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Interpreting Consultation: U.S. Fish & Wildlife Service and Native American Perceptions of Engagement Practices

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Interpreting Consultation: U.S. Fish & Wildlife Service and Native American Perceptions of
Engagement Practices

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to the Davis College of Agriculture, Natural Resources, and Design
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ABSTRACT

Interpreting Consultation: U.S. Fish & Wildlife Service and Native American Perceptions of Engagement Practices

Benjamin Barron Richardson

Federal land management agencies are legally required to consult Native American tribes when administering policies that may have tribal implications. Many laws and directives regarding consultation exist, yet agreement on its practical application and management implications remain ambiguous. An ongoing consultation conundrum is occurring in the Greater Yellowstone Ecosystem (GYE), where the US Fish & Wildlife Service (Service) has proposed to remove the grizzly bear from the Endangered Species List. Several tribal groups residing within or maintaining cultural ties to the region have contested the movement. The grizzly bear controversy has exposed larger issues implicit to consultation, such as tribal sovereignty and the overall federal-tribal relationship. The purpose of this research is to evaluate perceptions and practices of government-to-government consultation from the perspectives of tribal and Service representatives. Federal policies on consultation were reviewed using a document analysis method to determine which theoretical form of public participation they require of agencies. To understand consultation perceptions, interviews were conducted with Service and tribal officials; the transcripts were content analyzed. The results indicated several process and relational-themed barriers impeding consultation. These include financial issues, insufficient agency training, disrespect, and racial concerns. Suggestions to improve the consultation relationship posited by the respondents included increasing agency training, earlier inclusion in the decision-making process, and meeting on or near tribal lands. Based on the results of this research, coupled with findings in the public participation literature and agency best practices, an emergent model of tribal engagement is proposed. This research will help the Service improve consultations, increase trust, and continue to repair historic wounds with Native Nations.

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Chapter 1: Introduction

Problem Statement. The purpose of this research project is to evaluate the perceptions and applications of US Fish & Wildlife Service-tribal consultation requirements. The results from this study will be used to provide best practices recommendations for consultation circumstances, such as the grizzly bear Endangered Species List removal decision. This research is based on several laws and policies that outline consultation with federal agencies and tribal nations. Namely, Executive Order No. 13,175 (2000), Secretarial Order No. 3,206 (1997), the Service Native American Policy (1994), the Service Tribal Consultation Handbook (2011), and other relevant documents will be used to guide the study on consultation with Native American tribes. These policies attempt to explain consultation responsibilities for federal agencies, particularly the Service, when engaging in actions that may affect tribal interests (Executive Order No. 13,175, 2000). Additionally, the International Association of Public Participation's Spectrum of Public Participation (2007) and other public participation concepts (Leong, Decker, Lauber, Raik, & Siemer, 2009; Leong, Emmerson, & Byron, 2011) will serve as guiding theoretical frameworks for demystifying consultation.

The International Association of Public Participation (IAP2) is global in scale, and is cited frequently in academic research (Abelson, et al., 2007; Jankowski, 2009; Nabatchi, 2012; Selin & Mendoza, 2013; Videira, Antunes, Santos, & Lobo, 2006) and throughout the federal government. It is cited by several agencies when describing techniques for engaging the public. Federal agencies who use the framework include powerful, well-funded authorities such as the Environmental Protection Agency (EPA) and the Department of the Interior (DOI). The DOI houses the Bureau of Indian Affairs (BIA) and the US Fish & Wildlife Service (Service), amongst several other agencies.

This thesis addresses the following broad questions: What type of public engagement do federal policies require for consultation? How do Native American and Service representatives think federal consultation should be conducted? In addition, what barriers are preventing effective consultation and what are solutions for the future? This study addresses these questions through document reviews and stakeholder interviews with representatives located within the Greater Yellowstone Ecosystem where the grizzly bear (*Ursus arctos horribilis*) delisting process is occurring. The evaluation had two parts. First, the paper reviewed several federal consultation policies. The review assessed what level of public engagement the consultation policies require according to theoretical frameworks. Interviews were conducted with Tribal and federal representatives to determine their consultation perceptions in terms of theoretical frameworks. The interviews also uncovered several barriers impeding consultation, and provided suggestions for improvement. The results from these inquiries are used to create best-practices consultation scenarios, such as the GYE grizzly bear delisting example.

Overview

Greater Yellowstone Ecosystem. The Greater Yellowstone Ecosystem (GYE) is an immense swath of land covering nearly 28,000 square miles and 18 million acres (National Park Service, 2013). The area expands across three states: Wyoming, Montana, and Idaho. Two National Parks are located within the GYE, Yellowstone and Grand Teton. Additionally, the GYE reaches into six national forests (Greater Yellowstone Coordinating Committee, 2014). The GYE encompasses wildlife refuges, and several cities. Land management of the GYE is divided by multiple entities. Approximately 50% is managed by the US Forest Service, 10% by the National Park Service, 30% is privately owned, and the final 10% is managed by tribal, state, and local governments (US Department of the Interior, 2011).

The region's diversity has made the GYE a cultural hotbed for thousands of years. The GYE has approximately 1,600 documented archaeological sites, highlighting the region's cultural importance (National Park Service, 2011). The Yellowstone human history extends 11,000 years, with 26 Native American tribes tracing cultural roots to the region (National Park Service, 2011). The GYE is also rich in recreation opportunities. Yellowstone National Park has nearly 1,000 miles of backcountry trails, and over 450 camping sites (National Park Service, 2011). Other recreation activities include wildlife viewing and hunting (Greater Yellowstone Coordinating Committee, 2006). Furthermore, the Yellowstone bioregion provides space for agricultural practices (Gosnell, Haggerty, & Travis, 2006). The area is home to several ESA listed species, including the grizzly bear (National Park Service, 2011).

The Endangered Species Act. The Endangered Species Act (Act) was passed by Congress in 1973 to protect fauna and flora at risk of extinction (Endangered Species Act, 1973). Two Federal agencies are charged with managing the Act: the US Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (US Fish & Wildlife Service, 2015). Species are listed as either endangered or threatened depending on their likelihood of extinction within the near future. As of 2013, the Service has listed 2,054 species around the globe, 1,436 of which are in the United States (US Fish & Wildlife Service, 2013). The grizzly bear was placed under Act protections as *threatened* in 1975. It had experienced severe drops in numbers throughout the lower 48 states (National Park Service, 2013). The grizzly bear was briefly delisted from the Act in 2007, only to be re-listed in 2009 after extensive litigation (Schaffer, 2014). The delisting decision was reversed by a Federal judge explaining the Service did not accurately account for the loss of whitebark pine (*Pinus albicaulis*) nuts (a major food staple for

grizzly bears) throughout the bioregion due to climate change (National Park Service, 2013; Keller, 2014).

Delisting discussions restarted in 2012, when then-Secretary of the Interior Ken Salazar announced his intention to have the bear removed from the Act by 2014 (Suckling, 2014). In November 2013, the Interagency Grizzly Bear Committee (IGBC is a collection of representatives from federal, state, and Tribal agencies created to recover grizzly bear populations) recommended the Service remove the bear from the Act considering the population recovery and other indicators (Associated Press, 2013; National Park Service, 2013). Multiple stakeholders are affected in this decision, including Federal entities, state game agencies, landowners, recreationists, and Native American tribes (Gunther, Haroldson, Frey, Copeland, & Schwartz, 2004; National Park Service, 2011; GOAL, 2015)

Tribal Sovereignty. Since initial European contact with American Indian tribes, treaties became the heart of the government-to-government relationship between the nations (Harjo, 2014). The Constitution allows the United States to create treaties with foreign nations (US Constitution, art. 6) and regulate commerce with Indian Tribes (US Constitution, sec. 1, art. 8). Treaties with tribes are explicit acknowledgements of their inherent sovereignty (Harjo, 2014). Up to the end of the treaty-signing period in 1871¹, 370 treaties were contracted between the

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¹ The huge expenses the government amassed because of treating with Native Nations provoked Congress to issue a statute (Future treaties with Indian tribes, 1871), stripping the President of the power to create treaties without approval of both the House of Representatives and the Senate (Harjo, 2014; Spirling, 2012). While some argue this never actually ended the ability to treat with Native Nations (Harjo, 2014), formal treaties were replaced with Congressionally-approved, government-to-government “agreements” (Spirling, 2012, p. 87).

United States and Native American tribes (Canby, 2009; National Congress of American Indians, 2014).

In 1832, the US Supreme Court declared Native Nations “distinct political communities”, officially recognizing tribes as sovereign nations within the United States (*Worcester v. Georgia*, 1832, p. 557). As sovereign entities, Native American tribes are entitled to govern themselves independently. This is not because they are granted the right by the Federal government; rather, these powers are intrinsic to their existence (Cohen, 1982; Harjo, 2014; Monette, Greenwood, Gonzales-Rogers, & Durham, 2011).

However, throughout United States history, indigenous groups have been treated heinously (Bengston, 2004; Donoghue, Thompson, & Bliss, 2010; Harjo, 2014; Ohlson D. L., 2005). In attempted reparation and prevention of further abuses, numerous laws have expanded federal responsibilities for Native American tribes (Secretarial Order No. 3,206, 1997). As citizens of a sovereign tribal nation, Native Americans enjoy “a range of unique legal rights, preferences and immunities that fundamentally distinguish them from other segments of American society” (Harjo, 2014, p. 132). One such affordance from this distinctive relationship is consultation, the “core component of the federal-tribal relationship” (Monette et al., 2011, p. 11).

Native Americans are the only public stakeholder group the Service is legally required to fulfill special consultation obligations when making decisions because of treaty rights and their unique status as sovereign nations. Despite the abundance of legislation, little is fully understood or agreed upon about the practical implications for government-to-government consultation (Ohlson D. L., 2005). Federal laws use the terms consultation and collaboration with Native Americans often interchangeably. However, these expressions can have vastly different

meanings, expectations, and promises to the public (EPA, 2015; IAP2, 2007; Selin & Mendoza, 2013). It is understandable, then, why Native Americans may become confused during occasions that require consultation by federal agencies (GOAL, 2015; McKeown, 1997; Monette et al., 2011; Ohlson, 2005; Zellmer, 1998). An assessment of the policy language in reference to theoretical frameworks, coupled with perceptions from Service and Tribal representatives, should provide clarity for consultation implementation practices.

Significance of Study. The recent grizzly bear delisting discussions have sparked outrage by several Native American groups, citing a lack of consultation by the Service in the process. The dispute is generating significant media attention, further increasing the relevancy of investigating what the Service and Tribes perceive consultation to mean, and how it is being applied in practice. The grizzly bear case serves as a microcosm for the many consultations the federal government engages with Native American tribes. Additionally, issues surrounding consultation necessarily touch upon larger concerns such as respect for tribal sovereignty and treaty rights. By dissecting document themes and interviewee perceptions, clarity will be shed on the practical implications for government-to-government consultation.

There has been extensive literature on government relationships with indigenous peoples in reference to natural resource management (Bengston, 2004; Cortes-Vazquez & Zedalis, 2013; Cronin & Ostergren, 2007; Donoghue, Thompson, & Bliss, 2010; Lute & Gore, 2014; Ohlson, Cushing, Trulio, & Leventhal, 2008; Waage, 2003). However, the literature shows significant gaps on Native American perceptions of consultations and its applications. This study will contribute to the greater body of literature on public participation in natural resource management, while producing new insights into Native American perceptions of consultation.

The results of this study may be useful for several federal land management agencies, especially the US Fish & Wildlife Service. The examination of consultation interpretations will have immediate implications for the Service, as the grizzly bear issue is co-occurring with this study. While this study will interview only a sample of tribes, the lessons learned will surely hold value for future consultation circumstances with many Native American groups. By underlining interviewee perceptions of potential barriers to consultation and suggestions for improvement, this study will offer relationship-building opportunities for the stakeholders. This study may also benefit other federal agencies obligated to consult with Native American tribes when policies affect indigenous groups. The results may likewise be helpful for tribes engaging federal agencies on natural resource management issues requiring consultation.

Research Questions

This thesis investigates what is required by agencies concerning federal-tribal consultation using theoretical frameworks as a guide, and how the stakeholders perceive the meanings of consultation in practice. This research answers the following questions:

1. Using the IAP2 framework, what level of public engagement do federal policies require of agencies?
2. How do the various governments think consultations are and should be applied in terms of the IAP2 framework?
3. What barriers (if any) are impeding consultation?
4. What are recommendations to improve consultation between the Service and Native Nations?

Definition of Terms

Indian Tribe: Any Indian/Native American or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, USC 479a.

Tribal Sovereignty: The power to govern as distinct, independent, political communities with the power to exercise self-government.

Treaty: A contract between two sovereign nations. In the United States, treaties are the supreme rule of the land, and all judges are bound by them, State law notwithstanding.

Government-to-Government Relationship: A mutual recognition of the authority of the respective parties.

Self-Determination: Empowering Native American governments and supporting their missions and objectives as independent, sovereign nations able to self-govern.

Tribal Rights: Rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and which give rise to legally enforceable remedies.

Trust Responsibility: Natural resources, either on or off tribal lands, retained by, or reserved by or for Indian tribes, through treaties, statutes, judicial decisions, and executive orders, which are protected by a fiduciary obligation on the part of the United States.

Definitions retrieved and adapted from the Service Tribal Consultation Handbook (2011) and Secretarial Order No. 3,206 (1997).

Chapter 2: Literature Review

The following chapter outlines related literature on consultation requirements and meanings in both legal and theoretical frameworks. The section begins with a brief history and synthesis of federal laws requiring consultation with Indian tribes. The review then transitions to literature on public participation including the aforementioned IAP2 concept, highlighting examples specifically with Native American tribes. Finally, the chapter culminates with a review of literature on conflict management within the natural resources realm.

