



Public Health Law

Office for State, Tribal, Local and Territorial Support
Centers for Disease Control and Prevention

Tribal Emergency Preparedness Law

American Indian and Alaska Native tribes are sovereign nations that maintain a government-to-government relationship with the United States.¹ There are currently 567 federally recognized tribes throughout the contiguous United States and Alaska.² In addition to exercising political sovereignty, tribes exercise cultural sovereignty through traditions and religious practices unique to each tribe's history and culture.³ Cultural sovereignty "encompasses the spiritual, emotional, mental, and physical aspects" of Native people's lives and is a foundation to tribal exercise of political sovereignty.⁴

As sovereign nations, tribes have inherent authority to protect the public health and welfare of their citizens.⁵ Thus, in the context of emergency preparedness, tribes have the authority to engage in preparedness and response activities using methods most appropriate for their communities.⁶

This issue brief introduces tribal emergency preparedness law. First, it outlines tribal emergency preparedness authorities and gives examples of these authorities across tribal law. Next, it discusses federal Indian law and the principles governing the relationships among tribes, states, and the federal government in the context of emergency preparedness. The brief concludes by discussing cross-jurisdictional coordination between tribes and other jurisdictions.

Tribal Authorities

Tribes have been exercising political and cultural sovereignty since long before the establishment of the United States, and their sovereignty is based not on any federal authority, but on principles of international law.⁷ Upon the founding of the United States and the colonialization of tribal governments, the United States continued to recognize tribes as sovereign nations subject to certain federal laws.⁸ As described by the US Supreme Court, tribal sovereignty refers to the authority of tribes "to make their own laws and be ruled by them."⁹

While there is much diversity in tribes' laws, governments, and economic capacity,¹⁰ their responsibility to protect and promote their citizens' welfare remains an essential aspect of sovereignty.¹¹ Tribal sovereignty and self-governance are thus rich with examples of emergency preparedness and response authority; however, the terminology and organizational models by which tribes exercise and implement these authorities can vary.¹² The following sections give examples of tribal emergency preparedness authorities across tribal constitutions, codes, and emergency management plans.

Tribal Constitutions

Tribal constitutions can specifically reference a tribe's authority to protect the health and welfare of its communities. For example, pursuant to Article IV, Section 1(c)(j)(o) of the Standing Rock Sioux Tribe's



constitution, the tribe has the authority “to safeguard and protect general welfare, property, cultural and natural resources of the Standing Rock Sioux Tribe.”¹³ This article was cited by the tribal chairman as the source for his authority to declare a state of emergency in May 2013 when flash flooding threatened roads, homes, and the tribe’s irrigation system.¹⁴

Tribal Codes

Tribal codes outline the depth and breadth of tribal emergency management authorities. The Snoqualmie Indian Tribal Code includes an Emergency Management Department Act,¹⁵ which establishes the tribe’s Emergency Management Department and outlines the duties of the tribal chairman during an emergency.¹⁶ Per the tribal code, the department is responsible for developing a “Tribal Comprehensive Emergency Management Plan,” regularly reviewing and updating all emergency management plans, conducting emergency operation exercises, conducting regular inspections of tribal emergency facilities and systems, and enrolling emergency response volunteers before emergencies, among other duties.¹⁷ In the event of an emergency,¹⁸ the tribal code also authorizes the chairman to declare an emergency, issue emergency rules and orders related to an emergency response, obtain supplies and services to respond to an emergency, and requisition personnel and materiel.¹⁹

Similarly, the Cherokee Code of the Eastern Band of the Cherokee Nation includes an emergency management chapter.²⁰ It establishes a tribal Office of Emergency Management,²¹ which is responsible for planning and implementing all emergency management activities on Cherokee lands, recruiting volunteers for emergency responses, developing emergency response plans, and conducting public practice alerts, among other activities.²² It also authorizes the tribal chairman to declare emergencies²³ and compel evacuations.²⁴

