

MEMORANDUM

TO: Council and AP Members

FROM: Chris Oliver  
Acting Executive Director

DATE: May 30, 2001

SUBJECT: Community Development Quota Program

ESTIMATED TIME 2 HOURS
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**ACTION REQUIRED**

Receive committee report.

**BACKGROUND**

The Council formed the CDQ Policy Committee in December 2000 with the following guidance, as stated in the December 2000 newsletter:

*The Council will appoint a CDQ Policy Committee to address issues related to Community Development Quota oversight responsibilities of the State and NMFS. The new committee will provide policy recommendations to the Council on changes that may be needed to regulations governing the role of NMFS and the State in program oversight, the CDQ allocation process, and the administration of the CDQ Program. The committee also will address the on-going analysis of the State's proposed revisions to the CDQ administrative regulations which would determine whether oversight extends to the financial decisions of businesses owned by the CDQ groups. The committee is expected to report to the Council by June 2001.*

The committee met for the first time on April 26 - 27, and identified nine issues and several alternatives and options under each issue, for further discussion at the next meeting. The committee met again on May 24 - 25, and used this list of issues as a framework document by which to make specific recommendations to the Council on the committee's preferred course of action. The list of issues and alternatives that the committee recommends be analyzed is included as an attachment to the final CDQ Policy Committee report, which is provided as Agenda C-7(a). While the framework document lists several potential alternatives for analysis under each issue, the committee report identifies the committee's recommended preference among the alternatives, if general consensus could be reached. Where the committee did not reach consensus, a vote was taken and the majority/minority opinions are noted in the report.

The report encompasses the minutes of the May committee meeting, as well as the final committee recommendations to the Council. The report lists each of the nine issues as identified and addressed by the committee. The committee recommendation is listed first under each issue, and the relevant committee discussion, motion, and final vote follow the recommendation.

The Council is scheduled to receive the committee's report at this meeting. No action is necessary. Upon review, the Council may decide whether to task staff with a formal analysis. Should the Council choose to initiate an analysis of changes to the CDQ program, the document containing the complete list of issues and alternatives recommended by the committee for analysis is provided as Attachment 1 to the committee report. A separate list of fishery management issues, prepared by NMFS and discussed by the committee, is included as Attachment 2 to the report. The committee did not take any action regarding the fishery management alternatives. The minutes from the April committee meeting are also included as Agenda C-7(b) for reference purposes.

**Report and Recommendations of the NPFMC CDO Policy Committee**

May 24 - 25, 2001 – Anchorage, Alaska  
Hilton Hotel - 8:30 am - 5 pm

- Committee: Rick Lauber (Chair), Ragnar Alstrom, Eugene Asicksik, John Bundy, Jeff Bush, Morgen Crow, Phillip Lestenkof, John Moller, Robin Samuelson, Greg Baker (absent)
- Staff: NMFS - Sally Bibb  
NPFMC - Nicole Kimball  
State of Alaska - Bryce Edgmon, Laird Jones, Greg Cashen,
- Other: Todd Loomis, Eric Olson, Steve Rieger, Don Mitchell, Roger DuBrock, John Lamont, Norman Cohen
- Agenda: Provide the Council with a list of issues and alternatives for analysis as identified at the April committee meeting, and if possible, recommend to the Council the committee’s preferred alternative on each issue.

The CDQ Policy Committee was formed to address issues related to Community Development Quota (CDQ) oversight responsibilities of the State and NMFS, as well as provide policy recommendations to the Council on changes that may be needed to regulations governing the role of NMFS and the State, the CDQ allocation process, and the administration of the CDQ Program. The Council requested a report from the committee no later than June 2001. In April, the committee identified nine issues and several alternatives and options under each issue, for further discussion at the next meeting. The committee met again on May 24 - 25, and used this list of issues as a framework document by which to make specific recommendations to the Council, if general consensus could be reached. The list of issues and alternatives that the committee recommends by analyzed is attached to this report. The committee did not reach consensus on several issues, and majority/minority opinions are also noted in the following report. This report encompasses the minutes of the May committee meeting, as well as the final committee recommendations on the scope of analysis to the Council.

**This report lists each of the nine issues as identified and addressed by the committee. The committee recommendation is listed first under each issue, and the relevant committee discussion, motion, and final vote follow the recommendation.**

**ISSUE 1: Periodic or Permanent CDO Allocations**

**COMMITTEE RECOMMENDATION**

**Alternative 2, Option 2:** Establish a fixed allocation cycle of 3 years. Develop an escape clause so that in extraordinary circumstances the State could recommend and implement a mid-cycle change to an allocation upon approval of the Council.

**Committee Discussion**

The Committee discussed all of the alternatives under Issue 1, but focused primarily on Alternative 2, which would establish a fixed allocation cycle. Several of the committee members supported recommending a 3-year allocation cycle. The general consensus is that a change is needed to the current 1 or 2-year cycle, as developing a CDP is relatively expensive and burdensome to the groups. Most of the groups also found that implementing a CDP within

a two-year period is fairly difficult, and a shorter cycle tends to force the group to act too conservatively to provide a good investment for the communities in the region. A three-year cycle would allow the communities relative stability and reasonable expectations for the CDP, without establishing a permanent allocation.

The State recommended establishing a two-year cycle in regulation, consistent with their written comments provided to the committee prior to the meeting. The State is concerned that extending the allocation cycle to three years is too long to wait to make adjustments if unforeseen events change a group's ability to harvest its allocation or if other circumstances external to the program necessitate a change in the allocations. In addition, the State contends that a shorter allocation cycle is appropriate in order to keep the groups accountable to the milestones identified in their CDPs, as well as to provide incentives for improvement.

Two members supported establishing a permanent allocation (Alternative 3), but stated that a three-year cycle would be a preferable second choice.

In order to mitigate the State's concern with unforeseeable circumstances and a longer fixed allocation cycle, the Chairman suggested including an "escape clause", in which the State would retain flexibility to react to statutory changes, external impacts, and environmental concerns. The escape clause would need to be identified in regulation in order for the State to implement changes without necessitating a regulatory or plan amendment to do so. The State suggested incorporating language that would require Council approval to make any mid-cycle changes the State recommends, so that the groups would have the opportunity to provide comments to the Council on any proposed changes. The State anticipates that the clause would only be invoked in the most extraordinary of circumstances, but contends that it is important to have that flexibility available.

The committee discussed the idea of adding an escape clause and generally agreed that should the State or the Council determine a need to revisit the allocations before the end of the three-year cycle, the issue would then be placed on the Council agenda. The State noted that the groups themselves would likely notify the State that a mid-cycle change is necessary. In this event, the first question for the Council would be whether to reconsider the allocations mid-cycle. If the Council agrees to reconsider the allocations, then the entire allocation process would be re-initiated.

Sally Bibb noted that the current CDQ regulations provide for transfers of CDQ allocations within an allocation cycle. Using the transfer provision to change allocations probably would only be used if the CDQ group giving up CDQ was willing to do so. She expressed concern with the process involved in reallocating quota from a CDQ group that was unwilling to have the quota reallocated and whether this process could be carried out before the three-year allocation cycle expired.

**Jeff Bush moved that the committee recommend Alternative 2, Option 2: Establish a fixed allocation cycle of three years, with an escape clause to be developed so that in extraordinary circumstances the State could recommend and implement a mid-cycle change to an allocation, upon approval of the Council.**

**The motion passed with two objections (Moller, APICDA and Asicksik, NSEDC). NSEDC objected with the concern that the groups would not be involved in the decision should a mid-cycle allocation change be determined necessary. APICDA favored a permanent allocation.**

## **ISSUE 2: Define the role of government in oversight of the CDQ Program**

### **COMMITTEE RECOMMENDATION**

**Alternative 2:** Specifically identify elements of the government's responsibility for CDQ program administration and oversight of the economic development elements of the program. Government oversight of the CDQ program and the 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 by verifying CDP milestone compliance and financial performance;
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; and
5. Ensure compliance with legal program requirements.

### **Committee Discussion**

John Bundy (Glacier Fish) handed out copies of substitute language for Issue 2, Alternative 2, as a motion for addressing the parameters and limitations to government oversight. It was noted that the intent is to limit government oversight without excluding the business assistance role the State has previously undertaken. That role is viewed as a service provided to the CDQ groups and was agreed should not be eliminated.

While not in the original proposed language, the State suggested adding "ensure compliance with legal program requirements" so that it is explicitly stated that the State has an oversight role in other aspects of the program. The example of predatory practices was used: if a group engages in predatory practices, with the willful intent to put another group out of business, the State would retain the authority to discourage that practice during the allocation process. The suggested language was added as a friendly amendment.

Sally Bibb (NMFS) questioned whether the list of responsibilities applied equally to the State and Federal governments or whether they are intended to be divided among the agencies. It was noted that even if the committee intends this list as primarily functions of the State, if language is added to the FMP or the regulations, it could also become the responsibility of NMFS.

One member noted that government oversight is necessary to protect the intent of the program and the beneficiaries/residents in these communities, and thus should not focus on oversight of CDQ managers. It was suggested that oversight instead be tied more closely to the allocation process. The maker of the motion clarified that his intent with outlining these oversight responsibilities is based on the assumption that the allocation process has already occurred, and that oversight is still necessary to ensure that management is acting effectively. While the true accountability should lie with the residents of the CDQ communities, the assumption is that some level of government oversight is going to be necessary, and that the groups should have input as to the appropriate parameters. The maker of the motion did not intend for the list to address the allocation process.

The committee discussed at length the responsibility of the government to "audit CDP milestones" as originally proposed. The State questioned whether use of the word "audit" implies that the committee would like the State to undertake a more formal audit process, in order to audit all of the CDP milestones and not just the financial statements. It was clarified that the intent of the motion is not to expand government oversight beyond its current bounds, but to continue the audit requirement of the financial statements as well as a review (not formal audit) of the goals and objectives in the CDPs. The language should not imply that the current financial statement audit

requirement be removed or that the current audit process be expanded, but it should convey that the State continue its role in tracking and reviewing the milestone and financial performance of the groups.

The Chair noted that (c) in the draft issues/alternatives list covers the financial audit requirement and thus a separate notation for that responsibility may not be necessary. It was suggested to delete (e): audit CDP milestones, and to add explicit language that CDP milestone compliance and financial performance would continue to be reviewed by the State.

The State also noted that the list does not mention program goals, and questioned whether NMFS would be prohibited from adopting regulations necessary to comply with Federal law (the Magnuson-Stevens Act) and the FMP if limited to this list of government oversight responsibilities. NMFS confirmed that the goals and purpose of the program would still exist in the FMP regardless of any oversight responsibilities identified in regulation, and additional regulations could also be implemented to support those goals.

**John Bundy moved the language provided for Alternative 2, to limit and specify government oversight in regulation, with revisions made by the committee as referenced above. The motion passed with one objection (Moller, APICDA).** APICDA objected on the basis that the motion effectively reflects the current oversight responsibilities of the State even though they are not currently specified in regulation. APICDA noted support for a very limited government oversight role, applied to the program as whole, and not to each individual group.

### **ISSUE 3: CDQ Allocation Process - Type of Quotas**

#### **COMMITTEE RECOMMENDATION**

**Alternative 1:** Status quo. CDQ and prohibited species quota (PSQ) are specified by species, area, and gear type (sablefish and halibut). Each CDQ group is eligible to receive a percentage allocation of each CDQ or PSQ reserve as recommended by the State. The State decides how to balance demographic or socioeconomic factors with performance criteria.

#### **Committee Discussion**

The discussion of this issue revolved around whether to establish a foundation quota versus a performance quota, or some combination of each, as opposed to the current wholly competitive process. While the overall importance of the topic was noted (as identified during the April committee meeting as a priority issue), the committee discussed the feasibility of taking up this issue in the timeframe allotted. The State suggested that this is a far more complicated issue than the committee can deal with in one meeting, and the State does not support establishing a foundation quota.

The foundation versus performance quota concept was suggested by the National Research Council (NRC) in its 1999 report on the CDQ Program. The following is excerpted from page 95 of the NRC report:

“The foundation quota (likely more than half of the allocation) would be allocated on measures of population, income, employment, and proximity to the fishery being allocated. The performance quota (the remainder) would be allocated based on clearly defined performance measures such as accomplishments of the Community Development Plan goals, compliance with fishing regulations, quality of Community Development Plans, and so forth.”

One member noted that the original intent was for the CDQ program to be entirely performance-based, in order to ensure real-time benefits to each CDQ community. Because the concept of a foundation quota is generally discussed in terms of establishing a fixed portion of the quota based on population, the committee primarily discussed the issue in that context. Those not in support of a foundation quota generally agreed that population should be one consideration, but not the only criteria for receiving quota. The hypothetical used was that the largest group (by population) could have the poorest record of supplying benefits to their communities. Some members expressed

concern that a foundation quota would also provide incentive for communities to drop out of their current CDQ groups and apply for their own (guaranteed base) allocations, which could potentially erode the entire program.

CBSFA strongly supports the foundation quota plan, but only for the pollock allocations. Other members, while not supporting a foundation quota, thought that if the Council did establish a foundation quota it should apply to crab, pollock, cod, and halibut.

The committee recognized that its time could be spent more productively on other issues and agreed to move on. **The Chair noted that because there is not significant support for establishing a foundation-based quota, the committee would not be recommending any changes to the current system. In effect, the committee recommends the status quo (Alternative 1).**

#### **ISSUE 4: CDQ Allocation Process - The Evaluation Criteria**

##### **COMMITTEE RECOMMENDATION**

**Alternative 2:** The criteria for making CDQ allocations should include but are not limited to the following:

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. 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 CFR 679.1(e).
7. 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.

The State will develop a scorecard evaluation process for the above criteria, in consultation with the CDQ groups. (The State would provide a rationale for each of the scores on each of the listed criteria. The criteria will not be subject to a numerical weighting scheme and are not necessarily given equal weight by the State.)

