


MEMORANDUM

TO: Council and AP Members  
FROM: Chris Oliver   
Executive Director  
DATE: December 1, 2005  
SUBJECT: Community Development Quota (CDQ) Program

ESTIMATED TIME 4 HOURS
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ACTION REQUIRED

- (a) Final action on EA/RIR on management of CDQ reserves
- (b) Review of proposed alternatives/options for revised BSAI Amendment 71, action as necessary

BACKGROUND

- (a) Final action on EA/RIR on management of CDQ reserves

In June 2004, the Council reviewed a draft analysis to consider amending regulations that govern which CDQ Program allocations (CDQ reserves) should be allocated to the individual CDQ groups. At that time, the Council approved two additional alternatives for consideration: (1) allow after-the-fact CDQ transfers; and (2) allow CDQ groups to manage the harvest of their quota among themselves using cooperatives. A revised set of alternatives was approved by the Council in October 2004, and Council initial review was in October 2005. The current suite of alternatives would potentially allow the Council to modify the management of groundfish CDQ reserves and other CDQ fishery management measures. **The EA/RIR/IRFA was mailed to the Council on November 17. Final action on the analysis is scheduled for this December meeting.**

This proposed action is intended to address concerns that the current groundfish and halibut prohibited species allocations were not designed to provide the CDQ groups with an amount of incidental catch or halibut prohibited species catch needed to completely harvest their target species allocations. The changes to CDQ fisheries management regulations considered in this analysis could provide more flexibility for the CDQ groups to fully harvest their target species and reduce the potential for quota overages, while still providing NMFS with adequate tools to manage the CDQ catch limits established for the BSAI fisheries as a whole.

The analysis incorporates three components that address: (1) amending CDQ transfer regulations, (2) allowing CDQ groups to form cooperatives and pool their quota, and (3) identifying which CDQ reserves to allocate to individual CDQ groups, as well as, how allocated and non-allocated reserves should be managed (either with hard or soft caps, respectively). The analysis does not include all possible combinations of the components; however, the Council could further segregate or combine components as part of its final preferred alternative.

In October 2005, the Council approved the release of the EA/RIR for public review, with the following revised alternatives. **The Council identified Alternative 4, Option 1 as its preliminary preferred alternative.**

**Alternative 1:** Status Quo. Do not amend CDQ fishery management regulations. CDQ and PSQ transfers between CDQ groups would not be allowed to account for in-season quota overages; CDQ groups would not be allowed to form cooperatives and pool their CDQ allocations; each BSAI TAC category allocated to the CDQ Program would be allocated among CDQ groups; all CDQ group allocations would be managed as hard caps; and changes to those TAC categories allocated to CDQ groups would continue to be made through rulemaking.

**Alternative 2:** Amend regulations to remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or PSQ allocations.

**Alternative 3:** Amend regulations to: (1) remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or PSQ allocations, and (2) allow CDQ groups to form harvesting cooperatives and pool their groundfish CDQ allocations for purposes of quota management and monitoring.

**Alternative 4:** Amend regulations to: (1) remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or PSQ allocations, and (2) only allocate target species CDQ reserves among CDQ groups. CDQ target species allocations would be managed as hard caps and unallocated CDQ reserves would be managed as soft caps.

**Option 1:** Amend regulations to allow the Council to make future modifications to the suite of TAC categories allocated among CDQ groups during the annual groundfish harvest specifications process, rather than through rulemaking.

Option 1 is associated with Alternative 4 only. This option would allow the Council to determine which CDQ reserves to allocate to the individual CDQ groups during the annual groundfish specifications process. Allowing such changes to be made during the specifications process could allow future changes to the list of allocated or non-allocated CDQ reserves (as would be identified under Alternative 4) to be made without corresponding rulemaking. Such changes could potentially be in response to future changes in BSAI TAC categories, particularly in relationship to multi-year CDQ percentage allocations; issues associated with increases or decreases in the annual TACs for target or non-target species; or other considerations.

**However, NMFS does not recommend including Option 1 as part of the Council's preferred alternative for this action because it could result in the need to prepare a Regulatory Impact Review for the harvest specifications, which would add additional analytical complexity to the already complex harvest specifications process.**

(b) Review of proposed alternatives/options for revised BSAI Amendment 71, action as necessary

The Council made recommendations on eight issues related to the CDQ allocation process and oversight of the program under BSAI Amendment 71 in June 2002. In March 2005, NMFS implemented regulations for Issue 8 to simplify and streamline administrative regulations related to quota transfers, authorized vessels, and alternative fishing plans. However, NMFS has not been able to implement regulations for the remaining seven issues that address the purpose of the CDQ Program, the process for allocating quota among the CDQ groups, and oversight of the economic development aspects of the CDQ Program.

NMFS has identified a number of legal and policy issues that slowed progress and required repeated consultations with the Council. These issues include advice from NOAA GC that: (1) NMFS must include an administrative appeals process for decisions about the approval of allocations among the CDQ groups, the Community Development Plans (CDPs), and amendments to the CDPs; (2) administrative determinations to approve CDQ projects in the CDPs or in amendments to the CDPs are likely Federal actions subject to the Endangered Species Act and the National Environmental Policy Act; and (3) NMFS must establish the confidentiality status of information submitted by the CDQ groups and by the State on behalf of the CDQ groups. The administrative and financial implications of these legal issues were not included in the analysis reviewed by the Council at the time it took final action on Amendment 71.

In addition, a decision issued by the Alaska Region in response to an administrative appeal reversed NMFS's longstanding interpretation of its regulations that the CDQ groups may invest only in fisheries related economic development projects. The result of the decision is that NMFS must only consider whether the CDP as a *whole* is consistent with the fisheries related purpose of the CDQ Program. The June 2002 analysis for Amendment 71 assumed that NMFS's regulations required all individual CDQ *projects* to be 'fisheries related,' and this assumption provided the basis for the status quo alternative. The OAA decision modifies the status quo in such a way that was not considered by the Council in June 2002.

Finally, at its April 2005 meeting, the Council expressed concerns about the CDQ allocation process and oversight of the CDQ Program. After the State created the Blue Ribbon Panel in response to the Council's concerns, NMFS suspended further work on Amendment 71 until the Council could review the legal and policy issues described above, as well as decide whether to add some or all of the Blue Ribbon Panel's recommendations as new alternatives to the Amendment 71 analysis. Governor Murkowski accepted the recommendations of the Blue Ribbon Panel on October 4, and the report was presented to the Council at its October meeting.

**Given the above events, and the fact that the panel's recommendations would also require changes to Federal regulations, in October, the Council requested that staff provide a proposed structure for alternatives and options for a revised Amendment 71 analysis which incorporates the recommendations of the Blue Ribbon Panel for the December 2005 Council meeting.** A discussion paper outlining the proposed alternatives and four issues related to recommendations of the Blue Ribbon Panel that require clarification is provided as **Item C-3(b)(1)**. The list of alternatives is Attachment 2 to the discussion paper. This paper was also emailed to you on November 17. The Blue Ribbon Panel report (without appendices) is provided for reference as **Item C-3(b)(2)**.

Note also that the State of Alaska has noticed the public of proposed changes to State regulations (Title 6 of the Alaska Administrative Code) that implement some of the Blue Ribbon Panel recommendations related to administrative reporting requirements. A summary of the proposed revisions is provided as **Item C-3(b)(3)**. The full suite of proposed changes is at <http://www.commerce.state.ak.us/bsc/CDQ/proposedregs.htm>. Public comment can be submitted in writing to the State until 4:30 pm on January 6, 2006.

Note that should the Council choose to initiate a new analysis for Amendment 71 based on revised alternatives, it is necessary to partially rescind its previous action on Amendment 71 taken in June 2002. It is only necessary to *partially* rescind this action because one of the issues on which the Council made recommendations in June 2002 has been implemented. NMFS implemented a recommendation to simplify and streamline administrative regulations related to quota transfers, authorized vessels, and alternative fishing plans through Federal rulemaking in March 2005. It is the remaining issues related to the purpose of the CDQ Program, the process for allocating quota among the CDQ groups, and oversight of the economic development aspects of the program that NMFS has not been able to implement to date.

**The action for this meeting is to review the discussion paper outlining the revised structure of alternatives and options proposed by staff. The Council could modify and/or approve this structure and initiate a new analysis of BSAI Am. 71 at this meeting. The Council may need to consider partially rescinding its previous action (on Issues 1 – 7) on BSAI Amendment 71 from June 2002. Staff has also identified four issues related to recommendations of the Blue Ribbon Panel that require clarification prior to being analyzed under Alternative 3.**

## **BSAI Amendment 71 – Community Development Quota (CDQ) Program**

### **December 2005 Staff discussion paper**

#### **October 2005 Council motion**

In October, the Council received a report from the Blue Ribbon Panel (panel) established by Governor Murkowski in May 2005 to evaluate the CDQ Program. The panel conducted its review over the summer and submitted its final report to the Governor on September 14, 2005. The primary recommendations of the panel were related to the duration of the allocation cycle; government oversight; approval of the Community Development Plans; use of CDQ funds; and the allocation process. The Governor accepted the recommendations of the panel on October 4.

**Upon review of the panel's recommendations, the Council requested staff to provide a proposed structure for alternatives and options for a revised BSAI Amendment 71 analysis, which incorporates the recommendations of the Blue Ribbon Panel, for consideration at the December 2005 Council meeting.**

#### **Background**

Amendment 71 originally contained recommendations on eight issues related to the purpose of the CDQ Program, the process for allocating quota among the CDQ groups, and oversight of the economic development aspects of the program. The Council approved Amendment 71 at its June 2002 meeting. Since then, NMFS has been developing a proposed rule that would implement the Council's recommendations, in order to submit the amendment package to the Secretary of Commerce. However, a number of significant legal and policy issues have arisen that have delayed the submittal of the proposed rule to the Secretary. These issues include:

1. advice from NOAA GC that NMFS must revise regulations governing its informal administrative adjudication process to include an administrative appeals process for decisions about the approval of allocations among the CDQ groups, Community Development Plans (CDPs), and amendments to CDPs;
2. advice from NOAA GC that NMFS's administrative adjudications to approve CDQ projects are likely Federal actions subject to NEPA, the Endangered Species Act, and other Federal laws;
3. the need for NMFS to establish the confidentiality status of information submitted by the State on behalf of the CDQ groups;
4. the NMFS Office of Administrative Appeals (OAA) determination that NMFS regulations do not specifically require that each CDQ project must be fisheries related, but that the purpose of the CDQ Program at 50 CFR 679.1(c) can only be applied to the CDP as a whole (result of OAA appeal No. 03-0022; 11/26/04).

The administrative and economic implications of the above issues were not included in the analysis reviewed by the Council in June 2002 when it took final action on Am. 71. In April 2004, NMFS advised the Council that issues #1 – 3 were significant enough to require revisions to the analysis for Am. 71 and additional review by the Council. The Council was also notified of the Regional Administrator's affirmation of the OAA's decision (#4 above) that NMFS must only consider whether the CDP as a *whole* is consistent with the goals and purpose of the CDQ Program. The June 2002 analysis for Amendment 71 assumed that NMFS's regulations required all individual CDQ *projects* to be 'fisheries related,' and this

assumption provided the basis for the status quo alternative. The OAA decision modifies the status quo in such a way that was not considered by the Council in June 2002.

Finally, in April 2005, the Council reviewed draft groundfish, halibut, crab, and prohibited species quota allocation recommendations from the State of Alaska CDQ Team for the 2006 – 2008 allocation cycle. Upon review of those draft recommendations and public testimony, the Council expressed concerns related to the way in which the program standards and evaluation criteria in State regulations are applied in the evaluation of the CDPs and development of the allocation recommendations. These concerns were related in a letter to Governor Murkowski, with the suggestion of convening a panel to review the CDQ Program. Subsequent to the April Council meeting, Governor Murkowski appointed a Blue Ribbon Panel to review and recommend changes to the CDQ Program.

In the meantime, the State notified the public that the 2006 – 2008 CDQ allocation recommendations would be suspended, pending the completion of the Blue Ribbon Panel's report to the Governor. Given that NMFS must have received the State's 2006 – 2008 recommendations by May 1, 2005 in order to have time to issue a final agency decision by December 31, 2005, NMFS issued an initial administrative determination on August 8, 2005, to remove the December 31, 2005 expiration date for the CDPs and the CDQ allocations to the CDQ groups that were approved for 2003 – 2005. NMFS extended the current CDPs and CDQ allocations until December 31 of the year in which a final agency action replaces them with new CDPs and allocations issued by NMFS. This decision became a final agency action on September 7, 2005, as there were no formal appeals by the CDQ groups. Effectively, the 2003 – 2005 CDPs and allocations represent the current allocations to the CDQ groups and will continue at least through 2006.<sup>1</sup> This action was taken to ensure that approved CDQ allocations were in place for 2006.

As stated previously, the Governor accepted the Blue Ribbon Panel recommendations on October 4, and they were presented to the Council at its October 2005 meeting. In late October, the Governor sent a letter (**Attachment 1**) to the Alaska Congressional delegation, stating that he has directed the State CDQ Team to begin implementing the panel's recommendations to the extent possible in State regulations and to undertake a new allocation process for 2007 - 2011. The stated goal is to submit 2007 – 2011 allocation recommendations to NMFS by May 2006. Staff understands the intent is to consult with the Council on the 2007 - 2011 allocation recommendations at the April 2006 Council meeting.

#### Action for the December 2005 Council meeting

Given the above events, and the fact that the panel's recommendations would also require changes to Federal regulations, the Council requested that staff provide a proposed structure for alternatives and options for a revised Amendment 71 analysis which incorporates the recommendations of the Blue Ribbon Panel. The intent was that the Council would consider the proposed analytical structure at its December 2005 meeting. A summary of the structure proposed by staff is provided in the following section.

**Note that should the Council choose to initiate a new analysis for Amendment 71 based on revised alternatives, it is likely necessary to partially rescind its previous action on Amendment 71 taken in June 2002. It is only necessary to *partially* rescind this action because one of the issues on which the**

<sup>1</sup>The 2003-2005 CDQ allocations extended by NMFS on September 7, 2005, do not include allocations of the two new crab species added to the CDQ Program in April 2005 under Crab Rationalization (Eastern Aleutian Islands golden king crab and Adak red king crab). These two crab species were not part of the 2003-2005 CDQ allocations originally approved by NMFS on January 17, 2003, so they could not be extended in the 9/7/05 decision. The 2005 CDQ allocations for these two crab species were made separately in October 2005 and provide allocations only for 2005. The State should submit new CDQ allocation recommendations for these two crab species in 2006 and fully incorporate them into the CDQ allocation process through the 2007-2011 CDQ allocation recommendations. The State likely will include the 2006 allocation recommendations for these two crab species in its April 2006 consultation with the Council.

Council made recommendations in June 2002 has been implemented. The Council originally made recommendations on eight issues related to the CDQ Program, one of those being to simplify and streamline administrative regulations related to quota transfers, authorized vessels, and alternative fishing plans. NMFS implemented this particular recommendation through Federal rulemaking in March 2005. It is the remaining issues related to the purpose of the CDQ Program, the process for allocating quota among the CDQ groups, and oversight of the economic development aspects of the program that NMFS has not been able to implement to date.

**At this meeting, the Council may need to consider partially rescinding its previous action (on Issues 1 – 7) on BSAI Amendment 71 from June 2002. The other action for this meeting is to review the revised structure of alternatives and options proposed by staff. The Council could choose to modify and/or approve this structure and initiate a new analysis of BSAI Am. 71 at this meeting.**

Proposed alternatives for BSAI Amendment 71

Should the Council partially rescind its previous action on Amendment 71 and initiate a new analysis, the Council would need to approve new alternatives and options for analysis. This section summarizes the three primary alternatives as proposed by staff. Each alternative is comprised of 8 components. The first four components are related to oversight of the economic development aspects of the program, and the next four components are related to the CDQ allocation process. An outline of the analytical structure is as follows:

<b>Outline of revised structure for BSAI Amendment 71</b>	
<b>ALTERNATIVE 1.</b>	No action.
<b>ALTERNATIVE 2.</b>	Previous Council preferred alternative from June 2002.
<b>ALTERNATIVE 3.</b>	State of Alaska Blue Ribbon Panel recommendations.
<b>Alternatives 1 – 3 each consist of the following components:</b>	
<u>CDQ Program Oversight</u>	
Component 1:	Define the role of government in oversight of the CDQ Program
Component 2:	Extent of government oversight (definition of a CDQ project, subsidiary oversight)
Component 3:	Allowable investments
Component 4:	CDQ Program purpose
<u>CDQ Allocation Process</u>	
Component 5:	Process by which CDQ allocations are made
Component 6:	Fixed versus variable allocations
Component 7:	CDQ allocation evaluation criteria
Component 8:	Duration of allocation cycle

**Alternative 1** is the no action alternative, meaning current State and Federal oversight would continue and NMFS would continue to make competitive allocations through informal administrative adjudication. In effect, NMFS approval of CDPs and CDP amendments would continue to be necessary prior to the projects being undertaken. In addition, CDPs would be evaluated using the current twenty criteria in State regulation and other regulations the State applies to the allocation process. Note also that the intent that CDQ projects be fisheries related is only conveyed in the purpose statement in Federal regulations; there are no explicit requirements governing allowable projects. The OAA decision discussed earlier results in a status quo alternative such that NMFS regulations do not specifically require that each CDQ project be fisheries related, only that the CDP as a whole meet the fisheries related purpose.

**Alternative 2** is a suite of components that represents the Council's previous preferred alternative selected in June 2002. This alternative would, for the most part, maintain the current State and Federal oversight roles, but would identify those elements of oversight in the FMP. In addition, several provisions related to government oversight (oversight of subsidiaries, allowable projects) would be explicitly established in regulation. Alternative 2 would also continue the current competitive allocation process via NMFS informal administrative adjudication. The allocation cycle would be set at three years, and CDPs would be evaluated based on a condensed list of ten criteria in Federal regulations.

**Note that, as proposed by staff, Alternative 2 also contains an option that was not part of the Council's preferred alternative from June 2002.** Option 1 under Component 5 would make allocations to the individual CDQ groups through Federal rulemaking, as opposed to the current process of approving allocations through informal administrative adjudication. This option was considered under the previous analysis for Amendment 71 and not selected as part of the Council's preferred alternative. However, NMFS recommends including this option for general comparison purposes. In effect, the analysis would consider two mechanisms (informal administrative adjudications and rulemaking) for establishing CDQ allocations under Alternative 2, Component 5.

**Alternative 3** is a suite of components that represents the State of Alaska's Blue Ribbon Panel recommendations to modify the CDQ Program. This alternative would eliminate duplication in the oversight roles for the Federal and State governments by amending the BSAI FMPs and Federal regulations such that there is no Federal oversight of the *economic development* aspects of the CDQ Program. The State would implement regulations under State authority to address the Blue Ribbon Panel recommendations related to no prior approval of CDPs and CDQ projects, financial reporting and disclosure, the requirement that projects over \$2 million would be submitted to the State for review and comment, and limits on non-fisheries related projects. These elements would not be addressed in Federal regulations or the FMPs. NMFS would continue to make CDQ allocations through an informal adjudicative process based on State recommendations, regulate the designation of eligible communities, and administer the fisheries management aspects of the program, as is mandated in the Magnuson-Stevens Act. The State would develop its CDQ allocation recommendations using the five evaluation criteria that would compare a group's performance at the beginning and end of a ten-year cycle. Each new ten-year cycle would be limited to potentially modifying a maximum of 10% of each CDQ group's percentage allocations; 90% of the allocations would be fixed.

The following table summarizes the three primary alternatives and the eight components of each alternative. **Attachment 2** provides a text version of this table, which includes additional detail on each of the alternatives.



Table 1. BSAI Amendment 71 proposed alternatives and options

Component	Alternative 1 (no action)	Alternative 2 (June 2002 Council preferred alt)	Alternative 3 (Blue Ribbon Panel)
<b>CDQ PROGRAM OVERSIGHT</b>			
<b>1. Define the role of government in oversight of the CDQ Program</b>	No additions to the BSAI FMP outlining the role of government in oversight of the economic development aspects of the program. Prior approval of CDPs and amendments to CDPs is required.	Amend the BSAI FMP to identify elements of the Federal government's responsibility for oversight of the economic development aspects of the program. Prior approval of CDPs and amendments to CDPs is required.	Eliminate duplication in NMFS and State roles. Prior approval of CDPs and amendments is not required. CDQ groups must submit proposed investments over \$2 million to Banking & Securities for review/comment. State imposes penalties for non-compliance.
<b>2. Extent of government oversight (definition of a CDQ project, oversight of subsidiaries)</b>	NMFS regulations governing the extent of oversight of the business activities of the CDQ groups and affiliated businesses would not be revised. NOAA GC opinion (10/4/00) concludes that NMFS regulations are unclear and need to be revised.	Government oversight (primarily requirements for reporting and prior approval of investments) extends to subsidiaries controlled by CDQ groups. Effective management control or controlling interest is defined by ownership of 51% or more.	State regulations would establish financial reporting requirements similar to ANCSA corporations; require an annual report to communities; and require disclosure of compensation for CDQ group employees and all subsidiaries.
<b>3. Allowable investments</b>	No change to current regulations, which include a fisheries related purpose statement, but no specific requirements for each CDQ project to be fisheries related (per 11/26/04 OAA decision). NMFS can disapprove a CDQ project only if it would make the CDQ as a whole inconsistent with the purpose of the program.	Limit each CDQ group to fisheries related projects, with the exception of allowing each group to invest up to 20% of its previous year's pollock CDQ royalties on non-fisheries related projects. Non-fisheries projects must be in economic development projects in the CDQ region and be self-sustaining. Groups may also use funds for administration, charitable contributions, scholarships & training, stock/bonds.	State regulations would limit each CDQ group to fisheries related projects, with the exception of allowing each group to invest up to 20% of net revenues in non-fisheries projects in the CDQ region. Non-fisheries projects would not be allowed to fund infrastructure projects unless the CDQ group was providing matching funds.

Table 1 continued.

Component	Alternative 1 (no action)	Alternative 2 (June 2002 Council preferred alt)	Alternative 3 (Blue Ribbon Panel)
<b>4. CDQ Program Purpose</b>	Per 50 CFR 679.1(e): The goals and purpose of the CDQ program are to allocate CDQ to eligible western AK communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, fisheries related economy.	Revise purpose statement in Federal regs and FMP: The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible western AK communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based fisheries economy, and, as a second priority, to strengthen the non-fisheries related economy in the region.	(Same as Alt. 2) Revise purpose statement in Federal regs and FMP: The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible western AK communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based fisheries economy, and, as a second priority, to strengthen the non-fisheries related economy in the region.

Table 1 continued.

Component	Alternative 1 (no action)	Alternative 2 (June 2002 Council preferred alternative)	Alternative 3 (Blue Ribbon Panel)
<b>CDQ ALLOCATION PROCESS</b>			
5. Process by which CDQ allocations are made	Continue to make allocations through NMFS administrative adjudication. CDQ groups are provided an opportunity to comment on the State's initial recommendations and can appeal NMFS's decision to approve or disapprove State's recommendations.	Continue to make allocations through NMFS administrative adjudication. CDQ groups are provided an opportunity to comment on the State's initial recommendations and can appeal NMFS's administrative decision to approve or disapprove the State's recommendations. <sup>2</sup>  Option 1: Make allocations through Federal rulemaking.	Continue to make allocations through NMFS informal administrative adjudication. CDQ groups are provided an opportunity to comment on the State's initial recommendations and can appeal NMFS's initial administrative determination to approve or disapprove the State's recommendations.
6. Fixed versus variable allocations	100% of CDQ is allocated on a competitive basis as recommended by the State of AK and approved by NMFS.	100% of CDQ is allocated on a competitive basis as recommended by the State of AK and approved by NMFS.	10% of each group's CDQ allocation by species would be allocated on a variable basis every 10 yrs starting in 2012. 90% of each group's CDQ would be fixed. The 90/10 provision would apply to the CDQ allocations that are in effect at the time that the final rule for Amendment 71 is effective. It is assumed that the baseline allocations that the 90/10 provision would apply to would be determined through the current allocation process prior to implementation of Am. 71. <sup>3</sup>
7. CDQ allocation evaluation criteria	State CDQ allocation recommendations are based on the 20 criteria in State regulations at 6 AAC 93.040 and other State regs. Evaluation criteria are not specified in Federal regulations.	State CDQ allocation recommendations are based on a condensed list of 10 criteria published in Federal regulations.	State CDQ allocation recommendations are based on 5 criteria. Groups are evaluated on their individual performance relative to the criteria at the start and end of a 10-year cycle. The evaluation criteria are only applied to the portion (10%) of the CDQ that is not 'fixed'.
8. Duration of allocation cycle	Continue to make periodic, competitive allocations among the groups. The State determines the length of the allocation cycle.	Establish a 3-year allocation cycle in Federal regulations. Allow the State to recommend reallocation of CDQ mid-cycle under specific circumstances, with Council/NMFS approval.	Establish a 10-year cycle in Federal regulation, to coincide with the U.S. Census. The allocation cycle and process only applies to the 10% of the CDQ allocations that are not 'fixed.'

<sup>2</sup>While an appeals process was not part of the Council's preferred alternative in June 2002, NOAA GC has determined that an administrative appeals process is necessary for decisions about the approval of allocations, CDPs, and amendments to the CDPs under the Administrative Procedure Act. Thus, no appeals process is not a viable alternative.

<sup>3</sup>The State is starting a new allocation process that would recommend CDQ allocations for 2007 - 2011. The State intends to submit recommendations to NMFS by May 2006. It is assumed that the 2007 - 2011 allocations represent the baseline allocations intended by the Blue Ribbon Panel.

### Clarifications related to the Blue Ribbon Panel recommendations (proposed Alternative 3)

There are four issues related to the recommendations of the Blue Ribbon Panel that require clarification prior to analysis of proposed Alternative 3. Three of these issues are related to the panel's recommendation on fixed and variable allocations. The last issue is related to the panel's recommendation to eliminate the duplicative roles of NMFS and the State with regard to the oversight of the economic development aspects of the program.

One of the primary Blue Ribbon Panel recommendations is to modify the CDQ Program such that the percentage allocations to each CDQ group have a fixed component (90%) and a variable component (10%). This recommendation is included under Alternative 3, Component 6. The stated objective of 'fixing' 90 percent of each CDQ group's allocations is to increase stability, promote long-term planning, and reduce negative competition among the CDQ groups. In effect, 90 percent of the percentage allocations to each CDQ group would be fixed and 10 percent would be subject to change at the beginning of each ten-year allocation cycle (the "90/10 provision"). Under Alternative 3, any changes to the 10 percent of each CDQ group's allocations would be based on the State's application of the five evaluation criteria recommended by the panel and would be implemented through the current administrative process for making CDQ allocations.

**First, assessing the effect of fixing 90 percent of each CDQ group's allocations requires identification of the initial set of percentage allocations to which the 90/10 provision will apply (i.e., the "baseline" CDQ allocations).** The baseline, combined with the 90/10 provision, would establish long-term allocations among the CDQ groups, of which a maximum of 10% would potentially change with every allocation cycle. Thus, identification of the baseline allocations is a significant step, as 90 percent would be effective over the long-term. Note that the full effect of the 90/10 provision cannot be fully understood without understanding both this issue and the second issue identified by staff, which is described further in this paper.

The Blue Ribbon Panel noted in its final report that it did not recommend baseline percentage allocations to which the 90/10 provision would be applied in future allocation cycles. The final report provides two different statements that indicate conflicting options for determining the baseline CDQ allocations. On page 1, in the statement by the Chair, the report states that "[I]t is critical that your [Governor's] office set allocations that will be used as the baseline. These allocations need to be established before our recommendations can be effective."

The statement on page 1 of the panel report indicates that the panel recommends that the baseline CDQ allocations should be the next set of CDQ allocations recommended by the Governor of Alaska and approved by NMFS. The Governor issued a news release on October 4, 2005, providing notification that the State intends to submit 2007 – 2011 CDQ allocation recommendations to NMFS by May 2006. The Governor's letter to the Alaska Congressional delegation on October 25 reiterates this direction (see Attachment 1). The letter also relates specific concerns with potential MSA amendments, including any statutory action to "set allocations or complicate the already burdensome regulatory structure."

The second statement referenced from the panel's report is in the last sentence in paragraph one on the top of page 6. The report states that "[T]he panel realizes it has not made recommendations on how to "fix" the 90% allocations, or whether that should be done through MSA or rulemaking." This statement indicates a possibility that the CDQ allocations could be made by Congress through an amendment to the Magnuson-Stevens Act or could be established through Federal rulemaking based on Council recommendations. Staff cannot speculate whether Congress will establish CDQ allocations to each individual group in the MSA, or whether Congress would enact the 90/10 provision recommended by the panel if such action was taken. Establishing CDQ allocations through rulemaking means that an analysis would be completed to support Council recommendations on specific percentage allocations among the

CDQ groups, and that the Council's preferred alternative would be implemented through Federal regulations. Both of these possible options are alternatives to the current informal administrative adjudication which requires that the State submit its recommendations to the Council for review and to NMFS for approval.

**In sum, the panel report mentions three different processes for establishing baseline CDQ allocations to which the 90/10 provision would apply. Given the communication issued by the Governor since the panel report was completed, staff assumes that the upcoming 2007 – 2011 allocation recommendations referenced in the Governor's press release and letter represent the baseline allocations to which the Blue Ribbon Panel recommends applying the 90/10 provision. This intent is reflected in Alternative 3.**

In effect, the State would complete its evaluation of the CDPs, consult with the Council, and submit its 2007 – 2011 allocation recommendations to NMFS by May 2006. NMFS would review these allocation recommendations and, absent any unresolved administrative appeals, these allocation recommendations could be approved by NMFS effective January 1, 2007. Upon Council final action on Amendment 71, should Alternative 3 be the preferred alternative (which includes the 90/10 provision and a ten-year allocation cycle), the next allocation cycle would be 2012 – 2021 and a maximum of 10% of each CDQ group's percentage allocations would be subject to change. The 90/10 provision would apply to the CDQ allocations that are in effect at the time that the final rule for Amendment 71 is effective. It is anticipated that the allocations that would be in place at that time will be the State's 2007 - 2011 CDQ allocation recommendations. **The Council should inform staff if this does not mirror its desired intent under Alternative 3.**

Note that the development of a new Amendment 71 and the State's 2007 – 2011 allocation process are concurrent efforts. Since Alternative 3 currently assumes that the 90/10 provision will apply to the baseline (2007 – 2011) allocations in future allocation cycles, this alternative may effectively make 90% of the 2007 – 2011 allocations permanent (depending on the choice the Council makes on the following issue).<sup>4</sup> Thus, the baseline allocations must be known in order to adequately analyze the impact of Alternative 3. The baseline allocation recommendations will be submitted to NMFS by May 2006 if the State process operates as intended. NOAA GC has noted that there may be concern under National Standard 4 if the Council takes final action to apply the 90/10 provision of Alternative 3 to the 2007 – 2011 allocations prior to approval of these allocations by NMFS.<sup>5</sup> Thus, the Council may not be able to take final action on this component of Alternative 3 until the 2007 - 2011 allocations are approved. NOAA GC may provide additional guidance on this issue at this meeting. Note, also, that it is likely that allocations would not be approved by NMFS until late 2006 or early 2007, depending upon appeals.

**Secondly, the application of the 90/10 provision needs to be clarified. One approach would be to start with the 2007 – 2011 baseline allocations, and apply the 90/10 provision to this baseline once, for the first allocation cycle (2012 – 2021). In effect, this approach would establish the total amount of CDQ that would be fixed (90%) for all the groups and the total amount that would be available for reallocation among the groups (10%) in perpetuity. Note that this means that by the second ten-year cycle, while the total amount of CDQ that can be allocated among the groups is still 10% of the baseline, it does not necessarily represent 10% of each group's allocations from the previous cycle, if any allocations changed in the previous ten-year cycle. As an example:**

<sup>4</sup>Note that the 90/10 provision is permanent only in the sense that it would not change until and unless new rulemaking was undertaken to modify this provision.

<sup>5</sup>National Standard 4 states that "[C]onservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges."

**Example 1: Apply the 90/10 one time during first ten year allocation cycle**

Baseline allocation (2007 – 2011) to CDQ group A for species X = 20%

2012 – 2021 cycle:

90% of the baseline = 18% (fixed in perpetuity)

10% of the baseline = 2% (this is the maximum % that can change for Group A during the allocation cycle)

If Group A loses half of its 2% during the allocation process, its final 2012 – 2021 allocations for species X will be:

$$18\% + 1\% = 19\%$$

2022 – 2031 cycle:

90% of the baseline = 18% (fixed in perpetuity)

19% - 18% = 1% (the maximum % that can change for Group A during the 2022 – 2031 allocation cycle)

An alternative approach would be to start with the 2007 – 2011 baseline allocations and apply the 90/10 provision during every new allocation cycle; thus, the baseline would change with each new allocation cycle. In effect, this approach would not ultimately 'fix' 90% of the baseline allocations for more than a ten-year period. The baseline would instead readjust with each new allocation cycle. As an example:

**Example 2: Apply the 90/10 during each ten year allocation cycle**

Baseline allocation (2007 – 2011) to CDQ group A for species X = 20%

2012 – 2021 cycle:

90% of the baseline = 18% (fixed during 2012 - 2021)

10% of the baseline = 2% (this is the maximum % that can change for Group A during the allocation cycle)

If Group A loses half of its 2% during the allocation process, its final 2012 – 2021 allocations for species X will be:

$$18\% + 1\% = 19\% \text{ (new baseline)}$$

2022 – 2031 cycle:

90% x 19% = 17.1% (fixed during 2022 - 2031)

10% x 19% = 1.9% (the maximum % that can change for Group A during the 2022 – 2031 allocation cycle)

**A third clarification necessary to analyze Alternative 3 is the relative weighting of the evaluation criteria that is proposed under Component 7. The Blue Ribbon Panel recommended five criteria:**

1. Population/poverty level (as indicated in U.S. Census) (10%)
2. Number of jobs created (permanent and temporary) (30%)
3. Amount of in-region investments in both fisheries and non-fisheries projects (35%)
4. Amount and number of scholarships and training investments (15%)
5. Community economic development (as documented by Alaska DCCED, through measure of total local revenue and median household income) (10%)

While the panel weighted the criteria for the allocation formula as shown above in its report, it noted that this ranking was an “example of showing how the formula works, the ranking/weighting was determined by the Blue Ribbon Committee as their view of the importance of each area as it applies to the program as a whole...In the final analysis it is up to the State administration and the CDQ groups to set the ranking/weighting of the methodology.”

In the Council’s analysis of Amendment 71, it can construct its alternatives as it sees fit. The Council could maintain the weighting of the criteria as proposed by the panel and outlined in Alternative 3, Component 7. Alternatively, the Council could choose a different weighting scheme(s) for analysis. Finally, the Council could instead determine that only the evaluation criteria would be in the FMPs and Federal regulation, and that the State would determine the weights of the criteria. The weighting of the criteria would have to be determined by the State prior to the first application of these criteria, which is currently intended for the 2012 – 2021 allocation cycle. **This issue requires clarification by the Council prior to the analysis being completed.**

**Finally, the last issue is related to eliminating NMFS’s role in the oversight of the economic development aspects of the CDQ program. This relates to Components 1 – 3 in Alternative 3.** The Magnuson-Stevens Act does not require government oversight of the economic development aspects of the CDQ Program, i.e., how the CDQ groups use their allocations to provide benefits to the eligible communities. These elements exist in NMFS regulations at 50 CFR 679 because either the Council specifically recommended them or NMFS implemented them to support the Council’s general recommendations. Thus, whether these oversight elements continue to be required in NMFS regulations and whether these oversight responsibilities are conducted by NMFS or the State are policy decisions under the authority of the Council and the Secretary of Commerce.

The Blue Ribbon Panel recommended eliminating duplication in Federal and State oversight roles, and generally changing from a program that requires the groups to receive Federal and State approval prior to making investments to one comprised of stricter securities oversight by the Alaska Division of Banking and Securities. Alternative 3 is intended to represent these proposed changes.

Under Alternative 3, State regulations could include reporting requirements, financial disclosure requirements, limits on allowable investments and expenditures, and requirements for prior review of certain investments. The State would impose penalties for non-compliance with these requirements. At a minimum, the alternative requires that:

1. CDQ groups must submit proposed investments over \$2 million to the Division of Banking and Securities for review and comment. No approval process is required.
2. the Division of Banking and Securities would receive and review financial and annual reports.

**Staff has interpreted the panel's recommendation to eliminate duplication of State and Federal roles and proceed with State oversight of the economic development aspects of the program such that NMFS would remove Federal oversight of the economic development aspects of the program from Federal regulations and the BSAI FMPs.**

In effect, the Federal government would not dictate nor delegate the responsibilities of the State, and it would be the State's decision to implement regulations consistent with the Council's recommendations under Components 1-3 of Alternative 3. If the Council selected these components as part of its preferred alternative, it would be supporting the Blue Ribbon Panel's recommendations on the State's role in oversight of the economic development aspects of the CDQ Program, but the Council would not be directing how or whether the State must implement these components through the FMP or NMFS regulations. This would remove both NMFS and the Council from oversight of how the CDQ groups use their allocations to provide benefits to the eligible communities, although State regulations could require that financial reports and/or annual reports are also submitted to the Council. The State would retain primary control of the economic development aspects of the program, and NMFS's role would be limited to the responsibilities currently outlined in the MSA and FMPs (i.e., eligible communities, approving CDQ allocations, and fisheries management).

In sum, while the panel made recommendations related to the State's responsibilities, it did not recommend how those responsibilities should be implemented. This issue is highlighted to indicate how staff interprets the intent of the Blue Ribbon Panel recommendations on oversight as represented in Alternative 3, Components 1 – 3. Approval of the alternative as currently structured would mean that Federal oversight would be removed from Federal regulations and not be specified in the FMPs, which would allow the State to establish State regulations at its discretion to govern the economic development aspects of the program.

Alternatively, if the Council wanted to direct the State about specific aspects of oversight, it must do that either through the BSAI FMPs or through Federal regulations. In both of these cases, NMFS would remain involved in oversight of the economic development aspects of the CDQ Program because the State would be accountable to NMFS and the Council to conduct its oversight responsibilities consistent with the requirements of the FMP or Federal regulations. In addition, the CDQ groups could appeal to NMFS if they wanted to assert that the State was not acting consistent with the FMP or Federal regulations. Therefore, options that would allow the Council to specifically direct the State on elements of oversight would not accomplish the Blue Ribbon Panel's recommendation of *eliminating* duplication in the State and NMFS's role in oversight.

Additional clarifications of the Blue Ribbon Panel recommendations will likely be necessary as staff begins to analyze Alternative 3. However, it is assumed that staff could bring any further questions or clarifications back to the Council at a subsequent meeting. The Council may need an additional meeting to refine and finalize the alternatives for analysis.

### Summary

At this December meeting, the Council's action is to review the revised structure of alternatives and options proposed by staff. The Council could choose to modify and/or approve this structure and initiate a new analysis of BSAI Amendment 71 at this time. In addition, the Council may need to consider partially rescinding its previous action (on Issues 1 – 7) on BSAI Amendment 71 from June 2002. Staff has also identified four issues related to recommendations of the Blue Ribbon Panel that require clarification prior to being analyzed under Alternative 3.



**FRANK H. MURKOWSKI**  
Governor



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**STATE OF ALASKA**  
OFFICE OF THE GOVERNOR  
**JUNEAU**

October 25, 2005

The Honorable Ted Stevens  
United States Senator  
522 Hart Senate Building  
Washington, DC 20510

The Honorable Lisa Murkowski  
United States Senator  
709 Hart Senate Building  
Washington, DC 20510

The Honorable Don Young  
United States Congressman  
2111 Rayburn Building  
Washington, DC 20515-0201

Dear Congressional Delegation Members:

On October 4, 2005, I received the recommendations of the Community Development Quota (CDQ) Blue Ribbon Panel, which made four key recommendations affecting federal and state regulations. I was pleased with the panel's diligent review of the program and with its recommendations.

I have given directions to my CDQ Team to begin the process of implementing the Blue Ribbon Panel recommendations for the Western Alaska CDQ program. Working with the Department of Law, the CDQ Team has already started the process of revising the state's CDQ regulations. State regulations will incorporate changes to government oversight, investment review, and reporting requirements, including the public disclosure of critical financial information to community members as recommended by the panel. The goal is to submit new 2007-2011 allocation recommendations to the National Marine Fisheries Service (NMFS) by May 2006.

I have also received a memorandum from Commissioner Bill Noll, Commissioner McKie Campbell, and my Fisheries Policy Advisor Alan Austerman urging me to preserve state oversight of the CDQ program, and I agree. Since its inception in 1992, state oversight has been a key to the success of the program. The Blue Ribbon Panel recognized the importance of state oversight and recommended the need for a new type of state review directed at fostering the growth and success of this important program.

Congressional Delegation Members  
October 25, 2005  
Page 2

There is also concern that changes in the Magnuson-Stevens Act are being promoted to end state oversight. Since the Blue Ribbon Panel affirmed the importance of state oversight, such actions are not advised. I would further assert that the CDQ program and its future is best served by maintaining the maximum flexibility in the overriding statute, be it either federal or state.

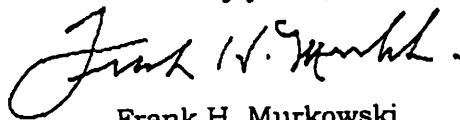
Additional areas of specific concern include:

- Any statutory actions that would set allocations or complicate the already burdensome regulatory structure;
- That no prior approval of CDQ group economic development projects by the U.S. Secretary of Commerce be required;
- Government oversight for the nonfisheries management portions of the CDQ program should be delegated to the Governor of Alaska; and
- That the 65 eligible communities which currently participate in the program should be listed in federal statute.

Limited federal legislative or regulatory changes may be needed to implement these changes and continue to advance the CDQ program. It is hoped that most of the necessary federal changes can be made by regulation rather than in federal law.

Finally, the State of Alaska CDQ Team has begun working with federal agencies, including the NMFS and the North Pacific Fisheries Management Council, to assist in identifying any changes in federal regulations necessary to implement the Blue Ribbon Panel's recommendations.

Sincerely yours,



Frank H. Murkowski  
Governor

cc: William C. Noll, Commissioner, Alaska Department of Commerce,  
Community, and Economic Development  
McKie Campbell, Commissioner, Alaska Department of Fish and Game  
John Katz, Director, State/Federal Relations and Special Counsel,  
Alaska Governor's Office  
Alan Austermán, Fisheries Policy Advisor, Alaska Governor's Office  
Tom Case, Member, CDQ Blue Ribbon Panel  
Stephanie Madsen, Member, CDQ Blue Ribbon Panel  
Carl Marrs, Facilitator, CDQ Blue Ribbon Panel  
Dennis Metrokin, Member, CDQ Blue Ribbon Panel  
Ron Miller, Member, CDQ Blue Ribbon Panel  
Ed Rasmuson, Member, CDQ Blue Ribbon Panel

## **BSAI Amendment 71: Alternatives proposed for analysis**

### **ALTERNATIVE 1. No action**

#### **CDQ Program oversight**

##### **Component 1: Define the role of government in oversight of the CDQ Program**

Do not amend the BSAI or crab FMPs to outline the role of government in oversight of the economic development aspects of the program. Prior approval by the State and NMFS of Community Development Plans (CDPs) and amendments to CDPs is required. CDQ groups must obtain prior approval for most investments and expenditures.

