



# The Biden Administration's Conservation Plan Must Prioritize Indigenous Leadership

By Sahir Doshi | January 26, 2021

Newly elected President Joe Biden, in his Plan for Tribal Nations, promised to “provide tribes with a greater role in the care and management of public lands that are of cultural significance to Tribal Nations.”<sup>1</sup> This is one of the most powerful, consequential commitments he made during his campaign, signaling a recognition of—and willingness to confront—three fundamental injustices that affect nearly all aspects of U.S. natural resource policy.

First, all public lands that the U.S. government owns and manages were stolen from Native Americans and Alaska Natives, often through violence, genocide, and forced removal.<sup>2</sup> National parks, national wildlife refuges, national forests, and other national public lands would not exist but for this dispossession. Second, the U.S. government has largely failed to manage public lands in a manner that is consistent with its trust and treaty obligations to tribal nations, including its responsibilities to safeguard ancestral homelands that are home to sacred and ceremonial sites and landscapes, inspiration for place-based languages, and sources of subsistence for tribes.<sup>3</sup> Finally, federal government agencies and the wider conservation community have often failed to recognize the integral contributions that Indigenous peoples have made to biodiversity and the climate as the original and best stewards of their natural resources.<sup>4</sup> Although the environmental movement is engaging in efforts to better acknowledge these histories, there remains a lack of respect for the conservation efforts that tribes have undertaken despite opposition, infringement, and usurpation from outside interests.<sup>5</sup> The Biden administration must take action to direct resources to support these efforts and enable tribes to execute a conservation vision of their choosing, both as a matter of tribal sovereignty and effectiveness for overall conservation.

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## Tribal sovereignty is the basis for Indigenous-led conservation

The building blocks for Indigenous-led conservation in the United States already exist. Federal tribal law is centered on principles established in the treaties through which the federal government acquired vast swaths of tribal territory. Treaties stated that the federal government would hold land and its natural resources in trust for

tribes. The United States therefore has a long-standing legal and moral obligation to protect and promote tribes' best interests, including through supporting tribal self-determination, respecting tribal sovereignty, and providing the resources necessary for cultural survival and economic development.<sup>6</sup>

In practice, however, the United States has rarely lived up to these obligations. In land management, this is seen in the frequently feeble agency efforts to conduct tribal consultation.<sup>7</sup> Instead of serving as a necessary platform to collaborate with tribes to develop federal policy, tribal consultation is too often seen as a formality that agencies undertake after making the substantial decisions on their own.<sup>8</sup> During the Trump administration, this dynamic was evidenced in significant decisions concerning oil and gas leasing, mining, logging, and monument downsizing.<sup>9</sup>

### Reckoning with colonialism in the environmental movement

Historically, elements of the dominant Eurocentric environmental movement—including some of the largest and oldest private conservation organizations—have not fared much better than the federal government when it comes to respect for tribal sovereignty, often advancing policies that dispossessed Indigenous peoples of their lands, waters, and rights. Many of these organizations have started to reckon with this history and realign themselves with Indigenous-led conservation, recognizing not only the injustice and illegality of their former stances, but also that strong, sovereign tribal nations are allies, constituents, and original stewards with whom it is invaluable to build respectful working relationships. The Sierra Club, for example, has begun to engage in a more candid accounting of its founders' colonial, white supremacist mindsets.<sup>10</sup> But the marginalization and sidelining of Indigenous voices is not confined to the distant past: It persists in the underrepresentation of Native people on environmental organizations' staff and boards, organizations' failure to acknowledge and incorporate Indigenous knowledge and contributions, and organizations' lack of meaningful relationships with tribal nations. More environmental institutions must strive to follow the lead of groups that have begun working to dismantle these structures and build trust with Indigenous conservationists.