The purpose of the CDQ program is to benefit eligible Western Alaska communities. The primary purpose is not to use the CDQ program as a tool to achieve other government policies. If other government policies are involved and relate to allocations, milestones, or performance measurement, they must be explicitly identified, after consultation with the CDQ groups, and agreed to by the Council.

#### **Committee Discussion**

The committee generally agreed that the current allocation process is not adequate. The State recognized problems in the past with having the CDQ groups develop and agree on a set of criteria, as each group typically advocates for the criteria in which they are strongest. This is the approach captured in Alternative 3, under the H.R. 553 proposed legislation. The Chair questioned whether development of the criteria could be effectively delegated to

the groups as proposed in H.R. 553, as only one group would need to object in order to prevent consensus. In effect, the responsibility of developing the criteria would then revert back to NMFS and the Council.

NMFS noted that Congress may pass legislation (H.R. 553) allowing the groups to develop their own criteria, which could effectively bypass the Council decision-making process, if the CDQ groups agree on criteria. However, should the Council determine that they want the groups or committee to recommend a set of evaluation criteria, it would still need to go through the public process of the Council and NMFS before it could be ultimately approved.

The State questioned whether the real issue is not the content of the criteria but whether it needs to be a lesser number of criteria combined with a more transparent process. The committee also raised the question of whether it should address this issue at all or whether it should wait for the outcome of the APICDA lawsuit, which is largely based on the evaluation criteria. Doubting that the courts would take on the task of developing the criteria and not wanting the Council process to be dictated by external sources, the committee generally agreed that waiting for a court decision was not an adequate solution. More discussion ensued on allowing the groups to get together outside of the committee to develop and agree upon the appropriate criteria. However, the committee generally agreed that the likelihood of complete consensus is low, which would put the responsibility for developing the criteria back with the Council and NMFS.

One member suggested using the Coastal Villages (CVRF) proposal of four basic criteria as a starting point. The CVRF proposal was provided to the committee previous to the meeting. CVRF stated that their proposed criteria was largely based on the criteria that was generally agreed to by the rest of the groups in previous attempts to gain consensus on the evaluation criteria. After much discussion, the committee largely agreed that delaying the issue was not an adequate solution, and that the CVRF proposal represented a good framework with which to begin the process.

The State suggested adding a "scorecard" to whatever criteria is recommended, so that each group could see exactly which factor lowered or raised their overall score. The State cautioned about numerically weighting the scores, as the weighting becomes increasingly important as you narrow the number of criteria. The State noted that some subjectivity would remain in the process, as each criteria would not be numerically weighted, and the State would have to consider which criteria were more important. However, the State did note that fewer criteria and the scorecard method would improve the transparency of the process.

The committee clarified that this would still allow the State and NMFS to approve different allocations of individual species to different groups. This would continue to place the burden on the groups to explain their harvest strategies in the CDPs, and allow the groups to maximize their abilities and allocations.

**Bundy moved the CVRF criteria with the modifications described above. Robin Samuelsen (BBEDC) moved to add three of the existing State criteria to the CVRF list, for a total of seven. He also moved to change the introductory language to: "criteria should include but is not limited to the following". This motion was accepted as friendly.**

**The motion passed with two objections (Moller, APICDA and Asicksik, NSEDC). APICDA objected on the basis that the State would still be weighting the criteria subjectively, which doesn't adequately resolve the issue of transparency. APICDA also did not support narrowing the criteria at this point. Alstrom (Yukon Delta) noted a concern with allocations based on past performance of regional or community economic development, but did not object to the overall motion. Lestenkof (CBSFA) generally objects to using population and number of communities as evaluation criteria, but also did not object to the overall motion.**

**Friday: Bundy moved additional language clarifying the intent and purpose of the CDQ program and explicitly requiring the State to make the groups aware, and get Council approval, of any government policies that may affect the allocation process. The motion was amended to add this language, with one objection (Samuelsen, BBEDC). BBEDC objected because the purpose and intent of the program is already stated in the FMP and NMFS regulations, and it contends that it is not necessary to imply that the program is used to implement other State policies. BBEDC did not object to the overall motion.**

#### **ISSUE 5: Public Comment on Allocation Recommendations; Appeals Process**

##### **COMMITTEE RECOMMENDATION**

**Alternative 2:** Develop a comment period for the State's allocation recommendations such that the State is required to:

1. Issue initial CDQ allocation recommendations and an explanation of changes from the previous allocations;
2. Accept comments from the public and the CDQ groups;
3. Issue final allocation recommendations and a written response to comments, including the reason for any changes from the State's initial allocation recommendations;
4. Consult with the Council on the final allocation recommendations; and
5. Submit final recommendations to NMFS.

The committee also recommends that the Council consider defining a more active role for NMFS as an appeals forum.

##### **Committee Discussion**

The committee discussed the roles of the State versus NMFS, and the Chair noted that the Council typically agrees with the State recommendation, as it has limited information to warrant overturning a State recommendation. The idea that follows is that the Council may not have enough time or information to represent an adequate appeals forum. NMFS explained that while the public and the CDQ groups have the opportunity to comment on the State recommended allocations (at the Council meeting), the current process does not have an administrative appeals process through NMFS. The current process does not require NMFS to provide another public comment period, and NMFS bases the final decision primarily on information submitted by the State and on any comments by the Council. There is a distinct difference between a public comment period and a response to those comments versus a formal appeals process with a group of people that are appointed for that purpose.

NMFS does have the authority to disapprove the State's recommendations, even though the agency has not done so in the past. The State has a lot of the responsibility for the program, and NMFS does not provide detailed instructions to the State (in the form of guidelines) on how to make the allocations.

Sally Bibb stated that Alternative 3, Option 2, to develop an appeals process similar to that established in the crab FMP, may not be appropriate but was included because it is an appeals process for management responsibilities that are deferred by the Council and NMFS to the State of Alaska. The process by which we defer crab management responsibility to the State may have some parallels to CDQ Program. She noted that the lack of an appeals process is addressed in the APICDA lawsuit. The committee also discussed the potential for one group to hold up the rest of the allocations if they are involved in an appeal.



One member recommended establishing an annual meeting between the State and the CDQ groups, sometime between when the State announces the allocation recommendations (September) and when the Council approves the allocations (October). This allow the groups a forum to discuss the rationale behind the initial State recommendations. Another member noted that such a meeting would be an appropriate time to correct any errors in the application. It was suggested that to date, the groups may not have used the Council process to the fullest extent possible to make a pitch to change a State recommended allocation.

The State is concerned with the time necessary to conduct a full administrative appeal, likely much more time than a CDQ group could afford to wait. The State also noted that there is already an opportunity to comment on the recommendations to the Council, and that if there is an egregious mistake, the State could make an adjustment (under current process). If we formalize that process to allow the groups to challenge an allocation, it would be in the groups best interest to challenge every single allocation.

APICDA stated its concern that NMFS should play a larger role in the allocation process, and not just approve the State's recommendations. APICDA also thinks we should address the transparency of the process, so that other State policies do not influence the allocation process. The committee discussed the confidentiality issue and the fine line that exists between transparency in the process and keeping a group's financial information confidential.

**Robin Samuelson moved Alternative 2, to develop a comment period for the State's allocation recommendations, with the modification to allow both the public and the CDQ groups to comment on the initial allocation recommendations. Language was also included to reflect a requirement that the State provide a rationale for any changes from the previous year's allocation. It was clarified that the recommendation is to establish a comment and response period and not a formal appeals process.**

**The motion passed with two objections (Bush, State of Alaska and Moller, APICDA). The State objected (minimally) on the grounds that the additional step added to the process will have no meaningful effect, due to the low likelihood that a public hearing would be productive and result in a re-allocation of all of the other groups' allocations. APICDA objected on the grounds that the motion doesn't change or strengthen NMFS' role in the allocation process. NMFS noted that this alternative keeps the agency role about the same, primarily process-oriented and limited to ensuring that the State completes the process to make the allocation recommendations but not conducting an independent review of those recommendations.**

**John Bundy moved that a statement be added to the recommended alternative to reflect that the committee recommends that the Council consider defining a more active role for NMFS as an appeals forum. This language passed with one objection (Samuelson, BBEDC). BBEDC contends that NMFS' current role is appropriate and does not want NMFS to take on additional duties as it would slow down the entire process.**

#### **ISSUE 6: Extent of Government Oversight (Definition of a CDQ Project)**

##### **COMMITTEE RECOMMENDATION**

**Alternative 2:** Implement revisions to the CDQ Program administrative regulations based on the State of Alaska's proposal.

These revisions would reduce requirements for expenditures that require review and prior approval by the State of Alaska and NMFS, and would clarify that oversight of the CDQ Program by the State of Alaska and NMFS includes the activities of businesses that the CDQ groups own.

Include a rebuttable presumption regarding State oversight of CDQ businesses, so that if a CDQ group owns 50% or more of a subsidiary company, the burden is on the CDQ group to prove that they do not exercise effective management control over that entity (as defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment (not as a CDQ-owned business) and thus subject to lower oversight and reporting requirements.

#### Committee Discussion

**Asicksik (NSED) moved Alternative 4, which mirrors the Congressional legislation proposed that specifies that oversight extend only to activities of the CDQ group and not to the businesses owned by the CDQ group.**

**Samuelson (BBED) noted that he cannot support Alternative 4 and offered Alternative 2, which mirrors the Bright New World proposal developed by the State and the CDQ groups, as a substitute.** BBED could not support Alternative 4 because of the inherent ability for a group to set up several "shell" corporations as subsidiaries, in order to avoid government oversight. BBED contends that this does not support the intent of the Council. Further, Alternative 2 represents the concept that the groups themselves worked to develop, and it would provide the groups with maximum flexibility while keeping investments made with CDQ money within the purview of government oversight.

The State also voiced support for Alternative 2 and discussed the need for an amendment. Currently, if a group owns 50% or more of a subsidiary company, there is a nonrebuttable presumption that the subsidiary is subject to oversight of the program. The State noted that there has always been a concern with that percentage. The reason for the 50% ownership clause is that greater than 50% ownership technically allows that entity (the CDQ group) to control the corporation, even if the CDQ group is not effectively or practically controlling the corporation.

The State offered an amendment to include a rebuttable presumption, so that if a CDQ group owns 50% or more of a subsidiary company, the burden is on the CDQ group to prove that they do not exercise effective management control over that entity (as defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment and thus subject to lower oversight and reporting requirements. This motion was accepted as friendly.

The committee discussed the rationale behind requiring oversight over a subsidiary company that the group does not have effective control over. The State's position is that the CDQ groups engage in two types of activities for the benefit of their communities. The first is as direct participants of those activities. The second is an investment activity, whereby a group may invest in a fishing operation that they do not effectively control but will receive a return on their investment as a means to raise capital. In the latter case, the State can't expect a CDQ group to control a company in which they may be a majority owner but do not have effective control over, and the rebuttable presumption clause mitigates that problem. The Bright New World proposal makes a distinction between these two types of activities and cleans up the regulations that define the differences. As part of that proposal the regulations would address the difference between core projects (which require a substantial amendment for a change to a CDP) and non-core projects (which require a technical amendment for a change to a CDP) In the context of this alternative, if a subsidiary is majority-owned and effectively controlled by the CDQ group, then a substantial amendment is needed for a change to the CDP to undertake a new activity or investment that is not covered in the CDP. If not, that level of review and procedure may not be necessary.

Based on some of the discussion regarding effective management control, Bundy offered substitute language for Alternative 2 that would delete reference to 50% ownership of the subsidiary company in the State's proposal and base the extent of government oversight solely on whether the CDQ group asserts effective management control over the company. The effect is that it doesn't matter whether the group is a majority owner, it only depends on whether the group has control over the operations of the subsidiaries. Motion failed for lack of a second.

**The motion is to recommend Alternative 2, with the additional language provided by the State regarding the rebuttable presumption. The motion carried 5-4.** The objecting votes were from Asicksik (NSEDG), Bundy (Glacier Fish), Lestenkof (CBSFA), and Moller (APICDA). Baker was absent. NSEDG strongly supports Alternative 4, with very limited government oversight. APICDA noted that they have lost faith in the allocation process as administered by the State and could not support an alternative which solidified the State's oversight role. CBSFA objected on the grounds that the committee should spend more time developing the criteria to ensure good decision-making.

BBEDC expressed frustration with the direction of the committee with respect to this issue, primarily because part of being responsible to the community residents is encompassed in the need for State oversight. The State also voiced concerns about objections to the regulatory changes included in the Bright New World proposal, as the CDQ groups were primary contributors to that proposal.

#### **ISSUE 7: Allowable Investments by CDQ Groups (Fisheries-Related Projects)**

Requirements would apply to the CDQ groups itself and its effectively controlled subsidiaries, as recommended in the preferred alternative for Issue 6.

#### **COMMITTEE RECOMMENDATION**

**Alternative 3:** Revise NMFS regulations to allow investments in non-fisheries related projects.

The following represent the maximum amount of investment in non-fisheries related projects on an annual basis. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may chose to invest less than the maximum.

**Option 2:** Allow the CDQ groups to invest up to 20% or a maximum of \$500,000 of their pollock royalties in non-fisheries related projects.

**Suboption 1:** Require that any non-fisheries related investments be made in economic development projects in the region of Alaska represented by the CDQ group.

#### **Committee Discussion**

The committee generally agreed that a firm interpretation of, or modifications to, the current regulations regarding this issue is needed.

Yukon Delta is concerned with the potential for not having any fisheries-related projects to invest in during particular years, due to stressed commercial fisheries in its region. The current requirement that all CDQ projects are fisheries-related may inhibit the group from investing in any projects during a given year, and securing any return for their communities. A suggestion was made to add flexibility to the regulations so that groups can take advantage of alternative, better opportunities, especially in the case that there aren't any fisheries-related projects

to invest in. Yukon Delta voiced support for Alternative 3, Option 2, which would limit the amount of investments in non-fisheries related projects to a maximum of 20% of pollock royalties. It was noted to keep in mind the variations in the group's investment abilities—while 20% may represent a lot of money for a larger group, it is a fairly modest amount for a smaller group. Yukon Delta also supports Suboption 1, which would require any non-fisheries related projects to be done in the region represented by the CDQ group.

