

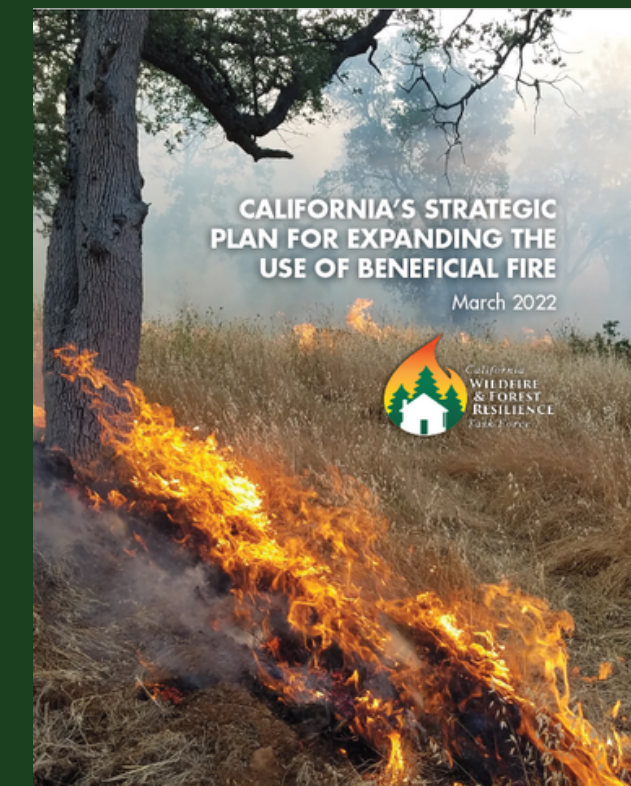
# Tribal Co-Management Legislation

Sara A. Clark  
September 22, 2026



# My Background

- Assist prescribed burn associations, Tribes, non-profits, and local agencies implement prescribed fire and cultural burning projects
- Helped draft multiple laws on prescribed fire liability, cultural burning and co-management
- Advise Tribes on protection of cultural resources, especially on federally administered lands and public lands
- Author of Good Fire I and II
- Subject Matter Expert for Biden-Harris Wildland Fire Mitigation and Management Commission



# Co–Stewardship v. Co–Management

CURRENT LAND, WATER, AND WILDLIFE  
AUTHORITIES THAT CAN SUPPORT TRIBAL  
STEWARDSHIP AND CO-STEWARDSHIP

## FINAL REPORT

DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SOLICITOR  
NOVEMBER 2022

Co-Stewardship. Co-stewardship broadly refers to collaborative or cooperative arrangements between Bureaus and Tribes and Native Hawaiian Organizations related to shared interests in managing, conserving, and preserving Federal lands and waters. Collaborative and cooperative arrangements can take a wide variety of forms. These may include, for example, sharing technical expertise; combining the capabilities of Bureaus and Tribes and Native Hawaiian Organizations to improve resource management and advance the responsibilities and interests of each; making Tribal knowledge, experience, and perspectives integral to the public's experience of Federal lands; cooperative agreements; and annual funding agreements under the Tribal Self-Governance Act (25 U.S.C. § 5361 *et seq.*) where applicable.

# Co–Stewardship v. Co–Management

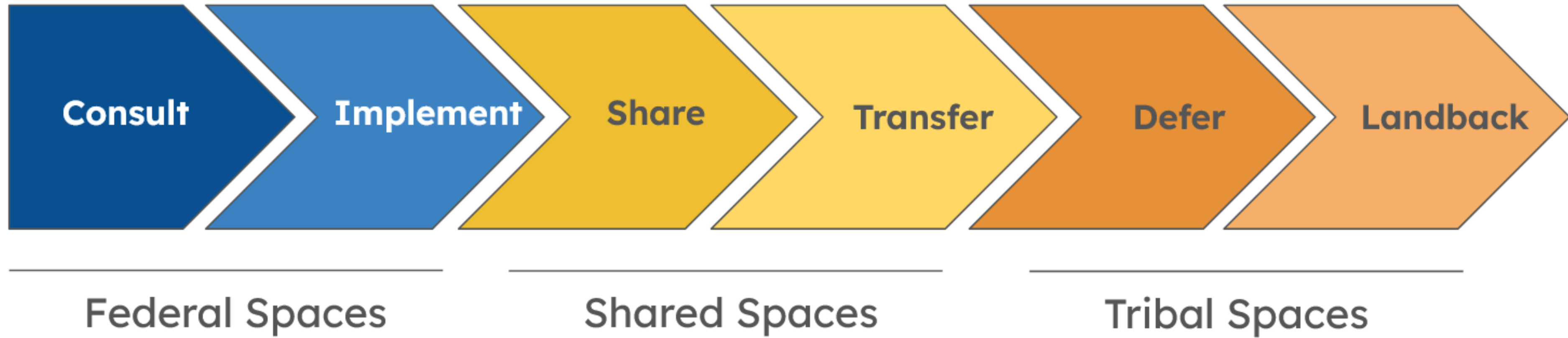
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Co-Management. Co-management narrowly refers to collaborative or cooperative stewardship arrangements that are undertaken pursuant to Federal authority that requires the delegation of some aspect of Federal decision-making or that make co-management otherwise legally necessary, such as management of the salmon harvest in the Pacific Northwest, where co-management has been established by law.

