



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #ABQ-19-033

TITLE: Support Tribal Efforts to Designate Conservation Areas through the U.S. Fish and Wildlife Service

EXECUTIVE COMMITTEE

PRESIDENT
Fawn R. Sharp
Quinalt Indian Nation

FIRST VICE-PRESIDENT
Aaron Payment
Sault Ste. Marie Tribe of Chippewa Indians

RECORDING SECRETARY
Juana Majel-Dixon
Pauma Band of Luiseño Indians

TREASURER
Clinton Lageson
Kenaitze Indian Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Rob Sanderson, Jr.
Tlingit & Haida Indian Tribes of Alaska

EASTERN OKLAHOMA
Norman Hildebrand
Wyandotte Nation

GREAT PLAINS
Larry Wright, Jr.
Ponca Tribe of Nebraska

MIDWEST
Shannon Holsey
Stockbridge Munsee Band of Mohican Indians

NORTHEAST
Tina Abrams
Seneca Nation of Indians

NORTHWEST
Leonard Forsman
Suquamish Tribe

PACIFIC
Erica Mae Macias
Cahuilla Band of Indians

ROCKY MOUNTAIN
MARK POLLOCK
Blackfeet Nation

SOUTHEAST
Nancy Carnley
Ma-Chis Lower Creek Indian Tribe of Alabama

SOUTHERN PLAINS
Robert Tippeconnie
Comanche Nation

SOUTHWEST
Vacant

WESTERN
Alan Mandell
Pyramid Lake Paiute Tribe

CHIEF EXECUTIVE OFFICER
KEVIN ALLIS
Forest County Potawatomi Community

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, tribal governments exercise sovereign authority over their territories, but some federal laws, including the Endangered Species Act (ESA), impose limitations on the authority of tribal nations to act on their own lands in the best interests of the tribal sovereign and the tribal citizenry; and

WHEREAS, the biodiversity of tribal lands makes Indian Country home to a number of species listed as endangered and threatened by the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.* (ESA); and

WHEREAS, the ESA imposes criminal and civil penalties on a person for the intentional “taking,” or killing of an endangered or threatened species; and

WHEREAS, in 1997, the U.S. Department Interior and the U.S. Department of Commerce issued Secretarial Order No. 3206 (Order 3206), “American Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,” in accordance with the ESA, the federal-tribal trust relationship, and other federal law, *see*, S.O. No. 3206, Sec. 1; and

WHEREAS, the Order 3206 clarifies the responsibilities of agencies when actions taken under the authority of the ESA affect “tribal trust resources” and it recognizes the special federal trust responsibility and government-to-government relationship with tribal nations, defined by treaties, statutes, executive orders, judicial decisions, and agreements; *Id.* at Sec. 4; and

WHEREAS, under Order 3206, the Departments are to recognize, respect, and consider the value of traditional tribal knowledge to resource management activities; and

WHEREAS, Order 3206 directs the Department of the Interior, including the FWS, to engage in direct, meaningful, government-to-government consultation with affected tribal nations and that all agencies should take into consideration the religious, spiritual, and cultural significance of listed species when taking action pursuant to the ESA; *Id.* at Sec. 5; and

WHEREAS, when agencies such as FWS are aware that their actions planned under the ESA may impact tribal trust resources, “they shall consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable;” *Id.* at Sec. 5; and

WHEREAS, the FWS has failed to carry out its tribal consultation obligations before taking actions that severely limited tribal economic development on tribal lands; and

WHEREAS, the Secretary of the Interior, through the FWS, is authorized to permit incidental takings of endangered or threatened species when an applicant submits to the Secretary a conservation plan that specifies the impact from the taking, the steps the applicant will take to minimize and mitigate such impacts, and the funding available to implement such steps; and

WHEREAS, tribal nations that encounter hurdles to developing their lands may seek to establish conservation areas on fee or trust land in order to designate a habitat for the protection of endangered or threatened species; and

WHEREAS, in order to establish conservation areas for endangered or threatened species that would further permit incidental takings on tribal lands outside of the conservation area, tribal nations must work collaboratively with the FWS, as well as the State in which the land is located, to develop an acceptable management plans.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls on the Department of the Interior, and specifically, the U.S. Fish and Wildlife Service, to adhere to the letter and spirit of Secretarial Order No. 3206 that requires meaningful consultation with tribal governments related to the impacts of the ESA; and

BE IT FURTHER RESOLVED, the NCAI urges the FWS to mitigate the harm the ESA imposes on tribal governments and tribal communities on tribal lands through expeditious designation of conservation areas and conservation banks that balance species protection with tribal sovereignty and tribal economic development, and advances the modern federal policy of tribal self-determination; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2019 Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, October 20-25, 2019, with a quorum present.



Fawn Sharp, President

ATTEST:



Juana Majel Dixon, Recording Secretary