

TRIBAL ENGAGEMENT STRATEGY

The logo is a circular emblem with a gradient from yellow-green at the top to teal at the bottom. It features the text "CALIFORNIA OCEAN PROTECTION COUNCIL" in white, uppercase letters, centered within the circle.

CALIFORNIA
OCEAN
PROTECTION
COUNCIL

A photograph of a coastal scene. In the foreground, six wooden canoes are beached on a sandy shore. The water is calm and reflects the sky. In the background, there are rolling hills covered in green vegetation under a clear sky.

State of California
Ocean Protection Council

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Disclaimer:

This policy is intended to ensure effective consultation and engagement between OPC and tribes. The policy is not intended, and should not be construed, to define a legal relationship between OPC and tribes. This document does not create, expand, limit, waive, or interpret any legal rights or obligations.

I. Background and Purpose

Native peoples have inhabited the California coast since time immemorial. California Native American tribes (tribes), defined below, share a unique relationship with the natural systems and resources of California and hold unique responsibilities and reciprocity with their members and homelands. Tribes have distinct cultural, spiritual, environmental, economic, and public health interests, and hold unique traditional cultural and ecological knowledge relating to natural systems in California.

In September 2011, Governor Edmund G. Brown, Jr. issued Executive Order B-10-11¹, which states that California is “committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes.” The Order specifies that the Governor’s Tribal Advisor “shall oversee and implement effective government-to-government consultation between [the] Administration and Tribes on policies that affect California tribal communities.” The Order continues by providing, among other things, that it is the policy of the Administration that “every State agency and department ... shall encourage communication and consultation,” including through opportunities “to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.”

In June 2019, Governor Gavin Newsom issued Executive Order N-15-19² apologizing on behalf of the state to California Native Americans for the many instances of violence, mistreatment and neglect inflicted upon California Native Americans throughout the state’s history, leading to the creation of a tribally-led, consultation-informed Truth and Healing Council to address these issues. This Executive Order reaffirmed Executive Order B-10-11 and incorporated its tribal consultation principles by reference.

In September 2020, Governor Newsom released a Statement of Administration Policy³ on Native American Ancestral Lands. This policy statement encourages state entities to seek opportunities to

¹ Executive Order B-10-11 (2011), <https://www.ca.gov/archive/gov39/2011/09/19/news17223/index.html>.

² Executive Order N-15-19 (2019), <https://www.gov.ca.gov/wp-content/uploads/2019/06/6.18.19-Executive-Order.pdf>

³ <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.25.20-Native-Ancestral-Lands-Policy.pdf>

support tribes' co-management of, and access to, natural lands that are within a tribe's ancestral land and under the ownership or control of the State of California. The policy statement also encourages state entities to work cooperatively with tribes that are interested in acquiring natural lands.

In 2022, OPC adopted its first-ever Equity Plan⁴ that provides goals, objectives, and strategies for advancing equity across ocean and coastal policies and actions in California, as well as strengthening internal efforts to create a more inclusive workplace at OPC. The Equity Plan and this Tribal Engagement Strategy are intended to be complementary documents. While the Tribal Engagement Strategy is specifically focused on tribal consultation, the Equity Plan includes recommendations to support tribal governments and communities outside of the consultation context.

The purpose of this Tribal Engagement Strategy (Strategy) is to provide a framework for enhanced partnership between the California Ocean Protection Council (OPC) and tribes, in furtherance of Executive Orders B-10-11 and N-15-19, Governor Newsom's policy statement on Native American Ancestral Lands, the Strategic Plan to Protect California's Coast and Ocean 2020-2025 (Strategic Plan)⁵, OPC's Equity Plan, and state law. This Strategy will advance OPC's mission to ensure that California maintains healthy, resilient, and productive ocean and coastal ecosystems for the benefit of current and future generations.

