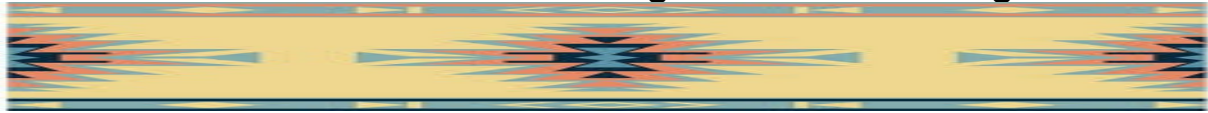


**U.S. Department of the Interior  
Office of Self-Governance - Indian Affairs  
Self-Governance PROGRESS Act Negotiated Rulemaking Committee**



**MEETING MINUTES**

Advisory Committee Management Officer (CMO)—Margaret Triebusch  
Designated Federal Officer (DFO)—Vickie Hanvey

DATE: **April 20, 2023**  
Federal Register Notice: FRN 2023-06878  
Meeting Number: 8  
DFO Convened at: 9:13 a.m. ET  
DFO Recessed at: 10:50 a.m. ET  
DFO Reconvened at: 12:30 p.m. ET  
DFO Recessed at: 1:05 p.m. ET  
DFO Reconvened at: 4:45 p.m. ET  
DFO Adjourned at: 4:57 p.m. ET

Location: Hybrid Meeting—Hosted In-Person Onsite at Federal Mediation and Conciliation Service (FMCS) Headquarters, Washington, D.C., and FMCS Zoom link (Committee Members)  
Broadcast via Federal Register MS Teams (Public Access)  
Designated Notetaker: Kelly Latimer, Office of Hearings & Appeals  
Sarah Walker, Bureau of Indian Affairs  
Facilitation: Federal Mediation and Conciliation Service (FMCS)

In accordance with the provisions of Federal Advisory Committee Act (Public Law 92-463, as amended), the meeting was open to the public.

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**CONSENSUS AGREEMENTS SUMMARY:**

The Self-Governance PROGRESS Act Negotiated Rulemaking Committee (the “Committee”) reached consensus on the following during the meeting:

1. Approval of the Committee’s March 30, 2023, plenary session meeting minutes, with caveat for future minutes to include “Other Federal” attendees to the total number of members of the public in attendance rather than listing separately;

2. Approval of Subpart B (Selection of Tribes for Participation in Tribal Self-Governance);
3. Approval of Subpart J (Waiver of Regulations);
4. Approval of Subpart P (Reports) subject to the minor corrections to be made by DFO Hanvey;

**OPENING**

The meeting was convened by Designated Federal Officer (DFO) Vickie Hanvey at 9:13 a.m. EST.

**BLESSING**

Gerry Hope, Sitka Tribe of Alaska, gave the blessing.

**ATTENDANCE:**

DFO Hanvey took a roll call of the primary and alternate Committee members, finding that a quorum was in attendance and that the meeting could proceed. See Appendix A for a list of all attendees.

	Present	Absent
Tribal Primary Members	4	3
Federal Primary Members	6	0
<b>Total Primary Attendance</b>	<b>10</b>	<b>3</b>
Tribal Alternate Members	4	3
Federal Alternate Members*	4	1
<b>Total Alternate Attendance</b>	<b>8</b>	<b>4</b>
* One Vacancy		

**REVIEW OF MARCH 30, 2023, PLENARY SESSION #7 MEETING MINUTES**

The first item on the agenda was to review the draft meeting minutes from the Committee’s March 30, 2023, plenary session, which were sent out by email to the Committee in advance of this meeting. DFO Hanvey noted that any grammatical errors could be emailed to her and would be updated. She then opened the floor to discussion of any substantive changes to the meeting minutes.

Melanie Fourkiller moved to approve the meeting minutes with the stipulation that all Tribal non-member attendees participating in the meeting as part of the Tribal team be individually listed in Appendix A under a category for “Other Tribal” attendees. She expressed that this change would be consistent with the meeting minutes listing of “Other Federal” attendees in Appendix A.

DFO Hanvey explained that “Other Federal” attendees were listed in the minutes because she is required to track all Federal team participants who attend the Committee meetings. DFO

Hanvey recommended that for future meeting minutes she could simply include them in the “members of the public” count, so they aren’t listed individually. This would treat Federal and Tribal attendees in the same manner. Director Fourkiller was agreeable.

A motion was made and seconded to approve the March 20, 2023, Meeting Minutes as discussed.

