

**Final Summary of
Tribal Consultation Teleconference to Discuss
Issuing Individual Fishing Quota to the Native Village of Eyak**
August 8, 2014

Participants

Participating via telephone:

Native Village of Eyak (NVE) Traditional Tribal Council
Robert Henrichs, President
Mark King, Vice President
Patience Andersen Faulkner, Council Member
Mark Hoover, Council Member

NVE Staff

Kerin Kramer, Interim Executive Director
John Whissel, DENR Director
Reyna Newirth, Executive Assistant, reyna.newirth@eyak-nsn.gov
Jeffrey Loman, Consultant

James Glaze, Attorney for NVE, Sonosky, Chambers, Sachse, Endreson & Perry, LLP

Patty Brown-Schwalenberg, Executive Director, Chugach Regional Resources Commission

Demian Schane, Attorney Advisor, NOAA General Counsel, Alaska Section

Participating at National Marine Fisheries Service (NMFS) Alaska Regional Office in Juneau:

James W. Balsiger, Ph.D., Administrator, Alaska Region
Glenn Merrill, Assistant Regional Administrator, NMFS, Sustainable Fisheries Division (SFD)
Sally Bibb, Deputy Assistant Regional Administrator, NMFS, SFD (907-586-7389)
Rachel Baker, Supervisor of the Catch Share Branch (including IFQ Program regulations),
NMFS, SFD
Tracy Buck, Program Administrator, NMFS, Restricted Access Division (issues IFQ and other permits)
Gabrielle Aberle, Tribal Consultation Coordinator for SFD (907-586-7356)

Summary

On June 30, 2014, Robert Henrichs, President, Native Village of Eyak (NVE), requested a government-to-government consultation to discuss the NVE's petition for NOAA to issue a reasonable amount of Individual Fishing Quota (IFQ) to the village for distribution to its members. The consultation was held on August 8, 2014. The consultation was conducted under Presidential Executive Order 13175.

Sally Bibb opened the meeting by introducing those present at the NMFS Alaska Regional Office, and then asked for an introduction from each of the callers. After introductions of NVE representatives, Jim Balsiger welcomed the NVE representatives and turned the consultation over to the representatives to present their questions and concerns.

The following issues were raised by the representatives of the NVE.

NVE requested that NMFS issue it a reasonable amount of halibut and sablefish IFQs.

NVE: The Community Development Quota (CDQ) Program established fishing quotas for Bering Sea and Aleutian Islands (BSAI) villages, but not for communities in the Gulf of Alaska (GOA). CDQ allocations provide economic opportunities for the groups in the program. The GOA communities were left out of the economic and social benefits of the CDQ Program. No one was looking out for us then; we would like you to look out for us now.

NMFS: The Magnuson-Stevens Fishery Conservation and Management Act (MSA) delegates the authority to develop fishery management plans (FMPs) for fisheries off Alaska to the North Pacific Fishery Management Council (Council). With limited exceptions, the Secretary of Commerce does not have the authority to implement FMPs independent of the Council. Fishery allocations are made by the Council through the FMPs. The Halibut and Sablefish IFQ Program and the CDQ Program were developed by the Council.

Halibut is managed by the International Pacific Halibut Commission (IPHC) and NMFS through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). Under the Halibut Act, the Council has some authority to develop regulations including limited access programs and allocations that are in addition to, and not in conflict with, approved IPHC regulations. Amendments to the halibut regulations also are made through the Council process.

When the Council was developing elements of the halibut and sablefish IFQ Program in the late 1980s and early 1990s, it considered making allocations to disadvantaged communities “within the geographic jurisdiction of the Council,” which included all communities in the GOA. However, the Council eventually decided to limit those allocations to the communities along the Bering Sea and Aleutian Islands through the Western Alaska Community Development Quota Program. Council discussion noted the difficulty of developing criteria for disadvantaged communities in the Gulf of Alaska. NMFS staff recalled understanding that other issues relevant to the discussion of community development quotas in the GOA were that the commercial halibut fisheries had been more accessible to residents of GOA communities evidenced by the existing commercial fishing fleets in those communities, and the difficulty of allocating to communities when that would mean reductions in allocations to resident commercial fishermen. Neither of these were significant factors in allocations to the western Alaska communities eventually determined eligible for the CDQ allocations.