It is only through open, inclusive, and regular communication efforts that the interests of tribes will be prioritized in the larger context of complex natural resource policy decision-making. This strategy provides specific actions that OPC will undertake to enhance tribal engagement in all aspects of its work. This strategy further provides OPC's approach to respectfully seeking, discussing, and considering the views of tribes, primarily through robust consultation, but also through other engagement approaches as appropriate. OPC will work with tribes to develop clear timelines and identify required resources for actions listed in this Strategy as the Strategy is implemented.

⁴ https://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20221006/Item-6-Exhibit-A-OPC-Equity-Plan-508.pdf

⁵ OPC, "Strategic Plan to Protect California's Coast and Ocean 2020-2025" (Feb. 2020), <http://www.opc.ca.gov/webmaster/ftp/pdf/2020-2025-strategic-plan/OPC-2020-2025-Strategic-Plan-FINAL-20200228.pdf>

The overarching goal of this Strategy is to ensure meaningful input by tribes into the development of regulations, rules, policies, programs, projects, plans, property decisions, and activities that may affect them, and to elevate partnerships with tribes in the pursuit of shared objectives and priorities. The proactive inclusion of tribes in OPC's work will promote positive, achievable, durable outcomes.

II. Strategy Development

In Fall 2021, OPC engaged more than 10 coastal tribes through early consultations and listening sessions to solicit tribes' perspectives and feedback on two key issues: tribes' priorities for coastal and ocean conservation and management, and best practices for conducting outreach and communicating with tribes in a respectful and effective manner.

Several key themes emerged in those conversations:

Tribal priorities for the coast and ocean

- Implementation of Governor Newsom's policy statement on Native American ancestral lands
- Development of meaningful co-management agreements, for example regarding the management of marine protected areas (MPAs)
- Support for existing tribal programs, and collaborative development of new research and monitoring projects in support of tribal priorities
- Restoration of culturally important habitats and species
- Improving tribal access to the coast and ocean
- Supporting tribal customary use of coastal and ocean resources
- Land return

Best practices for outreach and communication

- Tribes must be engaged early and often in the development of regulations, rules, policies, programs, projects, plans, property decisions, or activities that may affect them.
- In recognition of the unique status of tribes, OPC should prioritize consultation as its primary method of engagement with tribes. Other, less formal ways of engaging can supplement consultation.

- For policies and programs available for the wider tribal community, OPC should leverage a variety of outreach platforms (requests for consultation with tribal chairpersons and/or councils, formal letters to tribal chairpersons, outreach to tribally-run organizations or associations, email updates, text messages, phone calls/videoconferences, social media posts, existing committees and workgroups, etc.) to ensure that opportunities for engagement are distributed widely within tribal communities.
- In recognition of current limitations on tribal capacity, OPC should work with state agency partners to significantly improve efficiencies and minimize burdens on tribes.
- OPC, and the state more broadly, should provide dedicated funding and technical assistance to tribes to enhance their ability to meaningfully engage with the state.

These themes, along with other valuable input received from tribes, directly informed the development of a draft strategy, which was released to tribes for further consultation and community roundtable listening sessions in summer 2022. This final Strategy incorporates additional feedback received from tribes during those consultations and listening sessions.

III. Guiding Principles

OPC will be guided by the following principles and best practices to ensure, improve upon, and maintain respectful and effective engagement with tribes:

1. Acknowledge and respect the importance of strong relationships between the state and tribes.
2. Acknowledge and respect tribal cultural resources, regardless of whether those resources are located on or off tribal lands and treat such resources with appropriate cultural dignity consistent with tribal cultural values.⁶
3. Recognize that tribes have stewarded California’s coast and ocean since time immemorial and that tribes are the best managers of their ancestral lands and waters.
4. Acknowledge history and harms, and work to build relationships and trust with tribes.
5. Communicate with tribes in a manner that is considerate and respectful.

⁶ See Pub. Res. Code §§ 21084.3(b)(2), (3).

