117TH CONGRESS
1ST SESSION

H. R. __________

To prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Tribal Governments regarding Federal Government actions that impact Tribal lands and interests to ensure that meaningful Tribal input is an integral part of the Federal decision-making process.

IN THE HOUSE OF REPRESENTATIVES

Mr. GRIJALVA introduced the following bill; which was referred to the Committee on __________

A BILL

To prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Tribal Governments regarding Federal Government actions that impact Tribal lands and interests to ensure that meaningful Tribal input is an integral part of the Federal decision-making process.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the “Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes Act” or the “RESPECT Act”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

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Sec. 601. Judicial review.

SEC. 3. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—
(1) the United States has a unique, legally affirmed government-to-government relationship with Tribal Governments, as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions;

(2) the United States recognizes the right of Tribal Governments to self-govern and supports Tribal sovereignty and self-determination;

(3) the United States, through treaties, statutes, and historical relations, has defined a unique trust relationship and responsibility to protect and support Tribal Governments;

(4) owing to this trust relationship, the United States has a responsibility to consult with Tribal Governments on a government-to-government basis when formulating policies and undertaking activities that may have impacts on Tribal lands and interests;

(5) procedures for such consultation should be designed and structured to give Tribal Governments the opportunity to provide meaningful, informed input throughout the development and decision-making processes;

(6) increasing Federal and Tribal capacities for effective consultation while building institutional
knowledge fosters greater efficiency and will benefit future actions;

(7) the consultation process should be formalized according to best practices that are designed and administered by the agency and that fulfill the legal requirements mandated by this Act;

(8) consulting with Tribal Governments during the formulation of long-term management plans reduces the likelihood of project delays and increases the efficiency of project implementations; and

(9) effective consultation demands ongoing, respectful communication between agencies and Tribal Governments.

(b) PURPOSES.—The purposes of this Act are—

(1) to establish and support a process of regular, meaningful consultation and collaboration with Tribal Governments in the initiation of Federal activities and the development of Federal policies and regulations that impact Tribal lands and interests;

(2) to strengthen the United States’ government-to-government relationship with Tribal Governments; and

(3) to establish minimum standard procedures to ensure the above goals are achieved.
SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) consultation constitutes more than simply notifying an Tribal Government about a planned undertaking;

(2) effective, meaningful consultation requires a two-way exchange of information, a willingness to listen, an attempt to understand and to genuinely consider each other’s opinions, beliefs, and desired outcomes, and a seeking of agreement on how to proceed concerning the issues at hand; and

(3) consultation can be considered effective and meaningful when each party demonstrates a genuine commitment to learn, acknowledge, and respect the positions, perspectives, and concerns of the other parties and when Federal agencies accommodate Tribal concerns to the extent feasible and consistent with applicable law.

SEC. 5. DEFINITIONS.

For the purposes of this Act:

(1) ACTIVITY.—The term “activity” means any plan, project, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

(A) those carried out by or on behalf of an agency;
(B) those carried out with Federal financial assistance;

(C) those requiring a Federal permit, license, or approval; and

(D) those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency.

(2) AGENCY.—The term “agency” means any authority of the United States that is an agency under section 551 of title 5, United States Code.

(3) LEAD AGENCY.—The term “lead agency” means a designated agency that will fulfill the collective consultation responsibilities under this Act if more than one agency is involved in an activity or regulatory action. Any agency that does not designate a lead agency shall remain individually responsible for the consultation responsibilities of that agency under this Act.

(4) MEMORANDUM OF AGREEMENT.—The term “memorandum of agreement” means a document that records the terms and conditions agreed upon by an agency, or lead agency, and a Tribal Government or designated Tribal Leader Task Force through the consultation process regarding an activity or regulatory action.
NEW DISCOVERY.—The term “new discovery” means any unexpected development that occurs during the course of an activity, such as the discovery of a new archeological site, unanticipated impacts on organisms or ecosystems, or the realization of unintended consequences that may have impacts on Tribal lands and interests.

REGULATORY ACTION.—The term “regulatory action” means any regulation, policy, guidance, or grant funding formula change that is proposed by an agency.

