

# Draft TTR Consultation Best Practices Flowchart, August 2022

**1. Identify agency action, decision or rulemaking.**

Does the proposed action have the potential to affect a natural or cultural resource, the habitat or ecosystem supporting a natural or cultural resource?

Ask three threshold questions:

- 1- Do treaties, reserved rights, or other similar rights exist that are implicated by proposed agency action?
- 2- What treaty rights, reserved rights, or other similar rights may exist in, or what treaty-protected resources rely upon, the area affected by the proposed action?

3- How might treaty rights, reserved rights, or other similar rights potentially be affected by the proposed action?

**2. Identify applicable treaties.**

**3. Identify affected Tribes, and agency decision maker.**

Identify Tribes with treaty, reserved, or other rights related to the project area, regardless of the Tribe's current location.  
Treaty-ceded lands may be located far from a Tribe's existing reservation.

**4. Invite affected Tribes to consult.**

- 1- Draft "Dear Tribal Leader" letter.
- 2- Plan to send to recognized governing leadership of the Tribe(s) with at least 30 days notice.
- 3- Plan to provide time for written comments.
- 4- Plan to provide written summary of comments received and agency response.

Schedule consultation to allow timely, adequate notice to Tribe(s), absent extenuating circumstances, and prior to federal decision point(s).

Develop consultation protocols ahead of time to recommend procedures for how consultation will occur.

Federal agencies should communicate relevant Federal legal obligations, e.g., FOIA, as they pertain to information like sensitive Indigenous Knowledge.

**5. Initiate consultation**

Provide consultation that will be accessible and convenient to Tribal participants.

**6. Consider treaty rights and statutory law in consultation with Tribes.**

Provide detailed information to permit the Tribal participants to review the agency's proposed understanding of the treaty right, reserved right, or other similar rights that may be implicated.

Allow time for the Tribe(s) to respond with information that may inform agency decision-making.

The existence, nature, or scope of an asserted Tribal right may not be clearly established, or may be disputed by other Tribes, third parties, or others. Agencies should carefully consider information and views provided by Tribes.

**7. Communicate decision to Tribe.**

Explain how treaty rights were considered and how consultation information was utilized in the decision.

Provide a written summary of all Tribal comments received and how comments were considered and resolved.

Federal agencies should take measures to protect the confidentiality of any sensitive indigenous knowledge consistent with Tribal direction and to the fullest extent permitted by the FOIA and other applicable law.