**Consensus on the motion was tested by FMCS, with no Committee members objecting. Accordingly, a consensus was reached to approve the March 20, 2023, plenary session meeting minutes, with caveat for future minutes to include “Other Federal” attendees to the total number of members of the public in attendance rather than listing separately.**

## **EXPIRATION OF AUTHORITY PRESENTATION AND DISCUSSION**

Rose Petoskey shared general principles and advice from the General Division of Law on how the Federal caucus may be able to continue to work after the Committee’s authority expires on April 21, 2023. She explained that the Department has interpreted the expiration of the authority as preventing the Federal caucus from working as members of the Committee. Section 414 of Progress Act requires that if they were to pursue rulemaking under general rulemaking authority and issue a proposed and final rulemaking, it would not apply to all self-governance Tribes unless they all consented to it. Accordingly, the Department’s goal is to complete rulemaking through a negotiated process instead of under general rulemaking authority.

Ms. Petoskey explained that after April 21, 2023, the Federal caucus cannot continue to work on the Subparts or the substance of the rules. However, as a practical matter, the Federal caucus can work on many of the same substantive issues under their general authority. General law is studying the exact parameters under which the Federal caucus can communicate under their general authority instead of under the negotiating rulemaking provisions of the PROGRESS Act. They are working to implement a policy guiding how the Federal caucus can continue to work in the interim, with the ultimate goal of obtaining an extension of the Committee’s authority.

Jody Schwarz expressed that the goal is to continue the daily business of the Department, which is to issue policies and guidance and to implement the PROGRESS Act. After April 21, 2023, the Department can’t implement proposed rules through the Committee with the goal of putting them into a rulemaking, but there are still areas that can be worked on. She emphasized that the Department will not be working in isolation. Although the Federal caucus cannot continue to communicate with the Tribal caucus as a Federal rulemaking Committee, they can continue to work together as partners. Comments, consultation, and the creative exchange of ideas can continue to happen, they just cannot continue to exchange drafts of proposed rules.

The floor was opened for discussion. Chairman Allen expressed that it is clear to him that while the negotiations cannot continue after April 21, 2023, the Department will not implement any policy without consulting and engaging the Tribes. He stated that he appreciates that the Federal caucus is trying to figure out a work around that would prevent any violation of the

PROGRESS Act. He explained that the Tribal caucus will be moving forward with developing proposed language for all Subparts that have not yet been improved. He sees no reason why the Tribes cannot communicate with the Department and share any areas of concern or areas they are working on so that there is transparency while they are working on obtaining an extension of authority.

Ms. Schwarz reiterated that the Department has an obligation to consult with the Tribes on any policy developed. She explained that although the Tribal and Federal caucuses cannot meet as a negotiated rulemaking committee per se, they can meet on a government-to-government basis in a listening session or consultation session on implementation of the PROGRESS Act. However, the Federal and Tribal caucuses cannot continue to specifically work on the Subparts together, so they must be careful that any discussion of substantive issues do not run afoul of the rulemaking provisions of the PROGRESS Act. Ms. Petoskey added that the Federal caucus cannot work specifically on rulemaking but can work on communicating and consulting on issues related to implementation.

Chairman Allen asked whether the Federal caucus could continue to work on Subparts under the General implementation authority. Ms. Schwarz responded that they are following the legal advice of the Department to ensure that there are no technical FACA violations that could make them vulnerable to legal challenges to the published final rule.

Melanie Fourkiller expressed that she would like more clarification so they have a better idea of how they can keep working after the expiration of authority. She asked if the Assistant Secretary could form a workgroup for implementation of the Act. Ms. Petoskey confirmed that they could form an informal workgroup to discuss general policy issues related to self-governance in implementation of the Act. However, a workgroup would not be able to discuss a particular Subpart or language that would go into any proposed rulemaking or recommendation to the Secretary.

Several more questions were raised by Tribal representatives regarding clarification about what a workgroup would look like, workgroup members, travel and other protocols. Ms. Schwarz explained that they are still working internally within the Department to obtain guidance on the work that can be done. A working group can have dialogue about construction proposals, pose questions to the Department, and discuss and respond to policy issues on general subjects. However, the workgroup cannot work on implementation of a final rule.

Director Freeman suggested that since the Self Governance Advisory Committee (SGAC) operates under the auspices of self-governance workgroups, already has a structure of membership and is managed by SGCETC, that maybe an SGAC workgroup could be established for the purpose of implementing the Act. Ms. Fourkiller was agreeable with exploring an SGAC workgroup.