##### **Component 2: Extent of government oversight**

NMFS regulations governing the extent of oversight of the business activities of the CDQ groups and affiliated businesses<sup>1</sup> would not be revised. NOAA GC opinion (10/4/00) concludes that NMFS regulations are unclear and need to be revised.

##### **Component 3: Allowable investments**

The purpose statement in Federal regulations implements the intent of the program to develop fisheries related economies, without a clear description of allowable projects. There is no specific requirement for each CDQ project to be fisheries related (per Office of Administrative Appeals 11/26/04 decision). NMFS can disapprove a proposed CDQ project only if it would make the CDP as whole inconsistent with the purpose of the program.

##### **Component 4: CDQ Program purpose**

Per Federal regulations at 50 CFR 679.1(e): The goals and purpose of the CDQ program are to allocate CDQ to eligible western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based, fisheries related economy.

#### **CDQ Allocation Process**

##### **Component 5: Process by which CDQ allocations are made**

Allocations would continue to be made through NMFS informal administrative adjudication. (NMFS regulations do not adequately describe the process and need to be revised.) The current process is such that CDQ groups are provided an opportunity to comment on the State's initial recommendations. The State consults with the Council. CDQ groups can appeal NMFS's decision to approve or disapprove the State's recommendations. Current allocations remain in effect if NMFS cannot approve new allocation recommendations before the allocation cycle ends.

##### **Component 6: Fixed versus performance-based allocations**

100% of CDQ is allocated on a competitive basis as recommended by the State of Alaska and approved by NMFS. The State decides how to balance demographic and socioeconomic factors with performance criteria (see Component 7).

##### **Component 7: CDQ allocation evaluation criteria**

State CDQ allocation recommendations would be based on 20 evaluation criteria in State regulations at 6 AAC 93.040 and other State regulations. Evaluation criteria are not specified in Federal regulations.

<sup>1</sup> For purposes of this analysis, an 'affiliated business' is any entity that is owned in whole or in part by a CDQ group. A 'subsidiary' is an entity controlled by a CDQ group, and is also known as a 'consolidated affiliate' because the entity controlled by a CDQ group generally is consolidated with the CDQ group for financial reporting purposes. Affiliated businesses owned by the CDQ group, but not controlled by the CDQ group are known as 'unconsolidated affiliates.'

**Component 8: Duration of allocation cycle**

Continue to make periodic, competitive allocations among the groups, but the duration of the cycle is not set in regulation. The State determines the length of the allocation cycle.

**ALTERNATIVE 2. Council preferred alternative from June 2002**

**CDQ Program oversight**

**Component 1: Define the role of government in oversight of the CDQ Program**

Amend the BSAI groundfish FMP to identify elements of the Federal government's responsibility for oversight of the economic development aspects of the CDQ Program. Prior approval of CDPs and amendments to CDPs is required. Government oversight of the CDQ Program and CDQ groups is limited by the following purposes:

1. Ensure community involvement in decision-making;
2. Detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest;
3. Ensure that internal investment criteria and policies are established and followed;
4. Ensure that significant investments are the result of reasonable business decisions, i.e., made after due diligence and with sufficient information to make an informed investment decision;
5. Ensure that training, employment, and education benefits are being provided to the communities and residents; and
6. Ensure that the CDQ Program is providing benefits to each CDQ community and meeting the goals and purpose of the program.

Option 1: Amend the BSAI FMP such that there is no Federal oversight of the economic development aspects of the CDQ Program. If this option is selected, all regulations governing oversight of the economic development aspects of the program would be removed, including those addressed under Components 2 and 3 of this alternative. A revised purpose statement under Component 4 also would be necessary.

**Component 2: Extent of government oversight**

Amend Federal regulations to clarify that government oversight (primarily requirements for reporting and prior approval of investments) extends to subsidiaries controlled by CDQ groups. To have effective management control or controlling interest in a company the ownership needs to be 51% or greater.

**Component 3: Allowable investments**

Limit each CDQ group to fisheries related projects, with the exception of allowing each group to invest up to 20% of its previous year's pollock CDQ royalties on non-fisheries related projects. Non-fisheries projects must be in economic development projects in the CDQ region and be self-sustaining. Groups may also use funds for administration, charitable contributions, scholarships and training, and stocks/bonds.

**Component 4: CDQ Program purpose**

Amend Federal regulations and the BSAI FMP to state: The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an on-going, regionally based fisheries economy and, as a second priority, to strengthen the non-fisheries related economy in the region. (Fisheries-related projects will be given more weight in the allocation process than non-fisheries related projects.)

## **CDQ Allocation Process**

### **Component 5: Process by which CDQ allocations are made**

Allocations would continue to be made through NMFS informal administrative adjudication. The current process is such that CDQ groups are provided an opportunity to comment on the State's initial recommendations. The State consults with the Council. CDQ groups can appeal NMFS's decision to approve or disapprove the State's recommendations.<sup>2</sup> Current allocations remain in effect if NMFS cannot approve new allocation recommendations before the allocation cycle ends.

Option 1: Allocations would be established through Federal rulemaking rather than through the current administrative process. In effect, the Council would initiate rulemaking in the future to analyze alternative percentage allocations among the groups, recommend a specific set of allocation recommendations to NMFS, and NMFS would implement the Council's recommendations through proposed and final rulemaking. If the Council selected this mechanism to make CDQ allocations, it would change the nature of the decisions that the Council would make under Components 6, 7, and 8.

### **Component 6: Fixed versus performance-based allocations**

(Same as Alternative 1). 100% of CDQ is allocated on a competitive basis as recommended by the State of Alaska and approved by NMFS. The State must apply the evaluation criteria specified in Component 7, but it decides how to balance demographic and socioeconomic factors with performance criteria.

### **Component 7: CDQ allocation evaluation criteria**

State CDQ allocation recommendations would be based on the following list of ten criteria published in Federal regulations:

1. Number of participating communities, population, and economic condition.
2. A CDP that contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional or community economic development.
3. Past performance of the CDQ group in complying with program requirements and in carrying out its current plan for investments, service programs, infrastructure, and regional or community economic development.
4. Past performance of CDQ group governance, including: board training and participation; financial management; and community outreach.
5. A reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group.
6. Training, employment, and education benefits are being provided to residents of the eligible communities.
7. In areas of fisheries harvesting and processing, past performance of the CDQ group and proposed fishing plans in promoting conservation based fisheries by taking action that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to the essential fish habitats.
8. Proximity to the resource.
9. The extent to which the CDP will develop a sustainable fisheries-based economy.
10. For species identified as "incidental catch species" or "prohibited species," CDQ allocations may be related to the recommended target species allocations.

<sup>2</sup>While an appeal process was not part of the Council's preferred alternative in June 2002, NOAA GC has determined that an administrative appeal process is necessary for decisions about the approval of allocations, CDPs, and amendments to the CDPs under the Administrative Procedure Act. Thus, not having an appeals process is not a viable alternative.

**Component 8: Duration of allocation cycle**

Establish a 3-year cycle in Federal regulations. Allow the State to recommend reallocation of CDQ mid-cycle under extraordinary circumstances. The State would be required to consult with the Council on recommended reallocations, and reallocations would need to be implemented by NMFS administrative adjudication.

**ALTERNATIVE 3. State of Alaska Blue Ribbon Panel recommendations**

**CDQ Program oversight**

**Component 1: Define the role of government in oversight of the CDQ Program**

~~Eliminate duplication of NMFS and State roles by recommending specific oversight responsibilities for the State of Alaska (Division of Banking and Securities).~~ This alternative would eliminate duplication in the oversight roles for the Federal and State governments by amending the BSAI FMPs and Federal regulations such that there is no Federal oversight of the *economic development* aspects of the CDQ Program.<sup>3</sup> (*Council clarification on the interpretation of the Blue Ribbon Panel recommendations is needed*). The State would implement regulations under State authority related to reporting requirements, financial disclosure requirements, limits on allowable investments and expenditures, and requirements for prior review of certain investments. The State would impose penalties for non-compliance with these requirements. Prior approval of CDPs and CDP amendments is not required. State regulations would, at a minimum, require that:

1. CDQ groups submit proposed investments over \$2 million to the Division of Banking and Securities for review and comment. No approval process is required.
2. the Division of Banking and Securities receive and review financial and annual reports.

**Component 2: Extent of government oversight**

The Council would recommend that the State implement regulations, including financial reporting requirements similar to ANCSA corporations; an annual report to communities; and disclosure of compensation for CDQ group employees and all subsidiaries.

The Council would request the State to provide an annual report to the Council about its oversight of the economic development aspects of the CDQ Program, including copies of each CDQ group's annual report to its communities.

**Component 3: Allowable investments**

The Council would recommend that the State implement regulations to limit each CDQ group to fisheries related projects, with the exception of allowing each group to invest up to 20% of net revenues in non-fisheries related projects in the CDQ region and to prohibit the funding of non-fisheries infrastructure projects unless the CDQ group was providing matching funds.

**Component 4: CDQ Program purpose**

(Same as Alt. 2) Amend Federal regulations and the BSAI FMPs to state: The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an on-going, regionally based

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<sup>3</sup>NMFS would continue to make CDQ allocations through an informal adjudicative process based on State recommendations, regulate the designation of eligible communities, and administer the fisheries management aspects of the program, as mandated in the Magnuson-Stevens Act.

fisheries economy and, as a second priority, to strengthen the non-fisheries related economy in the region.<sup>4</sup>

### **CDQ Allocation Process**

#### **Component 5: Process by which CDQ allocations are made**

Allocations would continue to be made through NMFS informal administrative adjudication. The current process is such that CDQ groups are provided an opportunity to comment on the State's initial recommendations. The State consults with the Council. CDQ groups can appeal NMFS's initial administrative determination to approve or disapprove the State's recommendations. Current allocations remain in effect if NMFS cannot approve new allocation recommendations before the allocation cycle ends.

#### **Component 6: Fixed versus variable allocations**

Ten percent (10%) of each group's CDQ allocation by species would be allocated on a variable basis every ten years starting in 2012. Ninety percent (90%) of each group's CDQ would be fixed. The 90/10 provision would apply either one time to the CDQ allocations that are in effect at the time that the final rule for Amendment 71 is effective or could be applied at the beginning of each allocation cycle, starting in 2012 (*Council clarification on these options is needed*). It is assumed that baseline allocation recommendations to which the 90/10 provision would be applied for the 2012 – 2021 allocation cycle would be determined through the current allocation process prior to implementation of Am. 71.<sup>5</sup>

#### **Component 7: CDQ allocation evaluation criteria**

State CDQ allocation recommendations would be based on five criteria. Groups are evaluated on their individual performance relative to the criteria at the start and end of a ten-year cycle. The evaluation criteria are only applied to the portion (10%) of the CDQ that is not 'fixed' (see Component 6). Each CDQ group is evaluated based on the following list of five criteria that are established in the FMPs and Federal regulations:

1. Population/poverty level (as indicated in U.S. Census) (10%)
2. Number of jobs created (permanent and temporary) (30%)
3. Amount of in-region investments in both fisheries and non-fisheries projects (35%)
4. Amount and number of scholarships and training investments (15%)
5. Community economic development (as documented by Alaska DCCED, through measure of total local revenue and median household income) (10%)

***NOTE: The weighting of the evaluation criteria needs to be clarified by the Council prior to completion of the analysis. The Council could require the weighting of the criteria as proposed above by the Blue Ribbon Panel, or the Council could choose a different weighting scheme(s) for analysis. Alternatively, the Council could determine that only the evaluation criteria would be in the FMPs and Federal regulation, and that the FMP would direct the State to determine the weights of the criteria in State regulations.***

<sup>4</sup>If the Council agrees with staff's interpretation that there would be no Federal government role in oversight of the economic development aspects of the CDQ Program under Alternative 3, the analysis will address whether it is necessary or appropriate for the FMP to include such a specific statement about the goals and purpose of the CDQ Program.

<sup>5</sup>The State is starting a new allocation process that would recommend allocations for 2007 – 2011. The State intends to submit recommendations to NMFS by May 2006. It is anticipated that the 2007 – 2011 allocations will represent the baseline allocations and be in place at the time of implementation of Am. 71.

If one or more groups realize a reduction in their allocations, that 'available' quota should be divided by the formula or equally among the remaining CDQ groups. If all groups performed at status quo or improved relative to the criteria, no allocation changes would be made. If all groups did worse, no allocation changes would be made.

**Component 8: Duration of allocation cycle**

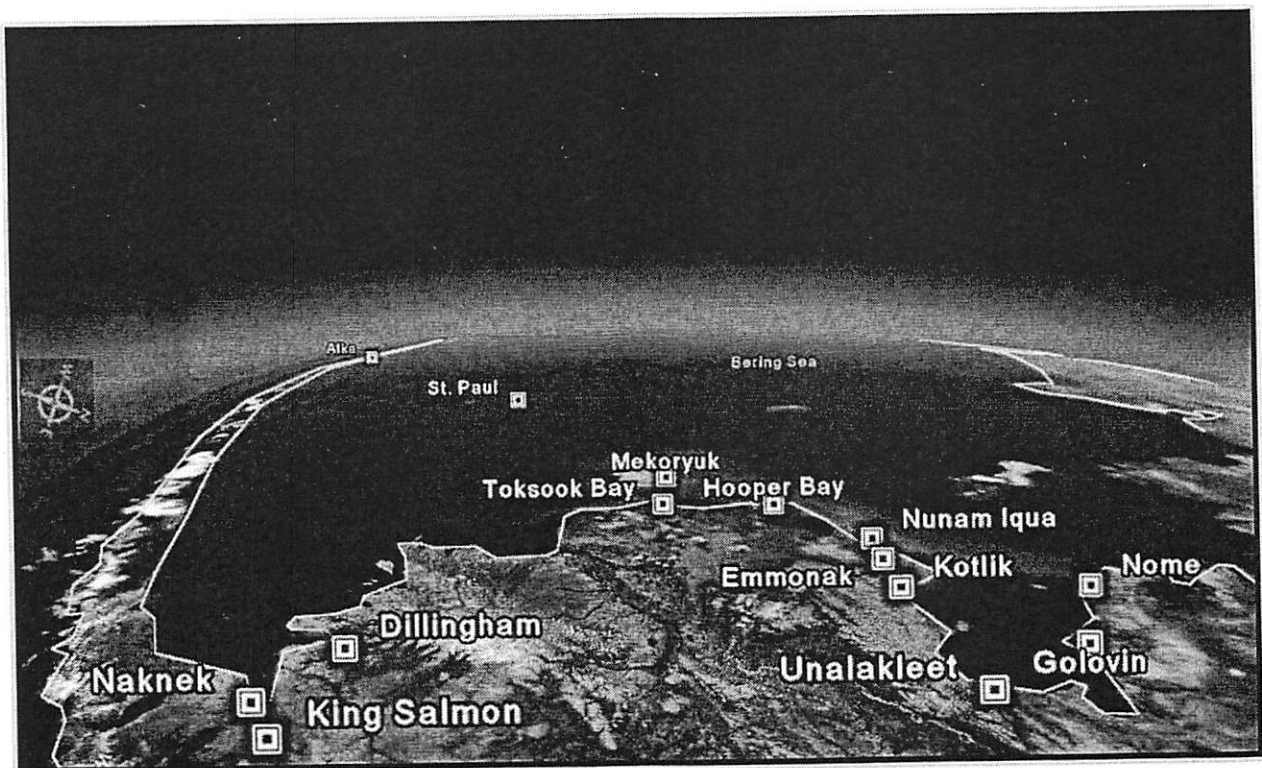
Establish a 10-year cycle in Federal regulation, to coincide with the U.S. Census.<sup>6</sup> The intent is that the first cycle would be 2012 - 2021.

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<sup>6</sup>The allocation cycle and process only applies to the 10% of the CDQ allocations that is not 'fixed.'



# Blue Ribbon Committee on the Western Alaska CDQ Program



## Report to the Governor State of Alaska

August 2005

## **Blue Ribbon Committee Members**

**Ed Rasmuson, Chairman**  
*Chair, Rasmuson Foundation*

**Tom Case, Panel Member**  
*Dean, College of Business and Public Policy University of Alaska, Anchorage*

**Stephanie Madsen, Panel Member**  
*Chair, North Pacific Fishery Management Council*

**Dennis Metrokin, Panel Member**  
*President, Koniag Incorporated*

**Ron Miller, Panel Member**  
*Executive Director, Alaska Industrial Development & Export Authority*

**Carl Marris, Facilitator**  
*President, Marris & Company*

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- a. Federal Regulations
- b. State Regulations
- c. *Amendment 71* – Regulatory Impact Review/Initial Regulatory Flexibility Analysis
- d. *Western Alaska CDQ Handbook*, CDQ Program, Department of Commerce, Division of Banking, Securities, and Corporations
- e. CDQ Groups – *Annual Report* (APICDA, BBEDC, CBSFA, CVRF, NSEDC, YDFDA)
- f. Sarbanes/Oxley

## Appendixes:

- a. Key Statistics – 2004, CDQ Groups, Kurt Martens, CPA
- b. Minutes, Blue Ribbon Panel CDQ Meeting, June 16, 2005, Anchorage
- c. Minutes, Community Meeting, APICDA Region, Atka
- d. Minutes, Community Meetings, BBEDC Region, Naknek, King Salmon, Dillingham
- e. Minutes, Community Meeting, CBSFA Region, St. Paul
- f. Minutes, Community Meetings, CVRF Region, Hooper Bay, Toksook Bay
- g. Minutes, Community Meetings, NSEDC Region, Nome, Golovin, Unalakleet
- h. Minutes, Community Meetings, YDFDA Region, Kotlik, Emmonak
- i. Minutes, Blue Ribbon Panel Executive Session, August 31, 2005, Anchorage

## Statement from the Chair

September 14, 2005

Honorable Governor Murkowski  
Juneau, Alaska 99801

Dear Governor Murkowski:

It is with a great deal of pride and satisfaction that the Blue Ribbon Committee submits to you, the final report of our review of the Community Development Quota Program. Our report lists our Conclusions and Recommendations that, if implemented, we believe will result in a greatly improved program.

We have traveled to at least two communities within each region, with the exception of APICDA, where due to weather conditions, we were only able to land in Atka; and of course St. Paul, which is the only community represented by CBSFA.

We believe, after many hearings and in working with each of the CDQ groups, that we have come forward with some solutions to many of the problems that the State, Federal and the CDQ groups have been wrestling with for many years. We believe that these recommendations will go a long way toward providing stability in the program and allowing an environment for increased cooperation between the CDQ groups in joint business ventures in the future. By lengthening the time between adjustments in allocation, these CDQ groups will have the ability to plan over a much longer period of time. It should also help them in dealings with financial intuitions as they continue to grow.

We would like to emphasize that Federal, State and Local governments must continue to support and fund projects in Western Alaska related to Health, Education, Public Safety and Transportation and not rely on the CDQ program to replace programs that are basic government requirements. However, this is not to say that the CDQs won't match some of those programs in the future.

It is critical that your office set allocations that will be used as the base line. These allocations need to be established before our recommendations can be effective. After many hours of discussion within the committee, we believe that these recommendations must be implemented together and not in pieces. Each recommendation has an impact on the other and for this to be a successful program for the CDQ groups, it should be implemented in its entirety.

We have appreciated the assistance from your Administration and have been very pleased to have had the insight of Mark Davis of the Division of Banking and Securities, whose role will increase substantially if you adopt our recommendations. Our thanks also to Gregg Cashen of the Department of Commerce, Nicole Kimball of the North Pacific Fishery Management Council, and Sally Bibb of the National Marine Fisheries Service, for their assistance in helping us to better understand the regulatory process.

Governor, on behalf of the Blue Ribbon Committee it has been an honor to serve you and the State of Alaska. We hope that you will find our efforts worthy and we are and will be, more than happy to continue to assist in making this program a better program for the people of Western Alaska and for all Alaskans.

Blue Ribbon Committee on CDQs

Ed Rasmuson, Chairman

## Four Key Recommendations from the Committee

1. *Our first recommendation is to lengthen the time to Ten (10) years between each reevaluation of the quotas that are given by the state and approved through the National Marine Fisheries Service; then, tie the lengthened terms in which each are measured by to a new set of criteria that is a measurable set of criteria starting now and measured at the end of each period.*
2. *Our second recommendation is to change the oversight to one of stricter securities oversight. We believe that the State Division of Banking and Securities should play a much stronger role in oversight of the financial well being of the CDQ groups especially in the areas of fraud, mismanagement, and reporting to the communities in which the CDQ's represent.*
3. *Our third recommendation is to eliminate the duplicative process of the National Marine Fisheries Service. This is a redundant system and is very costly not only to the CDQ groups, but to both governments. If in fact the state agrees to extend the evaluation process on the quotas and to change the criteria in which they are reviewed, there is no need for the NMFS or the State of Alaska to approve Community Development Plans or any amendments.*
4. *Our fourth recommendation is to put in place a system for allowing investments in non-fisheries related projects, including matching grants or leveraging dollars with other agencies, foundations or non-profit projects, but only within the regions and communities that the CDQ programs serve. We believe that for at least the first period<sup>1</sup> of these recommendations, up to 20% of all net revenues should be allowed to be invested on non-fisheries related grants or projects in the region only, to help support the communities that the CDQ program was designed to serve and enhance the economic or social values of the communities and region that the CDQ group serves.*

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<sup>1</sup> First Period refers to that period of time starting in 2005 and ending with the 2010 census as reported at the end of 2011. For all purposes, the first period would be from now (2005) through 2011, with any new allocation beginning in 2012. The next period would be from 2012 to 2022.

## **2. Introduction**

### ***Purpose of Blue Ribbon Committee***

The formation of this committee was a result of a recommendation from the North Pacific Fishery Management Council to Governor Murkowski. The Governor appointed the Committee in May 2005 and requested the committee to evaluate all aspects of the Community Development Quota (CDQ) and to develop recommendations that take into consideration:

- The original intent of the program
- The extent CDQ groups' actions are in alignment with needs of the coastal communities in their area
- Review of the CDQ regulations to ensure all regulations continue to be appropriate.

The purpose of the formation of this Committee was to review the CDQ Program for Western Alaska and to determine if there are changes that could or should be made to help the CDQ groups operate more effectively in stimulating the economies of each of the CDQ regions and their communities. In addition, we were to look at the controls that are in place to assure State and Federal Governments that these organizations are doing what the laws intended for them to do and to recommend areas that need to be strengthened to ensure that the programs are operated in a legal and prudent business manner. In addition, the Committee is to look for ways that the State and Federal processes that are now in place could be either eliminated or streamlined.

The Committee learned that there are many differing views as to what CDQ means to each individual and that the CDQ groups are mostly respected, but we believe that the vast majority felt that more communication and more transparency was necessary from the CDQ groups to the member communities. Therefore, in consideration of all aspects of the program, the Committee has come to the conclusion there are four major areas that need to be addressed in the existing program to effectuate a positive long term result for both the groups and the communities for which they serve.

### ***Process Used by Committee***

The Committee used the following methods to gather information:

- Map
- CDQ Group List
- Travel/Meeting Chart
- Individual Meetings (CDQ Groups/Other): See appendix
- Public Meetings (CDQ Communities): See appendix
- State supplied documentation
- Public documentation
- Public Feedback

The committee spent a considerable amount of time traveling to communities within the six CDQ regions to better understand how member communities viewed their CDQ organization, how they interfaced with the group and what changes have occurred in the communities. (See appendix for meeting notes)

### 3. Conclusions and Recommendations

The CDQ program is nearing the conclusion of its thirteenth year of existence. While the successes of the program are manifest throughout Western Alaska in terms of education, employment, in-region development, and profitable investments in the commercial fishing industry, programmatic changes in government oversight have not kept pace with the dynamic growth of the six CDQ groups. Regional differences have led the six groups in different directions requiring adjustments in the administration of the program.

Four key recommendations were developed over the course of the committee's work, which spurred additional recommendations within those key recommendations. Those areas include:

#### Allocation Process

The panel believes there should be a shift in the approach to the program. The current program is a competitive process that occurs about every three years. The groups Community Development Plans (CDP) are used as an application for the allocation. State regulations (6 AAC 93) contain twenty-one criteria to be considered when accessing the CDP to assign the percent of allocation each group will receive. The competitive nature of the program has resulted in increased conflicts among the groups and has inhibited groups from long term planning and the stability that results from that planning. The groups should be evaluated by its individual performance instead of its performance relative to the other groups' performance. Criteria should be measurable and as objective as possible in order to prevent confusion and uncertainty.

#### Duration of Cycle

- ***Extend the allocation cycle to 10 years, to coincide with the completion of the U.S. Census. The first cycle would occur in 2012 and then every 10 years.***

Rationale: Extended cycle promotes stability and allows long term planning.

*Our first recommendation is to lengthen the time to Ten (10) years between each reevaluation of the quotas that are given by the state and approved through the National Marine Fisheries Service; then, tie the lengthened terms in which each are measured by to a new set of criteria that is a measurable set of criteria starting now and measured at the end of each period.<sup>2</sup>*

Most of the people interviewed or who spoke at our meetings felt that the existing criteria are much too subjective; this concern is highlighted during changes in State administrations. It was also felt that by extending out the period between CDQ quota reevaluations it would help to bring a more cooperative working or joint venture environment between CDQ groups and allow for substantially more investment in-region and in the Bering Sea Fisheries, much less adding a much more stable environment to which the groups can deal with financial institutions that help finance their acquisitions in the fisheries.

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<sup>2</sup> Since the United States census normally takes a year or more to be completed, it is understood that this recommendation start as soon as practicable and for the first period which will be short of the ten year normal census period. Therefore re-evaluation and reallocations would occur in 2012.



- **Allocations for all species would be split into a 90% fixed or foundation allocation and 10% floating or performance allocation. All groups would receive a fixed allocation that would not be subject to adjustment based on criteria below.<sup>3</sup>**

Rationale: The CDQ program for Pollock and Crab is fixed in federal law at 10% (American Fisheries Act and Crab Rationalization, respectively). All other species are subject to adjustment through the federal regulatory process under the authority of National Marine Fisheries Service and the North Pacific Fishery Management Council. To provide stability to groups beyond the extended cycle, the panel recognizes at this time that Pollock is the economic driver of the program. The panel realizes it has not made recommendations on how to “fix” the 90% allocations, or whether that should be done through MSA or rulemaking.

## Criteria

- **Reduce number of criteria used for evaluating group's performance. Criteria should be measurable<sup>4</sup> and used at the end of the period relative to those criteria as of today<sup>5</sup>.**
  1. **population/poverty level**
  2. **number of jobs created**
  3. **amount of (\$) in-region investments both fisheries and non fisheries**
  4. **amount and number of scholarship and training investments**
  5. **community economic development**

Rationale: The CDQ program has matured and focus needs to shift to the group's success in each of their regions as opposed to being compared to another region. Current criteria is considered by most to be too subjective or outdated.

The CDQ groups will not be competing against each other. They will only be competing against the set of criteria and will be limited to the amount of loss that they could forego in any period.

### Criteria 1 – Population/Poverty

Measure of valuation. Set the population in the CDQ areas now and measure them at the next census. In addition, as a second category to this criteria, we add poverty levels as a percent of population. See attached methodologies.

### Criteria 2 – Jobs Created (Permanent and Temporary)

Number of permanent jobs that exist today that the CDQ's have created both on shore and off shore, then measured at the terms to see if jobs have increased or decreased. As a part of the measurement, the number of jobs that exist during any given year that are temporary should be a

<sup>3</sup> It is intended that each group receive 100% of their allocation during the period. Once the State has fixed the allocation, it would be fixed for a period of 10 years and only readjusted if a group or groups did not meet the criteria that is set. The adjusted allocation would only apply to the following 10 year period. In the case of the first period, the allocation would be for a shorter time and would be limited to 5% of each group's allocation.

<sup>4</sup> The attached Methodologies are developed to ensure consistent reporting and measurements among the groups.

<sup>5</sup> The ranking/weighting used for the formula are subjective only, for example of showing how the formula works, the ranking/weighting was determined by the Blue Ribbon Committee as their view of the importance of each area as it applies to the program as a whole. There was no attempt to set the formula by individual region. In the final analysis it is up to the state administration and the CDQ groups to set the ranking/weighting of the methodology. In addition, all CDQ groups have requested criteria for financial performance and the committee feels that could be another appropriate measure of each individual CDQ group.

factor in this measurement as a percentage of Criteria 2. Temporary jobs<sup>6</sup> should be measured each year to see if over the period they have increased or decreased and how many of the temporary jobs have become permanent. These should be averaged out over the period for the purpose of measuring either the increase or decrease at the end of each period. Both permanent and temporary jobs have a weighting factor in this criteria. See criteria 2 methodologies.

### Criteria 3 – In-Region Investments (Both Fisheries and Non-Fisheries)

Measure total CDQ investments In-Region programs today and measure total invested in the Region at the end of each term. Total expenditures on In-region projects both fisheries and non-fisheries related. Total investments should include all dollars spent on all projects including grants, on fishery related investment, both in-region and the Bering Sea Fisheries. See Criteria 3 methodologies.

### Criteria 4 – Scholarships and Training Investments

Measure total CDQ investments in scholarships given (both number of and expenditures in). The numbers of scholarships are known today and can be measured at the end of the period. This criteria should measure and to the extent possible should include scholarships for all levels of educations whether it be preschool, grade school, high school, colleges/universities, distant education at all levels or vocational training at all levels career advancement courses and career advancements in the areas that the student has applied his or her education. See Criteria 4 methodologies.

### Criteria 5 – Community Economic Development

Should measure the overall economic factors of each region as indicated by the State of Alaska, Department of Commerce and Economic Development. This factor is more difficult to measure in each of the regions. However, these are measurements that can be applied in the regions by all sources that affect the economics of each of the regions less specific funding sources from state. This criteria should have less weight of valuation factor attached to it because to some degree the CDQ groups may have no effect on other dollars spent in their regions, however, if a CDQ group is growing the economies in a region, they will in turn create secondary businesses by virtue of creating greater economies in the region. See Criteria 5 methodologies.<sup>7</sup>

<sup>6</sup> Temporary jobs – The definition of temporary jobs has not been defined in this document. We believe that definition can be determined by the State through the Department of Labor.

<sup>7</sup> As this new criteria is applied, it should be understood that under no circumstances shall a CDQ group lose more than 10% of its overall quota in any given 10 year period. In other words, even if a CDQ did a very unsatisfactory job in the 10 year period and by mathematical calculations using the criteria above, could have lost more of its allocable quota, its limit is only 10 percent of the prior allocation. Example is: If a CDQ was entitled to 15% of the allocation during the prior 10 year period, but did not meet any of the criteria. The maximum that CDQ group could lose is 1.5% taking them down to 13.5% for the next period. This formula should be adjusted for the first period. For example, 2005 to 2010, the first 5 year period until the next census in 1010. A CDQ should not lose more than 5% of its allocation during the first period.

An additional factor is that these CDQ groups will not be competing against each other. They will only be competing against the set of criteria and will be limited to the amount of loss that they could forego in any period. If there are losses by certain CDQ groups, there will be gains by others, but those gains will also be limited to the extent of their positive performance. See Footnote on Examples Page.

## EXAMPLE

Category Weight	Category Score	Category Allocation	Criteria
10%	97.9%	10%	(1) Population Growth and Poverty Decline

### Input required in Blue Cells

*Population Growth*

Population		% Score	Subcategory Weighting	Subcategory Allocation
Beginning	End			
515	450	87.4%	30%	26.2%

Population

*Poverty Decline*

Poverty		% Score	Subcategory Weighting	Subcategory Allocation
Beginning	End			
8.7%	8.5%	102.4%	70%	71.6%

Percent of population below poverty

Category Score 97.9%

30%	99.0%	30%	(2) Job Growth
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Permanent Jobs		% Score	Subcategory Weighting	Subcategory Allocation
Beginning	End			
250	255	102.0%	50%	51.0%

*CDQ Permanent Jobs*

Temporary Jobs		% Score	Subcategory Weighting	Subcategory Allocation
Beginning	End			
75	72	96.0%	50%	48.0%

*CDQ Temporary Jobs*

Category Score 99.0%

35%	120.0%	42%	(3) CDQ Investment in Region
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Expenditures		Category Score
Beginning	End	
5,000,000	6,000,000	120.0%

*Expenditures in Region*

15%	103.0%	15%	(4) Investments in Scholarships
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**EXAMPLE**

	Expenditures		% Score	Subcategory	
	Beginning	End		Weighting	Allocation
Scholarship funding	250,000	275,000	110.0%	20%	22.0%
Number of Scholarships					
	Beginning	End	% Score		
	82	80	97.6%	20%	19.5%
Ratio					
	Beginning	End	% Score		
	49%	50%	102.5%	60%	61.5%
	40	40			Category Score 103.0%
Ratio of graduates to number of scholarships Number of graduates					
	49%	50%	102.5%	60%	61.5%
	40	40			Category Score 103.0%
<b>Community Economic Development</b>					
	10%	107.1%	11%		
Local Revenue					
	Beginning	End	% Score		
	4,500,000	4,000,000	88.9%	50%	44.4%
Median Household Inc.					
	Beginning	End	% Score		
	39,873	50,000	125.4%	50%	62.7%
					Category Score 107.1%

(1) As defined in Summary of U.S. Census and Alaska Dept. of Community and Economic Data Related to the Community Development Program of Western Alaska, December 2001, Northern Economics, Inc. Excludes Outside Revenue such as Revenue Sharing, State Fish Tax, Municipal Assistance, etc.

100% Must = 100%  
Total Score 108%

Footnotes for Example Above: 90% of all species allocations to each CDQ group (90% of the baseline) would be fixed in Federal regulations. These allocations would be in effect in perpetuity or until subsequent rulemaking is approved to make changes.

10% of all species allocations to each CDQ group would be floating; based on each group's performance relative to the five criteria and sub criteria. Each group would be evaluated against its own performance over the 10 year cycle. Eg: if a group operated at status quo or improved in one or more of the 5 criteria, it could not lose any of its (baseline) 90%. If a group did worse in one or more of the 5 criteria, it could lose all or a portion of the 10%. 10% of each group's allocation for each species is the maximum amount of quota at stake with each new allocation cycle.

For example, if Group A was previously allocated 2,000 metric tons of Pollock, that group could not gain or lose more than 200 mt of Pollock in the new allocation. The change in the Group's allocation would apply to each species that is allocated to all six groups.

To determine the new allocation, the proposed methodology contains five primary categories that will be evaluated together, as a whole, to measure the success of the CDQ Company at the end of each allocation period. Each category will be scored separately and then added together to create a single overall score for each CDQ Company. Each category has been given a weighting, indicating its relative importance in the overall score of the CDQ Group.

The categories and associated weightings have been provided by the Blue Ribbon Committee and are subjective as to how the committee views their relative importance:

- Population Growth and Poverty Decline (10%)
- Job Growth (30%)
- CDQ Investment in Region (35%)
- Investments in Scholarships (15%)
- Community Economic Development (10%)

Each of the above categories has between one and three subcategories. The scores of the subcategories are also weighted based on relative importance to the overall category. The scores of the subcategories are determined by comparing the data at the end of the census period to the data at the beginning of the census period.

Example: 10% of Group's A's pollock allocation is 2,000 mt.

Group's population declined 515 to 450 an 87.4% decline X subcategory weighting 30% equals 26.2% rating.

Group's % of population below poverty level declined 8.7% to 8.5% an 102.4% X subcategory weighting 70% equals 71.6% rating.

26.2% plus 71.6% equals 97.9% rating X 10% total category rating.

The score for this category is added to the score for each of the other four categories to generate the overall Group score. If the overall group score is less than 100%, a reallocation will occur. For example, if the overall group score was 94.8%, the following would be the reallocation formula:

$94.8\% \times 2,000 \text{ mt} = 1,896 \text{ mt}$  allocation of pollock for next cycle, representing a 104 mt loss. This formula would be applied for all species.

The CDQ allocations are still a zero sum game. If one or more groups experience a reduction in their allocations, that 'extra' quota should be divided by the formula or equally among the remaining CDQ groups..

If all groups performed at status quo or improved relative to the 5 criteria, no changes would be made to the 10% floating allocations. If all groups did worse, no changes would be made to the 10% floating allocations.

The baseline would begin at the beginning of each cycle.

## Agency Oversight (including State of Alaska and National Marine Fisheries Service)

If the recommendations are adopted, the oversight of both the state and federal agencies would be reduced. The panel strongly believes that agency oversight has become burdensome and duplicative. The program and the CDQ groups have matured, so that less oversight is necessary.

*Our second recommendation is to change the oversight from a review process to one of stricter securities oversight. We believe that the State Division of Banking and Securities should play a much stronger role in oversight of the financial well being of the CDQ groups especially in the areas of fraud, mismanagement, and reporting to the communities in which the CDQ groups represent.*

The panel has several recommendations on agency oversight.

- **Banking and Securities would have two oversight responsibilities:**
  - **Any investment proposed by a group over two million dollars would be submitted to the department for a "third party" review of the proposal prior to its being undertaken.<sup>8</sup> The department would offer their opinion in writing to the CEO and CFO who in turn will have the responsibility to report to the board members the findings of the department, but the Department of Commerce or the Division of Banking & Securities would not have the authority to either disapprove or approve the investments.**
  - **Financial reporting requirements would be revised to require the groups to modify the reporting requirements to that which is more in line with the reporting requirements of Alaska Native Corporations in their proxy statements. A report to the communities that is separate from their Annual Report, each CDQ Group should include current requirements as well as additional requirements disclosing the top five paid executives including all compensation. In addition, such a report should include a line item for all compensation of all other executives and staff, all board compensation, all consulting compensation, all professional fees, legal fees and accounting fees within the general and administrative expenses. As part of the report, the same should be listed for all subsidiaries. A cumulative total would be provided if a person receives funds from more than one entity. This would also require listing all relatives of an officers or board members of a CDQ group or CDQ subsidiary, such as brothers and sisters, son, daughter, etc. that are working for the CDQ or its subsidiaries.**
  - **As part of the recommendation, we recommend the Division of Banking and Securities establish severe penalties for non-compliance and bring Alaska's regulations more in line with Sarbanes/Oxley Federal Law<sup>9</sup> in regards to non compliance by officers and directors.**

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<sup>8</sup> Such review should not take more than 10 working days and all information pertaining to deals that the groups are investing in shall be held highly confidential until either the deal is concluded or for one year unless the group or groups working the deal request a longer period. The State needs to maintain such confidentiality to assure that competitors to the groups do not receive an advantage to any deal that is in any offering that has been sent to the State for such a review.

<sup>9</sup> It is not the committee's recommendation that the State invoke Sarbanes/Oxley as passed by the U.S. Congress, but to use the federal law as a guide to set penalties against officers and directors of the CDQ groups for illegal acts while serving their stakeholders in a capacity of director or officer. We believe that the Division of Banking and Securities has the background and capacity working with the Department of Law to draft regulations that could be strictly enforced.

Rationale: The panel understands that if agency oversight is reduced that the transparency of information to the communities or stakeholders of the groups is critical.

We reached this conclusion for a variety of reasons, least of which is by stretching out the number of years between allocation review and changing the measuring criteria from the twenty one points that are mostly subjective to objective and measurable criteria. Thus, there is no need for the kind of review and oversight that the Department of Commerce, Community and Economic Development has today. However; we believe that because you lessen that type of role for the CDQ groups to operate under, it requires strengthening the securities rules under which they operate. We believe it is imperative that these CDQ group's operations become as transparent as possible. By that we believe it is important that each of them provide a more detailed report to the Division of Banking and Securities and to their communities. We believe an annual report that not only reviews what they are investing in and what their revenues and incomes are in any given year, should also include line items such as the top five (5) paid executives which would include all compensation. In addition, such a report should include a line item for all compensation of all other executive and staff, all board compensation, all consulting compensation, all professional fees, legal fees and accounting fees within the General & Administrative expenses. As a part of that report, the same should be listed for all subsidiaries, including executives, staff or Board members from the parent company serving in any capacity of and being paid by the subsidiaries, in addition to compensation received from the parent company. In addition, any consultant, professional, attorney or law firm or accountant or accounting firm that is paid by the subsidiary in addition to being paid by the parent. All relationships of officers and directors to each other, other employees, consultants, or relationships with partners should be disclosed as a part of the annual report to the communities. In essence, the reporting rules that Alaska Native Corporations are required to use in their proxy materials should be modified to conform for reporting purposes by the CDQ groups without jeopardizing their non-profit status.

We believe that by using Banking and Securities as well as better reporting of General and Administrative cost to the communities (i.e., stakeholders) there is very little need to have the sort of review process and approval process that the state has to go through now. We recommend as part of the process the CDQ groups be required to submit to Banking and Securities, any investments that they are in the process of making and allowing Banking and Securities a limited number of days to review and comment on such investments. This provision is not intended to grant Banking and Securities any authority to either approve or deny such investments, but only to give guidance to the investing CDQ groups as to potential problem areas that the CDQ group may have in such investment. Such review by Banking and Securities shall be sent to and the President/CEO and Chief Financial Officer of the CDQ group or groups contemplating such investments. Such reports should be reported to the Board of Directors of the CDQ groups by its president/CEO or Chief Financial Officer as soon as practical. We believe it was prudent in the early startup phases of the program that the state had a roll in directing CDQ groups as to what they should be spending monies on within the communities, but we don't believe that type of oversight is necessary now. Therefore, the role that the Department of Commerce, Community and Economic Development plays should be reduced and there should be no requirement for approval of investments by the CDQ groups in either fishery or non-fisheries related programs or projects.

## Approval of CDP including substantial amendments

*Our third recommendation addresses the need to eliminate the duplicative process of the National Marine Fisheries Service. This is a redundant system and is very costly not only to the CDQ groups, but to both governments. If in fact the state agrees to extend the evaluation process on the quotas*

and to change the criteria in which they are reviewed, there is no need for the NMFS or the State of Alaska to approve CDPs or amendments.

## Use of funds

*Our fourth recommendation addresses the need to establish a system for allowing investments in non-fisheries related projects, including matching grants or leveraging dollars with other agencies, foundations or non-profit projects, but only within the regions and communities that the CDQ programs serve. We believe that for at least the first period of these recommendations, up to 20% of net revenue from a CDQ group should be allowed to be invested in non-fisheries related grants or projects in the region only, to help support the communities that the CDQ program was designed to serve and enhance the economic or social values of the CDQ communities and region that the CDQ group serves.*

- Revise regulations to limit use of CDQ funds to fisheries related projects with the exemption of up to twenty percent of the net revenues could be used in-region on non fisheries related projects. It is not the intent of this provision to limit the amount of dollars that are used to continue the programs of the groups such as additional acquisition of onshore fisheries development or offshore Bering Sea fisheries. It is intended to allow the groups to invest in in-region projects that are important to the boards and management and communities of the region without hurting the ongoing investments in the Bering Sea or other onshore fisheries related businesses.

If this recommendation is adopted the goal and purpose statement of the program (50 CFR 679.1(e)) would need to be amended as suggested below and also as part of Amendment 71.

- Revise the goal and purpose statement as follows:

“The goals and purpose of the CDQ Program are to allocate CDQ’s to qualified applicants representing eligible western Alaska communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in ongoing fisheries based economies, and as a second priority, to strengthen the non fisheries related economy in the region.”

The panel believes that CDQ investment capital should not be used for community infrastructure projects that the Federal and State governments have an obligation to provide and fund. Except perhaps for meeting “matching funds” requirements after other sources have been exhausted.

