain *Indigenous knowledge* (“IK”) about their ancestral lands and associated plants, fish, and wildlife, having relied on harvesting these resources for thousands of years.³⁷ Some communities are more reliant on certain resources due to their geographic location, seasonality, and cultural traditions. Co-management of federal lands can provide Tribes with the opportunities to provide input on federal decisions affecting these natural resources and to advocate for access to them. In addition, through co-management, policymakers can potentially learn about this knowledge, including tribal values, culture, and ways of life, which could improve land management outcomes.³⁸ At the same time, some Indigenous peoples may want to control or limit information sharing for various reasons.³⁹

Fish in the Pacific Northwest

Due to their historical connection to salmon and other native fish, some of the Tribes in the Pacific Northwest reserved rights to continue hunting, fishing, or gathering on lands they ceded to the federal government by treaty. Many Tribes retain treaty-reserved rights to hunt or fish in “usual and accustomed” places.⁴⁰ Courts have affirmed these rights even when the usual and accustomed places are not located within the boundaries of a reservation.⁴¹ Courts also have held that the right to fish by extension includes a right to protect the habitat on which the fish rely.⁴²

Congress has acknowledged or protected regional tribal fishing rights, such as by ensuring a tribal role in managing fish in federal waters. The Magnuson-Stevens Fishery Conservation and Management Act, as amended, specifies certain Tribes as members on the Pacific Fishery Management Council.⁴³ The act specifies that the Secretary of Commerce (or designee) shall appoint at least one Pacific Fishery Management Council member “from an Indian Tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho.”⁴⁴ This tribal representation rotates among Tribes in the area, taking into account “the various rights of the Indian Tribes involved and judicial cases that set forth how those rights are to be exercised.”⁴⁵ Due to this tribal representation, the Pacific Fishery Management Council has described the

³⁷ There is no single definition of *Indigenous knowledge* (IK), and different Indigenous peoples and federal agencies may define the term differently. For more information, see CRS Report R48317, *Indigenous Knowledge and Data: Overview and Issues for Congress*, coordinated by Mariel J. Murray.

³⁸ See Fikret Berkes et al., “Rediscovery of Traditional Ecological Knowledge as Adaptive Management,” *Ecological Applications*, vol. 10, no. 5 (2000), p. 1252, <https://jstor.org/stable/2641280> (hereinafter Berkes et al., “Rediscovery”).

³⁹ See, e.g., University of California, Los Angeles (UCLA) School of Law, Native Nations Law & Policy Center, “The Need for Confidentiality Within Tribal Cultural Resource Protection,” December 2020, p. 6, https://law.ucla.edu/sites/default/files/PDFs/Native_Nations/239747_UCLA_Law_publications_Confidentiality_R2_042021.pdf.

⁴⁰ For example, see Treaty with the Yakima, 1855, Art. 3; Treaty with the Tribes of Middle Oregon, 1855; Treaty with the Walla Walla, Cayuse, etc., 1855, Art. 1; and Treaty with the Nez Perces, 1855, Art. III.

⁴¹ See, for example, *United States v. Winans*, 198 U.S. 371 (1905) and *United States v. Washington*, 520 F.2d 676 (9th Cir. 1975) (“the Boldt Decision”). The Supreme Court also ruled that treaty Tribes are entitled to a maximum of 50% of the harvestable fish (*Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979)).

⁴² *United States v. Washington*, 506 F. Supp. 187, 203 (W.D. Wash. 1980) and *United States v. Washington*, 853 F.3d 946, 963 (9th Cir. 2017).

⁴³ 16 U.S.C. §1852.

⁴⁴ 16 U.S.C. §1852(a)(1)(F).

⁴⁵ 16 U.S.C. §1852(b)(5)(B)(ii).

Tribes as co-managers of the fisheries overseen by the council, alongside the states and federal government.⁴⁶

As another example, in 1985 Congress provided for the implementation of the Pacific Salmon Treaty between the United States and Canada through the Pacific Salmon Treaty Act of 1985.⁴⁷ The treaty governs the overall harvest and allocation of salmon stocks in the region, and the statute established the Pacific Salmon Commission to implement the treaty.⁴⁸ The act mandated that regional “treaty Indian tribes” have representatives on the commission.⁴⁹ The act defined a *treaty Indian tribe* as “any of the federally recognized Indian tribes of the Columbia River basin, Washington coast or Puget Sound areas having reserved fishing rights to salmon stocks subject to the Treaty under treaties with the United States Government.”⁵⁰ Each year, commission representatives from the Canadian and U.S. governments, U.S. states, First Nations (i.e., Canadian Indigenous peoples), and treaty Indian tribes meet to discuss and review management of commercial, sport, and subsistence fisheries relative to the Pacific Salmon Treaty requirements.⁵¹

Many Pacific Northwest Tribes have sought to maintain fisheries by working with federal agencies. Tribes and others have argued that effective conservation of salmon, in particular, requires federal-tribal co-management, drawing on both IK and Western science.⁵² DOI and other federal agencies have often collaborated with Tribes to ensure compliance with tribal treaty rights and other laws providing for tribal management of fisheries and access to fish harvests. For example, throughout the 20th century, the Nez Perce Tribe (NPT), the United States, the State of Idaho, and local communities and water users in Idaho worked to resolve the Tribe’s water rights claims in the Snake River Basin (NPT claimed water rights for instream flows to protect the Tribe’s treaty-reserved fisheries).⁵³ In 2004, Congress passed a law to implement a tribal water rights settlement and authorize tribal co-management of federal fisheries in the Pacific Northwest.⁵⁴ That law specifically provided for tribal co-management of the Dworshak National Fish Hatchery, which was built by the USACE and operated by FWS on the NPT Reservation.⁵⁵ In 2022, FWS transferred its fishery management responsibilities to the NPT. USACE continues to own the facility, and the FWS committed to continuing to provide administrative support.⁵⁶

⁴⁶ Pacific Fishery Management Council, “Tribes,” <https://www.pccouncil.org/fishing-communities/tribes/>.

⁴⁷ Pacific Salmon Treaty Act of 1985, P.L. 99-5.

⁴⁸ See Jason S. Link and Anthony R. Marshak, “Regional Fishery Management Organizations,” in *Eco-system Based Fisheries Management: Progress, Importance, and Impacts in the United States* (Oxford University Press, 2021), p. 553, <https://doi.org/10.1093/oso/9780192843463.001.0001>.

⁴⁹ 16 U.S.C. §3632.

⁵⁰ 16 U.S.C. §3631.

⁵¹ NOAA Fisheries, “Pacific Salmon Treaty and the Pacific Salmon Commission,” <https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/pacific-salmon-treaty-and-pacific-salmon-commission>.

⁵² See, e.g., Maria Correia, Sarah Alexis, and Aleksandra Dulic, “Bringing the salmon home: a study of cross-cultural collaboration in the Syilx Okanagan Territory of British Columbia,” *Ecology & Society*, vol. 29, no. 1 (Article 15 2024).

⁵³ DOI, “Idaho, Nez Perce Tribe, and Federal Government Finalize Snake River Water Settlement,” press release, May 1, 2007, <https://www.bia.gov/as-ia/opa/online-press-release/idaho-nez-perce-tribe-and-federal-government-finalize-snake-river>. See also Idaho Department of Water Resources, “Nez Perce Agreement Summary,” p. 1, <https://idwr.idaho.gov/wp-content/uploads/sites/2/iwrb/2004/20040515-Nez-Perce-Agreement-Summary.pdf>.

⁵⁴ Snake River Water Rights Act of 2004, Title X of Division J, Consolidated Appropriations Act, 2005, P.L. 108-447.

⁵⁵ P.L. 108-447. See also FWS, “Dworshak National Fishery- About Us,” <https://www.fws.gov/fish-hatchery/dworshak/about-us>.

