

# NOAA Fisheries Alaska Regional Office & Alaska Fisheries Science Center

## Tribal Consultation Protocol

December 2024

### Part 1. Introduction

NOAA Fisheries in Alaska is committed to improving consultation processes and recognizes that Tribal engagement is a priority. [Executive Order \(E.O.\) 13175](#) requires each U.S. government agency to establish an accountable process to ensure timely “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)<sup>1</sup> and the National Oceanic and Atmospheric Administration (NOAA)<sup>2</sup> identify the need for Federal agencies such as NOAA Fisheries to consult and work with federally recognized Tribal governments (hereafter “Tribes”) when developing “regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Tribes”.<sup>3</sup> NOAA Fisheries may also conduct Tribal consultation for actions that do not fit within the definition under E.O. 13175. In addition to consultation with Federally recognized Tribes in Alaska, NOAA implements similar consultation guidance for Alaska Native Claims Settlement Act (ANCSA) Native corporations (hereafter Alaska Native corporations).<sup>4</sup>

Because consultation is a government-to-government dialogue, E.O. 13175 and the DOC and NOAA consultation policies do not apply to Tribal groups, Alaska Native Organizations<sup>5</sup>, or non-ANCSA Native corporations.<sup>6</sup> However, NOAA Fisheries recognizes that these Tribal organizations may be important partners or have interests in our activities. Communications and relationships with these organizations do not constitute or require Tribal consultation. Per NOAA policies, a Tribe consulting with NOAA Fisheries may invite any other party to attend or participate in a consultation or may expressly authorize an individual or Tribal Organization to represent it or conduct the consultation on its behalf. In these instances, we will strive to confirm the scope of that representation in writing with the Tribes, so that all parties are clear about roles and expectations.

In Alaska, NOAA Fisheries is represented by the [Alaska Regional Office](#) and the [Alaska Fisheries Science Center](#). The Alaska Regional Office is responsible for managing the fisheries in the Exclusive Economic Zone (EEZ) off Alaska; for conserving and recovering protected species,

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<sup>1</sup> [Department of Commerce DAO 281-8](#).

<sup>2</sup> [NOAA Tribal Resources](#).

<sup>3</sup> From the definition of “Policies that have Tribal implementations” in Section 1 of E.O. 13175.

<sup>4</sup> Until 2010, the consultation requirements only applied to federal decisions that could impact Indian tribes. Through a provision in a 2010 omnibus bill, the requirement for OMB and agencies to consult with tribes under EO 13175 was explicitly extended to include Alaska Native corporations. In OMB Guidance, the memorandum stated that pursuant to Pub. L. 108-199, 118 Stat. 452, as amended by Pub. L. 108-447, 118 Stat. 3267, OMB and all Federal agencies are required to “consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.”

<sup>5</sup> [Section 119 of the Marine Mammal Protection Act](#) (Public Law 103-238) allows NOAA Fisheries or the U.S. Fish and Wildlife Service to establish agreements with Alaska Native Organizations (ANOs), including, but not limited to, Alaska Native Tribes and tribally authorized co-management bodies.

<sup>6</sup> 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](#) (ANCSA). Consistent with ANCSA, a “Native Corporation” is any regional, village, urban, or group corporation defined in, or established pursuant to, ANCSA.

principally marine mammals; and for protecting Alaska’s marine habitat. The Alaska Fisheries Science Center is responsible for conducting science to support sustainable fisheries and seafood, healthy ecosystems, and ecosystem-based and climate-ready resource management decisions. The Alaska Regional Office and the Alaska Fisheries Science Center recognize the importance of engaging and consulting with the Tribes on NOAA Fisheries-related issues of interest to the Tribes and are making improvements to our Tribal consultation protocol with the resources available.

We acknowledge that NOAA Fisheries needs to improve its processes for consulting and engaging with Tribes and Alaska Native corporations. We are working to remedy these challenges by developing a protocol that includes a clear structure and process for consulting and engaging with Tribes and Alaska Native corporations as part of an ongoing relationship with the Tribes and Alaska Native corporations, in which we intend to be open and inclusive.

