


MEMORANDUM

TO: Council and AP Members

FROM: Chris Oliver 
Executive Director

DATE: June 1, 2006

SUBJECT: Community Development Quota (CDQ) Program

ESTIMATED TIME 2 HOURS

ACTION REQUIRED

Status report on legislation and implications for BSAI Amendment 71

BACKGROUND

The Council made recommendations on eight issues related to the CDQ allocation process and oversight of the CDQ program under BSAI Amendment 71 in June 2002. In March 2005, NMFS implemented regulations to simplify and streamline administrative regulations related to quota transfers, authorized vessels, and alternative fishing plans. However, NMFS has not been able to implement regulations for the remaining issues that address the purpose of the CDQ Program, the process for allocating quota among the CDQ groups, and oversight of the economic development aspects of the CDQ Program. This delay is due to a number of legal and policy issues on which the Council has been consulted several times, as well as a decision issued by NMFS Alaska Region, which effectively results in a modification to the status quo in such a way that was not considered by the Council when it took action on Amendment 71 in June 2002.¹

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

Given the above events, in December 2005, the Council rescinded its final action on Issues 1 – 7 of BSAI Amendment 71 taken at its June 2002 meeting, and adopted three primary alternatives and several options for analysis of a new amendment package (Item C-2(a)). Alternative 3 represents the recommendations from the State's Blue Ribbon Panel. The three alternatives include components related to the purpose of the CDQ Program, the process for allocating quota among the CDQ groups, and oversight of the economic development aspects of the program that NMFS has not been able to implement to date.

¹The NMFS Office of Administrative Appeals (OAA) issued a decision on November 26, 2004, in response to an administrative appeal by one of the CDQ groups. The Alaska Regional Administrator affirmed the OAA's decision in December 2004. The result of the decision is that NMFS must only consider whether the CDP as a *whole* is consistent with the fisheries related purpose of the CDQ Program, as opposed to the long-standing interpretation that all individual CDQ *projects* must be fisheries related.

On April 6, 2006, the U.S. Congress conference committee on H.R. 889 (*Coast Guard and Maritime Transportation Act of 2006*) released a conference committee bill and report. Section 416 of this proposed legislation would amend the CDQ provisions in Section 305(i) of the MSA (**Item C-2(b)**). This legislation would address, among other issues: overall allocations to the CDQ Program; whether some allocations are modified to represent directed fishing allowances or continue as total allocations; allocations among the CDQ groups; eligible communities; administration of the program; and the oversight roles of NMFS and the State of Alaska. This legislation has not yet been approved by Congress, so its status has not changed since the April Council meeting. Controversy over a section of the bill unrelated to the CDQ provisions appears to be delaying formal consideration of the bill by the House and Senate.

If this conference committee bill is approved by Congress and the President, many primary issues currently under consideration in Amendment 71 will be determined by Congress and will not need to be further analyzed. Note, however, that FMP and regulatory amendments would still be necessary to implement the MSA amendments. In April, the Council requested that staff prepare an assessment of the legislation and its impact on the Amendment 71 analysis for the June Council meeting, if MSA amendments were made prior to the June meeting. As stated previously, no MSA amendments have been approved to date.

Staff recommends that we continue to wait for the outcome of the Coast Guard bill before doing further work on the Amendment 71 analysis. Some of the provisions of the current bill are relatively complicated and will require significant analysis and/or legal interpretation from NOAA GC. A brief and preliminary summary of the alternatives and components in Amendment 71 that would be affected by the bill is provided as **Item C-2(c)** for your information. Should the bill pass over the summer, staff will provide a detailed report at the October 2006 Council meeting on the implications for the CDQ Program and non-CDQ fisheries. The Council would have an opportunity in October to assess the impacts and revise its alternatives and options for analysis in BSAI Amendment 71. The Council should direct staff if a different approach is preferred, specifically whether the Council would like to proceed with development of the Amendment 71 analysis over the summer under the current alternatives, regardless of pending legislation.

Alternatives for BSAI Amendment 71 – CDQ Program
Approved December 11, 2005

ALTERNATIVE 1. No Action

CDQ Program Oversight

Component 1. Define the role of government oversight in the CDQ Program

Do not amend the BSAI or crab FMPs to outline the role of government in oversight of the economic development aspects of the program.

Component 2. Extent of government oversight

Do not revise NMFS regulations governing the extent of oversight of the business activities of the CDQ groups and affiliated businesses.

Component 3. Allowable investments

Do not amend the purpose statement in Federal regulations to clarify the description of allowable projects.

Component 4. CDQ Program purpose

The goals and purpose of the CDQ program are to allocate CDQ to eligible western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries related economy.

CDQ Allocation Process

Component 5. Process by which CDQ allocations are made

Allocations would continue to be made through NMFS informal administrative adjudication. CDQ groups can appeal NMFS's decision to approve or disapprove the State's recommendations. Current allocations remain in effect if NMFS cannot approve or disapprove the State's recommendations before the allocation cycle ends.

Component 6. Fixed versus performance-based allocations

100% of CDQ is allocated on a competitive basis as recommended by the State of Alaska and approved by NMFS.

Component 7. CDQ allocation evaluation criteria

Evaluation criteria are not specified in Federal regulations.

Component 8. Duration of the allocation cycle

The State determines the length of the allocation cycle, but not in regulation.