Legal Frameworks

The treaty relationship between the United States and Native Nations is the foremost symbol of tribal sovereignty, and is the crux of the federal-tribal relationship (Monette et al, 2011). According to Judge William Canby, Jr. (2009), treaties serve as a “contract between two sovereigns” (p. 117). Furthermore, Judge Canby states, “Indian treaties stand on essentially the same footing as treaties with foreign nations” (2009, p. 118). Treaties signed between Native Nations and the United States established the government-to-government relationship that is still honored in current-age consultations (Monette et al., 2011).

Despite the lengthy history of treaty-making diplomacy (370 treaties were signed from 1778-1871), American Indians have a long history of mistreatment in the United States (Bengston, 2004; French, 2003; Harjo, 2014; National Congress of American Indians, 2014; Ohlson D. L., 2005). To remedy the effects of past injustices, the federal government has authored numerous laws, orders, policies and directives explicating treaty rights for Native Americans. The independent sovereignty Native Americans enjoy within the United States is innately complex.

In 1831, the US Supreme Court took steps describing the status of tribes as sovereign Nations within a larger Nation (i.e., the United States). This means tribes have the right to self-govern independent of the federal government on tribal property (*Cherokee Nation v. Georgia*, 1831; Cohen, 1982; Monette et al., 2011; Walters, 1983; *Worcester v. Georgia*, 1832). These rulings determined Native Americans are able to self-govern not because they are granted these rights, but because it is intrinsic to their existence (Cohen, 1982; Monette et al., 2011). The laws of tribal sovereignty have undoubtedly been contentious (Cronin & Ostergren, 2007). Regardless of controversy, the sovereign status ensures federally recognized tribes are entitled to certain liberties from the government. One such privilege is government-to-government consultation from federal agencies to Tribes when policies may affect Indian Nations (Monette et al., 2011).

Another key civil-liberties decree for Tribes is the American Indian Religious Freedom Act, also known as AIRFA (1978). AIRFA requires government agencies to avoid unnecessary obstruction of Native American religious practices. AIRFA also requires federal agencies to consult tribal leaders prior to engaging in projects that could have impacts on Native American religious practices (Monette et al., 2011; Pinel & Pecos, 2012). For example, the Cheyenne tribe has stated no animal holds more importance in traditional religion than the grizzly bear (Coleman, 2015). Native American groups have conveyed that removing grizzly bear protections without perceived consultation, and consequently allowing its hunting, is in violation of AIRFA (Richards, 2014).

Incorporating Native Americans in policy-making to encourage sovereignty has been prioritized for many administrations. In 2000, President Clinton signed the milestone Executive Order No. 13,175. This law requires Federal agencies to establish “regular and meaningful consultation and collaboration [used interchangeably] with tribal officials in the development of

Federal policies that have tribal implications” (Executive Order No. 13,175, 2000, p. 67249).

The Order (2000) emphasizes the importance of enhancing government-to-government relations between the two nations while encouraging self-determination. The legislation underscores the significance of obtaining “meaningful and timely input by tribal officials” in developing policies and making decisions that have tribal repercussions (Executive Order No. 13,175, 2000, p. 67250). When authoring the Order (2000), President Clinton acknowledged past injustices on the part of the United States government toward Indian nations. This Order (2000) was enacted in part to remedy past mistreatments, while enhancing current and future relationships with authentic consultation in policy forming.

President Obama echoed similar sentiments in his Memorandum for the Heads of Executive Departments and Agencies, Subject: Tribal Consultation (2009). The Memorandum (2009) says excluding Native American opinions when constructing federal policies affecting tribes has “devastating and tragic results” (p. 1). President Obama highlights consultation and collaboration (also used interchangeably) with Native American officials as a “critical ingredient” in the government-to-government relationship (Obama, 2009, p. 1). The Memorandum (2009) outlines increased accountability measures for each Agency director further enhancing the gravity of consultation with tribes.

Building on his 2009 Memorandum and President Clinton’s Executive Order No. 13,175 (2000), President Obama authored Executive Order No. 13,647 (2013). This policy concerns even greater engagement and consultation with Native Americans on policies affecting Indian Country (Executive Order No. 13,647, 2013). When meeting with tribes, President Obama has declared the government is “determined to partner” with Native Nations in decision-making processes when policies have the potential to have tribal implications (Executive Order No.

13,647, 2013; Richards, 2014, para. 5). Elements of the Executive Order include developing “prosperous and resilient tribal communities, including by...protecting tribal lands, environments, and natural resources, and promoting respect for tribal cultures” (Executive Order No. 13,647, 2013, pp. 39,538-39,539). In the case of the Yellowstone grizzly delisting process, Tribal spokespeople have expressed concern over a deficiency of engagement by the Service, citing a lack of adherence to President Obama’s Order from 2013 (Richards, 2014).

Because of preceding Executive Orders and other legal mandates, many federal agencies have been required to compose administrative rules to direct Native American engagement. The Service drafted The Native American Policy in 1994². The policy is based on maintaining government-to-government trust responsibilities through consultation and communication, trust building, and sharing of responsibilities (US Fish & Wildlife Service, 1994). The policy emphasizes that affected Native American governments shall be given opportunities to participate in agency decision-making processes (US Fish and Wildlife Service, 1994). The policy elucidates the importance of “consulting with Native American governments on fish and wildlife resource matters of mutual interest...” (US Fish & Wildlife Service, 1994, p. 5). The policy furthermore has special considerations for Native American cultural or religious interests, such as endangered species protection statuses (US Fish & Wildlife Service, 1994).

Even more specifically, the Secretaries of the Interior and Commerce issued a landmark Order in 1997 laying the framework of agency-tribal responsibilities, vis-à-vis the Endangered

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² At the time of publication for this thesis (2015-2016), the Service was in the process of revising their Native American Policy.

Species Act (1973). The Secretarial Order (1997) says Department of the Interior agencies (including the Service) must “take into consideration the impacts of their actions and policies under the Act on Indian use of listed species for cultural and religious purposes” (p. 6). It further explains that agencies shall “solicit information, traditional knowledge, and comments from, and utilize the expertise of, affected Indian tribes...during the consultation process” (Secretarial Order No. 3,206, 1997, p. 12). The Order (1997) says the purposes of these guidelines are to “respect the exercise of tribal sovereignty” and “minimize social...and cultural impacts on tribal communities” (p. 5, 13). Indeed, the grizzly bear delisting situation meets all consultation criteria considering its cultural and religious significance for multiple tribes.

The Service published their Tribal Consultation Handbook in 2011 (Monette et al., 2011), singularly emphasizing engagement practices. It was written using Department of the Interior directives and other federal policies and laws. The handbook provides extensive legal background on tribal rights and responsibilities, agency consultation, and suggested guidelines for consultative conducts. The guide provides practical advice for conducting meetings with tribes, cultural awareness suggestions, and leading principles for developing positive relationships with Native American groups. A listing of 565³ federally recognized tribes are provided, contact information for Native American tribes and liaisons, and even sample consultation outreach letters. While exhaustive in many ways, ironically the *Consultation* section of the handbook reveals its shortcomings. It describes the importance of consultation as the “heart of federal-tribal governmental interactions” (Monette et al., 2011, p. 11). However, it then

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³ After the publication of the Tribal Consultation Handbook in 2011, two more tribes received federal recognition increasing the total number of federally recognized tribes to 567.

admits the federal government's use of the term *consultation* is ambiguous as there is no "concrete definition...in any statute or Executive Order" (Monette et al., 2011, p. 12). Monette et al. (2011) states consultation likely "has at least as many definitions as there are federally recognized Tribes" (p. 12). Even the working definition lacks specificity stating consultation is "direct two-way communication, conducted in good faith, to secure meaningful participation in the decision-making process" (Monette et al., 2011, p. 12).

The handbook's consultation language tends to cover a wide breadth of theoretical public participation levels. In fact, the handbook references *consultation* from the Department of the Interior Policy on Consultation with Indian Tribes (2011) as a "process that aims to create effective *collaboration* with Indian tribes and to inform Federal decision-makers" (Department of the Interior Policy on Consultation with Indian Tribes, 2011, p. 1- italics added for emphasis).

The puzzling lack of clarity, procedural requirements, or practical expectations for agency-tribal consultation results in confusion potentially perpetuating bitterness (Greenberg & Greenberg, 2013; James E. Rogers College of Law Indigenous Peoples Law & Policy Program, 2013; McKeown, 1997; Ohlson D. L., 2005; Ohlson, Cushing, Trulio, & Leventhal, 2008; Routel & Holth, 2012-2013). The language is also perplexing when viewed through theoretical lenses.

Theoretical frameworks view consultation and collaboration as two entirely different forms of engagement. They require substantially varied procedures and expect different outcomes. The next section will examine public participation frameworks with a focus on consultation and collaboration in an attempt to tease out the distinctions between public engagement methods.

Theoretical Frameworks

The notion of public participation in natural resources has a lengthy history in the United States (Blahna & Yonts-Shepard, 1989). It has been subject to significant scrutiny and can be fraught with volatility as many diverse stakeholders come to the decision-making table (Blahna & Yonts-Shepard, 1989; Chase, Decker, & Lauber, 2004). Societal pressures on government agencies for increased decision-making involvement stem back to the 1960s (Leong, Emmerson, & Byron, 2011). Ensuing decades witnessed increased divergence of opinions and values between stakeholders resulting in litigation, stalemates, and acrimony (Cronin & Ostergren, 2007). This turbulence gave birth to concepts of engaging the public to ensure longer-lasting policies, public support, and more effective decision-making (Selin & Mendoza, 2013).

Defining and Clarifying Inclusion Criteria. The need to clarify the applicability of the following theoretical framework is imperative. The IAP2 Spectrum of Participation (2007) is widely renowned throughout academe (Abelson, et al., 2007; Jankowski, 2009; Nabatchi, 2012; Selin & Mendoza, 2013; Videira, Antunes, Santos, & Lobo, 2006) and the federal government. It is cited by several agencies, including powerful, well-funded, decision-making authorities such as the Department of the Interior and its US Fish & Wildlife Service. The notion of referring to Native American groups as merely *publics* within the framework, however, may be problematic. Native Americans are simply not another public stakeholder group the federal government must consider. They are, as defined by *Worcester v. Georgia* (1832), “distinct political communities” because of their treaty relationships with the United States (p. 557). In short, they are Nations within a larger Nation, and therefore move beyond solely members of the public.

Incidentally, however, American Indians also maintain citizenship of the United States as of 1924 (Indian Citizenship Act, 1924). In this manner, the IAP2 framework remains applicable

for investigating consultation requirements between the federal government and Native tribes. All the while, however, the researcher remains sensitive to the distinct reality that Native Americans are apart from, while simultaneously included in, the public of the United States.

It is clear the IAP2 framework does not fully capture the uniqueness of Native people's experiences as citizens of tribal nations and of the United States. Research into Native American perceptions of federal consultation is new for the field. Therefore, because of its vastly accepted usage in scholarly work and the federal government, the IAP2 spectrum will be used to frame this research examining perceptions of engagement between the Service and Native tribes.

Inform. Prior to the 1960s, the government tended to approach public involvement in an authoritative manner (Leong, Decker, Lauber, Raik, & Siemer, 2009). Little or no public input was requested or required; agencies were responsible only for notifying the public as to what the decisions were. According to the IAP2 (2007) continuum, this model of governance is known as *Inform* (see Figure 1). At this level, informing the public of decisions is solely obligatory, not in a spirit of relationship building (Predmore, Stern, Mortimer, & Seesholtz, 2011). In the United States Environmental Protection Agency (EPA) directive on international engagement (an appropriate source considering the sovereign status of federally recognized Indian Nations), the EPA expresses that the *informing* level is in fact not public participation at all (EPA, 2015). Instead, *informing* simply directs the agency to explain to the public the reasoning behind the decision or policy. Examples of informing the public are providing fact sheets, web sites and other forms of public outreach materials (IAP2, 2007; Selin & Mendoza, 2013).

Figure 1: Continuum of Public Participation (Adapted from IAP2 Spectrum of Public Participation, 2007)

Consult. *Consultation*, the next rung in the public participation ladder, is a matter of obtaining opinions from stakeholders for the decision-making process. The EPA (2015) describes consultation as the “basic minimum opportunity for public input to a decision” (para. 18). Leong et al. (2009) similarly describe this style of governance as *Inquisitive*. This is characterized by agencies seeking comments from the public, acknowledging concerns, and explaining how this will (or will not) affect outcomes (IAP2, 2007; Leong et al., 2009). It is important to note that at the *consultation* theoretical level, dialogue is not a goal in participation. While McKeown (1997) disagrees, his practical examples of obtaining advice and ideas from Native Americans do not necessarily indicate a two-way flow of discourse. The EPA (2015) says consultation does not require agencies to physically meet and discuss policy. In consultation, input is sought and considered from stakeholders, even traditionally underrepresented groups, but true dialogue does not occur (Leong et al., 2009). In this way, consultation is entirely not

collaboration (Ansell & Gash, 2007). Consultation practices include public comment periods, such as those required through the National Environmental Policy Act (1969) and other laws.

Unfortunately, agencies do not always differentiate *consultation* from simply informing stakeholder groups. The Quinault Indian Nation acknowledged this flaw in a letter to the National Park Service regarding the Olympic National Park General Management Plan (Sharp, 2006). The Tribe explained that despite the rules on *consultation*, their engagement experience with the agencies tended to be merely informative. The Navajo Nation, in a 1993 memorandum to the Bureau of Land Management (BLM), repeated this expression (McKeown, 1997). The tribal leaders stated:

The majority of agencies with which we are familiar do not distinguish between *notification* and *consultation*, and consider the former as adequate to meet their mandates for the latter. This neither meets the letter or spirit of the consultation requirements of the laws mandating consultation.