NVE: Mr. Hendrichs commented that he thought the reason we did not allow allocations to the tribes was because that would trigger the Boldt decision.

NVE: Is it possible to issue the NVE a reasonable amount of IFQ.

NMFS: It is possible but not likely. NMFS cannot issue IFQ without going through the Council. It is unlikely that creating an allocation of halibut to a specific community could be limited to NVE because many communities and tribes in the GOA face similar social and economic challenges. We will work with you to put together your proposal to the Council and to help you understand the Council process.

NVE representatives stated that they want to avoid litigation and are willing to work through the Council process. But, they do not want NMFS to just tell them how to work through the Council process. NVE requests that NMFS go to the Council with NVE to help bring about policy change.

NVE: Are there any statutory or regulatory hurdles that would make it harder for the NVE to get IFQ?

NMFS: We will research this question and respond as soon as we can.

Do the consultation requirements of E.O. 13175 apply to the Council?

NVE: Page 2 of the document “NMFS Alaska Region, Sustainable Fisheries Division, Tribal Consultation Process” notes that NMFS Alaska Region has requested a legal opinion from NOAA General Counsel on whether the term “agencies” as used in E.O. 13175 applies to the Council.

NMFS: It is NOAA’s, not the Council’s, responsibility to consult with federally recognized tribes under E.O. 13175. NOAA documented this determination in the NOAA Procedures for Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations, page 17¹, and in response to Comment 8, 78 FR 68819, November 15, 2013². The NMFS Alaska Region SFD tribal consultation guidelines will be updated to state this.

NVE: Is it then appropriate for NVE to come to NMFS with its concerns?

NMFS: Yes, it is appropriate for NVE to bring this request to NMFS although NMFS cannot revise the IFQ allocations independent of the Council. So, ultimately, the issue must be brought before the Council.

How does NMFS exercise its “trust responsibilities?”

NVE: What is NMFS’s policy on exercising its trust responsibilities in its role on the Council? If NMFS does not have a policy on that, how will you address it? How can we help you develop that role?

NMFS: We will have to discuss this question internally and provide an answer to NVE as soon as we can.

NVE noted the way in which the Federal Energy Regulatory Commission ensures that the tribes are protected.

Allocations of halibut to the charter sector

NVE: The following statements were made and questions asked about the allocations of halibut to the charter sector:

- We have harvested halibut for 10,000 years but did not receive an allocation. New users were given allocations. We have an inherent right to use the fishery.
- Look at the charter fishery for a recent model of a group that was given access to the halibut fishery at no charge. We should have the same opportunity.
- A representative who holds Area 3A halibut IFQ stated that his quota share dropped 34% after the charter halibut fishery was given a percentage of the halibut harvest.

NMFS: We agree that charter and commercial halibut fisheries are new compared to the tribe’s traditional harvest of halibut. However, the charter and commercial fisheries were not new participants to the halibut fishery. Regulations have existed for some time that allowed these groups to fish for halibut. The new regulations were implemented to control the halibut harvest of the charter industry. There was

¹ See page 17 of “NOAA Procedures for Government-to-Government Consultation With Federally Recognized Indian Tribes and Alaska Native Corporations,”

<http://www.legislative.noaa.gov/policybriefs/NOAA%20Tribal%20consultation%20handbook%20111213.pdf>

² See response to Comment 8 in the *Federal Register* notice announcing the “Final Handbook of NOAA Procedures for Government-to-Government Consultation With Federally Recognized Indian Tribes and Alaska Native Corporations,” <http://alaskafisheries.noaa.gov/notice/78fr68819.pdf>

no mechanism to stop charter vessel operators from fishing when their allocation was reached. The new regulations set a limit for this sector.