Another member, while voicing support for Alternative 2, Option 3, expressed concern with a policy that would limit the investment to a specific percentage, as it may influence a group to invest in a project solely for that reason and not because it is a good business decision. It was stated that the groups need flexibility to meet the needs of each group's individual region.

NSEDC supports a less restrictive option (Alternative 4) which would allow the CDQ groups to decide what percentage of their total revenues they wish to invest in non-fisheries related projects, without a limit.

BBEDC noted problems with the fact that some communities represented by the groups are well above the commercial fishing district. In order to make meaningful investments in those communities the program needs additional flexibility regarding this issue. BBEDC also cautioned the committee and suggested imposing a maximum dollar amount to be invested in non-fisheries related projects, so that the CDQ groups do not get taxed with taking over State responsibilities for such projects as fixing roads, hiring teachers, etc.

The Chair also cautioned the committee that while one purpose of the CDQ program is to make a profit, that is not the sole purpose. Degrading the public perception of the program may risk eroding support for the entire program.

Sally Bibb noted the need to clarify in regulation the ability of the CDQ groups to spend money on non-fisheries related projects such as scholarships, cultural events, and charitable contributions. The need to clarify our policy on these types of expenditures is particularly important if the Council decides to limit non-fisheries related expenditures to "economic development projects."

CBSFA supported Alternative 2 (prohibiting non-fisheries related projects) and cited the original intent of the program. Concern was voiced that a non-fisheries related project would be weighted the same as a fisheries-related project, and potentially affect a group's allocation that is still trying to meet the "fisheries" intent of the program.

**Samuelson moved Alternative 3, Option 2, with additional language to institute a cap of \$500,000 of pollock royalties that can be invested in non-fisheries related projects. Suboption 1 would also apply, to require non-fisheries projects to be done in-region. It was clarified that this limitation would be applied on an annual basis, and that the standard non-fishery projects that are currently allowed (scholarships, etc.) would continue to be allowed and not subject to the cap.**

A few members voiced opposition to the \$500,000 cap. A motion was made to delete the cap but failed.

**The State voiced concern with not restricting the types of non-fisheries related projects, and made a motion to amend the language so that non-fisheries projects would be limited to *economic development* projects and not encompass community social programs. The amendment was accepted as friendly, with no objections from the committee.**

**Alternative 3, Option 2, Suboption 1, as amended above by the State, passed 5-3. Lestenkof (CBSFA), Moller (APICDA), and Asicksik (NSEDC) objected based on the concerns expressed above during the discussion.**

## ISSUE 8: Governance

After some discussion, **the committee voted not to take action on Issue 8**, as no change is determined necessary. It can be removed from the list of issues and alternatives for analysis.

## ISSUE 9: Other CDO Administrative Issues

NMFS noted that most of the administrative changes under this issue would be incorporated, should the Council initiate an analysis, regardless of the committee's recommendations. These are primarily reporting changes based on the State's recommendations to simplify and streamline the regulations regarding the CDP process. In effect, all of these changes would be considered in an analysis for a regulatory package regardless of whether the committee takes action on Issue 9.

Given the above discussion, the committee supports the Council incorporating the options under Issue 9 in an analysis.

## OTHER ISSUES

### **Fishery management issues:**

NMFS organized these issues in a separate 3-page paper which was distributed to the committee prior to this meeting (provided as Attachment 2 to this report). Although extremely relevant, these issues are considered separate from the policy issues the committee was tasked to address. These issues will be addressed in an initial analysis for the October 2001 Council meeting. **The committee took no action on these issues.**

### **Continuation of the committee:**

The committee was initially created on the basis that it would address the policy priorities of the committee, provide recommendations to the Council, and subsequently be dis-banded. **The committee recommends the Council keep the committee intact for at least another year, to address on-going and upcoming CDQ issues on an as needed basis.**

CDQ Policy Committee  
Recommended Issues and Alternatives for Council Consideration  
As revised at May 24-25, 2001, committee meeting

**Issue 1: Periodic or Permanent CDQ Allocations**

**Alternative 1: status quo** - continue to make periodic, competitive allocations among CDQ groups (managing organizations that represent eligible communities).

**Alternative 2:** Establish fixed allocation cycle:

Option 1: establish a 2 year allocation cycle in regulation.

\*\* Option 2: establish a 3 year allocation cycle (H.R. 553 proposes as MSA amendment)

Option 3: establish a 5 year allocation cycle in regulation.

\*\* Sub-option available under Options 1-3

Establish an "escape clause" which would allow the State to recommend reallocation of CDQ mid-cycle under extraordinary circumstances. The Council and NMFS would have to approve the State's recommended reallocation.

**Alternative 3:** Make permanent allocations to the eligible CDQ communities

*The CDQ Policy Committee passed a motion (with two objections) to support Alternative 2, Option 2, a 3-year allocation cycle, with a sub-option to allow the State to recommend mid-cycle reallocation of CDQ among CDQ groups under "extraordinary circumstances." Council and NMFS approval would be required for a mid-cycle reallocation.*

**Issue 2: Define the role of government in oversight of the CDQ Program**

The appropriate role of government depends on the type of CDQ allocations being made. Following alternatives are appropriate if we continue to make periodic, competitive allocations among CDQ groups.

**Alternative 1: Status quo -**

- Current FMP language about a joint program of Secretary of Commerce and State of Alaska. Reference to NMFS fisheries management role and the State of Alaska's role in recommending eligible communities and approving Community Development Plans (CDPs) that are the basis for allocations among eligible communities.
- Current NMFS regulations that specify requirements for the State of Alaska in the CDQ allocation process, contents of the CDPs, process for amending the CDPs, and periodic reports.

**Alternative 2:** Specifically identify elements of the government's responsibility for CDQ program administration and oversight of the economic development elements of the program. Government oversight of the CDQ program and the 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 by verifying CDP milestone compliance and financial performance;
3. Ensure that internal investment criteria and policies are established and followed;
4. Ensure that significant investments are the result of reasonable business decision, i.e., made after due diligence and with sufficient information to make an informed investment decision; and
5. Ensure compliance with legal program requirements.

*The CDQ Policy Committee passed a motion to support Alternative 2 (with one objection).*

**Issue 3 - CDQ Allocation Process - Type of Quotas**

**Alternative 1: Status quo** - CDQ and prohibited species quota (PSQ) are specified by species, area, and gear type (sablefish and halibut). Each CDQ group is eligible to receive a percentage allocation of each CDQ or PSQ reserve as recommended by the State of Alaska. The State decides how to balance demographic or socioeconomic factors with performance criteria.

**Alternative 2: Foundation Quota and Performance Quota**

Allocations of CDQ among the CDQ groups are categorized as foundation quota and performance quota.

Foundation quota - some proportion of the CDQ allocations are fixed or based on demographic characteristics, such as population.

Performance quota - some proportion of the CDQ allocations are based on competition among the groups in areas such as financial performance, feasibility of proposed projects, needs of the local fishery, etc. The process used for the competitive allocations will be determined under Issue 4.

**Option 1:**

Foundation quota - 50% of the CDQ reserve is divided equally among the CDQ groups. Performance quota - 50% is allocated competitively among the CDQ groups.

**Option 2:**

Foundation quota - 1% for each community in CDQ group.  
Performance quota - remaining is allocated competitively among the CDQ groups.

**Option 3:**

Foundation quota based on population - 1% for every 1,000 people represented by the CDQ group.  
Performance quota - remaining is allocated competitively among the CDQ groups.

**Option 4:**

Foundation quota applied only to a portion of the allocation of pollock as described in Options 1 - 3.  
Performance quota - applied to some portion of the pollock allocations and allocation of all other species.

*The CDQ Policy Committee recommended status quo - no development of a foundation quota.*



**Issue 4: CDQ Allocation Process - The Evaluation Criteria**

**Alternative 1: Status quo**

The State publishes evaluation criteria in its regulations and decides how to apply these criteria to make CDQ allocation recommendations. The State explains its application of this criteria in its written recommendations to the Council and NMFS. No specific criteria are published in NMFS regulations.

The criteria currently used by the State (from 6 AAC 93) are attached.

**Alternative 2:**

The criteria for making CDQ allocations should include but are not limited to the following:

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. 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 CFR 679.1(e).
7. 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.

**Alternative 3:** Process described in H.R. 553.

- Evaluation criteria are published in NMFS regulations.
- If all of the CDQ groups agree on the same evaluation criteria, this criteria must be published in NMFS regulations and only this criteria may be used by the State and NMFS to make CDQ allocations.
- If the CDQ groups cannot agree on the evaluation criteria, the Council and NMFS must implement evaluation criteria in NMFS regulations through proposed and final rulemaking.

*The CDQ Policy Committee passed a motion to recommend Alternative 2 (with two objections).*

ATTACHMENT for ISSUE 4, Alternative 1

Selected State of Alaska CDQ Regulations from 6 AAC 93 related to evaluation criteria for making CDQ allocation recommendations

**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.

**6 AAC 93.040 FINAL EVALUATION OF PROPOSED CDPS [COMPLETE CDP APPLICATIONS]**

\* \* \*

(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) comments provided by other agencies, organizations, and the public.

\* \* \*

(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.

**Issue 5: Public Comment on Allocation Recommendations; Appeals Process**

**Alternative 1: Status quo**

The State issues its CDQ allocation recommendations within a few days before the meeting at which the State will consult with the Council. The CDQ groups may testify to the Council about the State's allocation recommendations. The Council must take any comments into consideration in deciding whether to support the State's recommendations. The State could take these comments into consideration before final recommendations are submitted to NMFS, but if the State's allocation recommendations change as a result of these comments, they must re-consult with the Council. NMFS issues a final agency decision if it approves the State's allocation recommendations. NMFS regulations do not require a public comment period on the State's allocation recommendations after they are submitted to NMFS; also do not require publishing agency decision in the Federal Register.

**Alternative 2:**

Develop a comment period for the State's allocation recommendations such that the State is required to:

1. Issue initial CDQ allocation recommendations and an explanation of changes from the previous allocations;
2. Accept comments from the public and the CDQ groups;
3. Issue final allocation recommendations and a written response to comments, including the reason for any changes from the State's initial allocation recommendations;
1. Consult with the Council on the final allocation recommendations; and
2. Submit final recommendations to NMFS.

*The committee also recommends that the Council consider defining a more active role for NMFS as an appeals forum.*

**Alternative 3:** Develop an appeals process for the State's allocation recommendations.

**Option 1:** State's initial recommendations are made by division staff with no input from the Commissioner or Deputy Commissioner level. A hearing would be held by the State before a final CDQ allocation recommendation was made by the Commissioner.

**Option 2:** Develop an appeals process in the FMP similar to the appeals processed established under the crab FMP.

*The CDQ Policy Committee recommended Alternative 2, with 2 objections to the motion.*

**Issue 6: Extent of Government Oversight (Definition of a CDQ Project)**

These alternatives are from a initial analysis presented at the October 2000 Council meeting.

**Alternative 1: Status quo**

NOAA GC opinion that our regulations are unclear on the extent of government oversight authorized by our definition of a CDQ project.

**Alternative 2:** Implement revisions to the CDQ Program administrative regulations based on the State of Alaska's proposal.

These revisions would reduce requirements for expenditures that require review and prior approval by the State of Alaska and NMFS, and would clarify that oversight of the CDQ Program by the State of Alaska and NMFS *includes* the activities of businesses that the CDQ groups own.

Additional detail in attachment on following page.

**Alternative 3:** Implement some of the revisions to the CDQ Program administrative regulations proposed by the State of Alaska, but clarify that oversight of the CDQ Program by the State of Alaska and NMFS *does not extend to* the activities of businesses that the CDQ groups own.

Additional detail in attachment on following page.

**Alternative 4:** (From H.R. 553) Oversight extends only to activities of the CDQ group, not to businesses owned by the CDQ group. Define CDQ project as proposed in H.R. 553.

(i) "CDQ project" means a program or activity that is administered or initiated by a CDQ group and that is funded by revenue the CDQ group derives or accrues during the duration of a community development plan approved by the Secretary from harvesting the fishery covered by the plan.

(ii) such term does not include a program or activity administered or initiated by a subsidiary, joint venture, partnership, or other entity in which a CDQ group owns an equity interest, if the program or activity is funded by the assets of the subsidiary, joint venture, partnership, or other entity, rather than by the assets of the CDQ group.

Need to determine what limitations, if any, would be established by paragraph (i) reference to oversight of "revenue from harvesting the fishery" versus text in paragraph (ii) distinguishing between "assets of the CDQ group" and assets of a subsidiary, etc. Would H.R. 553 limit oversight to the CDQ groups' total revenue or just to the CDQ groups' royalties and other revenues derived from "harvesting the fishery?"

## ATTACHMENT FOR ISSUE 6

Additional information from October 2000 analysis related to Alternative 2 and 3

**Alternative 2**

Following is a summary of the specific revisions to 50 CFR 679.30 that are proposed under Alternative 2. Requirements for information in the CDP and amendments to the CDP would apply to investments and expenditures by the CDQ group and by companies owned by the CDQ group.

