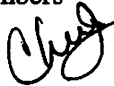


MEMORANDUM

TO: Council Members

FROM: Chris Oliver 
Executive Director

DATE: March 29, 2004

SUBJECT: Community Development Quota (CDQ) Program

ESTIMATED TIME 2 HOURS

ACTION REQUIRED:

- (a) Receive report on status of BSAI Amendment 71.
- (b) Discuss fishery management issues.

Background

(a) Receive report on status of BSAI Amendment 71

Sally Bibb (NMFS) will report to the Council on the issues associated with BSAI Amendment 71, as well as other issues pertaining to the upcoming 2006 - 2008 allocation process and government oversight of the CDQ Program.

In June 2002, the Council approved BSAI Amendment 71, to address policy and administrative issues in the western Alaska CDQ Program. The Council recommended revisions to the CDQ Program under eight issues which fall into four categories: (1) the CDQ allocation process; (2) government oversight; (3) allowance for CDQ groups to invest in non-fisheries economic development projects; and (4) revisions to requirements for quota transfers and alternative fishing plans. All of the issues require regulatory amendments to implement, but only two of the issues (government oversight and non-fisheries projects) have associated FMP amendment text.

NMFS Alaska Region staff have suspended work on a proposed rule that would address all of Amendment 71 in a single rulemaking package, primarily due to concerns that more analysis is needed on new legal issues related to the role of NMFS and the State in oversight of the CDQ Program, and because the next allocation cycle will begin before regulatory revisions can be made effective. NMFS will propose an approach to the Council that will divide the issues in Amendment 71 and allow NMFS to proceed with implementation of some issues while continuing to work on further analysis of the role of the State and NMFS in oversight of the CDQ Program.

The 2006-2008 CDQ allocation process

The current allocations to the CDQ groups expire at the end of 2005. The 2006-2008 CDQ allocation process will be conducted in a manner consistent with the regulatory revisions under Amendment 71. The primary new element in the allocation process is the addition of an administrative appeals process that was recommended by NMFS. The State is willing to voluntarily submit its CDQ allocation recommendations to NMFS prior to the October 15 deadline currently in NMFS's regulations, in order to provide sufficient time for the administrative appeals process. Under this proposal, the 2006 - 2008 CDQ allocation process

will start in October 2004 and conclude by December 31, 2005. NMFS and the State will provide the Council with a more detailed schedule of events for the 2006-2008 CDQ allocation cycle.

The crab rationalization program will add two new crab CDQ allocations to the CDQ Program in 2005: Eastern Aleutian Islands brown (golden) king crab and Adak red king crab. While allocations beyond 2005 will be included in the standard 2006-2008 allocation process, the State of Alaska and NMFS must develop and approve percentage allocations of these crab CDQ reserves among the CDQ groups for 2005. NMFS and the State CDQ Team are proposing to include 2005 allocation recommendations for these two new crab CDQ categories in the 2006-2008 CDQ allocation process.

The role of NMFS and the State in CDQ program oversight

Last fall, the U.S. Fish and Wildlife Service (USFWS) wrote a letter to NMFS concluding that NMFS is taking a Federal action under the Endangered Species Act (ESA) when it approves Community Development Plans (CDPs) and amendments to the plans. The letter is provided as Attachment C-8(a). The USFWS concluded that NMFS is authorizing the economic development projects and, therefore, has a responsibility to consult with the USFWS on these projects under the ESA. Since the implementation of the CDQ Program in 1992, NMFS has not considered ESA and NEPA issues in its decisions to approve CDPs and amendments. NOAA General Counsel generally agrees with the USFWS on this conclusion and has advised NMFS that approval and amendment of CDPs likely are agency action subject to the consultation requirements of the ESA

This conclusion on ESA responsibility will likely also lead to the conclusion that NMFS's approval of Community Development Plans and amendments require environmental review under NEPA. These additional responsibilities will require NMFS to conduct some level of environmental review for the CDP as a whole and for any amendments before NMFS can approve those actions. NMFS has not fully evaluated the process that would be required or the agency resources necessary to fulfill these additional responsibilities. However, it is certain that this determination would result in additional review responsibilities for NMFS staff and additional information requirements for the CDQ groups.

