

January 10, 2024

ATTN: Dr. Bob Foy, AFSC Director  
Dr. Bob McConnaughey, Fisheries Biologist, AFSC Resource Assessment and Conservation  
Maggie Mooney-Seus, AFSC Communications Program Manager; coordinating AFSC staff  
Engineering Division, Groundfish Assessment Program  
Molly Watson, NOAA General Counsel, AK Deputy Section Chief  
Mabel Baldwin-Schaeffer, AFSC Tribal Research Coordinator  
Lisa Hiruki-Raring, AFSC Education and Outreach Coordinator

**RE: *Postponement of Tribal Consultation on NETS project due to AFSC unpreparedness***

Greetings Dr. Foy, Dr. McConnaughey, Ms. Mooney-Seus, Ms. Baldwin-Schaeffer, Ms. Watson and Ms. Hiruki-Raring:

The NOAA Alaska Fisheries Science Center (AFSC) failed to be responsive to the request for Tribal Consultation from the Tribal Government of St. Paul Island, which was scheduled for 1/5/24. At the time of the request for Consultation (11/28/23), we expressly invited “participation from our Tribal partners who find this work very relevant to their representative Tribes and coastal communities, including Association of Village Council Presidents, Bering Sea Elders Group, Kawerak, Inc, and Native American Rights Fund.” As planning commenced, all of these named Tribal organizations and partners, as well as other Tribal Governments, indicated interest in joining the Consultation, and were added appropriately to the draft agenda. As of 1/5/24, the Tribal Governments intending to participate in the Consultation, as detailed in the agenda that was shared 1/3/24 with AFSC coordinating staff, included the Tribal Government of St. Paul Island, Nome Eskimo Community, Native Village of Unalakleet, Native Village of Elim, and the Native Village of Council. On 1/5/24, we received confirmation that the Native Village of Gambell would also be participating. However, NOAA AFSC continued a pattern of failure to meet NOAA’s trust responsibility to Tribes and the intent and directive of EO 13175; a mere 40 minutes prior to the intended start of Tribal Consultation with our Tribal Governments and partners, AFSC postponed via email, citing that they were unprepared and had fallen short on this Consultation.

We have received your email on 1/9/24 regarding a rescheduling of the meeting, though we are extremely concerned that the Center appears to think an appropriate focus for the Consultation will be to “...allay any fears that subsistence will be negatively impacted by this study.” This is a grossly inaccurate mischaracterization of the intent of Consultation as we requested and demonstrates that the Center still does not have an understanding of the goals, objectives and intent of Consultation. In light of the exceedingly disappointing events leading up to the postponed Consultation, **we request the immediate and full suspension of activities and actions related to the associated “NETS” project.**

AFSC has not yet provided much of the information (in terms of documents and questions to answers posed to the Center) we have respectfully requested and justified as relevant and necessary to ensure a meaningful Consultation. We would also highlight that the reasoning cited by the Center to justify postponement was that AFSC were not prepared for the meeting at their suggested date and time since the appropriate NOAA leadership would not be present. It is notable that we had requested several times since 12/14/23 for the appropriate NOAA leadership to be present in preparing for Consultation; had our repeated requests been honored, it is more likely that NOAA would have been prepared for this Consultation.

AFSC email communications and NETS documents that were provided to us are inconsistent, poorly written, disrespectful, and contain inaccurate information. In one example, AFSC documents imply the project has been underway since “FY22” and have not conducted any outreach and engagement to-date,

yet it is stated in an email dated 1/5/24 that, “[w]e want to assure you that while some preliminary work is being undertaken for this research project, we are still in the early stages of the planning process. Tribal input and guidance is, and has always been, a priority for us in designing this project.” Even if AFSC had taken heed of the issues we have raised since initiating Consultation on 11/28/23 and begun to produce outreach materials and engage Tribes in making them aware of the project, it would have been far too late to be considered “early stages” nor part of a “planning process.” Any outreach and engagement is very late in coming, and arguably unable to impact all relevant decision-making. Further, AFSC coordinating staff stated, “[t]he project overview was discussed and approved by the Center’s Board of Directors during its FY24 strategic planning discussions.” This alone provides clear evidence as to AFSC’s failure to ensure early engagement of potentially impacted Tribes as defined in the NOAA Tribal Consultation Handbook, pg. 3. This project has continued to develop out of Tribal and public awareness, despite the longstanding, clearly communicated, and repeated voicing of opposition from the Indigenous communities that stand to be harmed by this, and any future similar or re-branded research.