Although U.S. natural resource agencies have come to acknowledge and honor, in some of the places they manage, the current and historical connections of Indigenous peoples to the lands and waters,<sup>11</sup> Native Americans and Alaska Natives have been erased from public lands too often—both in name and in practice. True co-management of public lands requires land management agencies to honor tribal sovereignty, as well as support tribes in designing and executing a conservation vision that is consistent with their priorities and inclusive of time-tested, evidence-backed, and well-funded Indigenous knowledge. Despite the fact that there is a strong legal and scientific basis to support such a paradigm, examples of true co-management remain few and far between; instead, tribes are often relegated to the sidelines when agencies design and implement new policies.<sup>12</sup>

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## Biden, Haaland, and the 30x30 goal

The Biden-Harris administration cannot afford to perpetuate these mistakes as it begins the process of building a new natural resource policy framework to deal with the climate and biodiversity crises. The administration has taken a significant first step in a reparative direction by nominating Rep. Deb Haaland (D-NM) to serve as secretary of the U.S. Department of the Interior.<sup>13</sup> If confirmed, Haaland would not only be the first Native American to serve as a secretary in a presidential Cabinet, but she would also exercise control over the department that has been most complicit in disenfranchising tribes of their lands and resources.

One of the big ideas championed by both Rep. Haaland and President Biden is 30x30, a goal to protect 30 percent of U.S. lands and waters by 2030.<sup>14</sup> In 2019, Haaland was the lead sponsor of a House resolution to formally establish such a goal;<sup>15</sup> meanwhile, Biden's presidential campaign made 30x30 a key part of its plan to address climate change.<sup>16</sup> Notably, Haaland's resolution text establishes Indigenous-led conservation and respect for tribal sovereignty as a cornerstone of the 30x30 goal.<sup>17</sup> This is a clear and positive sign that the next administration and its congressional allies understand that any conservation goal lives and dies on the basis of support from tribal nations.

Indeed, the Biden-Harris administration has an opportunity to consciously and proactively signal that it will center tribal sovereignty when figuring out the specifics of their currently broad 30x30 plan. The administration should adopt sovereignty-affirming principles that ensure tribes are included early in the process at the highest level of decision-making. Additionally, all new conservation opportunities should be available to tribes with funding and flexibility. By meaningfully prioritizing tribal sovereignty, 30x30 can be an example of the United States striving to meet its trust and treaty obligations, rather than once again offering lofty language without the backing of institutional muscle.

Several tribal leaders have extended their support for the 30x30 goal<sup>18</sup> and are ensuring that their voices are heard early and often during establishment of the plan's contours, details and processes.<sup>19</sup> The key task for the next administration is to ensure that such cooperation is deepened and institutionalized. The federal government cannot afford to let this goal go the way of the many resource management plans that have been devised in the absence of tribal input, only to be presented to tribes for a last-hour consultation or tokenistic sign-off. Instead, tribal leadership must govern the very concept of what it means to protect 30 percent of U.S. lands and waters by 2030; if they do not, the objectives of this goal will not be maximally achieved.

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## Indigenous-led conservation is overwhelmingly effective

The U.S. government has both moral and legal obligations to support the conservation and natural resource priorities of tribal nations. But doing so would also provide universal scientific benefits: There is growing evidence from around the world that Indigenous-led conservation work leads to better outcomes across landscapes.

Studies from varied landscapes across Canada, Brazil, Australia, and Namibia find that lands under Indigenous control and management have greater biodiversity than equivalent areas under all other types of ownership, including federally protected national parks and wildlife reserves.<sup>20</sup> This corroborates the U.N.'s Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services 2019 report, which found that the rapid global mass extinction is slower on lands managed by Indigenous communities, which are better on average at managing the hazards of pollution and species decline.<sup>21</sup> Such biodiverse landscapes also execute more efficient ecological functions, from carbon sequestration to climate regulation.<sup>22</sup> Studies across the tropics find, for example, that greater recognition of Indigenous rights over forest land can lead to reduced deforestation and a higher carbon storage rate per hectare.<sup>23</sup> Similarly, Indigenous knowledge can enable more effective management of landscapes so that they are more resilient against drought, fires, and other natural disasters that are increasing in frequency worldwide as a result of climate change.<sup>24</sup> These ecological benefits complement the positive socioeconomic outcomes seen in countries such as Australia, where more Indigenous participation in designing and implementing conservation plans has led to improved life expectancy, employment, and health indicators for surrounding communities.<sup>25</sup>