Rationale: There was strong support in all regions to allow flexibility in the use of some limited funds to enhance the general economy of the regions. Many areas have needs that would be achievable if CDQ funds could be used to match other opportunity funds.

And finally, this committee’s comprehensive review of the CDQ program is the first review since the National Research Council was requested by Congress to review the program as part of the 1996 reauthorization of the Magnuson-Stevens Act. The committee believes a program such as this should have periodic reviews.



# Blue Ribbon Panel CDQ recommendations and current authority

## Issues related to the allocation process

Recommendations	Magnuson Stevens Act	Federal regulations	BSAI Fishery Management Plans (FMP)	State regulations	Council recommendation on BSAI Am. 71 (June 2002)
<b>ALLOCATION PROCESS</b>					
1. Extend the allocation cycle to 10 years, to coincide with the U.S. Census. The first cycle would occur in 2010 and then every 10 years.	No changes necessary.	Would require adding to Federal regs at 679.30 to clarify the duration of the allocation cycle. Cycle duration is not explicit in current regs (it is set at the discretion of State).	Council discretion.	Would require amending State regs to clarify the duration of the allocation cycle at 6 AAC 93.020. Currently regs do not define the duration of the cycle.	The Council recommended establishing a 3-year allocation cycle in Federal regulations. The Council also recommended allowing the State to recommend mid-cycle adjustments under extraordinary circumstances. The Council would have to approve the State's recommended reallocations.
2. Allocations would be split into a fixed allocation (90%) and a floating allocation (10%). All groups would receive a fixed allocation that would not be subject to adjustment based on evaluation criteria (see #3 below).	No changes necessary.	Would require amending Federal regs at 679.30. Currently all of the 47 CDQ quota categories are allocated competitively through a NMFS administrative determination. Percentage allocations could be listed in Federal regulations or continue to be done through an administrative process.	Council discretion.	Would require amending State regs to clarify that only a portion (10%) of the allocations will be evaluated on a competitive basis and recommendations would be submitted to NMFS on that portion only.	The Council recommended status quo on this issue (to continue the current allocation process by which all of the allocations are made based on a competitive process).
3. Reduce number of criteria used for evaluating the groups' performance (re: the 10% floating allocations). Criteria should be measurable and applied at the end of the period relative to a measure of those criteria today. Five criteria: 1) population/poverty level; 2) # jobs created; 3) amount (\$ in-region investment); 4) scholarships & training; 5) community economic development.	No changes necessary.	Council and NMFS discretion. Federal regs do not currently include the CDQ allocation evaluation criteria used by the State.	No changes necessary.	Changes to evaluation criteria would be required at 6 AAC 93.040. These criteria would be applied at the end of the allocation cycle, for the purpose of allocating the (10%) floating portion of the allocations.	The Council recommended reducing the evaluation criteria to 10 factors (as opposed to the current 20) and publishing them in Federal regulation. Many of the criteria remain subjective in nature. (The criteria are listed in the Council motion on Am. 71 under Issue 5).

\*Note that 'no changes necessary' means that the current language in the statute, FMP, or regulations would not be inconsistent with the proposed change. It does not prohibit amendments from being made to that particular authority, but it is not necessary to implement the change.

## Blue Ribbon Panel CDQ recommendations and current authority

### Issues related to oversight of the economic development aspects (use of revenues) & purpose

Recommendations	Magnuson Stevens Act	Federal regulations	BSAI Fishery Management Plans (FMP)	State regulations	Council recommendation on BSAI Am. 71 (June 2002)
<b>GOVERNMENT OVERSIGHT</b>					
1. Remove all requirements for Federal and State agencies to approve the CDPs or any plan amendments. No prior approval process remains.	No changes necessary.	Would require amendments to remove any current role for NMFS that would be either delegated to the State or removed altogether. Would also require removal and/or revision of language at 679.30 that refers to: the CDP as an application for CDQ allocations; the elements required in the CDP, specifically the 'request for CDQ and PSQ allocations;' the review and approval of proposed CDPs; and the current technical and substantial amendment process.	Would require FMP amendment to remove current language that refers to the requirement of a fisheries development plan approved by the Governor of Alaska.	State regs would be amended to change the purpose of and requirements for the CDP. Must eliminate all 'review and approval' provisions in current State regs.	The Council did not recommend reducing NMFS's or the State's role in any aspect of the CDQ Program under Amendment 71.
2. The State of Alaska (Banking & Securities Division) would have two roles: 1) any investment over \$2 m would be submitted for 3rd party review; and 2) receive and review an annual financial report. Financial reporting requirements would mirror those for ANCSA corporations, and would include the salaries of the top 5 paid executives.	Unknown.	NMFS regulations would not contain these requirements because NMFS would not be regulating, monitoring, or enforcing these requirements.	Would require amendments if these requirements delegated specific oversight responsibilities to the State. NOAA GC guidance is required.	State regulations would have to be amended to include these new requirements. Currently, State regulations at 6 AAC 93.055 reference Federal requirements for the CDP amendment process.	Under Issue 6, related to the extent of government oversight, the Council selected Alternative 2, which included a recommendation by the State to increase the threshold for substantial amendments from \$100,000 to \$250,000. Note that this recommendation continued the current process whereby the State reviews substantial amendments and submits a recommendation to NMFS, and NMFS approves or disapproves the amendment.

\*Note that 'no changes necessary' means that the current language in the statute, FMP, or regulations would not be inconsistent with the proposed change. It does not prohibit amendments from being made to that particular authority, but it is not necessary to implement the change.

Recommendations	Magnuson Stevens Act	Federal regulations	BSAI Fishery Management Plans (FMP)	State regulations	Council recommendation on BSAI Am. 71 (June 2002)
<b>GOVERNMENT OVERSIGHT continued</b>					
<p>3. Limit use of CDQ funds to fisheries related projects, with the exception of up to 20% of net revenues that could be used in the region on non-fisheries related projects. CDQ investment capital should not be used for community infrastructure projects that the State/Federal govt have an obligation to provide and fund, except in the case of providing 'matching funds'.</p>	<p>No changes necessary.</p>	<p>Council discretion to recommend. This element could likely be delegated to the State, and NMFS regulations would be revised to remove any role for NMFS in regulating, monitoring, or enforcing allowable expenditures and investments by the CDQ groups.</p>	<p>Would require amending the groundfish and crab FMPs if this responsibility is delegated to the State. Would be Council's discretion about what specific roles would be delegated to the State, including any requirements for the State to report back to the Council and NMFS.</p>	<p>State regs would be amended to explain how the State would regulate, monitor, and enforce this requirement. Would likely be through an after-the-fact review of each group's annual report, to determine if the group exceeded the 20% limit.</p>	<p>The Council recommended revising Federal regulations to clarify allowable investments. Each CDQ group would be allowed to invest up to 20% of its previous year's <i>pollock CDQ royalties</i> in non-fisheries related investments. These non-fisheries investments must be <i>economic development projects</i> in the region of AK represented by the CDQ groups and be <i>self-sustaining</i>.</p>
<p>4. Revise the purpose of the program to: 'The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible western AK communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based fisheries economy and, as a second priority, to strengthen the non-fisheries related economy in the region.'</p>	<p>No changes necessary.</p>	<p>Would require amending Federal regs at 679.1(e): 'The goals and purpose of the CDQ Program are to allocate CDQ to eligible western AK communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy.'</p>	<p>Would require amending the BSAI groundfish FMP in Section 3.7.4 and adding the purpose to the crab FMP.</p>	<p>State discretion. The purpose of the program is not currently in state regulations.</p>	<p>The Council recommended changing the purpose of the program in the BSAI FMP and Federal regs. The Council recommendation under Am. 71 is the same as the Blue Ribbon Panel recommendation.</p>
<p>5. Periodic reviews of the CDQ Program.</p>	<p>No changes necessary.</p>	<p>Council and NMFS discretion.</p>	<p>No changes necessary.</p>	<p>State discretion.</p>	<p>The Council did not address whether periodic reviews of the program should be required.</p>

\*Note that 'no changes necessary' means that the current language in the statute, FMP, or regulations would not be inconsistent with the proposed change. It does not prohibit amendments from being made to that particular authority, but it is not necessary to implement the change.

## REFERENCES

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DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT  
Office of the Commissioner

*Frank H. Murkowski, Governor*  
*William Noll, Commissioner*

November 23, 2005

Dear Interested Party:

Enclosed is a notice which includes an informative summary of the proposed revised regulations for the Western Alaska Community Development Quota (CDQ) Program.

The CDQ Program is a landmark success, creating good jobs and fostering social and economic development in the 65 participating communities. Recently, Governor Murkowski appointed a Blue Ribbon Panel to conduct the first review of the program since its inception in 1992. The report by the Blue Ribbon Panel underscored the value of the program, while at the same time making suggestions for its improvement. In October, the Governor accepted the report and asked that new CDQ regulations be prepared incorporating these suggestions.

The revision of the current regulations is an important step in ensuring the future success of the CDQ Program. The CDQ Team welcomes your comments on these suggested regulations.

Meanwhile, the current State of Alaska CDQ regulations will continue in place so that continuity in the program is maintained.

As a reminder, the 2003-2005 allocations have been rolled over into 2006, and the current Eastern Aleutian Islands (EAI) Brown crab allocations have been settled by mutual agreement among the six CDQ Groups.

As a further reminder, the Governor has directed that the 2007-2011 allocation recommendations be submitted to NMFS no later than May 15, 2006. This agency is now preparing the action plan to make those submissions. You will be informed of this plan in the very near future.

Sincerely,

William C. Noll  
Commissioner

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF  
THE OFFICE OF THE GOVERNOR

The Office of the Governor proposes to adopt regulation changes in Title 6 of the Alaska Administrative Code, dealing with the Western Alaska Community Development Quota Program, including the following:

1. 6 AAC 93.012 is proposed to be changed as follows: update the version of 50 C.F.R. 679 to be referenced in other sections of 6 AAC 93.
2. 6 AAC 93.015 is proposed to be changed as follows: change the personnel who comprise the CDQ team, provide for the designation of a CDQ manager, and define the term "eligible community."
3. 6 AAC 93.017 is proposed to be changed by deleting the program standards relating to due diligence, financial returns, risks, furthering of goals and purpose, and promotion of conservation-based fisheries.
4. 6 AAC 93.025 is proposed to be changed as follows: change the requirements for submitting a proposed community development plan, including the contents of a submitted plan; delete a definition of the term "eligible community;" and delete references to core and noncore projects.
5. 6 AAC 93.035 is proposed to be changed as follows: eliminate the requirements that a public hearing must be transcribed and that a transcript of the hearing will be made available to the public and the National Marine Fisheries Service; provide that a copy of the recording of the hearing, and a copy of the transcript if one is prepared, will be available to the public upon request.
6. 6 AAC 93.040 is proposed to be changed as follows: change the section heading; change the way the CDQ team evaluates proposed community development plans, including the deletion of factors to be considered; and allow a request for reconsideration of recommendations involving CDPs and allocations.
7. 6 AAC 93.042 is proposed to be added as a new section. The intended effect of this new section is to provide criteria the governor may consider in apportioning quota allocations and provide weighting criteria the governor may use in making those decisions.
8. 6 AAC 93.050 is proposed to be changed as follows: change the section heading; delete the requirement for a CDQ group to submit quarterly reports to the CDQ team; change the requirements for the submission of annual reports to the CDQ team by a CDQ group, including the contents of the report, the reporting period, and the time for reporting; expand requirements for audits of reports; require a CDQ group to submit an annual report of its nonprofit corporation's activities to residents of its participating communities and to the CDQ team; establish requirements for the contents of the annual report of the nonprofit corporation's activities, including tax returns from the corporation and its affiliates as well as other financial information, information on officers and directors, corporate structure and activities, and relationships among the corporation, its officers and directors and other persons and entities; and establish a reporting period and a time for reporting.
9. 6 AAC 93.055 is proposed to be changed as follows: change the requirements for submitting requested amendments to an existing community development plan, change the procedure for processing those requests, change the instances in which a substantial amendment is required, and delete requirements relating to noncore technical amendments.
10. 6 AAC 93.057, which sets forth a procedure for reclassifying core and noncore CDQ projects, is proposed to be repealed. The intended effect of this repeal is to eliminate the distinction between projects and to eliminate any need to reclassify projects.

11. 6 AAC 93.070 is proposed to be changed as follows: change the section heading, change the procedure for requesting and ruling on confidentiality of information, change the nature of the information that may be protected, and change the persons or entities that may be given confidential records.
12. 6 AAC 93.090 is proposed to be changed as follows: provide for reconsideration of recommendations involving CDPs and allocations and make changes to the procedures for processing requests for reconsideration.
13. 6 AAC 93.900 is proposed to be changed as follows: change or delete definitions of some terms (core CDQ project, fisheries-related, noncore CDQ project, substantial variation) and add definitions of other terms (affiliate, applicant, audit, CDQ group, CDQ project, CDQ region, community development plan, engagement letter, family member, financial statements, fisheries-related matters, independent public accountant, investment, participating community, PSQ, resident, resident fisherman, state, temporary job).
14. 6 AAC 93 is proposed to be changed as follows: correct the citations to authority for all sections of 6 AAC 93 listed above.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Greg Cashen, Program Manager, Western Alaska Community Development Quota Program at P.O. Box 110807 Juneau, AK 99811-0807. The comments must be received no later than 4:30 p.m. on January 6, 2006.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Otis Chapman at (907) 465-2523 no later than December 26, 2005 to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Otis Chapman at (907) 465-2523, or go to [www.commerce.state.ak.us/bsc/CDQ/cdq.htm](http://www.commerce.state.ak.us/bsc/CDQ/cdq.htm).

After the public comment period ends, the Office of the Governor will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.** Written comments received are public records and are subject to public inspection.

**Statutory Authority:** AS 44.33.020(11)

**Constitutional Authority:** Art. III, sec. 1, Ak Const., Art. III, sec. 24, Ak Const.

**Statutes Being Implemented, Interpreted, or Made Specific:** AS 44.33.020(11)

**Fiscal Information:** The proposed regulation changes are not expected to require an increased appropriation.

DATE: November 23, 2005

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Mark R. Davis, Director  
Division of Banking and Securities



ADDITIONAL REGULATIONS NOTICE INFORMATION  
(AS 44.62.190(d))

1. Adopting agency: Office of the Governor
2. General subject of regulation: Western Alaska Community Development Quota Program
3. Citation of regulation (may be grouped): 6 AAC 93
4. Reason for the proposed action:
  - compliance with federal law
  - compliance with new or changed state statute
  - compliance with court order
  - development of program standards
  - other: Modify regulations to reflect recommendations of CDQ Blue Ribbon Panel Report accepted by Governor Murkowski on October 4, 2005.

5. RDU/component affected: Division of Banking and Securities/CDQ Program

6. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 06	Subsequent Years
Operating Cost	\$0	\$0
Capital Cost	\$0	\$0
Federal receipts	\$0	\$0
General fund match	\$0	\$0
General fund	\$0	\$0
General fund/ program receipts	\$0	\$0
General fund/ mental health	\$0	\$0
Other funds (specify)	\$0	\$0

7. The name of the contact person for the regulations:

Name           Greg Cashen  
 Title           Program Manager  
 Address        P.O. Box 110807  
                   Juneau, Alaska 99811-0807  
 Telephone     (907) 465-2523  
 E-mail address dbbc@commerce.state.ak.us

8. The origin of the proposed action:

- staff of state agency
- federal government
- general public
- petition for regulation change
- other (please list) \_\_\_\_\_

9. Date: November 23, 2005

Prepared by: \_\_\_\_\_

Name           Greg Cashen  
 Title           Program Manager  
 Telephone:    (907) 465-2523

**Public Review Draft**

**Environmental Assessment/Regulatory Impact Review/  
Initial Regulatory Flexibility Analysis**

for

**A Regulatory Amendment to Modify the Management of  
Community Development Quota Groundfish Reserves**

Date: November 14, 2005

Lead Agency: National Marine Fisheries Service  
Alaska Region

Responsible Official: Robert D. Mecum  
Acting Administrator, Alaska Region

For further  
information contact: Obren Davis  
NMFS, Alaska Region  
P.O. Box 21668  
Juneau, Alaska 99802  
(907) 586-7228

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## Executive Summary

### *Background and purpose of this action*

This document provides National Environmental Policy Act (NEPA), Regulatory Impact Review (RIR), and Regulatory Flexibility Act (RFA) analyses for a proposed action to modify regulations associated with groundfish community development quota (CDQ) and halibut prohibited species quota (PSQ) transfers, to allow CDQ groups to form harvesting cooperatives, and to modify the management of CDQ Program allocations (groundfish CDQ reserves).

This action presents alternatives, including the North Pacific Fishery Management Council's (Council) preliminary preferred alternative, to amend regulations at 50 CFR part 679 governing groundfish CDQ and halibut PSQ transfers, CDQ harvesting cooperatives and quota pooling, and the designation of which groundfish CDQ reserves should be allocated among CDQ managing organizations (CDQ groups). Such revisions could provide more operational and catch accounting flexibility for CDQ groups to fully harvest their harvest species and reduce the potential for quota overages and subsequent enforcement actions. Modifications to the existing groundfish CDQ fishery management regime could increase the potential that CDQ groups may harvest more of their annual groundfish CDQ target species allocations, yielding associated benefits to CDQ communities. This action is specific to groundfish CDQ and halibut PSQ, and does not propose modifying regulations associated with the management of halibut CDQ, crab CDQ, salmon PSQ, or crab PSQ. Management of crab CDQ is delegated to the State of Alaska. The halibut CDQ fishery is managed in conjunction with the Individual Fishing Quota halibut fishery, and is, for the most part, distinct from the groundfish CDQ fisheries. Harvest limitations associated with crab PSQ and salmon PSQ are associated with specific time and area closures applicable to those groundfish CDQ fisheries conducted with trawl gear and this action does not propose changes to how salmon and crab PSQ are managed.

The purpose of the CDQ Program is to allocate groundfish, prohibited species, halibut, and crab to eligible western Alaska communities to provide the means for starting and supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy. The CDQ Program receives allocations of the annual catch limits for a variety of Bering Sea and Aleutian Islands (BSAI) target, non-target, and prohibited species, which are in turn allocated among six different CDQ groups. CDQ groups derive revenue from these allocations, which is then used for the economic benefit of the 65 communities participating in the program.

The CDQ Program's current groundfish fishery management objectives were developed, during a 1998 expansion of the CDQ Program, to strictly limit catch in the CDQ fishery to the CDQ reserve amounts allocated to the program. These objectives include not allowing catch under the program to accrue against non-CDQ portions of the total allowable catch (TAC) limits and prohibited species catch limits, managing target and non-target species allocations to the CDQ groups with the same level of strict quota accountability, and holding each CDQ group responsible to not exceed any of its groundfish CDQ allocations or its halibut prohibited species quota (PSQ) allocations. However, the current CDQ allocation regime was not designed to ensure that CDQ groups are provided with the allocations of non-target or halibut prohibited species needed to fully harvest target species allocations. The high level of quota accountability creates the potential that the CDQ groups may not be able to fully harvest their target species allocations because they may reach a quota for a non-target species or prohibited species first.

### *Alternatives considered for this action*

**Alternative 1:** Status Quo. Do not amend groundfish CDQ fishery management regulations. Groundfish CDQ and halibut PSQ transfers between CDQ groups would not be allowed to account for in-season quota overages, CDQ groups would not be allowed to form harvesting cooperatives and pool their CDQ allocations, each BSAI TAC category allocated to the CDQ Program would be allocated among CDQ groups, all CDQ group allocations would

be managed as hard caps, and changes to those TAC categories allocated to CDQ groups would continue to be made through the rulemaking.

Alternative 2: Amend regulations to remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or halibut PSQ allocations.

Alternative 3: Amend regulations to (1) remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or halibut PSQ allocations and (2) allow CDQ groups to form harvesting cooperatives and pool their groundfish CDQ allocations for purposes of quota management and monitoring.

Alternative 4: (Preliminary preferred alternative) Amend regulations to (1) remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or halibut PSQ allocations and (2) only allocate target species groundfish CDQ reserves among CDQ groups. Groundfish CDQ target species allocations would be managed as hard caps and unallocated CDQ reserves would be managed as soft caps.

Option 1: Amend regulations to allow the Council to make future modifications to the suite of TAC categories allocated among CDQ groups during the annual groundfish harvest specifications process, rather than through rulemaking.

**NMFS now believes that Option 1 should not be carried forward as part of the Council's preferred alternative for this action.** This is based on several factors. These include: NOAA General Counsel's concern that the harvest specifications process may not be the appropriate venue to make such changes; the fact that such changes probably would be introduced late in the complex harvest specifications process; and, recent recommendations made by the State of Alaska's Blue Ribbon Panel regarding changes to the CDQ allocation process and the length of allocation cycles. These issues are discussed in detail in Section 2.3.3.1.

#### *Effects and Impacts of this Action*

The environmental assessment (EA) was prepared to address NEPA requirements requiring determination of whether a proposed action will result in significant impacts on the human environment. The alternatives considered by this action would not amend the amount of BSAI TAC limits directly allocated to the CDQ Program, nor would they modify CDQ fishing practices or locations in ways not already considered in prior NEPA analyses. Alternatives 2 and 3 primarily propose administrative changes. Alternative 4 would allow the Council to modify the allocation and management of groundfish CDQ reserves by identifying which reserves should be allocated to groups, as well as to specify how non-allocated CDQ reserves would be managed. The initial assessment of this action's effects on the natural, physical, and socioeconomic environments concludes that the action would not result in adverse environmental impacts.

The RIR was prepared to address the requirements of Presidential Executive Order (E.O.) 12866. The RIR finds that the alternatives proposed by this action could, by modifying certain elements of the existing CDQ fishery management regime, provide some additional degree of operational flexibility for the CDQ fishery. This would result in corresponding benefits to CDQ groups if these changes allowed them to catch more of their CDQ target species or to be subject to fewer enforcement actions for exceeding annual quotas. Alternative 3 and Alternatives 4 could result in increased management costs for both CDQ groups and NMFS. The RIR does not indicate that this action would have an annual effect on the economy of \$100 million or more, or that it would trigger other threshold criteria associated with "significant regulatory actions" under E.O. 12866.

The Initial Regulatory Flexibility Analysis (IRFA) examines, per RFA requirements, potential impacts on regulated small entities. For this action, those entities are the six CDQ groups that represent 65 western

Alaska communities. Each of the proposed alternatives is intended to modify, by some degree, the existing, relatively strict CDQ fishery management regime. Alternative 3 could impose new recordkeeping and reporting requirements associated with CDQ cooperatives and quota pooling. The proposed alternatives are intended to provide some degree of benefit to CDQ groups; none of the alternatives appear to have any negative economic impacts on these small entities.

*Summary of the potential regulatory changes associated with the preliminary preferred alternative*

A preliminary assessment of the regulatory amendments associated with implementing the two components contained in Alternative 4 includes:

For Component 1

- Clarifying that federal regulations apply to transfers of groundfish CDQ, halibut CDQ, halibut PSQ, and crab PSQ. Federal transfer regulations do not apply to crab CDQ. Management of most aspects of the crab CDQ allocations are delegated to the State under the Fishery Management Plan for BS/AI King and Tanner crabs and are not regulated directly by NMFS.
- Removing the prohibition against allowing the CDQ groups to transfer groundfish CDQ or halibut PSQ after an overage has occurred (or to "cover" an overage).
- Requiring that all transfers to cover an overage (or that affect a prior calendar year) must be completed by January 31 of the next year. No transfers that affect a prior year's CDQ fishing will be approved by NMFS after January 31. Note: tentative date, subject to further assessment and revision.

For Component 3

- Listing which groundfish CDQ reserves are allocated among CDQ groups in regulation. The following target species would (depending on Council final action) be allocated among the CDQ groups: pollock, Pacific cod, sablefish, Atka mackerel, yellowfin sole, rock sole, Greenland turbot, flathead sole, and Pacific Ocean perch.
- Describing how allocated and non-allocated groundfish CDQ reserves would be managed by NMFS.

## 1.0 Purpose and Need

### 1.1 Introduction

This document is an Environmental Assessment/Regulatory Impact Review Analysis/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for proposed revisions to groundfish fisheries management regulations governing the Community Development Quota (CDQ) Program. The CDQ Program receives apportionments of the annual catch limits for a variety of BSAI species, which are in turn allocated among six different CDQ managing organizations (CDQ groups). CDQ groups derive revenue from such allocations, which is then used for the economic benefit of the 65 communities participating in the program.

This action proposes alternatives that would amend regulations governing groundfish CDQ and halibut PSQ transfers, harvesting cooperatives and quota pooling, and the designation of which CDQ Program allocations (CDQ reserves) to further allocate among the CDQ managing organizations (CDQ groups). Such revisions could provide more operational and catch accounting flexibility for CDQ groups to fully harvest their target species and reduce the potential for quota overages and subsequent enforcement actions. These revisions also could provide NMFS with the management measures necessary to more effectively manage the overall CDQ catch limits established for the Bering Sea and Aleutian Island (BSAI) groundfish fisheries.

An environmental assessment (EA) is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the action considered will result in a significant impact on the human environment. If the action is determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. If the EA determines that the proposed action is a major or significant action, then an environmental impact statement (EIS) must be prepared.

NEPA requires that an EA discuss 1) the need for the proposed action; 2) the proposed action and alternatives; 3) the probable environmental impacts of the proposed action and alternatives; and 4) the agencies and persons consulted during preparation of the EA. A description of the purpose and need for the proposed action is included in this section. Descriptions of the components and alternatives which may address the objectives of this action are included in **Section 2**. **Section 3** contains a summary description of the affected natural, physical, and human environment, and **Section 4** contains information on the impacts of the alternatives on that environment.

Executive Order 12866 (E.O. 12866) requires preparation of a Regulatory Impact Review (RIR) to assess the social and economic costs and benefits of available regulatory alternatives, in order to determine whether a proposed regulatory action is economically "significant" as defined by the order. **Section 5** contains a description and analysis of the economic and social impacts of each of the alternatives.



**Section 6** addresses the requirements of other applicable laws, including the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Marine Mammal Protection Act (MMPA), and Regulatory Flexibility Act (RFA), including an Initial Regulatory Flexibility Analysis (IRFA). The RFA requires analysis of adverse impacts on small entities which would be directly regulated by the proposed action. The major goals of the RFA are to: 1) increase agency awareness and understanding of the impact of their regulations on small businesses, 2) require that agencies communicate and explain their findings to the public, and 3) encourage agencies to use flexibility and to provide regulatory relief to small entities. The preparation of an IRFA emphasizes predicting significant adverse impacts on small entities as a group, distinct from other entities, and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action.

The references cited in this document are listed in **Section 7**, a list of the preparers is provided in **Section 8**, and a list of consulted people is provided in **Section 9**.

## **1.2 Background and Need for this Action**

The purpose of the CDQ Program is to allocate groundfish, prohibited species, halibut, and crab to eligible western Alaska communities to provide the means for starting and supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy.<sup>1</sup> The fishery current management objectives for the CDQ Program were developed as part of the 1998 expansion of CDQ allocations to include all groundfish and prohibited species.<sup>2</sup> At that time, NMFS interpreted that it was the objective of the Council that catch of all species allocated to the CDQ Program be strictly limited to the amount of the allocations, with no catch from CDQ fisheries accruing against non-CDQ allocations. The only way to accomplish this objective was to strictly limit the catch and not allow continued fishing for target species after allocations of non-target species or halibut prohibited species were reached. Requiring that each CDQ group be held accountable for its catch of the groundfish CDQ and halibut PSQ allocated to it allows each CDQ group to be responsible for its catch and to not be impacted by the catch of other CDQ groups.

Therefore, the fishery management objectives for the multispecies CDQ Program include, with a few exceptions, limiting catch for all species or species groups allocated to the CDQ Program to the amount allocated, not allowing catch under the program to accrue against non-CDQ portions of the total allowable catches and prohibited species catch limits, managing target and non-target species allocations to the CDQ groups with the same level of strict quota accountability, and holding each CDQ group responsible to not exceed any of its groundfish CDQ allocations or its halibut prohibited species catch allocations.

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<sup>1</sup> See 50 CFR 679.1(e).

<sup>2</sup> The "multispecies" CDQ allocations implemented under Amendment 39 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, which also implemented the groundfish and crab license limitation program.

The high level of quota accountability for the CDQ groups creates the potential that the CDQ groups may not be able to fully harvest their target species allocations because they will reach a quota for a non-target species or prohibited species first. This is a level of quota accountability that does not exist in other rationalized fisheries, such as the halibut and sablefish individual fishing quota program or the American Fisheries Act (AFA) pollock fisheries. However, these other fisheries also were designed as single target fisheries and not the multiple target allocations that are made to the CDQ Program. Nonetheless, no other rationalized fishery managed by the Council has been developed with the same level of strict quota accountability as the multispecies CDQ Program. This likely is due to concern, at least in part, about the high potential to limit the full harvest of the target species if too many non-target and prohibited species catch limits are associated with the target species allocations.

When the multispecies CDQ allocations were implemented, some Council members and the State of Alaska expressed the desire to hold the CDQ groups to a higher level of accountability for “bycatch,” meaning, at that time, both the incidental catch of groundfish species and prohibited species bycatch. The strict quota accountability for all allocations was the means for accomplishing this higher level of accountability. However, the multispecies CDQ allocations implemented in 1998 established the same percentage allocations of the non-target species and prohibited species as were made for all of the target species (7.5 percent of each total allowable catch limit and prohibited species catch limit, except fixed gear sablefish). Allocation percentages at the same level across the board do not provide the kind of match between target species allocations and non-target species allocations that is made when allocations are based on catch history (as in the AFA sideboards), or based on projected need. The fact that no consideration was made to providing non-target and prohibited species catch allocations that were related to the amount reasonably needed to harvest the target species allocations caused the “bycatch accountability” goal to be more difficult to achieve. It also created a conflict between the objectives of maximizing economic benefits of the program with the objective of bycatch accountability. This conflict continues to exist and is one of the reasons for this proposed action.

The complexity of determining the appropriate levels of all non-target species and prohibited species that might be needed to fully harvest the target species allocations was beyond the scope of the multispecies CDQ allocation recommendations made by the Council in 1995. In addition, the time that it would have taken to develop such an alternative approach would have delayed implementation of both the multispecies CDQ allocations and the groundfish and crab license limitation program for a year or more. However, these concerns were identified immediately by the CDQ groups and their harvesting partners and the groups have been requesting that the Council and NMFS address these issues since at least 1998. As a result of concerns about the potential for non-target species to limit the full harvest of target species, and based on Council recommendations, the allocation of squid was removed from the CDQ Program in 1999 and the management of the “other species” CDQ reserve was modified in 2003. In those cases, the Council recognized the objective of maximizing economic benefits to the CDQ Program.

### **1.3 Problem Statement**

NMFS proposes the following problem statement for this action:

*The purpose of the CDQ Program is to allocate groundfish, prohibited species, halibut, and crab to eligible western Alaska communities to provide the means for starting and supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy. Fishery management regulations should maximize the potential for the CDQ groups to fully harvest their target species allocations, because it is through these allocations that the benefits of the program are provided to the CDQ communities. However, these fishery management regulations also must meet the overall objectives for conservation and management of the BSAI fishery and should not negatively impact the non-CDQ fishing sectors.*

*One problem associated with the current CDQ fisheries management regime is that the groundfish allocations and halibut prohibited species allocations made to the CDQ Program were not designed to provide the CDQ groups with the amount of non-target or halibut prohibited species catch allocations potentially needed to fully harvest target species allocations. A second problem is that the original, relatively strict regulations associated with CDQ and PSQ transfers may subject CDQ groups to enforcement actions that potentially could be avoided.*

*These problems could be addressed by making revisions to NMFS regulations governing quota transfers, quota pooling, or the designation of which CDQ reserves to further allocate among the CDQ groups. Such revisions could provide more flexibility for the CDQ groups to fully harvest their target species and reduce the potential for quota overages and associated enforcement actions, while still providing NMFS with the tools necessary to manage the CDQ catch limits established for the BSAI fisheries as a whole without undertaking a comprehensive determination of the appropriate allocation percentages that should be made to the CDQ Program. These revisions would accomplish the goals of the Council to provide CDQ allocations to benefit the CDQ communities without negatively impacting NMFS's ability to manage other BSAI fisheries or the non-CDQ fishing sectors. In addition, management measures that would reduce the number of quota overages that must be investigated by NMFS Enforcement and prosecuted by NOAA General Counsel would allow these agency resources to be devoted to other enforcement issues.*

### **1.4 Management Authority and Regulatory Background**

The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed by the National Marine Fisheries Service (NMFS) under the authority of the Magnuson-Stevens Act. The mission of NMFS is the stewardship of living marine resources for the benefit of the nation, through science-based conservation and management and the promotion of a healthy marine environment. The goals of this mission are: maintaining

sustainable fisheries, recovering protected species, and protecting the living marine habitat. Guidance for achieving these goals is taken from relevant Federal legislation.

The groundfish fisheries of the BSAI are managed under a FMP approved by the Secretary of Commerce. The *Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area* (BSAI FMP) (NPFMC 2005) was developed under the Magnuson-Stevens Act and other applicable statutes to manage groundfish fisheries for optimal yield and to allocate catch limits among different fishery components, while preventing overfishing and conserving marine resources. The BSAI FMP was originally implemented in 1981 and has been amended over 70 times. Implementing regulations for the BSAI groundfish fisheries in general and the groundfish CDQ fisheries in particular, are found in 50 CFR part 679.

Actions taken to amend regulations governing the groundfish fisheries must meet the requirements of Federal laws and regulations. In addition to the Magnuson-Stevens Act, the most important of these are NEPA, the Endangered Species Act (ESA), the MMPA, Executive Order (E.O.) 12866, and the RFA. Each of these is discussed in subsequent sections of this analysis, as described in Section 1.1.

## 2.0 Description of Alternatives and Components

### 2.1 Overview of Components and Alternatives

This section describes each of the alternatives developed for this action. As described in Section 1.2, the primary purpose of this action is to provide flexibility for CDQ groups to harvest more of their groundfish CDQ target species within the context of the current CDQ allocation regime. This action is specific to groundfish CDQ and halibut PSQ, and does not propose modifying regulations associated with the management of halibut CDQ, crab CDQ, salmon PSQ, or crab PSQ. Management of crab CDQ is delegated to the State of Alaska. The halibut CDQ fishery is managed in conjunction with the Individual Fishing Quota halibut program, and is, for the most part, distinct from the groundfish CDQ fisheries. Harvest limitations associated with crab PSQ and salmon PSQ are associated with specific time and area closures applicable to those groundfish CDQ fisheries conducted with trawl gear and this action does not propose changing how salmon and crab PSQ are managed.

The alternatives considered each incorporate, in step-wise fashion, a range of components that were developed to address various fisheries management issues that have been identified by NMFS, CDQ groups, and the Council. The components include: amending inter-group CDQ transfer restrictions; allowing CDQ groups to pool and manage their annual CDQ allocations collectively; and, identifying which species categories are allocated to CDQ groups and managing such allocations with hard caps, while non-allocated CDQ reserves would be managed with soft caps. A summary of the existing CDQ fisheries management regime is discussed in Section 2.2 to provide the context for the alternatives proposed by this action, followed by a discussion of each component.

The first set of alternatives developed for this action presented a range of alternatives that encompassed the status quo (a very restrictive fisheries management structure), and then progress towards an increasingly flexible, less restrictive CDQ fisheries management structure. **The alternatives represent a range of possible changes to CDQ fisheries management measures, but are not the only possible alternatives. The Council could segregate or combine the components in another way as part of its selection of a preferred alternative to address CDQ reserve management issues.**

At its October 2005 meeting, the Council reviewed a draft analysis presenting the following range of options, including an Alternative 4 that included each of the three management components included in this action. Based on the report of the Council's Advisory Panel, public testimony, and its own deliberations, the Council recommended that Alternative 4 be amended to include only two components: allow CDQ groups to make transfers to account for in-season overages and allow the Council to identify which CDQ reserves to allocate to CDQ groups. The component to allow CDQ groups to pool quota was deleted from Alternative 4, but retained in the analysis as a whole. Alternative 4 was chosen as the preliminary preferred alternative.

**2.1.1 Alternative 1. Status Quo.** Do not amend CDQ fishery management regulations. CDQ and PSQ transfers between CDQ groups would not be allowed to account for in-season quota overages, CDQ groups would not be allowed to form cooperatives and pool their CDQ allocations, each BSAI total allowable catch (TAC) category allocated to the CDQ Program would be allocated among CDQ groups (except for “other species”<sup>3</sup>), all CDQ group allocations would be managed as hard caps, and changes to those TAC categories allocated to CDQ groups would continue to be made through the rulemaking.

**2.1.2 Alternative 2.** Amend regulations to remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or halibut PSQ allocations.

**2.1.3 Alternative 3:** Amend regulations to (1) remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or halibut PSQ allocations and (2) allow CDQ groups to form cooperatives and pool their groundfish CDQ allocations for purposes of quota management and monitoring.

**2.1.4 Alternative 4: (Preliminary preferred alternative)** Amend regulations to (1) remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or halibut PSQ allocations and (2) only allocate target species CDQ reserves among CDQ groups. CDQ target species allocations would be managed as hard caps and unallocated CDQ reserves would be managed as soft caps.

**Option 1:** Amend regulations to allow the Council to make future modifications to the suite of TAC categories allocated among CDQ groups during the annual groundfish harvest specifications process, rather than through rulemaking.

These alternatives are summarized in Table 2.1. **Although Alternative 4, the preliminary preferred alternative, includes Option 1, this option was included in the alternative without being subject to significant discussion or Council deliberation. NMFS now believes that it is inadvisable to carry this option forward, for the reasons discussed in Section 2.3.3.1.**

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<sup>3</sup> The “other species” CDQ reserve is no longer allocated among CDQ groups based on a regulatory change in 2003. Catch in this CDQ category is managed at the reserve level, rather than at the CDQ group level. Management of “other species” is further discussed in detail in section 5.7.

Table 2-1. Summary of Alternatives and Components.

	<i>Alternative 1 - status quo. Continue strict quota accountability.</i>	<i>Alternative 2 - Modest increase in accountability</i>	<i>Alternative 3 - Additional flexibility</i>	<i>Alternative 4 - Additional flexibility</i>
<i>General description of effects of the alternative</i>	No after-the-fact transfers; no way for groups to form cooperatives and pool quota allocations; no differentiation between quota accountability for target and non-target species.	Most frequently requested by CDQ groups as a way to increase operational flexibility. May indicate highest priority to groups.	Removes some potential constraints to harvesting CDQ allocations and to provide more operational flexibility, while still maintaining relatively strict limits on catch of both target and bycatch species.	Removes some potential constraints to harvesting CDQ allocations; increase groups' flexibility for management of target species allocations; continue high level of accountability for target species allocations.
<i>Component 1</i>	<i>Status quo</i> No transfers to cover overages.	Allow transfers to cover overages.	Allow transfers to cover overages.	Allow transfers to cover overages.
<i>Component 2</i>	<i>Status quo</i> No allowance for cooperatives and quota pooling.	<i>Status quo</i> No allowance for cooperatives and quota pooling.	Allow CDQ groups to form cooperatives and pool quota.	<i>Status quo</i> No allowance for cooperatives and quota pooling.
<i>Component 3</i>	<i>Status quo</i> Continue to allocate all species (except "other species"), including prohibited species, to the CDQ groups; manage all allocations with hard caps (except for salmon and crab PSQ).	<i>Status quo</i> Continue to allocate all species (except "other species"), including prohibited species, to the CDQ groups; manage all allocations with hard caps (except for salmon and crab PSQ).	<i>Status quo</i> Continue to allocate all species (except "other species"), including prohibited species, to the CDQ groups; manage all allocations with hard caps (except for salmon and crab PSQ).	Allocate only target species and prohibited species to the CDQ groups. Manage non-target species at the CDQ sector level with soft caps and no directed fishing. Option 1. Identify changes to which reserves are allocated to CDQ groups during annual harvest specifications process.

## 2.2 Current CDQ Fisheries Management

All BSAI FMP groundfish species or species groups (with the exception of squid), BSAI crab species, Pacific halibut, and prohibited species catch limits are allocated to the CDQ Program as CDQ reserves. CDQ groups periodically apply for a portion of each CDQ reserve. Each CDQ group receives a percentage allocation for each CDQ reserve category established for halibut, groundfish, PSQ, and crab. These allocations are based on recommendations made by the State of Alaska and approved by NMFS. NMFS applies these percentage allocations to each applicable annual CDQ reserve, which yields annual CDQ allocations for each CDQ group. The allocation of approximately 36 annual CDQ and PSQ reserves among the six CDQ groups results in about 200 different quotas that have to be managed at the CDQ group level. Some of these individual quotas, particularly for those species categories with small TACs relative to other BSAI TACs, are very small.

As noted in Section 1.2, the original groundfish CDQ catch accounting regulations were developed by NMFS based on its interpretation of the Council's motion to expand CDQ Program allocations to include all groundfish species and prohibited species. Individual CDQ groups are accountable for each of their quotas. All groundfish species and the halibut PSQ allocated to individual CDQ groups are managed with hard caps, meaning that a CDQ group is prohibited from exceeding its allocation of a given species. If a CDQ group catches more than it has available in a particular allocation, the CDQ group has what is termed an overage. If an overage occurs, NMFS documents it and notifies the NOAA Office for Law Enforcement (OLE), which investigates such incidents. The OLE then refers CDQ overage cases to NOAA General Counsel for prosecution or settlement. **There were approximately 23 overages between 1999 and 2004, including 13 target species overages and 10 non-target species overages.**

Another underlying theme of the current CDQ fisheries management regime is that all BSAI TAC categories, with the exception of squid, are allocated to the CDQ Program through the BSAI FMP. As part of the development of the multispecies CDQ Program, the Council recommended that the program annually receive 7.5 percent of each TAC category. No distinction was made regarding which species were target species, which species were regarded to be non-target species, or the appropriate proportion of non-target species TACs that would be necessary to fully account for the catch of such species in primary target fisheries. Additionally, no provision was made to readily accommodate changes to the species that were allocated to the CDQ Program or changes to the CDQ reserves that are allocated among CDQ groups. In order to remove a species from being allocated to the CDQ Program, the Council must initiate, and NMFS must complete, both a FMP amendment and a regulatory amendment. Such an action is uncommon, and has only occurred with squid in 1999<sup>4</sup>. Discontinuing the allocation of a CDQ reserve among CDQ groups requires a regulatory amendment. This occurred with "other species" in 2003. Both of these actions are described in greater detail in Section 5.7.

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<sup>4</sup> The MSA requires that a portion of each BSAI TAC species be allocated to the CDQ Program; however, the action to no longer allocate squid to the program was made in the context of addressing changes to the CDQ Program that resulted from passage of the American Fisheries Act (16 USC 1851 note).



The strict quota accountability requirements associated with the CDQ Program have given rise to issues associated with potential constraints on CDQ target fisheries. Completely catching a particular CDQ allocation could impact a CDQ group's ability to continue participating in some target fisheries, as additional catch of the species for which a group has no remaining quota may be impossible to avoid. This effectively requires a CDQ group to stop fishing for those target species for which it believes it has insufficient amounts of non-target species, or for which it is unable to obtain additional amounts of non-target species from another CDQ group by transfer. CDQ groups believe that some quotas are insufficient to meet their non-target needs in CDQ target fisheries.