Gerry Hope asked how from a practical standpoint the Tribal caucus can schedule meetings and communicate with the Federal caucus after April 21. Ms. Petoskey responded that one

option would be to form a workgroup. Although Vickie Harvey will no longer be DFO, she can help set up a working group. Ms. Schwarz added that the Office of Self-Governance can continue to negotiate aspects of the program, such as how the Act is implemented and how the Department and Tribes view it.

In response to Mr. Hope's question, DFO Harvey explained that the FMCS can have no billable hours during the time the Committee is inactive and so cannot facilitate workgroup discussions. She also explained that her role would not be as DFO, but as an OSG coordinator.

Ms. Fourkiller expressed that the Tribal caucus wants to do everything possible to prevent the Committee from losing momentum and to enable the Committee to begin working again quickly once it has the authority to reconvene. She asked whether the Committee membership would remain the same after getting an extension of authority.

DFO Harvey explained that membership of the Committee becomes inactive after April 21, but the Committee and Committee charter continues. Once there is an extension of authority, the Committee should be able to reconvene with the same members. DFO Harvey proposed keeping the weeks of May 7 and July 16, 2023, set aside for Committee meetings for now and cancel when the dates get closer if the Committee's authority has not yet been restored. She asked the group whether they want to establish additional future meeting dates.

Chairman Allen and Melanie Fourkiller agreed that before the end of the day the Committee should establish additional meeting dates for publication in the Federal Register and then cancel the meetings if an extension is not obtained. Ms. Petoskey expressed that they do not yet know whether funding would be available for a workgroup or other interim entity. She confirmed that there is nothing that prohibits Tribes from asking Departmental questions related to its position on the Act or self-governance.

Mr. Hope stated that he thought the May meeting date should be utilized as a date for a new interim entity to be formed or at least for a Tribal meeting. He expressed that the meeting could be held virtually. DFO Harvey confirmed that the DOI facilities are reserved for the May and July dates. She suggested that the facilities stay reserved in May as an option for meeting to implement a task force or workgroup and that she could publish the July 20, 2023, Committee meeting in the Federal Register and use this date for a workgroup meeting if the Committee's authority has not been extended. Melanie Fourkiller and Chairman Allen concurred and there were no further questions raised regarding this subject.

## **REVIEW OF SUBCOMMITTEE WORK**

Melanie Fourkiller provided a general update on the work being done by the Drafting Subcommittee. She explained that the Subcommittee has reached consensus on Subparts B, P, and J and that these Subparts are ready for the full Committee's consideration. Approval of these three Subparts would result in a total of nine Subparts. There are several remaining Subparts still in first phase of work—E, G, L, C, Q, and R. Phase 3 drafts have not yet been

exchanged for Subparts D, S, I, and K. The Subcommittee anticipates that the Subpart discussion on construction will be complex. She proposed that they present Subparts B, P, and J for full Committee approval then breakout for the Subcommittee to continue working on Subparts C, Q, and L. The full Committee could then reconvene at the end of the day. Sharee Freeman agreed.

1. Approval of Subpart B (Selection of Tribes for Participation in Tribal Self-Governance).
2. Approval of Subpart J (Waiver of Regulations).
3. Approval of Subpart P (Reports) subject to the minor corrections to be made by DFO Hanvey.

Melanie Fourkiller moved for a consensus vote to approve Subpart B. Sharee Freeman seconded this motion.

**Consensus on the motion was tested by FMCS, with no Committee members objecting. Accordingly, a consensus was reached to approve Subpart B (Selection of Tribes for Participation in Tribal Self-Governance).**

Melanie Fourkiller moved for a consensus vote to approve Subpart J. Sharee Freeman seconded this motion.

**Consensus on the motion was tested by FMCS, with no Committee members objecting. Accordingly, a consensus was reached to approve Subpart J (Waiver of Regulations).**

Matt Jaffe provided a brief summary of Subpart P (reports mandated under Title I and II of the PROGRESS Act). He explained that the Subcommittee has reached consensus on questions regarding tribal reports, tribal audits, and the Secretary's annual report. The Subcommittee also agreed that it would be more appropriate to move some of the proposed report Q&As to Subpart F. Mr. Jaffe concluded by stating that the Subcommittee has reached consensus on this Subpart and has only a few minor errors to be provided back to DFO Hanvey for correction.