These environmental review requirements result from NMFS's regulations that require the CDQ groups to receive prior approval from the State and NMFS before spending money or conducting activities described in the CDP or amendments. Before expanding its current role, NMFS needs to further examine the extent of its legal responsibilities for environmental review and provide the Council, State, and CDQ groups with an assessment of the impacts on the program and the agencies. NMFS proposes to address these issues as part of the continued analysis of government oversight issues associated with Amendment 71. NMFS recommends that an additional alternative with the following elements be further analyzed in that amendment package:

- (1) NMFS would continue to review and approve or disapprove the State's recommendations on CDQ allocations;
- (2) the CDQ groups could be required to submit a CDP as part of the allocation process, but NMFS would not approve or disapprove that plan at the time it approves allocations;
- (3) NMFS would no longer require the CDQ groups to obtain approval from NMFS for amendments to the plans or approval from NMFS before proceeding with new CDQ projects.

CDQ community eligibility issues

Senator Murkowski recently introduced a bill (S. 2197) in Congress which addresses the issue of eligible CDQ communities. Currently, community eligibility criteria for participating in the CDQ Program is included in the Magnuson-Stevens Act (added in 1996 under the Sustainable Fisheries Act amendments), the BSAI FMP, and in Federal regulations, but the exact wording of the criteria differs among the three documents. Given the rules of statutory construction, the eligibility criteria in the Magnuson-Stevens Act take precedence

over the eligibility criteria set forth in Federal regulations (50 CFR 679.2), to the extent there is any conflict between the statutory and regulatory language. A letter challenging the CDQ allocations prompted NMFS to examine this issue, and to initiate the effort, a legal opinion was requested from NOAA GC on whether and where inconsistencies exist between the criteria listed in Federal regulations and that listed in the Magnuson-Stevens Act, as well as how to interpret and apply the statutory criteria for community eligibility.

The legal opinion (NOAA GC, August 15, 2003) concluded that the Federal regulations (and BSAI Groundfish FMP) must be revised to be consistent with the eligibility criteria in the Magnuson-Stevens Act, and only communities that meet that criteria can be listed as eligible communities in regulation and participate in the CDQ Program. The legal opinion further concluded that NMFS must review the eligibility status of each of the 65 communities that have previously been determined eligible by NMFS, either through rulemaking or administrative determination, relative to the eligibility criteria in the statute. At its October 2003 meeting, the Council was provided with a discussion paper outlining the eligibility issues and NMFS' analytical approach to address the existing inconsistencies. NMFS delayed efforts on this analysis, with the understanding that Congressional action to clarify the eligible CDQ communities was likely forthcoming prior to the next allocation cycle.

Senator Murkowski introduced the "CDQ Community Preservation Act" on March 11, 2004. In sum, this bill would clarify the status of the 65 communities currently participating in the CDQ Program as eligible; this includes all communities determined eligible through rulemaking (currently listed in Table 7 to Part 679 of 50 CFR) as well as the subset of communities that was approved by NMFS administrative determination on April 19, 1999. The bill does not preclude new communities from becoming eligible. The proposed bill language is provided as Attachment C-8(b), and the list of 65 eligible communities is provided as Attachment C-8(c).

While NMFS may continue to take action to revise the FMP and Federal regulations to make the eligibility criteria consistent with that in the MSA, Congressional action on this bill would make a re-evaluation of each of the 65 participating communities unnecessary.

b) Discuss fishery management issues.

NMFS will provide a report to the Council on a proposed analysis to revise the fishery management regulations for the CDQ Program. This analysis was spurred by a concern with the strict quota accountability required for CDQ allocations and the need for more flexibility to respond to changes that occur in the groundfish fisheries through the annual specifications process.

In 2003, NMFS implemented the Council's recommendation to no longer allocate the "other species" CDQ reserve among the CDQ groups because of the potential that the CDQ groups would catch their allocations of "other species" before harvesting their target species. The issue likely will arise again in the next few years with rockfish, as some of the rockfish species groups have been split by species and area in recent years to better manage the individual rockfish species. Splitting quota categories usually results in smaller TACs, smaller CDQ reserves, and smaller allocations to the individual CDQ groups. Some of the rockfish TACs are sufficiently small that individual CDQ groups could be allocated less than one metric ton of a particular rockfish species for the entire fishing year.

