



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

June 16, 2010

Dear Tribal Representative:

In November 2009, the National Marine Fisheries Service (NMFS), Alaska Region contracted with the Rural Alaska Community Action Program (RurAL CAP) to bring together a group of people representing Alaska tribes to discuss how to improve the tribal consultation process under Presidential Executive Order (E.O.) 13175. RurAL CAP contacted the regional non-profit corporations to help identify participants for this work group, provided a meeting location, hired a facilitator to lead the discussion, and prepared the meeting report. The list of people who participated in this meeting (the "work group") and the meeting report and recommendations are attached to this letter.

Immediately after the meeting, we started using the recommendations made by the work group to improve our tribal consultation process and we will continue to use these recommendations in the future. As requested by the work group, we forwarded the meeting report to Donald Chapman, Special Advisor to the Secretary of Commerce on Native American Affairs. We provided the recommendations to the North Pacific Fishery Management Council (Council) and its outreach committee, and we will provide the Council a copy of this response. We also established a website for NMFS Alaska Region's tribal consultation issues (<http://www.alaskafisheries.noaa.gov/tc/>).


The two highest priorities identified by the work group to improve the Alaska Region's tribal consultation process are to (1) hire a person to work in the Alaska Regional Office as a tribal liaison, and (2) fund the Alaska tribes' participation in tribal consultations. We address those two issues in this letter and address remaining recommendations in an attachment to this letter.

We will continue to consider the recommendation to hire a tribal liaison in the future as we assess the resources needed to meet tribal consultation requests and our responsibilities under E.O. 13175. In the meantime, we will fulfill our tribal consultation responsibilities with existing staff as described in more detail in the attached additional response. Unfortunately, with the large number of tribes and corporations we are required to consult with, we cannot provide all of the funding necessary for tribal representatives to participate in tribal consultations. However, we will consider continuing to fund the participation of tribal representatives in consultations and meetings on a case-by-case basis. Although not formal consultations, we funded participation of tribal representatives in a February 2009 workshop in the Northern Bering Sea Research Area and we have funded travel and administrative support for the Alaska Native Subsistence Halibut Working Group since 2001. We also will continue to send NMFS staff to meet with tribal representatives in person as often as we can.



Additional information and responses to recommendations about our communication with the tribes, regulatory analysis, interactions with the North Pacific Fishery Management Council, and our future plans are addressed in the attachment. Please contact me if you have any additional recommendations about our tribal consultation process, other communications with the tribes, or comments on the recommendations made by the work group. We look forward to continuing to work with you on issues of concern to Alaska's tribes.

Sincerely,

for 
James W. Balsiger, Ph.D.
Administrator, Alaska Region

cc: Eric Olson, Chairman, NPFMC

Attachments

List of participants in November 2009 meeting
November 2009 meeting report and recommendations
Department of Commerce Plan (February 2010)

Contact Information

Donald Chapman
Senior Advisor on Native American Affairs
U.S. Department of Commerce
Office of the Secretary
1401 Constitution Avenue, NW
Washington, D.C. 20230
Phone: 202-482-1940

Additional Response to November 2009
Recommendations about the Alaska Region's Tribal Consultation Process

Tribal Consultation Process

Any tribe or corporation may contact NMFS directly at any time to request a consultation on an issue with tribal implications that is under the authority of NMFS. The Regional Administrator or his designees will participate in all tribal consultations. Consultations will continue to be held primarily by telephone with travel to meetings decided on a case-by-case basis depending on the issue and availability of funding for such travel.

Tribal consultations on marine mammal issues will continue to be conducted through co-management agreements between NMFS and Alaska Native Organizations. On any other fisheries or habitat issue, Alaska tribes and Native corporations will continue to receive written information about any Environmental Impact Analysis (EIS) that NMFS is preparing and any proposed rule that we think might have tribal implications. We will provide written information about regulatory issues when the North Pacific Fishery Management Council (Council) has forwarded to us a final recommendation to develop or revise regulations governing management of the federal fisheries off Alaska. While an issue is under discussion by the Council, tribes and Alaska Native corporations will receive information from the Council through its newsletters and outreach efforts.

The work group made a number of recommendations about how we can improve our communication with tribal representatives. We will make every effort to follow these recommendations as best we can with our existing staff and budget resources. We will continue to describe all tribal consultations in any EIS we prepare, and provide a summary of tribal consultations in the final rule for regulatory actions, as required under E.O. 13175. In addition, we will write a letter to the participants summarizing the consultation, provide information to the Council about the consultation, and post information about the consultation on our website. We also will continue to work with the Council in its outreach and education efforts so that the tribes are provided information about issues as soon as possible in the Council process and can participate in the Council's analysis and decision-making process.

