

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence Pautzke
Executive Director



ESTIMATED TIME
6 HOURS

DATE: November 30, 2001

SUBJECT: CDQ Program

ACTION REQUIRED

- (a) Final action on 4E/4D regulatory amendment.
- (b) Initial review of CDQ Policy amendment package .

BACKGROUND

- (a) Final action on 4E/4D regulatory amendment

Obren Davis, NMFS, will present an analysis of two proposed revisions to regulations governing halibut CDQ fishing in Areas 4D and 4E of the Bering Sea. These revisions were requested by the CDQ groups and the Council in late 1998 and early 1999 in order to increase the possibility that the CDQ groups could fully harvest their halibut CDQ allocations and to further develop small, local halibut fisheries in Area 4E.

The first proposal is to revise regulations to the 6,000 pound halibut trip limit in Area 4E so that the trip limit could be lifted after September 1 or September 15 each year. This revision would allow the CDQ groups to use small vessels to harvest as much halibut CDQ as possible through one of these dates, but allow them to use larger vessels after such a date. Current regulations effectively prevent the use of larger vessels because the 6,000 pound limit is not profitable for larger vessels. The dates of September 1 or September 15 were proposed as possible dates for lifting the trip limit because the weather in Western Alaska often prevents small boats from safely fishing after this time of year.

The second proposal is to allow halibut CDQ allocated from Area 4D to be caught in Area 4E. Area 4E is along the coast of Western Alaska and Area 4D is the adjacent area to the west in the Bering Sea. Area 4D includes only two CDQ communities: Gambell and Savoonga on St. Lawrence Island. This proposal would allow the two CDQ groups (Norton Sound and Yukon Delta) that only receive allocations of Area 4D halibut CDQ, but have communities located in Area 4E, an opportunity to develop small, local halibut fisheries. Additionally, the two CDQ groups (Bristol Bay and Coastal Villages) that receive both Area 4D and 4E allocations could use this flexibility to increase the amount available to their existing local halibut fisheries. Allocations of halibut among Areas 4C, 4D, and 4E are not based on biological factors or conservation concerns, therefore, the proposal to allow the catch of Area 4D halibut in Area 4E is not expected to negatively impact halibut stocks.

In October, the Council modified the alternatives and requested additional analysis prior to release of the draft regulatory analysis. The revised analysis was mailed to you on November 16, and final action is scheduled for this meeting. As part of final action, the Council would be requesting that the IPHC adopt the same changes. This schedule will allow the Federal and IPHC regulations to be approved by the Secretary by the start of the halibut CDQ fishery in 2002. The executive summary is attached as Item C-1(a). The analysis includes the following management alternatives, as revised by the Council in October 2001:

Issue 1: Modification or elimination of the Area 4E 6,000 pound trip limit

Alternative 1: No action

Alternative 2: Revise the 6,000 pound trip limit for Area 4E halibut CDQ to apply through:

Option 1. September 1 of each year, after which no trip limit applies.

Option 2. September 15 of each year, after which no trip limit applies.

Alternative 3: Revise the 6,000 pound trip limit for Area 4E halibut CDQ. A CDQ group must offer to transfer Area 4E halibut CDQ unharvested by August 15 to any other CDQ group with communities located in or proximate to Area 4E for harvest between:

Option 1. August 15 and September 1, unless the CDQ group that was initially awarded the allocation intends to harvest this quota prior to September 1. If a CDQ group that receives Area 4E halibut CDQ from another CDQ group does not harvest all of the halibut CDQ that was transferred to it by September 1, then the receiving CDQ group must transfer all remaining halibut CDQ back to the originating CDQ group. After September 1, the Area 4E trip limit would no longer apply.

Option 2. September 1 and September 15, unless the CDQ group that was initially awarded the allocation intends to harvest this quota prior to September 1. If a CDQ group that receives Area 4E halibut CDQ from another CDQ group does not harvest all of the halibut CDQ that was transferred to it by September 15, then the receiving CDQ group must transfer all remaining halibut CDQ back to the originating CDQ group. After September 15, the Area 4E trip limit would no longer apply.

Alternative 4: Remove the 6,000 pound halibut CDQ trip limit in Area 4E entirely.

Issue 2: Allow Area 4D halibut CDQ to be harvested in Area 4E

Alternative 1: No action

Alternative 2: Allow the harvest of Area 4D halibut CDQ in Area 4E.