In addition to laws specific to emergency preparedness and response, tribal laws governing other activities can be used to respond to various threats. For example, tribal solid waste management laws, nuisance control laws, and insecticide laws can support a response to an outbreak of a vector-borne disease.²⁵ Similarly, tribal laws address issues related to infectious disease outbreaks through contact tracing and partner notification laws; quarantine, isolation, and exclusion laws; and involuntary testing and treatment laws.²⁶

Tribal Emergency Management Plans

Often required by tribal law,²⁷ emergency management plans detail a tribe’s strategy for responding to and mitigating emergencies.²⁸ For example, the Lummi Nation’s Comprehensive Emergency Management Plan details the tribe’s emergency management structure, responsibilities, and procedures during and after an emergency.²⁹ The plan specifies that the tribe’s responsibility to protect the public during an emergency extends beyond tribal members to all members of the community and its visitors: “The Lummi Nation has established this plan to . . . [s]ave and protect the lives of the residents, visitors, employees, students, the public, and clients both living and working in Lummi Nation facilities and the Lummi Indian Reservation.”³⁰

The plan lists the legal authorities relied upon to develop and implement the plan, details the incident command structure and duties in the event of an emergency, and discusses intergovernmental coordination with local, state, and federal partners.³¹ The plan also refers to emergency response activities, such as disseminating public information and warnings³² and ensuring responder safety and health.³³

The Squaxin Island Tribe's Community Health Emergency/Pandemic Flu Plan supplements the tribe's Comprehensive Emergency Management Plan and establishes additional processes in the event of a community health or pandemic incident.³⁴ For example, it indicates that the Tribal Health and Human Services department will be responsible for surveillance activities³⁵ and discusses securing medical supplies,³⁶ both of which are referenced in CDC's Public Health Preparedness Capabilities.³⁷


Federal Indian Law and Emergency Preparedness

Federal Indian law refers to the body of law that defines the rights, relationships, and responsibilities among tribes, states, and the federal government.³⁸ Concurrent with tribal sovereign authority, the United States maintains a moral and legal trust responsibility toward tribes.³⁹ This trust responsibility includes a "fiduciary obligation . . . to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal Indian law."⁴⁰ The trust responsibility is not limited to components of the federal government that have specific missions to support tribal communities, such as the Indian Health Service or the Bureau of Indian Affairs, but rather extends across the whole federal government.⁴¹ Thus, any federal agency with a role in emergency preparedness and response, such as the Federal Emergency Management Agency or CDC, is obligated to provide consultation opportunities to tribes⁴² in addition to the other services and resources available at the agency.

Additionally, under US law, Congress has the authority to legislate on tribal issues,⁴³ and certain federal emergency preparedness laws can affect tribes.⁴⁴ For example, the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act")⁴⁵ authorizes the US president to declare a major disaster or emergency in response to an event or threat that overwhelms state, tribal, local, or territorial governments.⁴⁶ A Stafford Act declaration triggers access to federal technical, financial, logistical, and other assistance to state, tribal, local, and territorial governments.⁴⁷ The chief executive of a tribal government can request a Stafford Act declaration from the president.⁴⁸ Federal authority to legislate on tribal issues does not limit existing tribal sovereign authorities unless specifically preempted by federal law.⁴⁹ Thus, for example, the president's Stafford Act declaration authority does not preempt tribal authority to declare emergencies on their own lands. Finally, while the federal government has the authority to legislate on tribal issues, states do not have authority over tribal members on tribal lands unless specifically authorized by federal law.⁵⁰

Cross-Jurisdictional Coordination

While states have limited jurisdiction with respect to tribal lands, tribes are free to enter into intergovernmental agreements with state, local, or even other tribal governments on cross-jurisdictional issues, including emergency preparedness.⁵¹ An intergovernmental agreement, sometimes known as a mutual aid agreement or memorandum of understanding (MOU), offers the opportunity for governments to formalize arrangements to share information and data, medical and response personnel, and other resources in an emergency.⁵² For example, seven tribes and three local health departments in the Olympic Peninsula of Washington entered into a mutual aid agreement to assist and share resources in the event of a public health incident, disaster, or emergency.⁵³ The types of assistance can be "related to day-to-day public health services, communicable disease outbreak, isolation and quarantine public health services, or any other public health service or action."⁵⁴



