

NMFS - Alaska Region, Sustainable Fisheries Division

Tribal Consultation Process

Introduction

Executive Order (E.O.) 13175 requires each agency to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have “tribal implications.” The [tribal consultation policies](#) of the Department of Commerce (DOC) and the National Oceanic and Atmospheric Administration (NOAA) require the National Marine Fisheries Service (NMFS) to consult and work with tribal governments when developing policy, rules, or programs “that have substantial direct effects on one or more” tribes.¹ In addition to the requirement to consult with the 229 federally recognized tribes in Alaska, Congress also requires NMFS to consult with Alaska Native corporations on the same basis as tribes.²

NMFS Alaska Region is responsible for managing the fisheries in the Exclusive Economic Zone (EEZ) off Alaska; for ensuring the viability of protected species, principally marine mammals; and for protecting and enhancing Alaska's marine habitat. NMFS Alaska Region recognizes the importance of consulting with the tribes on issues of interest to the tribes and is striving to improve its tribal consultation process with the resources available to existing staff.

The Sustainable Fisheries (SF) Division manages the commercial groundfish fisheries off Alaska to ensure that catch does not exceed established quotas, and implements the fishery management plans (FMPs) and regulations recommended by the North Pacific Fishery Management Council (Council) for the groundfish, crab, scallop, and salmon fisheries in the EEZ off Alaska. The SF Division also implements regulations recommended by the Council for management of commercial, subsistence, and recreational charter fishing for halibut.

The primary issues under the responsibility of the SF Division that have been of interest to Alaska tribes are halibut subsistence, salmon bycatch, commercial fishing with trawl gear in the waters off western Alaska, and fisheries management in the Arctic. More information about the SF Division's tribal consultation process is posted on the [NMFS Alaska Region website](#).

Role of the North Pacific Fishery Management Council

Most fishery management, allocation, and bycatch management regulations for the Federal fisheries off Alaska are developed by the Council. The Council is one of eight regional councils established by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to oversee management of the nation's fisheries. With jurisdiction over the million-square-mile EEZ off Alaska, the Council has primary responsibility for groundfish management in the Gulf of Alaska and Bering Sea and Aleutian Islands management areas, including cod, pollock, flatfish, Atka

¹ From the definition of “Policies that have tribal implementations” in Section 1 of E.O. 13175.

² In 2004, through two consolidated appropriations acts, Congress required Federal agencies to consult with Alaska Native corporations on the same basis as Federally-recognized Indian Tribes under E.O. 13175 (Pub. L. 108-199, 118 Stat. 452, as amended by Pub. L. 108-447, 118 Stat. 3267). NOAA interprets the term “Alaska Native corporations” in this requirement to mean “Native corporations” as that term is defined under the [Alaska Native Claims Settlement Act of 1971](#).

mackerel, sablefish, and rockfish species harvested mainly by fishing vessels using trawl, hook-and-line, and pot gear. The Council also makes allocative and limited entry decisions for halibut, although the United States-Canada International Pacific Halibut Commission is responsible for conservation of halibut. Other large Alaska fisheries such as salmon, crab, and herring are managed primarily by the State of Alaska.

The Magnuson-Stevens Act requires the Council to develop an FMP for each fishery under its authority that requires conservation and management, and to amend those plans as necessary. In addition, the Magnuson-Stevens Act requires the Council to develop recommendations about regulations necessary to implement the FMPs.

NMFS's role is to review the Council's recommended FMPs, amendments to FMPs, and regulations to determine if they are consistent with all applicable Federal laws and regulations. NMFS may disapprove or partially approve an FMP or FMP amendment only if it is inconsistent with a particular Federal law (see section 304(a)(3) of the Magnuson-Stevens Act). Therefore, although NMFS on behalf of the Secretary of Commerce makes the final decision about approval of FMPs or FMP amendments and the regulations to implement the FMPs, the important policy decisions generally are made by the Council.