# Sharing Responsibility: A Spectrum of Approaches



- **Implement:** Tribe carries out project decided on by federal agency (e.g., most co-stewardship)
- **Share:** Tribe and federal agency share decision-making authority (e.g., collaborative decision-making processes)
- **Transfer:** Federal agency transfers authority to Tribe to carry out program, function, service, activity under federal law (e.g., 638 contract/compact)
- **Defer:** Federal agency defers to Tribal sovereign authority (e.g., ceremonial or cultural burning)

# Biden Administration Reviews

Order No. 3403: Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters

DOI, Current Land, Water, and Wildlife Authorities that Can Support Tribal Stewardship and Co-Stewardship (2022)

USDA, Office of General Counsel Legal Review (2022)

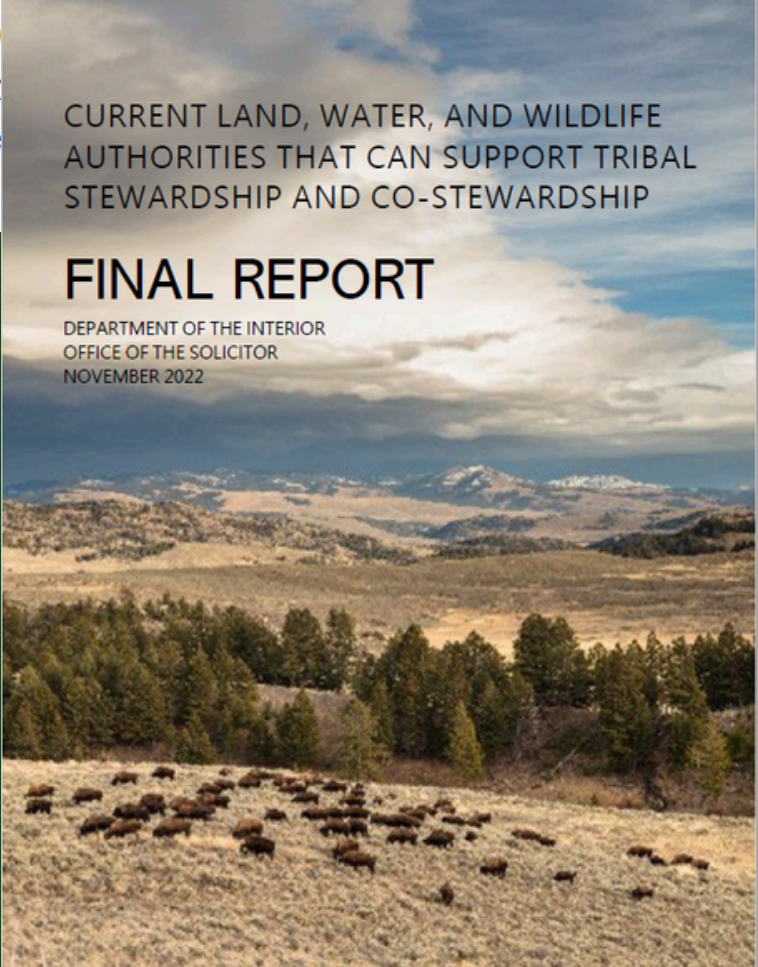


**Order No. 3403**

**Subject:** Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters

**Section 1. Purpose.** This Secretary’s Order is issued by the Secretary of Agriculture and the Secretary of the Interior (Secretaries) to ensure that the Department of Agriculture and the Department of the Interior (Departments) and their component Bureaus and Offices are managing Federal lands and waters in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of federally recognized Indian Tribes including the Native Hawaiian

between the  
fulfills the  
citizens.