ALTERNATIVE 2. Council Preferred Alternative from June 2002

CDQ Program Oversight

Component 1. Define the role of government oversight in the CDQ Program

Amend the BSAI groundfish FMP to specify the Federal government's responsibility for oversight of the CDQ program in addition to fishery management. Prior approval of CDPs and amendments to the CDPs is required. Government oversight of the CDQ Program and CDQ groups is limited to the following purposes:

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

Component 2. Extent of government oversight

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

Component 3. Allowable investments

Limit CDQ groups to investing in fisheries related projects, with the exception of allowing each group to invest up to 20% of its previous year's pollock CDQ royalties in self-sustaining, non-fisheries related projects in the CDQ regions. Other non-fisheries related activities such as administration, charitable contributions, scholarships and training, and stocks/bond purchases would not be included within the 20% cap.

Component 4. CDQ Program purpose

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

CDQ Allocation Process

Component 5. Process by which CDQ allocations are made

Allocations would continue to be made through NMFS informal administrative adjudication.

- Option 1. Allocations would be established through Federal rulemaking rather than through the current administrative process.

Component 6. Fixed versus performance-based allocations

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

Component 7. CDQ allocation evaluation criteria

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

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

Component 8. Duration of the allocation cycle

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

ALTERNATIVE 3. State of Alaska Blue Ribbon Panel recommendations

CDQ Program Oversight

Component 1. Define the role of government oversight in the CDQ Program

Option 1. Define in Federal regulations two specific oversight responsibilities for the State of Alaska, which are: 1) nonbinding review of proposed major investments, and 2) “transparency” reporting governed by the State Division of Banking and Securities.

Option 2. Amend the BSAI FMPs and Federal regulations to minimize the role of NMFS and the Council in CDQ program oversight to the maximum extent permissible under law.

Component 2. Extent of government oversight

The Council recommends that the State implement regulations including: financial reporting requirements similar to reporting by ANCSA corporations; an annual report to communities; and disclosure of compensation for contractors, Board members, and top five employees of CDQ groups and their subsidiaries.

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

Component 3. Allowable investments

The Council recommends that the State implement regulations to limit each CDQ group to fisheries related projects, with the exception of allowing each group to invest up to 20% of net revenues in non-fisheries related projects in the CDQ region and to prohibit the funding of non-fisheries infrastructure projects unless the CDQ group was providing matching funds. Other non-fisheries related activities such as administration, charitable contributions, scholarships and training, and stocks/bond purchases would not be counted under the 20% cap.

Component 4. CDQ program purpose

Option 1. Amend Federal regulations and the FMPs to state:

The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants representing eligible Western Alaska communities as the first priority, to provide the means for investing in, participating in, starting or supporting commercial fisheries business activities that will result in an on-going, regionally based, fisheries economy and, as a second priority, to strengthen the non-fisheries related economy in the region.

Option 2. Amend Federal regulations and the FMPs to state:

The purpose of the CDQ Program is to provide eligible western Alaska communities with the opportunity to participate and invest in fishery-related business activities, and to use earnings derived there from in support of economic development in western Alaska in order to provide economic and social benefits to residents and to achieve sustainable and diversified local economies.

CDQ Allocation Process

Component 5. Process by which CDQ allocations are made

Allocations would continue to be made through NMFS informal adjudication.

Component 6. Fixed versus performance-based allocations

A portion of each group's CDQ allocation by species would be allocated on a variable basis every ten years starting in 2012. Baseline allocation recommendations to which this provision would be applied for the 2012-2021 allocation cycle would be determined through the current allocation process prior to implementation of Amendment 71.

- Option 1. The fixed portion would be applied once based on the 2012 allocation and would remain fixed permanently.
- Option 2. The fixed portion would be recalculated each cycle and would limit the amount the allocation could change during the next allocation cycle.

Suboption 1 (applies to both options): The fixed percentage will be between 85% and 95%. Ranges to be analyzed are 85%, 90%, and 95%.

Component 7. CDQ allocation evaluation criteria

The evaluation criteria are only applied to the portion of the CDQ that is not 'fixed'. Each CDQ group is evaluated based on the following list of six criteria:

1. Population/poverty level (as indicated in the U.S. Census).
2. Number of jobs created (permanent and temporary).
3. Amount of in-region investments in both fisheries and non-fisheries projects.
4. Amount and number of scholarships and training provided.
5. Community economic development (as documented by ADCCED, through measure of total local revenue and median household income).
6. The financial performance of the CDQ groups.

- Option 1. The criteria and weighting/prioritization are established in the FMPs and Federal regulations. The analysis will need to address the following at a minimum:
 1. Ranges of weighting for each criteria from 10-35%
 2. How the different criteria would be defined and measured
 3. How changes in weighting of each criteria might affect the different groups' allocations depending on their current levels of population, poverty, number of jobs created to date, amount/number of scholarships and training provided, etc.

- Option 2. The criteria and weighting/prioritization are established in State regulations only.

Suboption 1 (applies to both options): The Council encourages the State of Alaska and the CDQ groups to jointly develop a recommended weighting proposal in time for Council final action.

Component 8. Duration of the allocation cycle

Establish a 10-year cycle in Federal regulation, to coincide with the U.S. Census. The first cycle would be 2012-2021.

109TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } 109-413

COAST GUARD AND MARITIME TRANSPORTATION ACT OF
2006

APRIL 6, 2006.—Ordered to be printed

Mr. YOUNG of Alaska, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 889]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 889), to authorize appropriations for the Coast Guard for fiscal year 2006, to make technical corrections to various laws administered by the Coast Guard, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coast Guard and Maritime Transportation Act of 2006".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—AUTHORIZATION

Sec. 101. Authorization of appropriations.

Sec. 102. Authorized levels of military strength and training.

Sec. 103. Supplemental authorization of appropriations.

Sec. 104. Web-based risk management data system.

TITLE II—COAST GUARD

Sec. 201. Extension of Coast Guard vessel anchorage and movement authority.

Sec. 202. International training and technical assistance.

Sec. 203. Officer promotion.

- Sec. 204. *Coast Guard band director.*
- Sec. 205. *Authority for one-step turnkey design-build contracting.*
- Sec. 206. *Reserve recall authority.*
- Sec. 207. *Reserve officer distribution.*
- Sec. 208. *Expansion of use of auxiliary equipment to support Coast Guard missions.*
- Sec. 209. *Coast Guard history fellowships.*
- Sec. 210. *Icebreakers.*
- Sec. 211. *Operation as a service in the Navy.*
- Sec. 212. *Limitation on moving assets to St. Elizabeth's Hospital.*
- Sec. 213. *Cooperative agreements.*
- Sec. 214. *Biodiesel feasibility study.*
- Sec. 215. *Boating safety director.*
- Sec. 216. *Hangar at Coast Guard Air Station Barbers Point.*
- Sec. 217. *Promotion of Coast Guard officers.*
- Sec. 218. *Redesignation of Coast Guard law specialists as judge advocates.*

TITLE III—SHIPPING AND NAVIGATION

- Sec. 301. *Treatment of ferries as passenger vessels.*
- Sec. 302. *Great Lakes pilotage annual ratemaking.*
- Sec. 303. *Certification of vessel nationality in drug smuggling cases.*
- Sec. 304. *LNG tankers.*
- Sec. 305. *Use of maritime safety and security teams.*
- Sec. 306. *Enhanced civil penalties for violations of provisions enacted by the Coast Guard and Maritime Transportation Act of 2004.*
- Sec. 307. *Training of cadets at United States Merchant Marine Academy.*
- Sec. 308. *Reports from mortgagees of vessels.*
- Sec. 309. *Determination of the Secretary.*
- Sec. 310. *Setting, relocating, and recovering anchors.*
- Sec. 311. *International tonnage measurement of vessels engaged in the Aleutian trade.*
- Sec. 312. *Riding gangs.*

TITLE IV—MISCELLANEOUS

- Sec. 401. *Authorization of junior reserve officers training program pilot program.*
- Sec. 402. *Transfer.*
- Sec. 403. *Loran-C.*
- Sec. 404. *Long-range vessel tracking system.*
- Sec. 405. *Marine vessel and cold water safety education.*
- Sec. 406. *Reports.*
- Sec. 407. *Conveyance of decommissioned Coast Guard Cutter MACKINAW.*
- Sec. 408. *Deepwater reports.*
- Sec. 409. *Helicopters.*
- Sec. 410. *Newtown Creek, New York City, New York.*
- Sec. 411. *Report on technology.*
- Sec. 412. *Assessment and planning.*
- Sec. 413. *Homeport.*
- Sec. 414. *Opinions regarding whether certain facilities create obstructions to navigation.*
- Sec. 415. *Port Richmond.*
- Sec. 416. *Western Alaska community development quota program.*
- Sec. 417. *Quota share allocation.*
- Sec. 418. *Maine fish tender vessels.*
- Sec. 419. *Automatic identification system.*
- Sec. 420. *Voyage data recorder study and report.*
- Sec. 421. *Distant water tuna fleet.*

TITLE V—LIGHTHOUSES

- Sec. 501. *Transfer.*
- Sec. 502. *Misty Fiords National Monument and Wilderness.*
- Sec. 503. *Miscellaneous Light Stations.*
- Sec. 504. *Inclusion of lighthouse in St. Marks National Wildlife Refuge, Florida.*

TITLE VI—DELAWARE RIVER PROTECTION AND MISCELLANEOUS OIL PROVISIONS

- Sec. 601. *Short title.*
- Sec. 602. *Requirement to notify Coast Guard of release of objects into the navigable waters of the United States.*
- Sec. 603. *Limits on liability.*

- (1) by redesignating subsection (d) as subsection (e); and
 (2) by inserting after subsection (c) the following:

“(d) WIND ENERGY FACILITY.—

“(1) IN GENERAL.—An offshore wind energy facility may not be constructed in the area commonly known as ‘Nantucket Sound’ unless the construction of such facility is approved by the Commandant of the Coast Guard.

“(2) INFORMATION.—A person proposing to build an offshore wind energy facility in the area commonly known as ‘Nantucket Sound’ shall provide to the Commandant of the Coast Guard and the Governor of any adjacent coastal State a plan for the siting and construction of the facility, including the location, size, and design of each wind turbine that will be a part of the facility, any cable connecting the facility to onshore sites, any other offshore components, and such other information as the Commandant may require.

