

## Appendix F: Native Americans

At the heart of the Department of Defense's (DoD) relationship with federally-recognized tribes is its commitment to the Department's American Indian and Alaska Native Policy. October 20, 2008, marked the ten-year anniversary of the policy and commemorated the close consultation with tribal governments that led to its development. The policy acknowledges DoD's trust responsibilities to tribes; directs the Department to build stable and enduring relationships with tribes; establishes consultation as the key component to successful, meaningful government-to-government dialog; and requires DoD to recognize and respect the significance that tribes attribute to natural and cultural resources.

### **Applicable Requirements**

The Components rely on the American Indian and Alaska Native Policy for guidance on how to address tribal interests while ensuring success of DoD's mission. The September 2006 DoD Instruction 4710.02, DoD Interactions with Federally-Recognized Tribes, reinforces DoD's commitment to Native American entities at the installation-level by clarifying the implementation requirements of the American Indian and Alaska Native Policy.

DoD installations are required to consult with tribes and Native Hawaiian Organizations (NHOs) regarding potential effects to cultural and natural resources of interest to Native American entities in compliance with federal statutes such as the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA), and Executive Order (E.O.) 13007, Native American Sacred Sites. Figure F-1 displays the number of DoD installations with such resources, as reported by the Components.

### **Current Management Practices**

Environmental impacts from DoD's operational and training activities may remain on American Indian lands and Alaska Native Claims Settlement Act-conveyed properties. These impacts may include hazardous materials, ordnance, old equipment, unsafe buildings, and debris. DoD has implemented several programs and conducted extensive outreach to mitigate these impacts.

### **Native American Lands Environmental Mitigation Program**

Since 1993, Congress has appropriated funds directing the Department to gather information, document, and mitigate environmental impacts on American Indian and Alaskan Native lands. In response to this Congressional mandate, DoD developed the Native American Lands Environmental Mitigation Program (NALEMP). Through NALEMP, DoD has identified approximately 901 potential impacts affecting more than 180 tribes.

In Fiscal Year (FY) 2008, Congress appropriated \$10 million for NALEMP, of which 70 percent was provided directly to the tribes for mitigation costs through cooperative agreements (CAs), as illustrated in Figure F-2. This continues the tradition of consistently high percentages of direct funding to the tribes under the program. The remaining NALEMP funds were used to:

- ▶ Address policy issues in Indian Country
- ▶ Sponsor cultural communication courses for DoD personnel to help them consult effectively with tribes
- ▶ Maintain and upgrade the Native American Management System for Environmental Impacts (NAMSEI)
- ▶ Conduct site assessments to validate reported DoD impacts to Indian lands; 250 sites have been found eligible. NALEMP has mitigated to some degree 135 sites under closed CAs and currently is mitigating 40 sites under open CAs.

In April 2008, the Red Cliff Band of Lake Superior Chippewa hosted the NALEMP Annual Meeting in Duluth, Minnesota. Twenty-nine tribal representatives and 25 federal and contractor personnel attended the meeting. The Assistant Deputy Under Secretary (Environment, Safety, Occupational Health) officially welcomed two new NALEMP partners: the Chilkoot Indian Association of Indians and the Kenaitze Indian Tribe.

### Native American Management System for Environmental Impacts

DoD continues to streamline NAMSEI, the NALEMP online database providing access to information on reported environmental impacts on tribal lands and resources resulting from DoD activities. NAMSEI provides an historical record of site assessment results, presents a forum to report new suspected impacts, and receives online comments about assessments and project status updates. By the end of FY2008, more than 630 sites were monitored in NAMSEI. Additionally, the system

supports program planning and funding decisions related to NALEMP. The database allows DoD, tribal representatives, and the public to access, report, and share information on DoD related issues of concern. The database also provides links for military and tribal communities on diverse topics of interest such as government-to-government consultations, inadvertent discoveries, national conferences, and precedence-setting legal decisions for tribal lands.

There are ongoing improvements to NAMSEI which enhance programmatic, security, and quality control capabilities. The database is continually reconfigured to stay current with the latest programming methodologies, information sharing requirements, and user-friendly

reporting. New features have been added to NAMSEI to aid its efficiency and accuracy. In FY2008, DoD implemented online capabilities for input of CA quarterly reports, one of the delivery requirements for the U.S. Army Corps of Engineers (USACE) and tribal partners.