⁵⁶ DOI, “Secretary Haaland Joins Nez Perce Tribe, Army Corps of Engineers to Commemorate Transfer at Dworshak (continued...) ”

Tribal members are allowed to harvest salmon and steelhead trout in tribal fishing grounds adjacent to the hatchery.⁵⁷

Subsistence Harvesting in Alaska

Alaska Natives have been treated distinctly from other Tribes because Congress has recognized that Alaska and its inhabitants are distinct from the rest of the country—for example, due to Alaska’s late joinder to the union, size, distinct geography, and separation from the contiguous United States. One example of this distinct treatment is that, rather than treaties and reservations, Congress resolved Alaska Native land claims via a settlement mechanism: the Alaska Native Claims Settlement Act (ANCSA) of 1971 settled outstanding Alaska Native lands claims by providing Alaska Natives with 45 million acres and a monetary payment.⁵⁸ ANCSA divided the majority of that land among more than 200 village corporations and 12 regional corporations (Alaska Native Corporations).⁵⁹

Through various laws, Congress has directed federal agencies to ensure Alaska Native access to fish and wildlife on federal lands. For example, the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 aimed to provide access to fish and wildlife on federal lands for rural subsistence needs, including for Alaska Natives.⁶⁰ Generally, a *subsistence use* is when rural Alaskan residents use fish and wildlife resources for traditional purposes such as consumption, shelter, transportation, or some commerce.⁶¹ The act acknowledged Alaska Native subsistence use in particular as “essential to Native physical, economic, traditional, and cultural existence.”⁶²

ANILCA also established multiple federally protected areas in Alaska, including the Yukon Flats National Wildlife Refuge.⁶³ The proximity of the Yukon Flats National Wildlife Refuge to certain Alaska Native communities has enabled co-management through ISDEAA agreements. Under ISDEAA, the FWS may enter annual or multiyear funding agreements for Tribes to assume certain FWS duties on units of the National Wildlife Refuge System or the National Fish Hatchery System. Several Alaska Native villages lying within or adjacent to the refuge maintain long-standing hunting and fishing (subsistence) uses.⁶⁴ In 1998, a regional consortium of Alaska Natives known as the Council of Athabascan Tribal Governments requested an expanded role in management of the Yukon Flats National Wildlife Refuge through an ISDEAA agreement.⁶⁵ In 2004, FWS entered into an ISDEAA agreement with the council to conduct refuge activities,

National Fishery,” press release, June 16, 2022, <https://www.doi.gov/pressreleases/secretary-haaland-joins-nez-perce-tribe-army-corps-engineers-commemorate-transfer>. See also FWS, “Dworshak National Fishery- About Us,” <https://www.fws.gov/fish-hatchery/dworshak/about-us>.

⁵⁷ FWS, “Dworshak National Fishery- What We Do,” <https://www.fws.gov/fish-hatchery/dworshak/what-we-do>.

⁵⁸ Alaska Native Claims Settlement Act (ANCSA, P.L. 92-203, as amended, 43 U.S.C. §§1601 et seq). See generally CRS Report R46997, *Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress*, by Mariel J. Murray.

⁵⁹ ANCSA also created a 13th Alaska Native Corporation for non-residents (43 U.S.C. §1606(c)).

⁶⁰ Alaska National Interest Lands Conservation Act (16 U.S.C. §§3101 et seq).

⁶¹ 16 U.S.C. §3113.

⁶² 16 U.S.C. §3111(1).

⁶³ 16 U.S.C. §668dd note.

⁶⁴ FWS, “Yukon Flats National Wildlife Refuge,” <https://www.fws.gov/refuge/yukon-flats/about-us>. BIA added Alaska Native villages to the annual list of federally recognized Tribes in 1993 (DOI, “Interior Publishes Revised List of Alaska Native Tribes Eligible for Services from Bureau of Indian Affairs,” press release, October 15, 1993).

⁶⁵ Washburn, “Facilitating,” p. 300.

including subsistence-related activities.⁶⁶ In FY2019, the parties agreed to collaborate on Yukon Flats moose management, among other activities.⁶⁷

Through the Marine Mammal Protection Act of 1972 (MMPA), Congress provided Alaska Natives with an exemption allowing for the subsistence use of marine mammals.⁶⁸ The MMPA also allows the Secretaries of Commerce and the Interior to enter into cooperative agreements with Alaska Native organizations “to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.”⁶⁹ These agreements can include grants to collect and analyze data on marine mammal populations for subsistence uses, and to develop “marine mammal co-management structures” with federal and state agencies.⁷⁰

The MMPA does not define *co-management*, but the agencies and Alaska Natives have delineated the term through implementation. For example, the Marine Mammal Commission (comprising representatives of FWS, NOAA Fisheries, and Alaska Natives) characterized its work implementing the MMPA as an example of 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.”⁷¹ In the 2006 memorandum of agreement on negotiating individual co-management cooperative agreements, NOAA Fisheries, FWS, and the Indigenous Peoples Council for Marine Mammals included a goal of “shared decision-making” for agreements that would be reached “through consensus, based on mutual respect.”⁷² In addition, the parties agreed to use the best available scientific information and traditional and contemporary Alaska Native knowledge and wisdom for all decisions regarding Alaska marine mammal co-management.

Congress also provided some Alaska Natives with an exemption allowing for the subsistence use of migratory birds in the Migratory Bird Treaty Act (MBTA).⁷³ The MBTA implements four bilateral treaties governing migratory birds. Although the law generally prohibits the taking of migratory birds, the MBTA authorizes FWS to issue regulations as needed to ensure Alaska Natives may take migratory birds and collect their eggs for their own nutritional and other essential needs during seasons established by FWS.⁷⁴

In 1997, the Senate ratified a protocol amending the MBTA treaty with Canada to provide for co-management of migratory birds by Alaska Natives, the State of Alaska, and the federal government.⁷⁵ The protocol stated that Alaskan Indigenous inhabitants “shall be afforded an

⁶⁶ Washburn, “Facilitating,” p. 302.

⁶⁷ DOI, *Tribal Self-Governance 2019 Annual Report to Congress*, 2019, p. 12, <https://osgdb.org/OSG/InformationFiles/FileLibrary/Annual%20Report%20to%20Congress/FY%202019%20Annual%20Report%20to%20Congress/2019%20Self%20Gov%20Annual%20Report%20to%20Congress%20Submitted.pdf> (hereinafter DOI, *2019 Tribal Self-Governance Report*).

⁶⁸ Marine Mammal Protection Act of 1972 (16 U.S.C. §§1361-1423h)), 16 U.S.C. §1371(b). See generally CRS Report R47892, *The Marine Mammal Protection Act (P.L. 92-522): Primer and Issues for Congress*, by Anthony R. Marshak.

⁶⁹ 16 U.S.C. §1388.

⁷⁰ 16 U.S.C. §1388.

⁷¹ Marine Mammal Commission, *Report of the Marine Mammal Commission- Review of Co-management Efforts in Alaska*, 2008, p. 39, https://www.mmc.gov/wp-content/uploads/mmc_comgmt.pdf.

⁷² FWS and NOAA, “Memorandum of Agreement for Negotiation of Marine Mammal Protection Act Section 119 Agreements,” October 30, 2006, p.4, <https://media.fisheries.noaa.gov/dam-migration/ipcomm-umbrellaagr06-akr.pdf>.

⁷³ Migratory Bird Treaty Act (16 U.S.C. §§703-712), 16 U.S.C. §712. See generally CRS Report R44694, *The Migratory Bird Treaty Act (MBTA): Selected Legal Issues*, by Cassandra J. Barnum.

⁷⁴ 16 U.S.C. §712. This section was added by P.L. 95-616.