The consultation requirements of E.O. 13175 apply to NMFS (a Federal agency) and any actions it takes, including approval of FMPs, FMP amendments, regulations, and policies that have tribal implications. Thus it is NMFS's—and not the Council's—responsibility to consult with federally recognized tribes under E.O. 13175.³ However, NMFS encourages the Council to discuss and work with tribes to understand and consider their concerns while developing fishery conservation and management measures under the Magnuson-Stevens Act.

The Council strives to identify and analyze the impacts of proposed alternative fishery management actions on rural communities and their residents, including Alaska Natives. Therefore, it is important for Alaska Native tribes and corporations to participate in the Council's policy and regulatory development process, public outreach, and public comment opportunities so that the Council is aware of concerns by the tribes early in the analysis process and in development of policies and regulatory recommendations. Tribes also may consult with NMFS at any time during development of a fishery conservation and management action using the process described below.

Tribal Consultations on Fisheries Management Issues

Once the Council initiates discussion of an FMP, FMP amendment, or regulatory amendment that will affect a fishery under its jurisdiction, the project generally is assigned to a staff member in the SF Division. SF staff follow the issue through the Council process and prepare Notices of Availability for the FMP amendments and the proposed and final rules.

The SF Division follows the process below to comply with E.O. 13175 for these actions.

³ See response to comment 5 in the Department of Commerce's revised tribal consultation policy ([FR 78 33331; June 4, 2013](#)).

Initiating Consultation

Consultations can be initiated by the SF Division or at the request of federally recognized tribal governments or Alaska Native corporations. A federally recognized tribe or Alaska Native corporation may request a consultation at any time on any issue that has tribal impacts.

Consultation requests should be submitted to:

James W. Balsiger, Ph.D.
Administrator, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802

Ph (907) 586-7221
Fax (907) 586-7249

As noted below, it assists NMFS to maintain proper records for consultation requests, and to identify the tribe and tribal representative, to have tribal consultation requests submitted in writing on the tribe's letterhead. Tribal representatives or any other person with questions about tribal consultation may call the Sustainable Fisheries Division at any time to ask specific questions or obtain additional information before submitting formal requests for consultation (see contact information below).

E.O. 13175 and the DOC and NOAA consultation policies do not apply to regional non-profit tribal organizations, tribal groups, or non-ANCSA Native corporations. However, NMFS recognizes that these tribal organizations may be important partners or have interests in NMFS's activities. Communications and relationships with these organizations do not constitute or require tribal consultation. A tribe consulting with NMFS may invite any other party to attend or participate in a consultation or may authorize an individual or tribal organization to represent it or conduct the consultation on its behalf.

Notification of Issues: Consultations may be prompted by the agency's notification to tribes of a specific action that may have tribal impacts or be of interest to a tribe. The SF Division notifies tribes by letter during the development of selected proposed rules, all Environmental Impact Statements (EISs), and selected special issues.⁴ Letters describing the proposed action are sent to tribes that may have an interest in the action. These letters notify the tribes of their right to consult on an issue under E.O 13175, and provide information about how to contact NMFS should a tribe wish to consult.

Our mailing list consists of approximately 640 entities and includes all federally recognized Alaska tribes, regional non-profit corporations, Alaska Native Claims Settlement Act regional and village corporations, regional non-profit tribal organizations, and local governments. Mailings are sent for the following actions:

⁴ Except for EISs, NMFS generally does not send letters to tribes while an issue is still under consideration by the Council. Rather NMFS relies on the Council's outreach efforts. This distinction is made to reduce the potential for confusion about where a particular issue is in the decision-making process and the role of NMFS at this stage of this process. This is not a strict policy and exceptions may be made under certain circumstances and with the concurrence of the Council.