Groundfish CDQ, crab and salmon PSQ, and halibut CDQ transfers are allowed under federal regulations. The State of Alaska manages the crab CDQ fisheries, including administering inter-group crab CDQ transfers. Subsequent discussions pertaining to CDQ transfers only are applicable to groundfish CDQ (halibut CDQ transfers are not within the scope of this analysis). Transfers provide CDQ groups with some in-season management flexibility or the ability to react to unanticipated circumstances. Groups may transfer amounts of CDQ, PSQ, CDQ percentage allocations, or PSQ percentage allocations among themselves. Transfers must be approved by NMFS before they are effective.

A transfer of a percentage allocation (of CDQ or PSQ) for a given quota category becomes effective in the year after the transfer is approved, and is effective for the remainder of an allocation cycle. Amending CDQ or PSQ allocation percentage transfer regulations is not considered in this action, as it is intended to consider regulatory amendments that are applicable to a given year's CDQ fishing and quota transfer activities, not the longer term effects of percentage allocation transfers. Percentage allocation transfer entail transferring some portion of the percent of a given CDQ or PSQ reserve that CDQ groups have been allocated, not actual annual quota amounts. There has never been a CDQ percentage allocation transfer in the tenure of the CDQ Program. To date, no CDQ group has requested a transfer of a percentage allocation. All transfers have involved annual amounts of quota, either by weight or, for prohibited species, some number of either crab or salmon.

In general, the CDQ groups may transfer annual amounts of groundfish CDQ and PSQ among themselves at any time during the year. A transfer of quota only is effective for the calendar year in which the transfer was requested. Restrictions on quota transfers do exist. Regulations at 50 CFR 679.30(e) currently state that "NMFS will not approve transfers to cover overages of CDQ or PSQ." **Thus, a CDQ group may not, once it has incurred an overage in a particular quota category, receive an additional amount of CDQ in that quota category by transfer from another group.** This is true regardless of whether other CDQ groups are willing to transfer the needed quota or whether there is still some amount of quota remaining in the applicable CDQ reserve as a whole.

## 2.3 Components Considered for this Action

This action contains three components that could, by varying degrees, change the management of the groundfish CDQ fisheries. Each component is independent of each other, and could be implemented without implementation of the other components. Each component affects different aspects of how the CDQ fisheries are currently managed. Selection of one component is not dependent on the selection of another component; however, selection of multiple components could affect how each component would be implemented.

### 2.3.1 Component 1. CDQ Transfer Timing

This component addresses the timing of groundfish CDQ and halibut PSQ transfers and whether to maintain the existing prohibition that does not allow CDQ groups to receive quota transfers after exceeding a particular quota. CDQ groups currently may transfer annual quota amounts among themselves at any time during the year, subject to quota availability and CDQ groups' willingness to make such transfers. CDQ groups made approximately 102 quota transfers between 2001 and 2004, or about 25 per year. Such transfers are typically bundled, so that a single transfer request encompasses multiple CDQ species categories, including target, non-target, and prohibited species.

CDQ groups are prohibited from exceeding their allocations of groundfish CDQ or halibut PSQ. NMFS monitors the catch of groundfish CDQ as it occurs throughout the fishing year and documents CDQ overages as soon as they are detected. CDQ groups also self-report such overages to NMFS when they occur, typically to provide an explanation for why they believe an overage occurred. There are two general types of overages: target species overages and non-target species (including halibut PSQ) overages. The implication of a target species overage is that a CDQ groups will be subject to an enforcement action for exceeding an available CDQ amount. The implication of a non-target species overage is that a CDQ group will be subject to an enforcement action and that the group may not be able to prosecute some or all of its CDQ target species allocations in which additional amounts of the non-target species may be caught.

Component 1 would continue to allow CDQ groups to transfer annual amounts of groundfish CDQ and PSQ among themselves at any time during the year, **but would remove from regulations the prohibition against allowing inter-group transfers to account for a CDQ group's overage of any particular groundfish CDQ allocation or halibut PSQ allocation.** Such transfers would still be subject to the amount available in each CDQ reserve. Modifying the timing of NMFS' CDQ catch monitoring and accounting regime could allow CDQ groups' the additional ability to effectively harvest all or the majority of their revenue generating target species. CDQ groups would not have to cease fishing for some species or in some management areas before the end of the fishing year, should they catch their entire remaining balance of a particular groundfish CDQ species or halibut CDQ. CDQ groups could also avoid facing enforcement actions for target species overages by receiving additional amounts of target species by transfer.

CDQ groups would still be prohibited from exceeding their groundfish CDQ or halibut PSQ allocations, including their initial annual allocations and any subsequent amount that they received by transfer.

**Compliance with the requirement that a CDQ group not exceed its groundfish CDQ and halibut PSQ allocations would be assessed by NMFS at the end of the calendar year, rather than as soon as an overage was detected during the year.** This component could also apply to the CDQ group cooperatives discussed in Section 2.3.2. This would result in a temporal shift in CDQ catch monitoring, as NMFS would assess quota overages at the end of the fishing year (after CDQ groups had opportunity to transfer quota among themselves, depending on quota availability), rather than as overages occur during the fishing year. Implementation of this component could result in fewer enforcement actions being taken against CDQ groups for quota overages, if some overages were “covered” by in-season or year end transfers.

This allowance could result in CDQ groups believing that each of their overages could be addressed by year-end transfers, resulting in unabated fishing activities. However, since NMFS would continue to monitor groundfish CDQ catch on a real-time basis during the year, it could apply other in-season management tools to particular CDQ groups or CDQ fisheries during the year on an as-needed basis, particularly if NMFS knew that some overages would not be able to be covered by transfers. An expanded description of the CDQ transfer process and proposed changes is in Section 5.7.2.

Regulatory amendments associated with this component could include the following changes, although the dates listed below are tentative:

- Clarifying that federal regulations apply to transfers of groundfish CDQ, halibut CDQ, halibut PSQ, and crab PSQ. Federal transfer regulations do not apply to crab CDQ. Management of most aspects of the crab CDQ allocations are delegated to the State under the Fishery Management Plan for BS/AI King and Tanner crabs and are not regulated directly by NMFS.
- Removing the prohibition at § 679.30(e) against allowing the CDQ groups to transfer groundfish CDQ and halibut PSQ after an overage has occurred (or to “cover” an overage).
- Requiring that all transfers to cover an overage (or that affect a prior calendar year) must be completed by January 31 of the next year. No transfers that affect a prior year’s CDQ fishing will be approved by NMFS after January 31.

### **2.3.2 Component 2. CDQ Harvesting Cooperatives and Quota Pooling**

This component would amend the current CDQ fisheries management structure to allow CDQ groups to form harvesting cooperatives and pool their CDQ allocations. The Council requested that NMFS examine allowing such cooperatives at the Council’s June 2004 meeting. Such cooperatives would be responsible for managing the harvest of the CDQ allocations of those groups represented by a given cooperative. Cooperatives would be formal organizations comprised of two or more CDQ groups, and established

through contractual agreements. Current CDQ catch accounting and reporting requirements would be extended to CDQ harvesting cooperatives. CDQ harvesting cooperatives would not be required to be cooperatives formed under the Fishermen's Collective Marketing Act of 1934 under this component, but would be subject to antitrust law.

The premise for allowing CDQ harvesting cooperatives is that it would allow CDQ groups to aggregate their individual quotas, particularly those allocations that are relatively small. This could allow a CDQ harvesting cooperative to have greater harvesting flexibility than individual CDQ groups. A cooperative, with its larger, aggregate allocations, could be less constrained by the likelihood of incurring overages. Some annual CDQ allocations, particularly for some rockfish species categories, can be very small. Having a larger initial allocation of some species could allow a CDQ harvesting cooperative to commence and sustain fishing activities to a greater extent than an individual CDQ group with smaller allocations.

### *Background*

CDQ groups currently may transfer any amount of any quota to another CDQ group. These transfers may be associated with private contractual arrangements that specify the financial and quota management arrangements between the groups involved in the transfers. A transfer trend that has become common in recent years is for CDQ groups to collaboratively pool their quota via a series of transfers that aggregate several groups' quotas for a particular target fishery, such as Atka mackerel or pollock, with one CDQ group. Although some target species have been pooled in this fashion, such arrangements have been limited. CDQ groups still act individually (via their respective harvesting partners) in other target fisheries, such as Pacific cod.

Pooling some species has increased efficiencies for harvesting partners and CDQ groups by limiting the number of participants in some CDQ fisheries, which streamlines catch monitoring and reporting activities. This quota pooling process also allows small, individual allocations of incidental species to be combined into larger quota amounts. Pooling small individual quota builds more of a buffer into the CDQ catch accounting process by allowing vessel operators and CDQ groups to better reconcile actual catch against available quota and to alter the pace of fishing as needed to stay within available quota balances.

### *Formation and Operation of CDQ Harvesting Cooperatives*

This component would allow the Council to recommend to NMFS that regulations be amended to incorporate CDQ cooperatives in the CDQ Program's fishery management structure. Regulations governing CDQ cooperatives under this component would include the following requirements:

- Two or more CDQ groups could form a CDQ harvesting cooperative and pool their CDQ allocations.

- CDQ groups must form CDQ harvesting cooperatives before the fishing year starts. CDQ groups could not leave a CDQ cooperative or change CDQ cooperatives once the fishing year starts. This requirement is necessary for NMFS to establish quota balances and identify the entity responsible for quota monitoring before CDQ fishing commences each year.
- If a CDQ group joins a CDQ harvesting cooperative, then all groundfish and prohibited species allocated to the CDQ group would become part of the cooperative's allocation. NMFS would combine, by species categories, the individual CDQ and PSQ allocations made to each CDQ group into cooperative-level CDQ allocations.
- NMFS would not manage some species allocated to a CDQ group through a pool and other species at the CDQ group level. Allowing CDQ groups to fish for some target species while pooling some of their other species with a cooperative could result in increased fishery management complexity for NMFS, CDQ groups, and CDQ cooperatives. The species allocated to CDQ groups may be caught in a many different target fisheries, so increasing the number of parties required to monitor and report CDQ catch probably would not increase CDQ groups' operational efficiencies.
- Halibut CDQ could be an exception to this restriction, as the halibut CDQ fishery is distinct from the groundfish CDQ fishery. CDQ groups currently must report groundfish CDQ caught by vessels greater than or equal to 60 ft. LOA that are halibut CDQ fishing, and this requirement could still be applicable to CDQ groups, rather than the CDQ harvesting cooperatives. If this were allowed, CDQ groups and cooperatives would have to coordinate information sharing to ensure that groundfish CDQ catch was being accounted for and managed properly.
- A CDQ harvesting cooperative would be prohibited from exceeding its collective allocations. If the CDQ cooperative exceeded any of its CDQ or halibut PSQ allocations, enforcement actions would be initiated against the CDQ cooperatives and its member CDQ groups.
- A CDQ harvesting cooperative contract would be required to be submitted to NMFS by November 1 of the year prior to a given fishing year to provide sufficient time to establish quota balances for each CDQ cooperative by January 1.
- A CDQ harvesting cooperative contract would be required to contain information about the CDQ groups that are members of the cooperative, the vessels that would be fishing on behalf of the cooperative, and the name of the CDQ cooperative for service of process (person authorized to receive and respond to any legal process issued in the U.S. with respect to all members of the CDQ cooperative).
- CDQ harvesting cooperatives would be responsible for the catch monitoring and reporting requirements that CDQ groups are individually responsible for.

A more thorough description of the formation of CDQ fishery cooperatives and their effects on the CDQ fishery is in Section 5.7.3.

### **2.3.3 Component 3. Allocation of Target and Non-target Species to CDQ Groups**

This component would allow the Council to select which species or species groups would be allocated among CDQ groups. The annual CDQ reserves for selected species would be allocated among CDQ groups, and each group's allocations would be managed with hard caps. CDQ groups would continue to be prohibited from exceeding their annual groundfish CDQ. As described in Section 2.2, all groundfish species and halibut PSQ are managed with hard caps, meaning that a CDQ group is prohibited from exceeding its allocation of a given species. If a CDQ group exceeds the amount available for a particular allocation, the CDQ group has an overage and faces possible enforcement action. If a particular CDQ reserve isn't allocated to CDQ groups, they do not have corresponding allocations to exceed.

**The Council could choose which CDQ reserves to allocate among CQQ designating CDQ reserves by target and non-target species.** Those CDQ reserves not selected by the Council to allocate among individual groups could be managed as "soft caps," based on the following restrictions. The concept of soft caps described below is what NMFS also refers to as "management at the CDQ reserve level."

- CDQ groups would be prohibited from directed fishing for species or species groups that are not allocated among the groups.
- For those species or species groups managed at the reserve level, CDQ groups could retain up to the maximum retainable amounts allowed by regulations, if the amount allocated to the CDQ Program was sufficient to allow retention. Otherwise, retention of such species or species group by any vessel fishing for a CDQ group would be prohibited at the beginning of each year to minimize the deliberate catch of such species.
- If retention were allowed, and the catch of a given non-allocated species or species group reached the amount available in the associated CDQ reserve, then NMFS in-season managers would evaluate the status of the overall TAC for that particular species or species group. Continued retention of these species in the CDQ fisheries could be allowed if there was sufficient TAC available to account for the anticipated total catch in the CDQ and non-CDQ fisheries combined for the remainder of the year, based on NMFS's assessment of historical and projected catch rates. This option could limit discards in species categories that would have enough remaining TAC to support retention in both CDQ and non-CDQ fisheries.
- Catch by all CDQ groups would accrue against the CDQ reserve until it was reached and then catch would accrue against the overall TAC for the species. No individual CDQ group would face enforcement action if catch by all CDQ groups combined exceeded the CDQ reserve amount allocated to the program.
- The total catch of a species or species group not allocated among CDQ groups could be managed under existing BSAI fishery management measures. If the total catch of a species or species group by all sectors (CDQ and non-CDQ) approaches the overfishing limit, NMFS must limit some directed fisheries in order to prevent overfishing. Which fisheries to close to prevent overfishing is a decision made by the Regional Administrator under in-season management authority at § 679.20.

There are two general categories of species or species groups caught in the CDQ fisheries: target species and non-target species. Target species are those species of economic importance that are caught as the primary focus of a given fishery. Non-target species includes both incidental catch species and bycatch species that are caught along with target species. The terms bycatch and incidental catch are often used interchangeably, although there is a legal distinction between the two terms. Incidental catch is defined in federal regulations and refers to that catch that is taken while targeting some other species but is retained and used (§ 679.2). Bycatch is defined by the MSA as that the portion of the fish harvested in a fishery that is not used and discarded, including regulatory and economic discards (16 U.S.C. 1802). Catch may be discarded because regulations require it to be, no markets exist for it, or it is of an undesirable sex, size, or quality.

For this analysis, CDQ target species are those species for which a directed CDQ fishery occurs or for those species commonly considered to be target species in the BS or AI. Non-target species is used to describe both incidental catch and bycatch species. Table 2.2 lists target species, while Table 2.3 displays non-target species.

Table 2.2. Target species categories

<b>Target species categories (by TAC and CDQ Reserve category)</b>	
<b>Area or subarea</b>	<b>Species</b>
BS, AI, and Bogoslof	Pollock
BSAI	Pacific cod
BS and AI	Sablefish (fixed gear)
BS and AI	Sablefish (non-gear specific)
EAI, CAI, and WAI	Atka mackerel
BSAI	Yellowfin sole
BSAI	Rock sole
BS and AI	Greenland turbot
BSAI	Flathead sole
EAI/BS, CAI, and WAI	Pacific Ocean perch

Table 2.3. Non-target species categories.

Non-target species (by TAC and CDQ reserve category)	
Area or subarea	Species
BSAI	Alaska plaice
BSAI	Arrowtooth flounder
BSAI	Northern rockfish
BSAI	Other flatfish
BSAI	Shortraker rockfish
BSAI	Rougeye rockfish
BS and AI	Other rockfish
Existing exceptions	
BSAI	Other species (not allocated among CDQ groups)
BSAI	Squid (not allocated to CDQ Program)

### 2.3.3.1 Option 1. Amend BSAI groundfish harvest specification regulations

#### *Status quo*

Changing the list of CDQ reserves to annually allocate among CDQ groups currently requires a regulatory amendment. If, under Component 3, the Council selected certain CDQ reserves that would be designated as target species and be allocated among the CDQ groups and identified CDQ reserves that would be designated as either target species or non-target species, then these designations would be implemented through a regulatory amendment. Any future changes to the list of CDQ reserves that annually would be allocated among CDQ groups would require additional regulatory amendments. Such amendments can take a year or more to develop and implement, thus delaying the implementation of such changes, even though such changes could be driven by changes stemming from the annual groundfish specifications process.

#### *Option 1*

The Council could recommend that future modifications to the list of species or species groups allocated to CDQ groups be made annually, as part of the groundfish specifications process, thereby providing a more expeditious means to implement such changes. The harvest specifications process is described in detail in Section 3.2.5. This option would allow the Council to modify the list of CDQ reserves that are allocated and not allocated to CDQ groups on an annual basis, should it consider such changes appropriate. Otherwise, recommended changes to which of the annual CDQ reserves to not allocate to CDQ groups would have to be made through routine notice-and-comment rulemaking. This was the process used to implement the Council's recommendation to not allocate the "other species" reserve to CDQ groups. Regulations at § 679.31(f) now identify the CDQ reserves that will not be allocated among CDQ groups. "Other species" is the only species category so listed.



Under Option 1, the Council could more readily make changes to which CDQ reserves to allocate to CDQ groups, or not, based on its consideration of management changes in TAC categories, changes to the BSAI groundfish fisheries in general, or the target fisheries in which the CDQ groups wish to engage. This option also could address species categorization issues that have arisen in past years. Changes associated with splitting or joining TAC categories by species or area may yield new CDQ reserves for which there are no applicable CDQ percentage allocations. Absent applicable percentage allocations to divide new CDQ reserve categories among CDQ groups, the Council could recommend that such reserves not be allocated to CDQ groups. This option has the potential to add additional complexity to the annual harvest specifications process.

*NMFS believes that Option 1 should not be carried forward*

In October 2005, Option 1 was included as part of the Council's preliminary preferred alternative (Alternative 4) for this action. **However, NMFS now believes this option should not be included as a part of the Council's preferred alternative for this action.** NMFS originally included this option in this analysis in light of its past experience with addressing how to manage CDQ reserves that the Council recommends not allocating to CDQ groups, such as occurred with "other species" in 2003 as well as changes to species categorization, such as occurred with some rockfish species in 2001 and 2002.

NMFS believes that this option should be withdrawn for several reasons. The annual specifications process receives an exemption, under E.O. 12866, from the requirement to prepare an RIR because the measures included in the annual specifications are strictly related to setting these specifications.<sup>5</sup> The addition of measures that are not related to the setting of the specifications may result in the loss of this exemption. Additionally, the inclusion of additional elements into the harvest specifications process that are not directly related to the specifications would, in turn, add additional analytical requirements to an already complex process. Furthermore, much of the stock assessment and other information upon which the annual specifications are based are developed throughout the course of the year by the Council's BSAI groundfish plan team, which meets prior to, and independently of the meetings at which the Council takes action on the harvest specifications. This means that any Council recommendations about changes to which CDQ reserves should be allocated to CDQ groups could come late in the specifications process.

Additionally, in October 2005, the Council received a report from the State of Alaska's Blue Ribbon Panel (BRP), which was established to provide an evaluation of the CDQ Program to the Governor of Alaska. The BRP made four primary recommendations, one of which was to consider establishing long-term (10 year) CDQ allocation cycles. The Council recommended that NMFS assess the implications for how the BRP's recommendations could be integrated with the Council's recommendation for

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<sup>5</sup> Lauren Smoker, NOAA GC attorney. Personal communication, October 6, 2005.

Amendment 71 to the BSAI FMP<sup>6</sup>, which includes elements associated with the CDQ allocation process. NMFS believes that it needs to complete this assessment, including the impacts of a long-term allocation cycle, before continuing to advocate for management changes such as the option that would amend the groundfish specifications process.

### **2.3.4 Options Considered but Not Carried Forward**

#### **2.3.4.1 Reinstate squid as a species allocated to the CDQ Program.**

NMFS also considered whether to incorporate an option under Component 3 that would allow the Council to revisit its past decision to no longer allocate squid to the CDQ Program. Presently, each BSAI TAC category is allocated to the CDQ Program, with the exception of squid. The CDQ Program originally received a squid CDQ reserve, as established by one of the final rules (63 *FR* 8356; February 19, 1998) associated with the implementation of the multispecies CDQ Program. Squid was allocated to CDQ groups in 1998 and 2000. Passage and implementation of the AFA led the Council and NMFS to modify squid management in the CDQ Program temporarily in 1999 and permanently in 2001. The AFA increased the allocation of pollock to the CDQ Program from 7.5 to 10 percent of the annual pollock TAC. Squid is predominantly caught in the pollock fishery, but the contribution from the squid TAC to the squid CDQ reserve did not increase with implementation of the AFA. This led to squid, a non-target species, no longer being allocated to the program (66 *FR* 13672; March 7, 2001).

The Council recommended that squid be removed from the CDQ Program after evaluating the potential that the squid CDQ reserve could be caught before the entire pollock CDQ reserve was caught, which would impact the economic success of CDQ groups and their development projects. Squid caught in either the groundfish CDQ or non-CDQ fisheries accrues towards the squid TAC. Squid is managed with the standard fishery management measures available in the BSAI fisheries.

When the Council considered alternatives to address the management of squid CDQ in 1999, NMFS was not aware of the range of alternatives developed for this analysis. Specifically, NMFS had not yet thought of the alternative to continue to allocate squid to a CDQ reserve, but to not further allocate the squid CDQ reserve among the CDQ groups. However, the Council's basis for recommending that squid be removed from the CDQ Program still stands: the 7.5 percent allocation of the squid TAC to the CDQ Program could be inadequate to meet the bycatch needs for the amount of squid that could be caught in the pollock CDQ fishery. Reinstating squid as a species allocated to the CDQ Program and managing the squid CDQ reserve with soft caps would require a FMP amendment but would result in the same effect as the status quo management of

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<sup>6</sup> The Council recommended a preferred alternative to Amendment 71 in June 2002, including recommendations for a suite of issues addressing the CDQ allocation process, government oversight, allowable investments, and other administrative issues such as streamlining the CDQ transfer process. Recommended changes for some minor administrative issues have been implemented, but a variety of legal and policy concerns about some of the major components of Amendment 71 still must be addressed.

squid. Therefore, NMFS recommends not including this option in this analysis. Reallocating squid to the CDQ Program would make the management of squid consistent with other CDQ Program species, but probably would result in no appreciable difference from the current management of squid.

#### **2.3.4.2 Revise percentage allocations for non-target species.**

This proposed action does not include alternatives that would revise the percentage allocations of non-target or prohibited species bycatch to the CDQ Program to better match incidental catch needs with target species allocations. At the October 2005 Council meeting, the Council's Scientific and Statistical Committee (SSC) questioned whether this was a valid approach, since the lack of a comprehensive match of the CDQ Program percentage allocations for both target and non-target species has driven some of the management issues that this action addresses.

NMFS recognizes that such an assessment could provide the means to alleviate some of the fisheries management issues that CDQ fisheries have faced. However, such an assessment would be complicated. It would entail calculating historic non-target catch rates and using such rates to determine what future CDQ percentage allocations for certain species should be. The complex variables associated with calculating past incidental catch rates, including integrating factors associated with: stock abundance for multiple species; variability of catch rates across time, fishing areas/depths, and gear types; and, a lack of knowledge about future fishing patterns by CDQ groups led NMFS to reject attempting such an exercise. NMFS initiated this action in the context of modifying or incorporating existing fisheries management measures applicable to the CDQ fisheries, and believes that proposals to modify the CDQ Program percentage allocations for groundfish species should be initiated by the Council.

Other fishery management actions currently being developed by the Council, including Amendment 80 to the BSAI FMP (rationalization of the non-AFA catcher/processor sector) and the Amendment 85 to the BSAI FMP (Pacific cod sector allocations) provide alternatives to change the percentage allocations of target, non-target, and prohibited species to the CDQ Program. Such changes are being proposed concurrently with other major actions, not independently for the CDQ Program. NMFS believes that a limited range of management options, such as those proposed by this action, could be used to provide additional degrees of harvesting flexibility to the CDQ groups without a comprehensive assessment of historic non-target species catch rates and changes to CDQ Program percentage allocations.

### 3.0 Affected Environment

#### 3.1 Natural and Physical Environment

This section describes the affected human environment, including the natural, physical, and human environment. The effects of the alternatives are the subject of Section 4.0.

The NEPA documents listed below contain extensive information about the fishery management areas, fisheries, marine resources, ecosystem, social, and economic elements of the BSAI groundfish fisheries, including CDQ fisheries. Rather than duplicate an affected environment description here, readers are referred to these documents, which are incorporated by reference into this document. This list is a partial listing of NEPA documents that have been prepared for BSAI fishery management measures. Internet links to these documents, as well as a comprehensive list of NEPA documents that have been prepared by NMFS, Alaska Region and the Council are at <http://www.fakr.noaa.gov/index/analyses/analyses.asp>.

Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement (NMFS 2004). A final programmatic SEIS (Final PSEIS) was prepared to evaluate the fishery management policies embedded in the BSAI and GOA groundfish FMPs against policy level alternatives. NMFS issued a Record of Decision for the Final PSEIS on August 26, 2004, effectively implementing a new management policy that is ecosystem-based and more precautionary when faced with scientific uncertainty. The PSEIS serves as the primary environmental document for subsequent analyses of environmental impacts on the groundfish fisheries. For more information, see the Final PSEIS and related documents at: <http://www.fakr.noaa.gov/sustainablefisheries/seis/default.htm>.

The PSEIS provides a recent complete description of the environment that may be affected by groundfish CDQ fishing activities in the following sections:

- Features of the physical environment, Section 3.3.
- Threatened and endangered species, Section 3.4.
- Groundfish Resources, Section 3.5.
- Habitat, Section 3.6.
- Seabirds, Section 3.7.
- Marine mammals, Section 3.8.
- Socioeconomic conditions, Section 3.9 (See also Section 3.2 of this document).
- Ecosystem, Section 3.10.

Chapter 3 of the PSEIS establishes an environmental baseline, which is a description of the existing conditions that serve as the starting point for the document's analyses. This chapter provides a detailed description of the affected environment, including extensive information on fishery management areas, marine resources, and marine habitat in the North Pacific Ocean. The description of baseline environmental conditions was developed using the best available scientific information, which at the time that the

PSEIS was drafted incorporated data up to 2002. This EA uses the PSEIS baseline as a starting point for the present evaluation of environmental effects and, therefore, incorporates the PSEIS baseline by reference.

Environmental Assessment/Final Regulatory Flexibility Analysis for the Harvest Specifications for the Alaska Groundfish Fisheries, 2005-2006 (NMFS 2005a).

This EA/RIR discusses the groundfish TACs and catch in 2004, along with final 2005-2006 specifications of overfishing levels (OFLs), acceptable biological catches (ABCs), and TACs for the BSAI. The Harvest Specifications EA/RIR tiers off of the PSEIS. It also discusses the economic effects of TAC setting alternatives on CDQ groups. Additionally, the status of each target species category, biomass estimates and acceptable biological catch specifications are presented both in summary and in detail in the annual BSAI stock assessment and fishery evaluation (SAFE) reports. SAFE reports are available at the web site given in this section's introductory paragraph.

EA/RIR/FRFA for a Regulatory Amendment to Modify the Management of "Other Species" Community Development Quota in the BSAI (NMFS 2005b).

This document discusses the CDQ fisheries management regime and alternatives to modify the management of the "other species" CDQ reserve with soft caps, rather than by allocating this reserve among individual CDQ groups and managing allocations with hard caps. This action and the associated Council recommendation are described in Section 5.7.

Steller Sea Lion Protection Measures Supplemental Environmental Impact Statement (NMFS 2001).

This document contains several sections with useful background information on the groundfish fishery (although the majority of information provided is focused on three important species - pollock, Pacific cod, and Atka mackerel). Section 3.12.2 provides extensive background information on existing social institutions, patterns, and conditions in these fisheries and associated communities, Appendix C provides extensive information on fishery economics, and Appendix D provides extensive background information on groundfish markets.

Essential Fish Habitat Final Environmental Impact Statement (NMFS 2005b)

This document evaluates alternatives for three separate actions. These actions include: describing EFH, identifying a means to identify Habitat Areas of Particular Concern (HAPC), and minimizing the adverse effects of Council-managed fishing on EFH. The EFH EIS provides a thorough description of EFH in the BSAI, as well as a discussion of the past and present effects of different gear types on EFH.

### **3.2 Economic and Social Conditions**

The NEPA documents referenced in Section 3.1 contain comprehensive information about the CDQ Program, as does the background information in Section 1.2 and Section 5.6.

In brief, the purpose of the Western Alaska CDQ Program is to help western Alaska communities strengthen their local economies by investing in both commercial fisheries and other fisheries-related projects, and to provide residents with education, training, and job opportunities in the fishing industry. The original CDQ Program regulations went into effect on November 18, 1992, and have been amended numerous times since then. In 1996, the Magnuson-Stevens Act institutionalized the program as part of the BSAI Groundfish FMP.

The 65 communities in the CDQ Program are predominantly Alaska Native villages. The communities are typically remote, isolated settlements with few natural assets with which to develop and sustain a viable diversified economic base. Basic community and social infrastructure is often underdeveloped or lacking, and transportation and energy costs are high. Historically, economic opportunities have been few, unemployment rates have been chronically high, and these communities (and the region) have been economically depressed. A complete list of CDQ communities is in Appendix A.

## **4.0 Environmental Effects of the Alternatives**

This section discusses the potential impacts of each of the proposed alternatives described in Section 2.3. An EA must consider whether an environmental impact is significant. Significance is determined by considering the contexts (geographic, temporal, and societal) in which the action could occur, and the intensity of the action. The alternatives considered by this action would not amend the amount of BSAI TACs directly allocated to the CDQ Program, nor would they modify regulations governing fishing practices or locations in a way not already considered in prior NEPA analyses. Therefore, the primary emphasis of this section is an examination of the economic and social effects of the alternatives.

### **4.1 Natural and Physical Environment**

#### **4.1.1 Effects on Groundfish Target Species**

The BSAI FMP describes target species as: pollock, Pacific cod, sablefish, yellowfin sole, Greenland turbot, arrowtooth flounder, rock sole, flathead sole, Alaska plaice, "other flatfish", Pacific Ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, "other rockfish", Atka mackerel, and squid. There also is an "other species" category target fishery that presently is of slight economic value and for which there is insufficient data to manage included species individually. This category includes sculpins, sharks, skates, and octopus (NPFMC 2005, page 10). This discussion will follow that FMP categorization, although practically speaking, the FMP target species do not match what the BSAI fishing industry and fisheries managers commonly refer to as target species, i.e., those species of direct economic importance to the fishery. The discussion of FMP target species in other sections of this analysis makes a practical distinction between which species are target species and which are non-target species.

The status quo alternative would not amend CDQ fisheries management regulation to: remove prohibitions associated with after-the-fact CDQ transfers; make changes as to when NMFS would assess whether a CDQ group had exceeded a given quota; allow CDQ groups to form cooperatives and pool their individual allocations; make changes to the list of CDQ reserves allocated among CDQ groups; or, make changes to how the Council could proscribe which CDQ reserves to allocate among CDQ groups. Maintaining the status quo would continue to subject CDQ groups to existing catch accounting standards and prohibitions.

Alternative 2 would modify CDQ regulations associated with quota transfers, while Alternative 3 would modify quota transfer regulations and provide provisions allowing CDQ groups to form fisheries cooperatives, respectively. These alternatives have no direct relationship to actual harvesting activities, but address quota transfer timing and providing the means by which CDQ groups may formally collaborate on their harvesting efforts. Each of these alternatives is intended to provide CDQ groups with increased in-season fisheries management and catch accounting flexibility, which in turn could allow CDQ groups the opportunity to more fully prosecute their target species allocations.

Prohibitions against exceeding either group level or cooperative level CDQ allocations would be maintained for all CDQ species. This would maintain the status quo of annually allocating the CDQ Program fixed amount of BSAI target species and containing CDQ catch to those amounts. NMFS does not anticipate that these alternatives would have any additional adverse effect on BSAI target species because these alternatives primarily consider modifying or augmenting administrative elements associated with the CDQ Program.

Under Alternative 4, which also includes the CDQ transfer component included under Alternative 2, the Council would be able to proscribe which CDQ reserves to allocate among CDQ groups, thereby differentiating between target and non-target species. Allocations made to CDQ groups would be managed with current CDQ accounting standards, in conjunction with allowing amending quota transfer provisions and CDQ cooperatives. CDQ group allocations would be managed as hard caps, while those CDQ reserves not allocated among CDQ groups would be managed by NMFS with soft caps. Soft cap management means that NMFS would apply general fisheries management measures to non-allocated CDQ reserves, including ensuring that the combined catch of a particular species category by both CDQ and non-CDQ fisheries did not exceed the annual TAC or ABC for that species.

As with Alternatives 2 and 3, NMFS does not anticipate that Alternative 4 would have an adverse effect on BSAI target species. The CDQ fisheries would be subject to either existing CDQ management measures or the more general management measures used to control the catch of groundfish in the non-CDQ fisheries. The alternatives considered for this action are not expected to have a significant effect on BSAI groundfish target species, as described by current TAC categories. The catch of CDQ target species would be constrained to that amount annually apportioned to the CDQ Program. NMFS management of species comprising non-allocated CDQ reserves could result in the catch by the CDQ fisheries exceeding annual CDQ Program apportionments, but such catch would still be constrained by both NMFS in-season fishery management measures as well as overall BSAI fishery management practices that limit annual catch amounts to specified TAC and ABC limits.

#### **4.1.2 Effects on Prohibited Species**

FMP prohibited species include both finfish and invertebrates. Finfish species include Pacific salmon (Chinook, coho, sockeye, chum, and pink), steelhead trout, Pacific halibut, and Pacific herring (herring is not allocated to the CDQ Program). Invertebrate species include king, Tanner, and snow crab. If Alternative 2, Alternative 3, or Alternative 4 were selected, the catch of some CDQ target species could increase. This also could result in a proportional increase in the catch of prohibited species. However, none of the alternatives modify the management of prohibited species in the BSAI or increases the amount of prohibited species allocated to the CDQ Program. CDQ fishery participants would continue to be subject to existing prohibited species catch restrictions and prohibitions, as well as fishing area closures. While Alternatives 2, 3, and 4 all incorporate components that could allow CDQ groups to transfer halibut PSQ among



themselves to account for a group exceeding its halibut PSQ, none of the alternatives propose allowing CDQ groups to exceed their annual halibut PSQ allocations, nor for NMFS to undertake the management of halibut PSQ as is proposed for non-allocated CDQ reserves under Alternative 4. Therefore, NMFS does not anticipate that this action would result in any adverse effects on BSAI prohibited species.

#### **4.1.3 Effects on Forage Fish**

Forage fish include those species which are a critical food source for many marine mammal, fish, and seabird species. NMFS does not believe that the alternatives considered under this action would have an adverse effect on forage fish, as it does not expect that the catch of forage fish species will increase should Alternative 2, 3, or 4 be selected and implemented. The catch of non-CDQ and CDQ groundfish would still be constrained by existing management measures applicable to annual TAC and ABC limits, which should limit the catch and impacts on forage fish.

#### **4.1.4 Benthic Habitat and Essential Fish Habitat (EFH)**

The alternatives considered under this action are not expected to change the gear types, general locations, or operational practices of the fisheries in which groundfish CDQ is caught. Therefore, none of the alternatives considered in this action are expected to adversely affect marine benthic habitat or EFH in any manner or to an extent not already addressed in previous NEPA analyses, including the EFH Final EIS.

#### **4.1.5 Ecosystem Considerations**

Alternatives 2, 3, and 4 primarily address regulatory amendments that could modify CDQ transfer prohibitions, provide ability for CDQ groups to form CDQ cooperatives, and allow the Council to select which CDQ reserves to allocate among CDQ groups, as well as how non-allocated CDQ reserves would be managed. These changes primarily are administrative in nature, and are designed to allow CDQ program participants to fully harvest their allocations. These alternatives are unlikely to produce population-level impacts for marine species, or changes to community-level or ecosystem-level attributes beyond the range of natural variability for the system. Thus, these alternatives are not expected to result in adverse impacts at an ecosystem level.

#### **4.1.6 Marine Mammals**

The alternatives considered under this action would change CDQ fisheries management regulations. This, in turn, could allow CDQ groups the increased ability to harvest their CDQ allocations or avoid the administrative expenses associated with enforcement actions stemming from quota overages. NMFS does not expect that the overall harvest of CDQ or non-CDQ groundfish species would increase beyond levels already considered under previous NEPA analyses, or that the number of marine mammal interactions would increase. Therefore, no adverse impacts on marine mammals are expected.

#### **4.1.7 Endangered or Threatened Species**

The alternatives considered in this action are intended to increase harvesting opportunities for participants in the CDQ Program by modifying catch accounting standards, as described in previous sections. Those species listed as threatened and endangered are fully described in the previously mentioned NEPA analyses. The western population of Steller sea lions (SSL) is listed as endangered under the ESA, and NMFS has implemented comprehensive SSL protection measures to mitigate the adverse effects of commercial fishing activities on this species.<sup>7</sup> None of this action's alternatives are expected to modify CDQ fishing practices, seasons, or where groundfish CDQ fishing occurs. Groundfish CDQ fisheries would still be subject to all applicable SSL protection measures, which disperse fishing effort over time and area. Thus, the effects of Alternatives 2, 3, or 4 on threatened or endangered species are expected to be insignificant.

#### **4.1.8 Effects on Seabirds**

Groundfish fishery interactions with seabirds are discussed in Section 4 of the PSEIS (NMFS 2004). The groundfish CDQ fisheries would continue to be subject to seabird avoidance measures specified in NMFS regulations under any of the alternatives proposed by this action. It is unlikely that selection and implementation of any these alternatives would have a discernible effect on seabird populations, thus, NMFS expects that this action's impact on seabirds would not be significant.

### **4.2 Socioeconomic Effects**

The expected economic effects are discussed at length in Section 5.7 of the RIR. The expected effects of the considered alternatives are summarized below.

#### **4.2.1 Effects of Alternative 1**

Alternative 1 would result in no change to the socioeconomic environment. CDQ groups have exclusive harvesting privilege for a portion of the BSAI groundfish species. CDQ fishery management regulations provide a structured means for CDQ groups to harvest their CDQ allocations, but also attempt to limit groups from catching more quota than they are annually allocated. The regulations may, to some extent, limit CDQ groups' operational flexibility or desired fishing activities. However, CDQ groups have, historically, harvested the majority of many of their CDQ target species, particularly the most valuable target species. If the status quo were maintained, CDQ groups believe they periodically could either experience some degree of diminished revenues due to potential difficulties in completely prosecuting each of their target fisheries or face penalties for quota overages.

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<sup>7</sup> See 68 FR 204; January 2, 2003.

#### **4.2.2 Effects of Alternatives 2, 3, 4, and Option 1**

Alternatives 2, 3, and 4 contain a range of components that would amend CDQ fishery management regulations to either relax current prohibitions or introduce new management elements that could allow CDQ groups to have more operational flexibility, which in turn could positively affect their ability to catch their CDQ target species. It is difficult to identify why the CDQ groups have not, historically caught all of their CDQ target species or the revenues they have foregone with available information. The RIR presents a largely qualitative assessment of the affects of Alternatives 2, 3, 4 and Option 1, with the conclusion that the adoption of any of these alternatives could have some positive net benefit to CDQ groups.

#### **4.3 Cumulative Effects**

NEPA requires that EAs analyze the potential cumulative effects of a proposed action and its alternatives. An EA must consider cumulative effects when determining whether an action significantly affects environmental quality. Cumulative effects are those combined effects on the quality of the human environment that result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. (40 CFR 1508.7, 1508.25(a), and 1508.25(c)) Cumulative impacts can result from individually minor but collectively significant action taking place over time. The concept behind cumulative effects analysis is to capture the total effects of many actions over time that would be missed by evaluating each action individually.

The potential direct and indirect effects of the BSAI groundfish fisheries on target species are detailed in the Final PSEIS (NMFS 2004, Chapter 4). Groundfish CDQ fisheries are a subset of these fisheries. Direct effects include fishing mortality, changes in biomass, and spatial and temporal concentration of catch that may lead to a change in the population structure. Indirect effects include the changes in prey availability and changes in habitat suitability. Indirect effects are not anticipated to occur with any of the alternatives analyzed because the proposed action would not change overall fishing practices that indirectly affect prey availability and habitat suitability. Significance criteria are explained in Appendix A of the PSEIS. To the extent practicable, this analysis incorporates the cumulative effects analysis of the PSEIS, including the effects of past actions and the effects of reasonable foreseeable future actions.

Beyond the cumulative impacts analysis documented in the Final PSEIS, no additional past present, or reasonably foreseeable cumulative negative impacts on the natural and physical environment have been identified that would accrue for the proposed action. Cumulatively significant negative impacts on these resources are not anticipated with the proposed action because no negative direct or indirect effects on BSAI resources have been identified. There may be some effects on the groundfish CDQ fishery participants and groundfish stocks as a result of the proposed action in combination with other actions. These effects are described below.

### *Past and Present Actions*

The groundfish PSEIS noted that the availability and consistency of data limits the ability to analyze the effects of past actions on the economic conditions of the Alaska groundfish fishery. The groundfish CDQ sector is an integral part of that larger fishery. Many factors, such as changes in biological conditions, markets, and fishery management regulations can result in changes in the operating costs and revenues of fishery participants, including those in the CDQ fishery. Isolating the effects of single factor is difficult to achieve, but it may be possible to make broad assumptions about the effect of particular actions on certain fisheries or fishery sectors.

The formation, incremental modification, and perpetuation of the CDQ Program by the Council has resulted in CDQ communities benefiting from the BSAI groundfish fisheries by being given dedicated, preferential access to annual allocations of BSAI groundfish species. The CDQ Program has grown from receiving pollock allocations, to receiving fixed gear sablefish and halibut allocations, and finally, being allocated crab and other groundfish species. Each additional allocation has added to CDQ communities' annual revenues and commensurate economic benefits. However, such benefits have been accompanied by relatively stringent administrative oversight of CDQ groups, as well as strict catch reporting and monitoring requirements. These restrictions have meant CDQ fisheries have incurred additional costs not borne by non-CDQ fisheries.

### *Actions since the PSEIS baseline*

A number of final rules have been implemented by NMFS since the January 2002 baseline for the analysis in the Final PSEIS. Each action was analyzed under NEPA for its impacts on the human environment. Copies of all final rules and associated analyses are available on the NMFS Alaska Regional website. Major rules associated with the BSAI groundfish fisheries are listed below. With the exception of the rule modifying the management of the "other species" CDQ reserve, none of these rules had significant effects on the groundfish CDQ fisheries or other management aspects of the BSAI groundfish fisheries beyond the scope of what was considered in the PSEIS.

