

Tribal Food Integrity Project

Policy Process Guide



A Policy Toolkit

Use this toolkit to guide you through the policymaking process.

A project of Northern California Tribal Court Coalition.
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Welcome

This policy toolkit is for you.

If you are a member or leader of a Tribal nation, this policy toolkit is for you.

Tribes have inherent sovereignty that is rooted in the existence of the Tribe from time immemorial. Sovereignty is not given to the Tribe because of federal recognition. Federal recognition is a political act by an external government (the United States) that acknowledges that the Tribal collective (or Peoples) is inherently sovereign by virtue of their continued existence since time immemorial. While federal recognition may, and usually does, limit the federal government's interpretation of how a Tribe should exercise its sovereignty, any limitation on the exercise of Tribal sovereignty refers to how the Federal government views a Tribe's sovereignty rather than the actual existence of full sovereignty itself.

The Federal government and Tribes generally agree that the exercise of sovereignty by a Tribe includes, at the bare minimum, the responsibility to protect the health and welfare of Tribal members, Tribal resources, and economic situation of the Tribe. To this end, Tribal governments have the responsibility to make policy and enact laws that can be enforced by the Tribe's courts and officials.

Tribal law making is not constrained by state, county, or local laws, so while some states may prohibit local governments from making laws banning genetically modified organisms or

restricting use of pesticides, Tribal governments are not subject to a state's prohibitions. This means that Tribal governments can regulate in instances where the same regulation is prohibited adjacent to the Tribe's territory.

Tribal members have the right and responsibility to bring issues to the attention of their leaders and ask for solutions. Tribal leaders have the authority to investigate and advocate for new laws or amendments to existing laws in order to protect the health and safety of the Tribe.

This toolkit is provided as an accompaniment to the Model Genetically Modified Organism (GEO) and Model Pesticide laws, in order to support the policy making and advocacy efforts of Tribal leaders and community members. It is meant to be a general guide to the process of lawmaking. Because every Tribe's processes are different, it is not intended to be an exact representation of the process followed by your Tribe. However, the steps and principles within are meant to provide you with a basic introduction to the policy process.

We offer this toolkit to Tribal members and leaders alike to empower the exercise of sovereignty over your food supply, protect the well-being of your community, and build strong leadership for your Tribe's future.

Why A Policy Toolkit



A Tribal Call-To-Action

Tribal communities in the United States have the highest proportion of food deserts in the nation. Due to historic injustices and political marginalization, Tribal members living on reservations experience epidemic rates of nutrition-related diseases such as diabetes, stroke, cardiovascular disease, cancer, and opportunistic diseases that result from impaired immunity. Some of the barriers to nutritious food include lack of access and insufficient income for food purchases. To remove these obstacles, Tribes are establishing food sovereignty programs that include construction of community gardens, creation of school curriculum, reintroduction of traditional foods, and funding of cultural programs that focus on traditional resource management.

The Focus on Contaminants

Contamination of food resources and traditional materials by pesticides and genetically engineered (GE) organisms undermines Tribal efforts to protect the health of members. Many of the diseases listed above are also linked to over-exposure to pesticides. Also, when farmers grow GE plants, they must apply pesticides formulated specifically for use with the GE plants. Growth of GE crops means that more pesticides are released into the air, soil, and water. Consuming GE foods has not yet been proven risk-free. The results of one long-term study on the health effects of GE foods indicated that consumption of foods

in which the DNA has been artificially modified may result in a significantly higher possibility of developing malignant tumors. Together, GE crops and pesticides increase the health risks for Tribal communities. Tribal efforts to limit and remove these substances from the food supply can be a significant step toward community well-being.

Control of pesticide and GE organism releases is an environmental matter that ultimately affects Tribal health and safety. Tribal governments have the right and responsibility to take action to protect Tribal members.

Food is about relationship and responsibility

Across the planet, Tribes have relationships with their foods, medicines, and traditional materials. Tribes also have the responsibility to care for them and ensure that they remain for the benefit of future Tribal members. For that reason, the quality and availability of food is a policy matter for Tribal governments. Protecting the plants and animals that provide for the Tribe, and ensuring that Tribal members are not exposed to health risks are responsibilities that can and should be addressed through Tribal policy and law as well as through education and Tribal programs. When Tribal governments design plans that are comprehensive, there is a much higher likelihood for success.

This policy toolkit is provided to support Tribal success.

