

Origin Products and Indian Country: EU and U.S. Law and Policy

**Panel 5 in the Series on:
American Origin Products, Geographical Indications,
and Rural Development**

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Food and Agriculture in Indian Country

- Three points
 - Inherent sovereignty and authority to regulate in the area of food and agriculture
 - Lack of comprehensive approach to food and agriculture policy to date
 - Importance of Tribal government engagement vis-à-vis origin products, geographic indicators and food
- Current situation
- Next steps

American Indians and Alaska Natives in the United States

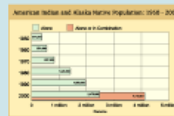
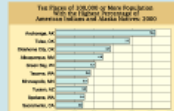


Top 100 American Indian and Alaska Native Tribal Lands: 2000

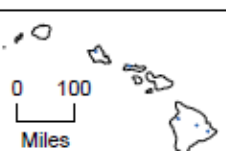
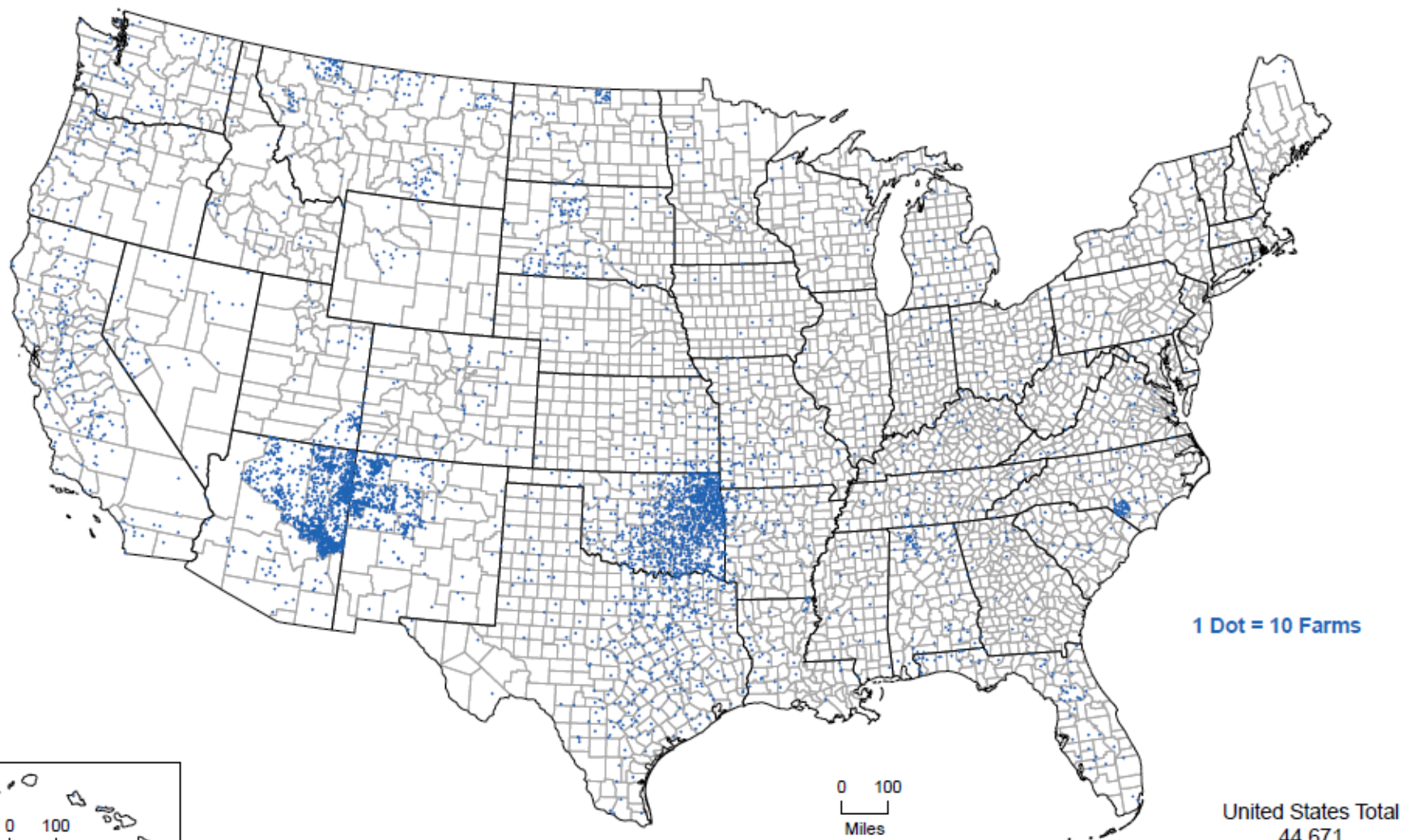
Tribal Land	Population
Navajo Nation	170,000
Cherokee Nation	160,000
Chickasaw Nation	150,000
Choctaw Nation	140,000
Comanche Nation	130,000
Deer Creek Band	120,000
Fort Belknap Reservation	110,000
Fort Hall Reservation	100,000
Fort Mojave Reservation	90,000
Fort Sill Reservation	80,000

