

**SOVEREIGN COOPERATION:  
THE MAKAH TRIBE’S OFFICE OF MARINE AFFAIRS  
AND THE FUNDAMENTALS OF PARTNERING WITH UNCLE SAM**

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HISTORICAL BACKGROUND

When Washington Territory was organized in 1853, President Franklin Pierce appointed a controversial young political supporter named Isaac Stevens to serve as both the Governor of the Territory and Superintendent of Indian Affairs. When he arrived, Stevens was anxious to acquire federal title to as many Native American held lands as possible.<sup>1</sup> On the Territory’s Olympic Peninsula, for example, Stevens set aside three separate areas on which to relocate each of the Makah, Skokomish, and Quinault Tribes, whose collective territories encompassed hundreds of thousands of acres. Stevens sought to use federal treaties as the vehicle for these “legal” transactions.<sup>2</sup>

On January 31, 1855, Governor Stevens and forty two “chiefs, headmen, and delegates” from the Makah Tribe signed the seminal Treaty of Neah Bay.<sup>3</sup> In exchange for thirty thousand dollars and the right to fish, whale, and seal on usual and accustomed grounds (“U and A”), the Makah ceded more than 300,000 acres of timberland to the United States and further agreed “to remove to and settle upon” the land reserved by the Governor.<sup>4</sup> Today, a century and a half later, through legal ingenuity and sheer pluck, the Makah have seized upon the Treaty’s grant of the perpetual right to harvest marine resources and made it an aspect of enduring importance to the Tribe in charting its role in the modern world.

THE ISSUE AT HAND

Historically, native tribal governments have always been at the mercy of the federal government in recognizing their collective rights and interests.<sup>5</sup> In recent years, however, the federal government has sought to engage federally recognized tribes in government-to-government consultation in order to ensure that their rights and interests are adequately represented at the federal level. The federal government has attempted to solicit consultation through the promulgation of a number of executive orders, policy statements, and agency instructions.<sup>6</sup> Marshaling and making use of this authority, however, has proved very difficult for federally recognized tribes. Such difficulty stems in large part from a lack of clearly delineated

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<sup>1</sup> History of Rights and U & A, <http://www.pgst.nsn.us/tribal-government/natural-resources/history-of-rights-and-u-and-a>; *see also* Treaty of Neah Bay, U.S.-Makah, Jan. 31, 1855, 12 Stat. 939, *available at* <http://digital.library.okstate.edu/kappler/vol2/treaties/mak0682.htm>.

<sup>2</sup> History of Rights and U & A, *supra* note 1.

<sup>3</sup> Treaty of Neah Bay, *supra* note 1.

<sup>4</sup> *Id.* (This parcel is described fully within Article 2 of the Treaty).

<sup>5</sup> *See, e.g.*, Johnson v. M’Intosh, 21 U.S. 543 (1823); Worcester v. Georgia, 31 U.S. 515 (1832); Larry Sager, *Rediscovering America: Recognizing the Sovereignty of Native American Indian Nations*, 76 U. DET. MERCY L. REV. 745, 759-67 (1999) (recognizing European and American expansion came the ends of mass genocide and governmentally ordered diaspora).

<sup>6</sup> For URL links to these sources of authority, *see infra* notes 20-23.

communication channels and organizational structures within the tribes. It further stems from a pervasive ignorance of both federal law and, on the part of the federal government, tribal custom and social perspective. The Alaskan Inter-Tribal Council (AI-TC), for example, the purported advocate for 229 federally recognized tribes, has experienced great difficulty in engaging with federal agencies for the reasons just mentioned. Regrettably, much of the hoped for collaboration between the AI-TC and federal government has dissolved into mere vitriolic accusations of federally ordained censorship and genocide.

In Washington State, however, in April 2013, the United States Coast Guard (USCG) and Makah Tribal Council (MTC), the Makah Tribe's governing body, signed a Memorandum of Agreement to reaffirm and build upon the federal government's fiduciary responsibility to the Tribe and its maritime resources.<sup>7</sup> The enumerated goals of the Makah Tribe and USCG's partnership include the enhancement of government-to-government consultation, boosting the leveraging of oil spill response resources within each party's respective authorities, and the improvement of collective all-hazards prevention and response<sup>8</sup> posture within the Tribe's U and A. According to Rear Admiral Keith A. Taylor of USCG District 13, this partnership could potentially serve as "a model for cooperation between Coast Guard leaders and other sovereign Tribal authorities."<sup>9</sup>

This research paper attempts to analyze both the process leading up to and, then, the ultimate utility of this partnership between the Makah and USCG. It has the further goal of providing a possible template for Alaska Native and other tribal governments arranging cooperation with federal agencies regarding water pollution issues. This paper looks to the recently signed Memorandum of Agreement in order to identify the federal authority that enables this and other potential partnerships with federal agencies. It focuses in particular on the creation of the Makah Tribe's Office of Marine Affairs as the vehicle through which this authority is put to work, where communication and coordination efforts are directed, and that which generally leads to material federal recognition of tribal sovereignty.