⁷⁵ “Treaties,” *Congressional Record*, daily edition, vol. 143, part 144 (October 23, 1997), p. 11167. See also U.S. (continued...)

effective and meaningful role in the conservation of migratory birds” through participating in “management bodies.”⁷⁶ This protocol led to the creation of the Alaska Migratory Bird Co-Management Council, which comprises representatives from the federal government, the State of Alaska, and Alaska Natives, “as equals,” from 12 regional management areas.⁷⁷ This council develops recommendations identifying certain subsistence harvest areas, which the FWS considers in developing its regulations on spring and summer subsistence harvesting of migratory birds and their eggs in Alaska.⁷⁸ In line with the protocol’s acknowledgement that IK should be considered in managing migratory birds, the council also is authorized to develop recommendations for the research and use of that knowledge related to the subsistence harvest of migratory birds.⁷⁹

Forests and Watersheds in Washington

For decades, Tribes have coordinated with FS to manage forests and associated watersheds. For example, FS has collaborated with the Tulalip Tribes for many years to manage the Mt. Baker-Snoqualmie National Forest, which FS has recognized as the Tribes’ ancestral homeland. FS has noted that its goal is to “create and maintain meaningful relationships between the Forest Service and local Indigenous communities.”⁸⁰ The agency has worked with the Tribes on wildlife reintroduction, huckleberry enhancement, and watershed enhancement. In 2007, the agency signed a memorandum of agreement with the Tulalip Tribes which laid out the parties’ intent to “identify opportunities for collaboration between the Parties; so as to further the protection and conservation of natural, cultural, and archaeological resources for future generations.”⁸¹

In 2020, the parties entered into a new kind of agreement. Under the Tribal Forest Protection Act (TFPA), which was first authorized in 2004, a Tribe may propose a project on FS or BLM lands that border, or are adjacent to, forested tribal trust or restricted fee lands to protect the tribal land from threats such as fire, insects, and disease.⁸² The Agriculture Improvement Act of 2018 (2018 farm bill) authorized FS and BLM to enter into self-determination contracts under ISDEAA to perform “administrative, management, and other functions” of TFPA projects.⁸³ The act stated that these would be “demonstration projects” but did not define that term or the scope of these projects.

In 2020, the Tulalip Tribes became the first Tribe to use this expanded TFPA authority to enter into a self-determination contract with FS. Under the contract, the Tulalip Tribes agreed to

Congress, Senate, *Protocol Amending the 1916 Convention For the Protection of Migratory Birds*, Message from the President of the United States, 104th Cong., 2nd sess., 104-28 (GPO, 1996), August 2, 1996, <https://www.congress.gov/104/cdoc/tdoc28/CDOC-104tdoc28.pdf> (hereinafter U.S. Senate, *Protocol Amending the 1916 Convention*).

⁷⁶ U.S. Senate, *Protocol Amending the 1916 Convention*, Article II 4(b)(ii), p. 5.

⁷⁷ 50 C.F.R. §§92.10, 92.11.

⁷⁸ 16 U.S.C. §712; 50 C.F.R. §92.10(c)(2). See also FWS, “History and Establishment of AMBCC,” <https://www.fws.gov/node/269356>.

⁷⁹ U.S. Senate, *Protocol Amending the 1916 Convention*, Article II pp. 3-4; 50 C.F.R. §92.10(c)(3).

⁸⁰ FS, Mount Baker-Snoqualmie National Forest, “Tribal Relations,” <https://www.fs.usda.gov/r06/mbs/working-with-us/tribal-relations>.

⁸¹ FS, “Memorandum of Agreement by and Between the Tulalip Tribes of Washington and the Mt. Baker-Snoqualmie National Forest,” October 3, 2007, p. 3, https://cops.usdoj.gov/pdf/tribal_training/MOU_MOA/Formalization_of_Relationship/MOA_Tulalip_Tribes_US_Forest_Service.pdf.

⁸² Tribal Forest Protection Act of 2004 (TFPA, 25 U.S.C. §3115(a)).

⁸³ Agriculture Improvement Act of 2018 (2018 farm bill; P.L. 115-334, §8703, 25 U.S.C. §3115(b)). Whereas Congress granted DOI the authority to make ISDEAA agreements more than 50 years ago, Congress first granted that authority to FS in the 2018 farm bill.

annually reintroduce beavers into salmon habitat to help with watershed restoration. FS explained that beaver dams can help maintain healthy habitat and water quality.⁸⁴ Furthermore, improving instream and riparian landscapes could help support endangered salmon, which the Tribe claims is a treaty resource.⁸⁵ As of November 2023, a total of 22 TFPA self-determination contracts totaling \$41.7 million had been executed nationwide.⁸⁶

Co-Managing Historic and Cultural Resources

Many Tribes maintain ongoing cultural and spiritual relationships with their ancestral homelands. Tribes may seek access to federal lands to continue practicing traditional ceremonies, and they may argue against certain activities on federal lands that may impede their ability to continue those practices or may affect lands they hold sacred.⁸⁷ In contrast to co-management of natural resources, which generally focuses on the use and development of natural resources, co-management of federal lands for historical and cultural purposes would provide Tribes with the opportunity to weigh in on federal decisions to advocate for protection of federal areas and the Tribes' continued access.⁸⁸

Historic Ties in Minnesota

The federal government and the Grand Portage Band of Lake Superior Chippewa have collaborated for almost a century to preserve the unique heritage around Grand Portage, MN. In addition to being tribal traditional homelands, Grand Portage is a historical fur trading area.⁸⁹ The Band advocated for the creation of the Grand Portage National Monument, and the Band donated about half of the land that became the monument.⁹⁰ In the enabling legislation for the monument, Congress acknowledged that the area contained “unique historical values,” and provided a specific preference for tribal employment in construction, maintenance activities, and “any other service within the monument for which they are qualified.”⁹¹

After the monument's establishment in 1958, NPS collaborated with the Band through various agreements. In 1999, the Band and NPS reached an initial ISDEAA agreement for the Tribe to

⁸⁴ FS, Mount Baker-Snoqualmie National Forest, “Tribal Relations.”

⁸⁵ FS, Mount Baker-Snoqualmie National Forest, “Tribal Relations.” See also Tulalip Tribes, “The Tulalip Tribes-Frequently Asked Questions,” p. 2, <https://www.tulaliptribes-nsn.gov/documents/Who-We-Are-Frequently-Asked-Questions.pdf>.

⁸⁶ Personal communication between CRS and the U.S. Forest Service on November 10, 2023. See also FS, “Tribal Forest Protection Act/638 Project Authority,” <https://www.fs.usda.gov/managing-land/restoration/tribal-forest-protection-act-638>.

⁸⁷ For example, BLM's authorization of certain energy or mining projects has raised concerns regarding the destruction or degradation of sacred sites. See Scott Sonner, “Nevada Tribe Says Coalitions, Not Lawsuits, Will Protect Sacred Sites as U.S. Advances Energy Agenda,” AP News, December 24, 2023; Coral Davenport, “Biden Administration Bans Drilling Around Native American Cultural Site,” *New York Times*, June 2, 2023.

⁸⁸ For more background, see CRS Report R48452, *Indigenous Sacred Sites: Overview and Issues for Congress*, coordinated by Mark K. DeSantis.

⁸⁹ Mary Ann King, “Co-management or Contracting? Agreements Between Native American Tribes and the U.S. National Park Service Pursuant to the 1994 Tribal Self-Governance Act,” *Harvard Environmental Law Review*, vol. 31, no. 2 (January 2007), pp. 508-509 (hereinafter King, “Co-management”).

⁹⁰ NPS, Grand Portage National Monument, Minnesota, “History and Culture,” <https://www.nps.gov/grpo/learn/historyculture/index.htm>. See also P.L. 85-910.