Social and Economic Analyses

The work group requested that NMFS and the Council provide information about how social and economic impact analyses are conducted and whether or how the tribes could be involved in planning or conducting those analyses. They recommended that NMFS and the Council allow tribal representatives or members to participate in the analysis stage of the decision making and that we allow traditional ecological knowledge (TEK) to be used in these analyses. Participants in a February 2010 Unalakleet consultation requested more engagement by NMFS in social science research, including funding for research that both quantifies the economic contributions of subsistence resources to communities and the region, and examines the social and cultural importance of the resources managed by NMFS.

TEK is a significant (\$1 million) component of the National Science Foundation and North Pacific Research Board funded Bering Sea Integrated Research Project (BSIERP). The BSIERP project summary is available online at <http://www.nprb.org/science/ltk.html>. The TEK or local and traditional knowledge component of this research is described on pages 4 and 5 of the BSIERP project summary.

For additional information about how NMFS is using local and traditional knowledge, please contact Dr. Jennifer M. Sepez, at the Alaska Fisheries Science Center (AFSC):

Jennifer Sepez, Ph.D.
Alaska Fisheries Science Center
7600 Sand Point Way N.E.
Seattle, WA 98115-0070

Phone (206) 526-6546

In 2005, Dr. Sepez and others at the AFSC published profiles for 136 fishing communities in Alaska. Most of these communities are Alaska Native villages whose residents are members of Alaska Native tribes and corporations. The AFSC will start updating these community profiles in 2011 after the new census data is available. They will be soliciting input on what should be included in the community profiles through public stakeholder meetings that will occur during the summer of 2011. Dr. Sepez will communicate with and engage the tribes as part of the planning process for updates to the community profiles.

As for studies of the economic importance and contributions of subsistence resources, the Alaska Department of Fish and Game (ADF&G) Subsistence Division has traditionally taken the lead on analyses about the use of subsistence resources in Alaska. For example, NMFS funds a grant to ADF&G to conduct the annual assessments of the amount of halibut taken for subsistence needs. The Council and NMFS rely on ADF&G's subsistence analyses as the basis of our analysis on fisheries management issues. The analysis prepared for the Council's action on Chinook salmon bycatch management in the Bering Sea summarizes and synthesizes ADF&G subsistence information and analyses to describe the subsistence use of salmon and the social and cultural value of salmon to Alaska Natives. The Council's upcoming analysis of the impacts of alternatives for chum salmon bycatch management in the Bering Sea will contain similar information based primarily on ADF&G research.

The analyses of the impacts of fisheries management actions on subsistence resources and subsistence users often are prepared by the Council's staff. Although we work together with the Council on these analyses and they ultimately must be adopted by the Secretary of Commerce (Secretary), they are prepared by the Council. The Council continuously seeks input from any member of the public about how its analyses can be improved and if the tribes have recommendations on specific Council analyses, we encourage you to continue to provide those comments directly to the Council as you have been doing. In addition, we will discuss further with the Council and ADF&G how best to obtain input from tribal representatives about improvements you believe are necessary to these analyses. If we can identify specific additional analyses that do not duplicate what other agencies are already doing and that have direct bearing

on the management decisions under the authority of the Council and NMFS, we will explore whether funding could be made available to undertake that work.

Recommendations Related to the Council

The work group made several recommendations related to the Council including that it adhere to the tribal consultation requirements of E.O. 13175, hire tribal liaisons, appoint tribal representation to the Advisory Panel, and conduct its meetings at times conducive to participation by tribal members. As stated earlier, we provided the Council and its outreach committee information about our meeting and your recommendations. Nicole Kimball of the Council's staff also provided participants in the November 2009 meeting with information about how interested tribal representatives could apply for seats on the Council's Advisory Panel and Scientific and Statistical Committee. This information is available from the Council at the following address and phone number:

North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

(907) 271-2817

The highest priority recommendation related to the Council was that the Secretary recommend to Congress that it amend the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require voting seats for regional tribal representatives on the Council. That recommendation was included in the information forwarded to Donald Chapman, the Secretary's Special Advisor for Native American Affairs. We note that tribal representatives have communicated this request directly to the Alaska Congressional Delegation, which is the appropriate approach for seeking the changes to the Magnuson-Stevens Act that you believe are needed to improve your representation on the Council.