SACRED SITE.—The term “sacred site” means any geophysical or geographical area or feature that is identified by a Tribal Government—

(A) as sacred by virtue of its established religious significance to, or ceremonial use by, a Tribal religion; or

(B) to be of established cultural significance.

STANDARD METHOD OF COMMUNICATION.—The term “standard method of communication” means the mode of communication that the agency uses in the typical course of communicating with persons outside the Federal Government.
(9) **STANDARD PROCESS.**—The term “standard process” means a process for Federal agency and Tribal Government interactions agreed to by both parties through consultation and certified in a memorandum of agreement that applies to certain specified activities or regulatory actions, or to limited categories of activities or regulatory actions.

(10) **TRIBAL GOVERNMENT.**—The term “Tribal Government” means the governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

(11) **TRIBAL IMPACT.**—The term “Tribal impact” means any Federal action that may have an impact on one or more Tribal Governments on matters, including—

(A) Tribal cultural practices, lands, resources, or access to traditional areas of cultural or religious importance;

(B) Tribal treaty-protected rights;
(C) the ability of a Tribal Government to govern or provide services to its members;

(D) a Tribal Government’s formal relationship with the Federal Government; or

(E) the consideration of the Federal Government’s trust responsibility to Tribal Governments.

(12) **Tribal Leader Task Force.**—The term “Tribal Leader Task Force” means a task force that is collaboratively determined by affected Tribal Governments.

**TITLE I—STANDARDS FOR CONSULTATION**

**SEC. 101. STANDARDS FOR CONSULTATION.**

(a) **Scope.**—Consultation with Tribal Governments shall occur before undertaking any proposed Federal activity or finalizing any Federal regulatory action that may have Tribal impacts. Additionally, consultation with Tribal Governments shall occur for all activities that would affect any part of any Federal land that shares a border with Indian Country, as defined in section 1151 of title 18, United States Code, but is not limited to activities on such lands.

(b) **Limitation.**—Nothing in this Act shall—
Title II—Consultation Procedures

Sec. 201. Assessing Tribal Impacts.

As early as possible in the planning stage of an activity or a regulatory action, the agency, or lead agency, shall—

1. prepare a Tribal Impact Statement that identifies any potential Tribal impacts of the proposed activity or regulatory action. At a minimum, the Tribal Impact Statement shall include the scope of the activity or regulatory action being considered, including any geographic areas important to Tribal Governments that might be affected, as well as a list of all affected Tribal Governments;
(2) make a good faith effort to identify areas that contain sacred sites important to Tribal Governments, whether such sacred sites are explicitly known to an agency or not; and

(3) publish the completed Tribal Impact Statement in the Federal Register, excluding all information designated as sensitive by a Tribal Government pursuant to section 502, before any further action on the proposed activity or regulatory action.

SEC. 202. CONSULTATION STAGE.

(a) INITIAL CONSULTATION OUTREACH.—The agency, or lead agency, shall—

(1) transmit, via the agency’s standard method of communication, a formal request for a consultation meeting, along with a copy of the proposed activity or regulatory action as well as a copy of the Tribal Impact Statement as prepared according to section 201, to each affected Tribal Government identified in the Tribal Impact Statement. In the case of a proposed activity, the documents shall also be transmitted to relevant Tribal governmental agencies (including the Tribal Historic Preservation Officer or cultural resource manager), and relevant non-Tribal stakeholders (including the State Historic Preservation Officer and local governments that
have jurisdiction on any affected land via agreement with the agency);

(2) at the request of an affected Tribal Government, transmit, via the agency’s standard method of communication, a copy of the Tribal Impact Statement and the letter requesting a consultation meeting to non-governmental Tribal stakeholders;

(3) not request consultation with non-governmental Tribal stakeholders without the written consent of the affected Tribal Government;

(4) follow up within 5 business days to ensure receipt of the documents by all intended recipients; and

(5) if the documents were not received by any of the intended recipients, retransmit all materials via a form of communication that is suitable to the recipient.