6. Recognize the diversity of tribes within the state, and the fact that all tribes represent distinct and independent entities with specific practices, laws, regulations, beliefs, traditions, and unique connections to areas of California that are their ancestral lands, waters, and cultural sites.
7. Communicate and consult with tribes as early as possible during the initial phase of decision-making processes that may affect ancestral lands, people, or cultural resources, and seek tribal input regarding the identification of potential issues, possible means of addressing those issues, and appropriate actions, if any, to be taken by OPC.
8. Ensure that tribal perspectives are considered before proposed new actions are taken, such that potential negative impacts are avoided, minimized, or mitigated in conformity with applicable legal requirements.
9. Acknowledge the need for confidentiality regarding some places, land, people, knowledges, and cultural resources, and adhere to legal protections associated with the confidentiality of certain tribal information.⁷ OPC will strive to take all lawful and necessary steps to protect confidential information provided by a tribe consistent with state and federal law.
10. Acknowledge current constraints on tribal capacity and work to significantly improve efficiencies, for example by coordinating with other state agencies to combine consultation opportunities.
11. Understand that the federal government has a unique trust relationship with federally recognized tribes.
12. Understand the unique challenges faced by non-federally recognized tribes.
13. Encourage collaborative and cooperative efforts between tribes and federal, state, and local government entities, to resolve issues of mutual concern.
14. Adopt a flexible approach to tribal consultations and engagement and work to accommodate tribal priorities, concerns, constraints, and preferences.
15. Recognize the cultural, subsistence, and economic importance and multigenerational nature of coastal and ocean stewardship for tribes.

⁷ See, e.g., Calif. Gov. Code §§ 6254(r), 6254.5(e), 6254.10; Calif. Pub. Res. Code § 21082.3(c), and Section IV(E), “Confidentiality,” below.

16. Commit to regular training for OPC staff on cultural competency and humility, California tribal history, consultation procedures and best practices, implementation of this Strategy, and other matters pertaining to tribal affairs.
17. Commit to regularly evaluating OPC's progress toward implementation of this Strategy, sharing milestones, and revising the Strategy and/or implementation approaches as needed in partnership with tribes.

IV. Enhancing Tribal Engagement in Efforts to Protect California's Coast and Ocean

OPC seeks to enhance tribal engagement in all aspects of its work and the implementation of its Strategic Plan. Below are specific actions that OPC will undertake in pursuit of this goal.

1. Establish a statewide Tribal Coast and Ocean Council, composed of tribal representatives from across California, to work with OPC to facilitate engagement with the state on all coast and ocean issues and improve coordination. This Council would work with OPC to further strategic priorities of importance to both tribes and the state. Specific objectives of the Council could include: development and implementation of co-management agreements; identification of funding opportunities for tribes; identification of opportunities for land return and improved tribal access to the coast; and policy development.
2. Coordinate with CNRA's Assistant Secretary for Tribal Affairs and other CNRA Tribal Affairs and Tribal Liaison staff to provide venues for coordinated, regular updates and discussion with tribes.
3. Increase co-management of ancestral lands and waters and natural resources.
 - a. Work with tribes and relevant state agencies to advance formal co-management of ancestral coastal lands and waters through a) Supporting the development of co-management agreements, in alignment with overarching CNRA policy; and b) Implementing and expanding co-management pilot projects along the coast.
 - b. Work to unify other state agencies in developing a process that facilitates a clear, streamlined, efficient, and transparent path for tribes to engage in the development of co-management agreements.