The work group also requested an explanation about why the Council is not required to comply with the tribal consultation requirements of E.O. 13175. We have requested that NOAA General Counsel, the attorneys that advise the Alaska Region and Council on legal matters, provide a response to this question. We will provide that response to the Alaska tribes and work group participants when it is available.

The work group recommended that NMFS Alaska Region develop a memorandum of agreement (MOA) with the Council about how it will engage with NMFS in consultation with the tribes. While an MOA may be appropriate in the future, we believe that the best approach is to continue to work closely with the Council, its rural outreach committee, and tribal representatives to develop the best integrated process possible given the issues, staff, and budget resources.

In the last two years, the Council has devoted considerable resources to improving its outreach and education to residents of rural communities. Most of these communities are Alaska Native villages whose residents are members of Alaska Native tribes and corporations. The Magnuson-Stevens Act authorizes the Council to be the primary policy-maker on management of the federal

fisheries off Alaska. Therefore, it is appropriate for the Council to determine how and when to conduct outreach and education on issues under its development. We will provide input into those decisions and staff to support the Council's outreach efforts to the degree that we can.

To affect management decisions, the tribes must provide input directly to the Council during its scoping, analysis, and deliberations. The tribes may request consultation with NMFS at any time on any issue with tribal implications and we will provide the Council with copies of all reports about issues raised at tribal consultations prior to and during the Council's deliberation. However, written and oral testimony to the Council by tribal representatives and tribal members is the best way to convey your concerns directly to decision makers.

DOC Plan for Implementation of E.O. 13175

Finally, the work group recommended that NMFS create a separate memorandum of understanding with the tribes about how the tribal consultation process will be conducted. On November 5, 2009, President Obama issued a memorandum to all federal agencies about tribal consultations. He reiterated the importance of E.O. 13175 and the requirement to engage in regular consultation with tribes in the development of federal policies that have tribal implications. The President instructed each agency to submit to the Office of Management and Budget (OMB) a detailed plan of actions to implement E.O. 13175. The Department of Commerce (DOC) submitted its plan to OMB within the 90-day deadline established by the President and released this plan to the public on April 19, 2010. A copy of this plan is attached to this letter and also is available from the Department of Commerce's website on Native American Affairs at:

<http://www.commerce.gov/office-secretary/native-american-affairs>

This plan describes the process that the DOC will undertake to develop a tribal consultation and coordination policy, including communication with the tribes to seek input into this policy. Please contact Mr. Chapman if you have any additional input or questions about the development of the DOC's tribal consultation policy. We will wait until we receive additional guidance from the DOC on its policy before considering a written agreement with the Alaska tribes about tribal consultations.

**NMFS and Tribal Representatives Workgroup
Meeting Report and Recommendations
November 9-10, 2009**

Participants

Present in person:

Mike Miller, ANHSWG
David O. Osterback, APIA
Karen Plentikoff, APIA
Steve Totemoff, Chugachmiut
Julie Raymond-Yakoubian, Kawerak
Eugene Smith, Maniilaq
Jennifer Hooper, AVCP
Art Ivanoff, Native Village of Unalakleet
Floyd Kookesh, CCTHITA
Joeneal Hicks, HTSS
Mike Smith, TCC
Patty Schwalenberg, CRRRC
Caroline Cannon, ASNA

Present via telephone:

Mitch Simeonoff, Sr., KANA
Andy Teuber, KANA (1/2 of Day 1)

Facilitator/Moderator

Heather Kinzie

Agency Staff

Sally Bibb, NMFS, AK Region
Nicole Kimball, NPFMC
Jay Ginter, NMFS, AK Region
Barb Mahoney, NMFS, AKRegion

Sarah Scanlan, RurAL CAP
Rebekah Lührs, RurAL CAP
Janice Berry, RurAL CAP

See the attached attendee list for additional contact information for participants.

The meeting began at 9:15 am. Sarah Scanlan greeted the group and participants introduced themselves. Sarah explained how the representatives were selected (each regional non-profit was asked to send a representative). Moderator Heather Kinzie described the goals and objectives of the meeting as follows:

The goal: provide an open discussion to help NMFS engage in a two-way tribal consultation process.

The objectives: to learn about the government agency process, to learn what tribal consultation means to the tribes, and to identify ways to improve the process.

Heather confirmed the meeting was designed for exchanging ideas and information and was not an actual "tribal consultation" as defined by Executive Order 13175.