The Policy Process

1. Identify the specific problem. For example: "Genetically modified corn pollen is contaminating our traditional seeds." Or, "Pesticide drift from agricultural crops is contaminating our water and causing asthma."

2. Get the facts. This is your opportunity to answer the five questions: Who? What? When? Where? Why? How? You will also want to document the extent of the problem. Also use the information in this toolkit to support your claims.

3. Research. Talk to your community. Find out what others have noticed, how they perceive the problem, and whether they agree that something should be done.

4. Team building. Identify a team to work on the problem. Enlist Tribal leaders, members of your Tribe, and representatives from Tribal departments to provide input on the solution.

5. Drafting. Determine which parts of the Model Laws in the toolkit will work for your Tribe, and which parts need to be modified to fit the situation. This should be a team effort with plenty of input. During this step you should prepare a draft to go to the Tribal Council or other decision-making body for approval.

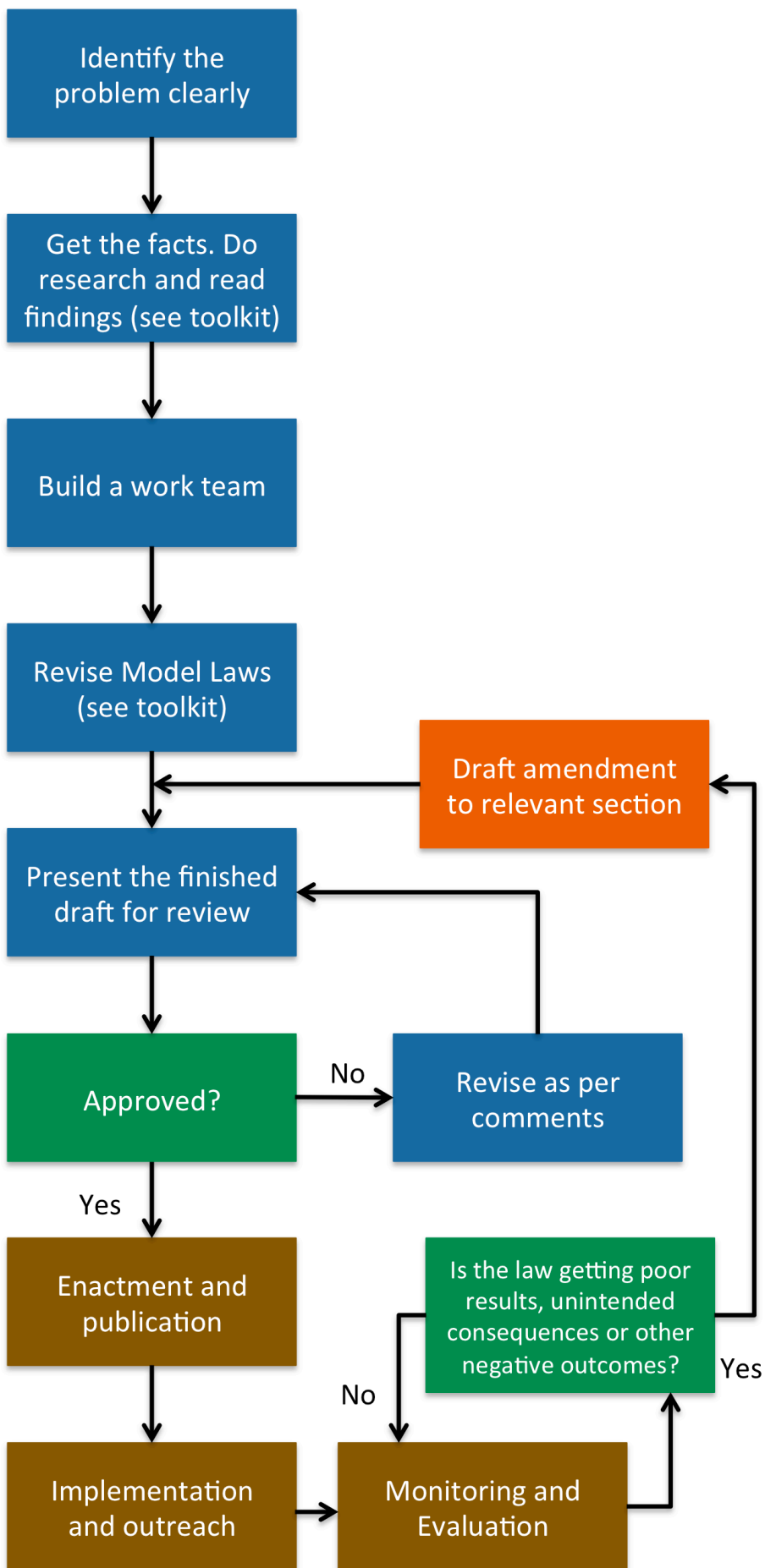
5. Review. Request the legislative body consider approving the law. You should expect an official review of the law at this time, and the decision-makers may decide it needs more work, or may decide to pass it on to the entire Tribe for review. Expect revisions.