- Selected Proposed Rules on issues known to be of interest to the tribes (e.g., halibut subsistence, salmon bycatch, Northern Bering Sea Research Area, Arctic)
 - Generally, the letters are sent to the entire mailing list, although for focused issues, letters may be sent to only a subset of the mailing list.
 - Letters are sent when the proposed rule is published and include a copy of the proposed rule and contact information for the SF Division staff working on the issue.
- Environmental Impact Statements (EISs) and Environmental Assessments (EAs)
 - A letter with information is sent to the entire tribal mailing list or a subset, depending on the issue.
 - The first letter is sent when NMFS issues a Notice of Intent for Scoping for an EIS or issues a proposed rule with a draft EA for comment.
 - For EISs, a second letter is sent when NMFS issues a Draft EIS for comment.

Consultation Process

When a tribal consultation request is received, the following steps are taken:

1. Identify the appropriate NMFS office to respond to the consultation request and, if it is not the SF Division, forward the request to that office (e.g., Protected Resources Division, Habitat Conservation Division, Alaska Fisheries Science Center).
2. SF Division staff respond to the request for a consultation.
 - The SF Division sends a letter acknowledging the request to the person requesting the consultation. The letter includes the name and contact information for the appropriate SF Division staff. NMFS staff also generally contact the tribal representative by phone and by e-mail to informally acknowledge the request for consultation and to establish multiple ways to stay in touch.
 - NMFS assumes that the person requesting the consultation is authorized by the tribal entity to speak on behalf of the tribe. NMFS does not request confirmation of this authority from the tribe or the person requesting the consultation. Therefore, it helps us to have the consultation request sent on the tribe's letterhead.
3. Organize and schedule the consultation.
 - Identify the issues and concerns.
 - SF Division staff work with the tribe's point of contact to clarify the issues of concern to each party and determine the issues to be addressed during the consultation.
 - Participants
 - Consultations are organized with the NMFS Alaska Region Administrator or the highest-level NMFS Alaska Region staff available.
 - Participants include NMFS staff and Council staff knowledgeable on the issue.

- Participants must include at least one tribal official or a person designated by a tribe to consult on its behalf. Tribal officials are defined in E.O. 13175 as “elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.” We do not check or ask for documentation of a tribal official’s authority to speak on behalf of the tribe or organization.
- Consultations may include other tribes or parties (e.g., tribal organizations, legislative staff) that may be interested and invited or authorized to participate by the tribe requesting the consultation.
- Location
 - NMFS staff have traveled to Alaska Native villages and regional centers to hold consultations. However, due to the cost and logistics of travel for both tribal officials and NMFS, consultations generally are held by teleconference. Tribal consultations also have been held in conjunction with Council meetings and Council community outreach meetings.
- Scheduling
 - The person requesting the consultation is contacted by email, telephone, or letter to schedule the consultation. Depending on the circumstances, we either ask for input from the tribes on the date and time or ask their availability for a particular date and time.
 - We ask the consulting person and tribe if they would like to invite other tribes or parties (e.g., tribal organizations, legislative staff) that might be interested or for permission for us to invite them.
 - We prefer not to schedule a consultation for the week before a Council meeting. If tribes are interested in consulting with NMFS on an issue that is before the Council, we request that these consultations be scheduled at least two weeks before the Council meeting to provide NMFS time to prepare a summary of the consultation for the upcoming Council meeting. A formal report from a tribal consultation held during a Council meeting generally will be provided to the Council at its next meeting.
- Information provided before the consultation
 - We email, mail, or fax consultation participants, depending on the circumstances, the agenda and other relevant information for the consultation. We answer questions about the information or issue in informal telephone conversations or e-mails.
 - If the tribe has specific questions it would like answered during a consultation, it helps NMFS better prepare for the consultation to have those questions in writing before the consultation meeting.

4. Consultation. Meetings usually follow this agenda:

- The consultation teleconference or meeting is initiated with a welcome from the NMFS Regional Administrator followed by the introduction of the participants in the conference room with the Regional Administrator, then introductions of each person on the phone. NMFS needs a record of the names and affiliation of each person and tribe that is represented and any other people participating in the consultation. Please bear with us as we take care to get the names and correct spellings for all participants. We will work with the tribal representatives to get a list of names and affiliations prior to the meeting to streamline the introductions. Throughout the consultation, NMFS requests that persons on the phone state their name for our record each time they speaks o

that we may accurately identify the speaker. NMFS staff will do the same when they are speaking during a teleconference.