- c. Conduct research on co-management and look to successful efforts as potential models for California.
 - d. Work collaboratively with tribes to address co-management issues that may arise regarding territory and/or resources shared by multiple tribes.
- 4. Support coastal and ocean access for tribes to enhance connections to ancestral lands, waters, and traditional practices, including for ceremonial, educational, and research purposes.
 - a. Provide funding to support the return of coastal land to tribes.
 - b. Identify opportunities to leverage funding from multiple state agencies (e.g., California Department of Fish and Wildlife, State Coastal Conservancy, etc.) to advance shared agency priorities in the tribal affairs space.
 - c. Where gaps exist, facilitate communication between tribes and conservation organizations.
 - d. Prioritize funding for projects and efforts that will improve tribal access to the coast and ocean and natural resources, particularly in areas that are part of tribal ancestral territories.
- 5. Support the development of a definition of Tribal Subsistence Harvest for the coast and ocean.
 - a. In addition to tribal consultation, work with the Fish and Game Commission's Tribal Committee, which is currently developing a definition of Tribal Subsistence Harvest, to implement the definition in coastal systems, allowing tribes to reclaim authority over resources in their ancestral territories.
- 6. Consistent with Target 2.1.1 of the Strategic Plan, work with tribes, academics, and other partners to develop and implement a trusted pathway for the consideration of tribal expertise and Traditional Ecological Knowledges (TEK) in ocean and coastal management decisions, in an inclusive way that recognizes each tribe's protocols for the study, sharing, and use of TEK and the diversity of TEK among different tribes,
 - a. Consider use of the Wiyot Tribe's traditional knowledge use protocol (currently under development) as one potential model for how to appropriately and respectfully proceed with knowledge exchange between tribes and the state in support of shared priorities.
 - b. Respect and abide by any existing TEK use protocols communicated by a tribe to OPC.

7. Provide funding and policy support for climate vulnerability assessments of cultural sites, tribal cultural resources, gathering areas, and sacred sites, with a focus on sea level rise, and support development of resilience plans and adaptation projects to protect ancestral lands, waters, and cultural resources.
8. Continue to support and explore opportunities to scale up the Tribal Marine Stewards Network⁸, an alliance of tribes working collaboratively to protect and restore coastal and marine ecosystems. Prioritize the inclusion of tribes from geographic regions that are currently underrepresented in the Network, in particular Central and Southern California.
9. Fill remaining tribal representative seats on the MPA Statewide Leadership Team, and, in partnership with current tribal representatives, work to ensure that representatives are engaged in a meaningful way as the Leadership Team seeks to implement its new 2021-2025 work plan.
10. Co-develop research, monitoring, and restoration projects.
 - a. When possible, develop such projects in partnership with tribes rather than seeking to include tribes in projects that are already planned or under way.
 - b. When (a) is not possible, work with tribes and the research community to identify tribal researchers, including graduate students, interested in partnering with OPC and the academic community on specific projects or initiatives.
 - c. As part of CNRA's "Cutting the Green Tape" initiative, identify ways to improve efficiencies and minimize regulatory burden for tribally-led restoration projects.
11. When funding is available, provide dedicated funding, technical assistance, and support for capacity building to tribes.
 - a. Provide additional funding to support expansion of the Tribal Marine Stewards Network.
 - b. Launch a dedicated Tribal Small Grants program.
 - c. Identify opportunities to partner with tribes to advance tribal capacity for ocean and coastal natural resource management.
 - d. Provide funding to initiate or maintain tribal programs, and, where OPC funding may be limited, assist tribes in pursuing other, longer-term, more sustainable funding options.

⁸ www.tribalmsn.org

- e. Reduce barriers to accessing and spending OPC grant funding by tribes.
- 12. Identify the unique barriers faced by non-federally recognized tribes and strive to implement creative solutions to those barriers as consistent with applicable laws and regulations.
- 13. Support tribal stewardship in furtherance of California’s 30x30 goal.
 - a. Support the designation of Indigenous Marine Stewardship Areas, as outlined in the state’s *Pathways to 30x30* strategy⁹.
 - b. In close collaboration with tribes and relevant state agencies, consider recommendations regarding the establishment and implementation, as appropriate, of strategies and protective designations, including tribal MPAs, Tribal Beneficial Use designations for California waterways, and other protective designations, to improve protection and stewardship of tribal cultural resources, cultural sites, natural resources, gathering areas, and sacred sites.
- 14. Partner with tribes with coastal ancestral lands and waters, or other coastal cultural connections, to develop an OPC Resolution recommending the development of state strategies to evaluate sacred or otherwise culturally sensitive coastal areas protections from potentially deleterious access and use by the public.
- 15. Increase coordination across state and federal actions to elevate tribal priorities for the coast and ocean. In particular, work to enhance partnerships with National Marine Sanctuaries in support of tribal stewardship.
- 16. Actively seek, compile, refer to, and consider tribal recommendations regarding strategies for improving protection of cultural and natural resources and values.
- 17. Work to ensure all OPC programs include tribal voices, leadership, and perspectives.
- 18. Continue to work with tribes to better understand tribal priorities for the coast and ocean, including local and regional cultural concerns and issues, tribal application of tribal expertise and TEK, and access to and protection of cultural sites, tribal cultural resources, traditional fishing and other gathering areas, and sacred sites.