“(3) LIMITATION ON APPROVAL.—The Commandant may not approve the construction of a facility described in paragraph (1) if—

“(A) within 90 days of the date of receipt of the plan for the facility under paragraph (2), the Governor of an adjacent coastal State makes a written determination that the Governor opposes the proposed location for the facility and submits the determination to the Commandant; or

“(B) the Commandant determines that the facility creates a hazard to navigation.

“(4) ADJACENT COASTAL STATE DEFINED.—In this section, the term ‘adjacent coastal State’, as used with respect to a proposed wind energy facility, is any coastal State which—

“(A) would be directly connected by a cable to the facility; or

“(B) is located within 15 miles of the proposed location of the facility.”

SEC. 415. PORT RICHMOND.

The Secretary of the department in which the Coast Guard is operating, acting through the Commandant of the Coast Guard, may not approve a security plan under section 70103(c) of title 46, United States Code, for a liquefied natural gas import facility at Port Richmond in Philadelphia, Pennsylvania, until the Secretary conducts a vulnerability assessment under section 70102(b) of such title.

SEC. 416. WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM.

(a) RESTATEMENT OF EXISTING PROGRAM INCORPORATING CERTAIN PROVISIONS OF REGULATIONS.—Section 305(i) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(i)) is amended by striking paragraph (1) and inserting the following:

“(1) WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM.—

“(A) IN GENERAL.—There is established the western Alaska community development quota program in order—

“(i) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in

the Bering Sea and Aleutian Islands Management Area;

“(ii) to support economic development in western Alaska;

“(iii) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and

“(iv) to achieve sustainable and diversified local economies in western Alaska.

“(B) PROGRAM ALLOCATION.—

“(i) IN GENERAL.—Except as provided in clause (ii), the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program in each directed fishery of the Bering Sea and Aleutian Islands shall be the percentage approved by the Secretary, or established by Federal law, as of March 1, 2006, for the program. The percentage for each fishery shall be either a directed fishing allowance or include both directed fishing and nontarget needs based on existing practice with respect to the program as of March 1, 2006, for each fishery.

“(ii) EXCEPTIONS.—Notwithstanding clause (i)—

“(I) the allocation under the program for each directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) shall be a directed fishing allocation of 10 percent upon the establishment of a quota program, fishing cooperative, sector allocation, or other rationalization program in any sector of the fishery; and

“(II) the allocation under the program in any directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) established after the date of enactment of this subclause shall be a directed fishing allocation of 10 percent.

“(iii) PROCESSING AND OTHER RIGHTS.—Allocations to the program include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006.

“(iv) REGULATION OF HARVEST.—The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species.

“(C) ALLOCATIONS TO ENTITIES.—Each entity eligible to participate in the program shall be authorized under the program to harvest annually the same percentage of each species allocated to the program under subparagraph (B) that it was authorized by the Secretary to harvest of such species annually as of March 1, 2006, except to the extent that its allocation is adjusted under subparagraph (H). Such allocation shall include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006.

"(D) ELIGIBLE VILLAGES.—The following villages shall be eligible to participate in the program through the following entities:

"(i) The villages of Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George through the Aleutian Pribilof Island Community Development Association.

"(ii) The villages of Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk, Ekwook, King Salmon/Savonoski, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik through the Bristol Bay Economic Development Corporation.

"(iii) The village of Saint Paul through the Central Bering Sea Fishermen's Association.

"(iv) The villages of Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, and Tununak through the Coastal Villages Region Fund.

"(v) The villages of Brevig Mission, Diomedea, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktolik, Stebbins, Teller, Unalakleet, Wales, and White Mountain through the Norton Sound Economic Development Corporation.

"(vi) The villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua through the Yukon Delta Fisheries Development Association.

"(E) ELIGIBILITY REQUIREMENTS FOR PARTICIPATING ENTITIES.—To be eligible to participate in the program, an entity referred to in subparagraph (D) shall meet the following requirements:

"(i) BOARD OF DIRECTORS.—The entity shall be governed by a board of directors. At least 75 percent of the members of the board shall be resident fishermen from the entity's member villages. The board shall include at least one director selected by each such member village.

"(ii) PANEL REPRESENTATIVE.—The entity shall elect a representative to serve on the panel established by subparagraph (G).

"(iii) OTHER INVESTMENTS.—The entity may make up to 20 percent of its annual investments in any combination of the following:

"(I) For projects that are not fishery-related and that are located in its region.

"(II) On a pooled or joint investment basis with one or more other entities participating in the program for projects that are not fishery-related and that are located in one or more of their regions.

"(III) For matching Federal or State grants for projects or programs in its member villages without regard to any limitation on the Federal or

State share, or restriction on the source of any non-Federal or non-State matching funds, of any grant program under any other provision of law.

"(iv) FISHERY-RELATED INVESTMENTS.—The entity shall make the remainder percent of its annual investments in fisheries-related projects or for other purposes consistent with the practices of the entity prior to March 1, 2006.

"(v) ANNUAL STATEMENT OF COMPLIANCE.—Each year the entity, following approval by its board of directors and signed by its chief executive officer, shall submit a written statement to the Secretary and the State of Alaska that summarizes the purposes for which it made investments under clauses (iii) and (iv) during the preceding year.

"(vi) OTHER PANEL REQUIREMENTS.—The entity shall comply with any other requirements established by the panel under subparagraph (G).