Table 4.1. Select Regulatory and FMP Amendments completed since the PSEIS

Action	Federal Register Citation	Effective Date
CDQ 'other species' management	68 FR 69974, December 16, 2003	January 15, 2004
Seabird Longline Avoidance Measures	69 FR 1930, January 13, 2004	February 12, 2004
Amendment 81, ecosystem management policy	Record of Decision August 26, 2004	August 26, 2004
List of Fisheries for Marine Mammal Protection	69 FR 48407, August 10, 2004	September 9, 2004
Amendment 48 to BSAI harvest specifications process	69 FR 64683, November 8, 2004	December 8, 2004

### *Future Actions*

#### BSAI FMP Amendment 80

The Council currently is considering an action (Amendment 80 to the BSAI FMP) that would create sector allocations of five different target species for the non-AFA

catcher/processor sector and also would allow this sector to form cooperatives. This particular action includes components that could increase CDQ percentage allocations for Atka mackerel, flathead sole, Pacific Ocean perch, rock sole, yellowfin sole, and prohibited species. Additionally, the action includes elements that would increase the CDQ percentage allocations for prohibited species and non-target species.

If the CDQ percentage allocations for primary target and non-target species were increased as a result of the Council's action on Amendment 80, some of the catch accounting issues that this CDQ reserve management action attempts to address could be affected. Any increases to CDQ allocation percentage amounts for either target or non-target species could result in more quota being available to the groundfish CDQ fishery as a whole. CDQ groups could prioritize the use of such increased allocations to ensure that their most valuable target species were completely harvested. Because the preferred CDQ-related elements contained in Amendment 80 have not been identified, nor their effects fully evaluated, the impacts of Amendment 80 on the groundfish CDQ fisheries, and thus the human environment, are uncertain.

#### BSAI Pacific cod allocations

The Council is considering, via Amendment 85 to the groundfish FMP, revising the current allocations of BSAI Pacific cod among trawl, jig, and fixed gear sectors that were implemented in 1997. The basis for determining sector allocations will be catch history, as well as considerations of various socioeconomic factors. The Pacific cod action contains an option that could increase the CDQ percentage allocation of this species. This could have a bearing on future benefits accruing to the CDQ Program. However, since the Pacific cod action is still under initial development, its impacts on the CDQ Program are unknown.

#### BSAI Salmon Bycatch

An action (Amendment 84 to the BSAI FMP) to modify the existing bycatch reduction measures for Chinook and chum salmon in the BSAI is under development. In October 2005, the Council recommended suspending the regulatory salmon savings area closures and allowing pollock cooperatives and CDQ groups to utilize their voluntary hot spot closure system to avoid salmon bycatch. This is intended to allow the industry to respond quickly to real-time incidences of high salmon bycatch in certain areas and shift fishing operations away from such areas, which may not correspond to the salmon savings areas specified in regulation. This action provides a more dynamic means to address concerns about salmon bycatch, without changing annual salmon bycatch limits. This action will not be implemented until 2007, so its effect on the pollock CDQ fishery is unknown.

### **4.4 Environmental Assessment Conclusions**

A primary purpose of an EA is to provide the evidence and analysis necessary to decide whether an agency must prepare an EIS. A Finding of No Significant Impact is the decision maker's determination that the proposed action will not result in significant impacts to the human environment and, therefore, further analysis in an EIS is not necessary.

NEPA significance is determined by considering both the context in which the action will occur and the intensity of the action. The context in which the action will occur includes the specific resources, ecosystem, and the human environment affected. The intensity of the action includes the type of impact (beneficial versus adverse), duration of impact, and other factors (see 40 CFR 1508.27(b)). This regulation contains a listing of considerations to use to determine intensity, as does NOAA Administrative Order 216-6.

**Context:** The setting of the proposed action is the groundfish fisheries of the BSAI. Any effects of this action are directly limited to these areas. The effects on society within these areas are on individuals directly and indirectly participating in the groundfish fisheries and on those who use BSAI ocean resources. The proposed action would primarily make administrative changes associated with CDQ catch accounting practices and CDQ reserve allocations. This action would have no significant impacts on society as a whole or regionally.

**Intensity:** A listing of considerations to determine the intensity of the impacts are in 40 CFR 1508.27(b) and in NOAA Administrative Order 216-6. Each consideration is addressed below in order as it appears in regulations.

1. **Adverse or beneficial impact determinations for marine resources, including sustainability of target and non-target species, damage to ocean or coastal habitat or EFH, effects on biodiversity and ecosystems, and marine mammals.** Impacts are limited to the participants in the CDQ fisheries in the BSAI. The alternatives considered under this action primarily are administrative, and could modify existing CDQ catch accounting and allocative regulations by varying degrees. CDQ Program participants could realize some beneficial impact, should any of the action alternatives (Alternatives 2-4) be selected, by being able to fully utilize target species allocations or avoid the administrative costs of some quota overages.
2. No **public health and safety impacts** were identified in any of the proposed alternatives.
3. This action takes place in the geographic area of the Bering Sea and Aleutian Islands. Although this area contains **cultural resources and ecologically critical areas**, no effects on the unique characteristics of these areas are anticipated to occur with this proposed action since fishing practices and locations are not effected.
4. The **effects of this action on the human environment are not controversial** in the sense that none of the alternatives would adversely affect the biology of the groundfish or halibut stocks, or the TACs established for these species. Historically, the social and economic aspects of the CDQ Program have been subject to a limited degree of criticism because it gives a closed class of communities preferred access to valuable fishery resources. However, in the context of this action, the CDQ groups support the proposed action since it could yield such groups beneficial impacts.

5. There are no know **risks to the human environment** associated with modifying CDQ fisheries and reserve management practices as considered by this action. Because the alternatives under consideration are essentially modifications to current administrative practices, and could only minimally change CDQ fishing practices, NMFS anticipates that there will be no risk to the human environment by taking this action.
6. **Future actions** related to this proposed action may result in impacts to the CDQ fisheries management regime and are addressed in the preceding section of this EA. Pursuant to NEPA, appropriate environmental analyses will be prepared to inform the public and decision makers of potential impacts of future impacts on the human environment.
7. The proposed action is not expected to have any **significant individual or cumulative effect** on the natural environment or socioeconomic conditions. The cumulative effects of this action, in combination with past actions, and reasonably foreseeable actions are insignificant. Alternatives 2 and 3 would primarily institute administrative changes to CDQ allocation and catch accounting regulations. Alternative 3 would provide the means to manage some portion CDQ fisheries catch with the fishery management measures already used for the remainder of the BSAI fisheries.
8. This action will have no effect on **districts, sites, highways, structures, or objects listed or eligible for listing in the National Register of Historic Places**, or cause loss or destruction of significant scientific, cultural, or historical resources. This consideration is not applicable to this action.
9. NEPA requires NMFS to determine the degree to which an action may affect **threatened or endangered species under the ESA**. There are no known interactions between the implementation of the alternatives under consideration and any ESA-listed species in addition to those identified in previous analyses.
10. This action poses **no know violation of Federal, State, or local laws or requirements for protection of the environment**. Alternatives under this action would be conducted in a manner consistent, to the maximum extent practicable, with the enforceable provisions of the Alaska Coastal Management Program within the meaning of section 30(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.
11. **No introduction or spread of non-indigenous species** is expected as a result of this action. This consideration is not applicable to this action.

## **5.0 Regulatory Impact Review**

### **5.1 Introduction**

This Regulatory Impact Review (RIR) examines the benefits and costs of alternatives to modify the fisheries management regulations associated with the groundfish Community Development Quota (CDQ) Program. It is intended to address some of the fisheries management issues that have arisen during the tenure of the program, which was implemented in 1998.

### **5.2 What is a Regulatory Impact Review?**

This RIR addresses the requirements of Presidential Executive Order (E.O.) 12866 (58 FR 51735; October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

### **5.3 Statutory Authority**

The National Marine Fisheries Service (NMFS) manages the groundfish CDQ fisheries of the Bering Sea and Aleutian Islands management area (BSAI) in the Exclusive Economic Zone (EEZ) under the Fishery Management Plan (FMP) for that area. The



North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMP are at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

#### **5.4 Purpose and Need**

This proposed action contains a range of alternatives that could increase the operational flexibility of CDQ groups, thereby increasing the likelihood that CDQ groups will be able to fully harvest their annual allocations of CDQ target species and obtain the most value for such allocations. This could be done by modifying the existing inter-group quota transfer provisions and prohibitions, by allowing CDQ groups to pool their CDQ allocations, by only allocating target species among CDQ groups, or by some combination of these three components.

The current groundfish and halibut prohibited species allocations were not designed to provide the CDQ groups with an amount of non-target or halibut prohibited species catch allocations needed to fully harvest target species allocations. Some revisions can be made to NMFS regulations governing quota transfers, quota pooling, or the designation of which CDQ allocations to further allocate among the CDQ groups. These revisions could provide more flexibility for the CDQ groups to fully harvest their target species and reduce the potential for quota overages and the resulting enforcement actions, while still providing NMFS with the tools necessary to manage the CDQ catch limits established for the BSAI fisheries as a whole. Such revisions would accomplish the goals of the Council to provide CDQ allocations to benefit the CDQ communities without negatively impacting NMFS's ability to manage other BSAI fisheries or the non-CDQ fishing sectors. In addition, management measures that would reduce the number of quota overages that must be investigated by NMFS Enforcement and prosecuted by NOAA General Counsel would allow these agency resources to be devoted to other enforcement issues.

The regulatory revisions proposed by this action are meant to incorporate actual operational and management experience into CDQ fishery management regulations. This could, in turn, increase the opportunity for CDQ groups to successfully harvest revenue generating target species or to not be subject to as many quota overages and their associated administrative costs. These changes would support the overall goals and purposes of the CDQ Program. This proposed action also includes an option that could better integrate the annual BSAI groundfish specifications process with the multi-year CDQ allocation and management regime, thereby enhancing the Council and NMFS's ability to effectively manage the CDQ Program.

#### **5.5 Description of Alternatives and Associated Components**

This section describes each of the alternatives developed for this action. The alternatives considered each incorporate, in step-wise fashion, a range of components that were

developed to address various CDQ fisheries management issues that have been identified by NMFS, CDQ groups, and the Council. The components include: (1) amending inter-group CDQ transfer restrictions; (2) allowing CDQ groups to pool and manage their annual CDQ allocations collectively; and, (3) identifying which species categories are allocated to CDQ groups and managing such allocations with hard caps, while non-allocated CDQ reserves would be managed with soft caps. A complete description of the current CDQ fisheries management regime is discussed in Section 2.0, as is each separate component.

The following alternatives present a range of choices that encompass the status quo (a very restrictive fisheries management structure), and then progress towards an increasingly flexible, less restrictive CDQ fisheries management structure. The Council selected Alternative 4 as its preliminary preferred alternative in October 2005.

**Alternative 1.** Status Quo. Do not amend CDQ fishery management regulations. CDQ and PSQ transfers between CDQ groups would not be allowed to account for in-season quota overages, CDQ groups would not be allowed to form cooperatives and pool their CDQ allocations, each BSAI TAC category allocated to the CDQ Program would be allocated among CDQ groups (except for "other species"), all CDQ group allocations would be managed as hard caps, and changes to those TAC categories allocated to CDQ groups would continue to be made through the rulemaking.

**Alternative 2.** Amend regulations to remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or halibut PSQ allocations.

**Alternative 3:** Amend regulations to (1) remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or halibut PSQ allocations and (2) allow CDQ groups to form harvesting cooperatives and pool their groundfish CDQ allocations for purposes of quota management and monitoring.

**Alternative 4:** (Preliminary preferred alternative) Amend regulations to (1) remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ or halibut PSQ allocations, and (2) only allocate target species CDQ reserves among CDQ groups. Target species CDQ allocations would be managed as hard caps and unallocated CDQ reserves would be managed as soft caps.

**Option 1:** Amend regulations to allow the Council to make future modifications to the suite of TAC categories allocated among CDQ groups

during the annual groundfish harvest specifications process, rather than through rulemaking.

### ***Summary of Components***

The management components that are integrated into Alternatives 2, 3, and 4 are summarized below.

#### **Component 1. CDQ Transfers**

This component addresses the timing of CDQ and PSQ transfers and whether to maintain the existing prohibition that does not allow CDQ groups to receive quota transfers after exceeding a given allocation. CDQ groups currently may transfer quota amounts among themselves at any time during the year, subject to quota availability and CDQ groups' willingness to make such transfers. CDQ groups are prohibited from exceeding their allocations of groundfish CDQ or halibut PSQ. NMFS monitors the catch of groundfish CDQ as it occurs throughout the fishing year and documents CDQ overages as soon as they are detected. CDQ groups also self-report such overages to NMFS when they occur.

This component would continue to allow CDQ groups to transfer annual amounts of groundfish CDQ and PSQ among themselves at any time during the year, but would remove from regulations the prohibition against allowing inter-group transfers to account for a CDQ group's overage of any particular groundfish CDQ allocation or halibut PSQ allocation. This could allow CDQ groups to, if they incurred a quota overage, receive inter-group quota transfers during the course of the fishing year. This would allow groups to continue fishing for valuable target species, rather than having to stand down from certain fisheries for which they no longer had either target or non-target quota available.

#### **Component 2. CDQ Harvesting Cooperatives and Quota Pooling**

This component would amend the current CDQ fisheries management structure to allow CDQ groups to form harvesting cooperatives and pool their CDQ allocations. The Council requested that NMFS examine allowing such cooperatives at the Council's June 2004 meeting. Such cooperatives would be responsible for managing the harvest of the CDQ allocations belonging to those groups represented by a given cooperative. Cooperatives would be formal organizations comprised of two or more CDQ groups, and established via contract and/or other written agreements. Current CDQ catch accounting and reporting requirements would be applicable to CDQ harvesting cooperatives.

The premise for allowing CDQ harvesting cooperatives is that it would allow CDQ groups to aggregate their individual quotas, particularly those non-target species allocations that are relatively small. This could allow a CDQ harvesting cooperative to have greater harvesting flexibility than individual CDQ groups. A cooperative, with its larger, aggregated CDQ allocations, may be less constrained by the likelihood of incurring overages. Some annual CDQ allocations, particularly for various rockfish

species categories, can be very small. Having a larger initial allocation of some species could allow a CDQ cooperative to commence and sustain fishing activities to a greater degree than an individual CDQ group with smaller allocations, particularly if all CDQ reserves were allocated among CDQ groups and groups were prohibited from exceeding each individual allocation.

### **Component 3. Allocation of Target and Non-target Species to CDQ Groups**

This component would allow the Council to select which species or species groups would be allocated among CDQ groups. The annual CDQ and PSQ reserves for selected species would be allocated among CDQ groups, and each group's allocations would be managed with hard caps. CDQ groups would continue to be prohibited from exceeding their annual groundfish CDQ allocations. As described in Section 2.2, all groundfish CDQ species and halibut PSQ are managed with hard caps, meaning that a CDQ group is prohibited from exceeding its allocation of a given species. If a CDQ group exceeds the amount available for a particular allocation, the CDQ group has an overage and faces possible enforcement action. Additionally, since a group is unable to receive additional amounts of overage species by transfer, it may not be able to continue participating in those fisheries in which additional amounts of the overage species may be caught.

NMFS believes the most likely way that the Council could choose which CDQ reserves to allocate among CQQ groups would be to segregate CDQ reserves by target and non-target species. Those CDQ reserves not selected by the Council to allocate among individual groups could be managed as "soft caps," based on the following restrictions. The concept of soft caps described below is what NMFS also refers to as "management at the CDQ reserve level."

- CDQ groups would be prohibited from directed fishing for species or species groups that are not allocated among the groups.
- For those species or species groups managed at the reserve level, CDQ groups could retain up to the maximum retainable amounts allowed by regulations, if the amount allocated to the CDQ Program was sufficient to allow retention. Otherwise, retention of such species or species group by any vessel fishing for a CDQ group would be prohibited at the beginning of each year to minimize the deliberate catch of such species.
- If retention were allowed, and the catch of a given non-allocated species or species group reached the amount available in the associated CDQ reserve, then NMFS in-season managers would evaluate the status of the overall TAC for that particular species or species group. Continued retention of these species in the CDQ fisheries could be allowed if there was sufficient TAC available to account for the anticipated total catch in the CDQ and non-CDQ fisheries combined for the remainder of the year, based on NMFS's assessment of historical and projected catch rates. This option could limit discards in species categories that would have enough remaining TAC to support retention in both CDQ and non-CDQ fisheries.
- Catch by all CDQ groups would accrue against the CDQ reserve until it was reached and then catch would accrue against the overall TAC for the species. No individual

CDQ group would face enforcement action if catch by all CDQ groups combined exceeded the CDQ reserve amount allocated to the program. The total catch of a species or species group not allocated among CDQ groups could be managed under existing BSAI fishery management measures. If the total catch of a species or species group by all sectors (CDQ and non-CDQ) approaches the overfishing limit, NMFS must limit some directed fisheries in order to prevent overfishing. Which fisheries to close is a decision made by the Regional Administrator under in-season management authority at § 679.20.

### **Option 1. Amend BSAI groundfish harvest specification regulations**

#### *Status quo*

Changing the list of CDQ reserves to annually allocate among CDQ groups currently requires a regulatory amendment. If, under Component 3, the Council selected certain CDQ reserves that would be designated as target species and be allocated among the CDQ groups and identified CDQ reserves that would be designated as either target species or non-target species, then these designations would be implemented through a regulatory amendment. Any future changes to the list of CDQ reserves that annually would be allocated among CDQ groups would require additional regulatory amendments. Such amendments can take a year or more to develop and implement, thus delaying the implementation of such changes, even though such changes could be driven by changes stemming from the annual groundfish specifications process.

#### *Option 1*

The Council could recommend that future modifications to the list of species or species groups allocated to CDQ groups be made annually, as part of the groundfish specifications process, thereby providing a more expeditious means to implement such changes. The harvest specifications process is described in detail in Section 3.2.5. This option would allow the Council to modify the list of CDQ reserves that are allocated and not allocated to CDQ groups on an annual basis, should it consider such changes appropriate. Otherwise, recommended changes to which of the annual CDQ reserves to not allocate to CDQ groups would have to be made through routine notice-and-comment rulemaking. This was the process used to implement the Council's recommendation to not allocate the "other species" reserve to CDQ groups. Regulations at § 679.31(f) now identify the CDQ reserves that will not be allocated among CDQ groups. "Other species" is the only species category so listed.

Under Option 1, the Council could more readily make changes to which CDQ reserves to allocate to CDQ groups, or not, based on its consideration of management changes in TAC categories, changes to the BSAI groundfish fisheries in general, or the target fisheries in which the CDQ groups wish to engage. This option also could address species categorization issues that have arisen in past years. Changes associated with splitting or joining TAC categories by species or area may yield new CDQ reserves for which there are no applicable CDQ percentage allocations. Absent applicable percentage

allocations to divide new CDQ reserve categories among CDQ groups, the Council could recommend that such reserves not be allocated to CDQ groups. This option has the potential to add additional complexity to the annual harvest specifications process.

*NMFS believes that Option 1 should not be carried forward*

In October 2005, the Council included Option 1 as part of its preliminary preferred alternative (Alternative 4). **NMFS believes this option should not be included as a part of the Council's preferred alternative for this action, as explained below.**

NMFS originally included this option in this analysis in light of its past experience with addressing how to manage CDQ reserves that the Council recommends not allocating to CDQ groups, such as occurred with "other species" in 2003, as well as changes to species categorization (which occurred with some rockfish species in 2001 and 2002).

NMFS believes that this option should not be carried forward for several reasons. One reason is the risk that this option could pose to an exemption, under E.O 12866, from the requirement requiring NMFS to prepare an RIR for the BSAI harvest specifications. The addition of measures that are not related to the setting of the specifications may result in the loss of this exemption, which would greatly add to the analytical requirements of the specifications process. Secondly, incorporating this option in the specification process also could be difficult from a timing perspective, as the specifications are based on a lengthy process, much of which precedes the Council's deliberations on the specifications. Finally, in October 2005, the State of Alaska's Blue Ribbon Panel (which was established to provide an evaluation of the CDQ Program to the Governor of Alaska) recommended significant changes to the CDQ allocation process. NMFS believes it needs additional time to assess the potential impacts of such changes on the CDQ Program to the degree that it may not be timely to proceed with Option 1. These reasons are discussed in more detail in Section 2.3.3.1.

## **5.6 CDQ Program Description and Background**

### **5.6.1 CDQ Program Background**

As described in Section 5.4, the purpose of the CDQ Program is to help western Alaska communities strengthen their local economies by investing in both commercial fisheries and other fisheries-related projects, and to provide residents with education, training, and job opportunities in the fishing industry. The original CDQ Program regulations went into effect on November 18, 1992 and have been amended numerous times since then. In 1996, the Magnuson-Stevens Act institutionalized the program as part of the BSAI Groundfish FMP.

The fishery resources allocated under the CDQ Program are under federal jurisdiction, but the program is jointly managed by NMFS and the State of Alaska (State). The State is primarily responsible for the day-to-day administration and oversight of the economic development aspects of the program and for recommending quota allocations for each

CDQ group. NMFS is primarily responsible for fisheries management aspects of the groundfish and halibut CDQ fisheries and broad program oversight. The specific criteria used to evaluate applications and make CDQ allocation recommendations are implemented in State regulations. The Alaska Regional Administrator, NMFS, acting on behalf of the U.S. Secretary of Commerce, and the Council review the State's recommendations and NMFS makes the final decision about allocations among the CDQ groups.

### **5.6.2 Communities and Groups**

The communities in the CDQ Program are predominantly Alaska Native villages. The communities are typically remote, isolated settlements with few natural assets with which to develop and sustain a viable diversified economic base. Basic community and social infrastructure is often underdeveloped or lacking, and transportation and energy costs are high. Historically, economic opportunities have been few, unemployment rates have been chronically high, and these communities (and the region) have been economically depressed.

While the CDQ communities border very productive fishing grounds, they were unable to exploit this proximity as the domestic BSAI groundfish fisheries developed between 1976 and 1990. However, the very high capital investment required to compete in these fisheries precluded small communities from participating in them. The CDQ Program serves to ameliorate some of these circumstances by extending an opportunity to qualifying communities to directly benefit from the productive harvest and use of these publicly owned resources.

The CDQ Program, through its allocation of valuable BSAI fishery resources, provides a means for western Alaska communities to directly benefit from the productive harvest and use of these publicly owned resources. Currently, 65 communities participate in the CDQ Program, based on eligibility criteria listed in both the Magnuson-Stevens Act and federal regulation. The eligible communities have formed six non-profit corporations (the CDQ groups) to manage and administer the CDQ allocations, investments, and economic development projects. Each CDQ group and its affiliated communities are listed in Appendix A.

### **5.6.3 Groundfish Harvest Specifications and Creation of CDQ Reserves**

Since 1992, the CDQ Program has expanded several times and now includes allocations of pollock, halibut, sablefish, crab, all of the remaining groundfish species (cod, Atka mackerel, flatfish, and rockfish), and prohibited species catch (i.e., as bycatch allowances for salmon, halibut, and crab). CDQ Program allocations vary by species. While originally set at 7.5 percent, Congress increased the pollock CDQ allocation to 10 percent in 1998 as part of the American Fisheries Act. The percentage of other catch limits allocated to the CDQ Program (as CDQ reserves) is determined by: the BSAI Crab Rationalization Program (10 percent of crab species, except for Norton Sound red king crab, which is 7.5 percent; the BSAI FMP for all other groundfish and prohibited species

(7.5 percent, except 20 percent for fixed gear sablefish); and, 50 CFR part 679 for halibut (20 percent to 100 percent, depending on management area).

Harvest specifications for the federal groundfish fisheries in the BSAI are set annually. These TAC specifications define upper catch limits for each subject calendar year. Recent scientific research and stock assessment information are included in annual Stock Assessment and Fishery Evaluation (SAFE) reports. The setting of harvest specifications includes a review of the most recent BSAI SAFE report by the Council and its advising committees, as well as recommendations from the public. The process involves considerations of biological, economic, and social factors associated with the BSAI groundfish fisheries. The total BSAI TAC is limited to an optimum yield (OY) ranging from 1.4 to 2 million metric tons, as described in the BSAI FMP (NPFMC 2005, Chapter 10), but the aggregate acceptable biological catch (ABC) of all species categories is usually much greater than the upper OY threshold. The Council makes harvest specifications recommendations for the forthcoming year, which NMFS then reviews and makes a determination about whether to submit to the Secretary of Commerce for approval and subsequent publication in the Federal Register. Harvest specifications are made for each managed species or species groups, which may be further apportioned by various combinations of management areas, management programs (such as the CDQ Program), processing components, seasons, vessel categories, and gear types.

Establishment of the annual groundfish CDQ reserves is an extension of the groundfish harvest specifications process. Once annual BSAI species categories and TAC amounts are established, an initial TAC amount of 85 percent of the aggregated BSAI TACs is calculated for all species, except pollock and fixed gear sablefish. The remaining 15 percent of annual TAC is equally split between the CDQ Program and a non-specified groundfish reserve. This is the basis for the annual 7.5 percent groundfish CDQ reserve, which is then apportioned back among the TAC categories in place for a given year, based on the proportion each TAC category contributes to the aggregate BSAI TAC limit. A parallel process is used to allocate 7.5 percent of each BSAI prohibited species catch limits to the CDQ Program as prohibited species quota (PSQ). Annual groundfish CDQ and PSQ reserves and allocations for 1998 to 2005 are available at the NMFS web site at <http://www.fakr.noaa.gov/cdq/default.htm>. Figure 5.1 illustrates the process involved in establishing the annual CDQ reserves. The process establishing PSQ reserves is similar.

#### **5.6.4 CDQ Harvest and Value**

The 2004 CDQ allocations included approximately 187,000 metric tons of groundfish, over 2 million pounds of halibut, and approximately 3 million pounds of crab. Table 5.1 portrays the amount of each groundfish CDQ reserve that was caught each year from 1999 to 2004. Note that species categories have changed over time, hence the variance in displayed CDQ species categories.



Figure 5.1 Establishment of CDQ reserves.

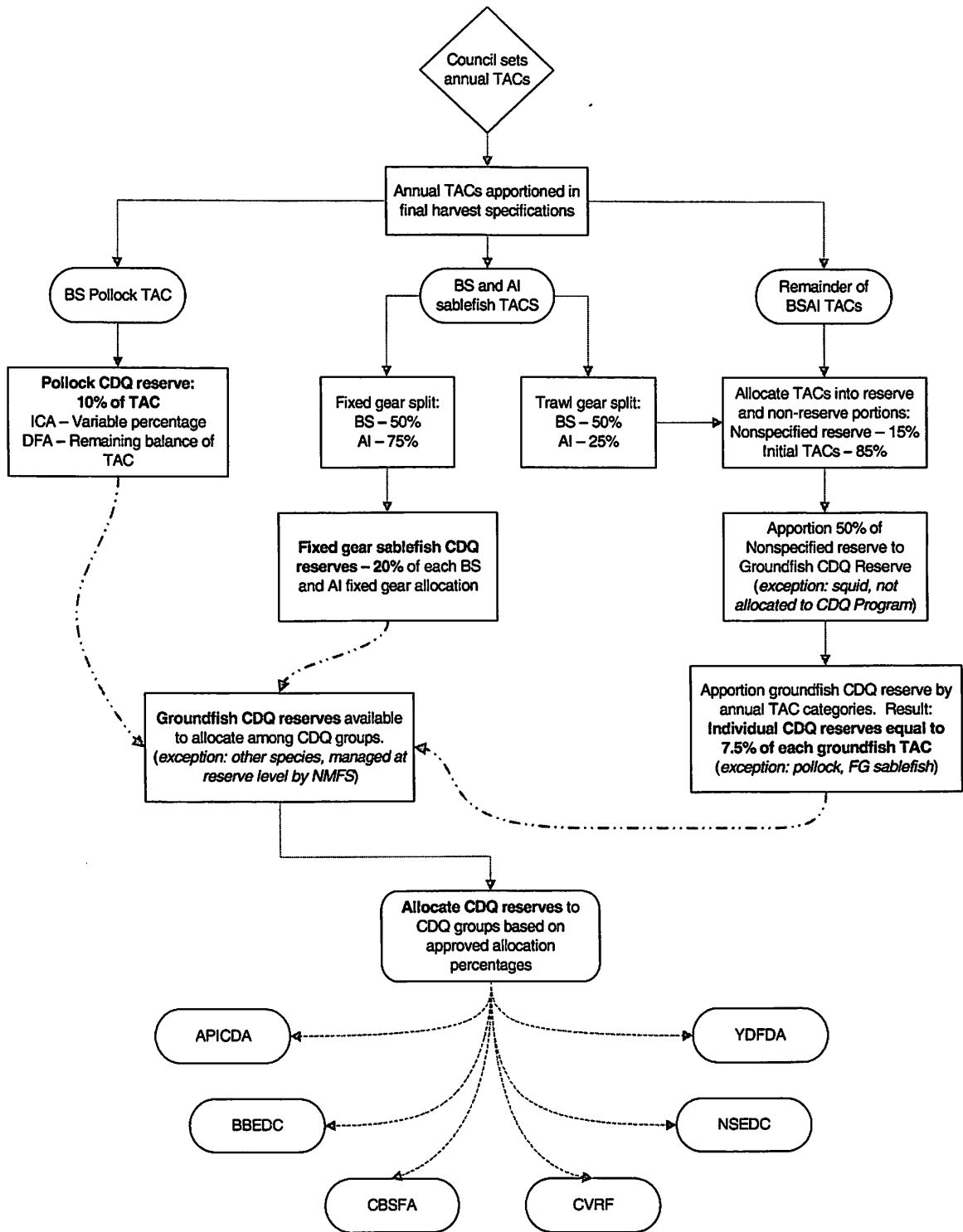


Table 5.1 Groundfish CDQ and PSQ catch, 1999-2004.

<b>CDQ species</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
BS Pollock	99,113	113,554	138,883	148,427	149,121	149,169
AI Pollock	16	0	0	0	0	0
Bogoslof Pollock	0	0	0	0	0	0
Pacific Cod	12,495	13,527	12,363	14,128	14,465	16,009
BS FG Sablefish	18	66	40	150	66	143
AI FG Sablefish	103	120	87	129	103	14
BS Sablefish	14	6	4	27	6	21
AI Sablefish	3	1	0	6	7	0
WAI Atka Mackerel	601	1,788	1,991	1,341	1,203	1,476
CAI Atka Mackerel	822	1,807	2,467	1,591	2,129	2,248
EAI/BS Atka Mackerel	1,166	1,192	519	320	696	771
Yellowfin Sole	1,968	219	182	1,972	5,564	6,321
Rock Sole	575	401	221	553	641	892
BS Greenland Turbot	196	244	26	53	48	31
AI Greenland Turbot	37	65	35	46	33	29
Arrowtooth Flounder	787	286	139	302	437	432
Flathead Sole	724	439	223	464	392	545
Other Flatfish	283	80	35	56	89	72
Alaska Plaice	n/a	n/a	n/a	137	184	302
BS Pacific Ocean Perch	35	1	8	9	15	2
WAI Pacific Ocean Perch	317	372	318	355	404	336
CAI Pacific Ocean Perch	129	216	152	155	185	170
EAI Pacific Ocean Perch	159	167	162	167	249	165
BS Other Red Rockfish	10	7	3	2	n/a	n/a
BS Northern	n/a	n/a	n/a	n/a	2	n/a
AI Sharpchin/Northern	247	346	328	n/a	n/a	n/a
AI Northern Rockfish	n/a	n/a	n/a	342	276	n/a
BS Shortraker/rougheye	n/a	n/a	n/a	n/a	8	n/a
Northern (BSAI)	n/a	n/a	n/a	n/a	n/a	403
Shortraker (BSAI)	n/a	n/a	n/a	n/a	n/a	29
Rougheye (BSAI)	n/a	n/a	n/a	n/a	n/a	3
AI Shortraker/Rougheye	28	35	17	14	25	n/a
BS Other Rockfish	6	6	2	2	4	4
AI Other Rockfish	27	36	18	32	10	17
Other Species	1,908	2,060	1,650	2,311	2,330	3,294
Squid	n/a	51	n/a	n/a	n/a	n/a
<b>PSQ species</b>						
Zone 1 Red King Crab	172	0	0	431	1,883	175
Zone 1 Bairdi Tanner Crab	2,998	17	690	4,074	9,119	1,679
Zone 2 Bairdi Tanner Crab	18,531	1,593	436	3,695	2,736	13,483
Opilio Tanner Crab	53,199	4,338	624	25,568	4,927	29,860
Pacific Halibut (mt)	217	103	86	149	175	153
Chinook Salmon	584	430	2,507	2,093	2,565	2,966
Non-Chinook Salmon	243	1	2,427	1,993	5,292	960

Source: NMFS CDQ catch data, 2005. All amounts in metric tons, with the exception of crab and salmon PSQ, which are in numbers of animals. Species are displayed in the same approximate order used for the annual groundfish harvest specifications.

CDQ harvesting operations encompass a cross-section of the various target and gear specific fisheries in the BSAI and are woven into the larger fabric of the BSAI groundfish fishery. CDQ fishing may occur concurrently with the prosecution of a particular non-CDQ target fishery, as happens in the BS pollock fishery. It may also take place prior to or after a non-CDQ season, as occurs with the Pacific cod fishery. CDQ fisheries are not restricted to the full suite of seasons, gear apportionments, area closures, or seasonal prohibited species catch allowances as are non-CDQ fisheries. Hence, access to CDQ offers harvesters and processors preferred access to groundfish resources, a means to expand operations, and a way to make more efficient use of capacity. Between 41 and 59 vessels participated in groundfish CDQ fisheries each year between 1999 and 2004, as portrayed in Table 5-2. Vessel types include: catcher vessels, catcher/processors, and one mothership. These vessels and processors are a subset of those entities already participating in BSAI groundfish fisheries.

Table 5-2. Vessel and processor participation in the groundfish CDQ fishery, 1999-2004.

Category	1999	2000	2001	2002	2003	2004
Processors	5	5	5	3	4	2
Vessels	56	59	47	47	41	41

Source: NMFS

CDQ groups have demonstrated the ability to successfully harvest many of their groundfish CDQ target allocations, most notably pollock, Pacific cod, and Atka mackerel. On average, over 99 percent of the BS pollock CDQ reserve has been caught, and approximately 94 percent of the Pacific cod CDQ reserve. Catch of the Atka mackerel CDQ reserves has averaged from 79 percent to 89 percent of annual apportionments, depending on management area. These statistics reflect aggregate catch by all CDQ groups combined.

For the most part, annual CDQ reserves have not been exceeded, except for “other species” and BSAI northern rockfish in 2004. Between 1999 and 2004, CDQ groups exceeded their individual allocations of both target and non-target species approximately 24 times. Since such overages have a bearing on groups’ fishing operations and also may result in monetary fines or other enforcement action. Table 5.3 displays the percent of each CDQ reserve caught between 1999 and 2004. CDQ reserves are segregated by target and non-target species.

Table 5.3 Percent of each CDQ reserve caught, 1999-2004.

Target species	1999	2000	2001	2002	2003	2004	Average
BS Pollock	99.1	99.7	99.2	100.0	100.0	100.0	99.6%
Pacific Cod	94.2	93.5	87.7	94.2	93.0	99.1	93.6%
EAI/BS Atka Mackerel	91.4	96.9	88.8	77.5	87.2	91.4	88.9%
CAI Atka Mackerel	48.9	97.6	97.9	89.1	96.7	96.4	87.8%
WAI Pacific Ocean Perch	68.1	87.5	89.4	83.5	92.1	86.5	84.5%
WAI Atka Mackerel	29.7	80.3	95.2	90.7	80.3	95.2	78.6%
EAI Pacific Ocean Perch	62.1	71.6	74.3	64.3	94.5	72.2	73.2%
CAI Pacific Ocean Perch	44.9	82.0	79.3	67.4	73.6	77.8	70.8%
Yellowfin Sole	12.6	2.4	2.2	30.6	88.6	97.9	39.0%
BS FG <sup>1</sup> Sablefish	13.2	44.8	25.6	77.6	22.8	49.4	38.9%
AI Greenland Turbot	16.9	28.4	16.6	23.5	33.1	48.5	27.8%
AI FG Sablefish	49.9	33.0	23.3	33.7	22.2	3.0	27.5%
BS Greenland Turbot	41.7	52.3	6.3	13.1	23.8	15.2	25.4%
Flathead Sole	12.5	11.1	7.4	24.8	26.2	38.3	20.0%
Rock Sole	6.4	4.0	3.9	13.7	19.4	29.0	12.7%
<b>Non-target species</b>							
BSAI Northern rockfish	n/a	n/a	n/a	n/a	n/a	107.5	107.5%
BSAI Other Species	91.1	69.3	65.3	80.2	96.2	161.5	93.9%
BS Shortraker/rougheye	n/a	n/a	n/a	n/a	81.1		81.1%
AI Sharpchin/Northern	78.0	89.9	64.9	n/a	n/a		77.6%
BSAI shortraker	n/a	n/a	n/a	n/a	n/a	73.6	73.6%
AI Northern Rockfish	n/a	n/a	n/a	67.6	62.6		65.1%
AI Other Rockfish	53.1	70.5	34.7	62.6	21.8	36.3	46.5%
BS Other Red Rockfish	47.9	50.9	29.7	19.0	n/a		36.9%
AI Shortraker/Rougheye	38.6	53.5	25.2	20.6	40.5		35.7%
BSAI Arrowtooth Flounder	9.1	3.4	16.9	49.2	48.5	48.0	29.2%
Alaska Plaice	n/a	n/a	n/a	15.2	24.6	40.2	26.6%
BS Northern	n/a	n/a	n/a	n/a	25.2		25.2%
BSAI rougheye	n/a	n/a	n/a	n/a	n/a	23.1	23.1%
BS Sablefish	26.8	11.1	6.3	38.0	5.7	19.1	17.9%
Other Flatfish	3.8	1.3	1.7	24.9	39.4	32.2	17.2%
BS Other Rockfish	23.5	24.0	7.0	7.4	5.5	10.7	13.0%
BS Pacific Ocean Perch	32.9	0.5	6.3	4.6	14.2	1.5	10.0%
AI Sablefish	11.4	1.4	0.5	11.8	11.4	0.3	6.1%
AI Pollock	7.8	0.0	0.0	0.0	0.0		1.6%
Bogoslof Pollock	0.0	0.0	0.0	0.0	0.0		0.0%
<b>PSQ (not ranked)</b>							
Zone 1 Red King Crab	1.2	0.0	0.0	5.9	25.9	1.2	5.7%
Zone 1 Bairdi Tanner Crab	5.3	0.0	1.3	5.5	12.4	2.3	4.5%
Zone 2 Bairdi Tanner Crab	13.2	0.8	0.3	1.7	1.2	6.1	3.9%
Opilio Tanner Crab	15.8	1.3	0.2	7.8	2.1	9.2	6.1%
Pacific Halibut	61.8	30.0	25.0	43.5	50.9	44.6	42.6%
Chinook Salmon	16.2	11.9	81.5	75.4	103.6	136.2	70.8%
Non-Chinook Salmon	7.7	0.0	77.0	63.2	168.0	30.5	57.7%

Source: NMFS CDQ catch data, 2005.

<sup>1</sup> FG means fixed gear.

Annual CDQ allocations and catch provides a revenue stream for CDQ groups through various channels, including the direct catch and sale of some species, leasing quota to various harvesting partners, and income from a variety of investments. The six CDQ groups had total revenues in 2004 of approximately \$134 million. Harvesting royalties, described below, accounted for \$56 million (42 percent) of these revenues, while income from investments and distributions accounted for remaining revenue. Since 1992, the CDQ groups have accumulated assets worth approximately \$350 million (as of 2004), including ownership of small local processing plants, catcher vessels, and catcher/processors that participate in the groundfish, crab, salmon, and halibut fisheries. (State of Alaska, DCEED 2005).

CDQ groups establish harvesting contracts, along with other business arrangements, with a variety of seafood harvesters and processors operating in the BSAI groundfish fisheries. Access to amounts of CDQ is given in exchange for a negotiated percentage of the ex-vessel value of a particular species. Most royalty agreements are specific to a particular target species, such as pollock or Atka mackerel. Pollock CDQ royalties historically have accounted for the largest proportion of annual CDQ royalties. The combined value of CDQ royalties in 2003, the most recent year that complete CDQ royalty information is available, was approximately \$53.4 million. Pollock CDQ royalties accounted for \$42.8 million of this amount, or 80 percent of total royalties (State of Alaska, DCEED 2005). Harvests of other groundfish, crab, and halibut CDQ yielded the remainder of CDQ royalties. Table 5.4 illustrates the proportions that major species groups contributed to overall CDQ royalties in 2001-2003.

Table 5.4 CDQ royalties by major species groups, 2001-2003.

Species	Total all groups 2001	Total all groups 2002	Total all groups 2003
Pollock	\$36,721,924	\$39,609,795	\$42,779,382
Pacific Cod	\$2,733,315	\$2,743,795	\$3,365,920
Crab	\$2,492,197	\$3,448,377	\$4,612,294
Halibut	\$202,822	\$214,872	\$1,922,821
Other species <sup>1</sup>	\$408,683	\$350,346	\$767,846
Total CDQ royalties	\$42,558,941	\$46,367,185	\$53,448,263

<sup>1</sup>Includes: Atka mackerel, flatfish, Greenland turbot, sablefish, and some other species categories.

Source: NMFS. Royalties compiled from aggregated CDQ royalty information from audited financial statements submitted by the CDQ groups.

### 5.6.5 Employment, Income, and Training

One of the most tangible direct benefits of the CDQ Program has been employment opportunities for western Alaska village residents. CDQ groups have had some successes in securing career track employment for many residents of qualifying communities, and have opened opportunities for non-CDQ Alaskan residents, as well. Jobs generated by the CDQ program included work aboard a wide range of fishing vessels, internships with the business partners or government agencies, employment at processing plants, and

administrative positions. Between 2000 and 2004, for example, CDQ related employment ranged from 1,720 to 2,080 individuals. Annual CDQ wages in those same years has ranged from \$11.8 million to \$12.5 million. CDQ groups continue to explore the means to provide both continuing and additional employment opportunities for local residents. CDQ training expenditures between 2000 and 2004 averaged \$1.9 million per year. These monies provided some form of training to approximately 1,300 persons per year. There are approximately 27,000 people in CDQ communities (State of Alaska, DCEED 2005).

### **5.6.6 CDQ Fisheries Management**

CDQ catch accounting regulations were developed by NMFS based on its interpretations of the Council's motion to expand CDQ Program allocations to all BSAI groundfish species. Individual CDQ groups are accountable for the quotas allocated to them. NMFS monitors CDQ catch throughout the course of a given year through both catch reports submitted by CDQ groups, delivery reports from processors, and observer data. All groundfish species and the halibut PSQ allocated to individual CDQ groups are managed with hard caps, meaning that a CDQ group is prohibited from exceeding its allocation of a given species. If a CDQ group catches more than it has available in a particular allocation, the CDQ group has what is termed an overage. NMFS documents the overage and notifies the NOAA Office for Law Enforcement (OLE), which investigates such incidents. The OLE then refers CDQ overage cases to NOAA General Counsel for prosecution or settlement.

The strict quota accountability requirements associated with the CDQ Program have given rise to issues associated with potential constraints on CDQ target fisheries due to the percentage allocations of target species and non-target species. There is no direct relationship between the amount of target species allocated to the CDQ Program and the corresponding amount of non-target species allocated to the program. Completely catching a given non-target species allocation could impact a CDQ group's ability to continue participating in some target fisheries, as additional catch of the species for which a group has no remaining quota may be impossible to avoid. This effectively requires CDQ groups to stop fishing for those target species for which it believes it has insufficient amounts of non-target species, or for which it is unable to obtain additional amounts of non-target species from another CDQ group by transfer. Additional information about the CDQ fisheries management regime is in Sections 1.2 and 2.2.