6. Enactment and Publication to announce the new policy

7. Implementation and outreach to provide the community with information on compliance.

8. Monitoring and Evaluation to ensure the law has the intended effect.

9. Amending the law to correct



Transparency and Community Participation



Community & Tribal Policy Evaluation

Tribal departments must be included in decisions about restricting GE organisms and pesticides. These might include:

- Culture
- Environment
- Agriculture
- Fisheries
- Wildlife or Game
- Forestry
- Elder's Council
- Youth Council
- Nutrition or Community Health
- Justice or Courts
- Tribal Counsel or Attorney
- Fiscal planning
- Economic development
- Public safety
- Police
- Education

This list is meant to provide examples of the wide range of Tribal functions that could be affected; it is not meant to be an exhaustive list. Which departments are involved will depend on Tribal structure.

Engaging Your Community

1. Educate

The purpose of community education is

to increase awareness of why you are advocating for GE organism (GEO) and pesticide restrictions.

Community education can take many forms, from formal community meetings to informal gatherings where the topic of conversation focuses on pesticides and genetically engineered organisms, to storytelling, and anywhere in-between. Traditional forms of knowledge transmission work better in some settings than formal, informational meetings. You should use your judgment for each educational opportunity.

Education requires a long-term commitment. It can be helpful for this effort to be shared amongst friends and family members who are committed to the Tribe limiting GEO and pesticides.

2. Build consensus

Building consensus is one of the goals of your education effort. During the process of education, you will most likely learn that Tribal members have different opinions on how the law should be enacted and its impact on them. Part of consensus building is to find common areas of agreement from which you can work together to address how disagreements should be worked out. At times reaching consensus can be

stressful, particularly when tribal members have strong views that disagree with yours. Remember to be patient and attempt to listen to their perspectives and concerns. While sometimes conflicts cannot be resolved, often they can be reduced when parties opposing one another have an opportunity to be heard and respected.

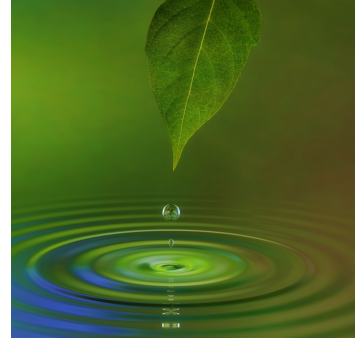
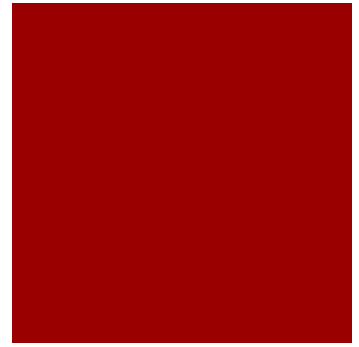
3. Consider Non-Tribal Members

The GEO and pesticide laws can have an impact on non-Tribal members who may reside in the Tribe's territory or adjacent to it, and will not have the ability to provide input to the Tribal government's decisions. We recommend that you consider this for at least two reasons:

A. Negative economic impacts on non-Tribal members may trigger a protest or create negative press.

B. Non-Tribal members who feel voiceless may advocate against the enactment of GEO and pesticide laws or take action against the Tribe to prevent the Tribe from implementing the law.

For these reasons it is better to communicate with non-Tribal members about your GEO and pesticide concerns, and include them in your community education efforts when possible



Persuasion: Bringing Leaders on Board

Methods for gaining support

There are several approaches you can take to persuade your leaders that making a law is the right thing to do.

1. Educate them

Education is the first step in building support for your policy. When you plan your community education efforts, include a plan to communicate facts and concerns with your Tribal leaders. You can use the information that accompanies this toolkit to create your own talking points and education plan.

2. Show them how the community benefits

Share information specific to your community with your Tribal leaders and discuss the community's concerns and visions for the future.