Additionally, the email correspondence from AFSC on 1/9/24 regarding rescheduling the Consultation, which indicates the Center sees a focal point of the Consultation being the “allay[ing of] any fears that subsistence will be negatively impacted by this study,” implies the Center sees the question of whether to conduct this study as an already-made decision, and one which simply requires educating Tribes away from what AFSC might consider misconceptions. This is not only disrespectful, Tribes are able to fully understand the implications of research and the scope of their own concerns, but also indicates this is yet another example of ‘after-the-fact’ Tribal Consultation which does not meet the mandate in EO 13175.

It is clear to us from the tone and poorly constructed emails and documents that AFSC has not engaged this matter and the mandate for a meaningful government-to-government relationship with Tribes seriously and respectfully; this is, additionally, despite the fact that we have reiterated numerous times how important and concerning this project is to Tribal entities. It is distressing to witness that AFSC has clearly failed to learn from their failures related to Tribal Consultation requests pertaining to bottom trawl research in Norton Sound over a decade ago, when Consultation requests were ignored in contravention of EO 13175 and which the Center still refuses to acknowledge; little appears to have changed over a decade later despite Tribal organizations repeatedly raising the issue of problems related to AFSC research as pertains to Tribal Consultation in the intervening years.

We maintain that this project should be completely canceled and terminated. Given that AFSC has clearly conducted significant work to-date on this project without appropriate Tribal involvement, the Center should draft and widely distribute a “Dear Tribal Leader” letter along with other outreach and engagement materials (including invitations to engage in formal Tribal Consultation) to Tribes and Tribal organizations. This should include accurate descriptions of the opposition to the proposed project from Tribal entities.

Please note that while AFSC has a responsibility to outreach, engage, and proactively offer Consultation to all “potentially impacted Tribes,” doing so should not result in a delay to rescheduling the existing, established outstanding Tribal Consultation with the Tribal Government of St. Paul Island, Nome Eskimo Community, Native Village of Unalakleet, Native Village of Elim, Native Village of Gambell, Native Village of Council, Native Village of Savoonga, Native Village of Wales, Chinik Eskimo Community, Stebbins Community Association, invited Tribal organizations, and any other Tribal Governments that wish to join. As such, let us be clear regarding one of our expectations: AFSC and NOAA should expeditiously reschedule this postponed Consultation regardless of any other Consultations that may be scheduled.

The Agency should consider all invited Tribal and Alaska Native entities as full and legitimate participants in that the rescheduled Consultation without question (their invitation being an extension of the sovereign authority of the Tribal Government of St. Paul Island). The Center should cease making

assumptions about the scope of Tribal interest and concerns regarding the NETS project including as pertains to the scope of the Consultation. The Center should provide all requested information well in advance of the Consultation, and the Center should reframe its understanding of how Consultation fits into the process related to this proposed study. As stated multiple times in emails with coordinating staff, this is an urgent matter. We hope that NOAA, more broadly, will be eager to assist the AFSC in adhering to its own protocols and policies, Executive Orders, Joint Secretarial Orders, and other directives and guidance, and that NOAA will provide or seek the appropriate entity to provide the required and necessary training and assistance to AFSC.

To summarize, these are our immediate expectations moving forward, and we request NOAA and AFSC provide confirmation of steps taken with regard to these items:

- We expect AFSC to immediately cancel any NETS project-related activities except those outlined in this bulleted list below.
- We expect an expeditious rescheduling of the Consultation which AFSC postponed, with all the appropriate NOAA staff present. Well in advance of the rescheduled Consultation, we expect AFSC to provide us a full and clear set of information and documents. A list of these missing items is included along with this letter for your convenience in addressing our concerns. We also expect a reorientation on the part of AFSC in terms of what it appears to consider the focus and purpose of this Consultation to be.
- We expect AFSC to conduct significant outreach, engagement, and extension of offers to Consult with Tribes and Tribal organizations around Alaska. It is highly concerning that AFSC noted in their correspondence that other Tribes had not requested Consultation - they have not done so because AFSC has not done the requisite outreach and engagement to any Tribes, as far as we can tell, to make them aware of this project and seek their input via Consultation. That is incumbent upon the agency, and this is a well-known best practice and basic principle relating to Tribal Consultation.
- We expect AFSC to review relevant materials related to the appropriate conduct of and respect for Tribal Consultation; to receive training regarding this; to strive to gain a shared understanding of what Consultation entails; and ensure there are lessons learned from this failed Consultation which improve future processes for AFSC's participation in Consultations they may engage in.

