



Public Health Law

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

American Indian and Alaska Native Hunting and Fishing Rights

The Centers for Disease Control and Prevention (CDC) is committed to endorsing traditional foods as an effective approach for health promotion and diabetes prevention in American Indians and Alaska Natives (AI/AN) communities. Hunting and fishing rights are significant in a public health context because many tribal communities rely on these traditional foods for subsistence.

AI/ANs may hunt and fish off-reservation, but their rights are no longer exempt from limitations in state law. States may put forth purely regulatory measures for the purposes of conservation on off-reservation land; however, state regulations must meet the additional standards of being reasonable and necessary conservation measures. Any application of such regulations to AI/ANs must be necessary in the interest of conservation. Most importantly, these state regulations cannot discriminate against AI/ANs.

Courts have developed key legal doctrines to explain off-reservation AI/AN hunting and fishing rights, including a) the reserved rights doctrine, b) the necessary for conservation standard, c) the fair apportionment standard, and d) the appropriate standards requirement.

Reserved Rights Doctrine

- Unless a treaty or federal statute clearly revokes a tribe's rights to hunt or fish, those rights are reserved to the tribe.
- This doctrine is the strongest argument in favor of securing off-reservation use rights for AI/ANs.
- Case law: *United States v. Winans*

The Necessary for Conservation Standard

- States can limit off-reservation AI/AN hunting and fishing rights where necessary to conserve resources on off-reservation lands (with certain protections for AI/AN rights).
- States may put forth measures that are purely regulatory in nature, such as time and manner of fishing, on off-reservation lands for the purposes of conservation.
- Case law: *Tulee v. Washington*



The Fair Apportionment Standard

- States must regulate resources in a way that is fairly apportioned between AI/ANs and non-AI/ANs.
- Tribes are entitled to “fair share” of fish, which is a harvest of up to 50 percent of fish as a maximum allocation—the number of fish required to provide a moderate living for AI/ANs.
- Relevant case law: *Dep’t of Game of Wash. v. Puyallup Tribal [Puyallup II]*; *United States v. Wash.*; *Wash. v. Fishing Vessel Ass’n*

The Appropriate Standards Requirement

- States must prove that their conservation measures are reasonable and necessary before limiting tribal rights to hunt and fish.
- Any application of state regulations to AI/ANs must be necessary in the interest of conservation; state regulations cannot discriminate against AI/ANs.
- The burden of proof is on the state to prove that its regulations meet these appropriate standards elements in order to be necessary for conservation.
- Relevant case law: *Puyallup Tribal v. Dep’t of Game of Wash. [Puyallup I]*; *Antoine v. Wash.*; *State v. Miller*; *State v. Buchanan*

For further information on this issue, email phlawprogram@cdc.gov.

This document was developed by Akshara Menon, JD, MPH, ORISE Fellow and Matthew Penn, Director, JD, MLIS with the Public Health Law Program (PHLP) within CDC’s Office for State, Tribal, Local and Territorial Support. 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 professional with questions regarding the application of law to a specific circumstance.