Rather than continuing to address the constraints that strict quota accountability places on the CDQ groups on a species by species basis as problems arise, NMFS is recommending that the Council consider alternatives to address this problem. In addition, NMFS will recommend alternatives to provide more flexibility to determine percentage allocations among the CDQ groups in the case that the Council combines groundfish TAC categories by area or species in the annual specifications process.

NMFS is proposing to analyze the following alternatives:

Alternative 1: No action. Continue to establish CDQ reserves for every annual TAC category except squid. All CDQ reserves would be allocated among CDQ groups, with the exception of "other species." The CDQ groups would continue to be prohibited from exceeding any of the CDQ allocations made to the group.

Alternative 2: Modify the annual groundfish specification regulations to allow the Council to recommend each year: (1) which CDQ reserves would be allocated among the groups and which CDQ reserves would not be allocated among the groups, and (2) how to manage new TAC categories created by joining existing TAC categories by species or area among the CDQ groups.

Option 1: Reallocate squid to the CDQ Program and incorporate into this process.

Alternative 3: Amend NMFS regulations to specify which TAC categories would be allocated to the CDQ groups and which TAC categories would not be allocated to the CDQ groups. Any changes to these specifications would have to be made by a subsequent regulatory amendment.

Option 1: Reallocate squid to the CDQ Program and incorporate into this process.

More information about the proposed problem statement and the alternatives is included in the attached summary prepared by Obren Davis (NMFS) (Attachment C-8(d)). NMFS is requesting recommendations from the Council on these and any other alternatives to include in the analysis. The initial draft analysis will be presented to the Council at its June 2004 meeting, with final action in October 2004.



in reply refer to
AFWFO

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Anchorage Fish & Wildlife Field Office
605 West 4th Avenue, Room G-61
Anchorage, Alaska 99501-2249

November 17, 2003

Sally Bibb
National Marine Fisheries Service
Alaska Regional Office
P.O. Box 21668
Juneau, Alaska 99802

Re: Section 7 consultation with NMFS on Proposed APICDA Seafood Processor at Nelson Lagoon

Dear Sally,

Lenny Corin, Ecological Services Supervisor, Ann Rappoport, Anchorage Fish and Wildlife Field Office Field Supervisor, and I have discussed the proposed APICDA seafood processor in Nelson Lagoon, and the nexus between this proposed project and the NMFS. We believe that although it is not direct, there is a clear link between the NMFS and the proposed seafood processor. Below I detail our rationale and hopefully lay a framework for future discussion:

ESA Requirements

Section 7(a)(2) of the Endangered Species Act requires Federal agencies to consult with the Services (USFWS for terrestrial and most freshwater species, NMFS for most marine species) to ensure that any action that they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

Steller's Eiders in Nelson Lagoon

Pacific Steller's eiders winter and molt in Nelson Lagoon. During fall, winter, and spring, their numbers may exceed 50,000 individuals. The threatened Alaska breeding population of Steller's eider number at most, about 2,500 individuals. Recent information indicates that approximately one half of the eiders from the listed population use Nelson Lagoon. This area is so important that it has been designated as Critical Habitat for this species.

Nexus

1. NMFS allocates Bering Sea groundfish quotas under the CDQ program.
2. NMFS has ultimate responsibility and authority over the CDQ program.
3. Profits from CDQ allocations must be used for fisheries-related economic development in communities.
4. APICDA is a private, non-profit organization that, under the CDQ program, promotes fisheries-related economic development in six villages, including Nelson Lagoon.
5. NMFS provides final approval for APICDA's Community Development Plan, thus authorizing the plan and APICDA's activities.