Alternative 3: Allow the harvest of Area 4D halibut CDQ in Area 4E *and* the harvest of Area 4E halibut CDQ in Area 4D.

(b) Initial review of CDQ Policy amendment package

The proposed action would implement several policy and administrative changes to the Community Development Quota (CDQ) Program, including changes to the role of NMFS and the State of Alaska in program oversight and the CDQ allocation process. The CDQ Program was created by the Council in 1992 as part of the inshore/offshore allocations of pollock in the BSAI. The Council established the program to provide western Alaska fishing communities an opportunity to participate in the BSAI fisheries that had been foreclosed to them because of the high capital investment needed to enter the fishery. The goals and purpose of the 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 (50 CFR 679.1(e)).

The proposed action would be an amendment to the BSAI FMP (Amendment 71). The initial review draft of this analysis considers nine policy issues that would change the administration of the current CDQ Program. The no action alternative is included under every issue, as well as a suite of alternatives to the status quo. Each issue represents a distinct decision-making point, but many of the issues are inter-related.

The complete list of alternatives is attached to this memo as Item C-1(b). The nine issues under consideration are:

- Issue 1: Define the role of NMFS, the State of Alaska, and the Council in making CDQ allocations
- Issue 2: Periodic or long-term CDQ allocations
- Issue 3: Define the role of government in oversight of the CDQ Program
- Issue 4: CDQ allocation process - Type of quotas
- Issue 5: CDQ allocation process - The evaluation criteria
- Issue 6: Appeals process
- Issue 7: Extent of government oversight (definition of a CDQ project)
- Issue 8: Allowable investments by CDQ groups (fisheries-related restriction)
- Issue 9: Other administrative issues

This amendment was initiated for several reasons. The National Research Council (NRC) prepared a comprehensive report on the performance and effectiveness of the CDQ Program in 1999 upon request of Congress. The NRC made several recommendations to improve the program, many of which are at issue in this analysis. Secondly, Congressman Don Young has proposed the Western Alaska CDQ Program Implementation Improvement Act of 2001 (House Resolution 553) in the 107th session of Congress. This legislation would amend Section 305(i) of the Magnuson-Stevens Act which addresses implementation of the CDQ Program. The amendments would make some significant policy and fisheries management changes to the CDQ Program, including increasing the autonomy of the CDQ groups by allowing them to determine the evaluation criteria used for making the allocations, as well as limiting government oversight to CDQ projects funded only by CDQ royalties. A Congressional hearing was held on July 19, 2001, and the bill remains within the Subcommittee on Fisheries Conservation, Wildlife, and Oceans. All of the policy changes proposed in H.R. 553 have been encompassed in this analysis under various alternatives and are discussed in more detail within the analysis.

In addition to the NRC report and H.R. 553, there is a general understanding that the CDQ Program and the CDQ groups have matured significantly since 1992. The CDQ Program has surpassed the expectations of many in accomplishing its goals, and the CDQ groups have gained valuable experience in managing their fisheries and related investments. As a result, the Council recognized the need to evaluate the CDQ Program and to identify issues of concern and alternatives to address those issues. The Council appointed a CDQ Policy Committee in December 2000 to address issues related to the CDQ oversight responsibilities of government as well as provide policy recommendations regarding the allocation process and overall program administration. The committee met in April and May of 2001 and provided a report to the Council at the June 2001 Council meeting. Based on the recommendations of the committee, the Council requested that staff prepare an analysis of the nine policy issues listed above.

Initial review of the draft analysis is scheduled for this meeting, and final action is currently scheduled for February 2002. The Council has not yet adopted a problem statement to guide the action under consideration and may want to do so at this time. Discussion of a proposed problem statement is provided in the document.

A draft analysis of these issues was mailed to the Council on November 16, 2001. This analysis is not complete. The primary task remaining is analysis of Issue 7 (extent of government oversight). NMFS has contracted with KPMG, Inc., a financial and management consulting company, to analyze the impacts of the alternatives under Issue 7 on the CDQ groups. NMFS has also requested a legal opinion from the Department of Commerce on several aspects of Issue 7, which has not yet been completed. Final action at the February 2002 meeting would require that the draft be completed by mid-January so it could be sent out for review prior to the Council meeting. This would provide about five weeks to complete the draft after the December Council meeting, and this time would include holidays. Staff working on this project do not believe that this schedule provides sufficient time to adequately complete the analysis.