Legend

- American Indian Reservation and/or Off-Reservation Trust Land (Indian Lands)
- Indian Tribal Land (Indian Lands)
- Indian Tribal Land (Indian Lands)
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Number of Farms with American Indian or Alaska Native Operators: 2012



Top States – American Indian Farms and Ranches, 2012

of Farms

1. Oklahoma
2. Arizona
3. New Mexico
4. Texas
5. California
6. Montana

Value of Production

1. Oklahoma
2. California
3. Texas
4. South Dakota
5. New Mexico
6. North Carolina

Food and Agriculture in Indian Country

- Largest contiguous farm in the US is owned by a Tribe
- Of the 26m acres of land in production in Arizona, 20m of those acres are under direct Tribal control
- Food and Agriculture is the 2nd largest employer in Indian Country
- Makes up a \$3b annual market impact with much room to grow
- Most of Indian Country's over 56 million acres of land is directly involved in food
- By some accounts at least 25% of the national "herd" is under direct or indirect tribal control
- Income is divided between livestock and all other food products
- Current Focus: addressing health/disease issues and access to foods but also building resilient local remote economies and diversifying economies
- Food Sovereignty as a driver

US Indian Policy Eras

- Indian Commerce Clause within the US Constitution; Art. I, Section 8, Clause 3
 - Congress shall have the power “to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes
- Sovereign-to-sovereign relationship (1778 – mid-1800s)
- Removal era (1800s) and Reservation era (1800s)
 - Much food production land was lost
- Allotment and Assimilation era (late 1800s to mid-1900s)
 - More food production land was lost
- Indian Self-Government era (1930s to 1940s)
- Termination era (1940s to 1960s)
- **Indian Self-Determination era (1960s to present)**

Executive Order 13175

- EO 13175 – President Clinton – November 6, 2000
 - Provides the modern foundation for federal responsibility applicable to all federal departments and agencies to consult with Tribal governments
 - “Regular and meaningful” consultation and collaboration with tribal governments
 - Prior to taking action that will significantly affect tribal interests
 - Strengthen government-to-government relationships
 - Reduce imposition of unfunded mandates upon Indian tribes
 - “Our Nation....has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise **inherent sovereign powers over their members and territory**”
 - Encourage Indian tribes to develop own policies
 - Defer to Indian tribes to establish standards
- Reaffirmed by President Obama in Presidential Memorandum November 2009

“Mastering American Indian Law”

Eaglewoman & Leeds

- Tribal governments have the obligation to tribal citizenry and visitors to tribal territory to provide basic services for health, education, safety, transportation routes, communication, support for commerce, employment opportunities and forums to resolve disputes (civil jurisdiction)
- Tribal constitutions vary in several ways and also in number of seats on Tribal Councils; differences in terms of office, etc
- Tribal Councils – legislative function, creating laws embodied in Tribal Codes, providing for enforcement, supervision of governmental departments, services, contracts and programs
- Tribal Councils may create new laws or model new laws based on laws of other Tribes – may be comprehensive sections or isolated provisions in subject areas

Role of government

- Managing their economies and seeing that businesses have freedom to be created and grow
- Watchdog to protect public interest
- Keep their economic picture in balance
- Fair and true competition
- Health, safety and welfare
- Encourage a healthy economic environment
- Maintain law and order
- Enforce contracts
- Define property rights
- Establish and maintain court systems and enforce economic rights
- Establish commercial rights