6. Without the NMFS CDQ Program, APICDA would not be proposing the construction of a seafood processor in Nelson Lagoon.

Conclusion

Because the purpose of the CDQ program is to support a fisheries-based economy in communities including Nelson Lagoon, and because NMFS authorizes this program, NMFS is required to review the effects of program activities on listed species, pursuant to the Endangered Species Act. In this case, potential impacts to Steller's eiders from the seafood processor, and its interrelated and interdependent effects should be assessed to determine if they could adversely affect this listed species or its designated Critical Habitat.

We are hopeful that we have accurately portrayed the nexus between the proposed APICDA seafood processor in Nelson Lagoon and the authorities of the NMFS. We would like to discuss this as soon as possible. We understand that Friday, November 21 is a possible date for a teleconference. Please contact me (907) 271-1467 or Ann Rappoport (907) 271-2787 to schedule this teleconference.

Sincerely,



Ellen Lance
Endangered Species Biologist

108TH CONGRESS
2D SESSION

S. 2197

EMBARGOED UNTIL MARCH 15, 2004 at 10am

IN THE SENATE OF THE UNITED STATES

Ms. MURKOWSKI (for herself and Mr. STEVENS) introduced the following bill;
which was read twice and referred to the Committee on

A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to clarify the status of certain communities in the western Alaska community development quota program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "CDQ Community Pres-
5 ervation Act".

1 SEC. 2. WESTERN ALASKA COMMUNITY DEVELOPMENT
2 QUOTA PROGRAM.

3 (a) ELIGIBLE COMMUNITIES.—Section 305(i)(1) of
4 the Magnuson-Stevens Fishery Conservation and Manage-
5 ment Act (16 U.S.C. 1855(i)) is amended adding at the
6 end the following:

7 “(E) A community shall be eligible to partici-
8 pate in the western Alaska community development
9 quota program under subparagraph (A) if the com-
10 munity was—

11 “(i) listed in table 7 to part 679 of title
12 50, Code of Federal Regulations, as in effect on
13 January 1, 2004; or

14 “(ii) approved by the National Marine
15 Fisheries Service on April 19, 1999.”.

16 (b) CONFORMING AMENDMENT.—Such section is fur-
17 ther amended, in paragraph (B), by striking “To” and
18 inserting, “Except as provided in subparagraph (E), to”.

EMBARGOED UNTIL MARCH 15, 2004 at 10am

**Communities Determined Eligible for the CDQ Program by NMFS through Rulemaking in 1992
and Administrative Determination in 1999**

APICDA (6)	Pop.
Akutan	713
Atka	92
False Pass	64
Nelson Lagoon	83
Nikolski	39
Saint George	152
TOTAL	1,143

Oscarville*	61
Platinum	41
Quinhagak	555
Scammon Bay	465
Toksook Bay	532
Tuntutuliak	370
Tununak	325
TOTAL	7,855

BBEDC (17)	Pop.
Aleknagik	221
Clark's Point	75
Dillingham	2,466
Egegik	116
Ekuk	2
Ekwok*	130
King Salmon/Savonoski	442
Levelok*	122
Manokotak	399
Naknek	678
Pilot Point	100
Port Heiden	119
Portage Creek*	36
South Naknek	137
Togiak	809
Twin Hills	69
Ugashik	11
TOTAL	5,932

NSEDC (15)	Pop.
Brevig Mission	276
Diomede	146
Elim	313
Gambell	649
Golovin	144
Koyuk	297
Nome	3,505
Saint Michael	368
Savoonga	643
Shaktolik	230
Stebbins	547
Teller	268
Unalakleet	747
Wales	152
White Mountain	203
TOTAL	8,488

CBSFA (1)	Pop.
Saint Paul	532

YDFDA (6)	Pop.
Alakanuk	652
Emmonak	767
Grayling*	194
Kotlik	591
Mountain Village*	755
Nunam Iqua	164
TOTAL	3,123

CVRF (20)	Pop.
Chefornak	394
Chevak	765
Eek	280
Goodnews Bay	230
Hooper Bay	1,014
Kipnuk	644
Kongiganak	359
Kwigillingok	338
Mekoryuk	210
Napakiak*	353
Napaskiak*	390
Newtok	321
Nightmute	208