United States  
Department of  
Agriculture  
Office of the  
General  
Counsel  
Washington,  
D.C.  
20250-1400

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# Existing Authorities?

- Treaty Rights
- Indian Self-Determination and Education Assistance Act
- Executive branch directives and actions
  - Joint Secretarial Order 3403
  - Shared Stewardship Agreements
- Implementation Authorities
  - Tribal Forest Protection Act and 2018 Farm Bill
  - Good Neighbor Authority/EXPLORE Act
  - Stewardship Contracting Authority
  - Challenge Cost Share Agreements



Cow Creek Umpqua and U.S. Forest Service Sign Shared Stewardship Agreement to Protect Forest Health

# Wildland Fire Mitigation and Management Commission (2023)

## Recommendation 30

**Congress should provide the U.S. Department of Agriculture stand-alone authorities to enter into co-management agreements with Tribes that would allow the Forest Service to share, defer or transfer decision-making authority with or to a Tribe or Tribes for management of Forest Service programs or activities.**

ON FIRE: The Report of the  
Wildland Fire Mitigation and  
Management Commission



September 2023

# USDA Framing Paper

## June 2024

### USDA TRIBAL CONSULTATION ON SELF-DETERMINATION IN FORESTRY – FRAMING PAPER

#### **APPENDIX A:** **Forest Service Tribal Self-Determination Authority**

#### **\*Tribal Consultation Discussion Draft \***

#### **Forest Service Tribal Self-determination Authority:**

**(a) PURPOSE.** – The purpose of this section is to expand authority for the Secretary, through the Forest Service, to more fully integrate Indian Tribes, ANCs, and Tribal Organizations into the management of the lands of the National Forest System by-

- (1) incorporating indigenous knowledge into Forest Service land management, with appropriate safeguards for data sovereignty and non-appropriation;
- (2) entering into agreements, including contracts and co-management agreements, with Indian Tribes, ANCs, and Tribal Organizations with respect to any Forest Service activities, including programs, functions, services and activities;
- (3) providing funding, including advanced funding, directly to Indian Tribes and Tribal Organizations to support agreements authorized by this section; and
- (4) ensuring that actions taken by the Secretary, through the Forest Service, under this section are conducted after consultation with the Indian Tribes regarding when and how to develop agreements with Indian Tribes and Tribal Organization under this section.

# Tribal Co-Management and Self Determination in Forestry Act (Huffman)

## H.R.3444 — 119th Congress (2025–2026)

- Secretary may enter into agreements with Tribe/Tribal organizations:
  - For programs, activities, services, or functions
    - planning, management, research, restoration, heritage programs, rec
  - “Share, delegate, or transfer management decisions”
  - On National Forest System lands that a “principally relevant” to Tribe
  - Consistent with existing plans and applicable laws
  - No inherently federal functions
- At least ten agreements in first 4 years
- Tort Claims Act coverage

# Tribal Co-Management and Self Determination in Forestry Act (Huffman)

## H.R.3444 — 119th Congress (2025–2026)

- Includes funding transfer from unobligated balances available to USFS
  - Includes advance payment options
- “Defer to” language:
  - Nothing in this bill affects the authority of the Secretary (as in effect on the date of the enactment of this Act) to acting through the Chief of the Forest Service, enter into agreements to enable or accommodate Tribal activities on lands administered by the Forest Service, including the exercise of Tribal Treaty, reserved, retained, or other similar rights.
- ISDEAA Study

<https://www.congress.gov/bill/119th-congress/house-bill/3444/text>

# Fostering Opportunities to Restore Ecosystems through Sound Tribal Stewardship Act (FORESTS Act, H.R. \_\_\_, Hurd)

- Designation of federally administered lands as “Indian Forest Land” for purposes of planning and management under National Indian Forest Resource Management Act
- Modifications to the Tribal Forest Protection Act re: timing
- Biochar demonstration projects

*<https://www.congress.gov/event/119th-congress/house-event/118223>*

## Other Possibilities?

- ISDEAA Title IV Expansion to USDA
- Cultural Burning Accommodation Act
- Securing Tribal Access to Forests Act

## Lessons Learned

- Concrete Examples
- Skepticism and opportunities on both sides
- Existing Laws?
- Sub-delegation concerns
- “Rights” of other parties
- Congressional dysfunction and prioritization
- Deference to agency
- Lack of knowledge
- Federally recognized Tribes

**Questions? Want Updates?**  
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