## RESEARCH & ANALYSIS

To begin, the establishment of a meaningful government-to-government consultation policy is the first step in fostering a fruitful dialogue (and hopefully a resulting partnership) between the federal government and a federally recognized tribe.<sup>10</sup> Specifically, this policy encourages parties both to listen to and speak with one another. It also forces each to think carefully about what one wants to convey precisely to the other side. For example, a guiding principle of the Makah Tribe's consultation policy has been the acknowledgement of inherent

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<sup>7</sup> For an overview of the history and modern interpretation of the Federal Trust Doctrine, *see generally* James Van Ness, Esq., *The Federal Trust Doctrine—Realizing Chief Justice Marshall's Vision*, U.S. DEP'T OF INTERIOR, <http://www.doi.gov/pmb/cadr/programs/native/gtgworkshop/The-Federal-Trust-Doctrine.cfm> (last visited November 23, 2013).

<sup>8</sup> "All-hazards prevention and response" is the idea that instead of being able to respond to only certain hazards, a party is in a position to address anything a situation may throw at it.

<sup>9</sup> *CG, Makah Tribe Sign Memorandum of Agreement*, MILITARY.COM, <http://www.military.com/daily-news/2013/04/13/cg-makah-tribe-sign-memorandum-of-agreement.html> (last visited November 23, 2013).

<sup>10</sup> *See* Chad Bovechop, *Interagency Interaction: Makah Tribal Council's Office of Marine Affairs*, 52, [http://www.uscg.mil/proceedings/spring2010/articles/51\\_Bovechop\\_MakahTribalCouncilOfficeOfficeOfMarineAffairs.pdf](http://www.uscg.mil/proceedings/spring2010/articles/51_Bovechop_MakahTribalCouncilOfficeOfficeOfMarineAffairs.pdf).

tribal sovereign powers over internal matters and the right to self-determination concerning the protection of tribal trust resources.<sup>11</sup> Once each side understands where the other is coming from, the dialogue generated as a result of this policy allows, potentially, the parties to recognize mutually shared interests and any commonly held principles. Hopefully, this dialogue further leads to the formation of a useful partnership in which these mutually shared interests and principles are collaboratively advanced.

The Makah have suggested that an ideal partnership encompasses a shared understanding of the federal government's fiduciary responsibility to a tribe's resources and also to the tribe's further desire to preserve historical, cultural, subsistent, and economic ties to them.<sup>12</sup> This understanding, then, makes room for growth, perhaps in how a tribe can organize to more meaningfully contribute to federal and state actions that affect tribal interest. The Makah, for example, did this through the creation of the Office of Marine Affairs and now actively assist the USCG in the protection of their ancestral fishing and whaling grounds. (More on that later.)

In the end, it is only through these partnerships that tribes like the Makah and others are able to effectively voice to federal authorities what is important to them, thereby ensuring that these interests will receive at least federal attention and then hopefully federal enforcement. It is therefore very advisable for a tribal government to do everything it can to form these partnerships, even if, as with AI-TC, the formation process initially proves difficult and uncomfortable.