**Total population of 65 CDQ communities
(based on 2000 U.S. census) = 27,073**

***Communities added to the CDQ Program
in 1999**

Summary of an analysis that NMFS is developing to address fisheries management issues in the
Community Development Quota Program

Prepared by Obren Davis
NMFS Alaska Regional Office
March 23, 2004

Introduction

NMFS is developing an analysis of alternatives to address fisheries management issues that have arisen during the tenure of the multispecies Community Development Quota (CDQ) Program, which was implemented in 1998. The strict quota accountability requirements associated with the CDQ program have been identified as being unnecessarily constraining to the complete prosecution of CDQ target species. Modifying the management of some CDQ reserves could allow CDQ groups to experience a greater degree of success in harvesting their annual CDQ target allocations. Additionally, the multi-year CDQ allocation percentages established for a given set of species categories are relatively inflexible in relationship to annual changes to Bering Sea and Aleutian Islands (BSAI) groundfish species categorization. Amending current regulations could provide a means to address both of these issues.

NMFS will be prepared to present an initial draft analysis to the Council at its June 2004 meeting and final action could be taken at the October 2004 meeting. Any recommended regulatory amendments would be implemented in mid to late 2005.

Objectives

The objectives of this proposed action are to develop a means to specify which CDQ reserves will be allocated among the CDQ groups; to integrate changes made during the annual BSAI groundfish specifications process into the multi-year CDQ allocation and management regime; and, to clarify how groundfish CDQ reserves will be managed. These objectives are meant to increase NMFS's flexibility to manage the groundfish CDQ fisheries effectively and to support the overall goals and purposes of the CDQ Program.

Background

The CDQ Program allocates groundfish, prohibited species, crab, and Pacific halibut to six CDQ groups representing 65 western Alaska communities. With limited exceptions, NMFS allocates 7.5 percent of each BSAI groundfish Total Allowable Catch (TAC) category to a CDQ reserve for that TAC category. Each CDQ reserve is further apportioned among the six CDQ groups. The purpose of the CDQ Program is to provide the means for starting or supporting commercial fisheries business activities that will result in ongoing, regionally based, fisheries-related economic benefits for residents of participating communities. CDQ groups use the proceeds derived from the harvest of CDQ allocations to fund a variety of fisheries-related projects and provide training and educational opportunities to residents of participating communities.

The CDQ Program began in 1992 with the allocation of 7.5 percent of the BSAI pollock TAC to a pollock CDQ reserve. Allocations of sablefish and halibut were added in 1995. The Council recommended expanding the CDQ Program in 1995 and NMFS implemented the multispecies CDQ Program in 1998, combining the existing pollock, halibut, and fixed gear sablefish CDQ fisheries with additional allocations of a variety of crab, groundfish, and prohibited species. The pollock CDQ allocation increased to 10 percent of the BSAI pollock TAC in 1999 under the American Fisheries Act (AFA) (Pub.L. 105-277).

As part of its original design, the multispecies CDQ Program required a higher level of accountability of allocated species than any other Alaska groundfish fishery that NMFS was then managing. Other limited access programs in place at the time, including the existing CDQ fisheries and the fixed gear halibut and sablefish Individual Fishing Quota fisheries, were target fishery-based programs that did not include individual quotas for all TAC and prohibited species catch species that were caught in those fisheries. In other words, the catch of target species in these programs was not constrained by any additional limits on the catch of incidentally caught or prohibited species.

Under the multispecies CDQ Program, each CDQ group is allocated a percentage of the groundfish CDQ and prohibited species quota (PSQ) reserves and each group is prohibited from exceeding any of its CDQ allocations or halibut PSQ allocation. 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. The allocative and catch accounting structure associated with the CDQ Program has given rise to two significant fisheries management issues. One issue is that strict catch accounting may constrain the groundfish CDQ fisheries, and the second is that current CDQ allocative procedures lack flexibility to incorporate annual changes made to BSAI groundfish species categorization.