We hope and look for improvements from AFSC and NOAA with regard to this and other Tribal matters.

Sincerely,



John Melovidov  
President, Tribal Government of St. Paul Island

CC: Dr. Cisco Werner, Director of Scientific Programs and Chief Science Advisor for NOAA Fisheries  
Jon Kurland, NOAA Alaska Region Regional Administrator  
Amilee Wilson NOAA Alaska Region Tribal Liaison  
Melanie Bahnke, President, Kawerak, Inc.  
Dr. Julie Raymond-Yakoubian, Social Science Program Director, Kawerak, Inc.  
Stacey Lucason, Tribal Research Coordinator, Kawerak, Inc.  
Vivian Korthius, CEO, Association of Village Council Presidents (AVCP)  
Jaylene Wheeler, Executive Director, Bering Sea Elders Group (BSEG)  
Erin Dougherty Lynch, Native American Rights Fund (NARF)

Sydney Tarzwell, Native American Rights Fund  
Tribal Leadership for the Native Villages of Elim, Council, Gambell, Unalakleet, Savoonga, Wales, and  
the Nome Eskimo Community, Chirikof Eskimo Community, and Stebbins Community Association

## **Attachment A: List of missing information and open questions to AFSC regarding NETS project and associated Consultation**

1. There have been formal resolutions from at least Kawerak, Inc., the Tribal Government of St. Paul Island, and the Association of Village Council Presidents that were provided to AFSC and NOAA Alaska Region. No formal response or acknowledgment of receipt has ever been sent from the AFSC. NOAA Alaska Region staff acknowledged receipt of the Kawerak and TGSPi after respective Tribal staff followed up a second time. AFSC coordinating staff did not ever acknowledge the explicit request for an update on these resolutions (email dated 12/28/23). We expect formal and complete responses to each of these resolutions.

2. No reasoning was given as to the exclusion of certain staff, including NOAA leadership, requested in the formal ask for Tribal Consultation by the Tribal Government of St. Paul Island, even after repeated requests for this information or their inclusion. Please see the list of requested attendees below.

a. We expect NOAA to follow their published protocols regarding the inclusion of appropriate staff for a formal government-to-government meeting with Tribes. Scheduling of a formal Tribal Consultation meeting should include at minimum, the Tribe(s) requesting consultation, Tribes and Indigenous organizations that have been invited to participate, the NOAA staff involved in decision-making, and at the unit level, line office, staff office, and/or NOAA Regional Team “headquarters tribal liaison” as referenced in the NOAA Tribal Consultation Handbook (page 8). Please ensure that all tribal liaisons for the Alaska Region, any tribal liaisons for the AFSC, and those assigned to any other entities of NOAA engaged in this project are included.

b. In order for NOAA to more fully respond to the request from the Tribal Government of St. Paul Island for consultation on this matter, please also ensure that any decision-makers for the Alaska Regional Office, the Alaska Fisheries Science Center, and any other NOAA entities engaged in this project are included. In addition to those offered by the Alaska Fisheries Science Center in coordinating emails, we have requested at least Amilee Wilson, Alaska Regional Office Tribal Liaison; Jon Kurland, Alaska Regional Administrator; and Cisco Werner, Director of Scientific Programs. These individuals should be included in planning for Tribal Consultation, as well as any other decision-makers referenced in the NETS documents provided that reference, “Leveraged funding. Multiple coordinated proposals”, which may be housed in other NOAA entities.