- (3) Define three ways to amend or supplement the Community Development Plan. The substantial amendment and technical amendments currently are defined in regulation, but would be amended as described below in (2) through (9). The investment notification would be a new category. The process described below is illustrated in Figure 2.
- (a) Substantial amendments require review and prior approval by the State and NMFS before the CDQ group can undertake the activity or investment. Substantial amendments generally involve more thorough review by the State and NMFS than do technical amendments.
- (b) Technical amendment requires review and prior approval by the State and NMFS. NMFS reviews technical amendments for completeness and generally approves them upon receipt with a faxed acknowledgment to the CDQ group and State.
- (c) Investment notification would not require review and prior approval by the State or NMFS. It would provide notification to the State and NMFS that an investment had occurred and would be required to be submitted within 30 days of the investment.
- (2) Add requirements for a substantial amendment to the CDP for the following expenditures or investments by the CDQ group or by a company in which the CDQ group holds 50% or more ownership interest:
- (a) expenditures of more than \$1,000,000 on a single CDQ project, or
- (b) investment in a vessel equal to or greater than 125 feet length overall (LOA), or
- (c) investment in a vessel of any size that has the capability to process fish or investment in a fish processing plant or facility
- [State's proposal reference to "new processing capacity" means investment by a CDQ group or a company owned by the CDQ group in a vessel or plant that has processing capacity.]*
- (3) Remove the requirement for a substantial amendment to the CDP for "funding a CDP project in excess of \$100,000."
- (4) Remove the requirement for a substantial amendment to the CDP for "more than a 20-percent increase in the annual budget of an approved CDP project."
- (5) Add requirements for an investment notification for the following expenditures or investments by the CDQ group or by a company in which the CDQ group holds 50% or more ownership interest for the following:



- (a) expenditure of between \$250,000 and \$1,000,000 for an investment fully described in an approved CDP;
  - (b) expenditure of \$1,000,000 or less for a new investment that is not described in an approved CDP
- (6) Add requirement for an investment notification expenditures or investments of more than \$1,000,000 by a company in which the CDQ group holds less than 50% ownership interest.
- (7) Allow the following expenditures or investment that have been fully described in an approved CDP without any notification to the State or NMFS:
- (a) expenditure of \$250,000 or less for an investment fully described in an approved CDP;
  - (b) expenditure of \$1,000,000 or less by a company in which the CDQ group holds less than 50% ownership interest.
- (8) No notification to the State and NMFS and no amendment to the CDP would be required for the following:
- (a) Expenditures of \$250,000 or less by the CDQ group or by a company in which the CDQ group holds 50% or more ownership interest for projects fully described in an approved CDP.
  - (b) Expenditures of \$1,000,000 or less by a company in which the CDQ group holds less than 50% ownership.
- (9) Reduce the threshold that requires an amendment to the CDP for changes in the administrative budget from 20% of the amount budgeted in the CDP to 10% of the amount budgeted in the CDP.  
*[Proposed by State after the June Council meeting]*

- (10) Revise text in 50 CFR 679 so that the use of the term CDQ project is consistent with the intent of the CDQ Program regulations.

*[Specific recommendations for revising and clarifying regulations will be determined once the preferred alternative is selected]*

- (11) Remove the requirement that the CDQ groups submit an annual budget report by December 15 of each year.

The requirement for the annual budget report and the annual budget reconciliation report were added in December 1995 because the State and NMFS believed that the requirement for a general budget in the CDP was not providing enough information to monitor the CDQ groups after the CDP was approved. The annual budget report is a detailed estimate of income and expenditures projected for the coming year that updates information in the CDP's general budget. The annual budget report must be submitted by December 15 of each year and it is approved upon receipt by NMFS unless it is disapproved in writing within 15 days. The provision for approval upon receipt could allow the CDQ groups to make significant changes in their general budget that should have gone through the review and approval process of a CDP amendment. In addition, the timing of this report - December 15 - makes it difficult for the State and NMFS to provide a thorough review within 15 days. NMFS and the State are proposing that the combination of the general budget in the two year CDP, requirements to submit CDP amendments for new investments and changes in administrative expenses, quarterly reports by the CDQ groups, the annual budget reconciliation report required by May 30, and the audited financial statements provide sufficient information to monitor the CDQ groups. Therefore, the requirement for an annual budget report could be removed.

- (12) Simplify the CDQ and PSQ transfer requirements by no longer considering them amendments to the CDP. Transfers of CDQ allocations and annual CDQ amounts would continue to require prior approval by the State and NMFS, but would not require the additional paperwork associated with a CDP amendment.

*[Recommended by NMFS to simplify CDP amendment process]*

### Alternative 3

Alternative 3 would implement most of the revisions to the administrative regulations described under Alternative 2, except that the requirements for information to be supplied in the CDP and activities that trigger an amendment to the CDP would apply only to expenditures or investments made by the CDQ and would not apply to expenditures or investments made by companies owned by the CDQ group.

**Issue 7: Allowable Investments by CDQ Groups (Fisheries Related Projects)**

Requirements would apply to the CDQ groups itself or the group and its subsidiaries, depending on the preferred alternative for Issue 6.

**Alternative 1: Status quo**

From NMFS 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.

NMFS regulations implement what we understood as the Council's intent, that the revenue generated by the CDQ allocations is to be spent on "fisheries-related" investments and projects to benefit the communities that are eligible for the CDQ Program.

Current regulations do not include specific investment guidelines or a list of allowable investments.

Some decisions about allowable investments have been made by policy or practicality. For example, CDQ groups provide scholarships for college without restricting the program of study to "fisheries related." Investments in substance abuse programs are not restricted to people working in fisheries related businesses. The CDQ groups' investment accounts include stocks, bonds, (and other financial instruments?) - these investments are not "fisheries related."

**Alternative 2:** Continue to require that the CDQ groups invest only in "fisheries related" projects, but clarify NMFS regulations as follows:

- Add specific prohibition against CDQ groups investing in non-fisheries related projects;
- Clarify that this prohibition does not apply to certain categories of expenditures or investments, such as investment accounts or scholarships - focus regulations on economic development projects.

**Alternative 3:** Revise NMFS regulations to allow investments in non-fisheries related projects.

The following options represent the 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 chose to invest less than the maximum.

**Option 1:** Allow the CDQ groups to invest up to 5% of their pollock royalties in non-fisheries related projects.

**Option 2:** Allow the CDQ groups to invest up to 20% of their pollock royalties or a maximum of \$500,000 in non-fisheries related projects.

**Option 3:** Allow the CDQ groups to invest up to 50% of total revenues in non-fisheries related projects.

Sub-options could be used in combination with any of Options 1 through 3.

**Attachment 1**

Sub-option 1: Require that any non-fisheries related investments be made in economic development projects in the region of Alaska represented by the CDQ group.

Alternative 4: Do not place any restrictions on what the CDQ groups may spend money on or what type of projects they may invest in.

*The CDQ Policy Committee passed a motion to recommend Alternative 3, Option 2 with suboption 1 (vote 5 - 3).*

**Issue 8: Governance**

*This issue was initially raised at the first policy committee meeting. However, the committee decided not to recommend that the Council analyze this issue, as it did not appear to be a problem at this time.*

**Alternative 1 - Status quo:** Make no changes to CDQ Program governance regulations.

[Need to describe status quo for governance regulations; what elements of current regulations address “governance?”]

**Alternative 2:** Remove the requirement that the CDQ group’s board of directors be composed of at least 75% fishermen from the communities.

Following definition at 50 CFR 679.2 would be revised:

*CDQ group means a qualified applicant with an approved CDP.*

*Qualified applicant means, for the purposes of the CDQ program:*

*(1) A local fishermen’s organization that:*

- (i) Represents an eligible community or group of eligible communities;*
- (ii) Is incorporated under the laws of the State of Alaska or under Federal law; and*
- (iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities); or*

*(2) A local economic development organization that:*

- (i) Represents an eligible community or group of communities;*
- (ii) Is incorporated under the laws of the State of Alaska or under Federal law specifically for the purpose of designing and implementing a CDP; and*
- (iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities).*

Comments on governance issues from first committee meeting:

- can all people (communities) participate
- communities need to know how decisions by CDQ group are made
- people need information about CDQ group’s performance

CBSFA and NSEDC send out consolidated financial statements to residents (?) of communities represented by the CDQ group.

**Issue 9: Other CDO Administrative Issues**

**Develop proposed regulatory amendments to simplify and streamline recordkeeping and reporting requirements, including:**

Transfers of CDQ/PSQ allocations (we've never received a request for transfer of % allocation)

- (1) do not allow transfers of %age allocations (can transfer CDQ/PSQ each year)
- (2) require amendment to CDP for transfers of %age allocations

Transfers of CDQ/PSQ would not be amendments to a CDP - just a transfer procedure

- (1) require approval by State of Alaska for transfers
- (2) require notification to State of Alaska at time NMFS approves transfers

PSQ Transfers

- (1) allow at any time during year
- (2) do not require transfer of groundfish CDQ with PSQ
- (3) require prior approval by State or notification to State by NMFS upon approval?

Revisions to the format of the fishing plan

- (1) reduce information requirements
  - (2) do not consider as a technical amendment to a CDP
  - (3) require prior approval by State or notification to State by NMFS upon approval? \
- (depends on whether new vessel or processor is a "partner" with a new contract that State may want to review)

Simplify annual and periodic reports

**CDQ Fisheries Management Issues and Alternatives** (revised 5/22/01)  
Prepared for CDQ Policy Committee, May 24-25, 2001, meeting.

**Issue 1: Which species are allocated to the CDQ Program?**

**Alternative 1: Status quo** Species allocated to the CDQ Program are specified in the BSAI FMP and in NMFS regulations.

They currently include halibut, crab, all groundfish species and species groups, except squid, and the prohibited species (halibut, crab, and salmon).

**Alternative 2:** Remove some groundfish species from CDQ allocations

Specify the list of species or species groups in the BSAI that are allocated to the CDQ Program. The Council would recommend which of the currently allocated species would no longer be allocated to the CDQ Program.

**Option 1:** List of species or species groups allocated to the CDQ Program are fixed in FMP or regulations.

**Option 2:** Create a framework for specifying which species or species group are allocated to the CDQ Program through the annual groundfish specifications process.

If a species is not allocated to the CDQ Program, the CDQ group must comply with the same incidental catch (maximum retainable bycatch amounts) and prohibited species status for this species as applies to the non-CDQ fisheries. Catch in the CDQ fisheries would accrue against the TAC for the species along with the catch from the non-CDQ fisheries. Closures of directed fisheries due to overfishing of an incidental catch species will apply to the CDQ and non-CDQ fisheries. The Council could specify whether the CDQ fisheries should be given priority in making overfishing closures.

Analysis would evaluate the impact of removing the following species from the CDQ Program:

Arrowtooth Flounder, all rockfish species, Sablefish (from trawl allocation), Pollock (Bogoslof, Aleutian Islands), "Other species" (skates, sharks, sculpins, octopus).

The Council could specify if additional species should be analyzed for possible removal from CDQ allocations.

Prohibited Species (halibut, crab, salmon) would continue to be allocated to the CDQ Program

Alternative 2 would address the Council's October 1998 request that we analyze removing some species from the CDQ Program as a means of reducing constraints on the ability of the CDQ groups to harvest their target species allocations. In addition, this alternative would address concerns NMFS has about managing very small quotas in the CDQ fisheries when groundfish species groups are subdivided by species (e.g. rockfish, "other species").

**Alternative 3:** (proposed in H.R. 553) Only species or species groups with a "Bering Sea directed fishery" would be allocated to the CDQ Program. (Assume this refers to directed fisheries in the Bering Sea and

Aleutian Islands Area).

Variation of Alternative 2 - but specifically focus only on the species that have directed fisheries. Need to develop a process for identifying the species that have directed fisheries. Also may need to develop process for removing a species from allocation to the CDQ Program if the status of the stock changes enough to cause the TAC to no longer support a directed fishery in the non-CDQ fisheries.

Option 1: List of species or species groups allocated to the CDQ Program are fixed in regulation.

Option 2: Create a framework for specifying which species or species group are allocated to the CDQ Program through the annual groundfish specifications process.

**Issue 2: What percentage of each species is allocated to the CDQ Program**

**Alternative 1: Status quo**

- 10% of pollock TAC as a directed fishing allowance
- 20% of the sablefish fixed gear allocation
- 7.5% of all other groundfish species or species groups, except squid
- 7.5% of the prohibited species of halibut, crab, and salmon
- range of % of halibut
- 7.5% crab

**Alternative 2:** Increase the percentage allocation of some prohibited species or groundfish species that are caught incidentally in the CDQ fisheries to increase the possibility that the CDQ groups can fully harvest their target species allocations. This is an alternative to removing species from the CDQ Program that would retain limits for the CDQ fisheries but provide for an increased amount of incidental catch of certain species.

**Issue 3: What catch accrues against the CDQ allocation?**

**Alternative 1: Status quo**

All catch in the groundfish and halibut CDQ fisheries accrues against the CDQ groups' CDQ allocations, regardless of whether caught in a directed fishery or as incidental catch.

Current exceptions:

(1) Pollock CDQ under the AFA is a directed fishing allowance, only catch of pollock in the directed fishery for pollock accrues against the pollock CDQ

(2) Groundfish bycatch in halibut CDQ fisheries by vessels less than 60' does not accrue against CDQ, accrues against open access quotas if reported.

**Alternative 2:** Only catch of a species in a directed fishery for that species accrues against CDQ.  
(Proposed in H.R. 553)

Species allocated to the CDQ Program are managed as directed fishing allowances - only catch of that species



in a directed fishery for that species accrues against the CDQ. Incidental catch in other CDQ fisheries does not accrue against the CDQ.

**Additional issues that will be considered in developing alternatives:**

1. Should species allocated to the CDQ Program be managed at the CDQ sector level or at the individual CDQ group level? This involves examining the proposal for "pooling" some CDQ species and managing them at the sector level. (Analysis requested by Council October 1998)
2. What would be the consequences of the CDQ Program reaching an allocation of a pooled species?
3. Underage and overage provisions for CDQ/PSQ allocations. (Analysis requested by Council October 1998)
4. How would the alternatives affect catch monitoring, observer coverage, or recordkeeping and reporting requirements?