Fisheries Management Issues

The first issue, as identified by the CDQ groups, is that the strict accounting requirements and prohibition against exceeding an annual CDQ amount is unnecessarily constraining the full harvest of their CDQ target species. This was a particular problem for the CDQ groups with the "other species" TAC category. In 2003, NMFS implemented the Council's recommendation to no longer allocate the "other species" CDQ reserve among the CDQ groups because of the potential that the CDQ groups would catch their allocations of "other species" before completely harvesting their target species. If this occurred, the CDQ groups would risk an overage and the enforcement action associated with it if they continued to fish for their target species and caught additional amounts of "other species."

A similar issue may arise with some of the other BSAI groundfish species categories in the future. Rockfish are probably the next best example of a situation where the catch of an incidental catch species could prevent the CDQ groups from fully harvesting their target species. Some of these rockfish species groups have been split by species and management area in recent years to better manage the catch of individual rockfish species. However, splitting quota categories usually results in smaller TACs, smaller CDQ reserves, and smaller allocations to the individual CDQ groups. Some of the rockfish TACs are getting so small that individual CDQ groups could be allocated less than a metric ton of a particular rockfish species for the entire fishing year. Rather than continuing to address the constraints that strict quota accountability places on the CDQ groups on a species by species basis as problems arise, NMFS is recommending that the Council consider alternatives that could address this problem more comprehensively.

The second CDQ fisheries management issue is that there is a problem associated with the lack of flexibility between CDQ percentage allocations, which are fixed for a three year period, and annual changes to groundfish TAC categories. Percentage allocations among the CDQ groups are recommended by the State and approved by NMFS every three years on the basis of the groundfish quota categories in existence at the beginning of an allocation cycle. However, during each annual specifications process, the Council may split or join groundfish species groups. This is usually done in response to recent stock assessment and biological information. Such changes may or may not reconcile with existing allocation percentages. Recent changes to rockfish species categorization in the past several years has meant that certain CDQ species categories and percentage allocations did not match re-specified BSAI rockfish categories. Both the Council and NMFS have taken action on a case-by-case basis to determine how to manage rockfish CDQ reserves that do not have applicable percentage allocations that can be applied to them.

When the Council splits a species group, NMFS can apply the percentage allocation approved for the original species group to the new quota categories. For example, if the Council split the combined shortraker/rougheye rockfish (SR/RE) quota category into two separate quota categories for shortraker rockfish (SR) and rougheye rockfish (RE), NMFS could apply the percentage allocations previously approved for SR/RE to the new allocations for SR and RE. However, if the Council joins two TAC categories by species or area, then NMFS does not have an approved percentage allocation to allocate the resultant CDQ reserve (which is based on the new TAC category) among the CDQ groups. If two separate quota categories, each with a different range of percentage allocations were combined into one quota category, NMFS would not have any approved percentage allocations to appropriately apply to the new quota category. This problem would occur, for example, if there previously were separate quota categories for Bering Sea SR and Aleutian Islands SR which were then combined by area into one quota category for BSAI SR. Lacking specificity about an appropriate range of allocation percentages to apply to new quota categories could lead NMFS to choose to not allocate such categories among CDQ groups, and to instead manage these quota categories with more general management measures.

Proposed Problem Statement

The current goals and purpose of the CDQ Program are to allocate CDQ 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 (50 CFR 679.1(e)). The original fishery management objectives developed for the program stipulate that the annual catch of CDQ must be managed to contain it to the amount of each CDQ reserve allocated to the program, that both target and non-target quota categories will be managed at the same level of accounting, and that CDQ groups will be responsible for managing their quotas. Additionally, current regulations do not incorporate a means to adapt existing CDQ allocations to new species categories that may be created during the annual BSAI groundfish specifications process.

The strict CDQ accounting requirements may be unnecessarily constraining to the complete harvest of annual CDQ target species. Additionally, the lack of flexibility between the current multi-year CDQ allocation process and annual groundfish specifications process may contribute to allocative problems if species categories are modified on a yearly basis. The problem, given the maturation of the CDQ Program, NMFS's experience with managing groundfish CDQ fisheries, and the increasing complexity of BSAI fisheries management, is that existing CDQ regulations may not be structured to allow CDQ groups to fully utilize their CDQ target allocations, nor do they allow NMFS to readily adapt annual BSAI fisheries changes to the annual CDQ allocation process. Review of this action by the Council, and possible Council action, may provide a means to address issues associated with CDQ fisheries management and align them with the overall goals and purpose of the CDQ Program.