An example of what's being talked about: the Strait of Juan de Fuca is among the busiest bodies of water in the United States with hundreds of commercial vessels like oil tankers passing through each year. On average, there is at least one loaded tanker entering the Strait every day.<sup>13</sup> The Makah Tribe's U and A lies at the junction of the Strait and the Pacific Ocean. As such, the risk of an oil spill impacting the Makah's treaty protected waters is very real. In a letter<sup>14</sup> dated February 1, 2012, the MTC, through the Office of Marine Affairs, petitioned both the Washington State Department of Ecology and USCG District 13 to "engage in joint government-to-government consultation" to "ensure tribal treaty interests are adequately represented in federal and state oil pollution regulatory efforts." In short, the MTC wanted to be a part of any federal or state decision that would impact the treaty protected area. The letter reminded federal and state authorities that the "MTC has invested considerable time and effort over the years contributing to federal and state oil pollution initiatives[, but] need[s] to ensure that [their] sovereign status as an Indian Tribal Government is properly acknowledged and included in these actions that impact our treaty interest." Through this appeal and after years of back and forth consultation, the MTC has worked with state and federal agents to develop a comprehensive spill response plan, integrating federal, tribal, and state efforts that "reflects... respective sovereign interests... without violating the regulatory independence of the respective agencies." Most importantly, during this process, the MTC remained "open to... suggestions" regarding the development of this emergency response plan.

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<sup>11</sup> *Id.* at 51-2.

<sup>12</sup> *See id.*

<sup>13</sup> *Tanker Exclusion Zone Clarification*, CHAMBER OF SHIPPING, [http://www.cosbc.ca/index.php?option=com\\_content&view=article&id=475%3Atanker-exclusion-zone-clarification&catid=47%3Aabc-ports&Itemid=86](http://www.cosbc.ca/index.php?option=com_content&view=article&id=475%3Atanker-exclusion-zone-clarification&catid=47%3Aabc-ports&Itemid=86) (last visited November, 27, 2013).

<sup>14</sup> The letter is available at: <http://www.ecy.wa.gov/programs/spills/rules/MTC-CG%20D13-WDOE%20Consultation%202-12.pdf>.

Another example:<sup>15</sup> in Washington state, the shellfish industry accounts for more than \$270 million in direct sales. Over the years, however, the average upper-ocean pH has decreased by about 0.1 units, from about 8.2 to 8.1. This drop in pH corresponds to an increase in acidity of about 30% and is tied in part to increasing levels of carbon dioxide in the atmosphere reacting with seawater. That increase in acidity is damaging to shellfish, coral reefs, and other marine animals. Much of the state's shellfishing takes place on the Makah Tribe's U and A and provides jobs to many tribal members. It is therefore of great interest to the tribe to protect this economic resource. Fast forward to the state's decision to investigate solutions in the increase in acidity and you will find that the MTC, after following the same petitioning and consultation process described above, occupies a permanent seat on the Governor's Blue Ribbon Panel. There, they provide research staffing, scientific observation, and other valuable insight to develop potential solutions to this potentially devastating problem.

As suggested above, the partnership between the Makah Tribe and USCG could potentially serve as a model for cooperation between Coast Guard leaders and other sovereign Tribal authorities. It is important then to recognize how the MTC went about engaging federal agencies because the legal tactics the Council ultimately employed could arguably be just as effective for other tribes looking to replicate the same results. This is true regardless of whether or not a tribe possesses treaty rights. Significantly, a treaty is not needed to begin this overall process. This will be discussed more below.

For the Makah, the 1855 Treaty of Neah Bay has served as an important document in developing the relationship the Tribe currently shares with the United States.<sup>16</sup> This lies in how the MTC has interpreted the Treaty's original grant of a perpetual right to harvest marine resources from the U and A. The MTC has argued that this grant creates a unique federal trust responsibility over the Tribe's traditional fishing and whaling grounds. It is because of this trust responsibility, the Makah say, that the federal government must engage with the Tribe and work with them when any agency action will affect this precious natural resource. As a result, and as described above, in recent years, the MTC has begun to actively solicit federal agencies to engage in government-to-government consultation in order to ensure that tribal interests are adequately represented at federal and state levels.<sup>17</sup> These solicited agencies include the United States Coast Guard, the Environmental Protection Agency (EPA), National Oceanic and Atmospheric Administration, U.S. Navy and, on the state level, the Washington State Department of Ecology.<sup>18</sup>

As indicated, a treaty is not necessary for a federally recognized tribe to achieve essentially the same thing as the Makah Tribe. This is because the federal government already

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<sup>15</sup> *Acidic Ocean Hits Pacific Northwest*, Eric Niiler, <http://cen.acs.org/articles/91/i12/Acidic-Ocean-Hits-Pacific-Northwest.html> (last visited November 27, 2013).

<sup>16</sup> See *id.*; see also Memorandum of Agreement Between United States Coast Guards and The Makah Indian Tribe Regarding Interoperability and Cooperation, USCG-Makah, Apr. 12, 2013, available at <http://www.psp.wa.gov/downloads/OILSPILL/oilspill%20update%207-7-13/Signed%20USCG-MTC%20MOA.pdf>.