## **Engagement and Consultation in the Alaska Region**

### **Engagement**

While government-to-government consultation is a formally structured and planned meeting, other forms of engagement among NOAA employees and Tribal officials, employees, and representatives are important elements of NOAA’s ongoing relationship with any Federally-recognized Tribe. Per NOAA Policy, “engagements” are interactions such as “sharing of information, data, perspectives, feedback and concerns, joint projects, and education and outreach. These routine engagements are the foundation of building relationships and fostering successful collaboration and cooperation and they generally include exchange of information about NOAA’s proposals, plans, or upcoming decisions and seek tribal input. However, these informal engagements are not the forum for the formal exchange of policy views among sovereigns and are not, taken by themselves, government-to-government consultation.

NOAA Fisheries staff are always open to engagement and consultation with Tribes and Alaska Native corporations. Our goal is to, first and foremost, foster meaningful collaborative relationships based on trust and respect and to advance equity and environmental justice (EEJ) in our science and management decision-making. To achieve this, we are committed to continuing informal engagement to keep Tribes and Alaska Native corporations informed of our activities as well as identify opportunities for an open and honest dialogue on topics of interest to them. NOAA Fisheries’ [National EEJ Strategy](#) guides equitable service to all communities, including Tribal communities. This EEJ Strategy provides a framework to incorporate EEJ into our daily activities. It identifies the development of implementation plans at the regional level; seeks to remove barriers to EEJ; and seeks to promote equity in all we do at NOAA Fisheries. To respond to this National effort, the Alaska Regional Office and the Alaska Fisheries Science Center have developed an [Alaska Implementation Plan for the National EEJ Strategy](#).

NOAA Fisheries staff at both the Alaska Regional Office and the Alaska Fisheries Science Center are committed to working with Alaska Native communities to support, strengthen, and enhance our working relationships through routine communications, collaboration, coordination, agency meetings, and research partnerships. We have taken a number of steps both at the Alaska Regional Office and at the Alaska Fisheries Science Center to ensure that our staff and scientific teams

engage more consistently with Alaska Native communities to provide information about our activities and invite feedback. This consultation protocol is a part of that broader effort to continue to improve the engagement with tribal partners. To facilitate this exchange, the Alaska Regional Office and the Alaska Fisheries Science Center commit to:

- Sharing information about how to improve engagement, request a consultation, or be involved in the NOAA Fisheries and North Pacific Fishery Management Council (hereafter “Council”) decision making processes.
- Engaging with Tribes and Alaska Native corporations. Tribal engagement includes the range of interactions with Tribal governments that may be similar to, but do not rise to the level of formal government-to-government consultation. Engagement may include many types of information exchange (e.g., sharing of information, data, perspectives, feedback, and concerns; co-development of joint projects; and education and outreach).<sup>7</sup>
- Distributing a joint Alaska Regional Office and Alaska Fisheries Science Center newsletter with information on our activities.
- Prior to conducting any Alaska Fisheries Science Center research activity in an area where there is the potential to overlap with subsistence activities, our scientific teams will engage early with communities to mitigate potential impacts to subsistence activities. The Alaska Fisheries Science Center scientific team will also develop a regular communications and engagement plan that keeps the communities informed while the research is being conducted and provides timely results after it is complete.

In addition, NOAA Fisheries will help our staff better understand Alaska Native community structure, different ways of knowing, and cultural differences in communications across Alaska. This includes providing resources and training, as needed, to help our staff more successfully engage with Tribal governments and native organizations in their communities. The Alaska Fisheries Science Center Tribal Research Coordinator plays a key role in helping distribute regular information about our survey operations and related science. As a scientist, the Tribal Research Coordinator also participates in our field research and is knowledgeable about the scope of our work. NOAA Fisheries also conducts education and outreach programs to share Indigenous Knowledge and science with Alaska students (e.g., NOAA Live Alaska) and provides educational opportunities through internships.

At any time, we also invite Tribes and Alaska Native corporations to contact our staff directly if they have questions, concerns or topics of interest they wish to discuss.

