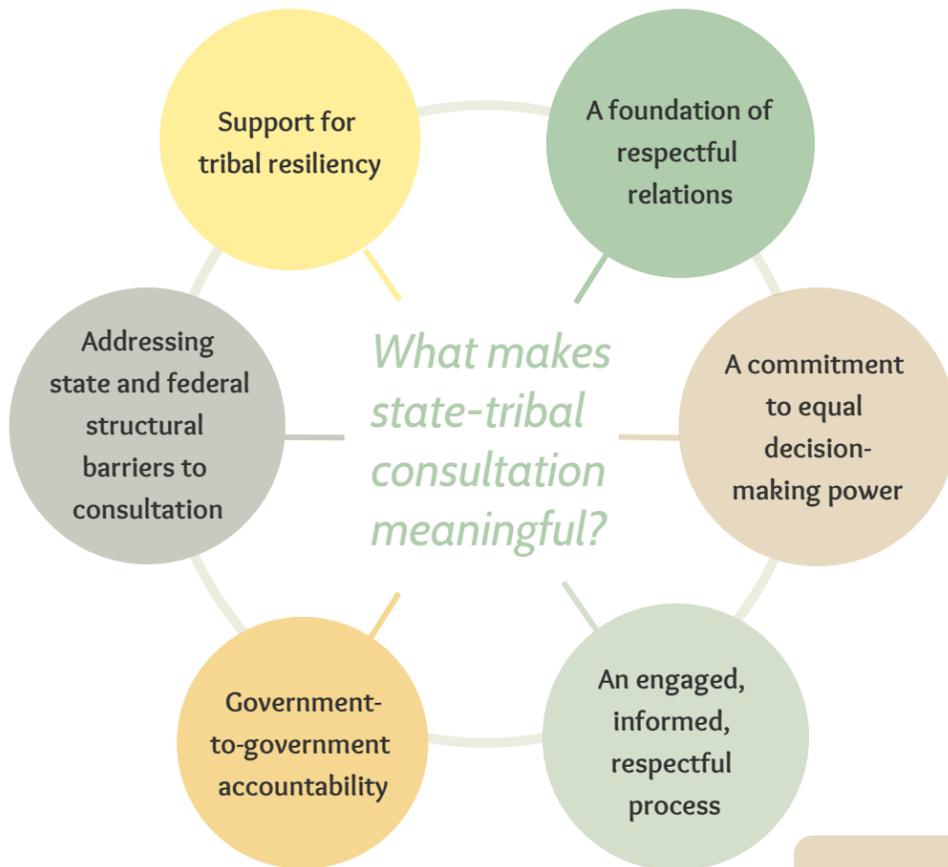


What makes state-tribal consultation meaningful?

Insights gained from interviews with tribal and state leaders

Manoomin (Ojibwe), psin (Dakota), wild rice (English) or *Zizania palustris* (Latin/scientific) is an aquatic grass with significant cultural and spiritual value to tribal nations in the Great Lakes region. To the Ojibwe people, it is a sacred food, medicine, and gift from the Creator. Because Manoomin is highly sensitive to environmental stressors, the Minnesota Pollution Control Agency (MPCA) established the 10mg/L wild rice sulfate standard in 1973. The standard went unenforced for years until the U.S. Environmental Protection Agency (EPA) mandated the state to begin enforcing it in 2011. From 2011-2017, the MPCA led a rule-making process to review and amend the wild rice sulfate standard. This process included researching wild rice, engaging a wild rice advisory task force, consulting with tribes, hosting public hearings, and issuing a new equation-based rule which was ultimately disapproved by the Chief Administrative Law Judge. In 2018, University of Minnesota and tribal researchers collaborated to interview four MPCA consultation participants and seven tribal participants—representing the Minnesota Chippewa Tribe, Grand Portage, Lac du Flambeau, and Fond du Lac bands of Lake Superior Chippewa—regarding their views on the sulfate standard consultation process. Insights gained from the interviews are intended to improve consultation practices and support more equitable and racially just, government-to-government environmental decision-making.