⁹¹ P.L. 85-910.

conduct maintenance on the monument.⁹² Between 1985 and 2016, NPS and the Band had completed more than 200 projects together.⁹³ The Band's construction program has helped build park housing, a maintenance facility, a heritage center, and park administration offices. In 2022, DOI testified that a tribal youth organization called the "Grand Portage Conservation Crew" had engaged in "co-management practices and projects," including preserving historic structures, archaeological and wildlife surveys, plant restoration, and timber stand improvement.⁹⁴

Cultural Landscapes in the Southwest

The Bears Ears National Monument in southern Utah is an example of the consultative and co-management role of multiple Tribes with cultural and historical ties to the area. Due in part to the significance of the area to many Tribes, President Obama issued a proclamation to reserve approximately 1.35 million acres as a national monument in December 2016.⁹⁵ The proclamation established a Bears Ears Commission with members from several Tribes "to provide guidance and recommendations on the development and implementation of management plans and on management of the monument."⁹⁶

Presidential proclamations in 2017 and 2021 modified the national monument to reduce or expand its size. In 2017, President Trump issued a proclamation reducing the Bears Ears National Monument by 1.15 million acres to ensure it was the "smallest area compatible with the proper care and management of the objects of historic or scientific interest to be protected."⁹⁷ In 2021, President Biden issued a proclamation that generally reestablished the terms and boundaries of the 2016 President Obama proclamation, also highlighting the spiritual, cultural, prehistoric, and historic legacy of the area.⁹⁸

In addition, President Biden directed the federal agencies to issue a new management plan and reestablished the commission to ensure that "management decisions affecting the monument reflect expertise and traditional and historical knowledge" of Tribes.⁹⁹ In June 2022, BLM and FS signed an intergovernmental cooperative agreement with the Bears Ears Commission.¹⁰⁰ The

⁹² DOI, *First Annual Report on Tribal Co-Stewardship*, pp. 6-7, November 2022, https://www.bia.gov/sites/default/files/dup/inline-files/doi_annual_report_on_co-stewardship.pdf.

⁹³ NPS, *Foundation Document: Grand Portage National Monument*, December 2016, p. 12, <http://npshistory.com/publications/foundation-documents/grpo-fd-2016.pdf>.

⁹⁴ Sams, "NPS Co-Management."

⁹⁵ White House, "Presidential Proclamation 9558: Establishment of the Bears Ears National Monument," December 28, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/12/28/proclamation-establishment-bears-ears-national-monument>. Subsequent presidential proclamations modified the national monument, as discussed in this section.

⁹⁶ The commission was to include one elected officer each from the Hopi Nation, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah Ouray, and Zuni Tribe.

⁹⁷ White House, "Presidential Proclamation 9681: Modifying the Bears Ears National Monument," December 4, 2017, <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-proclamation-modifying-bears-ears-national-monument/>.

⁹⁸ White House, "Presidential Proclamation 10285: A Proclamation on Bears Ears National Monument," October 8, 2021, <https://www.govinfo.gov/content/pkg/DCPD-202100834/pdf/DCPD-202100834.pdf> (hereinafter *Presidential Proclamation 10285*).

⁹⁹ Presidential Proclamation 10285.

¹⁰⁰ BLM, "Inter-Governmental Cooperative Agreement between the Tribal Nations whose representatives comprise the Bears Ears Commission, the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe of the Uintah and Ouray Reservation, and the Pueblo of Zuni, and the United States Department of the Interior, Bureau of Land Management and the United States Department of Agriculture, Forest Service, for the Cooperative Management of the (continued...)"

agreement provides the Tribe with a co-management role, ensuring management decisions for the monument “reflect the expertise and traditional and historical knowledge of interested Tribal Nations and people.”¹⁰¹ The agreement created a framework for communication that includes regular meetings and a timeline for tribal input in the monument planning process. BLM and FS worked with the Bears Ears Commission to develop a monument management plan, which was issued in January 2025.¹⁰² Among other things, the plan states that “the agencies’ co-stewardship relationship with the [Commission] facilitates, enhances, and supplements coordination and cooperative management of the federal lands within [the Monument]; however, the agencies retain decision-making authority.”¹⁰³

In 2026, President Trump issued a proclamation that modified the monument in several ways. It reduced the monument by more than 1.2 million acres to approximately 121,096 acres comprising two units: the Shash Jáa Unit and the Indian Creek Unit. It also directed BLM and FS to develop new management plans, and that they “shall provide for public involvement in the development of any management plan, including consultation with federally recognized Tribes and State and local governments.” The proclamation also disbanded and terminated the commission.¹⁰⁴ On September 2, 2026, several Tribes and environmental groups sued the Administration to overturn this action.¹⁰⁵

Issues and Options for Congress

Congress may continue to consider the suitability and effectiveness of federal-tribal co-management of federal lands. For example, Congress may continue to consider whether certain federal lands may be managed or protected through co-management agreements, or whether certain lands would not be available for co-management. Congress also may consider the scope of activities governed by co-management agreements on federal lands, including whether there are certain activities that agencies may not delegate to Tribes. Additionally, Congress may consider the administrative and financial benefits and challenges facing agencies and Tribes in these agreements.

Consideration of Indigenous Knowledge

Due to their historical connections, many Tribes maintain IK about their ancestral landscapes. Although there is no single definition, one scholar defined IK as “a cumulative body of knowledge, practice, and belief ... handed down through generations by cultural transmission, about the relationship of living beings (including humans) with one another and with their

Federal Lands and Resources of the Bears Ears National Monument,” June 18, 2022, <https://www.blm.gov/sites/default/files/docs/2022-06/Bears%20Ears%20National%20Monument%20Inter-Governmental%20Cooperative%20Agreement%202022.pdf> (hereinafter BLM, “Bears Ears Agreement”).

¹⁰¹ BLM, “Bears Ears Agreement,” p. 1.

¹⁰² DOI, BLM, “Bears Ears National Monument Record of Decision, Approved Resource Management Plan,” January 2025, https://www.bearscoalition.org/wp-content/uploads/2025/01/BENM_BLM-ROD_20250114_508_signed.pdf (hereinafter BLM, “Monument ROD”).

¹⁰³ BLM, “Monument ROD,” p. 28.

¹⁰⁴ White House, “Presidential Proclamation 11043: Modifying the Bears Ears National Monument,” July 13, 2026, <https://www.whitehouse.gov/presidential-actions/2026/07/modifying-the-bears-ears-national-monument/>.

¹⁰⁵ Exhibit A to Motion to Reopen and Lift Stay / Motion for Leave to Amend and Supplement Complaint, Natural Resources Defense Council v. Trump, No. 1:17-cv-02590 (D.D.C.), ECF No. 269-2.

environment.”¹⁰⁶ Some tribal groups have asked Congress to direct federal agencies to include Tribes (and their IK) in land management decisions to bring together “the expertise of diverse perspectives to build a collective and participatory framework that can benefit everyone.”¹⁰⁷

For the past several decades, some scientists working on natural resources and land management topics and some federal agencies have been collecting and using IK to varying degrees.¹⁰⁸

Appreciation for using IK began to change in the 1980s, potentially due to increasingly visible Indigenous political movements and an increased scientific recognition of IK.¹⁰⁹ For example, federal land managers can potentially learn from IK, including tribal values, culture, and ways of life, which could improve land management outcomes.¹¹⁰ Starting in the 1980s, some federal agencies began to consider and incorporate IK into their decisions and activities. More recently, the Biden Administration issued government-wide guidance on IK and specifically encouraged the incorporation of IK in federal land management.¹¹¹ For example, Executive Order 14072 established a policy to support IK and cultural and subsistence practices in national forests; the Trump Administration revoked this executive order in 2025.¹¹²

Congress has several options regarding the federal use of IK in federal land management planning. Congress could maintain the status quo, which would allow most federal agencies to continue to consider IK on an ad hoc basis. Alternatively, Congress could consider directing federal agencies to consider IK in specific contexts. Some Members of Congress have introduced legislation that would have required federal land management agencies to consult with Tribes in developing management plans on federal lands.¹¹³ Several bills specifically referenced the integration of IK into these management plans.¹¹⁴ For example, H.R. 3444 from the 119th Congress would provide a new authority for the Secretary of Agriculture to enter into agreements with Tribes to conduct certain activities on FS lands. When considering whether to enter into such an agreement, the Secretary of Agriculture was directed to “give special consideration” to the IK

¹⁰⁶ Berkes et al., “Rediscovery,” p. 1252. For more information, see CRS Report R48317, *Indigenous Knowledge and Data: Overview and Issues for Congress*, coordinated by Mariel J. Murray.

¹⁰⁷ NCAI, “Calling for Advancement.” See also Kirk Francis Sr., President, United South and Eastern Tribes (USET), “Honoring Traditional Ecological Knowledge is Critical,” December 13, 2021, <https://www.usetinc.org/general/honoring-traditional-ecological-knowledge-is-critical/>.