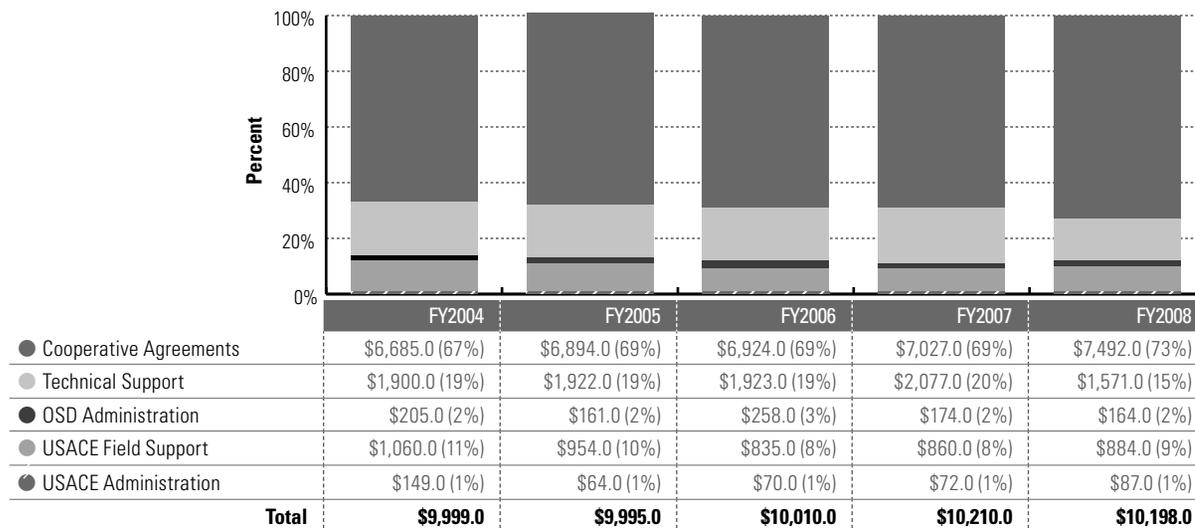
### Cooperative Agreements

Under NALEMP, DoD enters into CAs with tribal governments to address environmental problems attributable to past DoD activities. These agreements incorporate “traditional ecological knowledge” into remedial design, directly involve the tribe in project decision-making, develop tribal capacity regarding environmental services, and allow DoD to assist tribes in acquiring technical remediation skills.