(b) NON–RESPONSE TO CONSULTATION OUT–REACH.—If, after a good faith effort, the agency, or lead agency, fails to engage an affected Tribal Government in the consultation process, the agency, or lead agency, may conclude its consultation efforts by providing the Tribal Government with a written notification and explanation for its decision, signed by the head of the agency, or lead
agency, which shall be made part of the official consultation record as described in section 301(a).

(c) MEETING ARRANGEMENTS.—

(1) The agency, or lead agency, shall negotiate with each affected Tribal Government to determine the format, agenda, and goals of a consultation meeting, and shall keep thorough documentation of all steps taken to engage the affected Tribal Government in consultation meetings.

(2) In appropriate circumstances, affected Tribal Governments may elect to form a Tribal Leader Task Force, to aid in consultation on activities that are regional in scope or that affect multiple Tribal Governments. To the maximum extent possible, the Tribal Leader Task Force shall represent a cross-section of Tribal interests with respect to the proposed activity or regulatory action. Affected Tribal Governments that do not elect to join a Tribal Leader Task Force shall be consulted separately.

(d) CONSULTATION MEETING REQUIREMENTS.—A consultation meeting shall—

(1) begin with confirmation of the format, agenda, and goals of the meeting, with adequate time scheduled for introductions and any ceremonial proceedings;
(2) be structured to allow for meaningful and respectful interaction throughout the meeting among all meeting participants; and

(3) conclude with planning for the next meeting, if necessary, as well as confirmation of the method of any potential interim communications between all parties participating in the consultation.

(c) CONCLUSION OF CONSULTATION WITH A MEMORANDUM OF AGREEMENT.—

(1) Except as provided by subsection (b), subsection (f), and subsection (g), consultation shall conclude only upon the execution of a memorandum of agreement signed by the head of the agency, or lead agency, and the head of the affected Tribal Government or the members of the designated Tribal Leader Task Force.

(2) The memorandum of agreement—

(A) may address multiple activities or regulatory actions if the activities or regulatory actions are similar and repetitive in nature, or are multistate or regional in scope, or where routine management activities are undertaken at Federal installations, facilities, or other land management units;
(B) may establish standard processes for certain categories of activities and regulatory actions determined through consultation and defined in the memorandum of agreement;

(C) shall, in the case of a proposed activity—

(i) include a provision for monitoring and reporting on the implementation of the activity;

(ii) include provisions for reconsideration if the activity has not been completed within a specified time; and

(iii) include provisions to address new discoveries, which may include halting the activity and returning to the consultation stage.

(3) The signed memorandum of agreement may be amended at any time by the joint approval of all signatories.

(f) CONCLUSION OF CONSULTATION WITHOUT A MEMORANDUM OF AGREEMENT.—

(1) The agency, or lead agency, shall make a good faith effort through sustained interaction and collaboration to reach a consensus resulting in a memorandum of agreement.
(2) If, after a good faith effort, the agency, or lead agency, determines that further consultation will not be productive, it may conclude consultation by providing the Tribal Government with a written notification and explanation for its decision, including identification of any legal, policy, or factual barriers that prevented the agency from reaching agreement with the affected Tribal Government, signed by the head of the agency, or lead agency, which shall be made part of the official consultation record as described in section 301(a).

(g) Tribal Withdrawal from Consultation.—An affected Tribal Government may at any point decide to withdraw from the consultation process. In such case, the agency, or lead agency, shall provide the affected Tribal Government with the opportunity to submit a written statement, explanation, or comment on the consultation proceedings that will become part of the official consultation record as described in section 301(a).

SEC. 203. DECISION STAGE FOR PROPOSED ACTIVITY.