¹⁰⁸ For example, one review of scientific research papers referencing IK, traditional ecological knowledge (TEK), or “Indigenous Ecological Knowledge” found that five papers used those terms in 1990, compared with 1,404 in 2018 (Tyler D. Jessen et al., “Contributions of Indigenous Knowledge to Ecological and Evolutionary Understanding,” *Frontiers in Ecology and the Environment*, vol. 20, no. 2 (March 2022), pp. 93-101).

¹⁰⁹ See Victoria Reyes-García, “The Values of Traditional Ecological Knowledge,” in *Handbook of Ecological Economics*, eds. Joan Martínez-Alier and Roldan Muradian (Edward Elgar Publishing, 2015), pp. 286-288.

¹¹⁰ Shelly D. Stokes, “Ecosystem Co-management Plans: A Sound Approach or a Threat to Tribal Rights?,” *Vermont Law Review*, vol. 27 (2003), p. 426, https://heinonline.org/HOL/Page?handle=hein.journals/vlr27&div=19&g_sent=1&casa_token=&collection=journals.

¹¹¹ See for example, Executive Office of the President, Council on Environmental Quality (CEQ) and Office of Science and Technology Policy (OSTP), “Guidance for Federal Departments and Agencies on Indigenous Knowledge,” November 30, 2022, p. 5, https://www.bia.gov/sites/default/files/dup/inline-files/ik_guidance_implementation_memo.pdf.

¹¹² Executive Order 14072, “Strengthening the Nation’s Forests, Communities, and Local Economies,” 87 *Federal Register* 24851, April 27, 2022. Executive Order 14154, “Unleashing American Energy,” 90 *Federal Register* 8353-8359, January 29, 2025.

¹¹³ See, for example, H.R. 1791, Mountains to Sound Greenway National Heritage Act (115th Cong.); H.R. 5243, Northern Nevada Economic Development, Conservation, and Military Modernization Act of 2021 (117th Cong.); H.R. 7665, REC Act of 2022 (117th Cong.), and H.R. 3444, Tribal Self-Determination and Co-Management in Forestry Act of 2025 (119th Congress).

¹¹⁴ H.R. 1791, §5(b)(1) (115th Congress); H.R. 5243, §408 (117th Congress); and H.R. 7665, REC Act of 2022, §1208(b)(2)(D) (117th Congress).

and skills of the Tribe. In the 119th Congress, at least two bills also include provisions requiring DOI and/or USDA to protect IK, for example from disclosure.¹¹⁵

Management of Cultural Resources and Sacred Sites

Many Tribes continue to seek access to federal lands to practice traditional ceremonies in culturally important areas.¹¹⁶ A basic legal framework exists at the federal level to protect tribal religious, historic, and cultural sites and objects.¹¹⁷ For example, under the NHPA, federal agencies must consult with any Tribe that “attaches religious and cultural significance” to historic properties that may be affected by agency projects.¹¹⁸ However, absent specific legislative language, the protection of sacred sites on federal lands is largely up to agency discretion.

Congress has considered, and in some cases passed, site-specific legislation to protect tribal sacred sites with tribal input.¹¹⁹ For example, in the 119th Congress, H.R. 2345 would direct the Secretary of the Interior to “ensure the protection of sacred sites and cultural sites” within the newly designated Ocmulgee Mounds National Park and Preserve. In addition, several laws have allowed for the temporary closure of specific federal lands to the public at a Tribe’s request to enable traditional ceremonies and other activities.¹²⁰ Congress has also considered non-site-specific bills that would provide tribal input on federal decisions affecting sacred sites.¹²¹

Delegation of Federal Functions to Tribes

Whether, and how much, authority or functions a federal land management agency may delegate to a Tribe is a recurring issue. Although federal land management agencies collaborate with Tribes in many ways, the authorities under which they administer federal land do not generally provide clear direction as to which activities agencies should or should not delegate to Tribes. Some Tribes and scholars claim that co-management *must* go beyond federal-tribal consultation or collaboration on specific projects, and must include delegation, to be effective.¹²² To some Tribes and scholars, true co-management requires agencies to engage with Tribes as long-term primary partners in planning and implementation rather than consulting with Tribes on discrete

¹¹⁵ See H.R. 8616 and H.R. 3444.

¹¹⁶ For more background, see CRS Report R48452, *Indigenous Sacred Sites: Overview and Issues for Congress*, coordinated by Mark K. DeSantis. See also Martin Nie, “The Use of Co-management and Protected Land-Use Designations to Protect Tribal Cultural Resources and Reserved Treaty Rights on Federal Lands,” *Natural Resources Journal*, vol. 48, no. 3 (summer 2008), pp. 16-17, <https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1192&context=nrj>.

¹¹⁷ See generally National Historic Preservation Act (NHPA; 54 U.S.C. §§300101 et seq.); American Indian Religious Freedom Act (AIRFA; 42 U.S.C. §§1996 et seq.); Archeological Resources Protection Act of 1979 (ARPA; 16 U.S.C. §470aa-mm); and Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. §§3001 et seq.).

¹¹⁸ 54 U.S.C. §302706(b).

¹¹⁹ For example, see S. 2924 (116th Congress), H.R. 8719 (117th Congress), and P.L. 116-9.

¹²⁰ For example, see P.L. 117-353; P.L. 110-234, §8104; and P.L. 110-246.

¹²¹ For example, H.R. 8109, the Tribal Cultural Protection Act (117th Congress), would have established a “Tribal Cultural Areas System” comprising culturally significant sites on federal lands. Among other things, the bill stated that the Secretary of Agriculture or the Interior (as applicable) “shall only authorize new uses or existing uses within a Tribal cultural area” in consultation with a tribal commission.

¹²² See Mills and Nie, “Bridges,” p. 99; see also White House, “Executive Summary: Tribal Comments Received During Council on Environmental Quality Consultations on the President’s America the Beautiful Initiative,” 2022, p. 2, <https://www.whitehouse.gov/wp-content/uploads/2022/03/Atb-Tribal-Consultation-Summary.pdf> (hereinafter White House, “Executive Summary 2022”).

individual issues.¹²³ Others have asserted that several laws adequately provide for “careful consideration” of tribal values in federal land management.¹²⁴

Congress has several options regarding the delegation of land management activities in co-management arrangements. Congress could take no additional action and allow co-management to continue on an ad-hoc basis. Congress also could prohibit or otherwise limit co-management. CRS did not identify any legislation that explicitly prohibited or limited tribal co-management. However, some Members of Congress have introduced bills that could indirectly limit opportunities for tribal co-management. For example, in the 119th Congress, two bills would disapprove BLM’s management plan for the Grand Staircase-Escalante National Monument, where the management plan had provided for tribal co-management.¹²⁵

Alternatively, Congress may continue to include tribal co-management delegation provisions in site-specific legislation. Congress may also delineate non-site-specific delegable activities for co-management. For example, H.R. 3444 from the 119th Congress would establish a new authority for Tribes to conduct activities on FS lands, defining an allowable activity as a legal FS activity, service, or function that is

1. conducted on FS lands, and which the Secretary of Agriculture considers necessary;
2. consistent with the applicable land management plan; and
3. on lands that the Secretary and Tribe identify as being historically, culturally, or geographically related to the Tribe.

The bill also would prohibit the agency from delegating “any nondelegable function” to a Tribe or tribal organization.

In addition, the draft FORESTS Act from the 119th Congress would enable Tribes to conduct “forest management activities” (as defined by the National Indian Forest Management Resources Act, 25 U.S.C. §3103(4)), on federal forest lands that are “principally relevant” to them.¹²⁶

Delegable Functions Under ISDEAA

The scope of federal programs and activities that can be delegated to Tribes under ISDEAA has been particularly challenging to define. ISDEAA authorizes certain federal agencies and Tribes to enter into self-governance compacts for activities that do not involve an *inherent* or *inherently federal function*.¹²⁷ ISDEAA defines the term as “a Federal function that cannot be legally delegated to a Tribe.”¹²⁸ In the act’s legislative history, Congress explained that inherent federal

¹²³ White House, “Executive Summary 2022,” p. 2. See also Mills and Nie, “Bridges,” p. 99 (“consultation must evolve from the unenforceable, discretionary, and variable practice widely criticized by tribes into a meaningful, compatible, and continuing conversation between appropriate tribal and federal officials”).