Additionally, the outcome of the APICDA v U.S. Department of Commerce lawsuit regarding the 2001-2002 CDQ allocations is directly related to a number of issues under consideration in this analysis. Oral arguments on this lawsuit were heard in Federal District Court on November 15, 2001, and a decision is expected from Judge Holland in the next few months. The results of this decision could be incorporated into the draft

analysis when the decision is issued. Allowing continued work on the draft analysis until mid-March would increase the chance that the results of this lawsuit could be incorporated prior to final Council action. Finally, delaying the decision until April would also allow for the CDQ Policy Committee to meet and review a complete analysis, be informed about the related litigation, and provide its recommendations to the Council prior to final action.

The current CDQ allocations expire on December 31, 2002. Therefore, the CDQ allocation process for 2003 and beyond will start in May 2002 with the State's CDQ application period. Although some policy changes recommended by the Council could be implemented voluntarily by NMFS and the State, it is unlikely that any regulatory or FMP amendments could be implemented in time to be effective for the next CDQ allocation process regardless of whether the Council took final action in February or April 2002. The issues under consideration are controversial, the CDQ groups do not agree on a preferred alternative for many of the issues, and these issues are the subject of an on-going lawsuit and proposed MSA amendments. NMFS expects that such a complicated and controversial rulemaking will take time to implement, particularly since some elements may involve significant changes in NMFS' role in the CDQ allocation process. Given these considerations, staff recommends that the final draft be completed by mid-March 2002 with final action scheduled for the April 2002 Council meeting.

Executive Summary

This proposed amendment would change Federal regulations at 50 CFR part 679 and International Pacific Halibut Commission (IPHC) regulations to address two different components of the halibut Community Development Quota (CDQ) fishery in Regulatory Areas 4D and 4E in the Bering Sea. CDQ program participants have identified certain restrictions that may preclude them from successfully harvesting their entire Area 4E halibut CDQ allocations or further developing their local halibut fishery. One issue is whether to implement changes to the Area 4E 6,000 pound trip limit. This limit was established in 1988 to provide small boat fishermen in Area 4E protection from the competitive advantage available to large vessels operating in the Area 4E commercial halibut fishery. Removing the trip limit during part or all of the year could help CDQ groups with halibut CDQ allocations in Area 4E to more successfully harvest their entire allocation. In October 1998 the North Pacific Fishery Management Council (Council) clarified its intent to retain the Area 4E trip limit through September 1 of each year, and in October 2001 it recommended an additional alternative and conditions associated with the proposed revision to the trip limit.

A second issue under consideration is whether to allow the harvest of halibut CDQ allocated in Area 4D to be harvested in Area 4E. Currently, halibut CDQ allocated in a particular regulatory area may only be harvested in that area, as halibut catch limits are based on the halibut biomass in a given regulatory area. Eliminating this restriction could offer CDQ groups that only receive allocations of Area 4D halibut CDQ an opportunity to develop near-shore halibut fisheries. Additionally, CDQ groups that receive both Area 4D and 4E allocations could use this flexibility to augment the amount available to their existing local halibut fisheries. The IPHC noted that it had no objection to such a harvesting scenario in March 1999. At its February 1999 meeting the Council requested that an analysis related to the cross boundary harvest of Area 4D halibut CDQ be prepared. Adoption of one of the action alternatives associated with each of these respective issues may have a bearing on the potential success of the halibut CDQ fisheries in these two areas.

In order to incorporate the Council's recommendations into Federal and IPHC regulations by the start of the halibut CDQ fishery in 2002, the Council needs to make a final decision about its preferred alternative for each issue in December 2001.

The analysis includes the following management alternatives:

Issue 1: Modification or elimination of the Area 4E 6,000 pound trip limitAlternative 1: No action

Do not revise the Area 4E halibut CDQ 6,000 pound trip limit.

Alternative 2:

Revise the 6,000 pound trip limit for Area 4E halibut CDQ to apply through:
Option 1. September 1 of each year, after which no trip limit applies.

Option 2. September 15 of each year, after which no trip limit applies.