Melanie Fourkiller moved for a consensus vote to approve Subpart P. Sharee Freeman seconded this motion. **Consensus on the motion was tested by FMCS, with no Committee members objecting. Accordingly, a consensus was reached to approve Subpart P (Reports) subject to the minor corrections to be made by DFO Hanvey.**

Gerry Hope led the Committee in a moment of reflection and appreciation for the amount of work done to date to get these Subparts approved. It was then determined that the public comment period could be postponed until after the Committee's recess. Melanie Fourkiller suggested that the Committee recess and set a specific time to reconvene. **Upon receiving one objection, the motion to recess the full Committee and reconvene at 12:30 p.m. ET was approved.**

## **RECESSED**

The meeting was recessed by DFO Hanvey at 10:50 a.m. ET.

## **RECONVENED**

The meeting was reconvened by DFO Hanvey at 12:30 p.m. ET

## **REMARKS BY ASSISTANT SECRETARY OF INDIAN AFFAIRS BRYAN NEWLAND**

Assistant Secretary Bryan Newland made remarks to the Committee extending his gratitude to the Committee and all the work being done. He shared where the Department stands with legal authorities and some limitations which the Federal team communicated earlier but wanted to make sure that the conversation doesn't end. The Department is supportive of the extension request.

Following his remarks, Chairman Allen thanked Assistant Secretary Newland for his leadership and in advancing Tribal sovereignty and the Department's commitment towards these efforts. He expressed that the Committee has made meaningful progress to date. Melanie Fourkiller also expressed her gratitude and appreciation to the Tribal and Federal teams for the work that has been done so far and her hope for continued momentum and dialogue during the interim period until the Committee's authorization can be extended. She specifically thanked DFO Hanvey for her tireless work and unwavering commitment to the Committee. Gerry Hope expressed that he would like to see more assistance from the Department moving forward and requested that there be more Departmental decisionmakers at the table once the Committee's authorization is extended.

DFO Hanvey asked whether the Committee wants to discuss changing the September completion date in the proposed language for the extension. Melanie Fourkiller and Chairman Allen expressed that it is difficult to determine whether the date of completion should be amended at this time because it is unknown how long the lapse of the Committee's authorization might last and how the lapse will affect the Committee's timeline.

Matt Jaffe expressed that the optimal dates are September 2023 for the proposed rule and September 2024 for the final rule, but that they could possibly extend final rulemaking until December 2024. However, it is not possible to extend the deadline beyond that because everyone is in agreement that rulemaking needs to be completed during the existing administration.

Assistant Secretary Newland stated that he is in support of whatever legislative language gives the Committee the most flexibility. He believes that deadlines drive decisions and action. January 20, 2025, is the ultimate deadline. He expressed that he is open to discussions on improving the Federal Team's efficiency so that when the authorization is extended the Committee is able to work as quickly as possible given the short time-frame.

## **PUBLIC COMMENT #1**

Beginning at 12:55 p.m. ET, members of the public were given an opportunity to comment via a Zoom link or by calling in by telephone. No members of the public were present in person. DFO Hanvey stated that no virtual comments have been received by the public at any plenary sessions to date. She reminded everyone that members of the public may also submit written comments to the Committee.

The public comment session was closed at 1:00 p.m. ET after no members of the public logged into the Zoom meeting or called in for comment.

Chairman Allen moved to recess the full Committee so that the Subcommittee can resume work with the understanding that the full Committee will reconvene at 4:00 p.m. ET. The motion was seconded by Sharee Freeman. **Receiving no objections, the motion to recess and convene in Subcommittee until 4:00 p.m. ET was approved.**

### **RECESSED**

The meeting was recessed by DFO Hanvey at 1:05 p.m. ET.

### **RECONVENED**

The meeting was reconvened by DFO Hanvey at 4:45 p.m. ET.

### **OTHER MATTERS TO BE RAISED**

DFO Hanvey reconvened and moved into announcing potential dates established by committee, pending authority restoration for committee work:

Dates identified:

Week of July 17, 2023. Subcommittee meetings at the beginning of the week and a full committee session on July 20, 2023. Request was made that it be published in the federal register notice.

Week of August 21, 2023. Subcommittee meetings at the beginning of the week and a full committee session on Thursday, August 24

Week of September 5-8, 2023 virtual subcommittee meetings.

Week of October 2, 2023. Subcommittee meetings at the beginning of the week and a full committee session on October 5, 2023

Although met in separate caucuses today, not successful in reaching agreement to move a subpart to full committee for approval. No other review of subcommittee work. DFO Hanvey shared a spreadsheet of progress made, with nine subparts have been fully approved. Quite commendable in the timeframe the Committee has been working in. Several are close to being completed.



Director Freeman expressed thanks to FMCS for allowing them to visit their office and hosting. Thanks to tribal team for lunch to be able to keep working. Nine out of nineteen is a very positive showing of the hard work by both federal and tribal teams.