Nicole Kimball presented an overview of the roles of the North Pacific Fisheries Management Council (NPFMC) and the National Marine Fisheries Service (NMFS) in creating fisheries regulations. Sally Bibb presented an overview describing what is required for tribal consultation under Executive Order (E.O.) 13175 and summarized President Obama's 11/5/09 memo requiring each federal agency to submit a plan within 90 days for how that agency is going to comply with the requirements of E.O. 13175.

The group discussed the difficulty of incorporating meaningful tribal consultations on fisheries issues into the decision making process required under the Magnuson-Stevens Act. The Magnuson-Stevens Act authorizes the NPFMC to develop fishery management plans and recommend fishery management measures to NMFS. NMFS is authorized to approve, disapprove, or partially approve the NPFMC's recommendations. NMFS may implement management measures independently of the NPFMC, but is likely to do so only if the NPFMC fails to act on a conservation issue. Therefore, the primary decision maker for Federal fisheries management issues is the NPFMC. However, the tribal consultation requirements apply to NMFS. Consulting with NMFS on issues under the authority of the NPFMC is not as effective as consultations may be in other Federal agencies where the agency is the primary decision maker. Consulting with NMFS late in the process after the NPFMC has already taken action also is not effective because NMFS's options for how to address NPFMC recommendations are limited under the Magnuson-Stevens Act. Frustration about the difficulty tribes have in achieving what they consider to be effective tribal consultations in this process led to many of the recommendations identified later in the meeting. One participant expressed his frustration as follows: "Tribal consultation with NMFS cannot be meaningful within the NPFMC process as outlined in the Magnuson-Stevens Act and interpreted by NMFS."

What is Tribal Consultation?

The group openly discussed their vision of the characteristics or "elements" of an "effective" tribal consultation process. Following are the requirements and characteristics of a tribal consultation from the perspective of the tribal representatives at the meeting:

- A tribal consultation is a meeting between NMFS representatives and tribal representative(s) who have decision-making authority on behalf of their agency or the tribe(s) they represent.
- Tribal consultation is not a letter or one meeting on an issue, but is an on-going relationship between NMFS and the tribes that empowers the tribes to participate in decision making. A letter is fine if it is part of a functional, on-going relationship.
- Tribal Consultation represents an ongoing, engaging relationship between NMFS and the individual tribe
 - a. Needs to be meaningful and valuable communication between the parties.
 - b. Follow-up has to occur.
 - c. Accountability is necessary.
- Collaboration must be the objective of the relationship.
- Timely engagement has to occur. Collaboration must be sought by NMFS well before decisions are made by the NPFMC. The tribal consultation process cannot be so cumbersome that intent/objective is watered down beyond being valuable.
- Tribal consultation process must be a consistent process, not subject to the whims or agenda of changing administrations.
- NMFS staff participating in tribal consultations must be as consistent as possible. It is frustrating to have new agency staff continually becoming involved. We keep hearing from the new guy "we're here to listen and learn".
- Meetings and discussion must not be "lip service" – true consultation is a two-way information exchange.
- Meetings and discussion must be continual – it is a process that circles back.

- Some participants interpret the appropriations act that requires consultation with “Alaska Native corporations” to include the regional non-profit corporations and the Alaska Federation of Natives, in addition to the ANSCA regional and village corporations.

Lunch was offered by RurAL CAP and time was allowed for participants to converse openly.

Success Stories

After lunch, the group engaged in a discussion regarding the tribal consultation processes that appeared to work well with other agencies and groups. Those mentioned were:

- Alaska Migratory Bird Co-Management Council. It has some success because it is a co-management arrangement, the board is comprised of multiple Alaska Native representatives but only entitled to one vote. It is Federally funded.
- Dept. of Defense (U.S. Army, Air Force). Goals and interests are shared. Tribe's participation in consultations is funded by DOD, DOD has a tribal liaison to maintain the relationship, and DOD leadership travels to communities and participates in the tribal consultations.
- Cooperative Agreements
- The Alaska Native Halibut Subsistence Working Group. It is not true tribal consultation, but it brings together stakeholder groups, is Federally funded, and the timing coincides with NPFMC meetings so participants are able to participate directly in that process as well.
- Indigenous People's Council for Marine Mammals (IPCOMM). All representatives are voting members and they have operating procedures to guide people on decision-making and communications.
- Bering Sea Fishery Coalition. Tribal representatives speak to issues based on conservation.
- Western Arctic Caribou Working Group. It works with various land managers in governmental agencies but also other stakeholders such as hunting guides. It is tribally-driven.
- The Alaska Eskimo Whaling Commission (AEWC). Of all the cooperative agreements, the AEWC is the only co-management system that allows Native Alaskans to make the decisions about resource management.
- The Census Bureau. It works directly with tribes. For the 2010 census, the tribes will be asked to review and approve the census for their communities.