*"(F) ENTITY STATUS, LIMITATIONS, AND REGULATION.—
The entity—*

"(i) shall be subject to any excessive share ownership, harvesting, or processing limitations in the fisheries of the Bering Sea and Aleutian Islands Management Area only to the extent of the entity's proportional ownership, excluding any program allocations, and notwithstanding any other provision of law;

"(ii) shall comply with State of Alaska law requiring annual reports to the entity's member villages summarizing financial operations for the previous calendar year, including general and administrative costs and compensation levels of the top 5 highest paid personnel;

"(iii) shall comply with State of Alaska laws to prevent fraud that are administered by the Alaska Division of Banking and Securities, except that the entity and the State shall keep confidential from public disclosure any information if the disclosure would be harmful to the entity or its investments; and

"(iv) is exempt from compliance with any State law requiring approval of financial transactions, community development plans, or amendments thereto, except as required by subparagraph (H).

"(G) ADMINISTRATIVE PANEL.—

"(i) ESTABLISHMENT.—There is established a community development quota program panel.

"(ii) MEMBERSHIP.—The panel shall consist of 6 members. Each entity participating in the program shall select one member of the panel.

"(iii) FUNCTIONS.—The panel shall—

"(I) administer those aspects of the program not otherwise addressed in this paragraph, either through private contractual arrangement or through recommendations to the North Pacific Council, the Secretary, or the State of Alaska, as the case may be; and

"(II) coordinate and facilitate activities of the entities under the program.

"(iv) UNANIMITY REQUIRED.—The panel may act only by unanimous vote of all 6 members of the panel and may not act if there is a vacancy in the membership of the panel.

"(H) DECENNIAL REVIEW AND ADJUSTMENT OF ENTITY ALLOCATIONS.—

"(i) IN GENERAL.—During calendar year 2012 and every 10 years thereafter, the State of Alaska shall evaluate the performance of each entity participating in the program based on the criteria described in clause (ii).

"(ii) CRITERIA.—The panel shall establish a system to be applied under this subparagraph that allows each entity participating in the program to assign relative values to the following criteria to reflect the particular needs of its villages:

"(I) Changes during the preceding 10-year period in population, poverty level, and economic development in the entity's member villages.

"(II) The overall financial performance of the entity, including fishery and nonfishery investments by the entity.

"(III) Employment, scholarships, and training supported by the entity.

"(IV) Achieving of the goals of the entity's community development plan.

"(iii) ADJUSTMENT OF ALLOCATIONS.—After the evaluation required by clause (i), the State of Alaska shall make a determination, on the record and after an opportunity for a hearing, with respect to the performance of each entity participating in the program for the criteria described in clause (ii). If the State determines that the entity has maintained or improved its overall performance with respect to the criteria, the allocation to such entity under the program shall be extended by the State for the next 10-year period. If the State determines that the entity has not maintained or improved its overall performance with respect to the criteria—

"(I) at least 90 percent of the entity's allocation for each species under subparagraph (C) shall be extended by the State for the next 10-year period; and

"(II) the State may determine, or the Secretary may determine (if State law prevents the State from making the determination), and implement an appropriate reduction of up to 10 percent of the entity's allocation for each species under subparagraph (C) for all or part of such 10-year period.

"(iv) REALLOCATION OF REDUCED AMOUNT.—If the State or the Secretary reduces an entity's allocation under clause (iii), the reduction shall be reallocated among other entities participating in the program whose allocations are not reduced during the same pe-

riod in proportion to each such entity's allocation of the applicable species under subparagraph (C).

"(I) SECRETARIAL APPROVAL NOT REQUIRED.—Notwithstanding any other provision of law or regulation thereunder, the approval by the Secretary of a community development plan, or an amendment thereof, under the program is not required.

"(J) COMMUNITY DEVELOPMENT PLAN DEFINED.—In this paragraph, the term 'community development plan' means a plan, prepared by an entity referred to in subparagraph (D), for the program that describes how the entity intends—

"(i) to harvest its share of fishery resources allocated to the program, or

"(ii) to use its share of fishery resources allocated to the program, and any revenue derived from such use, to assist its member villages with projects to advance economic development,

but does not include a plan that allocates fishery resources to the program."

(b) NO INTERRUPTION OF EXISTING ALLOCATIONS.—The amendment made by subsection (a) shall not be construed or implemented in a way that causes any interruption in the allocations of fishery resources to the western Alaska community development quota program or in the opportunity of an entity participating in that program to harvest its share of such allocations.

(c) LOAN SUBSIDIES.—The last proviso under the heading "NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—OPERATIONS, RESEARCH, AND FACILITIES" in the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Public Law 109-108; 119 Stat. 2311-2312) is amended—

(1) by striking "for the cost of loans" and inserting "to subsidize gross obligations for the principal amount of direct loans, not to exceed a total of \$200,000,000,"; and

(2) by striking "use" and inserting "the purchase of all or part of ownership interests in fishing or processing vessels, shoreside fish processing facilities, permits, quota, and cooperative rights".

SEC. 417. QUOTA SHARE ALLOCATION.

(a) IN GENERAL.—The Secretary of Commerce shall modify the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands being implemented under section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1862(j)) to require that Blue Dutch, LLC, receives processor quota shares units equal to 0.75 percent of the total number of processor quota share units for each of the following fisheries: the Bristol Bay red king crab fishery and the Bering Sea C. opilio crab fishery.