Additional resources on tribal emergency preparedness law:

- [Emergency Declarations and Tribes: Mechanisms Under Tribal and Federal Law](#)
Gregory Sunshine & Aila Hoss, 24 MICH. ST. INT'L L. REV. 33 (Dec. 18, 2015).
- [Tribal Emergency Preparedness: Law and Practice \(webinar\)](#)
CTRS. FOR DISEASE CONTROL AND PREVENTION, THE NETWORK FOR PUB. HEALTH LAW (Sept. 24, 2015).
- [Responding to Public Health Emergencies on Tribal Lands: Jurisdictional Challenges and Practical Solutions](#)
Justin B. Barnard, 15 YALE J. HEALTH POL'Y, L. & ETHICS 251 (Summer 2015).

Acknowledgments and Disclaimers

This document was developed by Aila Hoss, JD, Carter Consulting, Inc., contractor and Gregory Sunshine, JD, Chenega Professional and Technical Services, LLC, contractor with the Public Health Law Program (PHLP) within the Centers for Disease Control and Prevention's Office for State, Tribal, Local and Territorial Support. The authors thank Matthew Penn, JD, MLIS, director, PHLP, for his editorial assistance.

For further technical assistance with this inventory, please contact phlawprogram@cdc.gov. PHLP provides technical assistance and public health law resources to advance the use of law as a public health tool. PHLP cannot provide legal advice on any issue and cannot represent any individual or entity in any matter. PHLP recommends seeking the advice of an attorney or other qualified professionals with questions regarding the application of law to a specific circumstance. The findings and conclusions in this summary are those of the author and do not necessarily represent the official position of CDC.

Published March 2, 2017

¹ COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, § 4.01[1][a] (Nell Jessup Newton et al. eds., 2012).

² [Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs](#), Fed. Reg. 81, 86 (May 4, 2016).

³ Wallace Coffey and Rebecca Tsosie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, 12 STAN. L. & POL'Y REV. 191, 196 (2001) (arguing that the concept of "cultural sovereignty" needs to be defined by Native communities and outside the construct of political sovereignty: "[W]e hope to open a dialogue about sovereignty and our collective future that is generated from *within* our tribal communities." *Id.* at 192.). Wallace Coffey is the chairman of the Comanche Nation Business Committee. Rebecca Tsosie is a law professor at the Indian Legal Program at Arizona State University. At the time of this article's publication, Chairman Coffey and Professor Tsosie served on the Board of Directors of the Native American Rights Fund, which they credited as providing the "impetus for this dialogue on cultural sovereignty." *Id.* at n.a1.

⁴ *Id.* at 210.

⁵ *Williams v. Lee*, 358 U.S. 217, 271 (1959).

⁶ Tribes maintain "inherent powers of limited sovereignty which has never been extinguished." *United States v. Wheeler*, 435 U.S. 313, 322-3 (1978) (quoting F. Cohen, HANDBOOK OF FEDERAL INDIAN LAW 122 (1945)). *Wheeler*

further explains that “Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.” *Wheeler*, 435 U.S. at 323.

⁷ See *supra*, COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, “What Is Federal Indian Law,” at 1.

⁸ *Id.* For a discussion of federal Indian law, see, *infra*, “Federal Indian law and Emergency Preparedness” of this brief.

⁹ *Williams* 358 U.S. at 271.

¹⁰ See, e.g., [Tribal Nations & the United States: An Introduction](#), NATIONAL CONGRESS OF AMERICAN INDIANS, 22 (stating that “[f]ederally recognized tribes have governments that are diverse in structure and in decision-making processes.”); Lorie M. Graham, *An Interdisciplinary Approach to American Indian Economic Development*, 80 N.D. L. REV. 597 (2004).

¹¹ Lawrence O. Gostin, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 5, 8–9 (2nd ed. 2008), which describes governments as not only having the power to promote the health and welfare of their citizens but also the duty to do so.