April Minutes of the NPFMC CDQ Policy Committee

April 26 - 27, 2001 – Anchorage, Alaska  
Clarion Hotel - 8:30 - 5 pm

Committee: Rick Lauber (Chair), John Lamont (for Ragnar Alstrom), Eugene Asicksik, Greg Baker, John Bundy, Jeff Bush, Morgen Crow, Phillip Lestenkof, John Moller, Eric Olson (for Robin Samuelsen)

Staff: NMFS - Sally Bibb  
NPFMC - Nicole Kimball  
State of Alaska - Bryce Edgmon, Laird Jones, Greg Cashen,

Other: Roger DuBrock, Al Adams, Henry Mitchell, Norman Cohen, Simon Kinneen, Steve Rieger

The CDQ Policy Committee met for the first time on April 26 - 27 to address issues related to Community Development Quota oversight responsibilities of the State and NMFS, as well as provide policy recommendations to the Council on changes that may be needed to regulations governing the role of NMFS and the State, the CDQ allocation process, and the administration of the CDQ Program. The Committee is scheduled to meet again on May 24 - 25 and to report their recommendations to the Council by June 2001.

#### **I. Introduction of committee members and staff**

The committee and staff introduced themselves. Two individuals noted that they were representing members who could not attend: John Lamont and Eric Olson were present for Ragnar Alstrom and Robin Samuelsen, respectively. The Chairman requested that each member select an alternate and submit their name to the Chairman before the next meeting.

#### **II. Chairman's comments**

##### Council's objectives for the committee

The Chairman summarized the committee's guidance from the Council, as stated below in the December 2000 Council newsletter and included in the agenda:

*The Council will appoint a CDQ Policy Committee to address issues related to Community Development Quota oversight responsibilities of the State and NMFS. The new committee will provide policy recommendations to the Council on changes that may be needed to regulations governing the role of NMFS and the State in program oversight, the CDQ allocation process, and the administration of the CDQ Program. The committee also will address the on-going analysis of the State's proposed revisions to the CDQ administrative regulations which would determine whether oversight extends to the financial decisions of businesses owned by the CDQ groups. The committee is expected report to the Council by June 2001.*

The Chairman noted that the Council left a lot of flexibility for the committee to determine its own objectives and identify and recommend to the Council necessary adjustments to the CDQ program. The Chair also noted that while the committee recommendations are not binding, it does have the opportunity to influence the direction of the program, as the Council could use the committee's recommendations as a general framework for any future modifications. The Chairman also provided a brief background of the CDQ program since its inception in 1992.

##### Overview of agenda, guidelines, and specific objectives for this meeting

The agenda was approved by the committee. The Chairman noted that it was initially suggested that the committee address the Marine Conservation Alliance's proposed Congressional legislation. That item was not addressed by the committee with the understanding that the legislation has since been withdrawn.

The Chair established some general guidelines for conducting the meeting. With the approval of the committee, the Chair also established that the committee would not operate by consensus, but that the Council would be best served by being appraised of the overall views of both the majority and minority opinions. The final report to the Council, which will make recommendations for any changes to the CDQ program deemed necessary by the committee, will list the vote of both the majority and the minority, if necessary, and provide the context of the discussion for each.

### III. Overview of proposed MSA amendments for CDQ Program

#### H.R. 553

Sally Bibb (NMFS) provided an overview of the contents of H.R. 553, which would amend Section 305(i) of the Magnuson-Stevens Act to make significant changes to the current CDQ Program. The bill was introduced Feb. 8, 2001. A handout outlining the provisions of the bill was developed and provided by Sally at the meeting, and the proposed legislation was included in the background packet sent to the committee for review prior to the meeting.

Some of the more significant aspects of the bill include:

- Defining the purpose of the CDQ Program as follows: “(A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries; and (B) to assist eligible communities to achieve sustainable long-term diversified local economic development.”
- Specification that the allocations of halibut (20 to 100%), crab (7.5%), and groundfish species other than pollock (7.5%, except 20% for sablefish) would be no less than the current allocations, but could be increased once the moratorium expires on Oct. 1, 2001.
- Specification that allocations to the CDQ Program be made only for species that have “directed fisheries” in the BSAI, so that only catch harvested in the directed fishery would accrue to a CDQ quota.
- Modification of the community eligibility criteria so that 1) a community no longer needs to meet criteria developed by the State of Alaska, approved by the Secretary, and published in the Federal Register, and 2) a community would have to be a member of a CDQ group to participate.
- Directs the Secretary to authorize percentage allocations that the CDQ groups decide upon, if they add up to 100%. If the CDQ groups cannot agree on allocations, they have 2 years to submit criteria to the Secretary for the Secretary to consider in determining harvest shares. If the groups agree on the evaluation criteria, the Secretary must use that criteria to determine the allocations. If the groups cannot agree on criteria, the Secretary has 30 months to develop it.

Sally related that other provisions addressing government oversight authority and fisheries management are also included in the bill, and all of the issues are outlined in more detail in the handout. Sally also explained that it is uncertain what effect some of the language changes would have on the administration of the program. One note to the committee was that the proposed language specifying the purpose of the program does not appear to require the Council or the agency to make changes about what is allowed under the CDQ program. It is very similar to the current FMP language, however the FMP and regulations reflect the Council’s original stated intent that CDQ allocations be used to develop a *fisheries-related* economy. The new purpose may be interpreted as encouraging the Council and NMFS to address the issue of allowing investments in *non-fisheries* related projects.

Sally also noted that H.R. 553 addresses the role of the State in CDQ oversight, which is the subject of the current lawsuit on the 2001-02 allocations. When the program was implemented, the State was to have the major oversight role, with the Secretary responsible for reviewing allocations and CDPs. The direct language in the legislation would require NMFS to re-examine and possibly increase its role, as well as more clearly define limits for the State. That section of the bill would also set a 3-year the allocation cycle.

On a related issue, Sally mentioned that NMFS issued a legal opinion last year stating it is unclear whether NMFS and the State have financial oversight authority over CDQ group affiliated businesses, or whether oversight only applies

to the activities of the CDQ group itself. This bill would clearly restrict the government from reviewing and approving business/investment decisions before they are made and would restrict the government to only reviewing and approving the business decisions made by the CDQ group, and not the subsidiaries.

The bill also would restrict government oversight to apply only to the royalties of CDQ groups (profits incurred from leasing the quota) and not to total revenues. In a brief review of the 1999 financial statements of the CDQ groups, about 73% of total revenue was from royalties.

Sally noted that NMFS is most concerned with the provisions that suggest NMFS should assume a larger oversight role and be involved in the daily administration of the program, since by regulation their role has largely been limited to quota management.

The committee questioned several provisions of the bill, specifically whether NMFS would need to define "directed fishing" for the CDQ Program. Sally related that under the proposal, NMFS would have to both redefine the regulations and determine a new catch accounting system.

Members of the committee also expressed concerns with the language changes regarding community eligibility criteria. There was a question of whether the eligibility criteria was intended to be applied annually or whether it was developed only to determine which communities were originally eligible for the program in 1992. This relates to the question of whether communities need to continue proving their eligibility to the State and NMFS on an annual basis, in order to continue to participate in the program. The State explained that although they wouldn't expect to go back and review whether participating communities still meet the criteria used for acceptance into the program in 1992, there is no clear answer. The committee may want to address this issue.

The committee agreed that it was not the best use of the committee's time to debate the merits of H.R. 553, but rather to be aware of the proposed legislation. The committee agreed that it should move forward with its own agenda and present recommendations to the Council based on the committee's work. The committee can later decide if it wants to make additional recommendations to the Council regarding this legislation.

#### **IV. Agency and committee members' statements**

Each member and agency representative discussed their primary concerns with the current CDQ program and what issues they would like the committee to address.

##### State of Alaska

Jeff Bush expressed the following concerns of the State:

- 1) *The State regulatory proposal.* This package, presented to the Council in October 2000, was designed to create a more flexible and amenable CDP amendment process and to address which types of projects should be subject to government oversight. That proposal is on hold subject to the work of this committee, and the State would like to see recommendations made to the Council regarding those proposals.
- 2) *Non-fishery related projects.* How would these investments be defined, should they be permitted, and what limitations should be in place?
- 3) *Allocation criteria.* This is a continual criticism of the State and the subject of the current lawsuit. The State has never received consensus from the CDQ groups on what criteria to use to make allocation decisions, since all of the groups have different interests and characteristics. The State would like recommended solutions from the committee.
- 4) *Definition of CDQ project.* The State would like a recommendation/discussion on financial oversight responsibilities of the State and NMFS. For instance, should oversight apply only to royalties or all revenues? Should oversight also apply to the subsidiaries of CDQ groups?

##### NMFS

Sally Bibb supplied a handout (*NMFS's Recommendations for the CDQ Policy Committee*) summarizing the agency's main concerns, including a draft list of proposed alternatives to address those concerns (p. 9 of the handout). Sally also

explained that NMFS' concern regarding the State's proposed regulations to streamline the CDPs stemmed from the lack of discussion on the "big picture" of the program. NMFS did not want to adopt regulatory changes without a discussion of the future direction of the program, government (NMFS vs. State) oversight responsibilities, and whether the Council's original objectives and intent continue to be relevant. Sally gave a brief overview of the history and intent of the program, and stated that NMFS is not opposed to changing objectives, the Federal role, or its relationship to the State, depending on the committee's recommendations. The process would be to revise the FMP and procedures to implement the new intent and corresponding objectives.

#### Representative of each CDQ group and other committee members

Each member discussed their primary concerns separately, and these issues were compiled with the State and NMFS concerns to form a comprehensive list of priority issues the committee could work from (Section V of this report). Several members repeated concerns of other members; these issues were listed only once. Although the allocation percentages were noted as a major concern, the committee recognized its limitations in addressing whether the allocations are fair and equitable. The committee generally agreed to focus on the process, policy, criteria, and oversight issues that it is equipped to deal with by June 2001. The committee agreed that it is outside of its scope to make recommendations to change/raise the percentage allocations.

#### **V. Summary of problems and issues raised by committee members and staff**

The following is a draft list of issues that the committee agreed to address, in order of priority, based on the concerns and interests voiced by each representative committee member, the State, and NMFS. **The order of priority is subject to change, depending on the direction of the committee over the course of the next meeting. The subtopics listed beneath each primary issue are not prioritized.**

##### 1. Government Oversight/Role of NMFS vs. State

- What is role of government in CDQ program oversight?
  - In general? State? NMFS?
- Should state continue to make CDQ allocation recommendations with no additional guidance from NMFS?
- Should NMFS make independent allocation decisions?
- Definition of CDQ project: does oversight extend to businesses owned by CDQ group? To revenues other than royalties?
- How important is Council's original intent (1992)?
- Do objectives in current FMP still reflect intent? Is it appropriate to develop new goals and objectives at this point in the program?

##### 2. CDQ Allocation Process

- Address process by which allocations are made
- How do we make the process more transparent? More consistent?
- What evaluation criteria should be used to determine allocations?
  - prioritize criteria?
  - establish weighting system?
  - score card/report card?
- Develop appeals process?
- Consider NRC recommendation to form 2 separate quotas: foundation vs. performance based?
- Address length of allocation cycle
  - permanent? 5 years? 2 years?

##### 3. Fisheries-Related Projects

- Allow for CDQ groups to invest in non-fisheries related projects?
  - Suggestions: - No non-fisheries related projects are allowed
  - Allow no more than 20% of pollock royalties

- Allow no more than 5% of pollock royalties
- Allow in-region projects only
- Each group decides for itself what percentage can be attributed to non-fisheries related projects but cannot exceed 50% of total revenues
- No limits on non-fisheries related projects
- How to define non-fishery related projects?
- Should fisheries-related projects hold greater weight in evaluation process?
- If non-fisheries related projects are allowed, what limitations should be in place?

#### 4. CDQ Fisheries Management Issues

- Should CDQ allocations be considered hard caps/strict quotas?
- Should allow more flexibility in transferring CDQ/PSQ among CDQ groups?
- Bycatch accountability vs. economic development?

#### 5. Other Issues

- Content of CDPs
  - simplify and streamline CDP requirements
  - adopt a more flexible amendment process
- Create a regular forum for addressing CDQ policy issues?

#### Discussion on each priority issue

Upon drafting the list of priorities, the committee discussed each of the issues more thoroughly and explored options to consider recommending to the Council. The committee understood that additional options and issues could be brought to the next committee meeting in May, and that recommendations to the Council would not be limited to these preliminary discussions or the above list. Where possible, headings are provided under each primary issue to better organize the discussion, although most of the issues are inherently inter-related.

#### 1. Government Oversight/Role of NMFS vs. State

The committee discussion ranged from continuing the current level of State oversight to severely restricting government oversight altogether. The committee questioned the State's role in overseeing investment decisions made by each CDQ group and whether following the State's guidance on investments increases the groups' chances of getting their allocation requests approved. The committee raised the issue that while maybe this was a valuable State role in the past, the groups are increasingly sophisticated and better able to make solid business decisions without input from the State.

The following was suggested as a possible list of duties that would constitute reasonable State oversight:

1. Ensure each CDQ group's actions are not fraudulent or dishonest
2. Ensure each CDQ group follows their investment criteria
3. Ensure each CDQ group exercises due diligence
4. Ensure each CDQ group has proper governance
5. Conduct ongoing performance reviews of CDQ groups

The State expressed frustration regarding the definition of a CDQ project and questioned how much oversight should apply to businesses owned by CDQ groups. The State related, and it was generally apparent from the committee, that while some groups want the State to maintain their current oversight role, other groups would like a lesser role for the State. The State does think they have a necessary role in the program, but it needs to be defined clearly for all involved. A discussion ensued regarding the complexities related to overseeing financial investments of the groups, specifically the transfer of profits to subsidiaries. The agency representatives confirmed that while each CDQ investment passes through a review process, once that review is made, the government does not retain any effective oversight over subsidiaries (i.e. the initial transfer will incur oversight, but that will occur on a regular basis, as royalties incur). Thus,

if all business activities of the CDQ group take place within a subsidiary, those activities would not be subject to government oversight. Unless the committee recommends no State oversight at all, the State has a concern with the inability to oversee subsidiaries' activities. It was noted that many groups have significant equity interests in their harvest partners.