¹²⁴ See, e.g., Testimony of R. Timothy McCrum, Partner, Crowell & Moring LLP, on behalf of Glamis Imperial Corp., in U.S. Congress, House Resources Committee, *Regarding H.R. 5155, A Bill To Protect Sacred Native American Federal Lands*, 107th Cong., 2nd sess., September 25, 2002, S.Hrg. 107-153 (GPO, 2003).

¹²⁵ See S.J.Res. 109 and H.J.Res. 151. See also BLM, “Record of Decision, Approved Resource Management Plan-Grand Staircase-Escalante National Monument,” January 2025, pp. 1-25, <https://eplanning.blm.gov/documents/?id=91d264cd-a7f2-f011-8406-001dd80ef717&spid=8fe7277f-a8f2-f011-8407-001dd80db62a#>.

¹²⁶ H.R._____, the Fostering Opportunities to Restore Ecosystems through Sound Tribal Stewardship Act, or the FORESTS Act, May 2025, discussion draft by Rep. Jeff Hurd, https://docs.house.gov/meetings/II/II10/20250520/118223/BILLS-119____ih.pdf.

¹²⁷ These terms are both found in the Indian Self-Determination and Assistance Act, as amended, and are used interchangeably. See, e.g., 25 U.S.C. §5361(6) and 25 U.S.C. §5363(k),

¹²⁸ 25 U.S.C. §5361(6).

functions are “federal responsibilities vested by the Congress in the Secretary of the Interior which are determined by the courts not to be delegable under the constitution.”¹²⁹ Some Members have cited the following as examples of inherently federal functions: the administration of federal fish and wildlife protection laws, promulgation of regulations, obligation and allocation of federal funds for certain programs, and the exercise of certain prosecutorial powers.¹³⁰

Neither DOI nor USDA have defined inherent federal functions. In a 1996 legal memorandum, DOI explained that ISDEAA’s inherently federal restriction could be applied only on a case-by-case basis.¹³¹ A 2022 DOI solicitor’s memorandum affirmed this case-by-case approach, stating that these functions involve “the exercise of substantial discretion while applying government authority, use of value judgment when making decisions for the government, or both.”¹³² The memorandum also noted that DOI would consider the activities the Tribe seeks to assume, the applicable federal law governing the activities, and the amount of authority DOI would retain. Nonetheless, DOI noted that staff retain “significant latitude” to enter into co-stewardship agreements or other arrangements with Tribes.¹³³ When DOI updated its ISDEAA self-governance regulations in 2024, it did not define the term. However, it included a new section that requires BIA’s regional and central offices to each develop and distribute a document outlining regional inherent federal functions and cost calculations each fiscal year for Tribes to use when negotiating self-governance compacts with BIA.¹³⁴

Some Tribes and the Government Accountability Office (GAO) have suggested that Congress amend the statutory definition of “inherently federal function” to clarify the scope of ISDEAA agreements.¹³⁵ GAO has criticized DOI for its case-by-case approach to interpreting the term, noting that this results in inconsistent determinations and a lack of predictability for Tribes.¹³⁶ Some Tribes and GAO have asserted that without a clear federal definition, federal employees, especially non-BIA employees at DOI, may continue to resist entering into ISDEAA agreements with Tribes.¹³⁷

¹²⁹ Statement of Sen. John McCain, “Indian Self-Determination Act Amendments of 1994,” *Congressional Record*, daily edition, October 2, 1994, p. S. 28834.

¹³⁰ Statement of Sen. John McCain, “Indian Self-Determination Act Amendments of 1994,” *Congressional Record*, daily edition, October 2, 1994, p. S. 28834. See also the No Child Left Behind Act of 2001, P.L. 107-110, which defined *inherently federal functions* as administering federal funds, personnel laws, and contracting and grant laws; administering hearings and appeals; issuing federal regulations and policies; reporting to Congress and the President; and conducting the statutory duties of the Secretary relating to trust resources.

¹³¹ DOI, Office of the Solicitor, “Inherently Federal Functions Under the Tribal Self-Governance Act” memorandum, May 17, 1996, <https://tribalselfgov.org/wp-content/uploads/2019/07/Inherent-Federal-Functions-Leshy-1996.pdf>.

¹³² DOI, Office of the Solicitor, *Final Report: Current Land, Water, and Wildlife Authorities That Can Support Tribal Stewardship and Co-stewardship*, p. 23, November 2022, <https://www.doi.gov/sites/default/files/ar-esb46-009795-doi-and-tribal-co-stewardship-20221125.pdf> (hereinafter DOI, *2022 SOL Report*).

¹³³ DOI, *2022 SOL Report*, p. 17.

¹³⁴ 25 C.F.R. §1000.690. As of October 2026, CRS was unable to identify whether these lists have been created based on publicly available sources.

¹³⁵ BIA, “Self-Governance PROGRESS Act Regulations,” 89 *Federal Register* 100230, December 11, 2024. See also GAO, *Interior Should Address Factors Hindering Tribal Administration of Federal Programs*, GAO-19-87, January 2019, p. 15, <https://www.gao.gov/assets/gao-19-87.pdf> (hereinafter GAO, *Factors Hindering Tribal Administration of Federal Programs*, GAO-19-87).

¹³⁶ GAO, *Factors Hindering Tribal Administration of Federal Programs*, GAO-19-87, p. 15.

¹³⁷ See Statement of Melanie Benjamin, Chief Executive, Mille Lacs Tribe of Ojibwe, in U.S. Congress, Senate Committee on Indian Affairs, *The 30th Anniversary of Tribal Self-Governance: Successes in Self-Governance and an Outlook for the Next 30 Years*, hearings, 115th Cong., 2nd sess., April, 18, 2018, S.Hrg. 115-403, p. 35 (hereinafter S.Hrg. 115-403). See also GAO, *Factors Hindering Tribal Administration of Federal Programs*, GAO-19-87, p. 1.

Congress may continue to allow DOI to define which activities are inherently federal on a case-by-case basis, which some Members of Congress have supported, or it could define the term.¹³⁸ A more prescriptive statutory definition could provide more legal certainty to agencies and thereby potentially encourage agencies' use of ISDEAA agreements for co-management, among other activities. At the same time, providing a more detailed statutory definition of inherently federal functions at DOI, or requiring DOI to develop a national (as opposed to a case-by-case or region-by-region definition), may limit DOI's flexibility and discretion.

Tribal and Federal Administrative Capacity

Limited agency and tribal capacity are ongoing issues affecting federal-tribal co-management.¹³⁹ Co-management may be inaccessible to some Tribes and other Indigenous entities due to limited personnel and expertise.¹⁴⁰ For example, TFPA projects can be complex and Tribes may face challenges because of the diversity of expertise required, such as aquatics, wildlife, fisheries, and forestry. For these reasons, some Tribes have asked for technical assistance and training.¹⁴¹

At the same time, agency employee understanding of tribal relations, including in the co-management context, is inconsistent.¹⁴² Many federal staff lack an understanding of government-to-government relationships and agency tribal trust responsibilities and other authorities.¹⁴³ Agencies have many authorities to partner with Tribes, but it may be unclear how these authorities can be used for the planning, administration, and management of federal land. For example, several studies of NPS-tribal partnerships identified failures to understand each other's procedural requirements, timetables, and reporting needs as sources of delay.¹⁴⁴ For these reasons, some tribal groups have called for more federal training in tribal relations.¹⁴⁵

In particular, GAO and some scholars reference that some Tribes have criticized agencies for their lack of understanding (and support for) the development of ISDEAA agreements.¹⁴⁶ For this reason, some Tribes have advocated for Congress to mandate that DOI agencies other than BIA enter into ISDEAA agreements if requested by Tribes (as is the case for BIA).¹⁴⁷ In the PROGRESS for Indian Tribes Act (P.L. 116-180), Congress maintained DOI land management

¹³⁸ Rep. George Miller, "Tribal Self-Governance Amendments of 1998," House Extensions of Remarks, *Congressional Record*, daily edition, vol. 144 (October 9, 1998), p. E1982, <https://www.govinfo.gov/content/pkg/CREC-1998-10-09/pdf/CREC-1998-10-09-pt1-PgE1982.pdf>.