Alternative 3:

Revise the 6,000 pound trip limit for Area 4E halibut CDQ. A CDQ group must offer to transfer Area 4E halibut CDQ unharvested by August 15 to any other CDQ group with communities located in or proximate to Area 4E for harvest between:

Option 1. August 15 and September 1, unless the CDQ group that was initially awarded the allocation intends to harvest this quota prior to September 1. If a CDQ group that receives Area 4E halibut CDQ from another CDQ group does not harvest all of the halibut CDQ that was transferred to it by September 1, then the receiving CDQ group must transfer all remaining halibut CDQ back to the originating CDQ group. After September 1, the Area 4E trip limit would no longer apply.

Option 2. September 1 and September 15, unless the CDQ group that was initially awarded the allocation intends to harvest this quota prior to September 1. If a CDQ group that receives Area 4E halibut CDQ from another CDQ group does not harvest all of the halibut CDQ that was transferred to it by September 15, then the receiving CDQ group must transfer all remaining halibut CDQ back to the originating CDQ group. After September 15, the Area 4E trip limit would no longer apply.

Alternative 4:

Remove the 6,000 pound halibut CDQ trip limit in Area 4E entirely.

Issue 2: Allow Area 4D halibut CDQ to be harvested in Area 4E

Alternative 1: No action

Do not revise the halibut CDQ regulations and IPHC regulations to allow Area 4D halibut CDQ to be harvested in Area 4E.

Alternative 2:

Allow the harvest of Area 4D halibut CDQ in Area 4E.

This alternative would require revisions to IPHC regulations to clarify that the Area 4D and 4E catch limits would not be exceeded before closing the regulatory area to fishing. This alternative

would also require revisions to the Area 4 CSP to modify the area 4E catch limit to be the sum of the total amount of the halibut CDQ catch limit available in both Areas 4D and 4E.

Alternative 3:

Allow the harvest of Area 4D halibut CDQ in Area 4E *and* the harvest of Area 4E halibut CDQ in Area 4D.

This alternative would require revisions to IPHC regulations to clarify that the Area 4D and 4E catch limits would not be exceeded before closing the regulatory area to fishing. Revisions to the Area 4 CSP to modify the Area 4D and Area 4E catch limits so that each limit is equal to the sum of the total amount of halibut CDQ available in both Areas 4D and 4E would also be necessary.

**Issues and Alternatives for CDQ Policy Analysis - Initial Review Draft
(As revised and adopted by the Council in June 2001)**

ISSUE 1: Define the role of NMFS, the State of Alaska, and the Council in making CDQ allocations

Issue 1 provides 4 alternatives for the role of NMFS, the State of Alaska, and the Council in CDQ allocations, which are explained in more detail in Section 5.1.2. No changes are proposed to the roles of NMFS, the Council, the State of Alaska, or the International Pacific Halibut Commission in management of the groundfish, halibut, and crab CDQ fisheries.

Alternative 1: Status quo: Do not change the CDQ administrative regulations. Continue to require the State to make CDQ allocations recommendations and NMFS to have a limited role in reviewing and approving the State's recommendations.

Alternative 2: NMFS would make CDQ allocations through an administrative process that may continue to require the State to submit CDQ allocation recommendations. Regulatory amendments would be implemented to describe the administrative process that would be used to make CDQ allocations, including evaluation criteria and a NMFS administrative appeals process.

Alternative 3: The State of Alaska would be responsible for CDQ allocations. Regulatory amendments would be implemented to minimize the role of NMFS and the Council in CDQ allocations and oversight of the economic development aspects of the program by allocating CDQ to the State of Alaska for purposes of the CDQ Program.

Alternative 4: The Council would be responsible for developing CDQ allocation recommendations, and NMFS would implement the allocations through proposed and final rulemaking. NMFS would not make independent decisions about the CDQ allocations, but it would review the Council's allocation recommendations for compliance with the MSA and other applicable laws.

ISSUE 2: Periodic or Long-Term CDQ Allocations

Alternative 1: No Action. Continue to make periodic, competitive allocations among CDQ groups.

Alternative 2: Establish a fixed allocation cycle in regulation:

Option 1: 2-year allocation cycle

Option 2: 3-year allocation cycle (*as proposed by H.R. 553*)

Option 3: 5-year allocation cycle

Sub-option 1: 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 long-term allocations to the eligible CDQ communities

ISSUE 3: 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. The following alternatives are appropriate if we continue to make periodic, competitive allocations among CDQ groups.