An example of the public comment form of consultation working successfully for stakeholders comes in the case of the Monongahela National Forest in West Virginia (Steelman, 1999). The public had contested timber-harvesting practices for many years resulting in lawsuits against the National Forest Service. The Forest Service replied by authoring the National Forest Management Act (1976) providing greater participation opportunities for the public in decision-making process (Steelman, 1999). During the 1984 Monongahela Forest planning process, managers received 3,597 public comments. Over half the respondents were in opposition to the agency's resource management proposals. The Forest Service staff admitted to receiving a clear message that the public did not agree with their intended direction. Managers explained many

value-based insights from the comment period were used to redevelop the forest plans, thus indicating consultation as an effective method of engagement in practice (Steelman, 1999).

Even when agencies do seek input from stakeholders, such as in a public comment process, the essence of consultation is not always achieved (Lute & Gore, 2014). This can be seen in the Michigan gray wolf delisting case. In 2012, the Service removed the gray wolf from Endangered Species Act protections. The Michigan Department of Natural Resources opened a comment period to seek public input on wolf management within the state. Tensions were high between stakeholders, including Native American groups. The public was allowed to voice their opinions, but many stakeholders felt their input was not valued. If the public senses the agency is simply following protocols and not seeking input in good faith, as in the case of the Michigan wolf case, mistrust is sure to transpire (Lute & Gore, 2014).

Agency consultation with Native Americans struggled in the 2012 Genesis solar energy project in California's Mojave Desert (Greenberg & Greenberg, 2013). The project area was adjacent to Mojave tribal land. Project managers hastily pushed forward without consulting the Mojave prior to excavation. The results were catastrophic. An excavation crew uncovered ancient human remains indicative of a former Native American burial site. Further remains were regrettably unearthed when the Mojave attempted to rebury the old artifacts, thus desecrating even more culturally significant land. The BLM acknowledged the oversight, and vowed to engage in greater efforts to obtain feedback from Tribes prior to commissioning projects (Greenberg & Greenberg, 2013).

Even in less drastic occasions, consultation is still imperative for engaging Native Americans. In 1995, the Service worked closely with the Nez Perce tribe in Idaho to reintroduce the gray wolf throughout the region. The Nez Perce handled the majority of the operational tasks,

which was considered by all accounts successful (Ohslon et al., 2008). As for the strategic planning and policy decisions, the tribe felt they were not sufficiently consulted as obligated by law (Ohslon et al., 2008). Despite the overall success of the project, the relationship could have been further enhanced with better consultation at the strategic level (Ohslon et al., 2008).

A review of the first 10 years of the Northwest Forest Plan, a plan originally developed as a multi-agency approach for protecting the habitat of the spotted owl throughout the Pacific Northwest, discusses consultation with Native American tribes. The plan interviewed 15 Native American tribes from within the region. Tribes generally acknowledged the establishment of consultation practices and relationships by several federal agencies (Stuart & Martine, 2006). However, tribes shared their frustration specifically with regulatory agencies not engaging in consultation, such as the US Fish & Wildlife Service (Stuart & Martine, 2006). This finding further increases the value of this research study on consultation practices by the Service.

Despite many practical shortcomings, consultation has been successful with Native American stakeholders. In 1979, the Kumeyaay tribe in southern California provided feedback to the BLM to preserve a culturally significant site known as Tecate Peak (Greenberg & Greenberg, 2013). The BLM had proposed building a power line over the mountain, which is considered sacred by Indian elders. The Kumeyaay leaders voiced their concerns to BLM managers, to the degree of providing interpretive trips up the mountain to convey its magnitude. The tribes also suggested an alternate route for the power line to avoid sacrilege, although it is unclear if the alternative route was used by the BLM. Regardless, the efforts paid off for the Tribe as the power line project was circumvented. Input was received and processed by the agency, and stakeholders were informed on how their comments effected the outcome (Greenberg & Greenberg, 2013).

Involve. According the IAP2 Spectrum, the next level in the public participation hierarchy is *involvement*. The theory explains agencies using this engagement format are to work with the public from the beginning and throughout the entire process ensuring all concerns are considered (IAP2, 2007). The EPA (2015) supports this interpretation of *involvement*, adding stakeholders should be offered many opportunities for engagement throughout the decision-making process. Leong et al. (2009) refers to this governance as *Intermediary*. Communication between the agency and public improves to a two-way dialogue. The agency still maintains decision-making authority, although concerns and input are incorporated throughout the process by working directly with stakeholders (IAP2, 2007; EPA, 2015). Community visioning, stakeholder buy-in, and conflict resolution are often objectives at the *Involve* level (Selin & Mendoza, 2013). To achieve public *involvement*, agencies can provide workshops and deliberative polling with stakeholders (IAP2, 2007).

The case of deer overpopulation in Jackson County, Missouri is a premiere example of public involvement (Leonge et al., 2009). The deer population became problematic, and the Missouri Department of Conservation (MDC) was in need of a management plan to remedy the situation. The agency sought public opinions, and made sure the public was aware of how concerns were being addressed. The MDC sent mailings and even went door-to-door to provide information on what the plan was at the time. The agency sought stakeholder buy-in, but was not dependent on a consensus to move forward with their policies (Leong et al., 2009).

Collaborate. Collaboration has arguably become the most popular ideology for public participation in our era (Cronin & Ostergren, 2007; Johnson et al., 2005; Selin, Schuett, & Carr, 2010). In fact, some natural resource agencies are realizing collaborative management is their only hope at developing lasting policies supported by the community (Selin, Schuett, & Carr,

1997). The IAP2 framework (2007) describes *collaboration* as partnering with the public in every way throughout decision-making process to seek consensus. Under this management design, agencies look to the public for advice when crafting policies and the recommendations are integrated into the decisions. The EPA (2015) notes that at the collaborative level “the public is directly engaged in decision making” (para. 22). It is at this stratum of public engagement where frequently consensus is sought (EPA, 2015). Ansell and Gash (2007) believe *collaboration* departs entirely from the *consultation* ideology. Where *consultation* generally uses one-way communication, collaboration is focused on dialogue and collective decision-making (Ansell & Gash, 2007). Leong et al. (2009) refer to this model as *Transactional*. *Collaboration* no longer uses an “us versus them” model; instead, the paradigm shifts to “we” (Leong et al., 2011, p. 235). While entirely transactional and fully engaging, the EPA (2015) suggests the agency still retains decision-making power. Some legislation, such as the Negotiated Rulemaking Act (1996), helped make collaborative processes more mainstream in federal policy-making actions (Leong et al., 2011).

Federal collaboration with nongovernment entities has challenges. Collaboration can be especially difficult when there is a history of distrust between stakeholder groups, or when there is a perceived gap in decision-making influence (Selin & Chavez, 1995; Selin & Mendoza, 2013). Undeniably, distrust and acrimony is a repeated theme throughout tribal-Federal relations (Johnson, Heald, McHugh, Brown, & Kaminitz, 2005; Harjo, 2014). Collaboration also proves difficult when groups cannot agree on basic facts (Selin & Mendoza, 2013; Lute & Gore, 2014). In the current case in the GYE, the Service believes there to be well over 700 grizzly bears in the region (Dayton, 2014). According to Service criteria, this population resembles a full recovery and eligible for removal from Act protections (Morello, 2014). Native American tribes believe

these numbers to be inflated, rendering them ineligible for delisting (GOAL, 2015). This discrepancy on fundamental facts makes for a collaboration stalemate. Collaboration works best when stakeholders believe they can achieve a better outcome by working together (Selin & Mendoza, 2013). These arrangements are effective when common goals and values are identified and responsibilities are clearly outlined at the onset (Selin & Chavez, 1995; Donoghue, Thompson, & Bliss, 2010). The literature further emphasizes that engagement is effective when groups think their input is valued and will have a genuine role in the decision-making process (Selin & Mendoza, 2013).

Prior to its opening in 2004, the curators for the National Museum of the American Indian collaborated extensively with tribal authorities (Johnson et al., 2005). Curators sought feedback and input from various tribal representatives to ensure displays accurately portrayed the history of the artifacts (Johnson et al., 2005). The managers of the museum believe Native people are the experts, and felt it was appropriate that they be involved from in the design and implementation of the exhibits (Johnson et al., 2005). The curators established comfort and trust as guiding principles in the collaborative activities, as well as effective communication. The successful arrangement built trust between the stakeholders and created opportunities for long-term relationships.

The natural resources discipline has likewise experienced success with collaborative relationships. In 2005, the Deschutes National Forest in Oregon participated in a collaborative arrangement called the Glaze Forest Restoration Project (Pajutee, 2015). The project was born out of extensive litigation from stakeholders upset with how forest management was occurring, especially with commercial sales of timber (Pajutee, 2015). People in the region had a strong sense of distrust toward the Forest Service. Suspicion arose over diameter limits for cutting and

old growth trees needing protection (Pajutee, 2015). The Forest Service partnered with the very stakeholders that were posing lawsuits against the agency, and worked together to develop a sustainable, collaborative management plan. Stakeholders suggested a form of timber cutting known as *mosaic thinning*, which Forest managers adopted into their plan. The agency learned that creating common ground between stakeholders, a willingness to compromise, and effective communication were successful parts in collaboration (Pajutee, 2015). The Forest Service employees also recognized the importance of allowing the public to be fully involved and creating transparency in their processes.

The restoration project was approved in 2008, and was the first sale of timber in over a decade that occurred without any litigation or conflict amongst stakeholders (Pajutee, 2015). The success of the Glaze project and its lessons-learned allowed it to be used as a model for other timber sale contracts on the Deschutes, which also occurred without conflict (Pajutee, 2015). The resource managers believe the greatest lesson they learned is that the agency cannot rely solely on science. Rather, science must be bolstered with strong, trusting relationships with community partners (Pajutee, 2015).

A premiere example of collaboration between the Service and an Indian tribe can be found in the Idaho gray wolf reintroduction case of 1995. The Nez Perce tribe recognized partnering with the Service as an opportunity to demonstrate their capabilities in natural resource management (Donoghue et al., 2010; Ohlson et al., 2008). The tribes were granted license to control decisions at the operational level. However, the Service maintained ultimate strategy and decision-making authority. This arrangement proved to be hugely successful in building relations between the two stakeholders (Olson et al., 2008). Researchers discovered the collaboration was successful primarily because the Nez Perce were able to share traditional knowledge and prove

their natural resource management aptitude (Donoghue et al., 2010). In short, the Nez Perce felt their participation was meaningful to the process. Traditional knowledge in decision-making processes may not only complement science, but also assuage potential resource management conflicts (Lute & Gore, 2014; Berkes, 2009).

Empower. Empowerment is considered the highest echelon of public participation according to the IAP2 (2007) framework. By empowering the public, agencies give them final decision-making authority. Decisions made by the stakeholders are implemented by the agency. This can come in the form of funding support and other forms of assistance such as task forces (Selin & Mendoza, 2013). Leong et al. (2009) describe empowerment management techniques as shifting the decision-making power to the stakeholder, and they are largely responsible for how they are applied in the field (Leong et al., 2009). Under this structure, research indicates that strong, reliable leadership at the local level is vital for empowerment to prosper (Decker, Brown, Vaske, & Manfredi, 2004; Leong et al., 2009). The federal government acknowledges that the empower level of public participation is very rare (EPA, 2015). In fact, federal agencies typically are prohibited from entrusting decision-making authority to the public (EPA, 2015). While extremely infrequent, it may be argued some empowering engagements have occurred within the federal government.

Empowerment interactions have achieved positive results between natural resource agencies and Native American groups. Successful empowerment can be found in the 1998 case of the Maidu Stewardship Project in Northern California with the National Forest Service. (Donoghue et al., 2010). The project was developed in order to restore 2,100 acres of forestland using the expertise of Native American traditional silviculture. The Forest Service was “hands-off” and essentially turned the decision-making authority over to the Maidu tribe (Donoghue et

al., 2010, p. 31). The Forest Service provided considerable funding for operations to the Maidu. This allowed the Native American group to implement traditional knowledge of forest restoration on their terms, and not under the influence of the Forest Service (Donoghue et al., 2010). This case proved to be hugely successful.

Clearly, rights and laws protecting sovereign Indian Nations are crucially important for the federal government and tribal groups alike. Incorporating Native Americans in the decision-making process is the crux of federal-tribal consultation. However, conflict still arises creating barriers to engagement. The following section will highlight literature on natural resource conflict and resolution strategies.

Conflict and Barriers to Engagement

Emborg et al. (2012) explain to prevent conflict; effective managers need to be understanding of cultural contexts and capable of finding ways to distribute the power. The authors also conclude that natural resource decision-makers should consider the ecological as well as social consequences of policies (Emborg et al., 2012). This is similarly related to the notion of procedural and environmental justice (Kapoor, 2001). Blending scientific and traditional knowledge in policy drafting can improve relationships and offset the potential for conflict (Bengston, 20014; Emborg et al., 2012). Selin & Mendoza (2013, p. 5) explain that incorporating stakeholders “early and often” in the in decision-making processes can reduce the chances of conflict and litigation.

However, when engaging in scenarios that include multiple stakeholders, differences in values, and strained relations, conflict is almost inevitable (Daniels & Walker, 1997; Emborg, Walker, & Daniels, 2012). Natural resource management is no exception. As explained earlier, the relationship between the United States government and Native Nations is filled with strife.

Because of this, when the federal government and Tribal Nations interact, the likelihood of tension and conflict management increases substantially (Emborg et al., 2012; Selin & Mendoza, 2013).

Daniels and Walker's (1997) *Progress Triangle* describes conflict as having substantive, procedure, and relationship components (Figure 2). Substantive components are the physical aspects of an issue preventing effective engagement (Hansen & Cox, 2015). Examples could be meeting minutes or agenda items (Hansen & Cox, 2015). In the case of the GYE grizzly bear, the actual proposal for delisting the bear from the ESA would be the substantive component in the conflict.

