



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

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

October 31, 2014

Robert Henrichs
Native Village of Eyak
P.O. Box 1388
Cordova, Alaska 99574-1388

Dear Mr. Henrichs:

This letter follows up on our August 8, 2014, consultation meeting to discuss the Native Village of Eyak's petition that the National Marine Fisheries Service (NMFS) issue a reasonable amount of Individual Fishing Quota (IFQ) to the Native Village of Eyak for distribution to its members. There are three outstanding questions from that consultation meeting that we respond to in this letter.

1. What is NMFS's policy about how we exercise our trust responsibilities to Alaska Natives in our role as a member of the North Pacific Fishery Management Council (Council)?
2. Will NMFS work with the Native Village of Eyak to develop a proposal to allocate IFQ to the Native Village of Eyak and recommend this proposal to the Council?
3. Are there any statutory or regulatory hurdles that would make it harder for the Native Village of Eyak to be issued IFQ?

As you know, Executive Order (E.O.) 13175 requires NMFS to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications. The policies implemented under E.O. 13175 stem from a distinct obligation of trust incumbent upon the U.S. government in its dealings with Indian tribes and Alaska Natives. That obligation does not impose a duty on the government to take action beyond complying with generally applicable statutes and regulations. In other words, the government assumes Indian trust responsibilities only to the extent it expressly accepts or imposes them by statute. The issue thus depends on the relevant statutes in question.

Halibut are managed by the International Pacific Halibut Commission and NMFS through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). Sablefish are managed by the Council and NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Neither the Halibut Act nor the Magnuson-Stevens Act explicitly create particularized trust obligations to American Indians or Alaska Natives with regard to the management of U.S. fisheries. NMFS fulfills the U.S. government's trust obligations through its compliance with the Halibut Act and the Magnuson-Stevens Act by ensuring that its regulations are consistent with these statutes.



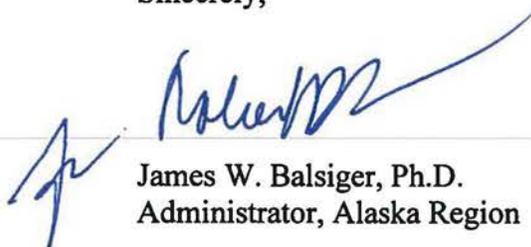
theses statutes. For example, management measures implemented under the Magnuson-Stevens Act must be consistent with the ten national standards set forth in section 301(a), 16 U.S.C. § 1851(a).

There are no federal statutes that would prohibit the Council from recommending and NMFS from implementing regulations to allocate halibut or sablefish IFQ to the Native Village of Eyak. However, the Magnuson-Stevens Act contains requirements for the process through which sablefish IFQ allocations would need to be made, namely through a recommendation from the Council that complies with all applicable laws and is consistent with the applicable fishery management plan. NMFS also uses the Council process to allocate halibut. An allocation of halibut or sablefish IFQ to the Native Village of Eyak outside of the Council process is not consistent with the current IFQ Program regulations at 50 CFR part 679. If the Native Village of Eyak desires an allocation of halibut or sablefish IFQ, the Council is the appropriate venue to make that request. If the Council recommended such an allocation, and NMFS approved the Council's recommendation, NMFS would implement this allocation through proposed and final rulemaking.

As we indicated during our August meeting, we would be willing to work with the Native Village of Eyak to help you and your staff understand the Council process and the laws and regulations governing fishery conservation and management measures. We believe the Native Village of Eyak ought to develop its proposal regarding the changes it wishes to make to the current IFQ program. If procedural questions arise, we would be happy to discuss them with you. Since no statute requires or authorizes NMFS to take a leadership role in developing or advocating for such a proposal on behalf of the Native Village of Eyak before the Council, we do not believe it is appropriate or desirable for us to take on this role on behalf of the Native Village of Eyak.

We are working with your staff to schedule a meeting to discuss our response to the questions in this letter. However, with our respective schedules that meeting likely will not occur until late in November. Therefore, we are sending our response now by letter, but we welcome the opportunity to talk and answer any additional questions. In the meantime, if you have questions about scheduling the meeting, please contact Gabrielle Aberle at gabrielle.aberle@noaa.gov or 907-586-7356. If you have specific questions about the IFQ Program or Council process, please contact Rachel Baker at rachel.baker@noaa.gov or 907-586-7425.

Sincerely,



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