Alternative 1: No Action - do not amend the BSAI FMP to add additional text about the role of government in administration and oversight of the economic development aspects of the CDQ Program.

Alternative 2: Amend the BSAIFMP to specifically identify elements of the government's responsibility for administration and oversight of the economic development elements of the CDQ Program, as follows:

Government oversight of the CDQ program and CDQ groups is limited by the following purposes:

1. Ensure community involvement in decision-making;
2. Detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest 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.

ISSUE 4: CDQ Allocation Process - Type of Quotas

Alternative 1: No Action. 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 and approved by the Secretary of Commerce. The State decides how to balance demographic or socioeconomic factors with performance criteria.

Alternative 2: Establish a separate foundation quota and performance quota

Allocations of CDQ among the CDQ groups are categorized as foundation quota and performance quota as defined below:

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% is allocated to the CDQ group for each community represented by the group. Performance quota: remainder is allocated competitively among the CDQ groups.

Option 3: Foundation quota: 1% is allocated to the CDQ group for every 1,000 people represented by the CDQ group.
Performance quota: remainder is allocated competitively among the CDQ groups.

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

ISSUE 5: CDQ Allocation Process - The Evaluation Criteria

Alternative 1: Status quo - Continue to publish the CDQ evaluation criteria in State regulations, but do not publish them in NMFS regulations.

Alternative 2: Revise the CDQ evaluation criteria and publish them in NMFS regulations.

Alternative 3: Develop CDQ evaluation criteria through the process proposed in H.R. 553.

ISSUE 6: Public Comment on Allocation Recommendations - Appeals Process

Alternative 1: No Action. The State issues its CDQ allocation recommendations a few days before the meeting at which the State consults with the Council. The CDQ groups may testify to the Council about the State's allocation recommendations. The Council must take public 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; they also do not require publishing the 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;
4. Consult with the Council on the final allocation recommendations; and
5. Submit final recommendations to NMFS.

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

Option 1: The 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.

ISSUE 7: Extent of Government Oversight (Definition of a CDQ Project)

Alternative 1: No Action. Regulations governing the extent of government oversight of the business activities of the CDQ groups and their subsidiaries would not be revised. An October 4, 2000, legal opinion by NOAA GC concludes that NMFS' regulations on this question are unclear and need to be revised.

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, such 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.

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.

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:

(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.

ISSUE 8: Allowable Investments by CDQ Groups - Fisheries-Related Projects

Alternative 1: No Action. NMFS regulations implement what NMFS 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. 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.

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 which 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; and
- 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 choose to invest less than the maximum.

Option 1: Allow each CDQ group to invest up to 5% of its pollock royalties in non-fisheries related projects.

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

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

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

Alternative 4: No restrictions on what the CDQ groups may spend money on or what type of projects they may invest in. (*May represent intent of H.R. 553*)

ISSUE 9: Other CDQ Administrative Issues

Alternative 1: No Action.

Alternative 2: Develop proposed regulatory amendments to simplify and streamline recordkeeping and reporting requirements, including:

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



Coastal Villages Region Fund

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Comments of Coastal Villages Region Fund on Initial Review Draft for Proposed Amendment 71 to BSAI Groundfish Regarding CDQ Program Revisions December 5, 2001

Thank you for the opportunity to provide comments to the Initial Review Draft for proposed Amendment 71 to the BSAI Groundfish – to implement policy and administrative changes to the Western Alaska Community Development Quota program.

For the record, my name is Howard Amos and I am the Vice President of the Coastal Villages Region Fund, serving 20 CDQ villages from Scammon Bay to Platinum. Given the stage that we are in reviewing the analysis for Amendment 71, I will emphasize in my comments the three recommendations adopted by the CVRF Board that were presented to the Council last June in Kodiak. In addition, I will make some preliminary comments on the remaining issues that are covered in the *Initial Review Draft*.

Issue 1) Define the role of NMFS, the State of Alaska, and the Council in making CDQ allocations.

- ✓ CVRF believes that Council and NMFS staff have done an adequate level of analysis on this issue. At this time, we continue to support an active role for the State of Alaska in the allocation process.

Issue 2) Periodic or long-term CDQ allocations.

- ✓ Again, CVRF believes that staff has done an adequate level of analysis on this issue. Given the likelihood that the allocation process will be lengthened due to the institution of an appeals process, CVRF supports three-year allocations at a minimum.