- The lead tribal official is invited to provide an opening statement or general comments.
- NMFS staff provide an overview of the action and NMFS's role in the action. If relevant, Council staff may provide information on the issue.
- The lead tribal official is invited to provide information that the tribe wishes to convey to NMFS, to make requests of NMFS, or to ask questions of NMFS staff. NMFS staff respond verbally to participants' statements or questions during the meeting with detailed responses if known. If a response is not known, NMFS staff will offer to follow up on the issue after the meeting.
- NMFS staff may ask questions of tribal officials and other participants in the call.
- NMFS staff document the consultation proceedings, the issues raised by the participants, and NMFS staff responses.

Consultation Follow-up

- NMFS staff write a draft summary of the consultation. Written responses to questions asked in the consultation meeting are included, if appropriate, or NMFS describes how we responded to those questions if that was done through a separate communication.
- The draft summary is sent to consultation participants and comments are requested to be submitted back to NMFS within 2 weeks. The draft summary is usually emailed to the participants.
- NMFS staff write a final summary of the consultation meeting.
- The final summary is sent to participants. The final summary may also be sent to other interested parties such as tribes that did not participate in the consultation and legislators that have asked to be informed of consultations with tribes in their districts.
- The final summary of a tribal consultation generally is a public document that is posted on the NMFS Alaska Region website and provided to the Council. However, if a tribe requests that information provided during a consultation not be made public, NMFS will carefully consider that request. If a tribe anticipates requesting that some information shared during a consultation be withheld from the public, it would help NMFS to know the nature of this information prior to the consultation so that NMFS and the tribe can discuss confidentiality provisions prior to the consultation.
- The final summary is posted on the NMFS Alaska Region tribal consultation website.
- For issues under consideration by the Council, a copy of the written summary is sent to the Council.
- NMFS staff also will give the Council a verbal briefing on the consultation upon request by the Council.

- NMFS staff will summarize the issues that were discussed in the consultation and our understanding of the tribes’ position on issues. However, NMFS staff cannot necessarily effectively communicate this position to the Council or advocate for this position. Therefore, it is important for the tribes to also communicate directly with the Council if they wish to provide input or recommendations on a Council decision.
- NMFS will hold follow-up meetings with tribes about the consultation, if applicable.

Documentation of the Consultation

- SF Division staff document and enter into the administrative record communications with the tribes and the consultation proceedings.
- Proposed Rule or Notice of Availability (NOA), if no Proposed Rule
 - Summarize E.O. 13175 issues in the Classification section of the proposed rule or in the NOA for a proposed FMP amendment if there is no proposed rule. We note that we sent information to the tribes and describe what was included in the letter and any other documents that were sent to the tribes. If any tribal consultations were conducted before the proposed rule or NOA is sent to NMFS HQ for review, those consultations will be described in the proposed rule or NOA. For example, sometimes tribal consultations have been conducted on issues while they are still under consideration by the Council. NMFS would describe those consultations in the proposed rule and again in the tribal summary impact statement in the final rule.
- Final Rule
 - If NMFS communicated with or consulted with tribes on a particular action, NMFS will prepare a “tribal impact summary statement” in the Classification section of the final rule. The tribal summary impact statement is required under section 5(b)(2)(B) of EO 13175. It describes the agency’s consultations with tribal officials, the tribal officials’ concerns, the extent to which the concerns of tribal officials have been met, and the agency’s position supporting the need to issue the regulation.
- Environmental Impact Statement (EIS) or Environmental Assessment (EA)
 - Describe the consultation process undertaken with tribal governments and Alaska Native corporations in the section of the EIS titled “Tribal Governments and Alaska Native Claims Settlement Act Regional and Village Corporations” or in a similar section in the EA.

For additional information about tribal consultation on issues under the responsibility of the Sustainable Fisheries Division, please contact —

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