

Science, Service, Stewardship



NMFS Alaska Region Tribal Consultation Process

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Overview of Presentation

- Sources of the requirements for tribal consultation and some key statements from these documents
- The Council's role in tribal consultation
- The Sustainable Fisheries Division's tribal consultation process for Council actions
- Challenges and Opportunities



Tribal Consultation Policies

The Alaska Region's tribal consultation responsibilities originate from Executive Orders, regulations, policies, and direction from Congress:

- Executive Order 13175 (2000)
- Council on Environmental Quality regulations (1999)
- Department of Commerce Tribal consultation policy (2013)
- NOAA Procedures for Tribal Consultation (2013)
- Requirements from Congress re: consultation with Alaska Native Corporations (2005)



Executive Order (E.O.) 13175

- Requires each federal agency to “have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”
- “Policies that have tribal implications” refers to regulations, ...and other policy statements or actions that have substantial direct effects on one or more Indian tribes, ...”



E.O. 13175 (continued)

For regulations that have tribal implications (substantial direct effects on Tribes), Federal agencies must:

- consult with tribal officials early in the process of developing proposed regulations,
- consider the tribal impacts of proposed actions, and
- include a “tribal summary impact statement” in the proposed and final rules.



Council on Environmental Quality (CEQ) Regulations (1999)

- The CEQ issued regulations for implementing the procedural provisions of the National Environmental Policy Act in 1999.
- These regulations are codified at 40 CFR parts 1500 – 1508.
- Section 1501.2(d) states that a Federal agency shall consult “early with appropriate State and local agencies and Indian tribes” when the Federal government’s involvement in an action is reasonably foreseeable.



Department of Commerce Policy (2013)

- DOC has had a tribal consultation policy since 1995.
- Most recently updated in 2013 through proposed and final policy statements issued in the Federal Register.
- Describes roles, responsibilities, training requirements, and expectations about ongoing communication, meaningful dialogue, and the tribal consultation process.
- Addresses role of the Fishery Management Councils.



DOC Tribal Consultation Policy and Fishery Management Councils

- States DOC's interpretation that the tribal consultation requirements do not apply to the Regional Fishery Management Councils.
- Recognizes the importance of the Councils in the fishery management process and as the first point of development of fisheries management policy.
- Encourages Councils to discuss and work with Tribes to address their concerns while developing conservation and management measures under the Magnuson-Stevens Act.



DOC Tribal Consultation Policy and Fishery Management Councils, cont.

- Encourages early and active participation by Tribes and Alaska Natives in the Council process.
- Does not limit in any way the Council's ability to decide how best to conduct outreach and communication with Alaska Tribes and how to incorporate Tribal concerns and impacts into analyses prepared for Council actions.



NOAA Tribal Consultation Handbook

- Contains more detail on the elements of the tribal consultation process
 - How to invite a Tribe to consult and respond to a request for consultation.
 - Communication, documentation, and other protocols before, during, and after a consultation meeting.
- States that line offices may adopt mission-specific procedures tailored to regional needs and based on the financial resources available to conduct consultations.



Consultation Requirements Related to Alaska Native Corporations

- The Consolidated Appropriations Acts of 2004 and 2005 extended the tribal consultation requirements of E.O. 13175 to Alaska Native corporations.
- Federal agencies are required to “consult with Alaska Native corporations on the same basis as Indian tribes...”
- NMFS includes Alaska Native Corporations in mailings of information sent to Tribes and, if requested to do so, meets with representatives of Alaska Native Corporations about issues of concern.



Sustainable Fisheries (SF) Division Tribal Consultation Process

- Most tribal consultation requests related to Council issues are handled by the SF Division.
- SF outreach, communication, and consultation protocols are posted on the AKR website.
- The major issues that we have consulted with Tribes on are salmon bycatch, halibut subsistence, the IFQ Program, and fishing or research activities in the Northern Bering Sea.
- The Alaska Fisheries Science Center participates in consultations on science and research issues.



SF Division Tribal Consultation Process

- NMFS generally does not initiate consultation with Tribes on fishery management issues under consideration by the Council.
- Council staff generally participate in tribal consultations about issues under consideration by the Council.
- NMFS staff sometimes participate in Council outreach meetings in Alaska Native villages and regional centers.



SF Division Tribal Consultation Process

- NMFS periodically mails information to Tribes and Corporations about issues that may be of interest to the Tribes and invites Tribes to consult with NMFS.
- If a Tribe requests consultation, we communicate by phone, e-mail, and letter about that particular consultation.
- NMFS sometimes meets with Tribes in their communities or regions of Alaska, but more often either at Council meetings or by teleconference.



SF Division Tribal Consultation Process

- NMFS writes a draft summary of the tribal consultation and works with the participating Tribes to finalize the consultation summary document.
- NMFS provides tribal consultation summary reports to the Council.
- NMFS and Council staff incorporate tribal consultation information into the analysis and rulemaking documents.



Biggest Challenges

- Requirements and expectations for:
 - Ongoing coordination and communication
 - Meaningful dialogue
 - Providing timely and accurate information
 - Ensuring meaningful and timely input from tribal officials
- The large number of Tribes and Native Corporations in Alaska and the importance of resources managed by the Council and NMFS to the Tribes and tribal members.



Challenges, continued

- Sequence and timing of Council development of fishery management actions relative to NMFS's review of the Council's recommendations.
- NMFS is responsible for tribal consultations under E.O. 13175, but NMFS has very limited options to address tribal concerns and impacts after the Council has taken final action.
- Balancing tribal consultation requirements, expectations, and analytical needs with other priorities and requirements for staff and budget resources.



Opportunities to Improve

- Working with the Council and the Community Outreach Committee to identify specific needs and priorities for outreach, communication, and improved analyses.
- The potential of the Bering Sea Fishery Ecosystem Plan Action Team on Local Knowledge/Traditional Knowledge/Subsistence to identify issues and priorities, and to provide recommendations.
- The Social Sciences Planning Team has identified information and data about Tribes as a category for further examination in the data gaps analysis.



For More Information

NOAA Fisheries Alaska Region website for tribal consultation:

<https://www.fisheries.noaa.gov/alaska/consultations/tribal-consultations-alaska>