Director Fourkiller expressed her gratitude and thanks to Federal Team and FMCS for hospitality.

### **PUBLIC COMMENT #2**

Beginning at 4:53 p.m. ET, members of the public were given an opportunity to comment via a Zoom link or by calling in by telephone. No members of the public were present in person. DFO Hanvey stated that no virtual comments have been received by the public at any plenary sessions to date. She reminded everyone that members of the public may also submit written comments to the Committee.

The public comment session was closed at 4:55 p.m. ET after no members of the public logged into the Zoom meeting or called in for comment.

### **ADJOURNMENT**

The meeting was adjourned by DFO Hanvey at 4:57 p.m. E.T.

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### **CERTIFICATION**

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.



Sharee Freeman,  
Director Office of Self-Governance, Assistant Secretary – Indian Affairs.  
Chair, Self-Governance PROGRESS Act Negotiated Rulemaking Committee

These minutes will be formally considered by the Committee at its next meeting, and any corrections or notations will be incorporated in the minutes of that meeting.

### **Attachments**

Appendix A—Attendees

**Attachments (to be posted to the website ( <https://www.bia.gov/service/progress-act> )**

## Appendix A—Attendees

TRIBAL REPRESENTATIVES		
Present	<b>PRIMARY Tribal Representatives</b>	
	<b>Name</b>	
	<b>Affiliation</b>	
	✓ W. Ron Allen	Chairman/CEO Jamestown S’Klallan Tribe
	Melanie Benjamin	Chief Executive Mille Lacs Band of Ojibwe
	Richard Peterson	President Central Council Tlingit and Haida Indian Tribes of Alaska
	✓ Michael Dolson	Councilman The Confederated Salish and Kootenai Tribes of the Flathead Nation
	✓ Melanie Fourkiller	Director of Self-Governance Choctaw Nation of Oklahoma
	Russel (Buster) Attebery	Chairman Karuk Tribe
	✓ Karen Fierro	Self-Governance Director Ak-Chin Indian Community
	<b>ALTERNATE Tribal Representatives</b>	
	✓ Sandra Sampson	Board Treasurer Confederated Tribes of the Umatilla Indian Reservation
	Jennifer Webster	Councilwoman Oneida Nation
	✓ Gerry Hope	Transportation Director, Former Tribal Leader Sitka Tribe of Alaska
	Jody LaMere	Councilwoman Chippewa Cree Tribe of the Rocky Boy’s Reservation
Lana Butler	Secretary Sac and Fox Nation	
✓ Will Micklin	Second Vice President Central Council Tlingit and Haida Indian Tribes of Alaska	
✓ Annette Bryan	Council Member Puvallup Tribes of Indians	
<b>FEDERAL REPRESENTATIVES</b>		
Present	<b>PRIMARY Federal Representatives</b>	
	<b>Name</b>	
	<b>Affiliation</b>	
	✓ Sharee Feeman	Director Office of Self-Governance, AS-IA
	✓ Jody H. Schwarz	Attorney-Advisor Branch of Self-Governance and Economic Development, Office of the Solicitor
	✓ Kelly Titensor	Native American Affairs Advisor Bureau of Reclamation
	✓ Byron Loosle	Division Chief National Conservation Lands, Bureau of Land and Minerals Management.
	✓ Scott Aikin	National Native American Programs Coordinator U.S. Fish and Wildlife Service Head Quarters.
	✓ Rose Petoskey	Senior Counselor to AS-IA Office of the Assistant Secretary—Indian Affairs.
	<b>ALTERNATE Federal Representatives</b>	
	✓ Matt Kallappa	Northwest Field Office Manager Office of Self-Governance, AS-IA
	Vacant	Attorney-Advisor Branch of Self-Governance and Economic Development, Office of the Solicitor
	✓ Nathalie Washington	Native American Affairs Advisor Bureau of Reclamation
	✓ (Charles) David Johnson	Tribal Liaison Bureau of Land and Minerals Management.
	Dorothy FireCloud	Native American Affairs Liaison National Park Service
	✓ Samuel Kohn	Senior Counselor to ASIA Office of the Assistant Secretary—Indian Affairs.

Vickie Hanvey, DFO  
Regina Gilbert, ADFO

**Federal Mediation and Conciliation Service (FMCS) Members Present:**

Martin Callaghan, Commissioner  
Kayla Mack, Commissioner  
Maira Caruso, Strategy Officer

**Members of the Public (22)**