<sup>17</sup> Bowechop, *supra* note 10, at 51; Telephone Interview with Eric Bullock, Commander, USCG District Thirteen (Oct. 2, 2013).

<sup>18</sup> Makah Tribal Council Office of Marine Affairs Presentation, [http://www.env.gov.bc.ca/eemp/symposium/pdf/psp\\_makah.pdf](http://www.env.gov.bc.ca/eemp/symposium/pdf/psp_makah.pdf) [hereinafter OMA PRESENTATION].

owes, at least in theory, a fiduciary duty to federally recognized tribes under the Federal Trust Doctrine. An agency instruction<sup>19</sup> issued by the Department of Defense provides that:

Under the federal trust doctrine, the United States—and individual agencies of the federal government—owe a fiduciary duty to Indian tribes... Where agency actions may affect Indian lands or off-reservation treaty rights, the trust duty includes a substantive duty to protect these lands and treaty rights “to the fullest extent possible.”

Essentially, the MTC cites the 1855 Treaty as an affirmation of, if not in addition to, an already existing fiduciary duty owed by the federal government. The same principles and legal devices which brought federal agencies to the Makah’s table can arguably be utilized by another federally recognized tribe to achieve essentially the same thing.

#### OK, SO HOW IS THIS DONE...EXACTLY?

Whether created through treaty rights or by the federal government, the fiduciary duty that the federal government owes to a federally recognized tribe entails a mandate to protect tribal resources “to the fullest extent possible.” This duty, as it has for the Makah, allows tribes to appeal to federal agencies to engage in government-to-government consultation and ensure that this duty is carried out.

More to the point, there is already ample explicit federal authority directing federal agencies to consult with federally recognized tribes. These sources of federal authority, as reflected in the Makah and USCG’s Memorandum of Agreement, include, Executive Order 13175,<sup>20</sup> the Department of Homeland Security Tribal Consultation Policy,<sup>21</sup> the American Indian and Alaska Native Policy and Department of Defense Instruction Number 4710.02: DoD Interactions with Federally-Recognized Tribes,<sup>22</sup> and, more specifically, for the purposes of this paper at least, Section 706 of the U.S. Coast Guard Authorization Act of 2010.<sup>23</sup>

Federal agencies, however, will not engage with just anyone; they will only enter into government-to-government consultation with officially designated tribal representatives. This is not, as some claim, because of some nefarious intention or as an act of overt censorship, but to make sure that, as with any legal designation, that the person who claims to speak on behalf of a larger organization is actually the one who has been officially designated to do so. Given how much wrong has been done to native peoples at the hands of the federal government, it should

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<sup>19</sup> Department of Defense, the American Indian and Alaska Native Policy and Department of Defense Instruction Number 4710.02: DoD Interactions with Federally-Recognized Tribes; *see infra* note 19 for a URL to access this document.

<sup>20</sup> The Executive Order is available at: <http://www.gpo.gov/fdsys/pkg/WCPD-2000-11-13/pdf/WCPD-2000-11-13-Pg2806-2.pdf>.

<sup>21</sup> The Consultation Policy is available at: <https://www.dhs.gov/sites/default/files/publications/DHS%20Tribal%20Consulation%20Policy%20Final%20PDF.pdf>.

<sup>22</sup> The Instruction is available at: <http://www.denix.osd.mil/na/upload/DoD-AI-AN-Policy-Booklet.pdf>.

<sup>23</sup> The Authorization Act is available at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ281/pdf/PLAW-111publ281.pdf>.

come as a surprise to no one that when the federal government wants to do right by native peoples and work with them, it wants to be speaking to the correct person when it does so.

Thus the first step is designating one person, or perhaps several, if a tribe so chooses, who can legally speak on behalf of the tribe. An official Power of Attorney form exists on the Coast Guard website for just this purpose. The same would not be legally dissimilar for use with other federal agencies. After designation, a tribe would then solicit the relevant agency, as the Makah have in the examples above, to engage in government-to-government consultation.<sup>24</sup>

But after designation and consultation, how would a federally recognized tribe achieve what the Makah have (“actively assist the USCG in the protection of their ancestral fishing and whaling grounds”), and is this really possible without a treaty? As discussed, the MTC makes use of the 1855 Treaty of Neah Bay as a reinforcement of the above cited authority rather than a foundational requirement of it.<sup>25</sup> Proof of this can be found in the fact that the enabling authority of the April 2013 Memorandum of Agreement does not include the 1855 Treaty, but refers to it only in the Preamble as providing a “foundation of the Trust responsibility.”<sup>26</sup> And as noted, this Trust responsibility already exists under the Federal Trust Doctrine. Really, the enabling authority actually cited in the Memorandum lays out the true legal capacity for the Makah’s relationship with the USCG, and in the following language.