The percentage of halibut for IFQ holders decreased because of a drop in the amount of halibut available for harvest, not because of the allocation to the charter fishery. Allocations to both the commercial and charter sectors in Area 3A were reduced in 2014 compared to previous years.

Community Quota Entity Program

NMFS: The Council considered tribes' involvement in the management process when it developed the Community Quota Entity (CQE) Program. The CQE Program adopted by the Council, and implemented by NMFS, was specifically intended to provide fishing opportunities to communities in the GOA that had a historic dependence on the halibut and sablefish fisheries. The Council recognized that a number of remote coastal communities were struggling to remain economically viable and developed the CQE Program to provide these communities with long-term opportunities to access the halibut and sablefish resources that were historically available to resident fishermen.

When the Council developed the IFQ Program, it considered providing allocations of halibut to GOA communities but did not include these allocations in the program when it was implemented. Instead the Council later developed the CQE Program to allow communities to form non-profit corporations to purchase halibut IFQ.

NVE: IFQ should have been awarded to us. IFQ is expensive and many of our members cannot afford it. Old Harbor bought 30,000 pounds of halibut IFQ and now they have 8,000 pounds. We cannot afford to buy IFQ when we think we should have been awarded it in the first place.

Other options for halibut allocations

NVE: Mr. Henrichs suggested that as halibut biomass increases, the increase could be used to provide IFQ to the village. One of the NVE representatives stated a concern and a question: 1) this would take money away from the commercial IFQ fishery, in which some members participate; and 2) if halibut biomass decreased, what would be the effect on the proposed IFQ?

Questions about halibut

NVE: When is halibut stock expected to increase? Can we get information on forecasts using the new models?

NMFS: Our ability to forecast the halibut population is not very good. The IPHC has been using new models for the last two years. We can arrange a follow-up meeting with knowledgeable staff to answer more specific questions about the halibut stock and fishery.

NVE: Regarding halibut bycatch in the trawl fisheries, observer coverage has dropped on the trawl fleet. Canada has a successful program to estimate bycatch. NMFS should consider looking at the halibut bycatch in the charter sector.

NMFS: We restructured the Observer Program in 2013 to improve the quality of the data collected. Prior to 2013, vessels equal to or greater than 60 feet length overall were required to carry observers for 30% of their fishing days and vessels less than 60 feet were not required to carry observers at all. Operators of vessels in the 30 percent coverage category could choose when to carry an observer, which decreased the quality of that observer data. Although the observer coverage rate for trawl catcher vessels has dropped

to about 15 percent of trips, we believe we are getting better quality data from these fisheries. We continue to evaluate the Observer Program to collect the best quality data we can with the money available to fund the program. The Council is considering a requirement for 100 percent coverage on all GOA trawl vessels. This proposal will be discussed at the October 2014 Council meeting.

The Council also is discussing whether additional actions are needed to address salmon and halibut bycatch. They will consider GOA trawl bycatch management at the October 2014 meeting, Bering Sea salmon bycatch at the December 2014 meeting, and halibut bycatch in the BSAI trawl fisheries at the February 2015 meeting.

Reauthorization of the MSA

NVE: Will NMFS Alaska Region weigh in on reauthorization of the MSA?

NMFS: NMFS Alaska Region will not develop recommendations on reauthorization of the MSA independent of NOAA headquarters. We will provide input if NMFS develops proposed legislation or responses to legislation introduced by Congress and requests our input.

NMFS notes that E.O. 13175 requires Federal agencies to consult with tribes on “legislative comments or proposed legislation” that have tribal implications. For further information or to request consultation on NOAA legislative comments or proposed legislation, please contact:

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Final thoughts and next steps

NVE suggested that NMFS attend the National Tribal Transportation Conference in Anchorage, September 22 through 25, because many tribal leaders will be at that meeting.

The consultation ended with an agreement to meet again to discuss the outstanding questions raised in this meeting. We discussed meeting again in mid-September 2014, possibly the week of September 8.