

INDIAN AFFAIRS MANUAL

1.1 Purpose. This chapter provides the authorities for a Fish, Wildlife and Recreation Program and the Bureau responsibilities in administering the Program.

1.2 Authority. In accordance with its overall mission and trust responsibility, the authority for coordinating and integrating management programs pertaining to Indian fish, wildlife and outdoor recreation resources and tribal hunting, fishing and gathering rights rests with the Bureau of Indian Affairs. Treaties signed with the federal government are the source of these authorities and responsibilities for conserving fish and wildlife resources of interest to American Indians and for protecting associated rights. Tribes reserved to themselves rights to hunt, fish and gather on established reservations and on certain ceded territories in perpetuity, in exchange for ceding vast tracts of land to the United States.

A Statutes. Specific fish and wildlife statutes applicable to the Fish, Wildlife and Recreation Program include:

- (1) Title 16 U.S.C. §§661-666c, Fish and Wildlife Coordination Act of 1934;
- (2) Title 16 U.S.C. §§703-711, Migratory Bird Hunting Act of 1918;
- (3) Title 16 U.S.C. §742a-j, Fish and Wildlife Act of 1956;
- (4) Title 16 U.S.C. §757a-f, Anadromous Fish Conservation Act of 1965;
- (5) Title 16 U.S.C. §1271, Wild and Scenic Rivers Act of 1968;
- (6) Title 16 U.S.C. §§1531-1543, Endangered Species Act of 1973;
- (7) Title 16 U.S.C. §1801, Fishery Conservation and Management Act of 1976;
- (8) Title 16 U.S.C. §3101, Alaska National Interests Lands Conservation Act of 1980;
- (9) Title 16 U.S.C. §3301, Salmon and Steelhead Conservation and Enhancement Act of 1980;
- (10) Title 16 U.S.C. §3631, Pacific Salmon Treaty Act of 1985;
- (11) Title 25 U.S.C. §495, Annette Island Fishery Reserve Act of 1891;
- (12) Title 25 U.S.C. §500, Reindeer Industry Act of 1937;
- (13) Title 25 U.S.C. §677i, Ute Partition Act of 1954;
- (14) Title 42 U.S.C. §1966, American Indian Religious Freedom Act of 1978;
- (15) P.L. 101-618 (104 Stat. 3294), Truckee-Carson Pyramid Lake Water Settlement Act; and
- (16) P.L. 100-581 (102 Stat. 2944), Fishing Sites Act of 1995.

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B. Regulations. 25 CFR, Subchapter J -- Fish and Wildlife.

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

(1) United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974); 459 F. Supp. 1020 (W.D. Wash. 1978); 476 F. Supp. 1101 (W.D. Wash. 1979); 626 F. Supp. 1405 (W.D. Wash. 1985); 98 F.3d 1159 (W.D. Wash. 1996). Landmark decisions which establish rights of Stevens treaty tribes of the Northwest to fish in their usual and accustomed places and to a fifty percent allocation of the harvestable fish.

(2) 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.

(3) 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.

(4) Lac Courte Oreilles Band v. Voigt, 700 F.2d 341 (7th Cir. 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.

(5) Grand Portage Band v. Minnesota, Civil No. 4-85-1090 (D. Minn. 1988). Pertains to the implementation of off-reservation treaty hunting, fishing and gathering rights in the 1854 Treaty area of Minnesota.

(6) Hoh v. Baldrige, 522 F. Supp. 683 (W.D. Wash. 1981). Commerce regulations concerning coho escapement were not necessary or reasonable to preserve spawning runs and could not be used to regulate the treaty fishing rights of three Washington coastal tribes.

(7) 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, since executive order-created reservations are the same for such purposes as reservations created in any other manner.

(8) Mille Lacs Band v. Minnesota, 124 F.3d 904 (8th Cir. 1997). Tribal rights to hunt, fish and gather on land ceded in 1837 treaty were not extinguished by subsequent treaty, equal footing doctrine or executive order.

(9) Fond du Lac Band v. Carlson, 68 F.3d 253 (8th Cir. 1995). Pertains to whether the states' authority to enforce fish and game laws against Indians was preempted by rights arising from 1837 and 1854 treaties between the Chippewa bands and the United States.

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(10) 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.

(11) 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.

D. Departmental Manual Part 501, Fish, Wildlife and Outdoor Recreation Resources.

1.3 Scope. The scope of Bureau and tribal fish and wildlife management authority, jurisdiction and responsibility varies by reservation and off-reservation case area depending on land status and the language contained in individual treaties, Executive Orders, court rulings, resource-specific statutes, and other legal instruments. In the following areas, the Bureau supports tribal needs and efforts in the areas of fisheries management, wildlife management, outdoor recreation management, and related fields. Tribes determine the specific scope of program activity for their respective reservations and programs.

A On-Reservation Hunting, Fishing and Gathering

(1) By Indians. With some exceptions, Congress has not authorized the issuance of regulations governing hunting, fishing, trapping, and gathering by Indians on Indian reservations; and state fish and game laws and regulations generally do not apply. 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 and have jurisdiction over related activities. On lands allotted to individual members of a tribe, Indians other than the respective allottees may not hunt, fish, trap or gather without the consent of the allottees.

(2) By Non-Indians. Under federal law, Indian lands are private trust assets which were set aside for exclusive Indian use (not general public benefit) pursuant to treaties, statutes and executive orders. Non-Indians and Indian non-tribal members have no right to hunt, fish, trap, or gather on trust or restricted lands within a reservation without the consent of the tribe. Such activity on restricted allotted lands also requires the consent of the particular allottee. Non-tribal persons must comply with tribal rules, regulations and ordinances governing on-reservation hunting, fishing, trapping, and gathering and may also be subject to applicable state and federal laws and regulations.

B. Off-Reservation Hunting, Fishing and Gathering by Indians. Except as provided for by treaty, 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 the boundaries of Indian reservations have been reaffirmed for some tribes by the 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.

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1.4 Responsibilities.

A. Central Office Officials

(1) Director, Office of Trust Responsibilities, as the line officer for trust programs, 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.

(2) Chief, Division of Natural Resources, is responsible for providing direction, coordination, management, planning, oversight, and monitoring for trust natural resource development and protection, including the program area of Fish, Wildlife and Recreation; and

(3) Chief, Fish, Wildlife and Recreation Program, 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.

B. Regional Directors

(1) Champion tribal fish, wildlife and outdoor recreation management issues and concerns in dealings with other governments and private interests;

(2) Compile 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) Ensure that technical support is provided to tribally contracted fish, wildlife and outdoor recreation resources management programs; and

(4) Assist in the conduct of annual administrative reviews and evaluation of the Fish, Wildlife and Recreation Program.

C. Agency Superintendents

(1) Establish local fish, wildlife, and recreation program direction;

(2) Develop and oversee 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) Acquaint tribal governing bodies with game and fish problems, management techniques and research needs as required; and

(4) Assist tribes in the conduct of annual program reviews and evaluation of the Fish, Wildlife and Recreation Program.