⁹ <https://www.californianature.ca.gov/pages/30x30>

19. Regularly evaluate and, as needed, modify OPC program priorities, grant funding, contracting, hiring practices, communications, and consultation practices to advance improved tribal relationships and engagement.
20. Develop an OPC-specific Tribal Consultation Policy in consultation with tribes.
21. In recognition of the importance of tribal engagement, as well as the staff time and unique skills and expertise required to effectively implement this strategy, work with CNRA Tribal Affairs and Liaisons staff, the CNRA Assistant Secretary for Tribal Affairs, and the Governor’s Office of Tribal Affairs to identify internal capacity needs at OPC and develop recommendations for meeting those needs.
22. As appropriate and needed, OPC will exercise its authority to “[i]dentify and recommend to the Legislature changes in [State] law needed” to ensure strong, meaningful relationships and effective engagement with tribes.¹⁰

V. Improving Communication with Tribes

This strategy is intended to facilitate respectful communication and maintain meaningful collaboration and partnership between OPC and tribes. It sets forth OPC’s commitment to be informed about the cultural setting of tribes, tribal ocean and coastal concerns, and tribal histories, for the purpose of developing strong, meaningful partnerships with all tribes. In collaboration with tribes, OPC will expand on these approaches as needed, to ensure that engagement with tribes is meaningful, inclusive, and mutually respectful.

Consultation will be the primary avenue through which OPC engages with tribes. To ensure consultation reflects the official positions of the tribe, OPC will consult only with decision-making individual(s) or body of the tribe (typically the Tribal Chairperson or Council) or individual(s) designated in writing by the elected decision-making body of the tribe. High-level officials with decision-making authority (e.g., OPC’s Executive Director, CNRA’s Assistant Secretary for Tribal Affairs) will be present at all consultations with tribes.

¹⁰ Calif. Pub. Res. Code § 35615(a)(6).

However, in addition to project and action consultations required by this Strategy and any subsequent implementation protocols, and consistent with the Strategic Plan, OPC will continually work to enhance relations and engagement with tribes in ways that supplement the consultation process, such as:

1. Beginning in 2023, identify opportunities for OPC staff and leadership to respectfully visit tribal ancestral territories across the state, meet in person with tribal leadership, staff, and communities, develop relationships, and discuss individual tribes' priorities for the coast and ocean.
2. Share a consultation calendar with tribes early each year, in coordination with other state agencies when possible, to support tribes' planning efforts. Organize quarterly meetings between tribes, OPC, and other state agencies to share updates, highlight opportunities for consultation, and solicit tribal feedback and perspectives.
3. Communicate and coordinate with the Governor's Office of Tribal Affairs and CNRA's Assistant Secretary for Tribal Affairs to ensure that opportunities for engagement with OPC are included in statewide communications to tribes.
4. Leverage existing tribal representation on decision-making and advisory bodies, such as the MPA Statewide Leadership Team, and improve OPC's presence at tribally relevant committees, venues, and events.
5. Hold meetings, workshops, and roundtable discussions at locations and times that maximize tribal involvement and minimize burden on tribes, including outside of normal business hours when possible.
6. Obtain a working knowledge of tribes' preferences for more informal outreach and communication (e.g., email, text, social media, phone, videoconference, in-person meetings) and communicate opportunities for engagement regularly via these methods. Regularly adapt informal outreach approaches based on tribal preferences and feedback.
7. Anticipate turnover in tribal leadership and staff and maintain a current list of tribal contacts. Develop strong working relationships with tribal staff to ensure timely and effective communication.
8. Enter into an ongoing dialogue with tribes on how best to consult, exchange information, and exchange technical and other assistance.

