

INDIAN AFFAIRS MANUAL

1.1 Purpose. This chapter provides authorities for a Fish, Wildlife and Recreation Program and the Bureau of Indian Affairs' (BIA) responsibilities in administering the Program.

1.2 Scope. This policy applies to the fish and wildlife management authority, jurisdiction, and responsibility of the BIA and Indian Tribes. The extent of authority, jurisdiction, and responsibility varies according to "reservation" and "non-reservation" areas and is dependent upon land status and specific language contained in individual treaties, Executive Orders, court decisions, resource-specific statutes, and other legal instruments. Tribes determine the scope of fish and wildlife program activities for their respective reservations.

A. On-Reservation Hunting, Fishing, and Gathering

- 1) By Indians. With some exceptions, there is no Congressional authority to regulate hunting, fishing, trapping, and gathering on Indian reservations. Neither do state laws and regulations generally apply to on-reservation fish and game activities by Indians. Accordingly, except where limited by federal statute or treaty, Indians enjoy exclusive rights to hunt, fish, trap, and gather on trust and restricted lands within the exterior boundaries of their reservations. Tribes also retain jurisdiction over these activities on their respective reservations except for allotted parcels of land within the boundaries of their reservations. Allottees of these parcels of land (individual members of a Tribe) retain the exclusive right to hunt, fish, trap, and gather on their allotments but must comply with Tribal rules, regulations and ordinances. Other Indians may engage in these activities only with the consent of the individual allottee.
- 2) By Non-Indians. Under federal law, treaties, statutes and executive orders Indian lands are regarded as trust assets. These trust assets have been set aside for exclusive use by Indian Tribes. Absent Tribal consent, non-Indians and Indian non-Tribal members have no right to engage in the following activities: hunting, fishing, trapping, or gathering on trust or restricted lands within the boundaries of a reservation. When these activities occur on restricted, allotted parcels of land non-Indians and Indian non-Tribal members must seek the consent of the individual Indian allottee. Non-Tribal members must comply with Tribal rules, regulations, and ordinances governing on-reservation hunting, fishing, trapping, and gathering. These individuals must also comply with state and federal laws and regulations pertaining to hunting, fishing, trapping, and gathering.

B. Off-Reservation Hunting, Fishing and Gathering by Indians. Except as provided for by treaty or Congressional Agreement, Indians who hunt, fish, trap, or gather off-reservation or on lands not restricted or held in trust are subject to applicable state fish and game laws, as well as regulations which may be imposed by land management agencies. Non-exclusive treaty hunting, fishing, trapping, and gathering rights outside

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the boundaries of Indian reservations have been reaffirmed for some Tribes by federal courts, and, in those cases, a state may not deny those rights, but may enforce reasonable conservation regulations applicable to all citizens of the state.

1.3 Policy. It is policy of the BIA to further the federal government's trust responsibility to Indian Tribes, as recognized by treaty rights, Congressional Agreements, and Executive Orders pertaining to fish, wildlife, and outdoor recreation resources, including Tribal hunting, fishing, and gathering. In order to fulfill this mission, the BIA coordinates and integrates management programs to conserve and protect fish and wildlife resources for the benefit of Indian Tribes.

1.4 Authority. Treaties comprise the primary source of authority for protecting fish and wildlife resources for the benefit of Indian Tribes. Treaty rights, which include the right to hunt, fish, and gather on established reservation land and certain other ceded territory, have been reserved to certain Indian Tribes. These rights are granted in perpetuity in exchange for the vast amounts of land ceded to the federal government by Indian Tribes. Congressional Agreements, subsequent to Treaty-making with Tribes which ended in 1871, serve as the guiding document for certain Tribes to hunt and fish on reservation land and ceded territory. Executive Orders serve for certain Indian Tribes as further guidance to describe hunting and fishing on reservation land and ceded territory.

A. Statutes and Regulations.

- 1) P. L. 101-618 (104 Stat. 3294), Truckee-Carson Pyramid Lake Water Settlement Act of 1990
- 2) P. L. 100-581 (102 Stat. 2944), Title IV—Columbia River Fishing Access Sites Act of 1998
- 3) 16 USC, Chapter 7 – Protection of Migratory Game and Insectivorous Birds
- 4) 16 USC, Chapter 5A, Subchapter I – Game, Fur-bearing Animals and Fish
- 5) 16 USC, Chapter 9 – Fish and Wildlife Service
- 6) 16 USC, Chapter 9A – Preservation of Fishery Resources
- 7) 16 USC, Chapter 28 – Wild and Scenic Rivers
- 8) 16 USC, Chapter 35 – Endangered Species
- 9) 16 USC, Chapter 38, Subchapter II – United States Rights and Authority Regarding Fish and Fishery Resources

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- 10) 16 USC, Chapter 51 – Alaska National Interests Lands
- 11) 16 USC, Chapter 52 – Salmon and Steelhead Conservation and Enhancement
- 12) 16 USC, Chapter 56A – Pacific Salmon Fishing
- 13) 42 USC § 1996, Protection and Preservation of Traditional Religions of Native Americans
- 14) 25 CFR Subchapter J – Fish and Wildlife

B. Guidance.

- 1) 501 Departmental Manual (DM) 2, Bureau of Indian Affairs and Fish and Wildlife Service

C. Court Rulings. Through various rulings, courts have reaffirmed the hunting, fishing, and gathering rights of many Tribes. In addition, courts have prescribed resource management roles, responsibilities, and co-management regimes required for the conservation and appropriate allocation of designated resources. These co-management efforts serve Tribes in perpetuating their continued exercise of associated Indian rights. Some notable court rulings are listed below.