Figure 2. The Conflict Progress Triangle (adapted from Daniels & Walker, 1997)

Procedure aspects of a conflict involve how decisions are made within an organization or agency, such as everything that goes into a consultation meeting (Hansen & Cox, 2015).

Procedure considerations in natural resource conflicts have to do with legal constraints or money and staffing issues (Daniels & Walker, 1997).

The relationship dimension of conflict involve all the abstract elements that act as barriers to effective engagement, including the parties histories with eachother, distrust and disrespect (Hansen & Cox, 2015; Lachapelle, McCool, & Patterson, 2003). Daniels and Walker (1997) believe the relationship variable is so important that very astute agencies should consider this dimension at the onset of any conflict, perhaps even before the substance and procedural components are analyzed. Agencies that assess these three dimensions of a conflict are better equipped to improve engagement and affect successful outcomes (Daniels & Walker, 1997; Hansen & Cox, 2015).

There are many potential barriers to engagement complicating the government-to-government relationship between the United States and Native Nations. Fortunately, extensive literature exists describing practices to overcome conflict in natural resource management. The following section describes the methodology for evaluating the perceptions of consultation, its barriers, and suggestions for improving the practice.

Chapter 3: Methodology

This study uses multiple sources of evidence for triangulation purposes increasing the strength of the research, as recommended by Bowen (2009) and Stemler (2001). First, a document review of relevant federal laws and policies requiring consultation with tribes was conducted. Interviews were also used to examine stakeholder interpretations of consultation. A second researcher analyzed transcript selections to ensure consistency in coding (Brinkmann & Kvale, 2015; Schreier, 2013). Finally, best practice propositions for improving consultation are provided using insights from the literature and stakeholder suggestions.

Study Area

The grizzly bear has been deemed the “symbol of America’s wildlands”, considering their massive size and range (US Fish & Wildlife Service, 2007, p. 1). Grizzlies can stand nearly 7 feet tall and normally weigh around 600 pounds. They can roam up to 500 square miles and live in forests, meadows, mountain landscapes and grasslands. Grizzly bears historically enjoyed a very large territory. The brown bear was known to have existed as far north as the Arctic Slope and south into Central Mexico. They once expanded east to Minnesota and west to the Pacific Coast (United States Department of Agriculture, n.d.). Today, the grizzly bear habitat has been reduced to 98% of its original expanse (National Park Service, 2013). In under 200 years, the population decreased from 50,000 bears to less than 1,000 due to western expansionism and development (US Fish & Wildlife Service, 2007). Presently, in the lower 48 states, brown bears reside in Wyoming, Montana, Idaho and Washington. The most sequestered community, the Greater Yellowstone grizzly (Wyoming, Montana and Idaho), reached an all-time low population of 136 bears by 1975 (National Park Service, 2013).

The grizzly was initially placed on the Endangered Species Act as *Threatened* on July 28, 1975. Since being listed, the Greater Yellowstone grizzly bear population has reportedly increased to nearly 500 bears (US Fish & Wildlife Service, 2007). The population rebound convinced the Service to delist the bear from the Act in 2007. The decision was highly contested resulting in litigation by stakeholders. By 2009, Federal courts overruled the Service and placed the bear back on the Act where it remains today. The Yellowstone Ecosystem Subcommittee of the Interagency Grizzly Bear Committee (consisting of federal, state, and tribal representatives) have recommend once more to the Service the bear be delisted from protections.

The Greater Yellowstone Ecosystem (GYE) is an immense swath of land covering nearly 28,000 square miles and 18 million acres (National Park Service, 2013). The area expands into three states: Wyoming, Montana, and Idaho (Figure 3). Two National Parks are located within the GYE, Yellowstone and the Grand Teton. Additionally, the GYE reaches into six national forests (Greater Yellowstone Coordinating Committee, 2014). The GYE encompasses wildlife refuges, and several cities. Land management of the GYE is divided by several entities. Approximately 50% is managed by the US Forest Service, 10% by the National Park Service, 30% is privately owned, and the final 10% is managed by tribal, state, and local governments (US Department of the Interior, 2011).

Figure 3. Map of the Greater Yellowstone Ecosystem (used with permission: Greater Yellowstone Coalition, 2004)

Documents

Document analysis is a useful method in qualitative research; many times, documents are used as the sole source of evidence in studies (Bowen, 2009). Documents can also be supplemental in research to provide context and suggest questions to be asked in qualitative interviews (Bowen, 2009).

The first research question for this study addresses the level of engagement consultation laws and policies require according to the framework. The documents collected were purposive, meaning they were selected based on their relevancy to the study. Namely, Executive Order No. 13,175 (2000), Secretarial Order No. 3,206 (1997), US Fish and Wildlife Service's Native American Policy (1994), and the US Fish and Wildlife Service's Tribal Consultation Handbook (2011) were used for analysis. These policies are closely related to consultation with American Indian tribes. This research is not a legal review, *per se*, rather an examination of the verbiage used in the documents to locate them within the public participation spectrum. The laws and policies are posted online in federal databases as public documents and can be downloaded for review.

Interviews

The three other research questions pertaining to perceptions of consultation, its barriers, and recommendations for improvements required interviews with stakeholders.

Instrument Development. The interview instrument (see Appendix B) has been adapted and modified from earlier federal-tribal natural resource research by Ohlson (2005). The original instrument used for this research was oriented specifically toward the grizzly bear consultation conflict occurring in the GYE. However, a Service staff member recommended the interview questions be broadened to cover consultation generally, not specific to the GYE controversy. The

respondent explained the grizzly bear delisting decision is ongoing and Service members would thus be unwilling to participate in an interview specific to that case. Therefore, the researcher modified the interview questions to expand the focus to cover consultation in general between the Service and Native Nations.

The interview questions were developed using an expert interview methodology (Brinkmann & Kvale, 2015). This method recognizes the interviewees as the experts in a phenomenological construct, such as consultation and the conflict surrounding the issue (Brinkmann & Kvale, 2015; Emerson, Fretz, & Shaw, 2011). The interviews were semi-structured in format (Brinkmann & Kvale, 2015). A standardized open-ended approach (Turner III, 2010) was used to structure the conversation but allowed interviewee freedom to share important thoughts that may not have been covered in the interview questions.

Interviews were divided into three parts. Interviews began with the participant's position title and involvement in consultation with the opposite government to ensure his or her expertise in the phenomenon. Concepts such as meaningful participation, a key component of consultation in federal legislation, were included. The next set of questions discussed perceptions of consensus, conflict resolution, and issues of sovereignty. The final section of the interview delved into the participant's perceptions of how consultation should be applied, perceived barriers to effective consultation, and suggestions improving the practice. This portion of the interview was entirely open for the interviewee to answer based upon his or her previous experiences.

Interview Sampling. The Service manual on consultation (2011) explains that Native Americans typically prefer meeting in person. A secondary form of consultation occurs in the form of telephone interviews. Funding and travel distances prevented the researcher from

conducting in-person interviews, an issue also plaguing many tribes according to the data. Thus, all 16 interviews were conducted by telephone.

Interviewees were purposively selected based on these measures: (1) membership/employment of a tribe or federal agency, (2) experience in consultation with the opposite government, and (3) willingness to participate in an interview. The research sample frame included experts within the Mountain-Prairie (Region 6) jurisdiction of the Service, and their referrals (which at times reached beyond the GYE study area). This included a diversity of General Schedule classifications throughout the Service.

The GYE boundary includes a portion of the Wind River Indian Reservation. The Eastern Shoshone and Northern Arapahoe tribes in Wyoming share the reservation (Bureau of Indian Affairs, 2015). Officials of the tribes are included in the Yellowstone Ecosystem Subcommittee of the aforementioned Interagency Grizzly Bear Committee (IGBC). The Shoshone-Bannock Tribes of Fort Hall, Idaho are the third Indian group to have membership in the IGBC. However, according to the National Park Service (2011), 26 different tribes have ancestral ties or oral traditions relating them to the ecosystem. It is customary and respectful (and many times legally required) for federal agencies to hold consultation meetings with tribes living within, as well as those maintaining ancestral ties to the area under review (Monette et al., 2011; Greater Yellowstone Science Learning Center, 2006).

Native Americans have repeatedly argued that an insufficient number of tribes have been consulted by the Service thus far, a statement acknowledged by the Service (GOAL, 2015; US Fish & Wildlife Service, 2015). The goal of this research paper was to interview representatives from as many of the 26 culturally affected tribes as possible (see Figure 4). Service employees involved in tribal consultation at the national, regional and local levels were contacted for

Figure 4. The 26 Native American Tribes Associated with the Greater Yellowstone Ecosystem (National Park Service, 2013)

interviews. Although the GYE is situated within Region 6 of the Service, the 26 culturally affected tribes now reside outside the scope of Region 6. Therefore, Service representatives were also contacted throughout in the various regions where the tribes now reside.

For both the Service and Native American interviews, purposive sampling was used. Purposive sampling allows the researcher to select participants with an expert knowledge of a subject matter (Tongco, 2007), and is mostly used for qualitative research (Miles, Huberman, & Saldana, 2013). A snowball referral technique was conducted where participants recommended additional interviewees at the end of their interview (Noy, 2008). Snowball sampling provides researchers with greater access to potentially “hidden populations” who may be unreachable without a referral (Noy, 2008, p. 330).

Interviews were stopped due to theoretical saturation, as well as for practical reasons. A set standard for the number of interviews to conduct for saturation is not defined in the literature (Fusch & Ness, 2015). For phenomenological research, Creswell (1998) says five to 25 interviews are an appropriate sample size. Other researchers (Guest, Bunce, & Johnson, 2006) argue that a minimum sample of 12 is satisfactory for achieving saturation. Therefore, for this research, a total sample size of 16 (eight per stakeholder group) meets the theoretical recommendations.

Interviews were also stopped for practical reasons. An appropriate respondent (natural resources manager, tribal historic preservation officer, or council member) was identified for each of the 26 tribes of the GYE. Each identified respondent (and in most cases, multiple respondents) were contacted for an interview. After exhausting the list of 26 tribes, eight respondents from eight different tribes agreed to be interviewed. No further tribal interviews

were granted. Thus, practical saturation was achieved. The Service interviews were stopped at eight to match the number of Native American interviews.

Interview Data Collection. Prior to beginning the interviews, Institutional Review Board (IRB) approval was obtained through the university to ensure ethical compliance (Brinkmann & Kvale, 2015). After IRB approval, the interview protocol began with researching the 26 tribes that have cultural or historic ties to the study area. Members of each tribe were contacted through either the Tribal Council, Tribal Historic Preservation office, or the Natural Resources division. Contact was made initially via email (when available), which included an invitation to interview with an attached recruitment letter. Follow-up phone calls were made one week after the initial email invitation. Two follow-up phone calls were made until abandoning efforts for that tribe.

Once granted an interview, a request for consent to have the interview recorded and later transcribed. All interviews were strictly confidential and interviewee's names will in no way be associated with the study to protect identities. Interviewees were assured that every interview is voluntary and only those willing to share their opinions will be interviewed. All interviews were recorded and transcribed upon consent of interviewee using a telephone service called *No Notes*.

Interviews (N=16) were conducted from July-October, 2015. Native American (N=8) and Service (N=8) interviews ranged from 27-100 minutes in length, averaging 47.5 minutes. Each of the 26 tribes related to the GYE were contacted for interviews. There were 100 contact attempts via telephone and email made to tribal representatives of different 26 tribes. Eight interviews were successfully conducted, yielding an 8% response rate. There were 27 contact attempts via telephone and email made to members of the Service. Eight interviews were conducted, yielding a 29.6% response rate.

Data Analysis (Documents and Interviews)

The interview transcripts were uploaded into *Dedoose*, a cloud-based computer program used for detailed qualitative research. Each federal and agency document was also entered into *Dedoose* for analysis.

A central focus of the first research question addresses the primary way in which federal agencies communicate tribal engagement requirements through formal memos and policies. Therefore, document analysis was the appropriate analysis method. According to Bowen (2009), document analysis requires three phases: skimming, reading, and interpretation. During the interpretation phase, keyword parent-codes were developed *a priori* for reviewing the federal documents to locate them on the IAP2 Spectrum of Public Participation (2007).

The second research question is focused on stakeholder perceptions surrounding consultation. Content analysis was used to review the interview transcripts as outlined by Bowen (2009) and Stemler (2001). The transcripts were deductively coded *a priori* using the IAP2 framework to establish coding categories (Brinkmann & Kvale, 2015; Stemler S. , 2001). The researcher investigated which level of participation seems to be most frequently cited based on themes that emerge from stakeholder responses. Comparisons and departures in consultation perceptions are discussed in the results section.

The third and fourth research questions focus on barriers to consultation and stakeholder suggestions for improving the practice. To address these questions, emergent, in vivo codes freely developed when analyzing interview data. The emergent codes regarding barriers to consultation were grouped into two themes. These themes are process and relationship barriers, referring to Daniels and Walker's (1997) theory on natural resource conflict management and progress.

The unit of analysis was each individual interview transcript or federal document. The coding units were sentences and phrases within the unit of analysis. After the emergent coding scheme was established from reviewing four interviews, this same scheme was applied to the remaining data (Schreier, 2013).

To ensure validity of the results, inter-rater reliability measures were completed as recommended by Stemler (2001). After the initial coding, a second researcher went through the data and coded it independently using the *Dedoose* software. The percent-agreement figure was used to measure inter-rater reliability (Stemler S. E., 2004). Percent agreement is calculated by adding the number of same-rated scores divided by total number of sections. Three separate tests were created based on three primary research questions (level of engagement, barriers, and best practice suggestions). The percent agreement scores are listed below (Table 1).

Table 1.