For the most part, NMFS does not issue in-season closures or otherwise proscribe what actions must be taken to prevent exceeding individual groups' CDQ and PSQ allocations. CDQ groups are expected to monitor and control their own fisheries, and thus the catch of their annual CDQ allocations. However, NMFS manages non-allocated CDQ reserves, such as "other species," at the program level based on the aggregate catch of that particular species category in the combined groundfish CDQ fisheries. NMFS will issue directed fishery closures specific to non-allocated CDQ reserves and take appropriate in-season management measures to limit the catch of such reserves, as necessary.

Management of the “other species” CDQ reserve is described in additional detail in the next section.

## 5.7 Expected Effects of the Alternatives

### 5.7.1 Effects of Alternative 1

The status quo alternative would not amend CDQ fisheries management regulation to: remove prohibitions associated with after-the-fact CDQ transfers; make changes as to when NMFS would assess whether a CDQ group had exceeded a given quota; allow CDQ groups to form cooperatives and pool their individual allocations; make changes to the list of CDQ reserves allocated among CDQ groups; or, make changes to how the Council could proscribe which CDQ reserves to allocate among CDQ groups. Maintaining the status quo would continue to subject CDQ groups to existing catch accounting standards and prohibitions. This could adversely affect the financial performance of CDQ groups if existing regulations had a significant bearing on whether a CDQ group was unable to catch all of its target species allocation in a given year, or if a group was assessed monetary penalties as a result of exceeding a particular allocation. However, CDQ groups have, in recent years, harvested the majority of many of their CDQ target species, particularly the most valuable target species.

### 5.7.2 Effects of Alternative 2

#### *Changes to Existing CDQ Transfer Regulations*

Both CDQ groups and the Council have requested that after-the-fact CDQ transfers be considered as a management option, most recently at the June 2004 Council meeting. **This alternative would amend regulations to allow CDQ groups to make “after-the-fact” transfers and to specify that NMFS will assess whether a CDQ group has exceeded any groundfish CDQ or halibut PSQ allocation at year’s end.** Allowing a CDQ group to receive quota by transfer after it had exceeded its available balance of a particular quota category could allow the group additional opportunities to continue fishing for its other, remaining annual CDQ allocations. This provision also could allow groups to negotiate quota transfers among themselves to avoid being subject to subsequent enforcement actions. CDQ groups would still be prohibited from exceeding any of their annual CDQ or halibut PSQ allocations (whether initial allocations or as adjusted by transfers). NMFS would not initiate any enforcement actions for CDQ overages until CDQ fishing has ceased for a given year.

These changes also could apply to CDQ groups’ salmon and crab PSQ allocations, but these quota categories are managed differently from the groundfish CDQ and halibut PSQ categories. Exceeding a given salmon or crab PSQ triggers time and area closures, but there isn’t an explicit regulatory prohibition against exceeding these particular PSQ categories. For example, if a CDQ group catches all of its annual Chinook salmon PSQ, it must cease directed fishing for pollock in the Chinook Salmon Savings Areas. However, the group may still continue fishing for pollock in other areas of the BSAI.

NMFS does not believe that the management of salmon and crab PSQ would need to be changed if Alternative 2 were to be selected.

CDQ transfers occur throughout the year in response to: changes in, or the non-availability of, CDQ groups' harvesting partners; non-CDQ fishery season lengths; a surplus or deficit of certain CDQ species; and, a variety of operational factors. For example, groups may have the opportunity to catch more of a particular target species than it was initially allocated or has available. A group will then negotiate with other CDQ groups to obtain additional amounts of a target species, such as Pacific cod, by transfer. CDQ groups also may believe that they did not receive adequate amounts of non-target species to support their fishing activities during a given year. They also may experience higher than anticipated catch rates for incidental species, thereby using their quotas for such species at a faster rate than expected, to the jeopardy of completely harvesting all or some of their remaining target species. CDQ groups may seek to obtain additional amounts of non-target species from other CDQ groups in order to have adequate amounts of such species available during the course of fishing for a particular target species.

Between 2001 and 2004, CDQ groups made approximately 102 quota transfers. Quota transfers are typically bundled, so that a single transfer request encompasses multiple species categories. Each transfer request usually includes one or more target species and an associated amount of non-target species in proportion to the amount of the target species being transferred.

Were Alternative 2 to be implemented, existing CDQ catch monitoring and reporting requirements would not change. CDQ groups would still be required to adhere to existing CDQ catch accounting requirements, so that both the CDQ groups and NMFS have the information necessary to monitor each CDQ groups' fishing activities during the course of the year. CDQ groups would be held accountable for any overage of a CDQ or halibut PSQ at the end of the year, but not during the year. Post-overage quota transfers during the fishing year would be permissible. Since the multispecies CDQ fisheries began in 1998, the CDQ groups have demonstrated that they are proficient at both managing their individual CDQ allocations and working together to arrange transfers among themselves as needed. NMFS does not believe that this pattern would change should Alternative 2 be implemented.

However, if multiple CDQ groups exceed their allocations of the same quota, this could give rise to the possibility that CDQ groups collectively would exceed the annual CDQ reserve for the species in question. NMFS believes it could use existing fishery management measures, such as placing the species on prohibited species status or CDQ-specific directed fishery closures to control the CDQ sectors catch of a given species. This process is both the same currently used to manage the catch of the "other species" CDQ reserve and the same as what is being proposed under Alternative 4. Management of non-allocated CDQ reserves is further discussed in Section 5.7.4.



## *Effects on CDQ Groups*

Modifying the timing of NMFS' CDQ catch monitoring and accounting regime could enhance CDQ groups' ability to effectively harvest all or the majority of their revenue generating target species. CDQ groups would not have to cease fishing for some species or in some management areas before the end of the fishing year, should they catch their entire remaining balance of a particular groundfish CDQ species or halibut CDQ. CDQ groups would still be prohibited from exceeding their groundfish CDQ or halibut PSQ allocations, including their initial annual allocations and any subsequent amount that they received by transfer. Compliance with the requirement that a CDQ group not exceed any of its groundfish CDQ and halibut PSQ allocations would be assessed by NMFS at the end of the year, rather than continuously during the year. This component could also apply to the CDQ harvesting cooperatives discussed under Alternative 3.

Alternative 2 would amend CDQ transfer regulations and prohibitions. The prohibition against allowing groundfish CDQ or halibut PSQ transfers to occur after a CDQ group had exceeded its available quota balance in such allocations would be removed. Quota transfers currently are allowed to afford CDQ groups some degree of in-season fisheries management flexibility among themselves. To cooperatively increase fishing opportunities among CDQ groups, a CDQ group may transfer all or part of an annual CDQ allocation to another group by submitting a transfer request to NMFS. Approved transfers are effective for the remainder of the calendar year in which a transfer occurs. In general, a transfer of quota involves the following steps:

1. Each CDQ group requesting a transfer must notify NMFS in writing that they wish to make a transfer, and identify the species and amounts associated with the transfer.
2. The quota transfer request becomes effective when NMFS notifies each CDQ group involved in a transfer that the transfer has been reviewed and approved. Approval usually is contingent on the transferring group having adequate quota available to transfer.
3. NMFS updates its CDQ catch accounting information system to either credit or debit each applicable CDQ or PSQ account.

If Alternative 2 were implemented, CDQ groups could be subject to fewer overage actions by being allowed to negotiate inter-group transfers to cover overages that occurred in-season. Fewer overages would mean a given CDQ group would have fewer administrative costs associated with responding to NOAA OLE investigations of overage events, as well as fewer penalties to pay should NOAA General Counsel levy a penalty for the overage. Additionally, CDQ groups could gain the ability to continue to fish for valuable target species after an overage had occurred, if it had incurred an overage of a non-target species that probably would be caught along with its remaining target species. Thus, CDQ groups may avoid having to forego fishing for such target species (with associated loss of royalties) or negotiating with other CDQ groups to fish for them, (after transferring quota). These are positive benefits.

However, CDQ groups could be at risk that they would not be able to receive quota by transfer at the end of the year. Some CDQ reserves could be fully caught by the end of the year, which means no additional quota would be available to transfer. Alternatively, some CDQ groups could choose to not transfer quota to other groups. CDQ groups would still be subject to enforcement actions for groundfish CDQ and halibut PSQ overages (as they are under the status quo) if they were unable to secure adequate amounts of quota from other CDDQ groups prior to the end of the fishing year or annual CDQ accounting period. CDQ groups also could be subject to increased administrative costs to negotiate and formalize after-the-fact transfer agreements. However, groups already face such costs for the in-season transfers that they do, so this alternative could temporally shift when such costs are incurred.

#### *Effects on Non-CDQ Industry Components*

The changes considered under Alternative 2 are associated with transfer regulations that are specific to the CDQ Program, but not to other components of the BSAI groundfish fisheries. The changes considered would not modify existing CDQ catch accounting elements associated with constraining CDQ catch to that amount of the BSAI groundfish CDQ and halibut PSQ apportioned to the program. Thus, this alternative does not affect the non-CDQ industry component.

#### *Effects on Management Costs*

NMFS does not anticipate that Alternative 2 would result in additional management costs in the context of CDQ fisheries management as a whole. NMFS would have to modify how it monitored the groundfish CDQ fisheries and the timing of when it documented and pursued enforcement actions for quota overages, but such changes are expected to be minor. If after-the-fact transfers were allowed, the number of overage actions per year could decrease, which would decrease the amount of administrative effort that NMFS, OLE, and NOAA GC spent addressing CDQ overages. This would be a positive benefit.

### **5.7.3 Effects of Alternative 3**

#### *Changes to Existing CDQ Fisheries Management Regulations*

Alternative 3 would amend regulations to allow CDQ groups to form CDQ harvesting cooperatives, as well as eliminating the prohibition against after-the-fact quota transfers. This section primarily addresses the costs and benefits of CDQ cooperatives. Background information about quota transfers and the effects of allowing after-the-fact transfers were discussed in the preceding section and are not repeated here.

Allowance of CDQ harvesting cooperatives would provide a formal means for CDQ groups to pool their individual allocations, should two or more groups wish to do so. CDQ groups currently may transfer amounts of any quota to other CDQ groups, as described in the preceding section. These transfers may be associated with private

contractual arrangements that specify the financial and quota management arrangements between the groups involved in the transfers.

This alternative could be considered an extension of the informal quota pooling arrangements that CDQ groups have developed in recent years. A trend that has become common is for some CDQ groups to collaboratively pool their quota with one CDQ group via a series of transfers that aggregate several groups' quotas for a particular target fishery, such as Atka mackerel or pollock. The receiving group is responsible for managing and monitoring the pooled quota, as well as ensuring that participating groups' receive their proportionate share of royalties received due to the harvested of the pooled species. Although some target species have been pooled in this fashion, CDQ groups still conduct other target fisheries, such as Pacific cod, on an individual basis.

Pooling some species has increased efficiencies for harvesting partners and CDQ groups by limiting the number of active participants (both CDQ groups and vessels) in some CDQ fisheries, which streamlines catch monitoring and reporting activities. Perhaps more importantly, this quota pooling process also allows small, individual allocations of incidental species to be combined into larger quota amounts. Pooling small individual quota builds more of a buffer into the CDQ catch accounting process by allowing vessel operators and CDQ groups to better reconcile actual catch against available quota and to alter the pace of fishing as needed to stay within available quota balances.

#### *Formation and Operation of CDQ Harvesting Cooperatives*

Fisheries cooperatives currently are used in two BSAI fisheries administered by NMFS, including the AFA pollock fishery and the crab fisheries conducted under the Crab Rationalization Program (additional information about these two programs if available at the NMFS, Alaska Region web site at [www.fakr.noaa.gov](http://www.fakr.noaa.gov)). The Council requested the provision to allow CDQ cooperatives be modeled on the cooperatives that have developed under the AFA. AFA cooperatives have formed to represent and manage various components of the BSAI pollock fishery, including catcher/processors and catcher vessels. The owners and operators of vessels that are members of an AFA cooperative are responsible for ensuring that the cooperative complies with the directed fishing, sideboard closures, PSC limits and other applicable allocations and restrictions. NMFS believes that CDQ harvesting cooperatives primary focus would be monitoring and managing the CDQ allocations of affiliated CDQ groups, rather than the suite of requirements for which AFA cooperatives are responsible.

This component would allow the Council to recommend to NMFS that regulations be amended to incorporate CDQ cooperatives in the CDQ Program's fishery management structure. NMFS recommends that, under Alternative 3, regulations governing CDQ cooperatives include the following requirements:

- Two or more CDQ groups could form a CDQ harvesting cooperative and pool their CDQ allocations.
- CDQ groups must form CDQ harvesting cooperatives before the fishing year starts. CDQ groups could not leave a CDQ cooperative or change CDQ cooperatives once

the fishing year starts. This requirement is necessary for NMFS to establish quota balances and identify the entity responsible for quota monitoring before CDQ fishing commences each year.

- If a CDQ group joins a CDQ cooperative, then all groundfish and prohibited species allocated to the CDQ group would become part of the cooperative's allocation. NMFS would combine, by species categories, the individual CDQ and PSQ allocations made to each CDQ group into cooperative level CDQ allocations.
- NMFS would not manage some species allocated to a CDQ group through a pool and other species at the CDQ group level. Allowing CDQ groups to fish for some target species while pooling some of their other species with a cooperative could result in increased fishery management complexity for NMFS, CDQ groups, and CDQ cooperatives. The species allocated to CDQ groups may be caught in a many different target fisheries, so increasing the number of parties required to monitor and report CDQ catch probably would not increase CDQ groups' operational efficiencies. If allowed, CDQ groups and cooperatives would have to coordinate information sharing to ensure that adequate quota was available for each fishery they were respectively participating in.
- Halibut CDQ could be an exception to this restriction, as the halibut CDQ fishery is distinct from the groundfish CDQ fishery. CDQ groups currently must report groundfish CDQ caught by vessels greater than or equal to 60 ft. LOA that are halibut CDQ fishing, and this requirement could still be applicable to CDQ groups, rather than the CDQ cooperatives. If this were allowed, CDQ groups and harvesting cooperatives would have to coordinate information sharing to ensure that the groundfish CDQ catch in a group's halibut CDQ fishery was being accounted for properly.
- A CDQ harvesting cooperative would be prohibited from exceeding its collective allocations. If the CDQ cooperative exceeded any of its CDQ or halibut PSQ allocations, enforcement actions would be initiated against the CDQ cooperatives and its member CDQ groups.
- A CDQ harvesting cooperative contract would be required to be submitted to NMFS by November 1 of the year prior to a given fishing year to provide sufficient time to establish quota balances for each CDQ cooperative by January 1.
- A CDQ harvesting cooperative contract would be required to contain information about the CDQ groups that are members of the cooperative, the party responsible for violations made by a cooperative or cooperative member, the vessels that would be fishing on behalf of the cooperative, and the name of the CDQ cooperative for service of process (person authorized to receive and respond to any legal process issued in the U.S. with respect to all members of the CDQ cooperative). These requirements are similar to those required of AFA cooperatives.
- CDQ harvesting cooperatives would be responsible for the catch monitoring and reporting requirements that CDQ groups are individually responsible for.

### *Effects on CDQ Groups*

Amending regulations to allow the formation and operation of CDQ cooperatives for the purposes of quota pooling could offer a means for CDQ groups to benefit from greater

operational efficiencies, as well as decreasing the possibility that some portion of CDQ target species allocations are not harvested. These are positive benefits.

Requiring CDQ groups to, should they wish to pool their CDQ allocations, formally enter into contractual agreements and submit such contracts to NMFS could increase the administrative expenses of participating groups. Groups would have to monitor the actions of the cooperative to which they belonged, and ensure that the cooperative was conducting fishing operations properly, reporting groups' CDQ and PSQ catch properly, and distributing revenues correctly. This could result in additional costs to the CDQ groups' administrative expense associated with fisheries and quota management. NMFS does not have sufficient information to quantify these potential costs. Note that CDQ groups would not have to join cooperatives, as this would be a voluntary provision available to groups. A CDQ group could choose not to join a cooperative if it felt that the costs of doing so outweighed the benefits.

#### *Effects on Non-CDQ Industry Components*

Alternative 3 includes two components, one associated with CDQ transfers and another associated with permitting CDQ groups to form fisheries cooperatives. Both of these components are specific to management of CDQ Program, but not to other components of the BSAI groundfish fisheries. The changes considered would not change CDQ groups' accountability to stay within allocated CDQ amounts, and such accountability would be extended to CDQ cooperatives, were this alternative to be selected. As with Alternative 2, this alternative probably would have no effect on the non-CDQ industry component. One exception to this would be if CDQ fishery cooperatives used fewer vessels to prosecute groundfish CDQ target fisheries. Fishing companies that were displaced from participating in the groundfish CDQ fisheries could incur adverse economic affects, since they would no longer have access to revenue-generating CDQ allocations. This would be a cost associated with the component to allow CDQ fishery cooperatives. NMFS does not have sufficient information about the CDQ-related revenues accruing to vessel companies participating in the groundfish CDQ fisheries to estimate such costs.

#### *Effects on Management and Enforcement Costs*

As with Alternative 2, modifying CDQ transfers prohibitions under Alternative 3 is not expected to appreciably increase NMFS's management costs. However, the CDQ cooperative component of Alternative 3 could increase NMFS's management costs. NMFS would have to undertake the following responsibilities associated with CDQ cooperatives: monitor the formation of cooperatives; ensure that cooperative contracts were submitted to NMFS and met applicable requirements; update existing catch accounting infrastructure; create quota allocations for each applicable cooperative, in addition to allocations for each CDQ group; and, ensure that cooperatives complied with applicable CDQ catch reporting and accounting requirements, as well as with any other annual or management reporting requirements. NMFS would have to revise its catch accounting and monitoring structure to prepare for the possibility that some CDQ groups might form cooperatives, regardless of whether any CDQ cooperatives actually formed.

Some CDQ groups could choose to not participate in a cooperative, while others could. This means that NMFS could be monitoring both individual CDQ groups and CDQ cooperatives, which could add to the complexity of CDQ fisheries management. This could result in additional management costs. As CDQ cooperatives would be distinct entities subject to CDQ catch monitoring and reporting requirements, any violations made by cooperatives would be subject to enforcement actions. This could result in increased enforcement costs.

#### **5.7.4 Effects of Alternative 4 (the preliminary preferred alternative)**

##### *Changes to Existing CDQ Fisheries Regulations*

Alternative 4 would allow the Council to recommend that regulations be amended to: (1) remove the current prohibition against allowing after-the-fact quota transfers and (2) identify which annual CDQ reserves should to be allocated among CDQ groups. This section addresses the costs and benefits of allowing the Council to select which CDQ reserves should be allocated to CDQ groups. Such allocations would be managed with hard caps, while those CDQ reserves not allocated among CDQ groups would be managed with soft caps, as described in Sections 2.3 and 5.5. The effects of changing regulations to allow after-the-fact quota transfers was discussed in preceding section addressing the effects of Alternative 2 and is not repeated here.

The component to only allocate target species among CDQ groups is described in Section 5.5. Essentially, this component would allow the Council to select which CDQ reserves to allocate to CDQ groups. The Council could choose any or all of the current CDQ reserves categories to allocate to groups, but NMFS anticipates that the Council could choose to allocate the commercially valuable CDQ target species identified in Table 2.1 and Table 5.3. Directed fisheries exist, both historically and presently, for each of the listed target species. Species allocated to CDQ groups would be managed with the current strict of accountability in place for the groundfish CDQ fisheries. This could ensure that the CDQ fisheries did not spill over into the parallel target fisheries prosecuted by the non-CDQ sector. The suite of CDQ reserves chosen to not be allocated to CDQ groups would be listed in regulation through rulemaking. NMFS would undertake management of these non-allocated CDQ reserves, as described in Section 5.5. This change in the management of CDQ reserves could afford additional operational flexibility for CDQ groups, since they could concentrate on completely harvesting their CDQ target allocations.

The underlying rationale for making a distinction between target and non-target CDQ reserves may be associated with the existing CDQ percentage allocations for target and non-target species. The current CDQ reserve apportionment process specifies that, with limited exceptions, the CDQ Program receives 7.5 percent of each TAC category. The Council, when recommending the amount of each TAC category to apportion to the multispecies CDQ Program in 1995, did not make a distinction between which species were target species, which species were regarded to be non-target species, nor the appropriate proportion of non-target species that would be necessary to fully account for

the catch of non-target species in primary target fisheries. Estimating the appropriate amount of each non-target species to allocate to the CDQ Program is a complex exercise that has never been undertaken at a comprehensive level by the Council or NMFS, although the State of Alaska has done some bycatch modeling as part of its periodic CDQ allocation recommendation process.<sup>8</sup>

Thus, the current allocation structure does not guarantee that adequate amounts of non-target species are made available to account for the catch of these species in the CDQ target fisheries. However, CDQ groups have the discretion to determine which species they consider primary species. They also have the flexibility to choose which vessel and gear types to use for the prosecution of primary target fisheries, as well as when and where fishing activities occur. This offers CDQ groups the means to tailor their fishing activities to maximize the benefits from any given CDQ allocation to the extent afforded by fixed CDQ percentage allocations of both target and non-target species.

This CDQ reserve and allocation regime has been modified since the initial implementation of the CDQ Program. Squid was removed as a species allocated to the CDQ Program in 1999, and the “other species” CDQ reserve currently is allocated to the CDQ Program, but not to CDQ groups. Each of these actions is discussed below.

The Council recommended that squid (a bycatch species) be removed from the CDQ Program through Amendment 66 to the BSAI FMP. This followed an analysis of the potential that the squid CDQ reserve could be caught before the entire pollock CDQ reserve was caught, which would impact the economic success of CDQ groups and their development projects. This occurred shortly after the passage and implementation of the AFA. The AFA increased the allocation of pollock to the CDQ Program from 7.5 to 10 percent of the annual pollock TAC. Squid is predominantly caught in the pollock fishery, but the contribution from the squid TAC to the squid CDQ reserve did not increase with implementation of the AFA. Per the Council’s recommendation, squid was removed from the CDQ Program (66 *FR* 13672, March 7, 2001). Presently, squid is managed with the standard fishery management measures available in the BSAI fisheries. Squid caught in either the groundfish CDQ or non-CDQ fisheries accrues towards the annual squid TAC.

The management of the “other species” CDQ reserve also has changed since the implementation of the CDQ Program. In 2003, the Council recommended that the “other species” CDQ reserve not be allocated among CDQ groups, due to concerns that there was inadequate “other species” available to account for the catch of this species complex (which contains sculpins, sharks, skates, and octopus) if all CDQ target species were fully prosecuted. CDQ groups believed that there was a potential that they would catch their

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<sup>8</sup> There is a separate Council action under consideration, BSAI FMP Amendment 80, which contains a component that would increase the CDQ percentage allocations for certain target species. An associated suboption would allocate incidental catch species to the CDQ Program based on estimates of how much of such species would be caught in CDQ target fisheries, based on historical catch rates of incidental species. This process would be specific to the incidental catch species caught with the target species considered under Amendment 80, but not all CDQ target species. Amendment 80 was discussed previously in Section 4.3 under *Future Actions*.

individual allocations of “other species” before completely catching their target species allocations.

NMFS implemented this recommendation in late 2003 (68 *FR* 69974, December 16, 2003). The “other species” CDQ reserve is now managed by NMFS fisheries managers in conjunction with the catch of “other species” in the non-CDQ fisheries. “Other species” CDQ is closed to directed fishing at the beginning of each year. CDQ groups are subject to having this species category place on prohibited species status (no retention allowed) or other management measures if they catch in excess of their annual “other species” CDQ reserve. NMFS monitors the combined catch “other species” in the CDQ fisheries and is prepared to implement additional measures to contain the catch of this species category, although has not yet been necessary. A status report detailing the management and catch of “other species” CDQ in 2004 is in Appendix B. To summarize, the 2004 catch of “other species” in the CDQ fisheries was 3,294 mt, which exceeded the initial CDQ reserve of 2,040 mt by 1,254 mt. This is approximately 62 percent more than the amount initially allocated to the CDQ Program. The non-CDQ fishery component caught approximately 3,000 mt more than its initial apportionment of 23,124 mt. The 2004 “other species” TAC was 27,205 mt and aggregate catch was approximately 29,400 mt. This catch amount is about 17,400 mt below the ABC amount of 46,810 mt.

#### *Effects on CDQ Fisheries*

The component to allow the Council to select which CDQ reserves to allocate among CDQ groups could reduce or eliminate the possibility that the catch of non-target species in the CDQ fisheries could constrain the catch of CDQ target species for one or more CDQ groups by elevating the accounting of non-allocated CDQ reserves to the CDQ reserve level. It potentially could even out disparities between CDQ groups anticipated needs, annual allocations, and actual catch for incidental catch species. The primary management of non-allocated species would be at the CDQ reserve level and secondary management of non-allocated species would be at the combined CDQ and non-CDQ aggregate catch level. The overall catch of non-allocated CDQ reserves would still be subject to existing controls associated with TAC, ABC, and OFL levels. Under such a management regime, CDQ groups would not be individually constrained by the catch of non-allocated species, a positive benefit.

However, each group’s target fisheries could be impacted by the performance of other CDQ groups and the non-CDQ fisheries. If the amount available in a particular non-allocated CDQ reserve was reached due to the fishing activities of a few CDQ groups, NMFS could put species in the reserve on “prohibited species” catch status. If catch in the CDQ fisheries, in combination with non-CDQ catch, resulted in the OFL being approached, NMFS could close select CDQ fisheries to minimize any further catch of the species of concern. All CDQ groups would be subject to the closure, regardless of whether they had actually caught all of their allocated target species affected by the closure. Thus, moving away from a regime of allocating all CDQ reserves to groups and moving towards one of managing some reserves at the CDQ reserve level could subject



each CDQ group to the actions of other CDQ groups or non-CDQ fisheries components. This could result in adverse effects on CDQ groups if they were unable to catch all of their annual target species allocations.

### *Effects on Non-CDQ Fisheries*

Alternative 4 could affect non-CDQ BSAI fisheries components. If NMFS managed the non-allocated CDQ reserves to try to contain the annual catch in each reserve to the amount allocated to the reserve, the catch of non-allocated CDQ species would not necessarily be limited to the amounts apportioned to each such reserve. For TAC categories with a substantial buffer between TAC and ABC, such as arrowtooth flounder, NMFS would be less likely to impose strict management measures on CDQ directed fisheries, even if the associated CDQ reserve was reached. In such situations, NMFS could manage the catch of a particular species to the overall TAC and ABC limits, rather than the apportionments between CDQ and non-CDQ fishery components. The management of "other species" CDQ illustrates this approach, as detailed in Appendix B.

For TAC categories with a small range between TAC and ABC, or if TAC was equal to ABC, fisheries management measures would have to be more stringent. Examples of such species include shortraker and roughey rockfish. If NMFS estimated that the non-CDQ fisheries would catch all of a particular TAC in a given year, NMFS could prohibit directed fishing or impose prohibited species catch limits to minimize the impact that catch by CDQ fisheries would have on non-CDQ fisheries. Thus, NMFS would manage the CDQ fisheries to try and contain its catch to the amount apportioned to annual CDQ reserve established for the more sensitive TAC categories. However, if such measures were ineffective at containing the CDQ fisheries catch, NMFS might also have to impose additional, restrictive management measure on non-CDQ fishery components to manage overall catch to annual ABC limits. This could result in adverse effects on non-CDQ fishery participants if they had to forego catching some amounts of target species.

### *Effects on Management and Enforcement Costs*

As with Alternative 3, modifying CDQ transfers prohibitions under Alternative 4 is not expected to appreciably increase NMFS's management costs. The expected management costs associated with the after-the-fact transfer component of Alternative 4 are discussed in the prior two sections and are not repeated here. The component associated with allocating some CDQ reserve to CDQ groups and managing groups' allocations with hard caps, while managing non-allocated reserves with soft caps, is not expected to significantly affect NMFS's management costs. Both NMFS and CDQ groups would have fewer individual quotas to monitor. **Additionally, the State of Alaska would have fewer CDQ reserves to allocate to CDQ groups, which could decrease the complexity and costs associated with the CDQ allocation process.**

However, NMFS could have additional CDQ reserves to manage. This would result in some additional costs associated with CDQ fisheries management and monitoring. NMFS probably would close some non-allocated CDQ reserves to directed fishing in the

annual harvest specifications for BSAI groundfish, as is now done with “other species” CDQ. NMFS would also have to issue additional in-season management actions to move CDQ reserves that were closed to directed fishing to prohibited species status once the annual CDQ reserve was caught. In the context of the overall management of the BSAI groundfish fisheries, these costs are anticipated to be minor.

#### **5.7.4.1 Effects of Alternative 4, Option 1**

##### *Changes to CDQ Fisheries Management Regulations*

Alternative 4 contains a component to allow the Council to recommend which CDQ reserves to allocate among CDQ groups and which reserves to not allocate to CDQ groups. Should the Council identify certain CDQ reserves to not annually allocate to CDQ groups, these designations would be made in regulation (as was done with the “other species” CDQ reserve category) through rulemaking. Option 1 would allow the Council to recommend that future changes to the list of non-allocated CDQ reserves be made as part of the annual specifications process, rather than through rulemaking. This would apply to future designations of which CDQ reserves to not allocate to CDQ groups, rather than those identified under this action. Regulations governing the creation and apportionment of CDQ reserves would be amended to reflect the Council’s discretion to identify changes to the suite of CDQ reserves to not allocate to CDQ groups. As described in the previous section, NMFS would then manage such reserves with soft caps.

This would enable the Council to respond to: (1) future situations in which the Council wished to change which CDQ reserves were allocated to CDQ groups due to biological or socioeconomic factors, or (2) situations in which revisions to TAC categories meant that the multi-year CDQ percentage allocations established for CDQ groups could not be applied to the CDQ reserves apportioned from the new TAC categories. For example, in 2004, the Council recommended that three rockfish species (northern, shortraker, and roughey) be managed as a combined BSAI level, rather than at separate BS and AI management subareas. There were no applicable, approved CDQ percentage allocations in place to apply to these new species categories. Absent the applicable percentage allocations necessary to distribute these rockfish CDQ reserves to CDQ groups, NMFS chose to not allocate them to CDQ groups and, instead, to manage these species at the reserve level.

### *Effects on CDQ Fisheries*

This option primarily is administrative in nature and would allow the Council to respond to future situations in which it chose or needed change the list of non-allocated CDQ reserves. The CDQ groups could benefit from this option if it led to more expeditious implementation of changes to which CDQ reserves are allocated or not allocated among CDQ groups. If this option were not adopted and implemented, future changes to which CDQ reserves to allocate to CDQ groups would be implemented through the rulemaking process.

### *Effects on Non-CDQ Fisheries*

NMFS anticipates that this option would neither benefit nor adversely impact the non-CDQ fisheries.

### *Effects on Management and Enforcement Costs*

Adoption and implementation of Option 1 could decrease the number of future rulemakings that NMFS would have to complete to implement additional Council recommendations about which CDQ reserves to allocate or not allocate to CDQ groups. While this might result in decreased administrative costs associated with rulemaking, NMFS does not have enough information about how many rulemakings could be foregone in the future to quantify any potential decrease in such costs. The provision to incorporate future changes in which CDQ reserves were allocated to CDQ groups into the harvest specifications process could increase management costs associated with the development and implementation of the harvest specifications.

### *NMFS believes that Option 1 should not be carried forward*

In October 2005, the Council chose to include Option 1 as part of its preliminary preferred alternative (Alternative 4). **However, NMFS believes this option should not be included as a part of the Council's preferred alternative for this action.**

NMFS originally included this option in this analysis in light of its past experience with addressing how to manage CDQ reserves that the Council recommends not allocating to CDQ groups, such as occurred with "other species" in 2003 as well as changes to species categorization, such as occurred with some rockfish species in 2001 and 2002.

NMFS believes that this option should not be carried forward for several reasons. One reason is the risk that this option could pose to an exemption, under E.O. 12866, from the requirement requiring NMFS to prepare an RIR for the BSAI harvest specifications. The addition of measures that are not related to the setting of the specifications may result in the loss of this exemption, which would greatly add to the analytical requirements of the specifications process. Incorporating this option in the specification process also could be difficult from a timing perspective, as the specifications are based on a lengthy process, much of which precedes the Council's deliberations on the specifications.

Finally, in October 2005, the State of Alaska's Blue Ribbon Panel (which was established to provide an evaluation of the CDQ Program to the Governor of Alaska) recommended significant changes to the CDQ allocation process. NMFS believes it needs additional time to assess the potential impacts of such changes on the CDQ Program to the degree that it may not be timely to proceed with Option 1. These reasons are discussed in more detail in Section 2.3.3.1.

## 5.8 E.O. 12866 Conclusions

### 5.8.1 Summary of costs and benefits

The benefits and costs of the alternatives are summarized below. It has not been possible to monetize these benefits and costs. In the absence of collateral or external costs imposed on other parties, it is reasonable to project a positive net social benefit from this action.

Table 5.4 Summary of costs and benefits.

	Alternative 1	Alternative 2	Alternative 3	Alternative 4
	Status Quo	Allow after-the-fact CDQ transfers to cover overages	Allow after-the-fact transfers and formation of CDQ cooperatives	Allow after-the-fact transfers and identification of which CDQ reserves to allocate to CDQ groups
Benefits	Baseline, no change in benefits	CDQ groups and their associated communities could face reduced chance of losing royalties due to quota overage situations. Groups may have to do fewer transfers, but probably a minor benefit. Some savings in management costs.	Same benefits discussed in Alt. 2. Additionally, cooperatives could offer groups greater operational efficiencies and opportunities to fully harvest target species.	Same benefits discussed under Alt. 2. Additionally, only allocating CDQ reserve for target species to CDQ groups could decrease chance non-target species allocations would constrain CDQ groups. CDQ groups would have fewer quotas to monitor and manage. NMFS would have fewer quotas to monitor.
Costs	Baseline, no change in costs	CDQ groups could incur additional costs negotiating and implementing transfers to cover overages. Minor cost.	Same costs discussed in Alt. 2. Additionally, CDQ groups could incur additional costs negotiating, creating, and monitoring performance of cooperatives. Management costs could increase to integrate cooperatives into CDQ fishery management regime.	Same costs as discussed in Alt. 2. Additionally, CDQ groups could be affected by catch of incidental species by other CDQ groups or industry sectors, if such catch resulted in fishery closures (as well as the reverse of this scenario). NMFS would have additional CDQ reserves to manage in conjunction with non-CDQ fisheries.
Net Benefits	Baseline, no change in net costs.	It has not been possible to monetize the benefits or costs of this alternative. Qualitative analysis suggests net benefits would be positive.	It has not been possible to monetize the benefits or costs of this alternative. Qualitative analysis suggests net benefits would be positive.	It has not been possible to monetize the benefits or costs of this alternative. Qualitative analysis suggests net benefits would be positive.
EO 12866 significance	Baseline	Does not appear to be significant.	Does not appear to be significant.	Does not appear to be significant.

## 5.8.2 Summary of E.O. 12866 Significance criteria

A “significant regulatory action” under E.O. 12866 means any action that is likely to result in a rule that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the executive order.

The combined value of CDQ royalties in 2003, the most recent year that complete CDQ royalty information is available, was approximately \$53.4 million. As noted in Section 5.6.4, pollock CDQ royalties accounted for \$42.8 million of this amount, or 80 percent of total royalties. Catch of other groundfish, crab, and halibut CDQ yielded the remainder of CDQ royalties. Historically, pollock CDQ has by far been the highest royalty generator for CDQ groups. The pollock CDQ fishery catches very small amounts of incidental or bycatch species and would probably not be impacted by the alternatives considered in this action. Implementation of the alternatives considered under this action could positively impact the groundfish CDQ fishery by decreasing certain management restrictions and increasing operational flexibility, but the additional amount of CDQ royalties or other benefits that CDQ groups might receive under these alternatives is unknown. Regulatory changes associated with this action do not appear to have the potential to result in “. . . an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs the environment, public health or safety, or State, local, or tribal governments or communities . . .”

NMFS has not identified any factors that would (a) “Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency”; (b) “Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof”; or (c) “Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the executive order.”

## **6.0 Consistency with Other Applicable Laws**

### **6.1 Regulatory Flexibility Act (RFA)**

#### **6.1.1 Introduction**

This Initial Regulatory Flexibility Analysis (IRFA) evaluates a proposed regulatory amendment to modify the management of the Bering Sea and Aleutian Islands (BSAI) groundfish reserves apportioned to the Western Alaska Community Development Quota (CDQ) Program. The proposed alternatives encompass a range of alternatives that could amend or add regulations to: relax prohibitions against allowing CDQ managing organizations (CDQ groups) to make “after-the-fact” transfers; allow CDQ groups to form fishery cooperatives; and, identify which CDQ reserves were or were not to be annually allocated to CDQ groups. The purpose of this proposed action is both to increase the operational flexibility of CDQ groups and to ensure that CDQ fisheries management measures reflect the Council’s current intent for such measures. Increasing operational flexibility could increase the likelihood that CDQ groups would be able to fully harvest their annual allocations of CDQ target species and obtain the most value for such allocations, which in turn could benefit CDQ communities.

This IRFA addresses the statutory requirements of the RFA of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612).

#### **6.1.2 The purpose of an IRFA**

The RFA was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are to: (1) increase agency awareness and understanding of the impact of their regulations on small businesses, (2) require that agencies communicate and explain their findings to the public, and (3) encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency’s compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency has taken to minimize significant economic impacts on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file *amicus* briefs in court proceedings involving an agency’s alleged violation of the RFA.

In determining the scope, or 'universe,' of the entities to be considered in an IRFA, NMFS generally includes only those entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

Data on cost and operational in the CDQ fishing sector subject to the proposed regulatory action are insufficient, at present, to permit preparation of a "factual basis" upon which to certify that the proposed alternatives do not have the potential to result in "significant economic impacts on a substantial number of small entities" (as those terms are defined under RFA). Because, based on all available information, it is not possible to 'certify' this outcome, should one of the proposed alternatives be adopted, a formal IRFA has been prepared and is included in this package for Secretarial review.

### **6.1.3 What is required in an IRFA?**

Under sections 603(b) and (c) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- Descriptions of any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes, and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
  1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
  2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
  3. The use of performance rather than design standards;
  4. An exemption from coverage of the rule, or any part thereof, for such small entities.



#### 6.1.4 What is a small entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) and small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a 'small business' as having the same meaning as 'small business concern' which is defined under Section 3 of the Small Business Act. A 'small business' or 'small business concern' includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a "small business concern" as one "organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. . . A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture."

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$3.5 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3.5 million criterion for fish harvesting operations. Finally, a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established "principles of affiliation" to determine whether a business concern is "independently owned and operated." In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian

Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership under the following conditions: (1) If a person owns or controls, or has the power to control, 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, that person is considered an affiliate of the concern; or (2) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor or subcontractor is treated as a participant in a joint venture if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such a relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

### **6.1.5 Reasons for considering the proposed action**

The purpose of the CDQ Program is to provide a means, via allocations of CDQ, for western Alaska communities to undertake commercial fishing-related business activities and enhance this region’s economy. The catch and sale of CDQ allocations provide revenues which CDQ groups use to fund projects benefiting the communities each group represents. Any annual amounts of CDQ target species allocations that are not harvested represent foregone revenues. The original CDQ transfer, catch accounting, and monitoring requirements developed for the CDQ Program are very stringent. Amending CDQ regulations to incorporate some or all of the components considered under this action could increase the operational flexibility of CDQ groups, thereby increasing their opportunities to maximize the benefits of their CDQ allocations. This would support the goals and purpose of the CDQ Program.

### **6.1.6 Objectives of, and legal basis for, this action**

The objective of this action is to consider a means to modify the management of groundfish CDQ reserves to both increase the operational flexibility of CDQ groups and to ensure that CDQ fisheries management measures reflect the Council's current intent for such measures. Such measures are an integral part of the current BSAI fisheries management measures.

The legal basis for this action is the Magnuson-Stevens Act and the BSAI Groundfish FMP. The Magnuson-Stevens Act vests management of marine resources in the Exclusive Economic Zone (an area extending from three to 200 miles off the U.S. coast) with the Secretary of Commerce and in regional fishery management councils. In Alaska, the North Pacific Fishery Management Council is responsible for preparing management plans for marine fishery resources. NMFS is charged with carrying out the federal mandates, with regard to marine resources.

### **6.1.7 Number and Description of Small Entities**

The entities that would be directly regulated by this proposed action are the six non-profit CDQ groups that currently participate in the CDQ Program. The CDQ groups include: Aleutian Pribilof Island Community Development Association, Bristol Bay Economic Development Corporation, Central Bering Sea Fishermen's Association, Coastal Villages Region Fund, Norton Sound Economic Development Corporation, and Yukon Delta Fisheries Development Association. As noted, each of these groups is organized as a not-for-profit entity and none is dominant in its field; consequently, each is a "small entity" under the RFA.

All six CDQ groups have received allocations of groundfish CDQ for the period from 2003 through 2005. Each has received periodic CDQ allocations since 1992. These groups participate, either directly or indirectly, in the commercial harvest of these allocations. Commercially valuable allocations include (among others): Alaska pollock, Pacific cod, sablefish, Greenland turbot, Atka mackerel, and a variety of flatfish species. CDQ groups receive royalties from the successful harvest of CDQ by commercial fishing companies, as well as access to employment and training opportunities for their communities' residents. Royalties and income from CDQ harvesting activities are used to fund economic development projects in CDQ communities. In 2003, the CDQ groups received approximately \$53.4 million in royalties from the harvest of CDQ allocations. CDQ Program activities are discussed in detail in Section 5.6 of the RIR associated with this action.

### **6.1.8 Impacts on regulated small entities**

The general economic impacts on regulated small entities are addressed in detail in Section 5. Those effects are summarized here.

Alternative 1, the status quo management of the groundfish CDQ reserves could have some impact on CDQ groups if it resulted in some CDQ target species not being caught each year. Any foregone harvest of target species probably would be accompanied by foregone royalties or other benefits. NMFS does not have adequate information to estimate the monetary value of such potential losses. CDQ groups have been very successful at completely harvesting their annual allocations of their most valuable target species allocations over time.

Alternatives 2, 3, and 4 provide a range of possible ways that the management of groundfish CDQ reserves and CDQ allocations could be managed. Alternative 2 would amend regulations to relax prohibitions against inter-group quota transfers to account for groundfish CDQ or halibut PSQ harvest overages a CDQ group may make. CDQ groups currently are prohibited from exceeding their CDQ allocations and from transferring quota between themselves to cover overages. Alternative 3 includes this amendment to transfer regulations, as well as a provision to allow CDQ groups to form fishery cooperatives and pool their quotas. Allowing CDQ harvesting cooperatives could allow participating CDQ groups with additional in-season fishery management and operational flexibility. This could result in some degree of cost savings by groups, and the ability to better manage small allocations of non-target species. Alternative 4 incorporates components associated with CDQ transfers and CDQ cooperatives, and would alter the suite of CDQ reserves allocated to CDQ groups. Under this alternative, the Council could recommend which CDQ reserves (likely target species) to allocate to CDQ groups. The current quota management regime would then apply to those species allocated among CDQ groups, while NMFS would assume management of non-allocated CDQ reserves. This could provide more flexibility to the overall CDQ fisheries management regime, although it could decrease CDQ group's accountability for minimizing their catch of incidental species, to some degree.