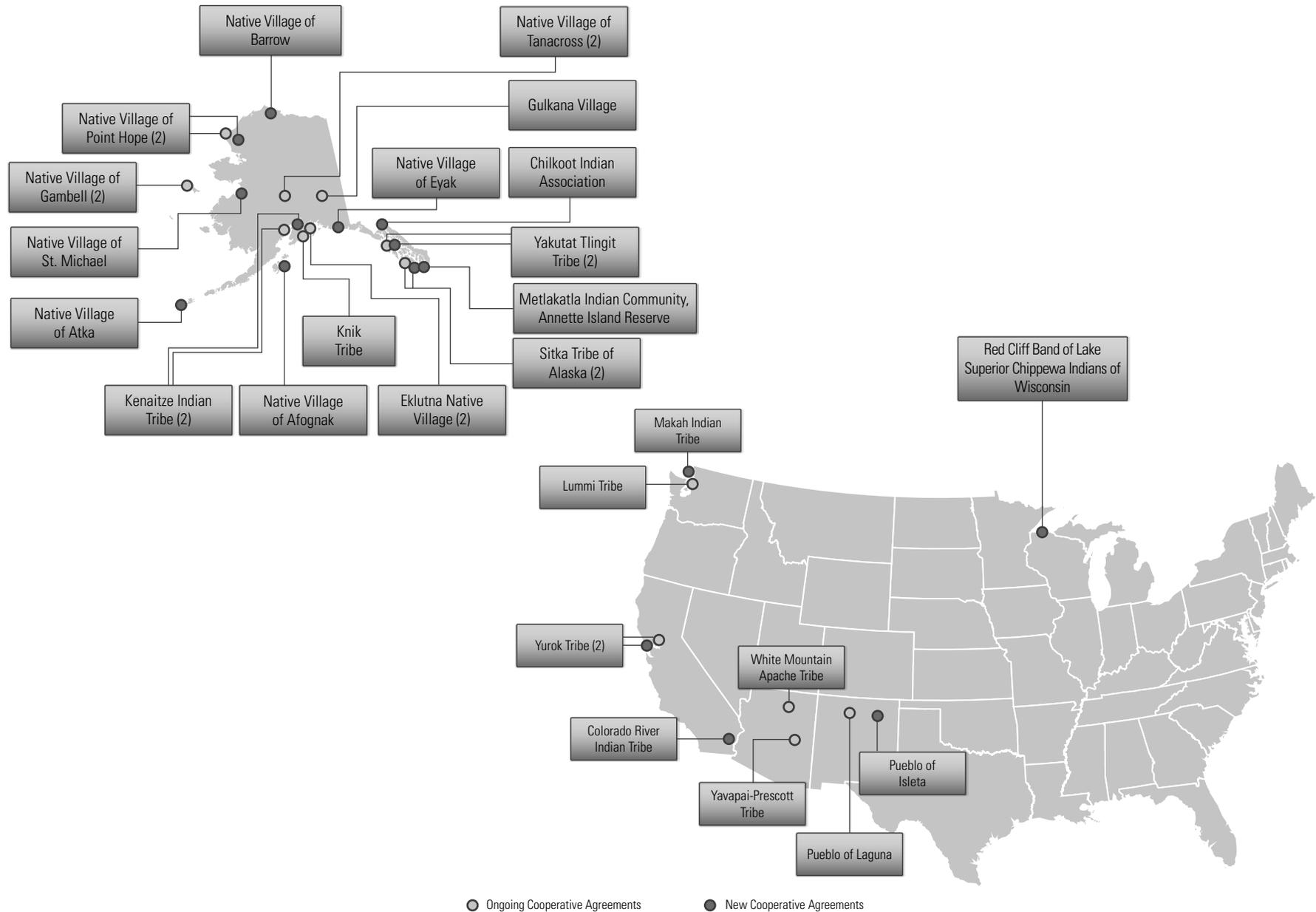
Figure F-1 DoD Installations with Resources of Interest to Tribes

	FY2004	FY2005	FY2006	FY2007	FY2008
DoD Installations with Native American Sacred Sites	68	59	48	46	48
DoD Installations where Access and Protection Procedures Are Needed	48	20	21	19	17
DoD Installations with Cultural Objects (falling under purview of NAGPRA)	33	35	36	40	37

Figure F-2 NALEMP Funding Distribution Trend (thousands)



**Figure F-3** Cooperative Agreements with American Indian and Alaska Native Tribes



As illustrated in Figure F-3, DoD entered into 18 CAs in FY2008. These included one new CA to mitigate impacts on the Colorado River Indian Tribes of the Colorado River Indian Reservation in Arizona and California, and 17 follow-on CAs to continue mitigation projects with previously funded tribes. DoD continues to conduct mitigation projects under an additional 15 active CAs, for a total of 33 ongoing and new CAs. Since the inception of NALEMP, DoD has executed over 157 new or continuing CAs to partner with a total of 43 tribal governments at a total funding level of \$61 million. CAs are the preferred method to undertake environmental mitigation projects on tribal lands because these agreements maximize the use of federal and tribal resources.

### DoD American Indian Cultural Communication Training Course

Effective communication and consultation is critical to working with American Indian and Alaska Native tribal governments. To facilitate greater understanding of tribal culture and federal policies for working with tribal governments, DoD offers a three-day course that highlights the requirements of DoD's American Indian and Alaska Native Policy and other relevant laws impacting the Department's relationships with tribal governments. The course provides DoD military and civilian staff with a greater understanding of diverse tribal cultures and the communication requirements that are essential to successful consultations with tribes. The course includes information on:

- ▶ Indian law and the legal basis for DoD policy
- ▶ Federal laws and policies impacting DoD's relationships with tribal governments
- ▶ Tribal concepts and culture
- ▶ Intercultural communication
- ▶ Practical guidance for consulting with tribal governments.