9. Improve transparency around OPC’s decision-making processes and how tribal information is used in these processes.
10. In alignment with OPC’s Equity Plan, develop relationships and engage with representatives of tribal communities while still maintaining a formal relationship with tribes.

VI. Conclusion

Tribes are the original stewards of the California coast and ocean. Despite a brutal history of genocide and oppression, and the fact that the state has historically excluded tribes from management decisions, tribes continue to steward marine resources sustainably in accordance with tribal expertise, TEK, and traditional practices. Encouragingly, in recent years, significant progress has been made in enhancing meaningful tribal engagement in the state’s coastal and ocean management efforts. Through the collaborative development and implementation of this strategy, OPC seeks to build on these successes and enhance tribal engagement in all aspects of this work. OPC envisions tribes and the state working together in support of a resilient coast and ocean for all beings.

Appendix 1

Definitions

For purposes of this Strategy, the following definitions shall apply:

Tribe: A Native American tribe that is on the contact list maintained by the Native American Heritage Commission (NAHC) for the purposes of Chapter 905 of the Statutes of 2004 (Pub. Resources Code, § 21073). This list includes both federally recognized California tribes listed on the most recent notice of the Federal Register as well as non-federally recognized California tribes.

Collaboration: Communicating and working together through mutual respect and cooperation toward a common purpose. Communications between OPC and tribes will be conducted with respect for tribal protocols and will strive to achieve consensus in problem solving and issue resolution.

Co-management: A collaborative effort established through an agreement in which two or more sovereigns mutually negotiate, define, and allocate amongst themselves the sharing of management functions and responsibilities for a given territory, area or set of natural resources.¹¹

Consultation: The meaningful and timely process of seeking, discussing, and considering carefully and respectfully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and tribes shall be conducted in a way that is mutually respectful of each party's sovereignty¹².

Traditional Ecological Knowledges:¹³ An accumulating body of knowledge, practice, and belief, evolving by adaptive processes and handed down through generations by cultural transmission, about

¹¹ Approved by Calif. Fish and Game Commission Feb. 21, 2020; at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=177360&inline>.

¹² Calif. Pub. Res. Code § 21080.

¹³ U.S. Fish and Wildlife Service, "Traditional Ecological Knowledge for Application by Service Scientists," at: <https://www.fws.gov/nativeamerican/pdf/tek-fact-sheet.pdf>; see also Calif. Coastal Commission, "Environmental Justice Policy" (March 8, 2019), at: https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf.

the relationship of living beings (human and non-human) with one another and with the environment. It encompasses the world view of Native people which includes ecology, spirituality, human and animal relationships, and more. The phrase “traditional ecological knowledge” refers to the evolving knowledge acquired by Native peoples over hundreds to thousands or tens of thousands of years through direct contact with the environment. This knowledge is specific to a location and includes the relationships between plants, animals, natural phenomena, landscapes, and timing of events that are used for lifeways, including but not limited to hunting, fishing, trapping, agriculture, and forestry.

Tribal Cultural Resources:¹⁴

1. Refers to either of the following:
 - a. Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a tribe that are either of the following:
 - i. Included or determined to be eligible for inclusion in the California Register of Historical Resources.
 - ii. Included in a local register of historical resources as defined in Public Resources Code Section 5020.1(k).
 - b. A resource determined by the CEQA lead agency or OPC, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in Public Resources Code Section 5024.1(c). In applying these criteria, the lead agency shall consider the significance of the resource to a tribe.
2. A cultural landscape that meets the criteria of subsection 1. above is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.
3. A historical resource described in Public Resources Code Section 21084.1, a unique archaeological resource as defined in Public Resources Code Section 21083.2(c), or a “nonunique archaeological resource” as defined in Public Resources Code Section 21083.2(h) may also be a tribal cultural resource if it conforms to the criteria of subsection 1. above.

Tribal Leaders: Elected or otherwise designated officials or decisionmakers of tribes.

¹⁴ Calif. Pub. Res. Code § 21074.

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