3. Demonstrate community support.

- Ask community members to sign a petition or write letters of support for the legislation.
- Invite leaders to any of the community gatherings you plan.
- Consider interests that your Tribe's leaders have advocated for in the past, and how GEO and pesticide laws might align with those interests.

4. Find funding sources to cover implementation costs.

Sometimes funding is the obstacle to enacting new policy. If the Tribe does not have the financial ability to implement a law, it will be difficult to convince Tribal leaders to take action. This is because the inability to enforce a law undermines the credibility of the law making process.

If you can identify some sources of funding in advance, you can avoid the disappointment of having your ordinance derailed for lack of enforcement funding.

Approaches to making policy

Resolutions

Resolutions can be used when the Tribal lawmakers want to make a policy statement, and do not yet want to enact a stronger law. Resolutions make the Tribe's policy known and can be a good first step toward setting a policy. Keep in mind that resolutions are not enforceable because they do not contain enforcement and penalty mechanisms

Ordinances

Ordinances are enforceable statements of the law that include expectations, measurements of accountability, enforcement provisions, and penalties. Ordinances are one of the strongest statements of policy a Tribal government can make.

Gathering Information



The information gathering process

You will need information to support your reasons for enacting GEO and pesticide laws. We have provided information on GEO and pesticides on our website at nctcc.org, and you can supplement that information with details specific to your own community, about how GEO and pesticides are harming or could harm your community. Some ways for you to do this are provided here.

Ways you can gather information

1. Community meetings

Like education, community meetings can be formal or informal. Community meetings can be useful for either gathering or presenting information. Most likely community meetings will be a combination of education, information gathering, and presentation.

When you conduct community meetings to gather information, you may want to present the information you already have, and invite community members to talk about their own observations, concerns, and perspectives. Recording meetings and taking notes is an important part of the gathering process, so be prepared with an audio recorder and also designate one or more note takers.

Immediately following a community meeting you should review your meeting records, and take note of important details that need to be considered as you modify the model ordinance provided, or draft your own.

2. Plan a conference or gathering

As we developed ordinances for Tribal communities, we held a conference on tribal food sovereignty. The topics discussed in the conference brought additional information to our attention. A conference or gathering with a few guest speakers can be an effective way to

learn more about how GEO and pesticides impact your community, and about additional factors to consider as you customize the model ordinances or draft your own.

3. Use photos as documentation

Photos, videos, and other visual documentation can be very useful for communicating information and providing evidence of the negative impacts of GEO and pesticides on Tribal members and resources. Smart devices are invaluable for efficiently capturing evidence.

4. Review the findings included in this toolkit

As part of this toolkit, information related to the impact of GEO and pesticides are provided to support your efforts to communicate your concerns with others.

5. State and County law research

Do some background research on your state and county laws - these do not affect how your Tribe can regulate, but they do affect how GEO and pesticides are regulated outside your Tribe's jurisdiction.

Why information is useful and important

Information serves a dual purpose of communicating issues and explaining the purpose of the law.

As a communication tool, information assists you with persuading Tribal decision-makers and community members to take action.

As a justification tool, information becomes part of the record of supporting evidence, explaining why the law was needed in the first place.

Your effort to document information and evidence is building a lasting case for why the Tribe needs the law you are proposing.

Model Laws



Model Tribal Genetically Modified Organism Ordinance

The purpose of the Model GEO Ordinance is to prohibit the release, growth, and presence of all genetically modified organisms within Tribal territory. This includes the "accidental" or intentional drift of GE materials into Tribal territory. A very narrow exception is allowed for Tribally-approved research projects, that must be strictly controlled to ensure releases do not happen.



Model Tribal Pesticide Ordinance

The purpose of the Model Pesticide Ordinance is to limit the release of all pesticides within Tribal territory, and includes the "accidental" or intentional drift of pesticides into Tribal territory. Some exceptions exist for emergency situations when a pest infestation is imminent, and for Tribally-approved research projects, that must be strictly controlled to ensure releases do not happen. The model pesticide ordinance includes provisions for community and vendor notification and education.





Modifying the Models

Recommendations

The models are generalized, and written in a fairly broad manner.

We recommend you avoid the temptation to make the language of your ordinance too specific. Remember that during the monitoring process you will be able to identify whether the ordinance is having the intended effect. Language with too much specificity is likely to be interpreted narrowly than language that is broadly applicable.

The details are important.