A related question was asked regarding State oversight of all CDQ revenues (current system) versus oversight only on royalties from CDQ projects. One explanation of the current system is that there exists the potential for a business to manipulate their actions so that royalties are reduced and yet profits are increased, which would significantly reduce the level of government oversight if it is applied to royalties only.

Some members of the committee also expressed the importance of *communities* deciding what is best for themselves; the State should not influence what projects are undertaken and investments made in order to correlate with the State's view of what these communities need. For example, the government should not be able to decide whether or not a group can partner with a particular harvester. It was noted that any action which constitutes a "substantial" CDP amendment triggers financial oversight.

Some members of the committee conveyed that the groups need to stick to the CDPs and the milestones they developed, while others were concerned with the practicality of doing so in a dynamic industry, as new information becomes available. The example was used of buying a crab boat. A group may include that investment in their CDP, but should the group be held to following through on that investment if the crab fishery crashes? This example underscores the importance of being able to easily amend the CDP.

The committee also questioned the possible government role of "ensuring due diligence", for example, would that be limited to the proposals submitted for review, or would it allow the State to encourage groups to make a different type of investment altogether, as may have been done in the past? One view was that due diligence means that government staff ensures the board does enough research to make a reasonable business decision that is consistent with the investment criteria of the group. In this sense it is simply a procedural role, and does not include commenting on the merits of the investment decision itself. While that could be considered the minimum government role, the State related that it does provide value in serving as a sort of business assistance agency, helping to advise on significant investments. The State clarified that it would not second-guess the investment proposed, but it could help raise questions and considerations related to the investment that would be beneficial to the group.

Concerning the proposal that the government should evaluate the performance of the groups, one member related that this should not be limited to past performance, but should include future plans in order to ensure the groups will satisfy the actual communities they are representing. This relates to expanding the realm of projects allowed (fisheries versus non-fisheries related, discussed in detail under (3)), which may be feasible as long as the government has the authority and ability to monitor a community's satisfaction.

## 2. CDQ Allocation Process

The committee addressed the CDQ allocation process several times under Issue #1 (government oversight), but also focused on this topic separately in order to brainstorm specific options the committee may want to consider at the next meeting.

### *Transparency in the process*

The issue of "transparency" in the allocation process spurred a lengthy discussion. The State commented that while it does not tell a group whether they can engage in a specific investment, the State must compare the CDP to the allocation criteria established. For instance, an investment in an environmentally "dirty" operation would be filtered through the environmental criteria. The committee agreed that if there are certain filters (i.e. within the allocation criteria), the State needs to be very clear about what weight they carry and how the CDP will be measured. This is both an allocation issue and an oversight issue, and there remains a question of whether the state wants that type of

oversight. In discussing state oversight roles, the question was raised whether the CDQ Program should be an instrument of state policy (i.e. decreasing a group's allocation if they choose to invest in something that may be legal but does not conform to State policy) or whether the State should be limited to ensuring that the CDQ groups are setting and meeting milestones to provide benefits to the communities.

The state reiterated that there are twenty different criteria associated with the allocation process, many of which could be viewed as policy considerations. The State also noted that while some groups may want a purely objective, administrative role for state, that would be extremely difficult in practice, as there will always be some subjectivity involved due to the nature of the criteria. It is not possible to define criteria so perfectly that no judgment is needed. The committee generally agreed that in addition to the transparency issue, the groups should be able to weigh in on which criteria are used.

The question of population as a criterion was addressed a few times by the committee in the context of transparency, specifically whether the State has allowed population or the eligible number of individuals within a group to substantially influence the allocation decisions. The State noted that this has been brought to the attention of agency staff by several CDQ groups, and that while population and economic base are one of the criterion, that criterion cannot be pointed to as the general basis for the allocations.

Another example raised by the committee regarding transparency was the lack of knowledge on what a group must do to get a higher allocation of a species other than pollock (i.e., is the criteria applied differently for pollock than it is for crab). It was also raised that one group's pollock quota was cut consistently over several years, and the group remained uncertain about what drove those cuts. Without understanding exactly how the groups are evaluated and how each criterion is weighted, groups must make assumptions about what is driving the process.

#### *Foundation vs. performance-based allocations*

One suggested option was to create two separate quotas: a "foundation" quota and a "performance-based" quota. This is based on the NRC's idea of establishing a minimum (foundation) quota amount that each group is guaranteed, with the remainder of the quota established through the current allocation process (performance/CDP review). While some members did not take a position on this issue, there was some discussion on the percentage of the quota that could constitute the foundation portion of the allocation. Four suggestions were made:

- 1) 50% of the quota be distributed equally, with the remaining 50% based on allocation criteria.
- 2) A smaller percentage (1% was used as an example) as a "foundation" quota based on the number of communities belonging to each group—so if a CDQ group is made up of 15 communities, they would be guaranteed 15%. Any remaining quota would be distributed according to the current CDP allocation process.
- 3) Apply the foundation quota on the basis of population (thousands of people). Meaning that a CDQ group made up of 9,000 people would be guaranteed 9%; any remaining quota would be distributed according to the current CDP allocation process.
- 4) Use a foundation quota only when allocating pollock, since other species such as halibut and crab are more area-specific.

The Chair noted that CDQ groups can merge freely, without state interference, resulting in reduced administrative costs but a loss of autonomy. It was also noted that guaranteeing a minimum allocation to each group may provide incentive for groups to split up, potentially threatening the ability of the groups to be effective, and ultimately endangering the program.

#### *Length of the allocation cycle*

The committee also discussed the length of the allocation cycle. Both a permanent allocation and a 5-year cycle were suggested. The apparent benefit is that groups would not have to go through the arduous process of submitting CDPs and waiting for the State's decision (as frequently). If a CDQ group disbanded, the State and NMFS could look at the allocation process again, but groups that remained intact would not receive a decrease in quota.



The State raised the issue that a 5-year cycle and a permanent cycle raise the same concerns. A long-term allocation is difficult because one assumes that the current amounts will remain the correct amounts in the future. Allocations are currently made knowing there will be a periodic, substantive review of those allocations. The frequent review process and the ability to modify the allocations on a relatively short-term basis provide an incentive for groups to improve their performance in the next year. That incentive is lost with a permanent or long-term allocation. Another cited benefit of a shorter cycle is that requiring a group to develop a new CDP “grounds” the board of directors and helps ensure that the direction of the board still fits with the community’s needs on the whole.

#### *Need for an appeals process*

The State explained that it previously entertained a proposal to establish “proposed” or “interim” allocations, the intent of which would be to provide time for a review with each group before the allocations were finalized. Any dissatisfaction with the allocations could be appealed to the State and NMFS. The State does not support this proposed allocation process, primarily because the comment period would not solve the trade-off decisions necessary to set quotas. All groups would have an interest in any quota adjustments made during the review or appeals process, since any additional points allocated to one group would need to come from another group’s interim allocation. This would likely result in further appeals by the group who “gave up” quota to supplement another group’s allocation.

The State did offer a recommendation to put the initial allocation decisions at the division level instead of the Commissioner’s office and allow a hearing before the allocations are sent to the Commissioner for final decision. Effectively then, an appeal would be elevated to the Commissioner’s office. Possibly only 94% of the quota could be allocated in advance and 6% could be held by the State until the hearing process was completed. So in the final allocation, no quota is taken away, but each group does have the possibility of receiving more. However, this system would ensure that every group would appeal for the last 6%.

It was also suggested that the allocation process could be modified to mimic the IPHC and Council process. The IPHC proposes halibut allocations, after which industry attends the Council meeting and comments on the IPHC recommendation, and then the final allocations for each area are made having considered industry comments. One member suggested that just having the opportunity to explain why some allocations are inadequate is an improvement over the current system. The Chair offered that the courts often deny an appeal because the person has exhausted their administrative opportunities, but that in this process there is no administrative appeals process. He further agreed that it may be beneficial to the agency to at least allow groups to discuss and articulate their frustrations, even if the decision is not overturned. Including this step in the process may help prevent further problems in the future and allow the groups a better opportunity to address some of their deficiencies in the next cycle.

### 3. Fisheries-Related Projects

The committee discussed whether the objectives in the FMP concerning the goal to provide sustainable fisheries-based economies for CDQ communities are still appropriate and relevant for how the program has developed and exists today. Although the same general goal of providing economic opportunities to western Alaska communities still applies, some members of the committee think the type of projects allowable under the program need to be expanded. The concern was raised that even if fishery-related projects were initially the crux of the program, the program should now evolve to include a full range of investments. Some members agreed that the committee should consider recommending that no restrictions be placed on what type of project the CDQ group undertakes. Some members agreed that communities should continue to invest in fisheries-related projects, but that the proceeds from those projects should be able to support both fisheries and non-fisheries related projects that will stimulate the overall economy of the community. Members of the committee also conveyed that should there be limited opportunities for fisheries-related projects in a particular year, a non-fisheries related project may appear to be a better investment for the group at the time. Several groups expressed that they would like the latitude to take advantage of those opportunities.

Sally noted that the FMP language is fairly broad, and questioned whether the agency would need to amend the FMP

to incorporate an allowance of non-fisheries related projects, or whether we could interpret the current language differently and write the regulations to that effect. The group generally thought that the FMP would not need revising, but that the regulations need to be clear on what types of projects are allowed.

This discussion spurred specific examples from the committee related to whether the regulations need to reflect a broader set of goals and objectives in order to develop new criteria by which to evaluate the definition of a CDQ project. One member used the example of funding a reindeer facility in one of the communities versus a golf course in Arizona. While the in-region reindeer facility may appear to be more beneficial to the community, the true test of the value of the project should be whether the profits are benefitting the region. The argument was made that the golf course should also be considered an allowable project, as long as the profits were spent in the region.

The Chair cautioned the committee that although the CDQ groups have evolved substantially over time, and specific non-fisheries related projects may appear to be good investments, the viability of the program still relies somewhat on public and legislative perception and opinion. The program may suffer if the public perception is that the program does not directly benefit the people it was designed to help. The committee may want to consider that the issue is more than just finding profitable ventures and "bringing profits back". Investing in projects such as the golf course example would be taking money that could have been invested in the region directly out of the region, and putting in-region projects on hold for a time period.

One member suggested that a possible recommendation to the Council may be to require non-fisheries related projects to occur in the region. It was also suggested that projects outside the region could be allowed but there must be a clear programmatic link to ensure that the region is benefitting. In relation to the idea of expanding the types of projects CDQ groups can invest in, one member suggested also changing the regulations that require that a CDQ group's board of directors be composed of at least 75% fishermen from the communities. The idea would be to broaden the political construct of the CDQ groups and set up guidance about how they should be governed, so that it is the people in the region who are deciding whether there is a real link between the region and the project. If communities determine there is a clear link, the project should be allowed.

Another member voiced concern about the goal for CDQ communities to become self-sustaining. The concern is that there would exist a perception that economic development is a terminal concept, and that at some point the CDQ Program could be declared to have met that goal and be terminated. In order to ensure that this does not occur, it was suggested that the CDQ Program is viewed as a necessary tool to enhance living in the villages. This supports the view that there may be limited types of non-fisheries related projects (recreational centers, washeterias, etc.) that would directly benefit the community, and that the community and the general public could see a clear link between CDQ profits and those benefits. The majority of the committee agreed that boundaries would need to be set on non-fisheries related projects, and that in addition, a clear definition of "in-region" projects would need to be developed.

While not all members took a position on this issue overall, several options were mentioned for consideration at the May meeting; these are captured in the priority list above. Other considerations mentioned include whether a non-fisheries related project could be: 1) executed by your subsidiary or harvest partner, 2) for profit vs. not for profit, or 3) in vs. out of region. It was also noted that should non-fisheries related projects be allowed under the CDQ program, the committee would need to consider whether a higher weight should be given to fishery-related projects over non-fisheries projects during the evaluation of the CDP.

#### 4. CDQ Fisheries Management Issues

While it was agreed that the committee would likely not have the time or be equipped to address all of the outstanding fisheries management issues in such a short time period, the committee could comment on a few issues that continue to warrant attention. One major concern of the committee is the target vs. non-target species allocations. The CDQ group representatives emphasized that they need to be allocated an adequate amount of non-target species (bycatch) in order to be able to fully utilize their target allocations.

NMFS explained that the proposed legislation (H.R. 553) that was outlined earlier specifies that the CDQ Program would function as directed fisheries only—any PSQ/bycatch would accrue against the directed fishing quota for that species. The committee expressed concern about being shut down by treating the quotas as hard caps; the committee wanted to ensure that if a non-target species quota is exceeded, red rockfish for example, it doesn't shut down an individual group's harvest in other fisheries (unless you are approaching an overfishing level). Any bycatch would be funded out of the general CDQ reserve.

Removing "other" species such as sharks, skates, and sculpins, and separating rockfish species, would establish a strict accounting system but would likely shut down directed fisheries sooner in the CDQ Program. This issue is being addressed in two separately initiated analyses, one of which is scheduled for Council initial action in October 2001.

NMFS voiced concern about the ability to deal with all of the fisheries management issues in the near-term. Changing from an all species program with a separate PSQ allocation to individual directed fisheries with all bycatch accounted for within those directed fisheries, is going to be slow-going. It was suggested that the committee may want to make a recommendation on how high a priority issue this is.

## 5. Other Issues

### *CDP content*

The State agreed to bring recommendations on simplifying/streamlining CDPs and the amendment process to the next meeting. It was also suggested that the committee discuss the criteria for a technical amendment vs. substantial amendment to a CDP. The committee agreed to look at modifying what would constitute each type of amendment, specifically regarding management issues such as transferring PSQ. The amendment package already proposed by the state was referenced, and some copies were made available at the meeting. Anyone needing an additional copy was advised to contact Council staff.