Percent Agreement Scores for Between-Rater Reliability

<u>Test Name</u>	<u>Percent Agreement</u>
Levels of Engagement	75%
Best Practice	82%
Barriers to Consultation	85.7%
<u>Aggregate Score</u>	80.9%

Chapter 4: Results

The documents and interviews revealed many themes related to perceptions of consultation between the federal government and Native American tribes. The documents varied in engagement level requirements, adding to the confusion and ambiguity surrounding consultation. Both the Native American and Service stakeholders conveyed thoughts on how consultation should be applied, what barriers are present, and how to improve the practice. To begin, the following section will discuss results around the federal policies on consultation with Native Nations.

Document Review

Four federal documents were reviewed and analyzed. The policies ranged from a government-wide directive (Executive Order No. 13,175, 2000), to department-specific (Secretary of the Interior Order 3206, 1997), and finally agency-explicit (US Fish & Wildlife Service Native American Policy, 1994; Tribal Consultation Handbook, 2011). Each policy discusses consultation with Native American tribes and discloses a range of requirements for federal-tribal engagement.

Research Question 1: What Public Engagement Practices Are Required by Federal Policies? Analysis of the data to answer this research question required a coding scheme developed *a priori* using the IAP2 (2007) Spectrum of Engagement framework (i.e. *Inform, Consult, Involve, Collaborate and Empower*) (see Table 2).

At the lowest end of the spectrum, *Inform*, none of the government policies recommended this form of engagement.

Table 2.

<i>Engagement Requirements by Policy</i>					
<u>Policy</u>	<u>Inform</u>	<u>Consult</u>	<u>Involve</u>	<u>Collaborate</u>	<u>Empower</u>
Tribal Consultation Handbook (2011)			X	X	
Executive Order No. 13,175 (2000)		X	X	X	
Secretarial Order No. 3,206 (1997)		X	X	X	X
FWS Native American Policy (1994)			X	X	

The next level, *Consult*, was discussed in two policies- Executive Order No. 13,175 (2000) and Secretarial Order No. 3,206 (1997). These policies are government and department-wide in scope. “Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications” (Executive Order No. 13,175, 2000, p. 67250). Because meaningful and timely is not clearly defined in the policy, the notion of seeking the input of Native Americans locates this phrase at the *Consult* level of engagement.

All four policies made references regarding consultation that parallel the *Involve* level of the IAP2 (2007) spectrum. This excerpt, from the Tribal Consultation Handbook (2011), explains the Service’s engagement intentions: “It is the goal of the Service to include federally-recognized Tribes in its decision-making process, from initiation to completion, for actions that may affect those Tribes or their membership” (p. 2). The Service intends to work directly with Native Nations throughout the decision-making process, indicating the *Involve* level of engagement.

Each policy also alludes to *Collaborate* concepts of the framework. The Tribal Consultation Handbook (2011) states, “To consult means to ask for advice or to seek an opinion...” (p. 12). The *Collaborate* level of the IAP2 Spectrum (2007) notes the promise to the

public from agencies is to look to the public “for advice and innovation in formulating solutions and incorporate your advice” into policies (para. 11). The Native American Policy (1994) explains, “The Service is committed to entering into contracts, cooperative agreements, or grants with Native American governments...” (p. 4). The Service’s Tribal Consultation Handbook (2011) also explains the agency works “to ensure that tribal governments are provided sufficient opportunity to express their perspectives, concerns, and alternatives to the policies” (p. 2). This clearly is associated with the *Collaborate* public participation goal of “partnering with the public...including the development of alternatives and identification of preferred solutions” (IAP2, 2007, para. 10).

The *Empower* level of engagement was mentioned by one policy, Secretarial Order No. 3,206 (1997). In directing all Interior Department agencies, the Order explains, “the Departments shall give deference to tribal conservation and management plans for tribal trust resources...and conservation needs of [Endangered Species Act] listed species” (p. 5). The Secretarial Order (1997) further explains, “The Departments shall respect the exercise of tribal sovereignty over the management of Indian lands, and tribal trust resources” (p. 5). This meets the IAP2 agency promise to the public that they will “implement what the public decides” (para. 14). However, the empowering language by the Department of Interior is describing management of lands owned by Native Nations—not federally owned or managed lands.

It is apparent the federal government appreciates a range of engagement practices. This is not helpful, though, in circumstances where the policy is contentious and in need of clarification. Such is the case in federal-tribal consultation. To help illuminate which levels of engagement are most emphasized in federal policies on consultation, it is observed that all four policies suggest *Involve* and *Collaborate* levels of participation for Native Nations. These participation levels are

consistently emphasized from the earliest analyzed policy from 1994 to the Handbook written in 2011. There does not appear to be a temporal trend throughout the years from one level of engagement to the next. If anything, perhaps the federal government intended to broaden the participation possibilities through Secretarial Order No. 3,206 (1997) and Executive Order No. 13,175 (2000), as these are the only two policies analyzed that reach as low as the *Consult* level. The participation levels emphasized constricts once more to *Involve* and *Collaborate* in the Handbook (2011).

Interviews

Research Question 2: How do the various governments think consultations are should be applied in terms of the IAP2 framework? A coding scheme was developed *a priori* using the IAP2 spectrum to inform the codes for this research question. The stakeholders both diverged and agreed upon levels of engagement that are appropriate for their relationship.

Inform. At the lowest end of the range of engagement, 50% of the Native American respondents indicated they felt the Service uses the *Inform* level of participation during consultation (see Table 3). Unfortunately, this method does not settle well with the Native American respondents, as 0% desired this form of engagement for federal-tribal consultation. As one respondent indicated, “It’s just kind of frustrating, you know? It’s frustrating because [at the time of consultation] it’s like it [the decision is] is almost a done deal” (Interview 7).

Table 3.

Perceptions of Consultation Applications

<u>Level of Engagement</u>	<u>% Occurring</u>		<u>% Desired</u>	
	NA	Service	NA	Service
Inform	50% (4)	62.5% (5)	0% (0)	37.5% (3)
Consult	50% (4)	37.5% (3)	25% (2)	75% (6)
Involve	12.5% (1)	75% (6)	75% (6)	75% (6)
Collaborate	12.5% (1)	50% (4)	50% (4)	62.5% (5)
Empower	0% (0)	12.5% (1)	0% (0)	12.5% (1)

Note. Number in parentheses indicates (n) responses. Interviewees at times mentioned more than one level of engagement, percentages therefore add to more than 100%.

Similarly, 62.5% of the Service respondents acknowledged the *Inform* method occurring in practice (Table 3). However, standing in stark contrast to the Native American responses, 37.5% of the Service representatives agreed with this method of engagement. As one Service respondent explained, “I think more importantly we’re giving them the opportunity to know what we’re doing” (Interview 9).

As explained by other federal agencies (EPA, 2015), the *Inform* level really is not a form of public engagement at all. It is typically understood to be one-sided and obligatory--not done in the spirit of relationship building (Predmore et al., 2011). Both sets of stakeholders widely acknowledge the engagement level of *Inform* as frequently occurring in the field.

Notifying Native Nations what the Service is doing, without any apparent opportunity to offer any input, seems to be alluded to by this Service representative as a desired method for consultation.

Consult. Half (50%) of the American Indian respondents felt federal engagement tends to be conducted in a manner consistent with how the IAP2 framework outlines *Consult*. Only 25% of Native American interviewees accepted this form of engagement as desired. Below is an excerpt from a tribal representative acknowledging the practice of consultation as consistent with how it is defined in terms of the IAP2 framework, presumably agreeing with it as a fair method of engagement. “They’ll write us and ask us for our opinion, or what we think, or if we got anything to say about it, or how we feel about it, well then... at that time, we can give them our answers” (Interview 6).

Nearly all (75%) the Service respondents agreed that engaging Native Americans similar to how IAP2 defines *Consult* is most desired (see Table 3). However, only 37.5% of the respondents observe it occurring at this level in practice. One representative defined the engagement playing out in this hypothetical conversation between the stakeholders:

Can I talk to you about what I want to do, and then can I get feedback from you? And when you give me feedback, can I spend some time to think about the feedback and then get back to you as to why I think that can or can’t work? (Interview 5)

This version of consultation moves beyond the *Inform* standard of public engagement because opinions are solicited from stakeholders (IAP2, 2007). The Native American respondents’ experience with being contacted for input is consistent with the minimum opportunity for engagement as defined by the framework (EPA, 2015; IAP2, 2007). The stakeholders agree that the input gathered needs to be considered and explained how it will (or will not) be used in the decision (Leong et al., 2009). Despite the cited Native American disappointment with the process, public engagement at the *Consult* level does not require a path

to effect policy outcomes—input merely needs to be gathered and sincerely considered (IAP2, 2007; Leong et al., 2009).

Despite the Service conducting consultations mostly in line with the IAP2 requirements, it only meets the desires of 25% of the Native Nations. While an improvement over the 0% agreement at the *Inform* level, it is clear a higher level of engagement is required to satisfy tribes.

Involve. When explaining how consultation should be conducted, 75% of the Native American respondents referenced elements of the *Involve* standard of engagement. Only 12.5% of respondents felt that *Involve* is actually occurring in practice. When asked what consultation means to one Native stakeholder, the response was, “Consultation is building our concerns into your planning process at the early stage so you are thinking about it as you step through your development” (Interview 3).

Another Native American touched on the notion of early involvement “...in other words, consultation should be done in advance of what’s proposed” (Interview 7). This is very similar to how the Service representatives explained the timing of consultations. One respondent posed a question the Service should ask itself at the point of engagement.

Are we actually giving the tribes the opportunity to engage before decision has been made, to provide input and guidance as to tribal values, right or interests...so that they may be taken into the decision action or effort that we are taking? (Interview 11)

Tribal representatives discussed consultation in terms of meeting in-person, even at the site under review. Early involvement in the decision making process was addressed by nearly all respondents. This practice moves engagement beyond the simple *Consult* level and into a higher echelon of participation. Agencies engaging at the *Involve* level must reflect the public’s

concerns into the policies and have direct interaction with the public from the beginning to the end of the process (IAP2, 2007; Leong et. al, 2009).

The *Involve* level of engagement shows true promise for improving relations between Native Nations and the Service. Clearly, Native American and Service representatives share similar values for engagement. The majority of participants from the Service (75%) and tribes (75%) desire engagement at the *Involve* stage. Interestingly, each of the four federal policies analyzed on consultation also suggested the *Involve* standard of engagement. However, Service representatives tended to perceive *Involve* occurring more often (75%) than how Native American respondents (12.5%) observed. Further exploration into this stratum of participation could be of value for the Service when conducting consultations.

Collaborate. Collaborative management is becoming an exceedingly popular public engagement approach in natural resources (Cronin & Ostergren, 2007; Johnson et al., 2005; Selin, Schuett, & Carr, 2010). However, *Collaborate* sentiments were only mentioned by 50% of Native Americans when describing the level of engagement they prefer. Additionally, only 12.5% perceived collaboration occurring in practice.

Many Service respondents (62.5%) preferred the *Collaborate* standard, and 50% observed it transpiring in the field. This relatively low frequency of occurrence in federal-tribal engagement may have several contributing factors. Collaboration can be compromised when there is a history of distrust between stakeholder groups, or when there is a perceived gap in decision-making influence (Selin & Mendoza, 2013; Selin & Chavez, 1995). Previously quoted excerpts from respondents, as well as more forthcoming, allude to these barriers. Despite the acrimony, both Service and Native American representatives referenced collaboration as a desired approach to engagement.

Native American respondents expressed their desire to be a direct part of the decision-making process. In describing how consultation should be conducted, tribes felt they should be “given a pathway to affect the outcome [of the policy decision]” (Interview 1). This points to the IAP2 *Collaborate* promise of looking to stakeholders for advice in developing the plan and using their input “to the maximum extent possible” (EPA, 2015; IAP2, 2007, para. 11).

Another tenet at the *Collaborate* standard is a focus on consensus building (IAP2, 2007). Various descriptions of consensus were discussed. Often times, consensus was discussed in terms of compromise or total agreement. As one subject explained, “[The goal is for] everybody to agree on...how the project should take place. Everybody wants to...have their own part in the project and consultation is to have everybody at the table, and to agree upon...what everybody wants to do” (Interview 4).

Interestingly, several Service interviewees also described elements of consensus seeking when consulting Native Nations.

We sit down together and decide what is in the best interest of everybody, and of course the resource. When we work out in detail what we need to do, we should honor that and do it as part of the consultation process. (Interview 16)

Certainly, what this Service representative explains as the ideal consultation scenario aligns with Ansell and Gash’s (2007) collaborative model of collective decision-making.

Beyond consensus seeking and meaningful involvement, both the Service and Native Americans discussed thoughts of cooperative or collaborative management of resources. Collaborative management arrangements allow each stakeholder to offer their expertise and share resources where the other is lacking. The success of this approach has been proven in

practice (Donoghue et al., 2010; Ohlson et al., 2008). The desire for greater management control, yet not operating entirely autonomous from agency support is a hallmark to collaborative agreements (Bengston, 2004; Donoghue et al., 2010; Selin & Mendoza, 2013).

Empower. Notions of the *Empower* standard were not offered as a preferred level of engagement by Native Americans. The situation is relatively unique as the primary purpose for the field station is to support whatever natural resource goals the bordering Indian Reservation has. “We are at the discretion of the tribal leadership to say, ‘we want you to do this or no, we don’t want you to do that.’...We would certainly obey” (Interview 15).

For this field station, the Service implements whatever the Tribes decide. This gives the Tribes the final decision-making authority, a key attribute of the *Empower* level of engagement (IAP2, 2007). In this particular circumstance, the Service biologists “manage it *as if it was* our own land so to speak, of course at the discretion of what the tribes want us to do” (Interview 15, italics added for emphasis). The land is not in the Service’s possession, rather, the Tribes’. While agencies have at times used the *Empower* management approach on federally owned lands (Donoghue et al., 2010), it is extremely rare (EPA, 2015).