¹² See *supra*, note 10.

¹³ [CONSTITUTION OF THE STANDING ROCK SIOUX TRIBE](#) (last visited Jan. 18, 2017).

¹⁴ Gregory Sunshine & Aila Hoss, [Emergency Declarations and Tribes: Mechanisms Under Tribal and Federal Law](#), 24 MICH. ST. INT’L L. REV. 33, 36 (Dec. 18, 2015) (*quoting* STANDING ROCK SIOUX TRIBAL FLOOD EMERGENCY DECLARATION OF DISASTER (May 27, 2013)).

¹⁵ SNOQUALMIE TRIBAL CODE 10.1, § 1.0 (2012).

¹⁶ *Id.* §§ 1.0–11.0.

¹⁷ *Id.* §§ 6.0, 8.0.

¹⁸ Per the Emergency Management Department Act, disaster is defined as “an event or set of circumstances which demand immediate action to preserve public health, protect life or property, or to provide relief to any stricken community affected by such events or set of circumstances. The term shall also mean an event or set of circumstances which reaches such dimension or degree of destructiveness as to warrant the governor of the state of Washington to declare a state of emergency pursuant to state law.” *Id.* § 4.0. Emergency is defined as “a disaster and shall also include an incident that requires a normal police, coroner, fire, rescue, emergency medical services, or utility repair response.” *Id.*

¹⁹ *Id.* § 7.0.

²⁰ EASTERN BAND CHEROKEE INDIANS CODE §§ 166-1–30.

²¹ *Id.* § 166-1.

²² *Id.* § 166-4.

²³ *Id.* § 166-9.

²⁴ *Id.* § 166-11.

²⁵ For examples of tribal vector-control laws, see Aila Hoss and Dawn Pepin, [Menu of Selected Tribal Laws Related to Mosquito and Vector Control](#), CENTERS FOR DISEASE CONTROL AND PREVENTION PUBLIC HEALTH LAW PROGRAM, (Nov. 30, 2016).

²⁶ For examples of tribal infectious disease control laws, see Aila Hoss, [Menu of Tribal Laws Related to Infectious Disease Control](#), CENTERS FOR DISEASE CONTROL AND PREVENTION PUBLIC HEALTH LAW PROGRAM (Nov. 20, 2014).

²⁷ See, e.g., SNOQ. TRIBAL CODE 10.1, § 6.0(a) (“The Director shall prepare, or cause to be prepared, a Tribal Comprehensive Emergency Management Plan. The Plan shall be prepared in conformity with the Washington state law requirements set forth in WAC 118–30, as well as any other Washington administrative rules and regulations promulgated pursuant to RCW 38–52 governing the development of emergency management plans.”); EASTERN BAND CHEROKEE INDIANS CODE § 166-5(a) (“Comprehensive Emergency Management plans shall be adopted and maintained by resolution of the Tribal Council. In the preparation of these plans as it pertains to tribal organizations, it is intended that the services, equipment and facilities and personnel of all existing departments and agencies shall be utilized to the fullest extent.”).

²⁸ See, e.g., [Comprehensive Emergency Management Plan](#), THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION (Mar. 2014); [Lummi Nation Comprehensive Emergency Management Plan](#), LUMMI NATION (Jun. 2015); [Squaxin Island Tribal Comprehensive Emergency Management Plan](#), SQUAXIN ISLAND TRIBE (Apr. 2008); [Squaxin Island Tribe Community Health Emergency/Pandemic Flu Plan](#), SQUAXIN ISLAND TRIBE (Apr. 2007).

²⁹ Lummi Nation Comprehensive Emergency Management Plan, *supra* note 28 at 6.