(b) APPLICABILITY.—The modification made under subsection (a) shall apply with respect to each fishery referred to in subsection (a) whenever the total allowable catch for that fishery is more than 2 percent higher than the most recent total allowable catch in effect for that fishery prior to September 15, 2005.

(c) SAVINGS PROVISION.—Nothing in this section affects the authority of the North Pacific Fishery Management Council to submit, and the Secretary of Commerce to implement, changes to or repeal

Section 416. Eligibility to participate in Western Alaska Community Development Quota Program

Section 426 of the House bill clarifies that the approval by the Secretary of Commerce of a community development plan for a Western Alaska Community Development Group does not constitute a major Federal action under Federal law.

The Senate bill does not contain a comparable provision.

The Conference substitute establishes the Western Alaska Community Development Quota program and lists the purposes of the program. It is the intent of Congress that all activities of the CDQ groups continue to be considered tax-exempt (as has been the practice since the program's inception in 1992) so that the six CDQ groups can more readily address the pressing economic needs of the region.

The Conference substitute requires that the CDQ program continue to receive the same annual percentage allocations of each fishery as it does now under existing Federal statute and regulation. It also requires that the percentage of a particular fishery allocated to the CDQ program shall be a directed fishing allowance if treated as such under existing practice and law (such as in the Bering Sea and Aleutian Islands pollock fishery), or in the alternative to include both directed fishing and non-target fishing allocation needs in fisheries where that is the current practice and law for the CDQ allocation. It is not the intent of the conferees to either change the current allocations to the CDQ program or create "squid box" problems where minor species such a squid inhibit any directed fishing under the CDQ program.

The Conference substitute provides that the allocation to the CDQ program of certain Bering Sea and Aleutian Islands groundfish species (including Pacific cod, mackerel, and flatfish species) be permanently increased to 10 percent (up from 7.5 percent) and treated as directed fishing allocations as soon as any quota-type programs are established in any sector of the applicable fishery or sector allocations are adopted in the fishery.

The Conference substitute requires that a directed fishing allocation of 10 percent be made to the CDQ program in any new fishery that is opened in the Bering Sea and Aleutian Islands.

The Conference substitute codifies existing practice with respect to processing and any other rights related to CDQ allocations. It specifies that the allocations to the CDQ program itself, as well as the allocations to each of the CDQ groups include the harvesting rights, the rights to process the fish, and any other rights or privileges related to the fish that are associated with the allocations as of March 1, 2006. This is not intended to give the CDQ program or the CDQ groups processing privileges that they do not already have. The language is also not intended to change the inshore/offshore split contained in the American Fisheries Act.

The Conference substitute requires that the harvest of the CDQ allocations be regulated in a manner no more restrictive or costly than for other participants in the applicable sector of the fishery. This section only applies to fisheries with individual quotas or fishing cooperatives.

The Conference substitute allocates to each CDQ group the same percentage of each species that it was authorized to harvest

annually by the Secretary as of March 1, 2006. It codifies the existing allocations among the groups dating back to 2003 as well as allocations for new crab CDQ allocations which were approved by the National Marine Fisheries Service in 2005. This includes all species for which the CDQ groups receive an allocation. Additionally, the provision establishes a new system to reallocate up to 10 percent of a CDQ group's allocation if the group fails to meet goals and criteria weighted by the group itself and based on the needs of its region.

By eliminating short term changes in fishery allocations, the conferees intend for the CDQ groups to be able to more readily address the economic needs of western Alaska.

The Conference substitute clarifies existing law by naming the 65 communities and six entities eligible to participate in the CDQ program.

The Conference substitute establishes the requirements that each of the six CDQ groups must fulfill to maintain eligibility in the CDQ program. Each group must be governed by a board of directors, at least 75 percent of the members of which are resident fishermen from the CDQ group's member villages, and have at least one director from each of its member villages. Each CDQ group must select a representative to serve on the CDQ panel.

The Conference substitute allows each CDQ group to make up to 20 percent of its annual investments: (I) on non-fishery projects in its member villages; (II) on pooled or joint investments with other CDQ groups in their regions; or (III) for the purpose of matching Federal or State grants for projects or programs in its member villages. Any remaining investments must be in fishery related projects or for purposes consistent with the current practices of the CDQ groups. It also requires each CDQ group to submit an annual written statement to the Secretary of Commerce and the State of Alaska which summarizes its investments for the previous year.

The Conference substitute requires CDQ groups to comply with any excessive share limitations in the BSAI fisheries only to the extent of their proportional ownership in any other entities. This provision is intended to address the inherent conflict between excessive share limitations in the fisheries and the CDQ program goal to expand the economic base of the adjacent communities through investment in the fisheries.

The excessive share limitations imposed by the North Pacific Council, Secretary, and Congress are mainly intended to prevent for-profit entities and individuals from acquiring excessive shares of fishing privileges in the fisheries. The excessive share concept stems from National Standard Four of the Magnuson-Stevens Act. It pre-dates the CDQ program and fails to take into account the unique characteristics of the CDQ program.