(a) Proposal Document.—Upon completion of the consultation stage pursuant to section 202, the agency, or lead agency, shall—

(1) compile a proposal document consisting of the plan for the proposed activity, its anticipated
Tribal impacts, and any signed memorandum of agreement;

(2) include sufficient supporting documentation to the extent permitted by law to enable any reviewing parties to understand its basis;

(3) transmit, via the agency’s standard method of communication, a copy of the proposal document to the affected Tribal Governments, including those that withdrew from the process;

(4) follow up within 5 business days to ensure receipt of the proposal document by all intended recipients;

(5) if the proposal document was not received by an intended recipient, retransmit all material via a form of communication that is suitable to the recipient; and

(6) after the verified receipt of the proposal document by all intended recipients, the proposal document shall be published in the Federal Register, excluding all information designated as sensitive by a Tribal Government pursuant to section 502.

(b) PUBLIC COMMENT PERIOD.—The agency, or lead agency, shall provide a period of not less than 90 days after publication of the proposal document in the Federal Register for public comment. A 30-day extension of the
90-day period shall be automatically granted upon request by an affected Tribal Government.

(c) **Preliminary Decision Document.**—After expiration of the public comment period pursuant to subsection (b), the agency, or lead agency, shall prepare a preliminary decision letter, signed by the head of the agency, or lead agency, that shall—

1. state the decision to proceed or not proceed with the activity;
2. state the rationale for the decision;
3. list any changes to the proposed activity made in response to the comments filed pursuant to subsection (b);
4. specifically address any points where the decision conflicts with the request of an affected Tribal Government, including a detailed explanation of why the request was disregarded;
5. transmit, via the agency’s standard method of communication, a copy of the preliminary decision letter to the affected Tribal Governments, including those that withdrew from the process;
6. follow up within 5 business days to ensure receipt of the preliminary decision letter by all intended recipients; and
(7) if the preliminary decision letter was not received by an intended recipient, retransmit the material via a form of communication that is suitable to the recipient.

(d) Tribal Response Period.—The agency, or lead agency, shall provide a period of no less than 45 days after issuance of the preliminary decision letter for a response by an affected Tribal Government.

(e) Final Decision Document.—After expiration of the Tribal Response Period pursuant to subsection (d), the agency, or lead agency, shall prepare a letter stating the final decision of the agency, signed by the head of the agency, or lead agency, that shall—

(1) state the decision to proceed or not proceed with the activity;

(2) state the rationale for the decision;

(3) list any changes to the preliminary decision in response to comments received from an affected Tribal Government pursuant to subsection (d);

(4) specifically address any points where the final decision conflicts with the request of an affected Tribal Government, including a detailed explanation of why the request was disregarded;

(5) transmit, via the agency’s standard method of communication, a copy of the final decision letter.
to the affected Tribal Governments, including those that withdrew from the process;

(6) follow up after 5 business days to ensure receipt of the final decision letter by all intended recipients; and

(7) if the final decision letter was not received by an intended recipient, retransmit the material via a form of communication that is suitable to the recipient.

(f) PUBLICATION OF LETTER.—The agency shall make public the final decision letter, excluding all information designated as sensitive by a Tribal Government pursuant to section 502.

SEC. 204. DECISION STAGE FOR PROPOSED REGULATORY ACTION.

(a) DECISION DOCUMENT.—Upon completion of the consultation stage pursuant to section 202, the agency, or lead agency, shall prepare a decision letter, signed by the head of the agency, or lead agency, that shall—

(1) state the decision to proceed or not proceed with the proposed regulatory action;

(2) state the rationale for the decision;

(3) list any changes to the proposed regulatory action made at the request of an affected Tribal
Government during the consultation process as outlined in section 202;

(4) specifically address any points where the decision conflicts with the request of an affected Tribal Government, along with a detailed explanation of why the request was disregarded;

(5) transmit, via the agency’s standard method of communication, a copy of the decision letter to the affected Tribal Governments, including those that withdrew from the process;

(6) follow up within 5 business days to ensure receipt of the decision letter by all intended recipients; and

(7) if the decision letter was not received by an intended recipient, retransmit the material via a form of communication that is suitable to the recipient.

(c) PUBLICATION IN FEDERAL REGISTER.—The decision letter shall be published in the Federal Register alongside the final decision on the regulatory action, excluding all information designated as sensitive by a Tribal Government pursuant to section 502.
TITLE III—DOCUMENTATION AND REPORTING

SEC. 301. DOCUMENTATION AND REPORTING.