Consider the problems that your Tribe needs to address, and ask what is within the Tribe's capacity. For instance, if your Tribe does not have an environmental enforcement officer,

which other departments can provide enforcement? How will household pesticides be limited and how will the limitations be enforced? Which Tribal department will conduct community education and outreach? For every provision in the model you can probably think of questions to ask. The answers should lead to practical solutions so that the law is enforceable and useful.

Discuss each provision with the drafting team

Drafting legislation requires teamwork. A work group of community members and Tribal agency representatives is the best way for you to learn how the models in this toolkit need to be modified to fit your Tribe's circumstances.

Continuing the Policy Process

Approval of your Tribe's GEO and pesticide ordinances is not the end of the process. After the ordinance is approved, the policy cycle enters the implementation, outreach, monitoring, evaluation, and amendment phases. It is rare for a law to be drafted perfectly the first time. The steps below outline the process for making sure the law is fitting your Tribe's needs.



Approval and Publication

Once Tribal members, leaders, and officials have reviewed the ordinance, provided comment, and revisions have been made, the Tribal Council or governing body will have the opportunity to decide whether to approve or disapprove the ordinance. If it is approved, the ordinance becomes part of your Tribe's law and is published as part of your Tribe's code.

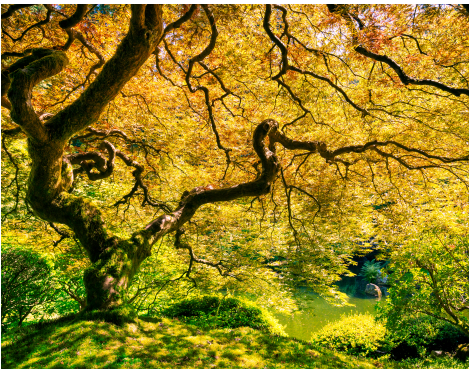
Your Tribe may issue a press release or otherwise announce the new law. Additionally, Tribal departments that have responsibility for implementing the law will be notified.



Implementation and Outreach

Implementation is the process of putting the law into action; it is the process that creates changes in the way the government operates. Tribal departments are given an opportunity to determine how the new law will change their procedures and practices, and what programs and training their officers will need. You should not expect to see things change instantly, but you should be able to see changes over time as Tribal departments work to put their new responsibilities into action.

Outreach is a function of implementation, and is the method of providing services to Tribal members. Often education and outreach are combined. Outreach to community member ensures that they understand how to comply with the new law.



Evaluation and Monitoring

Monitoring and evaluation occur over time as Tribal departments apply the ordinance's provisions to their day-to-day operations. Monitoring requires criteria to be set so that the department can measure how the ordinance is working. Site inspections and enforcement reports provide data for department officials to use in their analysis of the ordinance's effectiveness.

Evaluation is the step of using the data that has been collected to determine the strengths and weaknesses of the ordinance's provisions. If the evaluation process points to shortcomings in the ordinance that the department cannot fix by changing how the provisions are implemented, then it may be necessary to revise the ordinance. Monitoring and evaluation are typically done by department officials.



Amending the Law

Sometimes even projects with the most planning and the best foresight tend to have unintended effects. When this happens, laws need to be amended to eliminate results and consequences that were not intended.

The process of evaluation and monitoring will let you know whether a law needs to be amended, and how. The amendment process repeats the policy-making cycle. To amend the law you will need to provide evidence (typically obtained through evaluation and monitoring activities) the law is not working or having unintended consequences in some way.



Additional Resources

Other toolkit resources can be found at the Northern California Tribal Court Coalition website: www.nctcc.org

Model Ordinances

- Model Tribal GEO Ordinance
- Model Tribal Pesticide Ordinance

Information

- Tribal Regulation of Genetically Engineered Organisms
- Tribal Regulation of Pesticides

Tribal Youth Food Sovereignty

- Acorns to Oaks: Growing Tomorrow's Food Leaders (Video)
- Traditional Food Principles
- Agenda and Food Sovereignty Primer

Restoring the Balance: A Tribal Food Sovereignty Gathering

- Conference Agenda

Conference Videos:

- Restoring the Balance Movie
- Opening & Keynote Address
- Exercising Food and Culture Sovereignty
- Protecting Our Foods in a Changing Federal Legal Landscape
- Nanu' ávaha: Food Sovereignty and Security in Karuk Country
- Traditional Gardens: Bringing Native Communities Together
- National Tribal Model Food Code Project and Closing Remarks



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