The Conference substitute would therefore exempt CDQ groups from the "attribution" requirements of the American Fisheries Act, the crab quota program, and other federal regulations. Under the "attribution" rules, an entity is attributed with the entirety of another entity's harvesting or processing capacity even if the original entity only owns as little as 10 percent of the other entity. Under the substitute, if a CDQ group owns 25 percent of another entity,

only 25 percent of the other entity's harvesting or processing capacity would be counted against the CDQ group in determining compliance with any excessive share limitation. Similarly, if a CDQ group owns 77 percent of another entity, only 77 percent of the other entity's capacity would be counted against the CDQ group. The provision is intended to allow the CDQ groups to continue to expand in the BSAI fisheries off their shores, while not completely exempting CDQ groups from excessive share limitations.

The Conference substitute requires each CDQ group to comply with State of Alaska law for the purpose of ensuring that the group provides an annual report to its member villages describing its financial operations, including its general and administrative costs and compensation levels. This provision ensures that the State of Alaska's role is to ensure adequate "transparency" to the member villages, particularly with respect to administrative costs.

The Conference substitute requires CDQ groups to additionally comply with State of Alaska banking and securities law to prevent fraud. This requirement removes the State of Alaska from the investment planning and decisions of the CDQ groups, but creates anew, narrower role, to assist the member villages in ensuring against any fraud by the CDQ group. The provision also Clause (iii) requires that the CDQ group and State of Alaska keep confidential from public disclosure any information the disclosure of which would be harmful to the entity or its investments.

The Conference substitute exempts CDQ groups from compliance with any State approval of financial transactions, community development plans, and community development plan amendments, however the provision requires CDQ groups to comply with the decennial review conducted by the State of Alaska.

The Conference substitute establishes a community development quota program panel. The CDQ Panel will consist of a member from each of the six CDQ groups. The CDQ Panel removes the need for governmental oversight of the CDQ program and encourages the CDQ groups to work together. Decisions by the CDQ Panel require the unanimous vote of all six Panel members. The Panel may not act if there is a vacancy.

The Conference substitute requires a decennial review of the CDQ program by the State of Alaska. The first review will be in 2012. The CDQ Panel establishes a system to be used by the State of Alaska for purposes of the decennial review that allows each CDQ group to assign relative values to certain criteria in order to match the relative weights of the criteria to the specific needs identified by the CDQ group for its villages. The criteria are: (I) changes in the population, poverty level, and economic development in the CDQ group's member villages; (II) the overall financial performance of the CDQ group, including its fishery and non-fishery investments; (III) the employment, scholarships, and training supported by the CDQ group; (IV) the achievement of the goals of the entities Community Development Plan. Each CDQ group would weight these criteria to reflect the needs of its member villages.

The Conference substitute requires the State of Alaska to use the criteria as weighted by each CDQ group to determine the performance of each CDQ group under the decennial review. The State of Alaska is required to make each performance determination on

the record and after an opportunity for a hearing. If the State applies the CDQ group's weightings and determines that a CDQ group has maintained or improved its overall performance, the allocations to the CDQ group are automatically extended for the next 10-year period. If, on the other hand, the State determines that a CDQ group has failed to maintain or improve its performance as measured under the weighted criteria, then at least 90 percent of the CDQ group's allocation of each species under is automatically extended, and the State may determine an appropriate reduction of up to 10 percent of each species for all or part of the next 10-year period. If State law prevents the State from making this determination then the Secretary may make the appropriate reduction. Any reductions imposed by the State of Alaska or the Secretary under shall be reallocated for the period of the reduction to the other non-penalized groups in proportion to each non-penalized group's allocation of the applicable species.

The Conference substitute eliminates the requirement that CDQ groups seek either the review or approval by the Secretary of community development plans or amendments to community development plans. The Conference agreement does not require the State of Alaska to approve community development plans and amendments.

Nothing in the Conference substitute should be construed or implemented in a way that causes any interruption to the CDQ program or to the opportunity of CDQ groups to harvest their allocations.

Subsection (b) would amend existing CDQ loan authority to set the upper limit for the total of the CDQ loans provided by the recent bill language, and paragraph (2) would clarify that CDQ loans under the 1998 CDQ program may be used for the purchase of vessels, processors, permits, quota, and cooperative rights.

Section 417. Quota share allocation

Section 427 of the House bill provides that a portion of the total crab processing quota shares equal to 1.5 percent of the total allowable catch for the Bristol Bay red king crab fishery and the Bering Sea C. Opilio crab fishery be made available to the vessel Blue Dutch, LLC in years when the total allowable catch for that fishery is more than 2 percent higher than the total allowable catch for that fishery during calendar year 2005. The provision further provides that the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands implementing regulations shall thereafter be adjusted so that the total of all crab processing quota shares for each fishery referred to equals 90 percent of the total allowable catch.

The Senate bill does not contain a comparable provision.

The Conference substitute adopts a provision that directs the Secretary of Commerce to modify the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands to provide 0.75 percent of the processor quota share units for the Bristol Bay red king crab fishery and the Bering Sea C. Opilio crab fishery to the vessel Blue Dutch, LLC in years when the total allowable catch for that fishery is more than 2 percent higher than

**General and preliminary USCG Bill (HR 889) implications on alternatives for
BSAI Amendment 71 – CDQ Program**
Staff draft May 30, 2006

CDQ PROGRAM OVERSIGHT COMPONENTS

Component 1. Define the role of government oversight in the CDQ Program

The bill would establish several government oversight requirements related to the economic development aspects of the CDQ Program (see Component 2 below). Legal interpretation and analysis are necessary to determine what related provisions or implementation details would be necessary to include in Amendment 71, including whether any of the requirements would be necessary to include in the BSAI and Crab Fishery Management Plans and/or Federal regulations.