Recommendations for Improvement

After the group discussed some elements of processes with other agencies that work well, they discussed their ideas and recommendations to NMFS for improving its tribal consultation process.

The first six bullets in the list below are those the tribal representatives believe are of primary importance and priority. The remaining 14 bullets, while numbered, are not in any particular order of importance.

1. In addition to the official representative each agency must appoint under E.O. 13175, NMFS Alaska Region must hire tribal liaisons responsible to be the contact and resource for the tribes. NMFS must comply with ANILCA, including Title 13, in hiring the liaisons.
2. NMFS Alaska Region must communicate to the Secretary of Commerce to recommend to Congress that it amend the Magnuson-Stevens Act to require voting seats for regional tribal representatives on the NPFMC.
3. NMFS must fund the tribes' participation in tribal consultations. Tribal consultations can't be an unfunded mandate or a low priority in the budget. NMFS needs to expedite the process of providing funding for tribes to participate in tribal consultations.
4. NMFS must engage with the tribes in the same way that it is engaging with the State of Alaska. Constant interaction, sharing of information and advice, sharing of resources, etc. In addition, participants recommend that NMFS withhold Federal funding from the State until it complies with federal law (e.g. recognize tribes, subsistence priority, comply with ANILCA, comply with E.O. 13175).
5. NMFS must create a Memorandum of Agreement (MOA) or a Memorandum of Understanding (MOU) with the NPFMC about how the NPFMC will engage with NMFS in consultations with the tribes; NMFS must create a separate MOA/MOU with the tribes about how the tribal consultation process will be conducted. Language must be clear and concise, not leaving room for error or misinterpretation. Timelines must be perpetual (the MOA/MOU must not expire). Use language such as "shall" and "will" in the MOA/MOU, as opposed to "may" and "should."
6. The NPFMC must hire tribal liaisons responsible to be the contact and resource to the tribes. Comply with ANILCA including Title 13, local hire.
7. NMFS must send these recommendations to its headquarters office and to meeting participants so participants can send to all appropriate government officials, including the Congress of American Indians and the Alaska Federation of Natives.
8. The Federal government, including NMFS, must acknowledge and recognize tribes as sovereign governments, having a government-to-government relationship with the federal government.
9. NMFS must communicate effectively with tribes (regularly and consistently, using effective mediums, etc., regularly update contact lists, using multiple mediums).
10. NMFS must keep all tribes/representatives of tribes notified of tribal consultations on all issues throughout the entire process.
11. The NPFMC must adhere or otherwise follow the tribal consultation requirements of E.O. 13175.
12. NPFMC meetings, when they do occur, must be during times of the year that are conducive to strong engagement. Having meetings during fishing seasons, for example, is not effective.
13. Do not usurp the authority of the tribes. Consult with regional non-profit corporations if you can't engage with individual tribes, but only if the tribes have delegated their authority to the region.

14. Allow tribal entities to participate in the scientific analysis stage of the decision making. Allow for traditional ecological knowledge (TEK) to be used in this phase of the process.
15. Create a consistent tribal consultation process. NMFS and NOAA must use ONE process for tribal consultations. The Alaska Region NMFS must develop one tribal consultation process that covers all issues dealt with by the region (fisheries, habitat, marine mammals). Ideally all Federal agencies must use a consistent tribal consultation process.
16. NMFS must seek tribal consultations at the beginning of the process, not at the end!
17. NMFS must bring its legal representation or someone who can explain/interpret their position on an issue. This will allow tribal representatives to ask meaningful questions of the person "in the know" as opposed to relying on the "messenger" to try to interpret the logic/reasoning.
18. Tribes must have designated seats on the Advisory Panel to the NPFMC.
19. When creating a contact list for the tribes, identify the contact person specific to the tribal consultation process.
20. NMFS must follow up with tribal representatives about what NMFS will do regarding the recommendations of this group.

The work group meeting adjourned for the day at 5:15 pm.