In FY2008, approximately 130 participants from all Components attended training sessions, held in two locations: Anchorage, Alaska and San Diego, California. American Indian presenters and DoD legal staff served as instructors for the courses. Each three-day course included participation in cultural events with nearby tribes, presentations by tribal speakers, and field trips. The next course is scheduled for 10-12 March 2009 in Savannah, Georgia.

### DoD Native Hawaiian Consultation

In FY2008, DoD drafted and solicited comments on a consultation protocol to assist Components operating in Hawaii to meet DoD's consultation responsibilities with NHOs. As DoD increases its military training activities in Hawaii, it must continue to find ways to efficiently comply with applicable environmental and cultural resource protection laws and regulations that affect DoD's mission. Consultation plays a key role in compliance with the NHPA, NAGPRA, E.O. 13007, and NEPA. The consultation protocol, when completed, will assist DoD in meeting its legal consultation obligations to NHOs in a manner that facilitates the military mission in Hawaii.

The consultation protocol development process included a series of meetings on the islands of Maui, Hawaii, Oahu, and Kauai. DoD is currently incorporating the comments and recommendations from the meetings into the draft protocol document. To complement the consultation protocol development initiative, DoD developed a tailored Native Hawaiian Cultural Communication Course. The course will be offered to military and civilian personnel living and working in Hawaii in April 2009.

### EPA Tribal Solid Waste Interagency Work Group

The Tribal Solid Waste Interagency Work Group formed in April 1998, and a memorandum of agreement between the U.S. Environmental Protection Agency (EPA), Bureau of Indian Affairs, Indian Health Service, U.S. Department of Agriculture (USDA)/Rural Utilities Services, and DoD formally established the work group in April 2000. The project assists tribes by cleaning up and closing non-compliant solid waste sites, and developing alternative disposal options and integrated solid waste management plans. Since FY1999, the EPA Tribal Solid Waste Management Assistance Project has funded approximately \$24 million in projects to over 175 tribes. In FY2008, \$1.0 million was made available for projects to nine tribes. The work group began development of evaluation tools to determine the short- and long-term success of the program, including tribal governments' ability to maximize the benefits gained through individual grants.

The DoD Senior Tribal Liaison has been an active work group participant since its inception. Although DoD does not directly contribute monetary funding, it participates by: contributing to the development of the annual solicitation; meeting with the work group throughout the review and final selection process; reviewing and scoring each tribal proposal according to the interagency work group's approved criteria; and reviewing NALEMP CAs for commonalities in tribal projects. Through its participation in the work group, the Department has demonstrated its commitment to the cleanup of American Indian lands. DoD's participation fosters a relationship not only with key federal agencies, but also with tribal governments. NALEMP, combined with active work group participation, reinforces DoD's role in Indian Country as a proactive federal agency with a solid understanding of its responsibility to tribes and the government-to-government relationship.

## **Outreach**

DoD has developed relationships with the Veterans Administration, Department of the Interior, EPA, and USDA. In FY2008, under the auspices of the White House Office of Intergovernmental Affairs, DoD continued to participate in the White House Indian Affairs Executive Work Group. This task force was formed to improve communications, foster collaborative efforts, and identify opportunities for improvement within the Federal Government in its efforts to address Native American issues.

Annual programmatic outreach also is an integral part of the DoD's responsibilities, involving frequent travel to Indian Country to discuss issues of concern to American Indians and Alaska Natives. DoD attended ten conferences hosted by major tribal organizations such as the National Congress of American Indians, the National Association of Tribal Historic Preservation Officers, and the National Tribal Environmental Council, providing outreach and information sharing. A NALEMP information booth was displayed at most of these meetings. In addition, the Senior Tribal Liaison traveled to Indian Country community meetings with the Pueblo of Laguna, the Pueblo of Isleta, the Navajo Nation, and the Navy Region Northwest Tribal Council, which represents 22 tribes.

## **Performance Evaluation Criteria**

DoD adopted measures of merit to annually evaluate the progress of DoD Components in implementing the requirements of NAGPRA and DoD policy. NAGPRA requires that DoD Components properly account for any Native American human remains and related cultural items they possess and undertake procedures to repatriate these items to tribes and NHOs within timeframes prescribed by law.