¹³⁹ GAO, *Factors Hindering Tribal Administration of Federal Programs*, GAO-19-87, p. 11.

¹⁴⁰ GAO, *Federal Land and Water Management: Additional Actions would Strengthen Agreements with Tribes*, GAO-26-106626, January 28, 2026, <https://files.gao.gov/reports/GAO-26-106626/index.html> (hereinafter GAO, *Agreements with Tribes*, GAO-26-106626).

¹⁴¹ The Fourth Indian Forest Management Assessment Team (IFMAT) for the Intertribal Timber Council, *Assessment of Indian Forests and Forest Management in the United States*, 2023, pp. 14 and 192, https://www.bia.gov/sites/default/files/media_document/ifmat_iv_report.pdf (hereinafter IFMAT, "2023 Report").

¹⁴² See, for example, GAO, *Agreements with Tribes*, GAO-26-106626.

¹⁴³ Intertribal Timber Council, "Executive Summary," in *2013 TFPA Analysis Report: Fulfilling the Promise of the Tribal Forest Protection Act of 2004*, April 2013, p. 2, https://www.itcnet.org/file_download/ed11427f-0402-43f1-aa4f-070c06e63e7c.

¹⁴⁴ See CRS Report R42125, *National Park System: Units Managed Through Partnerships*, by Laura B. Comay.

¹⁴⁵ USET, "Training Comments," p. 2 ("USET SPF has long recommended mandatory training on U.S.-Tribal relations and the trust obligation for all federal employees").

¹⁴⁶ GAO, *Agreements with Tribes*, GAO-26-106626. See also King, "Co-management," p. 524.

¹⁴⁷ S.Hrg. 115-403, p. 6. See also 25 U.S.C. §5321(a)(1)(E).

agencies' discretion to refuse to enter into ISDEAA agreements.¹⁴⁸ The act also authorized grants to build tribal capacity for participation in ISDEAA agreements.¹⁴⁹

In the past, DOI and USDA have attempted to build agency and tribal capacity by hiring staff. The FS has an Office of Tribal Relations based in Washington, DC, and has typically had FS regional tribal liaisons.¹⁵⁰ DOI bureaus also typically have had tribal liaison officers and local staff.¹⁵¹ For example, the FWS Lead Refuge Information Technician for the Yukon Delta National Wildlife Refuge has facilitated communication and education between the refuge and Alaska Native stakeholders throughout the region.¹⁵² In 2026, GAO reported that agencies' ability to develop co-management agreements may have been affected by decreases in federal land management agency staffing levels that were proposed or began taking effect in early 2025.¹⁵³

Congress has several options regarding tribal and federal capacity for co-management. Congress could take no action, reduce capacity-building efforts, or refocus capacity-building activities. Congress could also promote federal-tribal capacity and coordination in federal-tribal co-management. First, it could codify one or more of the executive branch councils and committees focused on tribal issue coordination. For example, Congress could codify the White House Council on Native American Affairs, which was established by Executive Order 13647, or the DOI interbureau Committee on Collaborative and Cooperative Stewardship.¹⁵⁴ In addition, Congress could authorize training to facilitate specific tribal activities on federal lands. For example, the National Prescribed Fire Act of 2025 would authorize Tribes to conduct prescribed burns on federal land through a variety of mechanisms, some including planning, training, and coordination.¹⁵⁵

Alternatively, Congress may consider authorizing co-management demonstration projects or other pilot programs to facilitate federal-tribal coordination in areas with strong potential capacity for co-management.¹⁵⁶ If successful, such projects or programs may be reauthorized or expanded. For example, as noted, the 2018 farm bill authorized FS to enter into TFPA self-determination contracts with Tribes to conduct demonstration projects on agency lands, and the agency has done

¹⁴⁸ U.S. Congress, House Natural Resources Committee, *Practical Reforms and other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019*, report to accompany S. 209, 116th Cong., 2nd sess., May 22, 2020, H.Rept. 116-422 (stating that the bill would "leave unchanged the Department's discretionary authority to compact non-BIA programs within DOI").

¹⁴⁹ P.L. 116-180, §402(e).

¹⁵⁰ USDA, "Strengthening," pp. 1-2.

¹⁵¹ DOI, "Tribal Liaison Officers and Points of Contact," <https://www.doi.gov/priorities/tribal-consultation/tribal-liaison-officers>.

¹⁵² FWS, "My Life, Wildlife: Christopher Tulik," <https://www.fws.gov/story/my-life-wildlife-christopher-tulik>.

¹⁵³ GAO, *Agreements with Tribes*, GAO-26-106626.

¹⁵⁴ BIA, "White House Council on Native American Affairs," <https://www.bia.gov/whcnaa>; see also DOI, "Departmental Manual: Collaborative and Cooperative Stewardship with Tribes and the Native Hawaiian Community, Chapter 2: Committee on Collaborative and Cooperative Stewardship," <https://www.doi.gov/sites/default/files/elips/documents/502-dm-2.pdf>.

¹⁵⁵ H.R. 3889, S. 2015.

¹⁵⁶ Although there is no universal definition for the terms *demonstration project* or *program*, legislation has included these terms to describe short-term or otherwise limited projects or programs. See, for example, the Infrastructure Improvement and Jobs Act (IIJA, P.L. 117-58, §41001), which authorized appropriations for Energy Storage Demonstration Projects, a pilot grant program, for a term of four fiscal years.

so with multiple Tribes.¹⁵⁷ S. 1462 from the 119th Congress would permanently authorize the usage of ISDEAA self-determination contracts to implement TFPA projects at the FS.

Federal Funding for Co-Management

Whether and at what level to fund co-management activities on federal lands is another issue. In 2026, GAO found that limited agency and tribal funding impeded the development of federal-tribal agreements.¹⁵⁸ This is because developing co-management agreements may involve various expenses such as fuel, lodging, food, meeting space, and site visits.¹⁵⁹

At times, Congress has provided funding for costs incurred by Tribes in specific co-management agreements with federal land management agencies. For example, USACE requested in FY2027, and Congress appropriated in FY2026, funding for the Dworshak National Fish Hatchery, which is now managed by the Nez Perce Tribe.¹⁶⁰ Congress could continue to consider funding of specific agreements on a case-by-case basis.

Congress has not typically dedicated funding to land management agencies to administer co-management agreements. Land management agencies usually allocate funding for such agreements out of program budgets that were intended for multiple purposes.¹⁶¹ Some tribal groups have recommended noncompetitive, dedicated, and stable federal funding for tribal co-management authorities and agreements on federal lands.¹⁶² At the same time, GAO has reported that funding spent on co-management agreement development can divert funding needed to execute the agencies' other responsibilities.¹⁶³ Congress may choose to continue prioritizing funding for agency staff to perform activities in service of agency mission activities that do not include co-management agreements, or it may consider establishing dedicated agency budget lines for co-management.

At times, Congress has appropriated funding to implement co-management authorities. For example, the FS received its first-ever TFPA appropriations of up to \$8 million per year in the Infrastructure Investment and Jobs Act (P.L. 117-58, Division J). In the 119th Congress, S. 719 would authorize the appropriation of \$15 million for each fiscal year from FY2026 to FY2031 to implement TFPA. Also in the 119th Congress, H.R. 3444 would establish a new federal-tribal co-management authority, including authorizing a total of \$50 million for the period FY2026-FY2030 to implement that authority. Congress could continue to consider funding specific co-management authorities.

Federal Funding for ISDEAA Agreements with Co-Management Activities

Unique issues arise in the context of funding for ISDEAA agreements with co-management activities. Congress may continue to consider funding direct and/or indirect costs incurred by Tribes in ISDEAA agreements with federal land management agencies. ISDEAA requires the

¹⁵⁷ See generally FS, "Tribal Forest Protection Act/638 Project Authority," <https://www.fs.usda.gov/managing-land/restoration/tribal-forest-protection-act-638>.