Each of these alternatives is intended to either modify existing CDQ fishery management regulations or provide an additional means for CDQ groups to manage their fisheries. NMFS does not have the data needed to analyze the specific impacts of each of these alternatives, absent information about the degree to which CDQ groups would take advantage of each of the components considered under each alternative. However, since such regulatory changes have been initiated at the request of the Council and CDQ groups, NMFS does not foresee that such changes would result in negative economic impacts to CDQ groups, the regulated small entities affected by this action.

#### **6.1.9 Recordkeeping and reporting requirements**

The proposed action could have the potential to change some aspects of the current recordkeeping and reporting requirements of CDQ Program participants. This is particularly true of Alternatives 3, which includes a component that would allow CDQ groups to form fishery cooperative and pool their CDQ allocations. The allowance for, and implementation of, this component would entail the need for CDQ groups and any cooperatives they may form to prepare and submit contracts governing the structure and role of each cooperative. Additionally, CDQ cooperatives probably would be subject to

the same catch monitoring and reporting requirements currently required of individual CDQ groups.

**6.1.10 Relevant Federal rules that may duplicate, overlap, or conflict with the proposed action**

No duplication, overlap or conflict between this proposed action and existing Federal rules has been identified.

**6.1.11 Description of significant alternatives**

The four alternatives under consideration for this action are described in Section 2, and the reasons for proposing this action is presented in Section 1.2. These alternatives are summarized in the table below.

Table 6.1. Summary of CDQ Reserve Management Alternatives

<i>Alternative 1 - status quo. Continue strict quota accountability.</i>	<i>Alternative 2 - Some flexibility, less restrictions</i>	<i>Alternative 3 - Additional flexibility</i>	<i>Alternative 4 - Most flexible, least restrictive</i>
No after-the-fact transfers; no way for groups to form cooperatives and pool quota allocations; no differentiation between quota accountability for target and non-target species.	Most frequently requested by CDQ groups. May indicate highest priority to groups.	Provides two options to reduce the potential constraints to harvesting CDQ allocations and to provide more flexibility, while maintaining relatively strict limits on CDQ sector catch.	Lift most potential constraints posed by catch of non-target species; allow maximum flexibility for management of target species allocations; continue high level of accountability for target species allocations.
<i>Status quo</i> No transfers to cover overages.	Allow transfers to cover overages.	Allow transfers to cover overages.	Allow transfers to cover overages.
<i>Status quo</i> No allowance for cooperatives quota and quota pooling.	<i>Status quo</i> No allowance for harvesting cooperatives and quota pooling.	Allow CDQ groups to form cooperatives and pool quota.	<i>Status quo</i> No allowance for harvesting cooperatives and quota pooling..
<i>Status quo</i> Continue to allocate all species except "other species" to the CDQ groups; manage all allocations with hard caps; specify quota categories not allocated to groups by regulatory amendment.	<i>Status quo</i> Continue to allocate all species except "other species" to the CDQ groups; manage all allocations with hard caps; specify quota categories not allocated to groups by regulatory amendment.	<i>Status quo</i> Continue to allocate all species except "other species" to the CDQ groups; manage all allocations with hard caps; specify quota categories not allocated to groups by regulatory amendment.	Allocate only target species to the CDQ groups. Manage non-target species at the CDQ sector level with soft caps and no directed fishing. <i>Option 1:</i> Specify which species categories are allocated to the groups (versus the CDQ sector) through annual specifications process.

Except for Alternative 1 (status quo), each subsequent alternative offers incremental modifications to the current CDQ fishery management structure. Such modifications are intended to offer CDQ groups additional degrees of operational flexibility in their pursuit of the complete harvest of annual allocations of CDQ target species.

### **6.1.12 Impacts on regulated small entities**

The alternatives considered under this proposed action do not appear likely to have negative economic impacts on CDQ groups. These groups are the directed regulated small entities affected by this action.

### **6.2 Marine Mammal Protection Act (MMPA)**

The MMPA of 1992 (16 U.S.C. 1361 et seq.) as amended through 1996, establishes a federal responsibility to conserve marine mammals with management responsibility for cetaceans (whales) and pinnipeds (seals) vested in NMFS. The U.S. Fish and Wildlife Service is responsible for all other marine mammals in Alaska, including walrus, sea otters, and polar bears.

Species listed under the ESA that are present in the BSAI are listed in the groundfish PSEIS described in Section 3. Marine mammals not listed under the ESA that may be present in the BSAI include cetaceans, [minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the beaked whales (e.g., *Berardius bairdii* and *Mesoplodon spp.*)] as well as pinnipeds [Pacific harbor seal (*Phoca vitulina*), northern fur seal (*Callorhinus ursinus*), spotted seal (*Phoca largha*), and ribbon seal (*Phoca fasciata*)], and the sea otter (*Enhydra lutris*).

The primary management objective of the MMPA is to maintain the health and stability of the marine ecosystem, with a goal of obtaining an optimum sustainable population of marine mammals within the carrying capacity of the habitat. The Secretary is required to give full consideration to all factors regarding regulations applicable to the "take" of marine mammals, including the conservation, development, and utilization of fishery resources, and the economic and technological feasibility of implementing the regulations. If a fishery affects a marine mammal population, then the potential impacts of the fishery must be analyzed in the appropriate EA or EIS, and the Council or NMFS may be requested to consider regulations to mitigate adverse impacts.

Take of marine mammals has been and continues to be monitored through fishery observer programs. Because of the low incidence of problems with marine mammal interactions and the likelihood that the considered alternatives would not appreciably affect the size of the groundfish CDQ fishery or the gear types used in it, no additional effects on marine mammals are anticipated should any of the alternatives considered for this action be recommended and implemented.

### **6.3 Coastal Zone Management Act (CZMA)**

Implementation of any of the alternatives considered under this action would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of section 30(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

## 7.0 References

- NMFS 2005a. *EA/RIR/IRFA for the 2005 BSAI Annual Harvest Specifications*. DOC, NOAA, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802.
- NMFS 2005b. *Final Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska*. April 2005. DOC, NOAA, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802.
- NMFS 2005c. *Regulatory Impact Review/Final Regulatory Flexibility Analysis to Simplify Administrative Requirements of the CDQ Program Related to Quota Transfers, Eligible vessels, and Alternative Fishing Plans*. February 2005. DOC, NOAA, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802.
- NMFS 2004. *Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement*. DOC, NOAA, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802.
- NMFS 2003. *EA/RIR/FRFA for a Regulatory Amendment to Modify the Management of "Other Species" Community Development Quota in the BSAI*. November 2003. DOC, NOAA, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802.
- NMFS 2002. *Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Proposed Amendment 71 to the FMP for BSAI Groundfish*. July 2002. DOC, NOAA, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802.
- NMFS 2001. *Final Supplemental Environmental Impact Statement for Steller Sea Lion Protection Measures*. DOC, NOAA, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802.
- NPFMC 2005. *Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area*. NPFMC, 605 W. 4th, Anchorage, AK 99501.
- Northern Economics 2002. *An Assessment of the Socioeconomic Impacts of the Western Alaska Community Development Quota Program*. November 2002. Northern Economics, 880 H Street, Suite 210, Anchorage, AK 99501.
- State of Alaska, Department of Commerce, Community, and Economic Development. CDQ. CDQ Program statistics, at: <http://www.commerce.state.ak.us/bsc/CDQ/cdq.htm>. Accessed September 3, 2005.

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## Appendix A. CDQ Groups and Communities

CDQ group	Represented communities	
Aleutian Pribilof Island Community Development Association	Akutan Atka False Pass Nelson Lagoon Nikolski Saint George	
Bristol Bay Economic Development Corporation	Aleknagik Clark's Point Dillingham Egegik Ekuk Ekwok King Salmon Levelok Manokotak	Naknek Pilot Point Port Heiden Portage Creek South Naknek Togiak Twin Hills Ugashik
Central Bering Sea Fishermen's Association	St. Paul	
Coastal Villages Region Fund	Chefornak Chevak Eek Goodnews Bay Hooper Bay Kipnuk Kongiganak Kwigillingok Mekoryuk Napakiak	Napaskiak Newtok Nightmute Oscarville Platinum Quinhagak Scammon Bay Toksook Bay Tuntutuliak Tununak
Norton Sound Economic Development Corporation	Brevig Mission Diomedede Elim Gambell Golovin Koyuk Nome Saint Michael	Savoonga Shaktoolik Stebbins Teller Unalakleet Wales White Mountain
Yukon Delta Fisheries Development Association	Alakanuk Emmonak Grayling	Kotlik Mountain Village Nunam Iqua

**Appendix B. Status report: 2004 catch and management of the “other species” CDQ reserve.**

In 2004, NMFS began managing the “other species” CDQ reserve, rather than allocating this reserve among CDQ groups and requiring each group to manage its own allocation of “other species.” This was based on the Council’s April 2003 recommendation to manage this species category differently from other TAC categories allocated to the CDQ Program. This change was intended to relieve a potential constraint that could have been imposed on CDQ groups should their individual allocations of “other species” be insufficient to account for the amount of “other species” that they might catch while completely harvesting their allocations of CDQ target species. Otherwise, CDQ fishery management regulations effectively require that a CDQ group, once it has caught its allocation of a given non-target species, cease fishing for any target species in which additional amounts of that particular non-target species may be caught.

- The final rule implementing this change was effective December 15, 2003.
- NMFS closed the 2004 “other species” CDQ reserve to directed fishing on December 24, 2003, with a January 1, 2004 effective date.
- The 2004 “other species” CDQ reserve of 2,040 metric tons (mt) was reached in July 2004.
- NMFS prohibited retention of “other species” in the groundfish CDQ fisheries on July 28, 2004, effective July 31, 2004.
- An additional 1,254 mt of “other species” was caught in the groundfish CDQ fisheries after the initial “other species” CDQ reserve was reached.
- The longline catcher/processor Pacific cod CDQ fishery accounted for over 90 percent of the “other species” CDQ caught in 2004.

The following tables summarize the 2004 BSAI “other species” apportionments and catch (all amounts in metric tons).

Table 1. 2004 BSAI harvest specifications for the “other species” category.

Overfishing Level	Allowable Biological Catch	Total Allowable Catch	Initial TAC	CDQ Reserve
81,150	46,810	27,205	23,124	2,040

Table 2. 2004 “other species’ catch by CDQ and non-CDQ fishery components.

Component	Apportionment	Catch	Remaining
non-CDQ	23,124	26,098	(2,974)
CDQ	2,040	3,294	(1,254)
total	25,164	29,392	(4,228)

**GOVERNOR'S OFFICE**

**PROPOSED CHANGES TO REGULATIONS**



**6 AAC 93**

**WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA  
PROGRAM**



**Public Review Draft**

**November 23, 2005**

**Notes to Reader:**

1. Except as discussed in note 2, proposed new text that amends an existing regulation is **bolded and underlined like this**. Because a section heading always appears in bold print, proposed new text in a section heading is merely underlined **like this**.
2. If the lead-in line states that a new section, subsection, paragraph, subparagraph, or clause is being added, or that an existing section, subsection, etc., is being repealed and readopted (replaced), the new (or replaced) text is not bolded or underlined.
3. Text that is proposed to be deleted [APPEARS IN BRACKETS AND IS CAPITALIZED LIKE THIS]. Text that is proposed to be deleted from a section heading appears [LIKE THIS].
4. When the words "includes" and "including" are used, AS 01.10.040(b) provides that they shall be construed as though followed by the phrase "but not limited to."

**Title 6. Governor's Office.**

**Chapter 93. Western Alaska Community Development Quota Program.**

6 AAC 93.012 is amended to read:

**6 AAC 93.012. References to federal law.** In this chapter, each reference to a provision of 50 C.F.R. 679 refers to that provision **in 50 C.F.R. 679** as revised as of **June 16, 2004** [JUNE 9, 1999]. (Eff. 8/19/99, Register 151; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** [AK. CONST., ART. III, SEC. 1] [AK. CONST., ART. III, SEC. 24] AS 44.33.020(11)

**Art. III, sec. 1, Ak Const.**    **Art. III, sec. 24, Ak Const.**

6 AAC 93.015(a)(1) is amended to read:

(a) To carry out the state's role in the CDQ program under 50 C.F.R. 679, a CDQ team shall perform functions as directed in and under this chapter. The CDQ team consists of

(1) the commissioner of the Department of Commerce, Community, and Economic Development, or one or more of the commissioner's representatives from that department [, INCLUDING ONE PERSON TO ACT AS CDQ MANAGER];

6 AAC 93.015(a)(3) is amended to read:

(a) To carry out the state's role in the CDQ program under 50 C.F.R. 679, a CDQ team shall perform functions as directed in and under this chapter. The CDQ team consists of

• • •

(3) **the governor's fish policy advisor** [ONE OR MORE OTHER STATE EMPLOYEES OR STATE OFFICIALS DESIGNATED JOINTLY BY THOSE COMMISSIONERS, IF ADDITIONAL MEMBERS OF THE TEAM WOULD BE BENEFICIAL].

6 AAC 93.015(c)(1) is amended to read:

(c) To fulfill the purpose of this chapter, including providing accountability to the CDQ program, the CDQ team shall

(1) solicit submittals of community development plans (CDP) from eligible communities; **in this chapter, the term "eligible community" means a community that has been recognized by the federal government as being eligible to participate in the CDQ Program;**

6 AAC 93.015 is amended by adding a new subsection to read:

(e) The commissioner of the Department of Commerce, Community, and Economic Development will designate a person from the department to act as CDQ manager. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

Authority: [AK. CONST., ART. III, SEC. 1] [AK. CONST., ART. III, SEC. 24] AS 44.33.020(11)

**Art. III, sec. 1, Ak Const.** **Art. III, sec. 24, Ak Const.**

6 AAC 93.017 is repealed and readopted to read:

**6 AAC 93.017. CDQ program standards.** To carry out the state's role under 50 C.F.R. 679 and this chapter, the CDQ team shall apply the standards listed in (1) - (4) of this section, as applicable. The CDQ team shall determine whether

(1) a CDP provides specific and measurable benefits to each community participating in the CDP;

(2) a CDQ project set forth in a CDP provides benefits to individual residents of a participating community, to a single participating community, or to all participating communities;

(3) a proposed CDP has the support of all participating communities; **and**

(4) each CDQ project listed in a CDP has the support of the applicant's or CDQ group's board of directors, reflected by official action of the board. (Eff. 8/19/99, Register 151, am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.025 is repealed and readopted to read:

**6 AAC 93.025. Requirements for submitting a proposed CDP.** (a) To apply for an allocation under 50 C.F.R. 679, a qualified applicant shall submit to the CDQ team, on or before the deadline set under 6 AAC 93.020, a complete proposed CDP that contains the information required by 50 C.F.R. 679.30(a), including

(1) a statement that the applicant is a qualified applicant as defined in 50 C.F.R. 679.2; this statement shall be accompanied by a certificate of incorporation showing that the applicant is a nonprofit corporation formed under AS 10.20;

(2) a statement as to whether the applicant is also the managing organization for the proposed CDP;

(3) a statement that each community participating in the proposed CDP is an eligible community;

(4) a list of communities participating in the CDP as required by 50 C.F.R. 679.30(a)(1)(iv) and the following information as to those communities:

(A) evidence that the applicant has developed an effective outreach project to keep participating communities informed about the CDQ group's activities and to facilitate community input throughout the course of the CDP;

(B) evidence that the applicant has annually provided to residents of the applicant's participating communities

(i) notice of its nonprofit corporation's annual meeting; and

(ii) an annual report as required by 6 AAC 93.050(g);

(C) evidence that the applicant held at least one full meeting of its corporate board of directors in an eligible community in its region annually under its previous CDPs;

(D) information as to the number of both permanent and temporary jobs created in the community as a result of the applicant's previous CDPs and the number of both permanent and temporary jobs expected to be created or eliminated in the community as a result of the proposed CDP;

(5) for each member of the applicant's board of directors,

(A) a copy of the articles of incorporation or election results by which the person became a member of the board of directors;

(B) a letter of support from the governing body of the board member's eligible community; and

(C) a statement of support from the governing body of each community participating in the proposed CDP; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(6) for each species allocation, evidence, such as a contract with a business partner, that the applicant has not obligated, and does not intend to obligate, further allocations to a third party;

(7) for an applicant that is also a managing organization,

(A) evidence that the managing organization has a board of directors with a membership composed of at least 75 percent resident fishermen from the community or group of communities participating in the CDP, with at least one member from each community; and

(B) a statement of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(8) for a managing organization that will participate in a fishery on behalf of the applicant, but is not the applicant, a statement of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;

(9) information regarding the particular benefits that an allocation under the CDP would generate for the Bering Sea and Aleutian Islands region; in addition, the applicant may provide information regarding any benefits to the state or the United States;

(10) a detailed description of the applicant's plan to maximize specific and measurable benefits to eligible communities from CDQ allocations;

(11) a description of the applicant's CDQ projects for employment, education, and training to provide career track opportunities to residents of the applicant's participating communities;

(12) the applicant's existing and foreseeable business relationships; to meet the requirement of this paragraph, the applicant shall

(A) provide copies of any contractual arrangements dealing with legal services, lobbying services, consulting services, auditing services, accounting services, allocation management services, investment research services, fund management services, and all other services;

(B) provide copies of profit sharing arrangements;

(C) provide copies of funding and financing plans; and

(D) describe each type of relationship, including joint ventures, loans, partnerships, corporations, and, if applicable, distribution of proceeds;

(13) a copy of the applicant's investment guidelines approved by its corporate board of directors demonstrating a formal, effective administrative process that sets out sound business principles, including examples of due diligence, that the applicant will follow for

(A) for-profit CDQ projects;



- (B) infrastructure CDQ projects;
- (C) fund and cash management CDQ projects;
- (D) investment-related CDQ projects; and
- (E) other applicable CDQ projects;

(14) as part of the detailed description of each CDQ project required by 50 C.F.R. 679.30(a)(1)(i), information that

- (A) identifies the project as an active or proposed CDQ project; and
- (B) describes the project's normal scope of operations;

(15) a milestone table that sets out specific, realistic, and measurable objectives for each CDQ project and dates for achieving each objective;

(16) budgets, including

- (A) a general budget for the proposed CDP that identifies all allocation revenue, project revenue, and project expenditures for the entire period for the proposed CDP;
- (B) an annual budget listing detailed expenses for each CDQ project for the first year of the proposed CDP; and
- (C) an annual comprehensive budget for the allowable administrative expenses, as previously determined by the CDQ team, specifically indicating the expenses that are chargeable to the managerial, general administrative, and policy phases of a CDQ group and the group's projects;

(17) a description of how the applicant plans to report financial and audit information to the CDQ team throughout the course of its CDP, in accordance with 6 AAC 93.050;

(18) a copy of the applicant's federal Internal Revenue Service Form 990 Non-Profit Corporation Income Tax Return for the three most recent tax years;

(19) a copy of the applicant's federal consolidated Internal Revenue Service Form 1120 U.S Corporation Income Tax Return for the three most recent tax years;

(20) a copy of the federal income tax return filed with the Internal Revenue Service by each of the applicant's affiliates for the three most recent tax years;

(21) a list of names of the applicant's five highest-paid salaried personnel, five highest-paid consultants, and five highest-paid board members and the amount of total compensation paid to each of the persons listed; and

(22) any additional information that the CDQ team finds is necessary to determine whether to recommend approval of the proposed CDP under 6 AAC 93.040(b).

(b) An eligible community may not

(1) submit more than one proposed CDP during a single CDQ application period;

or

(2) participate in more than one CDP; this paragraph does not prevent an eligible community from participating in halibut allocations that are restricted by regulatory areas of the International Pacific Halibut Commission and 50 C.F.R. 679.30.

(c) Except for circumstances that the CDQ team finds were beyond the applicant's control, the CDQ team may not evaluate a proposed CDP received after the deadline set under 6 AAC 93.020. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

Authority: Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.035(c) is amended to read:

(c) A public hearing under this section **will** [MUST] be recorded and **may be** transcribed. **A copy of the [THE] recording [TRANSCRIPT] of the public hearing will be made available to the public, upon request [ , AT THE SAME TIME THAT THE TRANSCRIPT IS SUBMITTED UNDER 6 AAC 93.045]. If the public hearing is transcribed, a copy of the transcript will be made available to the public, upon request.**

(Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

Authority: [AK. CONST., ART. III, SEC. 1] [AK. CONST., ART. III, SEC. 24] AS 44.33.020(11)

**Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const.**

6 AAC 93.040 is repealed and readopted to read:

**6 AAC 93.040. Evaluation of proposed CDPs.** (a) After the public hearing under 6 AAC 93.035, the CDQ team shall evaluate all complete proposed CDPs to determine whether the CDPs are consistent with the standards in 6 AAC 93.017 and comply with the applicable requirements of this chapter and 50 C.F.R. 679.

(b) After evaluation under this section, the CDQ team shall transmit to the governor for the governor's review and necessary action each proposed CDP and the CDQ team's evaluation and recommendation regarding each CDP. The governor will then make a written finding that a proposed CDP

(1) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the National Marine Fisheries Service (NMFS) for approval for an allocation in the amount requested by the applicant;

(2) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the NMFS for approval with a reduced allocation from the amount initially requested by the applicant; or

(3) does not meet the requirements of this chapter and 50 C.F.R. 679 and will not be recommended to the NMFS for approval.

(c) If there is a sufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion, recommend all of those CDPs to the NMFS for approval.

(d) If there is an insufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion and after consultation by the CDQ team under (e) of this section,

(1) apportion the available quota among the applicants whose CDPs will be recommended for approval and will recommend the apportionment to the NMFS for approval; or

(2) select those complete proposed CDPs that the governor believes best satisfy the objectives, requirements, and criteria of the CDQ program and will recommend those CDPs to the NMFS for approval; a recommendation under this paragraph may also include a recommendation for an apportionment under (1) of this subsection.

(e) Before the CDQ team recommends an apportionment of the quota under (d) of this section, it shall consult with the applicants that might be affected by the proposed apportionment.

The CDQ team may request an applicant to submit a revised CDP to assist the CDQ team in determining the

(1) economic feasibility and likelihood of success of the proposed CDP with an allocation of fishery resource less than that requested; and

(2) particular benefits that may be derived by participating communities affected by an allocation of fishery resource less than that requested.

(f) In apportioning the quota of fishery resource under (d) of this section, the governor will consider the information specified in this chapter and 50 C.F.R. 679 and seek to maximize the benefits of the CDQ program to the greatest number of participating communities.

(g) If an applicant disagrees with the governor's recommendation regarding a proposed CDP or an allocation of quota of the fishery resource, the applicant may file a request for reconsideration of that recommendation as provided in 6 AAC 93.090.

(h) Before forwarding recommendations to the NMFS under 6 AAC 93.045, the governor will, or, at the governor's direction, the CDQ team shall, consult with the North Pacific Fishery Management Council (Council) regarding the proposed CDPs to be recommended by the governor for allocations and incorporate any comments from the Council into the written findings required under (b) of this section and 50 C.F.R. 679.30(d). (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93 is amended by adding a new section to read:

**6 AAC 93.042. Apportionment of quota allocations.** (a) In making a recommendation to the NMFS that requires apportionment of quota allocations under 6 AAC 93.040, the governor may, in the governor's discretion, consider the following criteria:

(1) the population of each community participating in the proposed CDP;

(2) the number of existing jobs in the applicant's CDQ region, both permanent and temporary, that exist as a result of the applicant's previous CDPs; the change, if any, in the number of permanent and temporary jobs since the applicant's last CDP was approved; and the number of jobs, if any, that have been reclassified from temporary to permanent or from permanent to temporary since the applicant's last CDP was approved;

(3) the amount of all investments that the applicant has made within the applicant's CDQ region from net CDQ assets as a result of the applicant's previous CDPs,

including grants given by the applicant and funds spent by the applicant on all projects, and the amount of those investments made since the applicant's last CDP was approved;

(4) the amount of all funds disbursed by the applicant in the form of scholarships, stipends, grants, and other expenditures to promote education and training at all scholastic or training institutions from net CDQ assets as a result of the applicant's previous CDPs and the amount of those funds disbursed since the applicant's last CDP was approved;

(5) the overall economic condition of the CDQ region to which the proposed CDP applies, including the median income for the region, the unemployment rate in the region, the percentage of the population in the region that lives below federal poverty guidelines for Alaska, and the change, if any, in those elements of the overall economic condition since the applicant's last CDP was approved;

(6) the applicant's past performance in developing harvesting or processing capability sufficient to support substantial participation by the applicant in fisheries in the Bering Sea and Aleutian Islands Management Area and the extent to which the proposed CDP is expected to develop harvesting or processing capability sufficient to support substantial participation by the applicant in fisheries in the Bering Sea and Aleutian Islands Management Area;

(7) the applicant's past performance in promoting conservation-based fisheries by minimizing bycatch, providing for full retention and increased utilization of the fishery resource, and minimizing impact to essential fish habitats; and

(8) the applicant's past performance in implementing and administering previous CDPs, including the extent to which the applicant has developed an effective outreach project as required by 6 AAC 93.025(a)(4)(C) and has provided the residents of its participating communities with an annual report, financial statement, or other communication that advised those residents of

(A) the annual gross income and net income the applicant realized from its CDQ projects;

(B) all financial transactions by the applicant if those transactions exceeded \$20,000 in the aggregate in any given year;

(C) the identities of the applicant's employees, officers, and directors who were paid more than \$20,000 in any year and the amounts those persons were paid;

(D) the identities of all consultants, attorneys, accountants, and others who performed professional services for the applicant who were paid more than \$10,000 in any year and the amounts those persons were paid; and

(E) all commitments by the applicant to pay any person or entity any amount exceeding \$10,000 in the future for any purpose.

(b) In considering the criteria set out in (a) of this section, the governor may, in the governor's discretion, rank applicants using the following weighting criteria:

(1) fisheries-related matters – 80 percent;

(2) matters that are not fisheries-related – 20 percent. (Eff. \_\_\_/\_\_\_/\_\_\_, Register\_\_\_\_\_)

**Authority:** Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.050 is repealed and readopted to read:

**6 AAC 93.050. Annual reports.** (a) In order for the CDQ team to monitor a CDP as required under 50 C.F.R. 679.30, a CDQ group shall submit to the CDQ team an annual report of the CDQ group's activities during the previous fiscal year. The CDQ group shall deliver the annual report to the CDQ team within 90 days after the end of the fiscal year. The annual report shall be considered to be delivered when it is personally delivered or when it is postmarked.

(b) The annual report required in (a) of this section shall include

(1) annual financial statements, including comparative annual consolidated financial statements prepared in accordance with generally accepted accounting principles for each of the two most recent calendar years; unaudited financial statements for the earlier year may be submitted if the CDQ group was not subject to this section for that year and audited statements were not prepared;

(2) an independent public accountant's report on the annual financial statements and a copy of the engagement letter by which the accountant agreed to perform the audit for the CDQ group;

(3) notes to the financial statements in which an independent public accountant explains in detail how financial results were determined and provides other information relevant to the annual financial statements;

(4) supplemental schedules reporting the financial position and results of operations for each of the CDQ group's affiliates;

(5) a supplemental schedule detailing the CDQ group's general and administrative expenses;

(6) a management report or letter;

(7) a report that explains how the CDQ group has met various milestones and objectives set out in its CDP and explains why it has failed to meet other milestones and objectives;

(8) a list of the names of the corporation's five highest-paid salaried personnel, five highest-paid consultants, and five highest-paid board members and the amount of total compensation paid to each of the persons listed; and

(9) any other information that the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program; if the CDQ team requires additional information under this paragraph, the CDQ team shall notify the CDQ group in writing at least 15 days before the group's annual report is due.

(c) The annual report required by (a) of this section shall be audited before it is submitted to the CDQ team. The CDQ group shall engage an independent public accountant to audit and report on its annual financial statements in accordance with generally accepted auditing standards. The scope of the audit engagement shall be sufficient to permit the accountant to determine and report whether the financial statements are presented fairly and in accordance with generally accepted accounting principles. The accountant shall examine, attest to, and report separately on, all items required to be submitted by (b)(1) – (b)(5) of this section, including the assertion of management concerning the CDQ group's internal control structure and the CDQ group's procedures for financial reporting. The attestation shall be made in accordance with generally accepted standards for attestation engagements.

(d) The independent public accountant engaged by the CDQ group to perform the functions set forth in (a) and (c) of this section shall

(1) be registered or licensed to practice as a public accountant in the state in which the audit occurs;

(2) be in good standing to perform audit services in the state in which the audit occurs;

(3) be in compliance with applicable rules of professional conduct that apply in the state in which the accountant is registered or licensed to practice; and

(4) upon request by the CDQ team, provide copies of any work papers, policies, and procedures relating to the audit;

(e) The CDQ group shall provide written notice to the CDQ team of the resignation or dismissal of an independent public accountant previously engaged. The notice shall be delivered

to the CDQ team no later than 15 days following the resignation or dismissal of the accountant and shall include a statement of the reasons for the resignation or dismissal in reasonable detail.

(f) In this section, "postmarked" means the

(1) United States Postal Service postmark;

(2) the date of placement with a courier-type delivery service as evidenced on the shipping documents;

(3) the date the document is delivered to the CDQ team by facsimile; or

(4) the date the document is delivered to the CDQ team by electronic mail.

(g) In addition to the annual report required by (a) of this section, a CDQ group shall prepare an annual report of its nonprofit corporation's activities based on the corporation's previous fiscal year and furnish the report to the CDQ team and the residents of its participating communities. The report of the corporation's activities is required to help ensure that the CDQ group is conducting an effective outreach project to keep the residents of its participating communities informed about the corporation's activities and to facilitate community input throughout the course of the CDP. The term "corporation" in this section includes the CDQ group's nonprofit corporation and all of its affiliates. The CDQ group shall deliver the annual report of the corporation's activities to the CDQ team within 90 days after the end of the fiscal year and shall deliver the annual report of the corporation's activities to all residents in all communities participating in the CDQ group at least 30 days before the date of the corporation's annual meeting. The annual report shall be considered to be delivered when it is personally delivered or when it is postmarked. If the corporation's annual meeting is not conducted within 120 days after the end of the fiscal year, the CDQ group shall update the information in the annual report of the corporation's activities before furnishing it to the residents of its participating communities. The annual report of the corporation's activities shall include

(1) sufficient information to adequately inform the residents of the participating communities and the CDQ team of the corporation's

(A) training and education programs;

(B) employment programs, and reports on employment of community residents, using the employment data reporting system of the United States Department of Labor Bureau of Labor Statistics;

(B) for-profit and non-profit community and economic development projects;

(C) CDQ harvesting activities; and



(D) community outreach efforts;

(2) financial information, including

(A) annual financial statements, including comparative annual consolidated financial statements prepared in accordance with generally accepted accounting principles for each of the two most recent fiscal years; unaudited financial statements for the earlier year may be submitted if the CDQ group was not subject to this section for that year and audited statements were not prepared;

(B) a list of the names of the corporation's five highest-paid salaried personnel, five highest-paid consultants, and five highest-paid board members and the amount of total compensation paid to each of the persons listed;

(C) a list of the names of the corporation's employees, officers, and directors who were paid more than \$20,000 during the year and the amount of total compensation paid to each of the persons listed;

(D) a list of the names of all consultants, attorneys, accountants, and others who performed professional services for the corporation who were paid more than \$10,000 and the amount of total compensation paid to each of the persons listed;

(E) a list of the names of all persons and entities the corporation has agreed to pay any amount exceeding \$10,000 in the future for any purpose, the amount the corporation has agreed to pay to each person and entity listed, and the purpose for which the corporation has agreed to pay the money to each person and entity listed;

(F) a description of all financial transactions by the corporation with any person or entity during the fiscal year and any financial transactions with any person or entity proposed by the corporation at the time the annual report is issued if the transactions in the aggregate exceeded or will exceed \$20,000 and

(i) any transaction was or will be with an entity in which an interest was or will be held by an officer or director of the corporation;

(ii) any transaction was or will be with a person nominated to become a director of the corporation; or

(iii) any transaction was or will be with a family member of an officer or director of the corporation or a family member of a person nominated to become a director of the corporation;

(G) a description of all financial transactions by the corporation with any entity during the fiscal year and any financial transactions with any entity proposed by the corporation at the time the annual report is issued if

(i) the transactions in the aggregate exceeded or will exceed \$20,000; and

(ii) an officer or director of the corporation or a family member of an officer or director of the corporation is employed by the entity, is an officer or director of the entity, or owns, directly or indirectly, an interest in the entity;

(H) a description of any arrangement by which a director of the corporation was compensated for services to the corporation and the amounts paid to the director for those services, including any amounts payable for committee participation or special assignments, but not including costs for ordinary and necessary business expenses or for group life insurance plans, medical reimbursement plans, or other plans that do not discriminate in favor of directors of the corporation and are generally available to all salaried employees;

(I) a statement of all current remuneration distributed or accrued and all future remuneration contributed during the corporation's fiscal year on behalf of officers and directors of the corporation; the term "current remuneration distributed or accrued" includes all monies paid to the officers and directors and all monies owed to the officers and directors but not yet paid by the corporation; the term "future remuneration contributed" includes amounts paid by the corporation for annuity, pension or retirement plans and for deferred compensation or profit sharing plans but does not include costs for ordinary and necessary business expenses or for group life insurance plans, medical reimbursement plans, or other plans that do not discriminate in favor of officers or directors of the corporation and are generally available to all salaried employees; the information shall be provided in the annual report for

(i) each of the five officers and directors who received, or will receive, the most remuneration for services to the corporation in any capacity; the five persons shall be named in the annual report; and

(ii) all officers and directors as a group; the number of persons in the group may be set forth without naming them;

(3) a biographical description of each nominee for a position as a member of the corporation's board of directors and each current director whose term of office will continue after the annual meeting; each description shall include

- (A) the person's name, age and address;
- (B) a list of all positions and offices the person has held in the corporation in the past and those positions and offices the person currently holds in the corporation;
- (C) the date a nominee's term of office as director would end if the person is elected and the date a current director's term of office will end;
- (D) the dates of service the person served as a director of the corporation in the past;
- (E) information as to the attendance of the person
  - (i) at regularly-scheduled and special meetings of the corporation's board of directors during the fiscal year if the person attended less than 75 percent of the meetings; and
  - (ii) at meetings of the corporation's committees on which the person served during the fiscal year if the person attended less than 75 percent of the meetings;
- (F) the nature of any family relationship if the person is a family member of any director, any person nominated to become a director, or any officer of the corporation;
- (G) the person's business experience as a self-employed person or as an employee during the past five years, including the nature of the person's principal employment or occupation and the names and addresses of the person's businesses and past employers; and
- (H) information as to whether, during the five years preceding the annual report, the person or the person's business
  - (i) filed a petition in bankruptcy court for relief of debt;
  - (ii) was adjudged insolvent in bankruptcy proceedings;
  - (iii) was placed in receivership;
  - (iv) was convicted of a criminal offense; or

(v) was found to have engaged in unethical or illegal business practices or was found to have violated securities laws;

(4) all existing or potential conflicts of interest that a director or executive officer of the corporation has or may have with the corporation, including a brief description of all legal proceedings to which a director or executive officer is a party with interests adverse to the corporation;

(5) if action is to be taken on the election of directors or other matters for which the financial statements are material to the exercise of prudent judgment, a description of the corporation's relationship with its independent public accountants; this description must include:

(A) the name of the principal accountant for the last fiscal year;

(B) a statement indicating whether the principal accountant, or a representative of the principal accountant, is expected to be present at the corporation's annual meeting with the opportunity of making a statement and with the responsibility of responding to appropriate questions;

(C) each professional service provided by the principal accountant and paid for by the corporation during the last fiscal year, including the preparation of corporate tax returns, preparation of personal tax returns, review of proposed acquisitions, review of personal investments, or development of corporate data processing systems;

(D) the percentage relationship which the aggregate of all nonaudit services bears to the aggregate of fees paid by the corporation to the principal accountant for both audit and nonaudit services performed by the principal accountant; and

(E) each disagreement the corporation had with the principal accountant in connection with audits of the last two fiscal years and any subsequent interim period;

(6) a list of the corporation's committees, including committees within or supervised by the corporation's board of directors, that perform audit, nomination, or compensation functions; the list shall include

(A) the names of the members of each committee;

(B) the number of meetings held by each committee during the last fiscal year; and

(C) a brief description of the functions performed by each committee;

(7) for each matter which is to be submitted to a vote of the board of directors, other than the election of directors, a description of the proposal and a statement of the vote required for its approval; for example,

(A) if action is to be taken on a proposed amendment to the articles of incorporation or bylaws, the description shall include the reasons for the amendment and the general effect of the amendment; or

(B) if action is to be taken on a proposed property transaction, the description shall

(i) outline the material features of the proposed transaction;

(ii) state the nature and amount of consideration involved in the transaction and, to the extent practicable, outline the facts which bear on the question of fairness and consideration;

(iii) state the name and address of the other party or parties to the proposed transaction and the nature of any material relationship of the party or parties to the corporation or the corporation's officers and directors; and

(iv) include a brief description of any substantial interest, direct or indirect, by shareholdings or otherwise, of each officer or director of the corporation in any matter to be acted upon at the annual meeting, unless the officer or director would receive no special benefit from the transaction not shared on a pro rata basis by all persons in all communities participating in the CDQ group;

(8) information regarding the preparation and distribution of the annual report, including

(A) a description of the methods to be employed in distributing the annual report;

(B) a statement of the amount spent in preparing the annual report for distribution;

(C) a statement of the estimated total costs to prepare and distribute the annual report, including fees for attorneys, accountants, public relations advisors,

or financial advisors and expenses for advertising, printing, transportation, and any other matters; and

(D) a statement identifying the source of the funds to be spent on preparation and distribution of the annual report and the total amount any person or entity has contributed or has agreed to contribute, unless the source is a contributor of less than \$500 in the aggregate. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

**Authority:** Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.055 is repealed and readopted to read:

**6 AAC 93.055. Amendments to an approved CDP.** (a) General requirements. A CDP is a working business plan that must be kept current by the CDQ group. A CDQ group that seeks to amend a CDP under this section and 50 C.F.R. 679.30 shall submit to the CDQ team a written request for approval of the amendment under the appropriate process described in this section. A CDQ group may not engage in an activity that requires an amendment to the group's CDP until the amendment is recommended for approval by the state and approved by the NMFS.

(b) Submittal requirements. When submitting a proposed CDP amendment under (c) or (d) of this section, in addition to the information that is required to be submitted under 50 C.F.R. 679.30(g)(4) or (5), the CDQ group shall describe how the amendment is consistent with

(1) the standards set forth in 6 AAC 93.017, the group's investment guidelines submitted under 6 AAC 93.025(a)(13), and the requirements of 50 C.F.R. 679; and

(2) the CDQ group's ability to meet the milestones and objectives in its CDP.

(c) Substantial amendments. A substantial amendment to a CDP is subject to (e) and (g) of this section and 50 C.F.R. 679.30(g)(4). A substantial amendment requires the commissioner to make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(4). A substantial amendment is required if

(1) a CDQ group intends to make a change described in 50 C.F.R. 679.30(g)(4)(iv);

(2) a CDQ group intends to add a new proposed CDQ project;

(3) a CDQ group receives notice of its breach of a loan covenant;

(4) a CDQ group fails to make a timely payment of a loan or debt obligation; or

(5) any entity involved in a CDQ project files a petition for relief of debt in a bankruptcy court.

(d) **Technical amendments.** A technical amendment to a CDP is subject to (f) and (h) of this section and 50 C.F.R. 679.30(g)(5). A technical amendment requires the CDQ manager to review the materials submitted by the CDQ group and make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(5). A technical amendment to the CDP under this subsection is required when a CDQ group intends to

(1) make a change in its board of directors or key administrative staff;

(2) make a change in a contract dealing with a business relationship described under 6 AAC 93.025(a)(10)(A);

(3) add a harvesting or processing contract that is substantially similar to an existing contract in the group's approved CDP; the CDQ group shall provide a copy of the contract; or

(4) make any other change that the CDQ team determines is technical in nature.

(e) **Review process for substantial amendments.** The CDQ team shall use the following process in its review for a substantial amendment proposed under (c) of this section:

(1) within 30 days after receiving the proposed amendment, the CDQ team shall determine whether the amendment is consistent with

(A) the standards set forth in 6 AAC 93.017, the group's investment guidelines submitted under 6 AAC 93.025(a)(13), and the requirements of 50 C.F.R. 679; and

(B) the CDQ group's ability to meet the milestones and objectives in its CDP;

(2) if the CDQ team finds an amendment to be inconsistent under (1)(A) or (1)(B) of this subsection,

(A) the CDQ team shall notify the CDQ group of that finding; the CDQ group may, within 10 days after receipt of the notice, submit to the CDQ team a written response to the finding;

(B) within 10 days after the CDQ team receives a response to the finding from the CDQ group, the CDQ team shall repeat the review under (1) of this subsection;

(3) the CDQ team shall repeat the process described in (2) of this subsection until the CDQ team recommends approval of the amendment or makes a determination under (g) of this section.

(f) Review process for technical amendments. The CDQ manager shall use the following process in the review of a technical amendment proposed under (d) of this section.

(1) within 10 days after receiving the proposed amendment, the CDQ manager shall determine whether the amendment is consistent with

(A) the standards set forth in 6 AAC 93.017, the group's investment guidelines submitted under 6 AAC 93.025(a)(13), and the requirements of 50 C.F.R. 679; and

(B) the CDQ group's ability to meet the milestones and objectives in its CDP;

(2) if the CDQ manager finds that an amendment is inconsistent under (1)(A) or (1)(B) of this subsection,

(A) the CDQ manager shall notify the CDQ group of that finding; the CDQ group may, within five days after receipt of the notice, submit to the CDQ manager a written response to the finding;

(B) within 10 days after the CDQ manager receives a response to the finding from the CDQ group, the CDQ manager shall repeat the review under (1) of this subsection;

(3) the CDQ manager shall repeat the process described in (2) of this subsection until the CDQ manager recommends approval of the amendment or makes a determination under (h) of this section.



(g) Recommendation for disapproval of a substantial amendment. If the CDQ team finds that a substantial amendment proposed under (c) of this section is inconsistent under (e)(1) of this section, the CDQ team shall recommend that the commissioner forward the amendment to the NMFS with a recommendation for disapproval. If the commissioner decides to recommend disapproval under this subsection, the commissioner will notify the CDQ group of that decision and will advise the CDQ group that it may request reconsideration of that decision under 6 AAC 93.090.

(h) Recommendation for disapproval of a technical amendment. If the CDQ manager finds that a technical amendment proposed under (d) of this section is inconsistent with the group's investment guidelines submitted under 6 AAC 93.025(a)(13) or the requirements of 50 C.F.R. 679, or that the proposed amendment is inconsistent with the CDQ group's ability to meet the milestones and objectives in its CDP, the CDQ manager shall recommend disapproval of the amendment. If the CDQ manager finds that the amendment is inconsistent with the standards in 6 AAC 93.017, the CDQ manager may recommend disapproval of the amendment. If the CDQ manager decides to recommend disapproval of the proposed amendment under this subsection, the CDQ manager will notify the CDQ group of that decision and will advise the CDQ group that it may request reconsideration of that decision under 6 AAC 93.090. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.057 is repealed:

6 AAC 93.057. Reclassification of core and noncore projects. Repealed. (Eff. 8/19/99, Register 151; repealed \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

The section heading of 6 AAC 93.070 is amended to read:

**6 AAC 93.070. Public [CONFIDENTIAL] records.**

6 AAC 93.070(a) is amended to read:

(a) Except as provided in (b) and (c) of this section, records submitted under this chapter by an applicant or a CDQ group that are in the possession of the governor or the CDQ team are subject to AS 40.25.110 - 40.25.120, [AND] are **in the public record, and are** open to inspection by the public during regular office hours.