## **Consultation**

Per [NOAA Policy](#), “Consultation is used to exchange information, deliberate and address federal policies that have tribal implications. Consultation should strive for consensus in decision-making and should attempt to resolve or address any disputes. Consultation should afford any party the

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<sup>7</sup> [https://www.noaa.gov/sites/default/files/2021-11/NOAA\\_Tribal\\_Consultation\\_Handbook\\_2021\\_1.pdf](https://www.noaa.gov/sites/default/files/2021-11/NOAA_Tribal_Consultation_Handbook_2021_1.pdf)

timely opportunity to provide feedback, dissenting opinions, or other information.” To facilitate this exchange, the Alaska Regional Office and the Alaska Fisheries Science Center commit to:

- Informing Tribes of upcoming NOAA Fisheries actions that have the potential to overlap with subsistence fishing and hunting activities and providing opportunities for Tribes to give meaningful feedback.
- Participating in government-to-government consultation regarding proposed actions that may have tribal implications.
- Inviting Tribes to provide input on fishery actions being considered by the Council.
- Documenting and addressing the concerns raised by the Tribes to the degree possible under our authority given any other laws that apply to a particular resource management decision.

## NOAA Fisheries in Alaska

NOAA Fisheries oversees sustainable fisheries in Alaska. Alaska produces more than half the fish caught in waters off the coast of the United States, with an average wholesale value of nearly \$4.5 billion a year.<sup>8</sup> Our area of responsibility includes nearly 1.5 million square miles (70 percent of the total U.S. continental shelf) of the North Pacific Ocean, including the Gulf of Alaska, the eastern Bering Sea, the Aleutian Islands, and marginal seas of the Arctic Ocean (Chukchi and Beaufort seas). These waters support some of the most productive marine ecosystems and valuable commercial fisheries in the world, and are also home to the largest populations of marine mammals in the nation. Alaska is also challenged with some of the fastest changing marine ecosystems due to climate change. This has resulted in some fish and marine mammal stocks that have declined while others have been more resilient.

### Role of the Alaska Regional Office

The [Alaska Regional Office](#) is responsible for regulating management programs related to sustainable fisheries, protected resources, and habitat conservation. Detailed information on each of these programs and our six divisions can be found on our [website](#).

Most NOAA Fisheries regulatory and management actions in Alaska that might have Tribal implications would be related to Fishery Management Plan (FMP) amendments or rulemaking, but this can also include actions related to the conservation and recovery of protected species or habitat conservation issues. When it comes to issues related to the subsistence use of marine mammals, engagement between NOAA Fisheries and Alaska Natives usually occurs under the framework of co-management agreements between NOAA Fisheries and Tribally-authorized Alaska Native Organizations, which are governed by the [Marine Mammal Protection Act](#). While co-management of marine mammals between NOAA Fisheries and an Alaska Native Organization would not constitute government-to-government consultation, a Tribe may expressly authorize such an organization to represent it or conduct consultation on its behalf for issues

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<sup>8</sup> <https://www.fisheries.noaa.gov/region/alaska>

involving co-management of marine mammals.

New or revised Federal fishery management measures generally originate with the North Pacific Fishery Management Council (Council). The NOAA Fisheries Regional Administrator is a voting member of the Council, and our staff work closely with Council staff to develop the analyses necessary to support the Council's recommendations for FMPs, amendments to FMPs, and regulations. We review the Council's recommendations, and implement them if they are consistent with the FMPs, the [Magnuson-Stevens Fishery Conservation and Management Act](#), and other applicable Federal laws and regulations. Because consultation obligations under E.O. 13175 apply to NOAA Fisheries (a Federal agency) and the actions it takes, including approval of FMPs, FMP amendments, regulations, and policies that may have Tribal implications, it is the responsibility of the NOAA Fisheries Alaska Regional Office - not the Council - to consult with Tribes under E.O. 13175.

