

US EPA ARCHIVE DOCUMENT

This document presents case studies that feature various components of Tribal wetland programs and describes the experiences of various Tribes and Native organizations in their efforts to protect wetlands. Given the geographical and political diversity of the Tribes and Native organizations featured in the case studies, this report covers a range of topics, depending on the types of wetlands, the range of impacts affecting Tribal wetlands, and the resources available to Tribes to implement programs and projects to protect their wetlands.

Purpose

The purpose of *Tribal Wetland Program Highlights* is to document the exemplary efforts that selected Tribes and Native organizations are making to protect their wetland resources. Disseminating information about efforts by Tribes and Native organizations to protect wetlands can be of great benefit to other Tribes, as well as other interested parties. Some of the wetland protection approaches included in the case studies might be directly applicable to current challenges facing Tribes; in other instances, the issues described may generate useful ideas for implementing more comprehensive Tribal wetland protection programs. The report will be distributed mainly to those with a particular interest in Tribal natural resource issues, although the case studies could also be useful to local, regional, and possibly state wetland protection efforts. A long-term purpose of *Tribal Wetland Program Highlights* is to initiate a process for documenting Tribal efforts to protect wetlands. The case studies highlighted here will form part of a baseline of information on Tribal wetland programs against which future progress can be compared and measured.

Background

EPA Policy for Environmental Protection in Indian Country

In 1984 EPA issued its *Indian Policy and Action Plan*, which described the Agency's government-to-government relationship and overall commitments to environmental protection in Indian country. According to the 1984 *Indian Policy and Action Plan* for Indian country, EPA

recognizes Tribal governments as the primary parties for setting standards, making environmental policy decisions, and managing [environmental] programs . . . consistent with Agency standards and regulations.

In 1994 EPA Administrator Carol Browner reaffirmed the *Indian Policy and Action Plan*. She also announced *Actions for Strengthening EPA's Tribal Operations*, including a commitment that each EPA program would establish a strategy for achieving Tribal environmental work plans. EPA's *Strategic Plan*, released in 1997,



describes programmatic and quantitative measures for improving water quality nationwide, including both states and Indian country. To support attaining the objectives of the *Strategic Plan* in Indian country, EPA's Office of Water published *Protecting Public Health and Water Resources in Indian Country: A Strategy for EPA/Tribal Partnership*.

Two common themes found in EPA's state and Tribal policies and programs are capacity building and partnerships. EPA believes that the protection of public health and environmental resources can be most effectively achieved when efforts are designed and carried out at the local level and are based on collaborative partnerships between local, regional, state, and national stakeholders. EPA's Wetlands Division has historically used this strategy of encouraging capacity building and fostering partnerships in its efforts to promote the protection and wise use of the nation's wetland resources.

Tribe-Specific Eligibility Criteria

For Tribes to assume many of EPA's major grant or regulatory programs, they usually must go through a process called "Treatment in a Manner Similar to a State," also known as TAS. TAS was first put into place in the 1986 and 1987 amendments to the Safe Drinking Water Act (SDWA) and Clean Water Act (CWA). These amendments allowed EPA to develop a process by which Tribes could apply for grants and program authority. EPA established a TAS process for eligibility under various programs according to the criteria identified in the SDWA and CWA. To be eligible for TAS, a Tribe must meet the following criteria:

- The Tribe must be federally recognized.
- The Tribe must have or be able to exercise substantial governmental powers.
- The Tribe must have or have been delegated jurisdiction over the area in question.
- The Tribe must have the financial, physical, and human resource capability to implement a program effectively.

In the initial years of the TAS process, many Tribes and EPA staff found the process to be overly burdensome. EPA has increasingly improved its own capacity to help Tribes meet the eligibility requirements, and in 1994, the Agency developed the "TAS Simplification Rule". Under this rule, EPA eliminated the need to meet all four criteria each time a Tribe applies for a program. In general, once a Tribe has been deemed eligible for one EPA program, it need only establish that it has jurisdiction and capability for each subsequent program. This requirement is necessary because each program might require different skills and activities to provide protection that meets the requirements of specific statutes and regulations.

EPA Wetland Programs in Indian Country

EPA began to provide financial support to Tribal wetland programs in 1990 with the establishment of the EPA Wetland Development Grant Program. EPA established the program to support state and Tribal efforts in the development and implementation of wetland protection programs. In 1997 the program was expanded to include assistance to local governments. More information about the Wetland Development Grant Program is provided in Appendix II.

Tribal Wetland Program Highlights represents a continuing commitment on the part of EPA's Wetlands Division to support the evolution of Tribal wetland programs around the country. Geographical, ecological, cultural, and political differences among Tribes make drawing comparisons among Tribal wetland programs a challenge. As the case studies illustrate, tools and strategies currently used by Tribal wetland programs are a function of many different factors, and no two programs are alike.

Goals of Tribal Wetland Programs

The goals of Tribal efforts to protect wetland resources are based in part on an acknowledgment that Tribal cultures have existed and evolved in the context of the natural environment. Respect for and wise use of the environmental resources on which Tribal societies depend is at the foundation of all their wetland programs, which generally aim to protect economic, ecological, aesthetic, recreational, medicinal, and spiritual values. Historically, Indians have viewed human life as part of the natural environment, not in opposition to it. Today, non-Indians are coming to realize that the concept of intergenerational equity should be central in environmental preservation and restoration philosophy. They acknowledge the wisdom and experience of Tribal ways. Likewise, Indians are realizing that some technologies can be compatible with their traditional beliefs and practices.

Organization of Report

This chapter discusses the purpose of the report and provides background information on Tribal wetland programs. Chapter 2 presents a comparative analysis of tools and strategies the 11 selected Tribes and Native organizations are using to meet their wetland protection goals. This comparative analysis is summarized in a table listing the various wetland program components and cross-referencing them to indicate which Tribes and Native organizations include a program component as part of their wetland protection activities.

Chapter 3 presents the 11 case studies, organized by Tribe or Native organization:

- Blackfeet Tribe
- Campo Band of Kumeyaay Indians
- Confederated Salish and Kootenai Tribes of the Flathead Reservation
- Menominee Tribe of Wisconsin
- Nisqually Tribe
- Oneida Tribe of Indians of Wisconsin
- Port Graham/Nanwalek Native Villages
- Seminole Tribe of Florida
- Taos Pueblo
- Wampanoag Tribe of Gay Head
- White Mountain Apache Tribe

Chapter 4 presents the report's conclusions. It briefly discusses EPA's future plans for working with Tribes to share information and develop wetland protection strategies that meet their programmatic and technical needs and interests.

Appendices included in the report present a wide range of wetland-related information that Tribes should find useful:

- Appendix I: EPA Regional Tribal and Wetland Contacts
- Appendix II: Sources of Support for Tribal Wetland Programs
- Appendix III: Information on Relevant Publications and Outreach Materials
- Appendix IV: Draft Core Essential Elements of a State or Tribal Wetlands Program