Executive Order 13175 mandates, “in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates,” federal agencies must “respect Indian tribal self-government and sovereignty...and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.” Moreover, when it comes to “formulat[ing] and implement[ing] policies that have tribal implications, [these] agencies shall...encourage Indian tribes to develop their own policies to achieve program objectives;...where possible, defer to Indian tribes to establish standards;...and in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.”

The Department of Homeland Security Tribal Consultation Policy states that the “United States Government has a unique legal and political relationship with American Indian and

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<sup>24</sup> This is not just legal theory. Currently, the USCG and EPA, on behalf of the Alaska Regional Response Team (ARRT), are leading a consultation effort on updates to the 1989 Oil Dispersant Guidelines. Utilizing this official designation process, as of this writing, the ARRT has invited over 75 tribes to formal consultation at five hub meetings in King Salmon, Anchorage, Kodiak, Valdez, and Dutch Harbor. Locations selected are “hub” locations with each area Subarea Response Plan affected by the proposed revision to the guidelines. Meetings include morning consultation meetings with tribal governments, followed by afternoon public/open participation meetings to discuss the proposed plan. An additional government-to-ANCSA corporation meeting is scheduled for Anchorage on December 6th, 2013 as well as a tribal government “make-up” session in Anchorage on December 5th, 2013. Over 80 ANCSA corporations were invited to consult in addition to the tribal governments. The above is referenced to show the good faith efforts and collaborative opportunities available for tribes and the federal government to work together on mutually shared interests.

<sup>25</sup> See *Bowechop*, *supra* note 10, at 51.

<sup>26</sup> See Memorandum of Agreement Between United States Coast Guards and The Makah Indian Tribe Regarding Interoperability and Cooperation, *supra* note 16.

Alaska Native Tribal Governments as set forth in the Constitution of the United States.” The Policy goes on to state that the “United States recognizes the right of Federally-recognized Indian Tribes to self-government [and to] exercise inherent sovereign powers over their members and territories.” The Policy concludes by laying the groundwork for effective consultation with tribal governments, noting in relevant part, that consultation “will be flexible in recognition of the uniqueness of each Indian Tribe and the wide range of Federal actions that may warrant” it.

In peacetime, the Coast Guard operates under the Department of Homeland Security.<sup>27</sup> In line with the new initiatives captioned in the DHS Policy, Section 706 of the U.S. Coast Guard Authorization Act of 2010 authorizes the Coast Guard to “enter into memoranda of agreement and associated protocols with Indian tribal governments in order to establish cooperative arrangements for oil pollution prevention, preparedness, and response.” Section 706 (c) and provides:

(c) COOPERATIVE ARRANGEMENTS.—...Such memoranda may be entered into prior to the development of the tribal consultation and coordination policy to provide Indian tribes grant and contract assistance. Such memoranda of agreement and associated protocols with Indian tribal governments may include [specific examples of types of agreements.]

Thus, this would be the primary organizing authority a federally recognized tribe would use should it choose to officially partner with the USCG and other federal agencies. Moreover, as indicated by the language, such partnerships are to be flexible given the uniqueness and particular circumstances of each tribe.

But while theoretically any federally recognized tribe can make use of the above cited authority and formally partner with a federal agency, one may wonder how the Makah Tribe was appointed to the Region 10 Response Team and to the Northwest Area Committee as a voting member. After all, these events ensure that the Tribe has even more of a direct say in decisions that affect its resources. Again, this was a result of demonstrating to the federal government the capacity and willingness to work together and providing it with a centralized place in which to channel all consultation and communication efforts (hint: ‘an official designation’).

The Makah achieved this through the creation of the Tribe’s Office of Marine Affairs (“OMA”), an act that greatly enhanced the Tribe’s credibility in the eyes of the federal government because it physically demonstrated its the organizational capacity and willingness to collaborate with the federal government and commit time and money to learning how best to complement federally orchestrated actions which affect tribal resources.