Day Two

The participants reviewed what had been discussed on Day One and sought to prioritize the recommendations listed above. In addition, they discussed what they believe must be an "ideal" tribal consultation process. The steps below summarize the recommendations of the tribal representatives for an ideal tribal consultation process:

"Ideal" NMFS Consultation Process

1. As NMFS or the NPFMC develop fishery management initiatives or policies, early in the process NMFS must think about and identify how the issue will impact tribes and their members.
2. An issue appropriate for tribal consultation could be identified by a tribe or by NMFS.
3. Communication about the issue must occur:
 - a. NMFS must send a letter to the tribes and Alaska Native corporations.
 - b. If there is no response to the letter, NMFS must follow-up via phone call with the non-respondents to see why there was no response. NMFS also must follow up by phone with respondents to see who must be involved in the issue and what level of involvement must occur.
 - c. NMFS also must contact the regional non-profit corporations about the issue if it needs assistance identifying which tribes it must consult with.
4. Tribes could request a tribal consultation meeting with NMFS.
 - a. NMFS must identify whether the consultation is with one tribe or with multiple tribes. The tribe requesting the consultation must decide whether other tribes

- would be invited to the consultation, and, if invited to participate in a joint consultation, the other tribe(s) must decide if they want to consult as a group or on their own.
- b. Parties must decide who must be involved in the consultation. (Will the NPFMC be involved? If so, who would represent the NPFMC?)
5. The tribal consultation must be scheduled.
 - a. Timing of consultation would depend on the schedules of the tribal representative and NMFS staff who needed to participate.
 - b. The Alaska Regional Administrator (NMFS) must participate in the consultation.
 - c. The meeting must be in the community's village or if that is not possible, in the tribe's region.
 - d. The meeting must be in a neutral location, not at a NMFS office.
 - e. NMFS must provide funding for tribal representatives to attend if the consultation is not in his or her home town.
 6. Prior to the tribal consultation, information must be disseminated.
 - a. NMFS must provide information and analysis about the issue.
 - b. Tribes must provide any questions or concerns to NMFS ahead of time.
 - c. Information must be as detailed, thorough, and specific as possible.
 - d. NMFS needs to be prepared for the consultation and needs to have thought about potential impact of the issue on tribes.
 7. The tribe and NMFS must jointly develop an agenda for the tribal consultation.
 8. Meet, discuss and decide (Lots of things happen here. It could go back and forth on documents, evidence, etc. Additional meetings may be needed.)
 - a. Identify actions that either party agrees to take.
 - b. Information requests must have been made prior to the consultation meeting and additional information requests may be made at the consultation.
 - c. NMFS must follow through on issues discussed, questions asked, or recommendations made at the consultation.
 9. After the meeting, NMFS must write a summary of the consultation and send to it to all parties for review.
 10. NMFS must revise the summary based on comments received from participants and issue a final summary of the consultation.
 11. The parties must determine if additional meetings were needed.
 - a. NMFS must have to consider issues and concerns and respond to them.
 - b. NMFS's response to issues or concerns raised at the consultation could be done through inclusion in an analysis, in a separate document, or as a separate action, as appropriate.
 12. NMFS must provide the tribe's position to the NPFMC (provide the written summary of the tribal consultation and any information about follow-up by NMFS).
 13. Tribes would present their position separately to the NPFMC during public comment on the issue (either in writing or in person at a Council meeting).

The meeting adjourned at 12:20 pm. See paragraphs below for follow-up items.

Requests for Information from Tribal Representatives

(Responses since the meeting are noted below in italics.)

1. NMFS must provide a written explanation about why E.O. 13175 does not apply to the NPFMC. *(NMFS has requested NOAA General Counsel to assist in providing this explanation).*
2. Why does the Federal Advisory Committee Act (FACA) not apply to NPFMC? *(Nicole Kimball provided all meeting participants with an excerpt from section 302(i)(1) of the Magnuson-Stevens Act that specifically exempts the Councils from FACA. It states " The Federal Advisory Committee Act (5 U.S.C. App. 2) shall not apply to the Councils, the Council coordination committee established under subsection (l), or to the scientific and statistical committees or other committees or advisory panels established under subsection (g)."*

An electronic copy of the Magnuson-Stevens Act is available online at:

http://www.nmfs.noaa.gov/msa2005/docs/MSA_amended_msa%2020070112_FINAL.pdf)

3. NMFS must provide information about how the Magnuson-Stevens Act was amended to require that the Pacific Fishery Management Council have one voting member representing a tribe.

(Section 302(a)(1)(F) requires that the Pacific Fishery Management Council have one voting member appointed from an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with additional requirements in section 203(b)(5) about how that person must be selected.)