### **Role of the Alaska Fisheries Science Center**

The Alaska Fisheries Science Center conducts biological, ecological, and socio-economic research that is mandated or guided by the same Federal policies, laws, and executive orders as the Alaska Regional Office. This research is highlighted in our [five-year strategic science plan](#) that includes science goals, objectives, and strategies designed to support, align with, and advance the overarching mission of [NOAA](#) and [NOAA Fisheries](#). The Alaska Fisheries Science Center provides scientific advice to the Alaska Regional Office and to the Council as required under various Federal laws, most notably, [the Magnuson-Stevens Fishery Conservation and Management Act](#). Alaska Fisheries Science Center scientists also provide scientific advice and data products to support U.S. treaty obligations and Federal and state initiatives (e.g., Alaska Salmon Research Task Force, Pacific Salmon Treaty and Yukon River Panel, International Whaling Commission, Central Arctic Ocean Fisheries Agreement).

Under [Section 119 of the Marine Mammal Protection Act](#) the Alaska Fisheries Science Center conducts research and provides scientific advice to support co-management of subsistence use of marine mammals under agreements with the Alaska Beluga Whale Committee, the Alaska Eskimo Whaling Commission, Aleut Marine Mammal Commission, Ice Seal Committee, Indigenous People's Council for Marine Mammals, Traditional Council of St. George Island and Tribal Government of St. Paul.

The Alaska Fisheries Science Center also conducts collaborative research with Alaska Native communities and Alaska Native Organizations such as ice seal tagging studies, ice seal vessel surveys, juvenile salmon studies on the Yukon River, Pacific cod tagging, and bowhead and beluga whale aerial surveys. When resources are available, [we also support](#) Tribally-led research and existing Indigenous Knowledge Networks to build capacity in remote Arctic communities.

## **Role of the North Pacific Fishery Management Council**

The Council is one of 8 regional councils established by the Magnuson-Stevens Act to oversee management of the nation's fisheries. 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 to the Secretary of Commerce about regulations necessary to implement the FMPs. Fishery management actions recommended by the Council and implemented by NOAA Fisheries must be consistent with the ten National Standards in the Magnuson-Stevens Act, including those actions must take into account the importance of fishery resources to fishing communities to provide for their sustained participation and to minimize adverse economic impacts. The Council has FMPs for groundfish in the Gulf of Alaska, groundfish and crab in the Bering Sea and Aleutian Islands, scallop off Alaska, salmon off Alaska, and an Arctic FMP that prohibits commercial fishing above the Bering Strait. The Council may also develop regulations, including allocative bycatch and limited entry regulations, for Pacific halibut.

NOAA Fisheries encourages Tribes and Alaska Native corporations to participate in the Council's process, public outreach, and public comment opportunities so that the Council is aware of Tribal concerns early in the analytical process as the Council develops recommendations for management actions. Council engagement with Tribes does not substitute for Federal tribal consultation that can occur through the Alaska Regional Office or Alaska Fisheries Science Center at any time during the Council's development of a fishery action that has Tribal implications consistent with E.O. 13175.

## Part 2. Tribal Consultation Protocol

To provide routine and predictable Tribal consultation opportunities, the Alaska Regional Office and Alaska Fisheries Science Center developed this joint protocol to reflect our preferred timeline, means of communication, exchange of information, and guidelines for setting up meaningful consultation in keeping with NOAA policy.

### *1. Initiating Consultation*

Tribal consultation can be initiated at any time at the request of a Federally-recognized Tribe or Alaska Native corporation or by NOAA Fisheries for any agency action that may have Tribal implications consistent with the guidance in this Protocol, [\*NOAA Procedures for Government-to-Government Consultation with Federally Recognized Tribal Governments\*](#) (or Handbook), and [E.O. 13175](#). Per NOAA policy, the Alaska Regional Office and/or the Alaska Fisheries Research Center will take “into consideration the nature of the issue or activity of concern to a tribe, past consultation efforts, available resources, availability of pertinent information, timing, change in tribal government or any other relevant factors when responding.” Tribes and Alaska Native corporations may submit written consultation requests to:

#### **For Regulatory and Management Actions**

Jonathan M. Kurland  
Regional Administrator  
Alaska Regional Office  
PO Box 21668  
Juneau, AK 99801  
Email: [Jon.Kurland@noaa.gov](mailto:Jon.Kurland@noaa.gov)

#### **For Science & Research Actions**

Robert Foy, Ph.D.  
Science & Research Director  
Alaska Fisheries Science Center  
17109 Point Lena Loop Rd.  
Juneau, Alaska 99802  
Email: [Robert.Foy@noaa.gov](mailto:Robert.Foy@noaa.gov)