³⁰ *Id.*

-
- ³¹ *Id.* at 8–9.
- ³² *Id.* at 23.
- ³³ *Id.* at 22.
- ³⁴ [Squaxin Island Tribe Community Health Emergency/Pandemic Flu Plan](#), SQUAXIN ISLAND TRIBE (Apr. 2007) 3–4.
- ³⁵ *Id.* at 5.
- ³⁶ *Id.* at 8.
- ³⁷ See *supra*, note 29.
- ³⁸ DAVID H. GETCHES, CHARLES F. WILKINSON, ROBERT A. WILLIAMS, JR., AND MATTHEW L.M. FLETCHER, CASE AND MATERIALS ON FEDERAL INDIAN LAW 1 (6th ed. 2011).
- ³⁹ [What Is the Federal Indian Trust Responsibility?](#), BUREAU OF INDIAN AFFAIRS.
- ⁴⁰ *Id.*
- ⁴¹ *Parravano v. Babbitt*, 70 F.3d 539, 546 (9th Cir. 1995) stating “that the federal government is the trustee of the Indian tribes’ rights, including fishing rights . . . This trust responsibility extends not just to the Interior Department, but attaches to the federal government as a whole.” See also [Modernizing the Trust: Redefining the United States–Tribal Government-to-Government Relationship and Advancing Trust Asset Reform](#), NATIONAL CONGRESS OF AMERICAN INDIANS (Oct. 2015).
- ⁴² [Memorandum on Government-to-Government Relations With Native American Tribal Governments](#), ADMINISTRATION OF WILLIAM J. CLINTON (Apr. 29, 1994). For a detailed summary and resources on tribal consultation, see Aila Hoss, [Tribal Consultation: Selected Resources](#), CENTERS FOR DISEASE CONTROL AND PREVENTION PUBLIC HEALTH LAW PROGRAM, (Feb. 18, 2016). See also *supra* note 43.
- ⁴³ *Ex parte Crow Dog*, 109 U.S. 556, 572 (1883); *United States v. Kagama*, 118 U.S. 375, 384–5 (1886).
- ⁴⁴ [Selected Federal Legal Authorities Pertinent to Public Health Emergencies](#), CENTERS FOR DISEASE CONTROL AND PREVENTION PUBLIC HEALTH LAW PROGRAM (Aug. 2014).
- ⁴⁵ Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, Pub. L. No. 93-288, 88 Stat. 143 (codified as amended at 42 U.S.C. §§ 5121-5206 and various sections of titles 12, 16, 20, 26, and 38 of the United States Code).
- ⁴⁶ 42 U.S.C. §§ 5170(a), 5191(b) (2012); *Selected Federal Legal Authorities*, *supra* note 46 at 2.
- ⁴⁷ 42 U.S.C §§ 5170(a), 5192(a)(1)-(8); *Selected Federal Legal Authorities*, *supra* note 46, at 2.
- ⁴⁸ Sandy Recovery Improvement Act of 2013, Pub. L. No. 113-2, §§1101-1111, 127 Stat. 4, 39, 48 (codified as amended at 42 U.S.C. §§ 5170(b)(1), 5191(c)(1) (2013)).
- ⁴⁹ Tribes maintain “inherent powers of limited sovereignty which has never been extinguished.” *Wheeler* 435 U.S. at 322–3 (quoting F. Cohen, HANDBOOK OF FEDERAL INDIAN LAW 122 (1945)). *Wheeler* further explains that “Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.” *Wheeler*, 435 U.S. at 323.
- ⁵⁰ See *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832). For a detailed discussion on the limited authorities of states on tribal lands, see Stephen L. Pevar, *The Rights of Indians and Tribes*, Chapter VII: State Power over Indian Affairs (8th ed. 2012).
- ⁵¹ [Government to Government: Understanding State and Tribal Governments](#), NATIONAL CONFERENCE OF STATE LEGISLATURES AND NATIONAL CONGRESS OF AMERICAN INDIANS (2000).
- ⁵² [Memorandum of Understanding & Mutual Aid Agreements](#), CENTERS FOR DISEASE CONTROL AND PREVENTION (last visited Jan. 20, 2017).
- ⁵³ [Olympic Regional Tribal-Public Health Collaboration and Mutual Aid Agreement](#), 1.
- ⁵⁴ *Id.* at 2.