6 AAC 93.070(b) is amended to read:

(b) A participating community, applicant, CDQ group, or managing organization wishing to protect a **trade secret or other proprietary information** [RECORD] that was provided to the state under this chapter may file with the governor or CDQ team a written petition **that identifies the particular information for which protection is sought and contains a showing of good cause as to why the information should be classified as a trade secret or proprietary information.** [IDENTIFYING THE RECORD TO BE PROTECTED AND SHOWING GOOD CAUSE TO CLASSIFY THE RECORD AS CONFIDENTIAL. IF, AT THE TIME OF SUBMISSION, A PARTICIPATING COMMUNITY, APPLICANT, CDQ GROUP, OR MANAGING ORGANIZATION WISHES TO PROTECT A RECORD BEING SUBMITTED UNDER THIS CHAPTER, THE COMMUNITY, APPLICANT, GROUP, OR ORGANIZATION SHALL MARK THE RECORD AS "CONFIDENTIAL" AND SHOW GOOD CAUSE TO CLASSIFY THE RECORD AS CONFIDENTIAL.]

6 AAC 93.070(c)(1) is amended to read:

(c) Good cause to classify a record as confidential under this section includes a showing that

(1) disclosure of the record to the public **would disclose a trade secret or proprietary information that is critical to the operation of a CDP or a CDQ project** [MIGHT COMPETITIVELY OR FINANCIALLY DISADVANTAGE OR HARM THE PARTICIPATING COMMUNITY, APPLICANT, CDQ GROUP, OR MANAGING ORGANIZATION WITH THE CONFIDENTIALITY INTEREST, OR MIGHT REVEAL A TRADE SECRET OR PROPRIETARY BUSINESS INTEREST]; and

6 AAC 93.070(c)(2) is amended to read:

(c) Good cause to classify a record as confidential under this section includes a showing that

• • •

(2) the need for **continued** confidentiality outweighs the public interest in disclosure.

6 AAC 93.070(e) is amended to read:

(e) Except as provided in Alaska Rules of Court, a record classified as confidential under this section will not be made public or furnished to any person or entity other than the United States Secretary of Commerce, [THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL,] the Alaska Region of the National Marine Fisheries Service, the governor, the CDQ team and staff, or other authorized representatives of the governor. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** [AK. CONST., ART. III, SEC. 1] [AK. CONST., ART. III, SEC. 24] AS 44.33.020(11)

**Art. III, sec. 1, Ak Const.** **Art. III, sec. 24, Ak Const.**

6 AAC 93.090 is repealed and readopted to read:

**6 AAC 93.090. Reconsideration process.** (a) A CDQ group may submit to the CDQ team a request for reconsideration of a decision under 6 AAC 93.040, 6 AAC 93.055, or 6 AAC 93.060. The request for reconsideration shall be submitted within 20 days after the CDQ group receives notice of the decision. For a decision to be reconsidered, the request for reconsideration shall include additional information that was not provided for consideration in the initial decision.

(b) For reconsideration of a decision under

(1) 6 AAC 93.040, involving a CDP or an allocation, the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the governor regarding a reconsideration decision; the governor will make the decision on reconsideration;

(2) 6 AAC 93.055(g), involving a substantial amendment, the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the commissioner regarding a reconsideration decision; the commissioner will make the decision on reconsideration;

(3) 6 AAC 93.055(h), involving a technical amendment, the CDQ manager shall review the additional information submitted with the request for reconsideration and make the decision on reconsideration;

(4) 6 AAC 93.060, involving a CDP or an allocation, the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the governor regarding a reconsideration decision; the governor will make the decision on reconsideration.

(c) Within 20 days after a request for reconsideration is received by the CDQ team, notification to the CDQ group of the decision on reconsideration will be made by

- (1) the commissioner, for a decision under 6 AAC 93.055(g);
- (2) the CDQ manager, for a decision under 6 AAC 93.055(h);
- (3) the governor, for a decision under 6 AAC 93.040 or 6 AAC 93.060.

(d) Findings regarding a reconsideration decision will be submitted to the NMFS along with the final recommendation regarding the CDP, allocation, or amendment in question. The CDQ team shall shorten the time within which a request for reconsideration may be submitted under (a) of this section if the CDQ team determines that a participating community will be competitively or financially harmed by a delay in issuing the decision. (Eff. 8/19/99, Register 151; am \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

**Authority:** Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)

6 AAC 93.900 is repealed and readopted to read:

**6 AAC 93.900. Definitions.** In this chapter

(1) "active CDQ project" means a CDQ project that was initiated under an approved CDP or through the amendment process in 6 AAC 93.055, and that continues its status as a CDQ project;

(2) "affiliate" means a separate legal entity that controls a CDQ group, is controlled by a CDQ group, or is under common control with a CDQ group, whether the control is exercised by ownership or contract; "affiliate" includes a parent, subsidiary, or other business with at least 10 percent ownership by a CDQ group and related entities;

(3) "allocation" includes a CDQ allocation and a PSQ allocation under 50 C.F.R. 679;

(4) "allocation cycle" means the time of duration of a CDP as designated at the onset of the CDQ application period;

(5) "applicant" means a nonprofit corporation formed under AS 10.20 that has submitted a proposed CDP to the CDQ team;

(6) "application period" means the time between the date of publication of the notice under 6 AAC 93.020(a) and the forwarding of the final CDP recommendation to the NMFS;

(7) "audit" means an examination of the financial statements, accounting records, and other supporting evidence of an entity performed by an independent certified or licensed public accountant in accordance with generally accepted auditing standards and of sufficient scope to enable the independent public accountant to express an opinion on the entity's financial statements as to their presentation in accordance with generally accepted accounting principles;

(8) "CDP" means community development plan;

(9) "CDQ" means community development quota;

(10) "CDQ activity" means an activity pursued by the CDQ group that is paid for, directly or indirectly, through CDQ assets;

(11) "CDQ asset" means property of a CDQ group;

(12) "CDQ group" means a qualified applicant with an approved CDP;

(13) "CDQ liability" means a debt of a CDQ group;

(14) "CDQ manager" means the department employee designated by the commissioner;

(15) "CDQ project" means any program that is funded by CDQ assets or involves CDQ liability as a result of the project;

(16) "CDQ region" means a geographic region encompassing the communities that are participating in a CDQ group;

(17) "CDQ team" means the state officials designated in or under 6 AAC 93.015;

(18) "commissioner" means the commissioner of the department;

(19) "community development plan" means a business plan for the economic and social development of a specific western Alaska community or group of communities under the CDQ program that is consistent with applicable state and federal law;

(20) "department" means the Department of Commerce, Community, and Economic Development;

(21) "engagement letter" means a letter from an independent public accountant to an entity's board of directors or audit committee that addresses the purpose and scope of the external auditing work to be performed, the period of time to be covered by the auditing work, the reports expected to be rendered, and any limitations placed on the scope of the auditing work;

(22) "family member" of a person means

(A) the spouse of the person;

(B) another person cohabiting with the person in a conjugal relationship that is not a legal marriage;

(C) a child, including a stepchild and an adoptive child, of the person;

(D) a parent, sibling, grandparent, aunt, or uncle of the person;

(E) a parent or sibling of the person's spouse or a parent or sibling of the person with whom the person is cohabiting in a conjugal relationship that is not a legal marriage; and

(F) an in-law of the person, including a mother-in-law, father-in-law, brother-in-law, and sister-in-law;

(23) "financial statements" means statements of an entity's financial position (balance sheet), income, cash flows, and changes in equity together with related notes;

(24) "fisheries-related matters" means those matters associated with the goals and purpose of the Western Alaska Community Development Quota Program, including those matters associated with starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy;

(25) "for-profit CDQ project" means a CDQ project with a central activity that involves an ongoing exchange of goods or services for compensation between two or more parties;

(26) "governing body" means a city council, traditional council, or Indian Reorganization Act (IRA) Council;

(27) "independent public accountant" means an accountant who is independent of an entity being audited, who is registered or licensed to practice as a public accountant in the state in which the audit is conducted, and who is in good standing under the laws of the state in which the audit is conducted; the accountant must be independent both in fact and in appearance;

(28) "investment" means an expenditure of CDQ assets for the social and economic development of a CDQ region;

(29) "NMFS" means the National Marine Fisheries Service;

(30) "participating community" means a community in a CDQ region that is participating in a CDQ group;

(31) "proposed CDQ project" means a CDQ project that is yet to be initiated;

(32) "PSQ" means prohibited species quota and is the amount of a PSQ reserve that is allocated to a CDQ group;

(33) "resident" means a person who maintains a mailing address and permanent domicile in an eligible community and is eligible to receive an Alaska Permanent Fund dividend at that address;

(34) "resident fisherman" means a person with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in an eligible community and is eligible to receive an Alaska Permanent Fund dividend at that address;

(35) "state" means the State of Alaska;

(36) "temporary job" means a job designed to last no more than six months. (Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151; am \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** Art. III, sec. 1, Ak Const. Art. III, sec. 24, Ak Const. AS 44.33.020(11)



## CHAPTER 093 WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM

### 6 AAC 93.010 PURPOSE OF REGULATIONS.

The purpose of this chapter is to implement the state's role in the Western Alaska Community Development Quota Program (CDQ Program) for the Bering Sea and Aleutian Islands Area under 50 C.F.R. 679.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

### 6 AAC 93.012 REFERENCES TO FEDERAL LAW.

In this chapter, each reference to a provision of 50 C.F.R. 679 refers to that provision as revised as of June 9, 1999.

History - Eff. 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

### 6 AAC 93.015 CDQ TEAM; RESPONSIBILITIES; LEAD STATE AGENCY.

(a) To carry out the state's role in the CDQ program under 50 C.F.R. 679, a CDQ team shall perform functions as directed in and under this chapter. The CDQ team consists of

- (1) the commissioner of the Department of Community and Economic Development, or one or more of the commissioner's representatives from that department, including one person to act as CDQ manager;
- (2) the commissioner of the Department of Fish and Game, or one or more of the commissioner's representatives from that department; and
- (3) one or more other state employees or state officials designated jointly by those commissioners, if additional members of the team would be beneficial.

(b) The Department of Community and Economic Development is the lead agency. CDQ program material submitted under this chapter shall be submitted to the lead agency.

(c) To fulfill the purpose of this chapter, including providing accountability to the CDQ program, the CDQ team shall

- (1) solicit submittals of community development plans (CDP) from eligible communities;
- (2) review and evaluate proposed CDPs;
- (3) make recommendations regarding CDQ allocations and changes to allocations;
- (4) review and make recommendations regarding amendments to approved CDPs;
- (5) monitor the performance of each CDQ group in achieving the group's milestones and objectives in its CDP;
- (6) seek to ensure consistency between the CDQ program standards in 6 AAC 93.017 and a CDQ group's activities that are subject to this chapter and 50 C.F.R. 679; and
- (7) based on reports and other information obtained under this chapter, prepare and submit to the governor, for the governor's review, approval, and necessary action, the state's annual progress report described in 50 C.F.R. 679.30(g) and (h).

(d) The governor will, in the governor's discretion, delegate in writing the responsibility for carrying out one or more duties of the governor under this chapter to the CDQ team.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

Editor's Notes - The mailing address for submitting material under this chapter is: CDQ Team, Office of the Commissioner, Department of Community and Economic Development, P.O. Box 110803, Juneau, Alaska 99811-0803.

### 6 AAC 93.017 CDQ PROGRAM STANDARDS.

To carry out the state's role under 50 C.F.R. 679 and this chapter, the CDQ team shall apply the standards listed in (1) - (9) of this section, as applicable. The CDQ team shall determine whether

- (1) a CDP provides specific and measurable benefits to each community participating in the CDP;
- (2) as part of a CDP, a CDQ project provides benefits to individual residents of a participating community, to a single participating community, or to all participating communities;
- (3) a proposed CDP has the support of all participating communities;
- (4) each CDQ project listed in a CDP has the support of the applicant's or CDQ group's board of directors, reflected by official action of the board;
- (5) before initiating a proposed CDQ project, a CDQ group exercised a level of due diligence that reflects the value of the investment, the risk involved, and the type of project;
- (6) a reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group;
- (7) the CDQ group has minimized legal and financial risk;
- (8) the CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 C.F.R. 679.1(e); and
- (9) in areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

History - Eff. 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

### 6 AAC 93.020 CDQ APPLICATION PERIOD.

- (a) Within a reasonable time before an application period is to begin, the CDQ team shall
- (1) establish the application period by scheduling a deadline for receipt of proposed CDPs from qualified applicants and by scheduling a projected time frame for
    - (A) initial evaluation;
    - (B) holding a public hearing to discuss all CDPs received; and
    - (C) final review;
  - (2) publish a notice that announces the CDQ application period, states the allocation cycle, and states the deadline for submitting a proposed CDP; the notice must be published in at least one newspaper of general circulation in Western Alaska and in at least one newspaper of general circulation in the state; and





- (3) mail a copy of the notice to each eligible community.
- (b) Except as provided in 6 AAC 93.075 (b), the deadline for submission of a proposed CDP set by (a)(1) of this section may not be less than 14 days after publication of the notice under (a) of this section.
- (c) If, after publication of the notice under (a) of this section, the CDQ team determines that it is necessary to change the allocation cycle, the CDQ team shall notify all applicants and eligible communities and publish notice of the change.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

### 6 AAC 93.025 REQUIREMENTS FOR SUBMITTING A PROPOSED CDP.

- (a) To apply for an allocation under 50 C.F.R. 679, a qualified applicant must submit to the CDQ team, on or before the deadline set under 6 AAC 93.020, a complete proposed CDP that contains the information required by 50 C.F.R. 679.30(a), including
- (1) a statement that the applicant is a qualified applicant as defined in 50 C.F.R. 679.2; this statement must be accompanied by a certificate of incorporation showing that the applicant is a nonprofit corporation formed under AS 10.20;
- (2) a statement as to whether the applicant is also the managing organization for the proposed CDP;
- (3) a statement that each community participating in the proposed CDP is an eligible community as defined in 50 C.F.R. 679.2;
- (4) with the list of communities participating in the CDP required by 50 C.F.R. 679.30(a)(1)(iv),
- (A) the population of each community;
- (B) the economic conditions in each community; and
- (C) evidence that the applicant has developed an effective outreach project to keep participating communities informed about the CDQ group's activities and to facilitate community input throughout the course of the CDP;
- (5) for each member of the applicant's board of directors, a letter of support or election results from the board member's eligible community and a statement of support from the governing body of each community participating in the proposed CDP; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;
- (6) for each species allocation, evidence, such as a contract with a business partner, that the applicant has not obligated, and does not intend to obligate, further allocations to a third party;
- (7) for an applicant that is also a managing organization,
- (A) evidence that the managing organization has a board of directors with a membership composed of at least 75 percent resident fishermen from the community or group of communities participating in the CDP, with at least one member from each community; and
- (B) a statement of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;
- (8) for a managing organization that will participate in a fishery on behalf of the applicant, but is not the applicant, a statement

- of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;
- (9) information regarding the particular benefits that an allocation under the CDP would generate for the Bering Sea and Aleutian Islands region; in addition, the applicant may provide information regarding any benefits to the state or the United States;
- (10) the applicant's existing and foreseeable business relationships; to meet the requirement of this paragraph, the applicant shall
- (A) provide copies of any contractual service arrangements dealing with legal, lobbying, audit, accounting, allocation management, investment research, fund management, and similar services;
- (B) provide copies of profit sharing arrangements;
- (C) provide copies of funding and financing plans; and
- (D) describe each type of relationship, including joint ventures, loans, partnerships, corporations, and, if applicable, distribution of proceeds;
- (11) a copy of the investment policies that the applicant will follow for
- (A) for-profit CDQ projects;
- (B) infrastructure CDQ projects;
- (C) fund and cash management CDQ projects; and
- (D) other applicable CDQ projects;
- (12) as part of the detailed description of each CDQ project required by 50 C.F.R. 679.30(a)(1)(i), information that
- (A) identifies the project as an active or proposed CDQ project;
- (B) describes the project's normal scope of operations; and
- (C) indicates whether an active project should be classified as a core or noncore CDQ project;
- (13) a milestone table that sets out specific and measurable objectives for each CDQ project and dates for achieving each objective;
- (14) budgets, including
- (A) a general budget for the proposed CDP that identifies all allocation revenue, project revenue, and project expenditures for the entire period for the proposed CDP;
- (B) an annual budget listing detailed expenses for each CDP project for the first year of the proposed CDP; and
- (C) an annual comprehensive budget for the allowable administrative expenses, as previously determined by the CDQ team, specifically indicating the expenses that are chargeable to the managerial, general administrative, and policy phases of a CDQ group and the group's projects;
- (15) a description of how the applicant plans to report financial and audit information to the CDQ team throughout the course of its CDP, in accordance with 6 AAC 93.050; and
- (16) any additional information that the CDQ team finds is necessary to determine whether to recommend approval of the proposed CDP under 6 AAC 93.040(c).
- (b) An eligible community may not
- (1) submit more than one proposed CDP during a single CDQ application period; or
- (2) participate in more than one CDP; this paragraph does not prevent an eligible community from participating in halibut allocations that are restricted by regulatory areas of the



International Pacific Halibut Commission and 50 C.F.R. 679.30.  
(c) Except for circumstances that the CDQ team finds were beyond the applicant's control, the CDQ team may not evaluate a proposed CDP received after the deadline set under 6 AAC 93.020.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 41.33.020 (11)  
Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015.

#### 6 AAC 93.030 INITIAL EVALUATION OF PROPOSED CDPS.

(a) The CDQ team shall perform an initial evaluation of a proposed CDP submitted under 6 AAC 93.025 to determine whether the CDP is complete. Within 15 days after a proposed CDP is received, the CDQ team shall notify the CDP applicant of any information needed to make the CDP complete. The applicant must submit the needed information within 10 days after being notified by the CDQ team. If, after the initial evaluation period, the CDQ team finds that additional information is needed for completeness, the applicant will have 10 days after notification to provide the information.  
(b) After the initial CDP evaluation, the CDQ team shall schedule a public hearing under 6 AAC 93.035 as required by 50 C.F.R. 679.30(b).

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 41.33.020 (11)

#### 6 AAC 93.035 PUBLIC HEARING.

(a) The CDQ team shall schedule at least one public hearing on all pending complete proposed CDPS, providing for a teleconference site in each geographical area that is subject to a proposed CDP.  
(b) The CDQ team shall provide notice of the date and location of a public hearing  
(1) to each applicant whose proposed CDP is the subject of the hearing;  
(2) through newspaper publication; in addition, notice may be provided through other media; and  
(3) to any other person the CDQ team believes will be interested in a pending CDP.  
(c) A public hearing under this section must be recorded and transcribed. The transcript of the public hearing will be made available to the public, upon request, at the same time that the transcript is submitted under 6 AAC 93.045.

(d) Repealed 8/19/99.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 41.33.020 (11)

#### 6 AAC 93.040 FINAL EVALUATION OF PROPOSED CDPS [COMPLETE CDP APPLICATIONS]

(a) After the public hearing under 6 AAC 93.035, the CDQ team shall evaluate all complete proposed CDPS to determine whether the CDPS are consistent with the standards in 6 AAC

93.017 and meet the applicable requirements of this chapter and 50 C.F.R. 679.

(b) The CDQ team shall consider the following factors when reviewing a complete proposed CDP:

- (1) the number of participating eligible communities and
  - (A) the population of each community; and
  - (B) the economic conditions in each community;
- (2) the size of the allocation requested by the applicant and the proper allocation necessary to achieve the milestones and objectives as stated in the proposed CDP;
- (3) the degree, if any, to which each CDQ project is expected to develop a self-sustaining local fisheries economy, and the proposed schedule for transition from reliance on an allocation to economic self-sufficiency;
- (4) the degree, if any, to which each CDQ project is expected to generate
  - (A) capital or equity in the local fisheries economy or infrastructure; or
  - (B) investment in commercial fishing or fish processing operations;
- (5) the applicant's contractual relationship, if any, with joint venture partners and the managing organization;
- (6) the applicant's and the applicant's harvesting and processing partners', if any, involvement and diversity in all facets of harvesting and processing;
- (7) the coordination or cooperation with other applicants or CDQ groups on CDQ projects;
- (8) the experience of the applicant's industry partners, if any;
- (9) the applicant's CDQ projects for employment, education, and training that provide career track opportunities;
- (10) the benefits, if any, to the state's economy or to the economy of communities that are not eligible to participate in the CDQ program that are in addition to the benefits generated by the proposed CDP for participating communities;
- (11) a demonstration, through the information submitted under 6 AAC 93.025(a)(11), that the applicant has a formal, effective administrative process that sets out sound business principles and examples of due diligence that the applicant will exercise;
- (12) the development, if any, of innovative products and processing techniques as well as innovation in harvesting gear for conservation and maximum utilization of the fishery resource;
- (13) the applicant's ability to maintain control over each of its allocations;
- (14) the capital or equity generated by the applicant's CDQ projects for fisheries-related business investment;
- (15) the past performance of the applicant and the applicant's industry partners, as appropriate;
- (16) the applicant's transition plan, including the objectives set out in the milestone table submitted under 6 AAC 93.025
  - (a)(13);
  - (17) for each CDQ project, the inclusion in the proposed CDP of realistic measurable milestones for determining progress;
  - (18) the degree of participating community input in developing the proposed CDP;
  - (19) the likely effectiveness of the outreach project described in 6 AAC 93.025(4)(C); and
  - (20) the comments provided by other agencies, organizations, and the public.



(c) After evaluation under this section, the CDQ team shall transmit to the governor for the governor's review and necessary action each proposed CDP and the CDQ team's evaluation and recommendation regarding each CDP. The governor will then make a written finding that a proposed CDP either

(1) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the National Marine Fisheries Service (NMFS) for approval for an allocation in the amount requested by the applicant;

(2) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the NMFS for approval with a reduced allocation from the amount initially requested by the applicant; or

(3) does not meet the requirements of this chapter and 50 C.F.R. 679 and will not be recommended to the NMFS for approval.

(d) If there is a sufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion, recommend all of those CDPs to the NMFS for approval.

(e) If there is an insufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion and after consultation by the CDQ team under (f) of this section,

(1) apportion the available quota among the applicants whose CDPs will be recommended for approval and will recommend the apportionment to the NMFS for approval; or

(2) select those complete proposed CDPs that the governor believes best satisfy the objectives, requirements, and criteria of the CDQ program and will recommend those CDPs to the NMFS for approval; a recommendation under this paragraph may also include a recommendation for an apportionment under (1) of this subsection.

(f) Before the CDQ team recommends an apportionment of the quota under (e) of this section, it shall consult with the applicants that might be affected by the proposed apportionment. The CDQ team may request an applicant to submit a revised CDP to assist the CDQ team in determining the

(1) economic feasibility and likelihood of success of the proposed CDP with an allocation of fishery resource less than that requested; and

(2) particular benefits that may be derived by participating communities affected by an allocation of fishery resource less than that requested.

(g) In apportioning the quota of fishery resource under (e) of this section, the governor will consider the information specified in this chapter and 50 C.F.R. 679 and seek to maximize the benefits of the CDQ program to the greatest number of participating communities.

(h) Before forwarding recommendations to the NMFS under 6 AAC 93.045, the governor will, or, at the governor's direction, the CDQ team shall, consult with the North Pacific Fishery Management Council regarding the proposed CDPs to be recommended by the governor for allocations and incorporate

any comments from the council into the written findings required under (c) of this section and 50 C.F.R. 679.30(d).

History - Eff. 11/18/92, Register 124, am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144, am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

#### **6 AAC 93.045 RECOMMENDATIONS TO THE NMFS REGARDING PROPOSED CDPs.**

After making written findings under 6 AAC 93.040 regarding the complete proposed CDPs, the governor will

(1) forward the proposed CDPs to the NMFS with written findings, rationale, and recommendations for approval of proposed CDPs and CDQ allocations; and

(2) notify in writing each CDP applicant as to whether the applicant's proposed CDP was recommended to the NMFS for approval, including whether any reduction of allocation was recommended under 6 AAC 93.040.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126, am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

#### **6 AAC 93.050 QUARTERLY AND ANNUAL REPORTS.**

(a) In order for the CDQ team to monitor a CDP as required under 50 C.F.R. 679.30, a CDQ group shall submit to the CDQ team a quarterly report for each calendar quarter in which that group's CDP is in effect, and an annual report as described in (d) of this section. Each quarterly report must be submitted by the deadline stated in (b) of this section and must contain the information required by (c) of this section.

(b) A CDQ group shall submit a quarterly report to the CDQ team, to be received or postmarked on or before

(1) April 30 for a CDP in effect during the preceding January, February, or March;

(2) July 30 for a CDP in effect during the preceding April, May, or June;

(3) October 30 for a CDP in effect during the preceding July, August, or September; and

(4) January 30 for a CDP in effect during the preceding October, November, or December.

(c) A quarterly report submitted under this section must include

(1) information describing how, during the period covered by the report, the CDP group has met the milestones and objectives of the CDP as set out in the CDP;

(2) a year-to-date report of all CDQ harvesting and processing activities of the CDQ group;

(3) comprehensive financial statements if required by the CDQ team; a statement required under this paragraph must include, as applicable,

(A) a consolidated balance sheet;

(B) a consolidated income statement that clearly identifies, by CDQ project, revenue and expenditures;

(C) a cash flow statement; and

(D) financial statements for the CDQ group's subsidiaries;

(4) complete year-to-date data regarding training, education, and employment under the CDP, provided in a format specified by the CDQ team;

(5) minutes for any CDQ group board or directors meetings



that were held during the quarter; and

(6) any other information that the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program; if the CDQ team requires additional information under this paragraph, the CDQ team shall notify the CDQ group in writing at least 15 days before the report is due.

(d) The quarterly reports submitted under this section for a calendar year are subject to an independent audit performed by a reputable accounting firm. The CDQ group's selection of an accounting firm is subject to the CDQ team approval. The independent audit constitutes a CDQ group's annual report and must be submitted by the CDQ group to the CDQ team, to be received or postmarked no later than May 31 of the year following the calendar year covered by the audit. The audit must include

(1) a report that indicates whether the CDQ group is meeting the milestones and objectives of the CDP as set out in its CDP; the CDP group shall meet with an auditor to develop agreed-upon procedures for the content of this report;

(2) consolidated financial statements, reported according to generally accepted accounting principles and, if determined necessary by the CDQ team, supplemental schedules reporting the financial position and results of operations for each of the CDQ group's consolidated for-profit subsidiaries classified in the CDP as a core CDQ project;

(3) a note to the financial statements in which the auditor details how financial results were determined and any other relevant information;

(4) a supplemental schedule detailing the CDQ group's general and administrative expenses;

(5) except for fund and cash management CDQ projects, a budget reconciliation between all CDQ projects and administrative budgets, and actual expenditures;

(6) a management report or letter; and

(7) any other information that the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program; if the CDQ team requires additional information under this paragraph, the CDQ team shall notify the CDQ group in writing at least 15 days before the group's annual report is due.

(e) In this section, "postmarked" means the

(1) United States Postal Service postmark;

(2) the date of placement with a courier-type delivery service as evidenced on the shipping documents;

(3) the date the document is delivered to the CDQ team by facsimile; or

(4) the date the document is delivered to the CDQ team by electronic mail.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 43.02.029 (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015.

## 6 AAC 93.055 AMENDMENTS TO AN APPROVED CDP.

(a) General requirements. A CDP is a working business plan that must be kept current. A CDQ group that seeks to amend a CDP under this section and 50 C.F.R. 679.30 shall submit to the CDQ

team a written request for approval of the amendment under the appropriate process described in this section. A CDQ group may not engage in an activity that requires an amendment to the group's CDP until the amendment is recommended for approval by the state and approved by the NMFS.

(b) Submittal requirements. When submitting a proposed CDP amendment under (c) or (d) of this section, in addition to the information that is required to be submitted under 50 C.F.R. 679.30(g)(4) or (5), the CDQ group shall describe how the amendment

(1) is consistent with the standards in 6 AAC 93.017, the group's investment policies submitted under 6 AAC 93.25(a)(11), and the requirements of 50 C.F.R. 679; and  
(2) will affect the CDQ group's ability to meet the milestones and objectives in its CDP.

(c) Substantial amendments. A substantial amendment to a CDP is subject to (f) and (h) of this section and 50 C.F.R. 679.30(g)(4). A substantial amendment requires the

commissioner to make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(4). A substantial amendment is required if a CDQ group intends to

(1) make a change described in 50 C.F.R. 679.30(g)(4)(iv);

(2) pursue a proposed CDQ project that will be classified in the amended CDP as a core CDQ project;

(3) add a new proposed CDQ project;

(4) make a substantial variation in the normal scope of operations for an active core CDQ project described under 6 AAC 93.025 (a)(12)(B); or

(5) engage in a CDQ activity that would result in an active noncore CDQ project being classified as a core CDQ project under 6 AAC 93.057.

(d) Technical amendments for noncore projects. A technical amendment under this subsection is subject to 50 C.F.R.

679.30(g)(5). If a CDQ group intends to pursue an activity described in this subsection, the group shall send a letter of notification to the CDQ manager, describing the activity and seeking a technical amendment to the CDP. With the letter of notification, the CDQ group shall include the information

required by (b) of this section. An activity under this subsection is subject to (g) and (i) of this section and requires the CDQ manager to make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(5). Subject to (g)(2) of this section, the CDQ manager will make a decision under this subsection within 10 days after a letter of notification is received. Notification under this subsection is required when a CDQ group intends to

(1) pursue a proposed noncore CDQ project that is clearly identified in the CDP text and budget, if the CDQ team advises the CDQ group that notification under this section is required; or

(2) make a substantial variation in the normal scope of operations of an active noncore CDQ project, if the variation will impact the CDQ project performance measures described in the milestone table submitted under 6 AAC 93.025 (a)(13);

(e) Other technical amendments. A technical amendment to a CDP is subject to 50 C.F.R. 679.30(g)(5). A technical



amendment requires the CDQ manager to review the materials submitted by the CDQ group and make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(5). A technical amendment to the CDP under this subsection is required when a CDQ group intends to

- (1) make a change in its board of directors or key administrative staff;
  - (2) make a change in a contract dealing with a business relationship described under 6 AAC 93.025 (a)(10)(A);
  - (3) add a harvesting or processing contract that is substantially similar to an existing contract in the group's approved CDP; the CDQ group shall provide a copy of the contract; or
  - (4) make any other change that the CDQ team determines is technical in nature.
- (f) Review process for substantial amendments. The CDQ team shall use the following process in its review for a substantial amendment proposed under (c) of this section:
- (1) the CDQ team shall determine within 30 days whether the amendment
    - (A) is consistent with the standards, policies, and requirements discussed under (b)(1) of this section; or
    - (B) will reduce the CDQ group's ability to meet the milestones and objectives in its CDP;
  - (2) if the CDQ team finds an amendment to be inconsistent under (1)(A) of this subsection or will reduce the CDQ group's ability to meet the milestones and objectives in its CDP,
    - (A) the CDQ team shall notify the CDQ group; the group will have 10 days to respond with more information;
    - (B) within 10 days after the CDQ group's response is received, the CDQ team shall repeat the review under (1) of this subsection; and
    - (3) the CDQ team shall repeat the process described in (2) of this subsection until the CDQ team recommends approval of the amendment or makes a determination under (h) of this section.
  - (g) Review process for technical amendments for noncore projects. The CDQ manager shall use the following process in the review of a technical amendment for a noncore project proposed under (d) of this section.
    - (1) the CDQ manager shall determine within 10 days whether the amendment
      - (A) is consistent with the standards, policies, and requirements discussed under (b)(1) of this section; or
      - (B) will reduce the CDQ group's ability to meet the milestones and objectives in its CDP;
    - (2) if the CDQ manager finds that an amendment is inconsistent under (1)(A) of this subsection or will reduce the CDQ group's ability to meet the milestones and objectives in its CDP,
      - (A) the CDQ manager shall notify the CDQ group; the group will have five days to respond with more information;
      - (B) within 10 days after the CDQ group's response is received, the CDQ manager shall repeat the review under (1) of this subsection; and
      - (3) the CDQ manager shall repeat the process described in (2) of this subsection until the CDQ manager recommends approval of the amendment or makes a determination under (i) of this section.
    - (h) Recommendation for disapproval of a substantial

amendment. If the CDQ team finds that a substantial amendment proposed under (c) of this section is inconsistent with the standards, policies, or requirements referred to in (b) of this section, or that the amendment will reduce the CDQ group's ability to successfully meet the milestones and objectives in its CDP, the CDQ team shall recommend that the commissioner forward the amendment to the NMFS with a recommendation for disapproval. If the commissioner decides to recommend disapproval under this subsection, the commissioner will notify the CDQ group, advising the group that it may request reconsideration under 6 AAC 93.090.

(i) Recommendation for disapproval of a technical amendment for a noncore project. If the CDQ manager finds that a technical amendment for a noncore project proposed under (d) of this section is inconsistent with the investment policies or federal requirements referred to in (b) of this section, or that the amendment will reduce the CDQ group's ability to successfully meet the milestones and objectives in its CDP, the CDQ manager shall recommend disapproval of the amendment. If the CDQ manager finds that the amendment is inconsistent with the standards in 6 AAC 93.017, the CDQ manager may recommend disapproval of the amendment. The CDQ group may request reconsideration of the CDQ manager's decision under 6 AAC 93.090.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 14.33.020 (11)  
Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015.

#### **6 AAC 93.057 RECLASSIFICATION OF CORE AND NONCORE PROJECTS.**

(a) If the annual progress report prepared by the CDQ team under 6 AAC 93.015 will address a CDQ project classified in the CDP as a noncore CDQ project that has been found by the CDQ team to meet the criteria for a core CDQ project in 6 AAC 93.900, the CDQ team may reclassify a noncore CDQ project as a core CDQ project in that report and shall request the CDQ group to seek a substantial amendment to its CDP under 6 AAC 93.055 (c). For the purposes of this subsection, the criteria in the definition of "core CDQ project" at 6 AAC 93.900 (13)(C)(i) may not be considered.

(b) If a CDQ group believes that a project classified in the group's CDP as a core CDQ project should instead be classified as a noncore CDQ project, the CDQ group may petition the CDQ team to reclassify the project. A CDQ group may submit a petition under this subsection only between June 15 and August 15.

(c) The CDQ team shall consider the following factors in its review of a petition submitted under (b) of this section:

- (1) the maturity of the business cycle, the stability of management, and the profitability of the project;
- (2) the success of the project in meeting the milestones and objectives in the CDP;
- (3) whether the majority of activities of the project are occurring in, or in proximity to, an eligible CDQ community; and
- (4) the overall impact the project has on the success of the CDQ group's CDP.



(d) If the CDQ team approves a petition submitted under (b) of this section, the petition will be treated as a technical amendment that is recommended for approval by the NMFS under 50 C.F.R. 679.30(g)(5).

History - Eff. 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015.

#### 6 AAC 93.060 SUSPENSION OR TERMINATION OF A CDP; DECREASE IN ALLOCATION.

(a) The governor will, in the governor's discretion, recommend to the NMFS in writing that a CDP be partially suspended, or terminated or that allocations under CDP be decreased if, as part of the annual progress report prepared under 6 AAC 93.015 or in response to an allegation under (c) of this section, the CDQ team notifies the governor that the CDQ team has determined that a CDQ group

(1) has failed to comply with

(A) this chapter; or

(B) 50 C.F.R. 679;

(2) has failed to meet its milestones or objectives; or

(3) appears unlikely to meet its milestones or objectives.

(b) Nothing in (a) of this section precludes the governor from including a recommendation for a decreased allocation with a recommendation for a partial suspension.

(c) If, at any time during the course of a CDP, the CDQ team is advised that a CDQ group has failed to comply with 50 C.F.R. 679 or with this chapter, the CDQ Team will send a written notice of the allegation to the CDQ group at the address on file at the department for the group. The CDQ group may, within 10 days after receipt of the notice, submit to the CDQ team a written response to the allegation. The CDQ team shall consider the CDQ group's written response, if any, in deciding whether to make a recommendation to the governor under (a) or (b) of this section. If the CDQ team decides to make a recommendation under (a) or (b) of this section, the CDQ team shall include the CDQ group's written response, if any, with the recommendation transmitted to the governor.

(d) Before sending the governor's recommendation under (a) or (b) of this section to the NMFS, the CDQ team shall inform the CDQ group of the governor's decision. The CDQ group may request reconsideration of the governor's decision under 6 AAC 93.090.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

#### 6 AAC 93.070 CONFIDENTIAL RECORDS.

(a) Except as provided in (b) and (c) of this section, records submitted under this chapter by an applicant or a CDQ group that are in the possession of the governor or the CDQ team are subject to AS 09.25.110 - 09.25.120 and are open to inspection by the public during regular office hours.

(b) A participating community, applicant, CDQ group, or managing organization wishing to protect a record that was provided to the state under this chapter may file with the governor or CDQ team a written petition identifying the record

to be protected and showing good cause to classify the record as confidential. If, at the time of submission, a participating community, applicant, CDQ group, or managing organization wishes to protect a record being submitted under this chapter, the community, applicant, group, or organization shall mark the record as "confidential" and show good cause to classify the record as confidential.

(c) Good cause to classify a record as confidential under this section includes a showing that

(1) disclosure of the record to the public might competitively or financially disadvantage or harm the participating community, applicant, CDQ group, or managing organization with the confidentiality interest, or might reveal a trade secret or proprietary business interest; and

(2) the need for confidentiality outweighs the public interest in disclosure.

(d) If the governor or CDQ team determines that good cause exists under (c) of this section, the governor or CDQ team will, in writing, classify the records as "confidential" and restrict access to them.

(e) Except as provided in Alaska Rules of Court, a record classified as confidential under this section will not be made public or furnished to any person other than the United States Secretary of Commerce, the North Pacific Fishery Management Council, the Alaska Region of the National Marine Fisheries Service, the governor, the CDQ team and staff, or other authorized representatives of the governor.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015.

#### 6 AAC 93.075 GENERAL PROVISIONS.

(a) The governor will, in the governor's discretion, consider other factors not identified in this chapter if those factors are relevant to the decision or recommendation in question.

(b) The governor will, in the governor's discretion, relax or reduce the notice requirements of 6 AAC 93.020 - 6 AAC 93.040 if the governor determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126

Authority - Art. III, Sec. 1, Ak. Const.

Art. III, Sec. 24, Ak. Const.

#### 6 AAC 93.080 REPORTING OF CDQ PROGRAM FISHERY HARVEST.

A buyer of fish that, under AS 16.05.690 and 5 AAC 39.130, is required to record and report a purchase of fish shall also record and report the buyer's purchases of fishery resources that are harvested through a CDQ program. This shall be done in the manner required by AS 16.05.690 and 5 AAC 39.130 and other regulations adopted under that statute.

History - Eff. 1/1/98, Register 144

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24



### 6 AAC 93.090 RECONSIDERATION PROCESS.

- (a) A CDQ group may submit to the CDQ team a request for reconsideration of a decision under 6 AAC 93.055 or a decision under 6 AAC 93.060. Subject to (e) of this section, the request for reconsideration must be submitted within 20 days after the CDQ group receives notice of the decision. For a decision to be reconsidered, the request for reconsideration must include additional information that was not provided for consideration in the initial decision.
- (b) For reconsideration of a decision under (1) 6 AAC 93.055 (h), the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the commissioner regarding a reconsideration decision;
- (2) 6 AAC 93.055 (i), the CDQ manager shall review the additional information submitted with the request for reconsideration and make a reconsideration decision; or
- (3) 6 AAC 93.060, the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the governor regarding a reconsideration decision.
- (c) Within 20 days after a request for reconsideration is received, notification to the CDQ group of the reconsideration decision will be made by
- (1) the commissioner, for a decision under 6 AAC 93.055 (h);
- (2) the CDQ manager, for a decision under 6 AAC 93.055 (i); or
- (3) the governor, for a decision under 6 AAC 93.060.
- (d) Findings regarding a reconsideration decision will be submitted to the NMFS along with the final recommendation regarding the amendment, suspension, termination, or decrease in allocation. The CDQ team shall shorten the time within which a request for reconsideration may be submitted under (a) of this section if the CDQ team determines that a participating community will be competitively or financially harmed by a delay in issuing the decision.
- History - Eff. 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 43.020 (11)  
Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015.

### 6 AAC 93.900 DEFINITIONS.

In this chapter

- (1) "active CDQ project" means a CDQ project that was initiated under an approved CDP or through the amendment process in 6 AAC 93.055, and that continues its status as a CDQ project;
- (2) "allocation" includes a CDQ allocation and a PSQ allocation under 50 C.F.R. 679;
- (3) "allocation cycle" means the time of duration of a CDP as designated at the onset of the CDQ application period;
- (4) "application period" means the time between the date of publication of the notice under 6 AAC 93.020 (a) and the forwarding of the final CDP recommendation to the NMFS;
- (5) "CDP" means community development plan;
- (6) "CDQ" means community development quota;
- (7) "CDQ activity" means an activity pursued by the CDQ group that is paid for, directly or indirectly, through CDQ assets;

- (8) "CDQ asset" means property of a CDQ group;
- (9) "CDQ liability" means a debt of a CDQ group;
- (10) "CDQ manager" means the department employee designated by the commissioner;
- (11) "CDQ team" means the state officials designated in or under 6 AAC 93.015;
- (12) "commissioner" means the commissioner of the department;
- (13) "core CDQ project" means a CDQ project that
- (A) has a collective ownership by the applicant or CDQ group that is in excess of 49 percent;
- (B) has a level of involvement by the applicant or CDQ group that demonstrates effective managing control, as determined by the CDQ team; or
- (C) meets at least two of the following criteria:
- (i) the applicant's or CDQ group's equity interest in the CDQ project constitutes at least 25 percent of the applicant's or group's assets;
- (ii) the CDQ project has total indebtedness that the applicant or CDQ group is directly liable for in excess of 25 percent of the applicant's or group's assets;
- (iii) the CDQ project has total indebtedness that the applicant or CDQ group is directly liable for in excess of 25 percent of the applicant's or group's assets;
- (iv) the CDQ project has been determined by the annual progress report prepared under 6 AAC 93.015 to not meet the milestones and objectives in the CDP for three consecutive years;
- (v) the CDQ project receives funding from the applicant or CDQ group in a calendar year;
- (14) "department" means the Department of Community and Economic Development;
- (15) "fisheries-related" means to have a direct or indirect link to the commercial fisheries industry;
- (16) "for-profit CDQ project" means a CDQ project with a central activity that involves an ongoing exchange of goods or services for compensation between two or more parties;
- (17) "governing body" means a city council, traditional council, or Indian Reorganization Act (IRA) Council;
- (18) "NMFS" means the federal National Marine Fisheries Service;
- (19) "noncore CDQ project" means a CDQ project that is not a core CDQ project;
- (20) "proposed CDQ project" means a CDQ project that is yet to be initiated;
- (21) "substantial variation" means a significant change in the normal scope of operations of an active CDQ project as stated in the CDP; a "substantial variation" includes a change that could result in a determination of inconsistency with the standards in 6 AAC 93.017 and a change that could affect a CDQ group's ability to meet the milestones and objectives in the CDP.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 43.020 (11)  
Editor's Notes - Definitions of other terms under in 6 AAC 93 are found at 50 C.F.R. 679.2.