Component 2. Extent of government oversight

Several sections of the bill establish some requirements for government oversight. Legal interpretation and analysis are necessary to determine what related provisions or implementation details would be necessary to include in Amendment 71. Some primary provisions of Section 416(a)(1) include:

- Secretarial (NOAA) approval would no longer be required for community development plans (CDPs) or amendments to plans. This provision of the legislation would remove the current federal actions that could be interpreted to require review of CDPs and CDQ projects under NEPA and ESA. (I)
- CDQ groups would not need approval from NMFS or the State prior to undertaking financial transactions, CDPs, or amendments to CDPs. (F)(iv) and (I)
- Each CDQ group would be required to submit a written statement to the Secretary and the State of Alaska that summarizes the purpose for which it made investments (both fisheries and non-fisheries related). (G)(v)
- Each CDQ group shall comply with the State's law requiring annual reports to the group's member villages. The report would include general and administrative costs and compensation levels of the top five highest paid personnel. (F)(ii)
- Each CDQ group shall comply with State laws to prevent fraud, as administered by the Alaska Division of Banking and Securities. (F)(iii)
- Each CDQ group shall elect a representative to serve on a new 'CDQ Program Panel'. The Panel may administer aspects of the CDQ Program that are not otherwise specifically delegated to the Secretary or the State under the MSA through private contracts or through recommendations to the Council, Secretary or State, as well as coordinate and facilitate activities of the groups. The panel may act only by unanimous vote. (Also see Component 7). (E)(ii) and (G).

Component 3. Allowable investments

Allowable investments are established in the bill in Section 416(a)(1)(E)(iii) and (iv). The bill would allow each CDQ group to make up to 20% of its *annual investments* in: projects that are not fisheries-related that are located in its region; joint investments with other CDQ groups for projects located in the CDQ region; or matching Federal or State grants for projects or programs in its member villages. The bill would also establish that the remainder of each CDQ group's annual investments must be "in fisheries-related projects or for other purposes consistent with the practices of the entity prior to March 1, 2006."

Many of the primary decision points relative to allowable investments would no longer be part of Amendment 71. Legal interpretation is necessary, and it is likely that clarifications and implementation details would be part of Amendment 71. The allowable investment provisions are different from Alternatives 1 – 3; thus, the alternatives/options under Component 3 would need to be modified.

Component 4. CDQ Program purpose

The CDQ Program purpose would be established in the bill in Section 416(a)(1)(A). Establishing program purpose language would no longer be part of Amendment 71. The bill uses different wording than Alternatives 1 – 3.

CDQ ALLOCATION COMPONENTS

Component 5. Process by which CDQ allocations are made

Allocations to the CDQ Program would be established in the bill in Section 416(a)(1)(B). This issue is not addressed in Amendment 71. It would establish CDQ Program allocations at the current allocations, with exceptions noted in (ii). Primary legal interpretation related to this section is how to interpret the terms ‘directed fishing allocation’ versus ‘allocation’ versus ‘directed fishing allowance’ throughout this section. In addition, interpretation is necessary to understand which species would be required to be increased to 10% under (ii).

Allocations to the CDQ groups would be established in the bill in Section 416(a)(1)(C) as the current CDQ group allocations as of March 1, 2006. These allocations could be considered the ‘baseline allocations’, from which any future adjustments would be made starting in 2012 (see Component 6 below). The bill would also establish the process by which any CDQ allocations could be modified by the State on a ten-year review cycle in Section 416 (a)(1)(H). Amendment 71 does not propose different options for establishing baseline allocations, but does include options to determine the process by which future changes to the CDQ allocations would be made. This primary decision point would no longer be necessary in Am. 71, although implementation details may still be required in rulemaking.

Component 6. Fixed versus performance-based allocations

CDQ group allocations are established in Section 416(a)(1)(C) and the process by which they are modified is in (H). 90% of the allocations would be fixed, and 10% would be subject to change on a ten-year basis starting in 2012, for all or part of the next ten-year period. The State of Alaska would be required to evaluate the performance of each entity every 10 years, based on criteria described in the bill (see Component 7 below). The decision of whether to have some portion of the CDQ allocations on a fixed basis would no longer be part of Amendment 71. The 90% - 10% split is similar to Alternative 3.

Component 7. CDQ allocation evaluation criteria

Evaluation criteria are established in Section 416(a)(1)(H)(ii). The CDQ Program Panel, created under the bill, would establish a system that allows each CDQ group to assign relative values to the criteria listed in the bill. Legal interpretation is necessary on several provisions in the section related to decennial review and adjustment of entity allocations. Evaluation criteria would no longer be determined in Amendment 71. The criteria in the bill are different from what is proposed in Alternatives 1 – 3.

Component 8. Duration of the allocation cycle

The allocation cycle is established in Section 416(a)(1)(H)(i). During the calendar year 2012 and every 10 years thereafter, the State would be required to evaluate the performance of each entity, based on criteria described in the bill and weighting system established by the CDQ Program Panel. The decision on the length of the allocation cycle would no longer be necessary in Amendment 71. The ten-year allocation cycle is consistent with Alternative 3.