To obtain additional information or if you have questions, please contact the Regional Tribal Relations Coordinator or AFSC Communications Program Manager:

Amilee Wilson  
Tribal Relations Coordinator  
Alaska Regional Office  
421 Ocean Cape Rd  
Yakutat, Alaska 99802  
Phone: (907) 723-7099  
Email: [Amilee.Wilson@noaa.gov](mailto:Amilee.Wilson@noaa.gov)

Maggie Mooney-Seus  
Communications Program Manager  
Alaska Fisheries Science Center  
7600 Sand Point Way N.E., Building 4  
Seattle, Washington 98115  
Phone: (774) 392-4865  
Email: [Marjorie.Mooney-Seus@noaa.gov](mailto:Marjorie.Mooney-Seus@noaa.gov)

When submitting a written request, a consulting Tribe may authorize and identify a Tribal organization to represent it or conduct consultation on its behalf or may invite a Tribal organization to participate in a consultation along with the Tribe. In such situations, NOAA Fisheries will ask the consulting Tribe to clarify who is representing the Tribe. In all cases, per NOAA policy, the Alaska Regional Office and/or Alaska Fisheries Science Center will “ensure the individuals, tribes or other organizations participating in the consultation have an opportunity to provide input.”

## 2. *Notification of Action(s) from NOAA Fisheries to Alaska Native Tribes/Corporations*

NOAA Fisheries Alaska Regional Office or Alaska Fisheries Science Center, as appropriate, will notify the Tribe(s)/Corporation(s) by email and/or mail regarding actions that may be of interest to them. Other forms of communication for rural communities may also be considered (e.g., radio, newspaper, etc.).

Agency tribal email<sup>9</sup> and mailing lists consist of 600+ entities and include Federally recognized Tribes, Alaska Native Corporations, regional and village corporations, regional non-profit tribal organizations, and local governments. NOAA Fisheries recognizes that, similar to agency staff, tribal staff may move on and rotate employment. Tribal listservs are updated with the Bureau of Indian Affairs monthly, and tribal partners are contacted periodically for correct contact information so agency requests or information are received in a timely manner. NOAA Fisheries also encourages Tribes and other Tribal organizations to let us know if their contact information changes. Please notify the NOAA Fisheries Alaska Regional Office Tribal Relations Coordinator and the Alaska Fisheries Science Center Communications Program Manager.

When we issue a notice of a forthcoming agency action that may have tribal implications or overlap with subsistence hunting activities, NOAA Fisheries will:

- Explain, in plain language, the proposed policy or action and offer a summary of any information on potential effects to tribal members, resources, or interests. Correspondence will clearly indicate, “*Request to Initiate Government-to-Government Consultation*,” and will provide a specific timeframe for the Tribe(s) to respond to accept or decline the request.
- Outline the timeframe for consultation and explain any time constraints known to the agency, such as statutory deadlines. Any deadlines for written comments will also be provided, as appropriate.
- Note, if relevant, where the Tribe(s) can access more information about the proposed policy or action and whether there will be other opportunities for public participation or comment (such as public comment periods on proposed rulemakings or draft environmental impact statements, or public participation at fishery management council meetings).
- Designate a NOAA Fisheries point of contact to make arrangements for the consultation.
- Remain available to consult at any time in the decision-making or policymaking to the extent practicable. In many cases, NOAA Fisheries has limited ability to make big changes to a proposed action late in the process of considering the proposed action, so we encourage interested Tribes to consult with us at an early enough stage that new options can more easily be considered (e.g., before publishing a proposed rule).

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<sup>9</sup> Tribal employee email lists should not be shared or used by anyone except the NOAA Fisheries employee that received that permission. A Tribe may request an agency employee contact a specific tribal member on specific issues. That permission is specific to that issue and that employee.