2020



What is tribal consultation?

As sovereign nations, federally recognized American Indian and Alaska Native tribal nations maintain government-to-government relations with the U.S. federal and individual state governments as defined in treaties and the U.S. Constitution. Consultation between U.S. government agencies and tribal nations is required for all issues within tribal jurisdictions or with tribal implications, including natural resources management in ceded territories. In Minnesota, Governors Dayton and Walz have each established a consultation requirement for state agencies via Executive Orders in 2013 and 2019, respectively. Thus state policies that impact Manoomin and Manoomin waters, such as the sulfate pollution standard for wild rice, require co-regulation and consultation between state agencies and tribal nations.

"I think consultation requires listening and certainly at least incorporating some of what's heard in a consultation. Otherwise it's not meaningful." —Tribal staff member

A foundation of respectful relations

- Recognition of inherent tribal sovereignty
- Understanding and respect for different relationships with Manoomin
- Understanding and respect for different management philosophies
- Recognition of historic and ongoing harms to local Indigenous peoples, including systematic and institutionalized racism

- Commitment to repairing and building trust
- Training for state agency staff on intercultural and tribal governance
- Opportunities for state and tribal staff to build authentic relationships outside the formal consultation space

A commitment to equal decision-making power

- Avoiding a superficial "check-the-box" approach
- Engaged listening, even when there are conflicting views
- Exchanging information and perspectives on equal footing
- Using tribal knowledge, resources, and research in decision-making

"It's astounding to me that these tribal elders and rickers come to these meetings and speak to state officials about wild rice . . . and then just have nothing come of that is just the ultimate disrespect." —Tribal staff member

Support for tribal resiliency

- Continuing to foster tribal staff who are well-versed in the issues
- Continuing to adapt strategies that bring successes within the existing system
- Preparing to repeatedly stand up for tribal sovereignty
- Continuing to show tribal solidarity and band together across tribes

It's up to us as tribal leaders to be there to speak for [our tribal members] . . . Not only that, but it all comes down to standing up and speaking for that Manoomin." —Tribal staff member

An engaged, informed, respectful process

- Engaging with tribes immediately in the consultation process
- Sending staff who have thorough understanding of the relevant issues, including legal, technical, cultural, and traditional ecological knowledge [TEK]
- Committing to open, respectful communication and behavior
- Preparing fair and flexible agendas that allow for inclusive information exchange and opportunities for conversation
- Maximizing location, timing, and technological access for all invited participants
- Including tribally hosted meetings
- Creating and sharing clear documentation, including thorough meeting notes and written statements of intentions
- Ensuring deliberate followup when there are misunderstandings

"I think we have a better appreciation for the technical knowledge—whether it's tribal ecological knowledge or Western science, but being practiced by tribal members . . . I think we're more ready to build time into the process for that." —MPCA staff member

Addressing structural barriers

- The Clean Water Act and sulfate rulemaking mandate have narrow and restrictive regulatory structures.
- The scientific approach used in lawmaking is traditionally narrow, and excludes TEK integration.
- State interpretations of treaty and federal law are inconsistent.
- Sulfate pollution is a politicized issue subject to industry influence.

"It wouldn't have been possible to have a broader rule at that time or to entertain that more holistic protection, because we didn't know how to do it . . . the Clean Water Act isn't structured that way . . . It's structured for figuring out how much protection is needed to protect a specific use." —MPCA staff member

" . . . there's no accountability. There's no recourse . . . at least on the federal side [it's] written in law . . . in the Constitution of the United States itself that treaties are the supreme law of the land. And that's probably one of our biggest, greatest tools . . . If we're doing things with the federal government, there's a tool to hold them accountable, and when we do these types of things with state governments there isn't."

—Tribal staff member

Government-to-government accountability

- Meaningful accountability mechanisms for the state
- Tribal liaisons within state and federal agencies who are empowered and included in consultations
- Clear government-to-government channels of communications with the appropriate level of decision-makers committed to the process
- Clear commitment of U.S. and state leadership to mutually beneficial tribal relations

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