(a) OFFICIAL CONSULTATION RECORD.—The agency, or lead agency, shall—

(1) keep an official consultation record that allows accurate tracking of the process so that the agency and all consulting parties can correct any errors or omissions, and provides an official record of the process that can be referred to in any litigation that may arise;

(2) document all efforts to initiate consultation as well as documenting the process once it has begun, such as correspondence, telephone logs, and emails;

(3) keep notes so that the consultation record documents the content of consultation meetings, site visits, and phone calls in addition to information about dates and who participated;

(4) include all documentation in the official consultation record; and

(5) ensure that all information designated as sensitive by a Tribal Government pursuant to section 502 is kept confidential.
(b) Payment for Tribal Documentation Work.—If the agency, or lead agency, asks a Tribal Government for specific information or documentation that in any way fulfills the duties of the agency in a role similar to that of a consultant or contractor, then the agency, or lead agency, must pay for such services, if so requested by the Tribal Government, as it would for any private consultant or contractor.

(e) Report to Congress.—Each agency shall submit a biennial report on its consultation activities to Congress, including outcomes.

TITLE IV—IMPLEMENTATION AND TRAINING

SEC. 401. DESIGNATED AGENCY OFFICIAL.

No later than 90 days after the date of the enactment of this Act—

(1) the head of each agency shall designate an official with principal responsibility for the agency’s implementation of this Act; and

(2) each bureau or office within the agency shall designate one or more officials with the responsibility to work with the principal agency official on implementation of this Act.
SEC. 402. CONSULTATION POLICY.

No later than 180 days after enactment of this Act, the designated agency official shall submit to the Office of Management and Budget a description of the agency’s consultation policy, including all designated agency officials, in conformity with this Act.

SEC. 403. TRAINING.

Each agency shall design training for staff aimed at improving the agency’s capacity for interacting with Tribal Governments and executing the consultation process. The training shall—

(1) promote consultation, communication, collaboration, and other interactions with Tribal Governments;

(2) outline and reinforce the agency duties concerning Tribal interests; and

(3) strengthen the understanding of the United States’ government-to-government relationship with Tribal Governments.

TITLE V—TRIBAL SOVEREIGNTY

SEC. 501. TRIBAL SOVEREIGNTY.

(a) In General.—Agencies shall recognize and respect Tribal self-government and sovereignty, honor Tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Tribal Governments.
(b) MAXIMUM TRIBAL ADMINISTRATIVE DISCRETION.—With respect to Federal statutes and regulations administered by Tribal Governments, the Federal Government shall grant Tribal Governments the maximum administrative discretion possible.

(c) ALTERNATIVES TO FEDERAL REGULATION.—

With respect to the formulation and implementation of policies that have an impact on Tribal matters, agencies shall—

(1) encourage Tribal Governments to develop their own policies to achieve program objectives;

(2) when possible, defer to Tribal Governments to establish standards; and

(3) in determining whether to establish Federal standards, consult with Tribal Governments as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Tribal Governments.

SEC. 502. SENSITIVE TRIBAL INFORMATION.

Notwithstanding chapter 7 of title 5, United States Code (commonly known as the Administrative Procedure Act), consultation meetings shall be closed to the public at the request of the Tribal Government. Notwithstanding section 552 of title 5, United States Code (commonly
known as the Freedom of Information Act), all information designated by the Tribal Government as sensitive, such as the location of sacred sites or other details of cultural or religious practices, shall be deleted from any public publication made as part of the consultation process or in the process of carrying out the activity. Once information has been designated as sensitive, the agency will determine in consultation with the Tribal Government who may have access to the information for the purposes of carrying out the activity.

TITLE VI—JUDICIAL REVIEW

SEC. 601. JUDICIAL REVIEW.

A Tribal Government may seek judicial review of a determination of an agency under this Act in accordance with subchapter II of chapter 5 of title 5, United States Code, and chapter 7 of title 5, United States Code (commonly known as the Administrative Procedure Act), if the Tribal Government has exhausted all other administrative remedies available to the Tribal Government.