

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 Department of Commerce's tribal consultation policy requires the National Marine Fisheries Service (NMFS) to consult and work with tribal governments before making decisions or implementing policy, rules, or programs that may affect tribes to ensure that tribal rights and concerns are addressed. 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.¹

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 is responsible to manage the commercial groundfish fisheries off Alaska to ensure that catch does not exceed established quotas, and to implement the fishery management plans (FMPs) and regulations recommended by the North Pacific Fishery Management Council (Council) for the groundfish, crab, scallops, 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 the Alaska tribes in the past 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 on NMFS Alaska Region's website at the following address: <http://www.alaskafisheries.noaa.gov/tc/>.

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 Exclusive Economic Zone 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, mackerel, sablefish, and rockfish species harvested mainly by trawlers, hook-and-line longliners, and pot fishermen. The Council also makes allocative and limited entry decisions for halibut, although the U.S.-Canada International Pacific Halibut

¹ See http://www.alaskafisheries.noaa.gov/tc/policy/app_language_anc1209.pdf.

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. 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. NMFS Alaska Region is not certain whether the term "agencies" applies to the Council and has requested a legal opinion to answer this question. However, until NMFS hears otherwise through a legal opinion from NOAA General Counsel, we cannot direct the Council that it must conduct tribal consultations.

The Council strives to identify and analyze the impacts of proposed alternative fishery management actions on rural communities and their residents, including Alaska Natives. However, it is very 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 development of policies and regulatory recommendations.

The Council's Outreach Committee

One of the Council's policy priorities is to improve outreach and communications with rural communities and Alaska Native entities and develop a method for systematic documentation of Alaska Native and community participation in the development of fishery management actions. The Council's Rural Community Outreach Committee has three primary tasks: 1) to advise the Council on how to provide opportunities for better understanding and participation from Alaska Native and rural communities; 2) to provide feedback on community impacts sections of specific analyses, if requested; and 3) to provide recommendations regarding which proposed Council actions need a specific outreach plan and prioritize multiple actions when necessary. The committee has been instrumental in recommending and implementing changes to improve overall outreach and two-way communication with rural stakeholders, as well as assisting in the development of project-specific, long-term outreach plans for Council actions regarding Bering Sea Chinook and chum salmon bycatch reduction measures. More information about the Council's rural outreach and issues that have historically been of interest to Alaska tribes is on the Council's webpage (<http://www.alaskafisheries.noaa.gov/npfmc/>). SF Division staff

participate in the Council's Outreach Committee meetings and report to the committee about requests for tribal consultation.

Tribal Consultations on Fisheries Management Issues

Once the Council recommends an FMP, FMP amendment, or regulatory amendment that will affect a fishery under its jurisdiction, the project is assigned to a staff person in the SF Division. The SF Division follows the process below to comply with E.O. 13175 for these actions.

Initiating Consultation

Consultations can be initiated by the SF Division or at the request of federally recognized tribal governments or tribal organizations. Consultations may be prompted by the agency's notification to tribes of a specific action that may affect tribal interests.

Notification of Issues: The SF Division notifies tribes by letter during the development of selected proposed rules, all environmental impact statements, and selected special issues. 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 consultation 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 tribes, regional non-profit corporations, Alaska Native Claims Settlement Act regional and village corporations, and local governments. Mailings are sent for the following actions:

- Selected Proposed Rules on issues known to be of interest to the tribes (e.g., halibut subsistence, salmon bycatch, Northern Bering Sea Research Area)
 - Generally the letters are sent to the entire mailing list, although for very 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 Statement and Environmental Assessment
 - A letter with information is sent to the entire tribal mailing list or a sub-set, depending on the issue.
 - The first letter is sent when NMFS issues a Notice of Intent for Scoping.
 - A second letter is sent when NMFS issues a Draft EIS for comments.

Consultation initiated by a tribe: A tribe may submit a request in writing to NMFS at any time requesting consultation on any issue that has tribal impacts. Send the letter 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

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, 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 assumes that the person requesting the consultation is authorized by the tribal entity to speak on behalf of the tribe. NMFS does request confirmation of this authority from the tribe or the person requesting the consultation. Therefore, it greatly assists us to have the consultation request sent to us on the tribe's letterhead.
3. Organize and schedule the consultation.
 - Location
 - Consultations generally are held by teleconference. NMFS staff have traveled to Alaska Native villages and regional centers to hold consultations. Tribal consultations also have been held in conjunction with Council community outreach meetings.
 - Scheduling
 - The person requesting 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. So, 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 brief summary of the consultation for the upcoming Council meeting.
- Participants
 - Consultations are organized with the NMFS Alaska Region Deputy Regional 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. Tribal officials under E.O. 13175 are “elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.” We do not check or ask for documentation of 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.
- 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.

4. Consultation. Meetings usually follow this agenda:

- The consultation teleconference or meeting is initiated with the introduction of the participants in the conference room followed by introduction of each caller. NMFS needs a good 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. Cooperation in compiling names and affiliations is important as doing so after the consultation has proven very difficult.
- NMFS staff provides an overview of action and NMFS’s role in the action. If relevant, Council staff may provide information on the issue of interest.
- NMFS asks for comments and questions from tribal officials and other participants in the call. We request that the person providing comments or asking a question state his or her name and affiliation for our record each time he or she speaks.

- NMFS staff responds 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 documents 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 is posted on 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 meeting 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 staff document and enter into the administrative record communications with the tribes and the consultation proceedings.
- Proposed Rules or Notices of Availability, if no Proposed Rule

- Summarize E.O. 13175 issues in the Classification section of the proposed rule. Note that we sent information to the tribes and describe what was included in the letter and any other documents that were sent. If any tribal consultations were conducted before the proposed rule is sent to NMFS HQ for review, those consultations will be described in the Classification section of the proposed rule. 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
 - Address compliance with E.O. 13175 in the Classification section of the final rule in the tribal summary impact statement. The tribal summary impact statement 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 or Environmental Assessment
 - 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”

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

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