Research Question 3: What barriers are impeding consultation? Native American and Service representatives were able to convey many themes related to consultation impediments. These barriers were roughly divided into two groups based on Daniels and Walker’s (1997) natural resources conflict progress theory. The two categories were process and relationship barriers (see Table 4). The process barriers, detailed in the following section, were primarily administrative in nature.

Process Barriers. Hansen and Cox (2015) explain process barriers as all the logistical issues that go into a consultation meeting. This includes travel constraints, funding issues, and training gaps. These process barriers are obstacles for many natural resources groups (Lachapelle et al., 2003); the Service and Native tribes interviewed are no exception.

Funding and Logistical Issues. A large majority (75%) of Native representatives mentioned a logistical barrier impeding consultation (Table 4). One Native American closely linked to consultations explained that small budgets can be a major inhibitor to consultations saying, “The distance plays a factor in us not being able to make it [to consultation meetings] because sometimes it is too far for our budget...[we] can't cover the travel for that distance” (Interview 4).

Service representatives felt similarly as 75% of the respondents referenced some form of logistical impediment preventing effective consultation (Table 4). One representative voiced frustration over prior consultation experiences saying, “In fact, I was always hamstrung with funding. I mean, let’s face it, it [consultations with tribes] is not a high priority for the Service” (Interview 16).

Table 4.

Perceptions of Process Barriers to Consultation

<u>Barrier</u>	<u>n</u>		<u>%</u>	
	NA	Service	NA	Service
Funding and Logistical Issues	6	6	75%	75%
Ineffective Engagement	4	7	50%	87.5%
Insufficient Agency Training	4	7	50%	87.5%
Insincerity	3	7	37.5%	87.5%

Note. Interviewees at times mentioned more than one best practice suggestion, percentages therefore add to more than 100%.

Ineffective Engagement. Notions of late or total lack of involvement in the decision-making process, engaging the wrong people, poorly run meetings and other barriers to effective engagement were mentioned by 50% of Native Americans interviewed. A resounding 87.5% of Service representatives agreed with this conviction. One Service representative explained, “An example is the grizzly bear issue. The tribes are really upset; they didn’t feel like they were consulted with at all...some of which could have been averted on our part but we weren’t proactive enough” (Interview 15).

A Native American representative detailed his experience in a recent consultation meeting, also citing a lack of effective engagement practices.

...It wasn’t a consultation meeting in the eyes of some of the more experienced THPOs (Tribal Historic Preservation Officers)... because a lot of the tribes weren’t involved in the beginning of the process...and they [Service] were already like in the 3rd or 4th stage where they’re ready to go ahead and go on with the project. (Interview 4)

Late engagement with tribes resulted in conflict in each of these examples. While obviously overdue, it could be argued that at least some version of engagement occurred eventually. A complete neglect of consultation is not unheard of according to one Native representative: “I don’t think there was any consultation meetings...that I was aware of” (Interview 7).

Selin and Mendoza (2013) explain that prompt and repeated engagement with stakeholders can help prevent conflict. Another representative explained, “Think about how people define consultation--it’s not being spoken down to when the document is almost done” (Interview 3). When consultations occur after decisions have already been made, engagement

lacks authenticity-- an issue that federal agencies have historically struggled with (Smith & McDonough, 2001).

Insufficient Agency Training. For half (50%) of Native American interviewees, the perception of Service representatives being unaware of important tribal customs is seen as a barrier. For instance, “They don’t understand fully how we... want to do a prayer first and I think that's one thing that needs to be brought to their attention. That we need to have our prayer before we start our meetings” (Interview 4).

Beyond cultural milieus, Native American respondents felt many field-level Service staff simply are oblivious toward federal policies on consultation.

I have talked to refuge personnel here that weren’t even aware that the Service had a Native American Policy, let alone knowing what was in it. I think there is a disconnect from the policies drawn up and approved in Washington [to the field staff]. (Interview 3)

This notion of the perceived ignorance on Indian Affairs policies by the Service may stem from a lack of training. Simply put by a Native American representative, “I have never seen any indication that there is any training for Service staff in any of the branches” (Interview 3).

The large majority (87.5%) of Service respondents admitted misconceptions and obliviousness toward Indian Affairs. “It [consultations] ends up being inconsistently done because of the lack of direction or people just don’t know. It is not anybody’s fault, they don’t know” (Interview 11).

Several Service staff cited a need for further training. One in particular explained that increased education of employees would improve the consistency of consultation applications, and possibly heal historic wounds.

That poses our biggest challenge to consultation. We have folks that may not always understand the history, the relationship, how much the relationships today are going to be colored by the history of how that tribe interacting with United States in the past.

(Interview 10)

Sometimes, the way an agency is structured and has been molded by its staff may not lend itself toward certain values and processes of engagement (Lachapelle et al., 2003). Agency culture is fundamental to how they engage the public, and issues of the culture can be hard to alter (Smith & McDonough, 2001). However, strong leadership and incentive programs to improve training of staff can slowly affect this change (Smith & McDonough, 2001).

Insincerity. Three tribes (37.5%) felt the Service is insincere in consultations and does not follow through with promises or assurances. A resounding 87.5% of Service representatives agreed that insincerity is a struggle. A Service agent posed a hypothetical consultation question their colleagues should consider, “Are we meeting just to satisfy an obligation? [Consultation] is not meeting to check a box” (Interview 11). Additionally, Service representatives noted the notorious “Dear Tribal Leader” is an insincere, impersonal method to consulting Native Nations.

The Native American Policy was mentioned by one tribal representative as a “lofty document that looks good” with “a lot of feel good language” (Interview 3) but its principles are not executed. Service representatives felt similarly saying, “I think it’s looked at, but quite often it’s not followed through with” (Interview 16). It is clear the policy and its directives are perceived as contrived and hollow by both parties.

The impression of inauthenticity and separation extends beyond the federal policies and into the staff. Native representatives described Service members as “federal bureaucrats from

Washington that have...a big disconnect from tribes...they are so removed from us” (Interview 7). Tribes perceive Service members as government operators that “say something is going to be changed to this or that way and it isn’t” (Interview 7). A Service representative also recognized the divide and thinks it may stymie consultation. “There’s a lot of people who...might be afraid to go to a [Native area] because it is like going to a third-world country...” (Interview 14).

These unfortunate examples of insincere engagement are what Lachapelle et al. (2003) call *planning engineering*, which fails to observe social nuances intrinsic to engaging Native Nations (p. 485). Furthermore, process barriers such as insincerity in public participation gives the impression that values and concerns are not appreciated (Booth & Halseth, 2011). When public interests are not valued, deeper relationship barriers such as distrust or disrespect may develop (Booth & Halseth, 2011).

Relationship Barriers. The relationship barriers to consultation conveyed by Service and Native American representatives were interpersonal in nature. Three primary relational barrier themes emerged during the interviews. These were disrespect, distrust, and racism.

Disrespect. A general sense of disrespect coming from Service representatives was felt by 62.5% of Native Americans interviewed (see Table 5). Likewise, 62.5% of Service staff also acknowledged sentiments of disrespect toward Native Nations during consultation (see Table 5).

In one startling example, a Native American representative conveyed a recent story where he felt a tribal elder was blatantly disrespected in public by Service staff.

There was an instance where [deleted for anonymity] and his sons, he got 3 boys, they wanted to pay respect to the bear, to where they wanted to sing a song for the bear and

they weren't allowed to do that... and what made it bad was they allowed other people to go ahead and voice their opinion but they won't... let that song happen. (Interview 4)

Table 5.

Perceptions of Relationship Barriers to Consultation

<u>Barrier</u>	<u>n</u>		<u>%</u>	
	NA	Service	NA	Service
Disrespect	5	5	62.5%	62.5%
Distrust	3	4	37.5%	50%
Racism	2	0	25%	0%

Note. Interviewees at times mentioned more than one best practice suggestion, percentages therefore add to more than 100%.

The Native representative was particularly troubled by this example, explaining, “They kind of embarrassed him in front of everybody, you know, and it wasn’t right” (Interview 4). This representative conveyed that all parties should be able to voice their opinion at consultations, what Booth and Halseth (2011) call “leveling the playing field” (p. 902). This is a form of procedural justice in natural resource decision-making, and is crucial to effective public engagement (Smith & McDonough, 2001).

Disrespect was also discussed in terms of power differentials and unfair representation. A Service manager described it this way, “For example, when the state government works with the Service, they are on it. When the tribes ask the Service for things, it doesn’t happen to that same degree... There is no equality whatsoever there” (Interview 16). This also reflects the conflict described by Booth and Halseth (2011) as “leveling the playing field” (p. 902). By fully engaging only stakeholders that are perceived to have greater power, injustice in the decision making-process is committed (Booth & Halseth, 2011; Smith & McDonough, 2001).

Procedural injustices and “leveling the playing field” issues also apply to unfair funding mechanisms (Booth & Halseth, 2011, p. 902). One Service manager was especially concerned over a perceived bias in federal funding related to Native Nations.

The tribes don't get the Federal Aid dollars that States and US Territories get... They're kind of left out and that's where you will hear these Tribal leaders screaming... '[If] this is such a priority, why don't you help us? Why don't you fund us? You don't want to fund us, but yet you want us to be an equal partner.' (Interview 16)

Disrespect was also discussed in terms of “paternalism”, and being “talked down to”. Multiple Service representatives described a history of paternalism in dealing with tribes. Each manager stated that avoiding a paternalistic approach with Native Nations is an area they are actively working on with their staff.

Distrust. Distrustful themes included opinions of blaming, arguments and accusations. The theme of distrust was discussed by 37.5% of Native American respondents. Distrust issues were mentioned by 50% of Service managers. When stakeholders have a history of distrust, public engagement can be difficult if not impossible (Selin & Mendoza, 2013). As discussed, the United States and Native Nations have an unfortunate past (Bengston, 2004). One Native American respondent discussed his tribe's history of broken trust with the United States.

The people [federal government] that were supposed to be looking out for our best interest are the ones that were involved. Of course, that was them people back then and all that...but even to this day, they're going to get the blame for it. (Interview 6)

A Service member in an entirely different region from this Native American respondent echoed this exact belief. “There may be memory of wrongs that occurred 50, 100, or 150 years ago that still come up in a meeting today” (Interview 11).

The ongoing effects of distrust can be the result of the design and culture of the agency (Lachapelle et al., 2003). As explained by a Service representative, “I think a lot of it are just really small things, people being scared to talk to each other. Tribes have a natural reluctance to talk to the government, and the government has a natural reluctance to talk to anybody” (Interview 12).

Institutional and cultural issues of an agency can slowly be overcome by rewarding employees who engage with tribes effectively and appropriately (Lachapelle et al., 2003; Smith & McDonough, 2001). It may be necessary to remove from the organization those with discriminating beliefs about engaging Native Nations (Smith & McDonough, 2001). By making fair decisions that incorporate Native American opinions will therefore increase trust between the governments (Smith & McDonough, 2001).

Racism. While related to the previous themes of distrust and disrespect, the gravity of outright racism experienced by Native Americans from Service personnel demanded a section of its own. The fact that two (25%) Native American representatives in separate regions discussed sentiments of racism coming from the Service shows this may not be an isolated issue. As one respondent explained:

I mean you get to a place where you insinuate your professional colleagues may have some racist tendencies... I tried real hard not to think along those lines but yes the reality

of it was when you really started thinking about it, that's kind of where it took you, which was unfortunate. (Interview 3)

The broad discussion of racism within natural resource management has been occurring for some time (Wilmsen, et al., 2012); even specifically regarding Native Americans (Bengston, 2004; Kapoor, 2001). Racial barriers to effective engagement can be based on the institutional design and culture of an agency (Lachapelle et al., 2003; Smith & McDonough, 2001). The herculean shift of culture change can occur through strong leadership, incentive programs for staff training and ensuring culture sensitivity and inclusion criteria in consultation meetings (Bengston, 2004; Kapoor, 2001; Smith & McDonough, 2001). As a final resort, an agency may need to make personnel changes to achieve fairness in decision-making (Smith & McDonough, 2001).

None (0%) of the Service representatives mentioned racism as a barrier to consultation.

Research Question 4: What are recommendations to improve consultation between the Service and Native Nations? The definition of consultation is undeniably ambiguous, a statement acknowledged by the Service. Therefore, it seems consultation should be conducted in a manner consistent with how Native Americans and Service representatives agree to understand the process. This study intended to reveal how resource managers of Native Nations and the Service interpret consultation. The controversy in the GYE highlights how the divergence of perceptions between Native Nations and the Service can become newsworthy. The following are several suggestions for improving the practice posited by the stakeholders during interviews.

Improve and Make Required Agency Training on Indian Affairs. Four (50%) different representatives suggested the Service should improve and make required training on

consultations and Native affairs (Table 6). By improving training, field-level staff that directly engages with tribes will have cultural sensitivity and awareness. For instance, providing food at consultations is a simple gesture yet shows appreciation for the tribal culture.

Table 6.

Suggestions for Improving Consultation

<u>Suggestion</u>	<u>n</u>		<u>%</u>	
	NA	Service	NA	Service
Improve Agency Training	4	8	50%	100%
Early Inclusion in Process	4	6	50%	75%
Meet on/near Tribal Land	4	5	50%	62.5%
Cooperative Management	4	1	50%	12.5%

Note. Interviewees at times mentioned more than suggestion, percentages therefore add to more than 100%.

Many Native American groups hold a prayer service and other traditional rituals at the introduction of a meeting. Unfortunately, the Service has not always respected this. “Sometimes they overlook that and...I don't know it just seems like they don't agree with stuff like that” (Interview 4). Instead, this Native American felt “they just go ahead and get right to their business...but it would be nice to have a prayer” (Interview 4). Incorporating prayers and religious elements into meetings may be unconventional for natural resource managers (Bengston, 2004). It is important to allow for these rituals as a show of respect for Native cultures (Bengston, 2004; Monette et al., 2011).