Alternatives

Alternative 1: No action. Continue to establish CDQ reserves for every annual TAC category except squid. All CDQ reserves would be allocated among CDQ groups, with the exception of "other species." The CDQ groups would continue to be prohibited from exceeding any of the CDQ allocations made to the group.

Alternative 2: Modify the annual groundfish specifications regulations to allow the Council to recommend each year (1) which CDQ reserves would be allocated among the groups and which CDQ reserves would not be allocated among the groups, and (2) how to manage new TAC categories created by joining existing TAC categories by species or area among the CDQ groups.

Option 1: Reallocate squid to the CDQ Program and incorporate into this process.

Alternative 3: Amend NMFS regulations to specify which TAC categories would be allocated to the CDQ groups and which TAC categories would not be allocated to the CDQ groups. Any changes to these specifications would have to be made by a subsequent regulatory amendment.

Option 1: Reallocate squid to the CDQ Program and incorporate into this process.

Under **Alternative 2**, the Council would recommend which CDQ reserves should be allocated among CDQ groups as part of the annual groundfish specifications process. CDQ groups would continue to be prohibited from exceeding any of the CDQ allocations made to the groups. Any species not allocated to the group would be managed at the CDQ reserve level by limiting directed fishing and retention to control the catch of unallocated CDQ reserves within the CDQ fisheries. This would remove a potential constraint to CDQ groups by eliminating the possibility that a given allocation would be inadequate to account for the catch of a given species during the course of directed fishing for CDQ target species. Without a specific allocation to exceed, the prohibition against exceeding an allocation would not apply. NMFS would instead monitor the aggregate catch of a non-allocated CDQ reserve and specify additional measures for the CDQ fisheries to control the catch of a given species, as needed.

Additionally, Alternative 2 would allow the Council to specify how any new CDQ reserves created by combining existing TAC categories should be managed. Management options could include not allocating such reserves among CDQ groups or recommending interim allocation percentages that would allow NMFS to distribute new CDQ reserves among CDQ groups for the remainder of a given allocation cycle.

Alternative 2, Option 1 would add squid to the suite of species allocated to the CDQ Program. Squid was removed from being a species issued to the program in 1999. Under the AFA, the allocation of pollock to the program increased to 10 percent of the annual BS pollock TAC, while the allocation of squid to the program remained at 7.5 percent of the BSAI squid TAC. Concern that there would be inadequate squid available to account for the possible catch of squid in the pollock CDQ fisheries led the Council and NMFS to remove squid from the CDQ Program. Amending regulations to allow the Council to specify which CDQ reserves would be allocated among CDQ groups could encompass the original intent of removing squid from the CDQ Program. Integrating squid back into the CDQ Program would require an amendment to the Fishery Management Plan (FMP) for BSAI Groundfish.

Alternative 3 would amend regulations to specify which species categories would be allocated among CDQ groups each year. The Council would recommend which TAC categories and associated CDQ reserves to allocate among CDQ groups on a more permanent basis than the annual process described under Alternative 2. Regulations also would be amended to specify that any new CDQ reserve category created if the Council recommended that existing TAC categories be joined by species or area would not be allocated among the CDQ groups until the next CDQ allocation cycle.

Under this alternative, the CDQ groups would continue to be prohibited from exceeding any CDQ allocations made to the groups. Any species not allocated to the group would be managed at the CDQ reserve level by limited directed fishing and retention to control the catch of unallocated CDQ reserves. This would remove a potential constraint to CDQ groups, as described under Alternative 2.

Alternative 3, Option 1 is similar to Alternative 2, Option 1. Squid would be integrated back into the CDQ Program and a portion of the annual BSAI squid TAC would be allocated to the program as a squid CDQ reserve. If squid were not included in the suite of CDQ reserves that were allocated among CDQ groups, then squid would be managed at the CDQ reserve level. Integrating squid back into the CDQ Program would require an amendment to the BSAI groundfish FMP.

