



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

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

May 31, 2012

Eric Olson, Chairman  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2817

Dear Chairman Olson:

Staff of the Alaska Department of Fish and Game (ADF&G) asked whether any federal regulations apply to *non-commercial fishing* for groundfish in the Exclusive Economic Zone (EEZ) off Alaska. Their question referred to groundfish in general and to sablefish in particular. We are providing this letter to the North Pacific Fishery Management Council (Council) as our response because this issue involves regulations governing commercial fishing under the fishery management plans and regulations recommended by the Council, and we expect that our answer will be of interest to a broad audience. This letter also is posted on the NMFS Alaska Region website at (<http://www.alaskafisheries.noaa.gov/sustainablefisheries/default.htm>). In summary, there are no “non-commercial fishing” categories under which persons may harvest sablefish with *fixed gear* in the EEZ.

Additional Information

Regulations promulgated by NMFS in 50 CFR part 679 govern commercial fishing for groundfish in the EEZ off Alaska. These regulations do not specifically address any non-commercial fishing for groundfish. When no federal regulations govern a fishing activity in the EEZ, section 306(a)(3) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) allows a state to regulate both vessels registered under the laws of that state and, under some circumstances, vessels not so registered while those vessels are fishing in the EEZ.

Commercial fishing for sablefish in the EEZ off Alaska is authorized only for vessels using fixed gear or trawl gear as defined under § 679.2. Under regulations at § 679.24(c), persons catching sablefish with any gear other than fixed gear or trawl gear must treat this sablefish as a prohibited species and, after allowing for sampling by an observer if an observer is onboard the vessel, return the sablefish to the sea with a minimum of injury.

Regulations governing the halibut and sablefish Individual Fishing Quota (IFQ) Program do not contain a specific definition of commercial fishing for sablefish using fixed gear. Nevertheless, in order to have an IFQ Program that can be effectively managed and monitored, the regulations work together to insure that harvests of sablefish are limited to a select group of commercial fishermen. Only those fishermen possessing an IFQ sablefish permit and using fixed gear in the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) management areas may harvest IFQ sablefish in federally managed waters. In some cases, the IFQ regulations also apply to sablefish harvested in waters of the State of Alaska.



NMFS regulations define IFQ sablefish as “any sablefish that is harvested with fixed gear, either in the EEZ off Alaska or in waters of the State of Alaska, by persons holding an IFQ permit, but does not include sablefish harvested in Prince William Sound or under a State of Alaska limited entry program.” Fixed gear is defined as longline gear in the GOA, which includes hook-and-line, jig, troll, and handline; and as hook-and-line and pot gear in the BSAI. The harvest of IFQ sablefish is governed by the IFQ regulations in 50 CFR part 679, specifically:

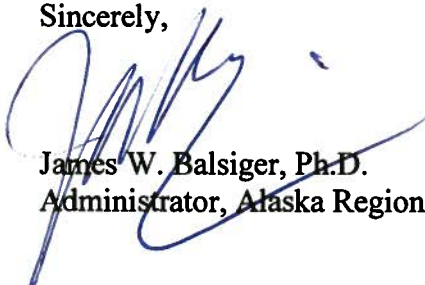
- § 679.7(f)(3)(ii) prohibits any person from retaining sablefish caught with fixed gear without a valid IFQ permit or IFQ hired master permit, unless that person is fishing on behalf of a Community Development Quota (CDQ) group; and
- § 679.7(f)(4) prohibits any person from retaining IFQ or CDQ sablefish on a vessel in excess of the total amount of unharvested IFQ or CDQ currently held by all permit holders onboard the vessel.

The result of these regulations is that any sablefish harvested with *fixed gear* in the EEZ or in waters of the State of Alaska, with the exception of Prince William Sound or under a State of Alaska limited entry program, may be retained only if the harvest, retention, and disposition of the sablefish complies with all regulations in 50 CFR part 679 that apply to IFQ or CDQ sablefish. If fixed gear is used to harvest sablefish, these regulations apply even if a person is not intending to commercial fish for sablefish.

This letter specifically refers to regulations governing commercial fishing for groundfish that have been promulgated by the Secretary of Commerce. The U.S. Fish and Wildlife Service and the U.S. Forest Service manage subsistence activities on federal public lands in Alaska, including limited marine waters, under 50 CFR part 100 and 36 CFR part 242 respectively. Questions about federal regulations governing subsistence fishing under 50 CFR part 100 should be directed to the U.S. Fish and Wildlife Service Office of Subsistence Management. In addition, as stated earlier, if fishing for groundfish in the EEZ is not regulated as commercial fishing under 50 CFR part 679, no regulations promulgated by NMFS apply to that fishing and it may be permissible under the MSA for the State of Alaska to extend its regulations to vessels non-commercial fishing in the EEZ.

Please let us know if you have any questions on this issue or if you would like to discuss this further at a future Council meeting.

Sincerely,



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

cc: Commissioner Campbell, ADF&G