In the United States, a study commissioned by the Center for American Progress and conducted by a team of scientists at Conservation Science Partners found that tribal lands—lands that are not public but are owned or managed by tribes—experienced the lowest proportion of nature loss over the past two decades compared with federal, state, and private lands.<sup>26</sup> This is true despite the fact that tribal lands have few federally recognized protections, raising the possibility that affirmative decisions tribes have made to conserve natural resources are not reflected in the dominant accounting of protected areas.<sup>27</sup> The House and Senate 30x30 resolutions envision using “a wide range of flexible and enduring conservation solutions” to meet the goal,<sup>28</sup> which could allow acknowledgment of more categories of Indigenous-managed land for their conservation value.

## Compelling examples of tribal co-management in the United States

There are myriad successful examples of Indigenous-led conservation in the United States, but one of the most famous is the Bears Ears National Monument in Utah.<sup>29</sup> The monument's declaration and statutory adherence to co-management principles were the result of direct advocacy and leadership from an intertribal coalition comprising representatives of the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, Ute Indian Tribe, and Pueblo of Zuni.<sup>30</sup> One of the coalition's goals is to enable the application of traditional ecological knowledge in a manner that serves as a blueprint for other co-management projects nationwide.<sup>31</sup> Tribes have been instrumental in improving protections for the Badger-Two Medicine,<sup>32</sup> Kasha-Katuwe Tent Rocks,<sup>33</sup> Mission Mountains Tribal Wilderness,<sup>34</sup> and other landscapes with ecocultural significance. Sovereignty and trust principles have been implemented in the successful management of specific resources such as Yurok and other fisheries programs in the Northwest.<sup>35</sup> Tribes in the West

have received recognition for the effectiveness of Indigenous disaster management techniques to improve resilience to fires, underscoring the importance of traditional knowledge.<sup>36</sup>

In addition to all of these programs, Native activists are also increasingly at the forefront of the climate and biodiversity movements, as demonstrated by front-line protests at Standing Rock,<sup>37</sup> the Gwich'in resistance to the Trump administration's push for drilling in the Arctic National Wildlife Refuge,<sup>38</sup> and Tohono O'odham actions to prevent devastating U.S.-Mexico border wall construction.<sup>39</sup> Most recently, the 116th Congress acknowledged both its fiduciary responsibility to the Confederated Salish and Kootenai Tribes as well as the success of Indigenous-led bison conservation<sup>40</sup> by returning the National Bison Range to tribal management.<sup>41</sup>

Indigenous leadership can unlock a wealth of underrecognized conservation opportunities that historical marginalization has denied to both Native communities and the country as a whole. Yet although Indigenous communities are often best positioned to design, lead, and manage protections for natural, historic, and cultural resources, they are often sidelined by the federal government. Tribal sovereignty is essential to effective land management, as tribes cannot implement their stewardship knowledge fully if they are consulted as an afterthought or impeded by bureaucratic, procedural, or funding hurdles.

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### Current barriers to effective co-management

While trust and treaty law provide the legal foundations for genuine tribal co-management of public lands, problems arise in implementation. Several existing barriers to pursuing co-management can be addressed through additional will, resources, and creativity on the part of the federal government to lead to real progress.