Role of government

- Generally, Tribal Nations retain inherent regulatory authority within Indian Country
- In specific areas, such as meeting federal environmental standards, federal regulatory authority is the default when tribal government does not provide regulatory authority
- Tribal governments engage in community planning and have delegated authority to land use and planning agencies to zone tribal land areas for specific activities
- Regulations adopted by tribes may govern land use permitting
- Stewardship of tribal lands has led to environmental protection legislation and oversight agencies
- Tribes have detailed regulations due to negotiations with federal and state governments in areas of hunting, fishing and gathering - - both on and off-reservation

Historic Use & Ownership Concepts

- Ownership and rights of use in land as a function of traditional ways of thinking about food and farming
- Many tribes and Pueblo peoples allotted farming and use rights to lands to individuals and/or worked communally to build extensive farming sites
- Each tribes' thinking and actions in relation to food, food traditions, food "governance" are unique
- Indigenous peoples' knowledge of and recognition of private property rights also extended to intellectual property, copyright and trademark as tribal members in some tribes had sole rights to use carvings, dances, marriage ceremonies, names, medicines, masks and rituals, horses and other animals

Shift to Modern Statutory Authorities

- American Indian Agricultural Resource Management Act (1993)
- Management of agricultural lands and related renewable resources in manner consistent with identified tribal goals and priorities for conservation, multiple use, and sustained yield
- Increase the educational and training opportunities available to Indian people and communities
- Definitions:
 - Agricultural product
 - Agricultural resource
- Holistic management objectives
- Management objectives; Land Leasing objectives
- Planning processes leading to Tribal government control over destiny of the land uses for agricultural purposes and the products thereof

Shift to Statutory Authorities

- HEARTH ACT (2010)
- Voluntary alternative land leasing program
- Primary focused on homeownership concerns
- Also contains provisions related to agricultural leasing
- Specifically, the Act authorizes tribes to execute agricultural and business leases of tribal trust lands for a primary term of 25 years and up to two renewal terms of 25 years each. Leases of tribal trust lands for residential, recreational, religious or educational purposes may be executed for a primary term of up to 75 years, again without Secretarial approval.
- In support of tribal self-determination, the Act requires the Secretary to approve tribal leasing regulations if the regulations are consistent with the Department of the Interior's leasing regulations at 25 CFR Part 162 and they provide for an environmental review process that meets requirements set forth in the Act.

Phases in Economic Development

- Mineral and Oil Development-1800-present
- SBA 8A Program-1968
- Indian Gaming Regulatory Act-1988
- Empowerment Zones-1993
- HubZone-1997
- Payday Lending-2000
- Promise Zones – 2010 and after
- **Geographic Indicators – the future?**

“Growing Economies in Indian Country”

Effort of Federal Reserve (2010-11)

- Conclusions:
 - Insufficient access to capital
 - Capacity and capital constraints of small business resource providers
 - Insufficient workforce development
 - Financial management training, and business education
 - Tribal governance constraints
 - Regulatory constraints on land held in trust and land designated as restricted use
 - Underdeveloped physical infrastructure
 - Insufficient research and data
 - Lack of regional coordination and collaboration

Examples of recommendations

- Expanding access to capital
 - Facilitate location of regulated lending institutions (banks, credit unions, etc.) within tribe's physical jurisdiction
 - Fund equity grant programs for Native entrepreneurs
 - Use asset-building initiatives such as individual development accounts that offer opportunities to build equity for small business capitalization
 - Multi-sector coalitions to provide resources and support for entrepreneurs and small businesses

Examples of recommendations, cont.