4. Get and review EPA's Region 10 Tribal Consult GAP report. *(On 11/12/09, Karen Pletnikoff provided this information to NMFS. It was forwarded to meeting participants on 11/30/09.)*
5. NMFS and the NPFMC staff must provide information about how social and economic impact analysis is conducted and whether or how the tribes would be involved in planning or conducting those analyses.
6. NMFS must provide meeting participants with a copy of IPCOMM operating guidelines. *(Sally Bibb provided this information via e-mail on 12/3/09.)*
7. NPFMC staff must provide information about how tribal representatives would be appointed to seats on the NPFMC's Advisory Panel (AP) and Scientific and Statistical Committee (SSC). *(Nicole Kimball provided all meeting participants with information about the NPFMC's recent request for applications for the AP and SSC. Interested tribal representatives may apply to the NPFMC for a seat on these committees during specific times of the year.)*

Next Steps (Recommended by Tribal Representatives)

(Steps taken since the meeting are noted below in italics.)

1. RurAL CAP must distribute draft minutes to participants for their comments. Once the minutes are final, RurAL CAP must provide a copy of them to NMFS and to the meeting participants.
2. NMFS and NPFMC staff must respond to the information requests. Some responses have already been provided.
3. NMFS must convene a follow up meeting with these participants to provide NMFS response to the recommendations. A higher level NMFS representative and someone from NOAA GC must attend this meeting.
4. NMFS must provide participants information about how the Department of Commerce will respond to the recent Presidential memo on tribal consultation (dated 11/5/09) and how these recommendations can be included in that process. *(On 11/13/09, Sally Bibb provided participants with the name and contact information for Don Chapman, Special Advisor to the Secretary of Commerce for Native American Affairs. Mr. Chapman is responsible for developing DOC's plan in response to the President's memo.)*
5. The NPFMC (during their outreach meeting) must also be provided this information. *(On 11/20/09, Sally Bibb provided a summary of this meeting to the NPFMC's Outreach Committee. This information also will be provided to the NPFMC at its December 2009 through the minutes of the outreach committee meeting that Nicole Kimball will present to the NPFMC.)*
6. NMFS must convey the recommendation of this group to the NPFMC and discuss how these recommendations and the NMFS recommendations would be addressed.
7. When NMFS is contacting tribes regarding the recent Presidential memo on tribal consultation (dated 11/5/09), NMFS must utilize this time to update contacts. *(Both NMFS and the NPFMC continuously update their address lists for tribes and corporations through information obtained from each mailing and by review and comparison with other mailing lists.)*

Attendee Contact Sheet

Project: NMFs and Tribal Representatives Planning Meeting

Meeting Date: November 9-10, 2009

Facilitator: Heather Kinzie, heather@aleadingsolution.com

Place/Room: Rural CAP Library

Name	Title	Organization / Region	Phone	E-Mail
Andy Teuber	Representative	Kodiak Area Native Association	907-486-9800	andy.teuber@kanaweb.org
Art C. Ivanoff	Representative	Native Village of Unalakleet / Norton Sound	907-624-3622	artcivanoff@hotmail.com
Caroline Cannon	Vice Chair	Arctic Slope Native Association		cpcannon2006@yahoo.com
David O. Osterback	Chairman	Aleutian Pribilof Islands Association	907-276-2700	davidO@apiai.org
Eugene Smith	Representative	Maniilaq / CIO	907-442-7268	esmith@maniilaq.org
Floyd M. Kookesh	Representative	Central Council Tlingit Haida Indian Tribes of Alaska	907-780-2276	fmkookesh@hotmail.com
Janice Berry	Meeting Transcriber/ Community Dev. Specialist	Rural Alaska Community Action Program, Inc.	907-865-7354	jberry@ruralcap.com
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U.S. Department of Commerce
Plan to
Develop a Tribal Consultation and Coordination Policy
Implementing Executive Order 13175

February 2010

Purpose

By memorandum dated November 5, 2009, President Obama reiterated to the heads of executive departments and agencies the importance of engaging in regular consultation with Indian tribal governments in the development of federal policies that have tribal implications. The President instructed each Executive Branch agency to develop – in consultation with Indian tribes and tribal leaders – a plan for implementing Executive Order (EO) 13175, “Consultation and Coordination with Indian Tribal Governments.”

Tribal governments play an important role in the Department of Commerce’s ability to successfully carry out its mission of promoting economic growth and opportunity for all Americans. The Department seeks to ensure a sound and productive relationship with tribal governments through the development and maintenance of a meaningful dialogue. This plan describes the framework through which the Department’s consultation and coordination policy will be developed.