Perhaps unfortunately, this process can best be related through story. Several years ago, the EPA provided funding to the MTC in recognition of its history with oil spills, the volume of vessel traffic in the treaty area, the sensitivity of the marine environment, and the desire to protect its cultural, subsistence, and economic connection to the U and A.<sup>28</sup> With that funding, the MTC created the OMA with the two goals of safeguarding treaty resources and advancing tribal interests.<sup>29</sup> From the beginning, the MTC made it a goal that in all interactions with other governments that the OMA was to apply the best scientific and cultural information in the development of oil spill prevention, preparedness, response and restoration policies.<sup>30</sup>

<sup>27</sup> See *Missions*, USCG, <http://www.uscg.mil/top/missions/> (last visited October 4, 2013).

<sup>28</sup> See *Bowechop*, *supra* note 10, at 51.

<sup>29</sup> OMA PRESENTATION, *supra* note 18.

<sup>30</sup> *Id.*

In order to demonstrate this commitment to meaningful cooperation and the building of government-to-government partnerships, the MTC, through the OMA, participated in the 2007 oil pollution summit with Washington State Governor Christine Gregoire and USCG District 13 Rear Admiral Richard Houck. The resulting Memorandum of Agreement on oil pollution prevention and response between the USCG and the State of Washington identified mutual areas of authorities and interests shared between the federal and state government, in effect strengthening a working relationship to advance oil spill prevention, preparedness and response activities.<sup>31</sup> From this, the MTC and other Northwest Treaty tribes were able to learn how to improve interaction with the federal and state governments.<sup>32</sup> By breaking down how the two parties of the MOA communicated within the document, effectively in an almost “intra-governmental parlance,” the MTC was able to appropriate this language and better convey its desire to formalize with the Coast Guard its intent to acquire the necessary training, equipment, and support that would enable the MTC to obtain a basic ordering agreement status as an “all hazards responder”<sup>33</sup> and lay the foundation for a similar Memorandum of Agreement.<sup>34</sup>

At the time this desire was conveyed, the MTC knew that a Memorandum of Agreement could further serve as a clarifying document addressing the government-to-government relationship with the 13th Coast Guard District until a formal coordination and consultation policy with Indian tribal governments was established.<sup>35</sup> It could be argued that the existence of the OMA made the signing of the Memorandum of Agreement more likely.

Fast forward to the actual signing and one will see that the Memorandum calls for both parties to meet twice per year to update, validate and prioritize a consolidated work list that frames specific cooperative efforts; agree to enhance situational awareness through improved communications and coordination to include establishing communication protocols, and provide technical assistance; to work to promote robust derelict vessel, fishing vessel safety and waterways analysis programs; and to work to identify challenges and safety requirements that Makah vessels face when responding to pollution incidents.

As if to cap all of this off, Chad Bowechop, Manager of the OMA, said that the first step in beginning this process of establishing partnerships with federal agencies is the participation in meaningful consultation. The second part is implementation of the results of that consultation. For the Makah, progress was incremental. For three years, the MTC, through the OMA, regularly met with the USCG on proposed rule making, slowly building up the administrative record. After the demonstration of a committed effort to working within the agency’s system, the MTC saw real results and is currently enjoying significant international recognition, having been asked by a number of international organizations to serve in a consulting capacity on oil spill response efforts and to develop response and assessment models.

The same, in theory, is possible for any federally recognized tribe, but in order to get there, the process described above must be followed. Any federally recognized tribe may engage in government-to-government consultation, but if a tribe wants to achieve what the Makah have,

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<sup>31</sup> See Memorandum of Agreement on Pollution Prevention and Response Between the Commander, Thirteenth Coast Guard District and the State of Washington, USCG-WA, Jun. 26, 2007.

<sup>32</sup> See Bowechop, *supra* note 10, at 52.

<sup>33</sup> See *supra* note 8.

<sup>34</sup> See Bowechop, *supra* note 10, at 52 (N.B. This was before the Makah had signed the April 2013 Memorandum of Agreement with the USCG.)

<sup>35</sup> *Id.*



such a result may require the development of an organization like the OMA. It seems that federal authorities, once they see that a tribe has the capacity and resources to meaningfully assist them, they will allow and provide training for that tribe to do so. That comes after consultation, though. The best course of action, as the Makah have demonstrated, seems to be for a tribe to try to assimilate itself into the system, rather than try to beat it.

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