- Legal Infrastructure to enhance effectiveness of tribal governance
- **Enact and implement tribal commercial, business, and other related laws and regulations to enhance the tribe's legal environment for commercial activity**
 - Secured transactions codes
 - Uniform commercial laws
 - Trusted, reliable lien-filing systems
 - Business organization laws
 - **Streamlined business licensing regulations**
 - Land use and zoning regulations and codes
 - Comprehensive ethics codes and management systems

Examples Today

- Intertribal Agriculture Council
- “Made/Produced by American Indians” Trademark
- Current use related to tribal food products
- Next steps



Made/Produced by American Indians trademark

- The Intertribal Agriculture Council (IAC) promotes the “Made/Produced by American Indians” trademark as a means to successfully and clearly identify actual American Indian products from federally recognized Tribes.
- The IAC began the process of research, development and registration of the trademark in 1991
 - Funded through Administration for Native Americans (ANA) grant
 - Augmented since then with resources provided by the USDA Foreign Ag Service MAP program
- January 1995 the United States Patent and Trademark Office approved the trademark.
 - The trademark has been test marketed
 - Used in three (3) classes and additional certifications are ongoing
- Currently approved for use for promotion of agricultural or other Indian products which have been produced and/or processed by enrolled members of a federally recognized tribe.
- Currently has over 500 licensed trademark users

Purpose of the Trademark

- According to the United States Department of Commerce, as much as 20% of the estimated \$1 billion spent annually on Indian cultural goods is spent on fake Indian products.
- The “Made/Produced by American Indians” trademark is specifically registered to protect Indian producers and the consumer from imitation products.
- The trademark can also assist American Indian producers to improve their market share, thereby increasing the economic base of the Indian producer and their community.
- <http://www.indianaglink.com/wp-content/uploads/2013/09/IAC-Trademark-Booklet.pdf>

Process of approval

- First used on January 19, 1993, White Earth Reservation's Tribal enterprise, Manitoak Wild Rice in test market
 - Used on wild rice products, wild berry jellies and syrups, and birch bark arts and crafts.
- After subsequent changes in the application and further approvals, the trademark was approved
- September 1994, the trademark finally approved, and on January 3, 1995, the IAC received the notice that the trademark was granted by the U.S. Patent Office.

Three (3) categories of approved use

- CATEGORY 21:
 - Small domestic utensils and containers (not of precious metals, or coated therewith); combs and sponges; brushes (other than paint brushes); brush making materials; instruments and materials for cleaning purposes, steel wool; unworked or semi-worked glass (excluding glass used in building); glassware, porcelain and earthenware, not included in other classes.
- CATEGORY 29:
 - Meats, fish, poultry and game, meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, eggs, milk and other dairy products; edible oils and fats; preserves, pickles.
- CATEGORY 30:
 - Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes, flour, and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard, pepper, vinegar, sauces, spices; ice.

Requirements for use

- “Produced in Indian Country”
 - Requires for use on livestock products that the animals were fed in Indian Country for at least 60 days prior to milking, processing, or slaughtering; on crop production that the product was grown in Indian Country for the same period
- Raw ag produce may use the label if no less than 80% of the product was produced by American Indians
- Processed products may be identified if no less than 80% of the featured product component or at least 60% of the total product by weight was produced by American Indians
- Producer may use the labeling statement on any eligible product if the product was processed in a plant at least 51% owned by American Indians

Additional use

- Can be used on manufactured goods
- Can be used on arts and crafts
- Retailers and wholesalers may use the labeling statement and logo for those products that have obtained the approval to use the trademark
- Display requirements
- To date, has not been used purely as “geographic” or “regional” indicators
- Used extensively as Native food products participate in the FAS Market Access Program to access export markets



Navajo Agricultural Products Industry



Bedr'e Fine Chocolate



Sister Sky Natural Products



Red Lake Nation Foods, Inc.



Red Lake Nation Foods, Inc.

RED LAKE NATION FOODS INCORPORATED



Red Lake Nation Foods, Inc.



Native Natural™ Southwest Native Foods – Isleta Pueblo



Passamaquoddy Wild Blueberry Co



Yakama Nation Apples

- Yakama Nation apples
- Yakama Apples (red and golden)
- Yakama Nation Apples (red and golden)
- Chief Yakama Apples



Questions and Next Steps

- Do Tribal governments have in place the necessary **Food and Agriculture Code provisions** to support regional/geographic origin food products?
- How can the existing IAC Trademark already in place be used to augment this conversation and further move this discussion?
- What are the regulatory, legal, business and intertribal barriers to further development in this area?
- How can we partner with others to promote this issue for the betterment of tribal economies and communities?
- How do we negotiate the sensitive issues related to traditional foods?

Thank you

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