¹⁵⁸ GAO, *Agreements with Tribes*, GAO-26-106626.

¹⁵⁹ GAO, *Agreements with Tribes*, GAO-26-106626.

¹⁶⁰ See the following portion of the budget justification documents submitted as part of the President's FY2027 budget request, USACE, *FY2027 Operations and Maintenance*, p. 77, <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll6/id/2593>. See also the Consolidated Appropriations Act, 2023 (P.L. 117-328) and IJJA.

¹⁶¹ GAO, *Agreements with Tribes*, GAO-26-106626.

¹⁶² See NCAL, "Calling for Advancement," p. 2. See also IFMAT, "2023 Report," p. 192.

¹⁶³ GAO, *Agreements with Tribes*, GAO-26-106626.

Secretary of the Interior to provide the contracting Tribe with funds equivalent to those that the relevant Secretary “would have otherwise provided” for the programs.¹⁶⁴ That includes *contract support costs* (CSCs), or “reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management.”¹⁶⁵ Allowable uses of contract support cost funding include the depreciation of assets, construction and mortgage costs, management studies, insurance and indemnification, and interest expenses on capital.¹⁶⁶ The Supreme Court has held that the government must pay these costs at the Indian Health Service (IHS) and BIA regardless of the availability of appropriations.¹⁶⁷

Whether agencies beyond BIA and IHS are required to pay CSCs has historically been raised as an issue.¹⁶⁸ As of the 2024 update, DOI’s self-governance regulations require DOI agencies other than BIA to pay CSCs.¹⁶⁹ Although the TFPA 638 authority did not specify that FS must pay CSCs, during the Biden Administration, FS committed to reimbursing Tribes for direct and indirect expenses within TFPA agreements.¹⁷⁰

Some Tribes have contended that through ISDEAA agreements, they can use federal funding more efficiently than the federal government, potentially decreasing overall project or program costs.¹⁷¹ For example, Tribes that receive lump-sum funding in ISDEAA funding agreements may reallocate those funds during the year and may carry over unspent funds.¹⁷² In addition, Tribes may enter into ISDEAA agreements with multiple years of funding.¹⁷³ By contrast, depending on the relevant authorities, federal program appropriations may be time limited and may not be authorized to be carried over from one fiscal year to the next. In its FY2019 self-governance report to Congress, DOI also asserted that “the greater control and flexibility in the use of funds to better meet Tribal conditions, needs, and circumstances promotes more efficient and effective governance and is a major source of significant relative benefits” in ISDEAA funding agreements.¹⁷⁴ In the forestry context, some scholars contend that some Tribes have been adept at decreasing costs relative to BIA efforts, raising worker productivity, and increasing income from forest products.¹⁷⁵

On the other hand, federal land management agencies may have economies of scale that reduce their direct and indirect costs relative to Tribes. In addition, the federal government may not necessarily reduce its costs by entering into ISDEAA agreements with Tribes. For example, although federal agencies may incur administrative overhead costs in providing services to Tribes, such as human resources, these costs may be lower than the contract support costs

¹⁶⁴ 25 U.S.C. §5325(a)(1) and 25 U.S.C. §5326.

¹⁶⁵ 25 U.S.C. §5325(a)(2).

¹⁶⁶ 25 U.S.C. §5325.

¹⁶⁷ *Cherokee Nation of Okla. v. Leavitt*, 543 U.S. 631, 647 (2005); *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182 (2012).

¹⁶⁸ See, for example, Testimony of Thora Padilla, President, Mescalero Apache Tribe, in U.S. Congress, Senate Committee on Indian Affairs, *Tribal Forest Protection Act Amendments Act of 2024*, hearing on S. 4370, 118th Cong., 2nd sess., July 25, 2024, p. 6, <https://www.indian.senate.gov/wp-content/uploads/07-25-2024-Padilla-Testimony.pdf>.

¹⁶⁹ 25 C.F.R. §1000.885.

¹⁷⁰ Communication between CRS and U.S. Forest Service on May 21, 2024.

¹⁷¹ See S.Hrg. 115-403, p. 8.

¹⁷² DOI, *2019 Tribal Self-Governance Report*, pp. 7-8.

¹⁷³ 25 U.S.C. §5363 (p)(4).

¹⁷⁴ DOI, *2019 Tribal Self-Governance Report*, p. 7.

¹⁷⁵ Washburn, “Facilitating,” p. 287.

requested by the Tribe to perform the ISDEAA agreement.¹⁷⁶ In addition, the federal government continues to pay federal staff in an ISDEAA agreement.¹⁷⁷

Some stakeholders have opposed ISDEAA co-management agreements based on concerns about agency resources. For example, the National Wildlife Refuge Association opposed the FWS ISDEAA agreement with the Council at Yukon Flats National Wildlife Refuge, because of FWS's apparently limited budget.¹⁷⁸ In particular, the association argued that FWS should allow for a competitive bidding process (rather than ISDEAA's direct tribal contracting authority), asserting that such a process was "an important way to use refuge funding wisely."¹⁷⁹ In addition, the association argued, while FWS entering into ISDEAA agreements for only a limited number of refuges may not significantly affect FWS funding availability, more ISDEAA agreements "could prove to have considerable budget ramifications."¹⁸⁰ It appears that the National Wildlife Refuge Association believed that if the agency did not use a competitive bidding process, the Tribe might overcharge the agency for services.

Congress has several options regarding funding for ISDEAA agreements with co-management activities. Congress could request that GAO assess the relative costs and benefits of these agreements. In addition, Congress could take certain actions to reduce costs. For example, it could limit the amount of CSCs available for ISDEAA agreements at federal land management agencies. In addition, given the costs of supporting federal employees who choose to remain when programs transition to Tribes through ISDEAA agreements, Congress may consider limiting or eliminating those federal employee protection provisions. Alternatively, Congress may seek to support or expand funding for ISDEAA agreements with co-management activities. For example, Congress could consider providing dedicated, multiyear funding for CSCs at federal land management agencies. Congress established two indefinite discretionary appropriations accounts for CSCs in the Consolidated Appropriations Act, 2016 (P.L. 114-113): one for BIA and another for IHS. Congress could consider something similar for federal land management agencies.¹⁸¹

¹⁷⁶ For example, one scholar reported that the NPS-tribal ISDEAA agreements that included certain programs at the Grand Portage National Monument cost slightly more than pre-ISDEAA NPS management of those programs. The Tribe was able to perform the services at roughly the same funding level as the NPS, but contract support and administrative overhead increased the overall cost (King, "Co-management," p. 521, footnote 271).

¹⁷⁷ ISDEAA allows federal employees to retain their jobs and federal personnel benefits after a Tribe takes over a federal program or service under an ISDEAA agreement. Tribes can offer jobs with the newly transitioned program to existing federal employees, either as tribal employees or through a two-year Intergovernmental Personnel Act (IPA) Agreement (25 U.S.C. §5323).

¹⁷⁸ National Wildlife Refuge Association, "Action Alert: Yukon Flats NWR Annual Funding Agreement," <https://perma.cc/XP7Y-FXD9>. See also Washburn, "Facilitating," pp. 300-305.

¹⁷⁹ National Wildlife Refuge Association, "Action Alert: Yukon Flats NWR Annual Funding Agreement," <https://perma.cc/XP7Y-FXD9>.

¹⁸⁰ National Wildlife Refuge Association, "Action Alert: Yukon Flats NWR Annual Funding Agreement," <https://perma.cc/XP7Y-FXD9>.

¹⁸¹ For BIA, see P.L. 114-113, Division G, Title I, Bureau of Indian Affairs, Contract Support Costs. See also *Congressional Record*, vol. 161, no. 184, book III (December 17, 2015), p. H10218. For IHS, see P.L. 114-113, Division G, Title III, Related Agencies, Indian Health Service, Contract Support Costs. See also *Congressional Record*, vol. 161, no. 184, book III (December 17, 2015), p. H10222.

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