- 1) United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974) affirmed 520 F. 2d 676 (9th Cir. 1975) certiorari denied 423 US 1086 (1976). Landmark decision recognizing rights of Northwest treaty Tribes to fish in their usual and accustomed places and to a fifty percent allocation of the harvestable fish.
- 2) United States v. Michigan, 653 F.2d 277 (6th Cir. 1981). Treaty fishing rights included aboriginal rights to engage in gill net fishing, subject to state regulation if necessary for conservation. This was deemed the least restrictive alternative method for species conservation, and did not discriminately harm Indian fishing or favor other classes of fishermen. In 1985, all parties entered into a consent decree regarding allocation of the Great Lakes fisheries. The original consent decree was extended by stipulation of the parties and remains in effect until 2020.
- 3) White Mountain Apache Tribe v. Arizona, 649 F.2d 1274 (9th Cir. 1981). Sets out analysis for settling conflicts between state and Tribal hunting and fishing license requirements.
- 4) Hoh v. Baldrige, 522 F. Supp. 683 (W.D. Wash. 1981), affirmed 676 F.2d 710 (9th Cir. 1982). Addressed commercial regulations and concluded that coho escapement was not necessary or reasonable to preserve spawning runs and could not be used to

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regulate the treaty fishing rights of three Washington coastal Tribes.

- 5) New Mexico v. Mescalero Tribe, 462 U.S. 324 (1983). Federal law preempts the application of state game laws against Tribal members and non-members on the reservation.
- 6) Lac Courte Oreilles Band v. Voigt, 700 F.2d 341 (7th Cir. 1983), certiorari denied, 464 US 805 (1983). Band's use rights established in 1837 and 1842 treaties were not terminated by 1854 treaty, since abrogation cannot be implied and Congress did not evince such intent clearly.
- 7) United States v. Oregon, 769 F.2d 1410 (9th Cir. 1985). Pertains to state regulation of treaty fishing for conservation purposes and the need to afford treaty rights equal treatment with other uses.
- 8) Grand Portage Band v. Minnesota, Civil No. 4-85-1090 (D. Minn. 1988). This judicially issued Memorandum of Agreement pertains to the implementation of off-reservation treaty hunting, fishing and gathering rights in the 1854 Treaty area of Minnesota.
- 9) Parravano v. Babbitt, 70 F.3d 539 (9th Cir. 1995). The Hoopa-Yurok Settlement Act of 1988 did not divest Tribes of their federally reserved fishing rights, even though the Act did not specifically set aside fishing rights. Indian rights issued under executive orders are entitled to the same protection from non-federal interests as those rights provided by treaties.
- 10) Fond du Lac Band v. Carlson, 68 F.3d 253 (8th Cir. 1995). The Chippewa band of Indians sought injunctive relief against Minnesota officials to prevent enforcement of the state's fish and game laws. In doing so, the Band relied upon their treaty rights arising from 1837 and 1854 treaties with the United States.
- 11) Mille Laes Band v. Minnesota, 53 US 172 (1999). Tribal rights to hunt, fish, and gather on land ceded in 1837 treaty were not extinguished by Minnesota's subsequent admission to the Union.

1.5 Responsibilities.

- A. **Deputy Bureau Director, Office of Trust Services (OTS)** is responsible for all headquarters activities associated with the management and protection of trust lands, natural resources, and treaty and statutory rights of Indian Tribes and individual Indians in or affecting property held in trust or co-managed by the federal government.
- B. **Chief, Division of Natural Resources, OTS** is responsible for providing direction,

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coordination, management, planning, oversight, and monitoring for trust natural resource development and protection, including the program area of Fish, Wildlife and Recreation.

C. Chief, Fish, Wildlife and Recreation Program, OTS serves as the day-to-day manager of the Fish, Wildlife and Recreation Program in matters covering the planning, budgeting, performance management, policy development, administration, and supervision of related program operations and maintains liaison with regional and agency offices on all program matters.

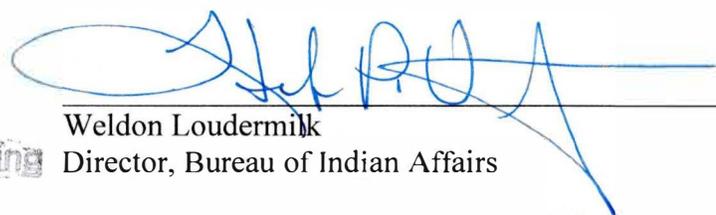
D. Regional Directors are responsible for:

- 1) championing Tribal fish, wildlife and outdoor recreation management issues and concerns in dealings with other governments and private interests;
- 2) compiling data provided from agencies and Tribes to establish regional program direction and to assist in the development and preparation of annual Wildlife and Parks budgets and performance plans;
- 3) ensuring that technical support is provided to Tribally contracted fish, wildlife and outdoor recreation resources management programs; and
- 4) assisting in the conduct of annual administrative reviews and evaluation of the Fish, Wildlife and Recreation Program.

E. Agency Superintendents are responsible for:

- 1) establishing local fish, wildlife, and recreation program direction;
- 2) developing and overseeing the execution of immediate and long range programs to integrate fish, wildlife and outdoor recreation resource needs of reservations and Tribes within their jurisdiction;
- 3) acquainting Tribal governing bodies with game and fish problems, management techniques, and research needs as required; and
- 4) assisting Tribes in the conduct of annual program reviews and evaluation of the Fish, Wildlife and Recreation Program.

Approval



Weldon Loudermilk
Director, Bureau of Indian Affairs

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Date

Acting