Guiding Principles

The Department of Commerce is committed to establishing a comprehensive policy for consulting with Indian tribes on policy matters that have tribal implications. As the foundation of this policy, it recognizes:

- Indian nations exercise inherent sovereign powers and self-determination as domestic dependent nations.
- The Federal Government has a unique legal relationship with Indian tribal governments and works with them on a government-to-government basis.
- Consultation and collaboration with tribal officials is a critical ingredient to a sound and productive federal-tribal relationship.
- To succeed, the Department’s approach must be based on robust tribal participation.

Narrative

In March 1995, then-Secretary of Commerce Ronald Brown issued a set of guidelines for the Department’s interaction with American Indian and Alaska Native governments. The Department’s offices and operating units were instructed to follow that guidance in policy

development, planning and management activities, and legislative and regulatory initiatives. The guidelines recognize and acknowledge:

- the government-to-government relationship with American Indian and Alaska Native tribal governments;
- the previous commitments and precedents established by Congress and the President of the United States;
- the trust relationship between the Federal Government and American Indian and Alaska Native tribes as established by statute, treaties, court decisions, Executive Orders, regulations and federal policies;
- the Commerce Clause of the United States Constitution, which provides for the regulation of commerce between the states, and with Indian tribes and foreign nations;
- the need to obtain appropriate tribal input on policies, rules, programs and issues that affect tribes, to identify and eliminate impediments to working directly and effectively with tribal governments, and to work cooperatively with other federal departments and agencies as needed to ensure effective tribal consultation; and
- the importance of economic independence to tribal self-determination and self-sufficiency, and the need for the Department to make every effort to ensure that eligible tribes have access to Commerce programs that will help them meet their economic goals.

The Department's guidelines and EO 13175, which was issued in November 2000, have been considered in various ways by the operating units in working to administer their programs and to achieve their objectives. As an example, the Bureau of the Census has taken into consideration the significant need for tribal collaboration in planning for the decennial census of 2010. To date, 14 meetings have been held in order to consult with American Indian and Alaska Native tribal representatives and to, specifically:

- provide tribal governments focused opportunities to raise concerns that could impact the effectiveness of the decennial census;
- build partnerships to collaborate on issues of mutual interest;
- identify and promote innovative approaches for future consultation;
- involve tribes in the Bureau's decision-making process; and
- enhance the long-term relationship between tribal governments and the Bureau.

Following issuance of the President's November 2009 memorandum, the Department of Commerce established a Tribal Consultation Team (TCT) to conduct a comprehensive

assessment of other practices through which operating units have consulted with Indian tribes. The TCT comprises policy officials from across the Department.

This activity is being coordinated by the Secretary's Senior Advisor on Native American Affairs, Donald Chapman. Mr. Chapman, a member of the Mohegan Tribe of Connecticut, serves as the principal official responsible for developing and coordinating the Department's consultation policy and process, and represents the Department at weekly meetings of the White House Tribal Consultation Policy Development Team.

Plan of Actions

In developing its plan of actions, the Department of Commerce has utilized information gathered through regional and national "listening sessions" with tribal officials and other federal agencies, including the Departments of Agriculture, Education, Interior, and Treasury and the U.S. Army Corps of Engineers. These ongoing sessions are facilitated by tribal representatives and explore the full range of issues relating to how to achieve full and open tribal participation in policy matters that potentially impact on their members.

The Department will pursue the following steps to develop and implement its consultation policy.

- A communication strategy will be utilized to obtain input and share information, including:
 - the creation of a website to post this implementation plan, contact information for the Departmental coordinator, solicitations for comments and input, and, as it is developed, the Department's draft and, subsequently, final consultation plan;
 - the announcement of upcoming listening sessions in order to maximize participation and thereby enhance Commerce's awareness of tribal concerns and issues; and
 - the utilization of Federal Register notices to solicit input on the Department's tribal consultation plans and processes.
- The Department's TCT will develop a draft consultation policy based on the results of its review of current practices within Commerce and input received from tribal leaders and other stakeholders. The policy will be finalized based on comments that are received and will be posted to the Department's and White House's websites.
- The Department will continue to participate in government-wide activities and other opportunities to gain insight from tribal leaders in order to identify best practices that can be adopted and incorporated in Commerce's approach.

- A process will be adopted through which the Department's TCT will routinely evaluate the effectiveness of the consultation policy, identify opportunities for strengthening it, and make appropriate adjustments to increase its effectiveness.
- Within 270 days of President Obama's November 5, 2009, memorandum, the Department will submit to the Office of Management and Budget its first annual report on its consultation policy and progress on its implementation.