Every (100%) Service representative concurred with the need for more training (Table 6). Training improvements will help Service staff understand the diplomatic seriousness of their work. “This is something that I’ve been working on is helping everybody understand that when we’re consulting with a tribal government, we’re consulting with another nation” (Interview 14).

The Service is actively working on creating more training opportunities for staff that engage regularly with Native Americans. However, a tribal representative explained that merely offering training opportunities for Service staff might not be enough. In the respondent's opinion, training may need to be highly incentivized or made required for promotional advancement. "To get people to do things you almost have to issue an order of requirement...the training should affect how you move up through the ranks, the pay scale, the whole nine yards" (Interview 3).

It is possible the Service could conduct these trainings in conjunction with Native American representatives. Further research is needed in this area.

Early Inclusion in the Decision-Making Process. Echoing the extensive literature on effective public engagement, 50% of Native American respondents recommended early inclusion in the decision-making process to improve the relationship. "The biggest is to be included at the beginning of things. When they start making policies and everything we should be at the table then, and not when the decisions are already made" (Interview 8).

Most Service managers interviewed (75%) agreed that early inclusion is paramount to meaningful consultation with Native Nations. "It boils down to notifications at the earliest stages possible" (Interview 10). Early inclusion requires foresight, even if the tribal implications are not obvious.

Even when they do not see the tribal effect, most likely it is going to effect a tribal population somewhere. So automatically tribal thought needs to come into the decision-making process right from the beginning, and the Service does a very poor job of that. (Interview 12)

Meet on or near Tribal Land. Financial issues plague Native American tribes, which prevents them from traveling far distances to attend consultation meetings. Half (50%) of the Native American respondents explained that hosting consultation on or near tribal lands makes participation more likely. “They got to have them where the people would be able to attend” (Interview 7). The Service (62.5%) largely agreed with this.

Meeting on or near Tribal land necessarily means meeting in-person. While many versions of video or teleconferencing are available, they do not achieve the same interpersonal satisfaction that is crucial for many Native Americans (Monette et al., 2011). As a Service manager explained:

You can do stuff over the phone or through email but it’s not anything like being with someone, shaking their hand, the whole face-to-face contact. The videoconference thing, that’s all great, but certainly in Indian Country I know this [face-to-face contact] is something that is culturally important. (Interview 15)

Indian reservations in some states (such as Oklahoma) are near each other in proximity. Hosting a consultation on reservation land can allow agencies to meet with multiple Native Nations on a single trip⁴, bypassing some logistical barriers. In addition, hosting consultation in-person on tribal lands shows respect for treaties where Native Nations reserved parcels of land in exchange for millions of acres ceded to the burgeoning United States. As a Service

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⁴ Hosting consultations on reservation land allows for meeting with several tribes on a single trip. However, as one respondent explained, “When they consult they want to do it on one-on-one, they don’t want 40 different tribes in the room.” Consultations should still be conducted individually, when possible.

representative explained, “In order to build trust you have to have that physical contact with people” (Interview 15).

Cooperative Management. Many Native Nations are eager to use traditional knowledge and natural resources aptitude in conjunction with federal agencies (Bengston, 2004; Donoghue et al., 2010). Cooperative management has seen considerable success in practice (Donoghue et al., 2010; Ohlson et al., 2008). Several (50%) Native American representatives interviewed were also keen to flex their resource management muscle. “We are interested in a management agreement with refuges here...there was a similar agreement in one of the refuges in Alaska, and I know a couple of other tribes...that are interested in similar things” (Interview 3).

By partnering with federal agencies, tribes are able to exercise control while developing resource management skills. “I am into cooperative agreements because we don’t have the expertise to manage a Park [alone]. There’s no way. [This way] we can learn how to manage the park properly” (Interview 7). Unfortunately, management agreements are sometimes met with resistance, preventing the collaboration from taking effect. “I think there are number of tribes that seem to be interested, and what seems to be happening is there is such opposition [from the Service] (Interview 3).

Despite the perceived Service opposition, and only one (12.5%) agency representative suggesting it as a best-practice solution, the Service has successfully worked cooperatively with some Native Nations. In the words of a tribal respondent:

We have consulted with the Service about reacquiring [a federal preserve] as a tribal possession. We don’t expect them to completely relinquish their hold on it but they have helped us in recognizing some of the barriers that would hold us back from putting

ourselves in a place to reclaim it and also have a joint effort in overseeing that area.

(Interview 13)

This positive experience has been refreshing for the tribe and is a sure sign of improving relations. “I just can’t say anything negative about the US Fish & Wildlife Service at the time”

(Interview 13).

Chapter 5: Discussion

This study was an inquiry into how Native American and Service representatives understand government-to-government consultation in relation to the IAP2 Spectrum of Public Participation (2007) framework. Broadly, this research addressed these questions: What type of public engagement do federal policies require for consultation? How do Native American and Service representatives think federal consultation should be conducted? In addition, what barriers are preventing effective consultation and what are solutions for the future? While literature abounds regarding general engagement with Native communities (Bengston, 2004; Cortes-Vazquez & Zedalis, 2013; Cronin & Ostergren, 2007; Donoghue, et al., 2010; Lute & Gore, 2014; Ohlson, et al., 2008; Waage, 2003), there has been virtually no previous research conducted on perceptions of government-to-government consultation.

Major Study Findings

The United States has maintained a lengthy diplomatic relationship with Native Nations (Harjo, 2014). While at times ignored or altogether abrogated, the treaties that largely established this government-to-government relationship remain relevant to this day (Canby, 2009; French, 2003; Harjo 2014; National Congress of American Indians, 2014). As sovereign nations, tribes enjoy a multitude of special rights that set them apart from other segments of the American population (Harjo, 2014). One affordance of treaty rights is consultations with the federal government on policies that have tribal implications.

Despite the abundance of legislation, little is fully understood or agreed upon about the practical implications for government-to-government consultation (Ohlson D. L., 2005). The Service handbook on consultations (2011) admits, “There is no universally agreed-upon definition for *consultation* throughout the federal government” (p. 11). Yet, federal agencies are

still required to conduct consultations in the face of a puzzling lack of clarity, procedural requirements, or practical expectations for engagement (Greenberg & Greenberg, 2013; James E. Rogers College of Law Indigenous Peoples Law & Policy Program, 2013; McKeown, 1997; Ohlson D. L., 2005; Ohlson, Cushing, Trulio, & Leventhal, 2008; Routel & Holth, 2012-2013). It is reasonable, then, when Native Americans become frustrated during occasions that require consultation (Monette et al., 2011; Ohlson, 2005; GOAL, 2015; McKeown, 1997; Zellmer, 1998). Considering the diplomatic seriousness of consultations as an extension of the treaty relationship between the United States and Native Nations, developing an understanding of the practice is imperative. This study attempted to close the research gap surrounding stakeholder perceptions of consultation required by federal order.

Using the IAP2 (2007) framework as a guide, the results indicated that federal policies on consultation tended to reference *Involve* and *Collaborate* standards of engagement most frequently. However, in contrast to what the federal policies seem to require of agencies, Native American respondents observed the Service conducting lesser levels of engagement such as *Inform* and *Consult* during consultations. In their perspective, engagement occurring at these standards is insufficient.

The *Involve* level of engagement was most desired by Native American respondents, followed by *Collaborate*. Service representatives concurred, agreeing that the *Involve* stratum of engagement is a highly favored tactic for consultations. In order to meet the desires of both Native Nations and Service personnel, the agency needs to increase their participation efforts focusing on (at minimum) *Involvement* techniques. These are early involvement throughout the process, incorporating Native values and concerns into the policy alternatives, and engaging in workshops (IAP2, 2007). These findings close the research gap of stakeholder perceptions of

government-to-government consultation between the United States and Native Nations, while adding to the overall body of literature on public engagement in natural resources management.

Utilizing the conflict management *Progress Triangle* (Daniels & Walker, 1997) as a framework, the interviews about consultations disclosed many barriers to the practice. These barriers were both procedural and relational in nature; some of which are deep-seated for both Native American and Service personnel. Procedural barriers such as financial constraints and late (ineffective) engagement, and poor agency training were described as obstacles for effective engagement. In addition, both stakeholders viewed notions of disrespect, distrust, and racism as relational impediments for the consultations. These noted relational barriers can be attributed to poor agency design and culture (Lachapelle et al., 2003; Smith & McDonough, 2001). Strong leadership, incentive programs for attending trainings, and removal of problem personnel can remedy these issues (Bengston, 2004; Kapoor, 2001; Smith & McDonough, 2001).

The respondents suggested several recommendations to improve the at-times troubled relationship. These included increasing agency training, early inclusion in decision-making processes (Selin & Mendoza, 2013) meeting on tribal land (Monette et al., 2011), and cooperative management agreements (Bengston, 2004; Donoghue et al., 2010). The Service and Native American subjects agreed on most proposed best-practice suggestions, except for cooperative management. The Service personnel less frequently offered this as a technique for improving the government-to-government relationship. This coincides with the EPA's (2015) explanation of the federal government's reluctance to relinquish decision-making authority in policy matters. These findings close gaps in the literature related to perceptions of barriers and recommendations to improve consultations, as well as adds to the overall body of literature on

Native American perspectives of natural resource management (Bengston, 2004; Donoghue et al., 2010).

From Consultation to Engagement. Based on this research, as well as findings in public engagement literature (Bengston, 2004; Booth & Halseth, 2011; Cronin & Ostergren, 2007; IAP2, 2007; Leong et al., 2011; Ohlson et al., 2008; Selin & Mendoza, 2013) and federal agency best practices (EPA, 2015; Monette et al., 2011; National Park Service, 2006; US Forest Service, 2012;), the following model is proposed.

The first part of the model (Figure 5) represents the frequently experienced status quo of *consultation*. The model explains the practice of *consultation* as largely one-way, impersonal,

Outcomes: Possible conflict and/or litigation; Stagnation; Distrust

Figure 5: Consultation Status Quo Model

and is often delayed or even absent. The onus is primarily on the Service, with little opportunity for Native Nations to share responsibilities, opinions, or values. This framework of engagement can easily lead to conflict, lawsuits, and further sentiments of distrust—all of which have been present in the grizzly bear delisting scenario in the GYE.

The second part of the model (Figure 6) is an emergent framework based on this research, as well as earlier cited literature and federal agency best practices. This framework is built upon mutual information exchange and learning, dialogue, and continued participation by both stakeholders. According to this model, the Service should remain proactive with initiating the engagement (which may still legally be called *consultation*). The Service sincerely, directly

Figure 6: Emergent Tribal Engagement Model

(avoid “Dear Tribal Leader” letters) and sensitively reaches out to Native Nations requesting advice and input on values or concerns at the beginning of (and throughout) the decision-making process. The Tribes, in turn, agree to share input in a timely manner in order to advance the progress of mutually agreed upon goals. The Service remains committed to incorporating this feedback into their decisions.

Additionally, Service managers should meet on tribal land for *consultations*. The reasons are threefold. The first is for logistical ease. Many tribes’ reservation lands are located near each other, such as in Oklahoma. By meeting on tribal land, the Service is enabled to meet with many tribal officials on a single trip. Second, meeting on reservation land allows Service managers to engage in-person with tribal officials. Face-to-face engagement is the preferred method amongst many Native American cultures (Monette et al., 2011). Finally, meeting on tribal reservations shows respect for the treaty relationship the United States maintains with Native Nations. At the time of treaty-signings, tribes ceded thousands of acres of their homelands to the United States government. In exchange, several tribes reserved smaller sections of land now called *Indian reservations* (Bureau of Indian Affairs, 2016). By meeting on these reserved lands, the Service can honor historic treaties, which builds trust, balances power, and increases relationship capacity.

Abiding by this engagement model may improve overall relationships, and create further opportunities to collaborate such as in cooperative resource management agreements. In addition, the Service will experience reduced conflict throughout the decision-making process. Furthermore, decisions will become more sustainable with greater stakeholder buy-in, as Native American input and values will be reflected in the resolutions.

Future Research

Further research is needed to investigate collaborative training opportunities between the Service and Native Nations. Refinement of the IAP2 (2007) public participation framework to cater toward indigenous, sovereign entities is suggested for ensuing studies. Future research should also strive to interview additional tribes to achieve a more comprehensive insight into the myriad Native Nations' perspectives.

While conducting this research, weightier concepts than simple consultation surfaced. Issues such as treaty relationships, tribal sovereignty, and environmental/procedural justice emerged. Many of these quandaries have historical ties related to the centuries-old relationship between the United States government and Native Nations. These topics are larger and more complex than this preliminary research can feasibly study. Further research is needed to investigate these themes.

Limitations

The IAP2 framework has been widely adopted throughout the federal government. The framework directs many policies on public engagement. However, Native American tribes are not merely public entities within the United States. They are Nations within a larger Nation, and therefore move beyond solely members of the public. They are also, incidentally, citizens of the United States. In this manner, the IAP2 framework retains its applicability for investigating consultation requirements between the federal government and Native tribes. While it does not entirely capture the complexity of the Native American experience, the IAP2 framework is the most feasible framework for examining perceptions of engagement between the Service and Native tribes. Future research should attempt to expand and modify the IAP2 framework to better reflect the unique political structure of Native Nations within the United States.

While all 26 tribes associated with the GYE were contacted for interviews, only representatives from eight were successfully interviewed. Furthermore, the interviews were conducted over the telephone. In future research, given the time and funding, interviews with tribal representatives should be held in-person, on tribal land if possible.

This is a study on how consultation is understood by several Native American tribes throughout the United States. Many cross-tribal similarities are sure to be drawn for best-practice use. However, each Native Nation is unique and may have different perceptions on how consultation should be practically applied. Therefore, the results of this study may not be representative of every tribe throughout the United States. These results should not be considered entirely generalizable.