3. There have been repeated requests to clarify the details for this project. As stated in email on 12/18/23, “One of the things that we request in advance of the Consultation is all materials related to this AFSC project - from the proposal to the budget, timeline, any associated RFPs, work plans that it is listed in, and other related documents not noted here that AFSC has.” A promise to share these materials was made on 12/19/23; however, this has never been done. This request was reiterated on 12/28/23 without reply.

a. Budget information has not been shared. Please do so, including any necessary “(multiple) coordinated proposals to support unfunded field operations, optional project elements, and enhanced stakeholder participation resulted (sic) in funding from independent programs” as are referenced in the 1/3/24 overview document. AFSC noted in a coordinating email that they did not wish to provide this information, perhaps forgetting they are a public organization and Tribes are not required to submit a FOIA to obtain information needed for a Tribal Consultation. We expect this error in understanding to be corrected and all pertinent budget information to be shared.

b. Between 12/18/23 and 1/3/24 various answers on timing were given, over email and in the NETS documents (two have been shared). Sometimes this project is referred to as if it is well underway and sometimes as if it is still very early in the process. Some answers appear to be about fieldwork while some information is about the project. Please specify the accurate timeline for this project, to include: Timing of the idea/internal proposal as it occurred, with any requests about or for this research by other

organizations, any precipitating events or new developments that specifically would induce NOAA to undertake this project; Timing of project planning, also referred to as the “Design Phase,” including any outreach that is referenced in the 1/3/24 NETS document to Tribes and any changes to project design that were incorporated from their input; Funding sought and NOAA approval(s) for internal funding decisions that were made and are being made; Partnerships sought that are referenced in the documents provided and that exist in other documents that have not been provided; Contracting and other allocation of funds; Scheduled fieldwork, including “sea trials in Puget Sound”, as well as surveys in Alaskan waters; Selection of survey sites and other methodological refinement as evidenced in the figures provided in the NETS document; Planned analysis timing; Expected outputs and when those are intended to be available; and other information as requested.

c. No RFPs have been shared; please do so. Please also include the contract for a vessel that was referenced in the NETS document shared 1/3/24.

d. No work plans have been shared. Several research plans, priority lists, and processes for selecting research are referenced in the overview documents and in emails from AFSC coordinating staff, possibly in response to this question. However, the most recent message to reference this, on 1/2/24, puts off responding to a repeat request for this information and instead pivots to an offer of verbal explanation in the Consultation meeting. This is not an appropriate response. Please provide the NOAA document(s) that refer to this research project, including when they were published and how they were made available. Information on the NOAA approval process and/or priority setting for research may also be shared.

e. Please also include any other documents NOAA and AFSC have regarding the NETS research project, as was requested ahead of any Tribal Consultation meeting.

4. It is clear to the participating Tribal Governments and Tribal partners that the AFSC has not been taking this Tribal Consultation seriously. Repeated requests have been made for confirmation from AFSC that they understand and affirm their duties in regard to Tribal Consultation, especially as all of the evidence above indicates that at best the AFSC is not able to provide timely information and instead is moving ahead with this project while neglecting their responsibilities to Tribal Consultation.

a. Given the lack of responses to formal resolutions, and the delay in replying to a formal request for Tribal Consultation, whether or not this process is being taken seriously was explicitly asked beginning 12/18/23. No answer has been given in reply.

b. Continued evasive, disorganized, and/or absent responses led to repeated requests that the AFSC be explicit about the level of seriousness with which it is taking this Tribal Consultation process. In reply to an email sent 12/28/23, on 1/2/24, the following reply was included, “The Alaska Fisheries Science Center will consider all discussion during the consultation in its decision making,” by coordinating staff. However, this response was paired with a reference to “the Center’s Board” that had reviewed and approved this project in some past meeting, indicating that whether to conduct this project is no longer under consideration by NOAA.

c. As with the confused timelines above, please share clearly what point of the NOAA approval process this NETS project is at, what factors have been considered in its approval so far, and confirm whether this Tribal Consultation is being offered at a time that is meaningful. All indications reinforce that Consultation was initiated after critical decision-making times have already passed (e.g., “The project overview was discussed and approved by the Center’s Board of Directors during its FY24 strategic planning discussions”).

d. Please share exactly how what is learned by NOAA through this Tribal Consultation will be used in relation to decision-making regarding the NETS project and any future research conceived for the Northern Bering Sea.