It was noted by the committee that simplifying the allocation process is directly tied to simplifying the CDP development. The committee generally agreed that these types of issues would fall out of other decisions made at a higher level on related issues.

### *Continuing forum for these policy issues*

The committee agreed to come back with ideas in May.

## **VI. Identify additional information needed (to explain the problem in more detail and to identify alternative solutions to the problem)**

This agenda item was encompassed in the discussions provided above in Section V.

## **VII. Develop agenda for next meeting**

The next meeting is scheduled for May 24 - 25, at the Hilton hotel in Anchorage. The committee agreed that a one-item agenda is sufficient: final action on recommendations to the Council on issues identified at the April meeting.

## **VIII. Tasking**

No formal tasking was necessary. The committee agreed to bring the issues/priorities discussed at this meeting to their representative groups and be prepared to work toward final recommendations to the Council at the next meeting. The State agreed to bring recommendations to streamline the CDPs and amendment process, and NMFS agreed to put together a draft list of options under each topic on the priority list for the committee to start from at the next meeting.



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

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

June 1, 2001

David Benton, Chairman  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup>, Suite 306  
Anchorage, Alaska 99501

Re: June 2001 Council meeting, Agenda C-7, CDQ Program

Dear Dave:

At its June 2001 meeting, the North Pacific Fishery Management Council (Council) will receive a report from the Community Development Quota (CDQ) Policy Committee. The committee will recommend that the Council proceed with analysis of a number of issues and alternatives related to administration and oversight of the CDQ Program. NMFS staff participated in both committee meetings and the committee incorporated our suggestions in its recommendations to the Council. We appreciate the work of the CDQ Policy Committee and support its recommendations for the issues and alternatives to be analyzed by the Council. This letter provides a few additional recommendations on issues that should be addressed in this analysis to ensure that the Council considers a full range of alternatives.

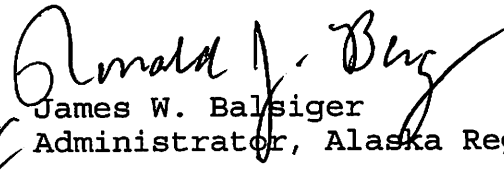
NMFS recommends that the Council include the following in its analysis of CDQ Program oversight and administration issues:

1. Add an issue and alternatives that would define the respective roles of NMFS and the State of Alaska in CDQ allocations and oversight of the economic development aspects of the CDQ Program. Specific alternatives that NMFS recommends be analyzed are described in the attachment to this letter. Consideration of these alternatives would provide Council recommendations on proposed changes to CDQ Program oversight responsibilities that are at issue in the lawsuit against the State of Alaska and NMFS by the Aleutian Pribilof Island Community Development Association and in H.R. 553 (Congressman Don Young's bill that would amend the CDQ sections of the Magnuson-Stevens Act). In addition, one of the alternatives would eliminate NMFS's role in CDQ allocations and administration by allocating the CDQ reserves to the State of Alaska for purposes of the CDQ Program.



2. The CDQ Policy Committee discussed the alternative of adding a public comment period in the State of Alaska's CDQ allocation process. NMFS recommends that the analysis also consider the alternatives of adding a public comment period and/or an appeals process during NMFS's review of the State's CDQ allocation recommendations and approval of CDQ allocations.
3. The analysis should include a discussion of confidentiality issues related to the CDQ groups' submission of confidential financial information and the use of this information in making CDQ allocations.

Sincerely,

*For*   
James W. Balsiger  
Administrator, Alaska Region

Attachment

Attachment

**Issue:** Define the respective roles of NMFS and the State of Alaska in CDQ allocations and oversight of the economic development aspects of the CDQ Program.

**Alternative 1: Status quo: Do not change the CDQ administrative regulations.**

- This alternative would not address problems that have arisen in the recent CDQ allocation process, in APICDA and CBSFA challenges to the 2001-2002 CDQ allocations, the APICDA lawsuits against NMFS and the State of Alaska, and the proposed MSA amendments in H.R. 553.

**Alternative 2: Continue current responsibilities for NMFS and State of Alaska, with some modifications.**

- The State would continue to be responsible for making CDQ allocation recommendations and for day-to-day management of the economic development aspects of the program.
- NMFS would continue to review the State's CDQ allocation recommendations and approve them if the State followed the process in NMFS regulations and provided a reasonable rationale for its recommendations. NMFS would not make independent decisions about the CDQ allocations or the economic development aspects of the program.
- The Council could consider deferring management of the CDQ Program to the State of Alaska using the crab FMP structure to more clearly define responsibilities of the State, Council, and NMFS.
- NMFS regulations could provide more guidelines for how the State must make its allocation recommendations, including putting any of the following in NMFS regulations: evaluation criteria; priority, ranking, or weighting for specific criteria; further explanation of the role of population in allocations; provisions for public comment and State response on the State's initial recommendations before they are presented to the Council; requirements that the allocation recommendations be published as proposed and final rulemaking with NMFS responding to public comments.
- Regulations could be amended to provide more guidance or clarification on economic development aspects of the program, including allowing some investment in non-fisheries related projects, or clarifying the extent of State and NMFS oversight of the activities of businesses owned by the CDQ group (more clearly define "CDQ project").

**Alternative 3: Eliminate NMFS's role in CDQ allocations and oversight of the economic development aspects of the CDQ Program.**

- NMFS's role in the CDQ Program would be guided by the direct requirements of the MSA, which are limited to:
  - establishing the CDQ Program and allocating a percentage of the TACs for BSAI fisheries to the program;
  - limiting participation in the CDQ program to communities that meet specific eligibility criteria;
  - not adding species to the CDQ program or increasing CDQ percentage allocations prior to October 1, 2001;
  - allocating 7.5% of the BS crab to the CDQ program (2000 and thereafter).
- As required by the MSA, NMFS would continue to allocate a percentage of BSAI quota to the CDQ Program each year. However, instead of allocating the CDQ reserves to the CDQ groups based on the State's recommendations, NMFS would allocate the CDQ reserve to the State of Alaska for purposes of the CDQ Program.
- The State of Alaska would no longer be required to submit CDQ allocation recommendations to NMFS for approval. NMFS would no longer be involved in reviewing and approving Community Development Plans and amendments to the plans. This means that NMFS wouldn't be involved in the economic development aspects of the CDQ Program or in approving percentage allocations to the CDQ groups or communities.
- The State of Alaska would notify NMFS prior to the beginning of each fishing year the name of the organizations (the CDQ groups) that would be authorized to catch CDQ and PSQ on behalf of the State of Alaska, and the percentage of each CDQ and PSQ reserve that each group would be authorized to harvest. The State would be required to document that the CDQ groups represented eligible communities. NMFS would issue a CDQ permit to each group in the amount authorized by the State. The CDQ permit holder would be responsible for not exceeding the CDQ and PSQ amounts allocated to them through the CDQ permits. Enforcement action could be taken against the group identified on the CDQ permit for any CDQ or PSQ overages or other violations of NMFS regulations.
- NMFS also would issue permits or authorization to participate to individual vessels that would be catching the

CDQ for each CDQ group. This authorization currently is issued through NMFS approval of the CDP or amendments to it.

- The MSA requirements imply that the CDQ Program must benefit the eligible communities authorized to participate in the program. So, at a minimum, the Council and NMFS would require the State to provide an annual report that demonstrates that the CDQ allocations are benefitting the eligible communities.

**Alternative 4: NMFS would have primary responsibility for CDQ allocations and oversight of the economic development aspects of the CDQ Program.**

- This alternative represents what appears to be the intent of the APICDA lawsuit and H.R. 553 (MSA amendments for CDQ Program).
- Revise FMP and regulations so that NMFS has primary responsibility for CDQ allocations among the CDQ groups and for the administration of the economic development aspects of the CDQ Program. NMFS regulations would have to provide specific objectives and guidelines about how NMFS would undertake each aspect of its responsibilities for CDQ Program oversight. All aspects of CDQ Program decisions would be made following guidelines developed in the FMP and NMFS regulations.
- Option 1: The Council would accept allocation requests and CDPs from the CDQ groups and make allocation recommendations to NMFS through a framework process or as part of the groundfish specifications process.
- Option 2: Require NMFS to make an independent decision about CDQ allocations based on an allocation process, evaluation criteria, and weighting factors contained in NMFS regulations. NMFS would make initial allocation recommendations, seek public input, and then make final allocations (through proposed and final rulemaking). NMFS would consult with the Council on proposed allocation recommendations prior to making a final decision.
- The State of Alaska could act in an advisory role to the Council or NMFS under either Option 1 or Option 2.
- Consider deferring management of the CDQ Program to the State of Alaska using the crab FMP structure to more clearly define responsibilities of the State, Council, and NMFS.





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

C-7

June 1, 2001

David Benton, Chairman  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup>, Suite 306  
Anchorage, Alaska 99501

Re: June 2001 Council meeting, Agenda C-7, CDQ Program

Dear Dave:

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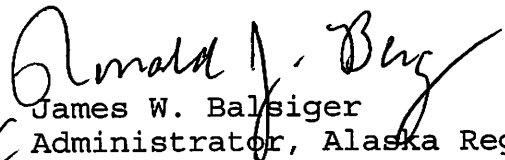
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3. The analysis should include a discussion of confidentiality issues related to the CDQ groups' submission of confidential financial information and the use of this information in making CDQ allocations.

Sincerely,

*For*   
James W. Balsiger  
Administrator, Alaska Region

Attachment

Attachment

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- The Council could consider deferring management of the CDQ Program to the State of Alaska using the crab FMP structure to more clearly define responsibilities of the State, Council, and NMFS.
- NMFS regulations could provide more guidelines for how the State must make its allocation recommendations, including putting any of the following in NMFS regulations: evaluation criteria; priority, ranking, or weighting for specific criteria; further explanation of the role of population in allocations; provisions for public comment and State response on the State's initial recommendations before they are presented to the Council; requirements that the allocation recommendations be published as proposed and final rulemaking with NMFS responding to public comments.
- Regulations could be amended to provide more guidance or clarification on economic development aspects of the program, including allowing some investment in non-fisheries related projects, or clarifying the extent of State and NMFS oversight of the activities of businesses owned by the CDQ group (more clearly define "CDQ project").

**Alternative 3: Eliminate NMFS's role in CDQ allocations and oversight of the economic development aspects of the CDQ Program.**

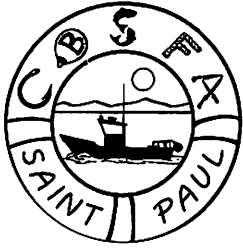
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CDQ for each CDQ group. This authorization currently is issued through NMFS approval of the CDP or amendments to it.

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**Alternative 4: NMFS would have primary responsibility for CDQ allocations and oversight of the economic development aspects of the CDQ Program.**

- This alternative represents what appears to be the intent of the APICDA lawsuit and H.R. 553 (MSA amendments for CDQ Program).
- Revise FMP and regulations so that NMFS has primary responsibility for CDQ allocations among the CDQ groups and for the administration of the economic development aspects of the CDQ Program. NMFS regulations would have to provide specific objectives and guidelines about how NMFS would undertake each aspect of its responsibilities for CDQ Program oversight. All aspects of CDQ Program decisions would be made following guidelines developed in the FMP and NMFS regulations.
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- Consider deferring management of the CDQ Program to the State of Alaska using the crab FMP structure to more clearly define responsibilities of the State, Council, and NMFS.



## CENTRAL BERING SEA FISHERMEN'S ASSOCIATION

Post Office Box 288 ▲ St. Paul Island, Alaska 99660 ▲ Phone (907) 546-2597 ▲ Fax (907) 546-2450

### **Phillip Lestenkof – Testimony – CDQ Policy Committee Issues, Alternatives and Options – North Pacific Fishery Management Council, Kodiak, June 2001**

Good \_\_\_\_\_, Chairman *Bruce* (Benton) and members of the *AP* (Council). I'm Phillip Lestenkof, the president of the Central Bering Sea Fishermen's Association, which is the CDQ group from St. Paul Island.

To begin my testimony, I want to say that the CDQ Program has provided numerous benefits to the communities involved in the program, and that the community of St. Paul is grateful to be part of the CDQ program.

One of the greatest benefits St. Paul has received from the CDQ Program was the chance to develop a local halibut fishery. St. Paul has built a fleet of locally owned vessels that has created a major source of employment and has become a major source of livelihood to many residents of St. Paul.

CBSFA believes that our success in developing a local fleet that harvests and processes all the CDQ halibut locally accomplishes the original intent of the CDQ Program, which is to "provide the means for starting and supporting an ongoing, regionally based, fisheries related economy. It also meets another intent of the CDQ program in regards to CDQ communities, which says, "to help alleviate the growing social and economic crisis within these communities".

The Pollock allocation has also played an important role in developing our local fleet. We have used the revenue generated by our Pollock allocation to create a vessel and gear loan program that has essentially financed the development of St. Paul's local fleet.

I know the (*A.P.*) Council has specific CDQ policy alternatives before you to consider, but CBSFA feels that there are larger questions that need to be considered before making any changes to the CDQ program policies.

Up until now, the CDQ program has been administered by making periodic, competitive allocations among the CDQ groups.

In consideration of the original intent of the CDQ program, which is to help alleviate the growing social and economic crisis within CDQ communities, why must the CDQ program be administered on a competitive basis? Does competition further the original intent of the CDQ program and help to alleviate the social and economic problems within all the communities?

We feel that the current system of competing for allocations causes divisiveness amongst the CDQ groups and between the groups and the government.

CBSFA is asking the (A.P.) Council to consider whether the competitive allocations process is the best way to promote the original intent of the CDQ program.

CBSFA has suffered significant losses under the competitive allocations process for reasons that are not clear to us and we do not agree with the way the Pollock allocations process has been administered so far.

