



August 19, 2022

To: Mr. Jon Kurland, Regional Administrator  
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*Sent via email to: [jon.kurland@noaa.gov](mailto:jon.kurland@noaa.gov)*

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Re: NMFS Tribal Consultation

Dear Mr. Kurland and Dr. Foy,

We are writing on behalf of a coalition of federally-recognized Tribes and Tribal organizations spanning Interior and Western Alaska, the Bering Sea, and the Pribilof Islands. Our coalition has been working together for over a decade on a range of issues including fisheries management, research and science policy, legislation, and other issues.

We are writing to address a long-standing challenge our Tribes and Tribal organizations have had with the National Marine Fisheries Service (NMFS): Tribal Consultation. Our organizations have interfaced with NMFS regarding Tribal Consultation issues for more than a decade, including through active participation in and facilitation of Tribal Consultations. We have communicated our desires for improved Tribal Consultation in a number of fora, including in

requests for Tribal Consultation, during Tribal Consultations themselves, at North Pacific Fishery Management Council (NPFMC) meetings, in formal and informal communications with NOAA staff, and most recently in conversations with the Sustainable Fisheries Division Tribal Engagement Team.

We are pleased that there is some recent positive improvement and efforts on the part of NMFS regarding Tribal Consultation. However, most, if not all, of the long-standing challenges associated with NMFS Tribal Consultation remain, and we are concerned about the lack of significant and rapid progress on this issue as well as the apparent lack of a collective bold, wide-ranging vision to fix the pervasive structural problems with the agency.

There has been a long-standing failure of the agency to meet the spirit and requirements of Executive Order 13175 regarding Tribal Consultation. The problems regarding the conduct of NMFS Tribal Consultation activities and the NPFMC process are particularly glaring. As you know, the NPFMC does not engage in Tribal Consultation; NMFS, the agency, does. However, Tribal Consultation has historically not been well-integrated into the Alaska federal fishery management process such that it can inform the decision-making process. While the Department of Commerce is the legal decision-maker, in reality the NPFMC is the *de facto* decision-maker, meaning that failure to incorporate Consultation activities at the Council-level effectively ignores the mandate to consult with Tribes and severely degrades the government-to-government relationship. To our knowledge, there are few, if any, instances in which Tribal Consultation has changed a decision made by the Council. A few years ago, an outgoing staff member at NMFS responsible for Tribal Consultation stated at an NPFMC Community Engagement Committee meeting that it cannot be said, with regard to the NPFMC process, that NMFS Tribal Consultation is meaningful.

As such, some of the key problems we have noted historically with NMFS Tribal Consultation as pertains the NPFMC process include that:

1. NMFS Tribal Consultation has not been meaningful or impactful on decision-making.
2. NMFS Tribal Consultation is not timely or well-integrated into the NPFMC process. This has even resulted in after-the-fact Consultation, where a final action has already been made before Consultation occurred.
3. NMFS Tribal Consultation is not relationship-based or occurring with the respect needed to give effect to a true government-to-government relationship with federally recognized Tribes.
4. Tribal participants in Consultation activities frequently feel they are not getting straight answers (or answers at all) on everything from the Tribal Consultation process in general to the details involved in particular issues. There is a great degree of opaqueness in the process, including how decisions are made, and if, how, or when improvements are going to be made to the process as a whole.
5. Instead of the agency creating a meaningful ongoing relationship where issues can be discussed in a timely manner with clarity about how those inputs will be considered and valued, the burden has been placed on Tribes to initiate Tribal Consultation with NMFS.

This does not comply with Executive Order 13175, which puts the burden on federal agencies to initiate Consultation. Tribes cannot be expected to know all of the activities the agency is conducting that should involve Tribal Consultation, and thus it is imperative that there be an ongoing relationship emanating from the agency such that this awareness can be possible.

Additionally, and more broadly speaking than the NPFMC process, there is a historical deficit of Tribal Consultation with regard to research activities. Research activities are covered under the types of actions that have substantial direct effects on Tribes, and are thus the type of action for which there should be Tribal Consultation. This has been a long-running and foundational problem. For example, in 2010 a number of Tribes requested Consultation on bottom-trawling research, but these requests were ignored. Unfortunately, to our eyes, the Alaska Fisheries Science Center (AFSC) has not made sufficient progress on developing a satisfactory approach to Tribal Consultation on research activities.

Below are several key steps and milestones which we would like to see from the agency with regard to Tribal Consultation:

1. At a general level, we would like to see the problems of NMFS Tribal Consultation fixed as soon as possible. We would like to see a clear timeline with definable milestones for instituting a structure and process that is acceptable to Tribes and which remedies all of the problems with the process.
2. The structure and process developed should ensure that the agency develops an ongoing relationship with Tribes which is always open and inclusive.
3. The agency and its divisions (e.g. SFD, EFH, AFSC, etc.) should be outreaching to, engaging with, and notifying Tribes, Alaska Native Corporations, and Tribal Consortia regarding activities which may be of interest to those entities for Consultation, in a timely fashion. Furthermore, we want to see Tribal Consultation occurring with all sections of NOAA/NMFS, including SFD, EFH, Marine Mammals, and AFSC.
4. Tribes should determine what is of interest to them, not the agency. The baseline assumption should be that Tribes are potentially interested in all agency and NPFMC activities.
5. The structure and process developed should ensure that Tribal Consultation is undertaken in a way which is timely, regular, and which can maximally impact decision-making processes, including analyses leading to decision-making. Consultations should occur before NPFMC meetings, actions, and at other times. Additionally, the NPFMC should be required to review Consultation information and fully consider it before acting. The appropriate people should be in attendance at every Tribal Consultation. This includes the Regional Administrator, the AFSC Director, General Counsel, relevant NPFMC staff, relevant scientists/analysts, and those working on implementation and regulation. Clear answers should be provided by the agency to questions posed to them.
6. Tribal Consortia should be engaged/notified about Tribal Consultation activities, as they are entities that were created by and continue to be governed by Tribes, and often represent Tribes in Tribal Consultations.

7. NOAA should additionally undertake non-Consultation outreach and engagement activities with Tribes as well as the broader universe of Tribal organizations and entities.
8. While we support the idea of results of Tribal Consultation, outreach, and engagement being presented at B reports to the NPFMC, such as in a standalone B report along with other Tribal inputs, this should not be a replacement for our broader expectation that Tribal inputs (in terms of Consultation information, engagement, co-management information, appropriate and robust utilization of TK, IK, and the social science thereof, etc.) constitute a significant portion of all NPFMC B reports as well as other agenda items.
9. Traditional Knowledge (TK) and Tribal perspectives should play an equal or greater role to western science and policy in decision-making.
10. Fundamentally, we expect Tribal Consultation to be meaningful and impactful in the fullest senses of those words.

Towards the goal of facilitating progress on the issues noted above, we request a meeting be set up to discuss these issues with the signatories to this letter, and opened to Tribes throughout the North Pacific, with NOAA and NPFMC staff. We respectfully request that each of you attend this meeting, along with the heads of Sustainable Fisheries, Essential Fish Habitat, and Marine Mammals; representatives from General Counsel and In-Season Management; the NPFMC Executive Director and Rural and Tribal Community Liaison; and the AFSC Tribal Research Coordinator.

We look forward to working with you further on these issues.

Sincerely,



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