Finally, because of the immediate relevancy of the grizzly bear delisting scenario, Service representatives were unwilling to discuss that specific case due to potential litigation. Therefore, interview questions were modified to explore the practice of consultation generally with Native American tribes (see appendix B for interview instrument).

Conclusion

The ongoing grizzly bear case is a prime example of the complexity and confusions surrounding consultations between the federal government and Native Nations. By incorporating the findings of this project, the Service can begin improving the practice of consultations and progress the overall relationship between the governments. The Service will be better positioned to develop greater trust, display respect, and repair wounds from prior generations. To conclude this research, these words from a Service respondent exemplify the sensitive, relational perspective needed for a successful government-to-government future:

Considering how tribal people have been treated by the federal government over the last 200 years, what we do here... [Can be] a tiny repayment for some of the negative things that have been perpetrated upon the tribes by the federal government. (Interview 15)

Appendices

Appendix A: The 26 Tribes Associated with the Greater Yellowstone Ecosystem

1. Assiniboine & Sioux Tribes	13. Gros Ventre and Assiniboine Tribes
2. Blackfeet Tribe	14. Kiowa Tribe of Oklahoma
3. Cheyenne River Sioux Tribe	15. Lower Brule Sioux Tribe
4. Coeur d'Alene Tribe	16. Nez Perce Tribe
5. Comanche Tribe of Oklahoma	17. Northern Arapaho Tribe
6. Confederated Salish & Kootenai Tribes	18. Northern Cheyenne Tribe
7. Confederated Tribes of the Colville Indian Reservation	19. Oglala Sioux Tribe
8. Confederated Tribes of the Umatilla Indian Reservation	20. Rosebud Sioux Tribe
9. Crow Tribe	21. Shoshone–Bannock Tribes
10. Crow Creek Sioux Tribe	22. Sisseton–Wahpeton Sioux Tribe
11. Eastern Shoshone Tribe	23. Spirit Lake Sioux Tribe
12. Flandreau Santee Sioux Tribe	24. Standing Rock Sioux Tribe
	25. Turtle Mountain Band of the Chippewa Indians
	26. Yankton Sioux Tribe

Appendix B: Interview Instrument

Interview Instrument: Native American Tribes

Interview Introduction

Thank you for assisting us in our research about consultation practices between the US Fish and Wildlife Service and Native American tribes. This research is being conducted in partial fulfillment of the requirements for a Master of Science degree in Recreation, Parks and Tourism Resources in the Division of Forestry and Natural Resources at West Virginia University. This is independent research, and is not affiliated with any agency or group. Some of the results may be presented at academic conferences and in theoretical journal submissions.

The purpose of this study is to evaluate the perceptions and applications of US Fish and Wildlife Service-Tribal consultation requirements. The results from this study will be used to provide best practice recommendations for future consultation circumstances between federal land management agencies and Native American tribes.

Your participation in this study is voluntary. All of your responses will remain strictly confidential and your name will in no way be connected with the results of the project.

Thank you again for your time and assistance with this project. Your input is important.

May I have your permission to record this interview?

Information about the interviewee

1. What is your position title?
  - a. How long have you been in this position?
  - b. What are your responsibilities as a [position title]?
  - c. Are you an enrolled member of a [name] Tribe?

Interviewee's perception of consultation (Research Questions 2)

2. How would you describe your relationship with the Service?
3. During consultation, with whom do you usually communicate with from the Service?
4. What participation opportunities does the Service give your tribe during consultation?
5. Do you think the opportunities have been meaningful in general?

-- {PROBING QUESTIONS IF NEEDED} --

- a. What would you consider meaningful participation opportunities to be?
- b. Do you think there typically are enough opportunities to participate with the Service?
- c. Do you think Tribal input and traditional knowledge has been used in decision-making processes?

Interviewee's perception of effective consultation (Research Questions 3)

6. How would you define consensus?
  - a. Is consensus important in consultation?
7. How have disagreements been resolved when they arise?

8. Do you think the Service respects tribal rights of sovereignty and religious freedoms during consultative processes?
9. Do you think the Service treats Native American tribes as equals?

Interviewee's perception of how consultation should be applied (Research Question 3-4)

10. What is the goal of consultation in your opinion?
11. Think of a recent consultation experience, what were the outcomes?
12. What barriers do you think are currently impeding successful consultation?
13. How should consultation strategies be adjusted in the future?
14. Is there anything you would like to add regarding consultation with the Service?
15. Is there anyone else you recommend I contact for an interview?

Interview Instrument: US Fish and Wildlife Service

Interview Introduction

Thank you for assisting us in our research about consultation practices between the US Fish and Wildlife Service and Native American tribes. This research is being conducted in partial fulfillment of the requirements for a Master of Science degree in Recreation, Parks and Tourism Resources in the Division of Forestry and Natural Resources at West Virginia University. This is independent research, and is not affiliated with any agency or group. Some of the results may be presented at academic conferences and in theoretical journal submissions.

The purpose of this study is to evaluate the perceptions and applications of US Fish and Wildlife Service-Tribal consultation requirements. The results from this study will be used to provide best practice recommendations for future consultation circumstances between federal land management agencies and Native American tribes.

Your participation in this study is voluntary. All of your responses will remain strictly confidential and your name will in no way be connected with the results of the project.

Thank you again for your time and assistance with this project. Your input is important.

May I have your permission to record this interview?

Information about the interviewee

1. What is your position title?
  - a. How long have you been in this position?
  - b. What are your responsibilities as a [position title]?

Interviewee's perception of consultation (Research Questions 2)

2. How would you describe your relationship with Native American Tribes?
3. During consultation, with whom do you usually communicate with from the Tribes?
4. What participation opportunities does the Service give Tribes during consultation?
5. Do you think the opportunities have been meaningful in general?

-- {PROBING QUESTIONS IF NEEDED} --

- a. What would you consider meaningful participation opportunities to be?
- b. Do you think Tribes are typically given enough opportunities to participate with the Service?
- c. Do you think Tribal input and traditional knowledge has been used in decision-making processes?

Interviewee's perception of effective consultation (Research Questions 3)

6. How would you define consensus?
  - a. Is consensus important in consultation?
7. How have disagreements been resolved when they arise?
8. Do you think the Service respects tribal rights of sovereignty and religious freedoms during consultative processes?
9. Do you think the Service treats Tribes as equals in the processes?

Interviewee's perception of how consultation should be applied (Research Question 3-4)

10. What is the goal of consultation in your opinion?
11. Think of a recent consultation experience, what were the outcomes?
12. What barriers do you think are currently impeding successful consultation?
13. How should consultation strategies be adjusted in the future?
14. Is there anything you would like to add regarding consultation with the Tribes?
15. Is there anyone else you recommend I contact for an interview?

Instrument adapted and modified from Ohlson D. L., 2005.

Appendix C: Coding Table

Assessment of overall relationship	Description of how the stakeholder assess their relationship with the other party.
Negative	Terms that are negative toward the overall relationship with the other government
Positive	Words or phrases that connote a positive working relationship with the other government.
Meaningful participation	The stakeholders assessment about the quality and components of participation opportunities offered by the USFWS to Native American tribes. This includes use of traditional knowledge, assessment of there being enough opportunities, and notions of consensus (see consensus code).
Participation opportunities are not meaningful	All negative comments about meaningful participation
There are enough opportunities	Descriptions by participants about having enough opportunities to participate with FWS.
Traditional Knowledge is used for decisions	Participants' belief that traditional knowledge is used by FWS and other government agencies in decision making processes
Participation opportunities are meaningful	Responses indicating that they interviewee considers the participation by FWS to be meaningful
Sovereignty	
Treated as Equals	Assessment of stakeholders on treating tribes as equals in consultation, thus respecting sovereignty
Not treated as equals	Indicators suggesting FWS does not view the tribe as an equal
Respect for Treaty Rights	References to treaties and treaties being respected or not.
Consensus	
Compromise	Definitions using terms such as tradeoffs, giving a little, not everyone happy but all can agree
Consensus important in consultation	Terms indicating that consensus is needed for consultation arrangements
All parties agree	Descriptions stating that all parties need to agree on the issue before moving forward.
Majority rule	Descriptions by stakeholders describing consensus where the majority of the group agrees
Don't know	Descriptions where the person is unsure or does not know how to define consensus.

Spectrum of Engagement desired by stakeholders	Level of engagement that the stakeholders would like to see occurring in practice.
Inform	Does not actually provide the opportunity for public participation at all, but rather provides the public with the information they need. Both the public participation goal and promise at the inform level is to keep the public informed.
Consult	The basic minimum opportunity for public input to a decision. To obtain feedback on analysis, alternatives/decisions. Will keep informed, listen and acknowledge concerns, provide feedback how the input influenced decisions. (Public comments, focus groups, surveys).
Involve	Work directly with the public throughout the process, from the beginning. Work with public to ensure concerns are directly reflected in alternatives, provide feedback. Agency is still the decision maker (workshops, deliberative polling).
Empower	Place final decision-making in hands of public. Agency implements what public decides.
Collaborate	Partner with the public in each aspect of the decision, directly engaged. Look to the public for advice. Consensus-building. Dialogue is a major component. Engaged in all key decisions, input sought to the maximum extent possible. Stakeholders shape the plan, alternatives, and preferred solutions.
Level of Engagement Occurring in field	Level of engagement that the stakeholders perceive to be occurring in practice—NOT necessarily what they would like to see. Same levels as above, desired level of engagement.
Barriers to consultation	Descriptions by interviewees throughout the transcript that indicate a point of conflict or reason why the relationship and/or consultation is not working as effectively as possible. One interview question asks this directly, but it may come up elsewhere in the interview. Issues such as poor training, logistics, funding, racism and others may be barriers to effective consultation.
Conflict Resolution Strategies	Strategies used to assuage conflict between the tribes and FWS.
Third Party	Use of third parties to mediate conflicts and come up with resolutions
Conflicts are not resolved	Comments related to conflict not getting resolved between stakeholders, stalemates.

Have not had conflict	Stakeholders stating that conflict has not occurred in their experiences.
Talk it out/discuss	Responses about compromise, talking things through between the two parties.
Process Barriers	Administrative issues such as financials, meeting facilitation, trainings, etc.
Funding and Logistical Issues	Far distances, trouble with coordinating schedules, lack of funding which can lead to issues with traveling for consultation and also limits staff to effectively have consultation, etc.
Ineffective Engagement	Not being included from the beginning of the process, or simply too late in the process by the FWS, or not having consultation at all. Supplying individuals with poor equipment to do the job, engaging the wrong people, and poorly running meetings, etc.
Different approaches to management	Descriptions by stakeholders explaining a barrier to consulting is a fundamental difference in how a resource should be managed.
Different understandings of consultation	Not agreeing on what consultation, resulting in a breach or break in consultation all together.
Insufficient agency training on culture and policy	Comments about lack of knowledge by stakeholders leading to conflicts, ignorance on tribal trust responsibilities, or inconsistency in its applications by Service staff.
Legal issues	Conflict because of lawsuits, policy restrictions, jurisdictional issues etc.
Insincerity	Comments related to parties not following through on their promises, saying they will to appease and not following through, notions of the agency being apart from or disingenuous toward the tribes.
Relationship Barriers	Conflicts that come from personal dispositions, issues of disrespect, racism, etc.
Distrust	Comments related to blaming, distrust, arguments, and accusations.
Racism	All comments related to bigotry and racism
Disrespect	Words or phrases discussing disrespect generally, NOT specifically racism. This includes talking down to, paternalistic engagement, etc.
Best practices/Implications	Suggestions to improve consultation and government-to-government relations

Improve communication	Suggestions to improve consultation referring to communication, etc.
Meet on/near tribal land for (in-person) consultation	Descriptions by interviewees suggesting that consultation occur on tribal ground to reduce travel issues and costs incurred by the tribes; also these consultations should occur in-person.
Early inclusion in decision making process	All comments explaining that consultation should begin early, allowing for early comments or participation.
Increase training of FWS staff	Suggestions about improving or increasing training for FWS employees on tribal relations. This includes increasing training that is sensitive to cultural milieu of Native groups.
Have consultation with people in authority	Have people attend meetings who are in a position of authority, can make decisions, etc. This includes delegates as long as they have authority.
Work issues from low to high	Begin consultation with field level staff, increase in authority as needed.
Cooperative management	Responses suggesting co-management, shared managing responsibilities, etc. This includes providing the tribes with appropriate funding/resources to effectively co-manage.

(Bold denotes parent code; centered codes represent child code of the parent code.)

Appendix D: Expected Outcomes

The research from this paper is expected to have several outcomes. First, it is anticipated that the ambiguity surrounding federal-tribal consultation will be demystified through theoretical frameworks. Next, perceptions from the stakeholders on how consultation has occurred in the case of the grizzly bear delisting will be used as an evaluative measure of Service practices. Stakeholder beliefs on how they think consultation should occur will be compared. Finally, possible consultation barriers between the Service and affected tribes will be assessed. The results from these outcomes will create best-practice opportunities for agencies to utilize in similar scenarios.

Appendix E: Timetable

This thesis proposal was submitted to committee members on July 1, 2015. Upon committee and Institutional Review Board approval, tribal and Service representatives were contacted July-October 2015 for interviews. Interviews occurred from July-October, 2015. Data analysis began October 2015 and anticipated completion is January 15, 2016. The final writing and revisions will take place from January 15-March 1, 2016. Presentations at conference and the thesis defense will commence March-April 2016.

Appendix F: Permission to Use Copyrighted Materials

Ref: Request for permission to copy, reproduce or publish IAP2 Federation copyrighted materials.

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Regards,
Ellen

Ellen Ernst | Executive Manager | IAP2 Federation

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