### *3. Request for Tribal Consultation from Alaska Native Tribes/Corporations to NOAA Fisheries*

An Alaska Native Tribal government or Alaska Native corporation may request consultation on any NOAA Fisheries policy, proposed regulation, or other action that may have tribal implications. Written consultation requests must be received via email, letter, or via the [NOAA Fisheries Alaska Tribal Consultation Request Form](#). When an Alaska Native Tribal government or Alaska Native corporation sends an invitation to consult, NOAA Fisheries will:

- Send a prompt written response acknowledging the request. The written response will identify a NOAA Fisheries point of contact and next steps. The point of contact will also contact the Tribal representative by email or phone to acknowledge the request for consultation and to establish a preferred method(s) of communication.
- If a Tribe(s) would like to authorize an organization to represent them or conduct consultation on their behalf, this confirmation must be in writing as well as the scope of representation (e.g., which Tribes are represented by the tribal organization and the role that the Tribal organization will fulfill during the consultation process).

### *4. Tribal Consultation Protocol*

During preparations for the tribal consultation, NOAA Fisheries will:

- Work with the Tribal requester(s) to clarify the issues of concern to each party and determine topics to be addressed during the consultation.
- Work with the Tribal representative to identify participants in the consultation. NOAA Fisheries will endeavor to have a representative with appropriate decision-making authority participate in all consultation meetings. Participants and their invitees, including their roles in consultation, should be identified as early as possible to ensure that information is efficiently exchanged and in sufficient time prior to the meeting.
- Coordinate logistics for the meeting, including who will host, a date, location (virtual or in-person), notetaker(s), and agenda preparation (Tribal, Federal, or joint).<sup>10</sup>
- Identify the format and timing of any information to be shared before and following consultation.

### *5. Conducting Tribal Consultation*

During tribal consultation, NOAA Fisheries will endeavor to ensure that Tribal Leaders and Tribal

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<sup>10</sup> Because a number of laws and policies govern audio and video recordings created by NMFS or of NMFS staff, NMFS and Tribes should confirm whether there will be an audio or video recording of the meeting beforehand.

members are able to participate before other participants. In the meeting, NOAA Fisheries will:

- Provide an opportunity for Tribal elders and leadership to open the Tribal consultation. If the above opportunity is declined, NOAA Fisheries may offer to give a land acknowledgement.
- Seek to determine if any information will be designated as sensitive or confidential by a Tribal government and discuss steps to take to limit the risk of public disclosure.<sup>11</sup>
- Provide time for discussion between Tribes and Federal decision-makers and answer questions regarding the federal action or policy.
- Create a record of the consultation meeting via meeting notes.
- Determine the next steps jointly with Tribal representatives and document next steps in the meeting notes.

#### *6. Documentation of the Tribal Consultation*

NOAA Fisheries will work with Tribes and Alaska Native corporations to document the Tribal consultation by:

- Sharing draft summary meeting notes for review and comment with Tribal participants before finalization. Summary notes will include tribal input and agency responses to discussion and questions.
- Sharing final summary meeting notes or a link to the posting on our website with Tribal participants following the meeting.
- Ensuring the final decision document or administrative record explains how NOAA Fisheries considered and/or incorporated tribal input into the agency action.

#### *7. Resources*

The following is a list of links to information on Federal Tribal consultation, coordination, engagement, and other helpful tribal consultation resources:

- [Executive Order 13175: Consultation and Coordination With Indian Tribal Governments](#)
- [NOAA Procedures for Government-to-Government Consultation with Federally](#)

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<sup>11</sup> Before Indigenous Knowledge is accessed or collected by NOAA Fisheries, we will seek to obtain advance informed consent from Tribes and will inform tribal representatives that certain Federal Laws, including the Freedom of Information Act, may require disclosure of such information, if information is collected by NOAA Fisheries. If the Tribe or Tribes wish to share sensitive or confidential information with NOAA Fisheries, we will work with the Tribe(s) to determine if and how that information will be accessed or collected by NOAA Fisheries before the Tribes allow such access or collection.

Recognized Indian Tribal Governments - NOAA Tribal Consultation Handbook, 2023

- White House Memorandum on Uniform Standards for Tribal Consultation
- Alaska Region Tribal Consultations
- Alaska Fisheries Tribal Consultation Documents and Workgroup
- NOAA's Tribal Relations Team and Resources