**Public Testimony Sign-Up Sheet
and
Other Handouts Received**

**PUBLIC TESTIMONY SIGN-UP SHEET FOR
AGENDA ITEM C-E COQ**

	NAME (PLEASE PRINT)	AFFILIATION
1	Eugene Asicksik, Steve	NSEDC
2	Rueger, Don Mitchell	
3	Payton, Simeon + Olson	BBED
4	Morgan Crow, Simeon John	Coalition for Responsible
5		
6		
7		
8		
9	X Eugene Asicksik, Steve Rueger	NSEDC
10	Don Mitchell	
11		
12	X Paul Payton, Robin Samuelsen, Eric Olsen	BBEDC
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14	Morgan Crow, Simeon John	
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

**Council Motion on final action for BSAI Amendment 71 - CDQ Policy Amendment
June 7, 2002**

The Council recommends that the following policy and administrative changes be made to the CDQ Program as defined by the following issues and alternatives.

Issue 1: Determine the process through which CDQ allocations are made

The Council adopts Alternative 2 (amended), to define the process in regulation, include an expanded State hearing and comment process, but no formal appeals process.

Issue 2: Periodic or long-term CDQ allocations

The Council adopts Alternative 2, Option 2, Suboption 1: Set fixed 3-year allocations with possible mid-cycle adjustments for extraordinary circumstances.

Alternative 2: Establish a fixed allocation cycle in regulation.

Option 2: 3-year allocation cycle.

Suboption 1: Allow the State to recommend reallocation of CDQ mid-cycle under extraordinary circumstances. Council and NMFS would have to approve the State's recommended reallocation.

Additionally, the Council recommends that the regulations must be revised to reflect that suspension or termination of the CDQ allocations would be an administrative determination by NMFS and that the CDQ groups involved would be allowed an opportunity to appeal NMFS's initial administrative determination on any changes in CDQ allocations. The Council also recommends removing the requirement to publish a notice in the Federal Register about suspension or termination of a CDQ allocation.

Issue 3: Role of government oversight

The Council adopts Alternative 2, amend the BSAI FMP to specify government oversight purposes as described in the analysis.

Alternative 2: Amend the BSAI FMP to specifically identify elements of the government's responsibility for administration and oversight of the economic development elements of the CDQ Program.

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.

Issue 4: CDQ allocation process: Types of quotas

The Council adopts Alternative 1 - no action.

Issue 5: CDQ allocation process - The evaluation criteria

The Council adopts Alternative 2 (amended), to publish the following criteria in NMFS regulations:

1. Number of participating communities, population, and economic condition.
2. A Community Development Plan 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.

Issue 6: Extent of government oversight

The Council adopts Alternative 2 to clarify that government oversight extends to subsidiaries controlled by CDQ groups. To have effective management control or controlling interest in a company the ownership needs to be, at a minimum, 51%.

Issue 7: Allowable investments by CDQ groups: Fisheries-related projects

The Council adopts Alternative 3, amended Option 2, amended Suboption 1, and amended Supoption A.

Alternative 3: Revise NMFS regulations to allow investments in non-fisheries related projects. The following option represents the annual maximum amount of investment in non-fisheries related projects. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum.

Option 2 (amended): Allow each CDQ group to invest up to 20% of its previous year's pollock CDQ royalties.

Suboption 1 (amended): Require that any non-fisheries related investment be made in economic development projects in the region of Alaska represented by the CDQ groups and be self-sustaining. In-region extends to the borders of the 65 communities that participate in the CDQ Program.

Suboption A (amended): 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. *(The intent of this statement is that fisheries-related projects will be given more weight in the allocation process than non-fisheries related projects.)*

Issue 8: Other CDQ Administrative Issues

The Council adopted Alternative 2, all three options.

Option 1: Allow CDQ groups to transfer quota by submitting a transfer request directly to NMFS.

Option 2: Allow NMFS to approve PSQ transfers directly, allow the transfer to PSQ during any month of the year, and allow PSQ transfer without an associated transfer of CDQ.

Option 3: CDQ groups would submit alternative fishing plans directly to NMFS.