CBSFA is currently receiving only 4 percent of the CDQ Pollock, in the beginning of the program, we were at 10 percent. We are saying that 4 percent is well below the threshold for any CDQ Group to remain viable. The Pollock allocation is the main source of revenue for developing community projects and it is also the main source of revenue for investments made by the groups. A 4 percent Pollock allocation prevents CBSFA from making any significant investments, and suppresses CBSFA's ability to grow and work towards increasing benefits to our community. CBSFA needs a reasonable and fair Pollock allocation to move forward.

CBSFA believes the current administration of the CDQ program is not fully promoting the true intent of the CDQ Program and is not protecting the inherent rights of some of the eligible communities involved in the CDQ program.

up with now, the CDD program has been administered by making periodic competitive allocations among the CDD groups.

In consideration of the original intent of the CDD program, which is to help alleviate the growing social and economic crisis within CDD communities, why must the CDD program be administered on a competitive basis? Does competition further the original intent of the CDD program and help to alleviate the social and economic problems within all the communities?

We feel that the current system of competing for allocations causes divisiveness amongst the CDD groups and between the groups and the government.

CRSFA is asking the (V.A.) Council to consider whether the competitive allocation process is the best way to provide the original intent of the CDD program.

CRSFA has suffered significant losses under the competitive allocation process for reasons that are not clear to us and we do not agree with the way the block allocations process has been administered so far.

CRSFA is currently receiving only 4 percent of the CDD block in the beginning of the program, we were at 10 percent. We are saying that 4 percent is well below the threshold

for any CDD group to remain viable. The block allocation is the main source of revenue for developing community projects and it is also the main source of revenue in investments made by the groups. A 4 percent block allocation prevents CRSFA from making any significant investments and suppresses CRSFA's ability to grow and work towards increasing benefits to our community. CRSFA needs a reasonable and fair block allocation to move forward.

CRSFA believes the current administration of the CDD program is not fully promoting the true intent of the CDD program and is not protecting the fabricating of some of the eligible communities involved in the CDD program.



If you look back and consider the reason for creating the CDQ Program, you will recognize that the reason is very noble, and sympathetic to the social and economic problems of Western Alaska.

The original intent of the CDQ program needs to be reviewed and clarified, and if it is determined that the current administration has gone off course, we ask that you take action to correct the direction of the program. This will insure that all the CDQ groups and communities receive their fair share of the intended benefits of the program.

Thank you.

### Purpose and Scope

The NMFS regulations at 50 CFR 679.1(e) states the following as the intent of the CDQ Program, it says, "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".

A 1992 document entitled the "Western Alaska Community Development Quota Program Criteria and Procedures" states the intent of the CDQ program under the title named "PURPOSE AND SCOPE", it reads: The Western Alaska Community Development Quota Program is established to provide fishermen who reside in western Alaska communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands fisheries, and promote the economic well being of local coastal communities in relation to Bering Sea fishery resources.

Another document, the Bering Sea Aleutian Islands FMP expresses the Councils intent for the CDQ program, it reads: "The Western Alaska Community Development Quota Program is established to provide fishermen who reside in western Alaska communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands groundfish fisheries, to expand their participation in salmon, herring, and other nearshore fisheries, and to help alleviate the growing social economic crisis within these communities.

If you look back and consider the reason for creating the CDD program you will recognize that the reason is very noble and sympathetic to the social and economic problems of Western Alaska.

The original intent of the CDD program needs to be reviewed and clarified, and it is determined that the current administration has gone off course. We ask that you take action to correct the direction of the program. This will insure that all the CDD groups and committees receive their fair share of the intended benefits of the program.

Thank you.

PLEASE AND THANK YOU

The NHTA's regulations at 20 CFR 690.101 states the following as the intent of the CDD program: "The goals and purpose of the CDD program are to allocate CDD 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."

A 1993 document entitled the "Western Alaska Community Development Quota Program: Criteria and Procedures" states the intent of the CDD program under the title named "PURPOSE AND SCOPE". It reads: "The Western Alaska Community Development Quota Program is established to provide fishermen who reside in Western Alaska communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands fisheries and promote the economic well being of local coastal communities in relation to Bering Sea fishery resources."

Another document, the Bering Sea Aleutian Islands FVH, expresses the Council's intent for the CDD program. It reads: "The Western Alaska Community Development Quota Program is established to provide fishermen who reside in Western Alaska communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands groundfish fisheries to expand their participation in salmon, herring, and other fisheries and to help alleviate the growing social economic crisis within these communities."

- a reprimand system of public censure, similar to what is used for wayward lawyers or judges
- suspension or escrow of CDQ quota pending resolution of a group's management problems
- a bank examiner model, under which the state could classify investments, management practices, etc. as "underperforming" similar to a bank examiner's

CSBA believes that the Council should request the staff to analyze additional enforcement "tools" that could be, by regulation, added to the state's enforcement toolbox. Some suggestions of possible alternative "tools" are:

An additional problem with this approach is that the committees which constitute a CDQ group are punished by taking away their economic development monies when the intent is to penalize a group's management because the state has concerns over the group's management practices.

Overnight decisions therefore automatically become allocation decisions. Moreover, the state is presented with only two options: it can choose to do nothing, which means that oversight is not enforced, or it can choose to take allocations away from a group, which may frequently be far too severe a penalty. In short, it is either nothing, or the atomic bomb.

The Committee discussion of oversight was directed to defining the extent of oversight. However, despite this fact, the discussion kept straying over into allocation issues. The reason for this is that under the current system, the only "tool" that the state uses to enforce its oversight responsibilities is the reduction of a group's allocation.

I. OVERSIGHT

On behalf of the Central Bering Sea Fishermen's Association (CSBA), I would like to single out several areas where the CDQ policy committee's report needs to be supplemented by further staff analysis, or by further work by the CDQ Policy Committee. These areas fall within the categories of oversight, which is Issue 2 in the CDQ Policy Committee report, and Allocation Process, which is Issue 4 in that report. I will address them in turn.

Testimony of Roger W. Dubrock  
 Submitted on behalf of  
 Central Bering Sea Fisherman's Association  
 June 7, 2001

0-7

Testimony of Roger W. DuBrock, Esq.  
On behalf of CBSFA  
June 7, 2001

classification of bank loans, with appropriate consequences to follow.

CBSFA believes that the addition of other "tools" to the State's toolbox will provide the State with more options, and an ability to respond more appropriately to each individual problem that might arise.

## II. ALLOCATION PROCESS

There was general agreement among everyone on the CDQ Policy Committee that the current allocation process is too subjective and too "opaque." Everyone agrees that the process needs to be opened up, made more "transparent," and that the procedure must be designed to make the State accountable for the allocation recommendations that it makes.

In this regard, the Committee's recommendation of a scorecard is a step in the right direction.

Unfortunately, the new allocation criteria recommended by the Committee, while they are intended to make the process more "transparent" are actually very little, if any, improvement on the current system.

Although the committee recommends reducing the criteria from the current 20 to 7, the 7 new criteria are large and nebulous categories that contain numerous subcriteria. The recommended scorecard would provide only for scores on the 7 big criteria with no scores for the various sub criteria, and no weighting of the various subcriteria.

If a group received an average grade on one of the 7 big criteria, it would have no way of knowing why it received that grade. It could be because it did average on all of the subcriteria. Alternatively, it could be that it did well on one subcriterion, and poorly on all the other subcriteria, but still came out average on the aggregate because the State felt that the one good subcriterion was much more important than the other subcriteria. That there are many other possibilities is obvious.

The bottom line is that a group will not know from the scorecard why it did well, or average, or poorly. Subjectivity is not eliminated.

Testimony of Roger W. DuBrock, Esq.  
On behalf of CBSFA  
June 7, 2001

CBSFA believes that there should be a separate score on each and every subcriterion that enters into the allocation process. Moreover, the possible point score for each subcriterion will tell a group how the subcriteria are weighted. A subcriterion which has a maximum possible score of 30 is clearly three times as important as a subcriterion with a maximum possible score of 10.

Such a system will go a long way to eliminating subjectivity. Since it will tell the groups what subcriteria are important, it will promote better CDP's, because groups will know what to put in the CDPs by reviewing the points that are assigned to the various subcriteria. It will also make it possible for NMFS to exercise a meaningful review of the State's recommendations.

### III. CONFIDENTIALITY

CBSFA supports the staff's recommendation that there be further analysis of the confidentiality issue.

Currently the State allows each CDQ group to decide for itself what is confidential, and there is wide variety among the groups in this regard. Some stamp almost everything as confidential, and some stamp almost nothing as confidential.

Since the allocations process is a zero sum game, it can only be graded on a curve. If a group does well, but all the other groups do equally well, it should not get an increase in allocation. Conversely, if a group does poorly, but all the other groups do equally poorly, it should not be cut.

Therefore, any explanation for an increase or decrease in allocation is not complete unless the State can explain how the group in question did in comparison to all of the other groups. Currently, the State cannot do this because the information about the other groups is likely to have been designated as confidential by those groups.

A regulation that standardizes what is confidential is needed, and this regulation needs to be structured so that the State will be able to satisfactorily explain any recommendation for a change in allocation.

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**TELEFAX COVER SHEET**

**DATE:** JUNE 7, 2001

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**FAX NO.:** (907) 486-3430

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Via Facsimile, (907) 486-3430

June 7, 2001

Helen Allen  
North Pacific Fisheries  
Management Council  
605 W. 4th Avenue, Suite 306  
Anchorage, AK 99501-2252

Re: Public Comments

Dear Ms. Allen:

A written copy of Mr. DuBrock's testimony follows. Please call if you have any questions.

Sincerely,



Gillian Havrilla  
Legal Assistant

Attachment

c: CBSFA\CDQ\Allen ltr 001

## CVRF Testimony

My Chairman:

My name is Simeon John and I am the President of Coastal Villages Region Fund. I come before you today to discuss three items of great interest and importance to CVRF. Accompanying me today are members of our Executive Committee as well as two members of our staff. I would like to introduce the members of the Executive Committee. . . .

My opening comments concern the report of the CDQ Policy Committee. First, let me say that we are very impressed by the work of the Committee and support its efforts to deal with the important issues of CDQ management. In that regard, we support the continuation of the Committee as a way of moving the process forward. As we discussed at length at our board meeting yesterday, we see the current proposal as one step along the road. We see the end result being limited governmental oversight over the activities of the CDQ groups and the CDQ program. However, we do support continuation of the oversight program at this time. We support the general content of the Committee's report, and have a few suggestions for changes to the report. We request that these changes be included in the Council's analysis and request that the analyses proceed quickly towards final Council action later this year.

There are six main issues that the Committee considered. I will discuss each in order:

1. Establish a 3-year allocation cycle period. We support this recommendation.
2. Limit government oversight – We support this recommendation. We believe that the recommendation lays out what are proper governmental functions in regard to how the CDQ groups conduct their business. We believe that the list does not allow governmental entities to impose their policy goals on the CDQ groups and the CDQ program, but rather to ensure that the CDQ groups, having developed their own policies and plans, are doing a good job and are providing the benefits to the communities that the program was intended to accomplish when it was established ten years ago at its June 1991 meeting.
3. Clarify allocation criteria – We support the allocation criteria adopted by the Committee. We believe that they contain criteria that are consistent with the role of government. They include population and existing social and economic conditions as a base and then add criteria that determine whether the CDQ group is doing a good job in providing benefits to their member communities. It is up to the CDQ group to determine what those benefits should be, for the agencies to determine whether those benefits are well-thought out, see how they compare with what other CDQ groups are doing, and finally, whether they have done a good job in carrying the programs out.
4. We support the appeals process as adopted by the Committee.
5. As our first recommendation for a change in the Committee's product, we request that staff analyze as a sub option to the "Bright New World" proposal, an exemption from oversight for fishing companies, which are owned in part by a CDQ group, for investments in the fishing industry. We believe that this is justified whether the CDQ group owns 20% of the fishing company or 50%. We



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believe that these investments are part of the normal course of business and as long as they are industry-related, do not require governmental oversight.

6. Finally, we have two recommendations for the acceptable level of non-fisheries related investment. First, as to non-fisheries related, economic development projects, we propose the limit be 20% of Pollock royalties or \$1,000,000 per year, whichever is less. And second, we propose that CDQ groups be able to institute community grant programs at up to \$200,000 per group per year. We have 20 communities. One project, such as investing in the Nunivak Island reindeer business may cost \$500,000 or more. With nineteen other communities, the \$500,000 limitation is simply too low. We support the original intent of the program to enable our communities to invest in the fishing industry and to create self-sustaining economies in our regions. However, we need to look at other economic activity, not just fisheries-related, if we are truly going to be successful in our mission. As to the community grant program, we believe that it is important to provide some direct benefit to our communities from successful investments in the industry. With their being social and cultural needs, as well as economic needs, we see this program as providing some minimal, but still significant tangible result from the CDQ program. We do not see this program becoming a substitute for governmental responsibilities, such as schools, health care, etc. We have received many requests from our communities for this type of support and we think that the program should support this minimal level of non-fisheries, non-economic development investment in our communities.

The ~~two~~ other problems that I would like to raise before the Council concern the difficulty that CVRF is having this year in prosecuting its fisheries. With the reduction in the Arrowtooth flounder TAC and the resulting reduction in the amount of Other Species that was allocated to CVRF, we simply will not be able to harvest are major target species this year without some relief. In fact, we have already discontinued some directed fishing because of this shortfall. To resolve this problem, the CDQ groups are requesting an emergency rule that allows more of the Arrowtooth to be used as part of the non-specific reserve. We believe that this will go a long way to address the problem and that the remainder will be remedied by other CDQ groups that have higher Other Species allocations.

~~Finally, we continue to run into problems with other small bycatch allocations that threaten to shut down our major target species. With only 1.6 mt of other red rockfish in the Bering Sea, we are in serious jeopardy of this limit shutting down all of our remaining fisheries. Unfortunately, the other CDQ groups are in the same position. We desperately need some relief if we are going to be able to harvest our allocations this year.~~

Again, Mr. Chairman, we appreciate the opportunity to testify and look forward to working with the Council through these thorny management issues.

Helen