First, trust and treaty obligations and the sovereignty principle are not well-integrated into laws or agency decisions on public lands. Congress has often shortchanged tribes on funding opportunities vis-a-vis states and private partners, failing to name tribes in relevant legislation or dismantle the barriers that block access and use where it is available. Federal agencies, meanwhile, often use their considerable discretion to forgo the kind of long-term investment and relationship-building that is necessary for genuine co-management.<sup>42</sup>

Furthermore, when the federal government does engage in consultation, tribes are too often an afterthought. In order for tribal consultation to have actual substance, agencies must integrate tribes early into the decision-making process. Agencies currently tend to develop plans without tribal input and then approach consultation as a procedural roadblock to achieving a predetermined outcome. Tribes find themselves in a reactionary or defensive position without any kind of legal or institutional power, instead of in a proactive, vision-establishing role.

Several agencies and offices have not invested in long-term partnerships with tribes, working instead on a project-specific basis. This means that even if tribes were to be consulted earlier and more often in the process, their efforts might still be hampered by the maze of permitting and systemic hurdles that could have been preempted had the relevant processes been designed with prior tribal input. In addition, procedural control requirements and agencies' use of the nondelegation doctrine allow the federal government to cede little ground in underprioritized tribal partnerships. Federal agencies must build the capacity necessary to remain in more constant and dynamic dialogue with tribes in order to move beyond this inefficient, ad hoc system.

Yet since much of the tribal consultation process as it currently exists is ad hoc, tribes rarely have access to dispute mechanisms or legal recourse for agency failures, meaning that there is not enough accountability in the system. Today's limited procedural protections are rarely embedded into agency plans in a manner that would make them enforceable through defined standards, guidelines, or conditions.<sup>43</sup>

Moreover, Indigenous knowledge and tribal science have been marginalized and not given their due. From controlled burning to prevent forest fires, to knowledge of species-specific stewardship, to identifying sacred sites with ecological significance, tribal cultural practices and knowledge banks have been ignored, impeded, discounted and underfunded, to the detriment of the entire country.<sup>44</sup> As discussed above, even where agencies allow space for Indigenous leadership and design guided by cultural knowledge, bureaucratic barriers and lack of institutional capacity do not let these collaborations meet their full potential.

Finally, the United States has not been proactive in creating legitimation structures to enable tribes to declare their own protected areas and conservation visions. This is in contrast with other countries that, despite often not having equally robust Indigenous government frameworks, have been able to establish and fund various conservation opportunities for Indigenous communities. Where the United States has extended funding programs to tribes, there are often additional barriers to access—barriers that states and other entities do not face.

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## Recommendations for the new administration

The Biden-Harris administration has the opportunity to build a new and transformative natural resource policy to help combat the climate and nature crises, expand equitable access to nature, and achieve the 30x30 goal. These goals cannot be achieved without also implementing policies that support sovereignty-affirming tribal co-management and Indigenous-led conservation efforts.

To inform and guide support for tribal co-management and Indigenous-led conservation, the new administration should establish a tribal-led task force to advise the secretary of the interior on tribal priorities for natural resource management and the pursuit of 30x30. The task force could help ensure that tribal sovereignty, government-to-government relations, and adherence to trust and treaty responsibilities are core priorities of the new administration's 30x30 initiative. This section outlines potential actions that the task force could consider.

### Improve and embed consultation in respect for tribal sovereignty

The task force could make recommendations to ensure that land management agencies commit to free, prior, and informed consent (FPIC) with tribal nations, particularly regarding new federal land protection designations.<sup>45</sup> This type of consultation would engage tribes at the beginning of the decision-making process and allow them to have a real impact on projects.

### Provide tribes with the funds and flexibilities needed to execute their vision

Federal law and treaty obligation require the federal government to provide tribes with sufficient resources to provide for the needs of their people; the sovereignty principle ensures that they have the flexibility to spend those dollars in a manner that makes sense for their communities. The task force could recommend ways to dismantle the barriers that largely lock tribes out of conservation funding opportunities, including the Land and Water Conservation Fund. It could also explore new ways to provide direct funding to tribes to support conservation, such as by recognizing, incorporating, and perpetuating greater use of Indigenous knowledge in land management.

### Enable genuine tribal co-management on public lands

The task force could make recommendations on how federal land management agencies can work under existing authorities to expand and strengthen tribal co-management opportunities, building on the co-management principles sought during the Bears Ears National Monument designation.<sup>46</sup> This could include issuing clear and enforceable mandates to pursue co-management; developing technical expertise and hiring additional staff to engage with tribal nations in a more meaningful and respectful manner; and installing accountability and dispute resolution mechanisms through which tribes can hold agencies responsible for failures.

### Take a co-production of knowledge approach in research engagement

Indigenous-led conservation is most successful when tribes are able to preserve and utilize traditional knowledge without its practice being underplayed, undervalued, or constrained by outside actors. Agencies must reform research engagement to incorporate knowledge held and produced by tribes. At the same time, the government must pursue better and stronger privacy protections for traditional ecological knowledge and tribally generated data so as to prevent abuse, infringement and exploitation by outside actors. In order for Indigenous-led conservation to be successful, tribes must be able to share their knowledge with agencies without the fear that a Freedom of Information Act request or other well-intentioned but contextually misplaced transparency measure will backfire by exposing, for example, the locations of sacred sites that bad actors might desecrate or loot, or age-old medicinal knowledge that corporations might unethically appropriate.

Confidentiality is key, amongst other principles, to honoring sovereignty and enabling effective consultation and co-management. In addition to enabling safe use of traditional knowledge, agencies should also adopt a co-production of knowledge approach in research engagement that gives tribes a genuine seat at the table. Tribal leadership of and active participation in new research projects can serve as a steppingstone to management, as resource plans are often based on the findings of studies conducted on lands and resources that are important to tribes. In its 2020 resolution on the issue, the National Congress of American Indians put forth some principles that could guide meaningful co-production of knowledge.<sup>47</sup>

### Explore new ideas to recognize Indigenous-led conservation

Countries such as Australia and Canada offer promising models of how to honor Indigenous-led conservation efforts.<sup>48</sup> Both countries have established new protected areas that are identified and managed by tribes, bringing positive outcomes for the local communities and their economies, as well as advancing biodiversity protection, climate change mitigation, and disaster management. The task force could examine whether applicable lessons or inspiration can be drawn from similar international Indigenous-led conservations efforts, including developing a new Indigenous Protected Area system. Moreover, tribes in the United States are already advocating for legislation to better honor and protect sacred sites.<sup>49</sup> The task force could also examine existing self-governance authorities, which contract with tribes to provide services to their own communities. Finally, it could expand self-governance principles to public land management, building on new authority in the 2018 Farm Bill that allows tribes to conduct forestry activities on U.S. Forest Lands adjacent to tribal lands.<sup>50</sup>

### Prioritize tribal homeland restoration

The U.S. government should prioritize the return of tribal homelands to tribes in order to help restore tribal nations and strengthen their economies. While research shows that lands under tribal management are often highly protected, any effort to



return homelands should not presume that lands placed into trust with tribes will be part of conservation efforts. The task force could also examine promising policies in California, whereby tribes have the right of first refusal to purchase lands that power companies are seeking to offload.<sup>51</sup>

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## Conclusion

Fixing the federal government's broken relationship with tribal nations will take an enormous amount of work, as will stemming the nature crisis. Biden's stated commitment to Indigenous-led conservation and incorporation of tribal co-management into the process of building his 30x30 conservation goal—following the legislative model of Rep. Haaland—are welcome moves in the right direction. Conservation efforts will benefit from trust-honoring, sovereignty-affirming tribal participation and leadership. Land management agencies and green groups must invest in building genuine relationships with sovereign tribal nations, even when their immediate goals are at odds. This is not just a legal and moral imperative, but also a shot at building just, inclusive, and effective conservation policies that restore decision-making power to those who have both the right and the record to wield it.

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