Issue 3) Define the role of government in oversight of the CDQ program

- ✓ CVRF supports Alternative 2 – However, we believe that the analysis needs to be expanded. In developing the list of purposes contained in Alternative 2, CVRF intended that the policies of the government entities in regard to fisheries and regional development were not going to supercede the policies of the CDQ communities. The CDQ program was created to give eligible communities the ability to participate actively in the Bering Sea fisheries and to have the ability to develop locally based economies within the parameters set down in the FMP and by the Congress. It was not created to further other policy goals of the NMFS or the State of Alaska. This point was discussed at the CDQ Policy Committee and deserves discussion in the Final Draft Analysis.

Issue 4) CDQ allocation process – Type of Quota

- ✓ CVRF supports Alternative 1 – No action. While CVRF could benefit under some foundation formulas and lose under others, we believe that the current system, as modified by Issue 5, is still preferred.

Issue 5) CDQ allocation process – The Evaluation Criteria

- ✓ CVRF supports the changes in the allocation criteria contained in Alternative 2. In reviewing these criteria, we do take issue with the conclusion reached in the analysis on page 106 that the nine criteria are nearly identical to the existing twenty. Probably the major

distinction is that the new list removes from consideration the insinuation of governmental policy objectives not specifically identified in the purposes of the CDQ program. While the analysis does discuss ~~some~~ some of the criteria that would be removed under Alternative 2, it fails to discuss the underlying basis for the change. As to the scorecard, CVRF agrees with the NMFS conclusion on page 115 that it be the basis for the allocation decisions, not confidential scoring information. The intent of the scorecard is to make the allocation process as transparent as possible. CVRF supports this goal.

Issue 6) Public comment on Allocation Recommendations

- ✓ CVRF supports the institution of an appeals process, whether at the State or NMFS level.

Issue 7) Extent of Government Oversight (Definition of a CDQ Project)

- ✓ CVRF is looking forward to the completion of this report. As CVRF testified in June, we support the removal from oversight of financial decisions by businesses owned in whole or in part by the CDQ group, when new CDQ funds are not contributed to the business or entity.

Issue 8) Allowable investments by CDQ group– Fisheries related projects

CVRF supports the following recommendations:

- ✓ Allow \$1,000,000 per year in non-fisheries related, in region economic development, an increase from the \$500,000 limit proposed by the CDQ Policy Committee. While one CDQ group consists of a single community and a second of six communities, CVRF has twenty member communities spread along a coastline of nearly 300 miles. Up front costs for a single project alone may cost \$500,000 for the first year. With twenty communities and limited number sensible fisheries related investments available, CVRF believes that the limit

for allowable non-fisheries related investments be a minimum of \$1 million annually. We believe that staff has done a good job of analyzing this issue and would like to ensure that the council can adopt this limit when it takes final action in April.

- ✓ Allow \$200,000 per year for community grants. Another method of providing direct benefits to communities is through a community grant program. Grants to support village activities, from sobriety conferences to bladder festivals, are important to the social welfare of the communities. The CDQ Program should be able to contribute to these efforts. For CVRF, a program of \$200,000 annually equals an average of only \$10,000 per community per year. Certainly, the CDQ Program can participate to this extent without losing focus of economic development.

Issue 9) Other CDQ Administrative Issues

- ✓ CVRF believes that these are important issues and should be analyzed so that they can become a part of the final package for adoption in April.

On behalf of the CVRF Board of Directors, I would like to thank you for the opportunity to make these comments. We look forward to commenting on the final draft analysis in the near future.

**Comments of State of Alaska on
Initial Review Draft for Amendment 71 to BSAI Groundfish FMP
Regarding CDQ Program Revisions
November 29, 2001**

These comments are submitted by the State of Alaska (state) to the Initial Review Draft for Amendment 71 to the BSAI groundfish FMP, prepared by the North Pacific Fisheries Management Council (Council) and the National Marine Fisheries Service (NMFS) staff for presentation during the December 2001 Council meeting.

The Western Alaska Community Development Quota (CDQ) program is an innovative attempt to accomplish community development in western coastal Alaska, which is in one of the more impoverished regions of the United States. The CDQ program, which began in 1992, will enjoy its 10-year anniversary in December of 2002. By nearly all standards the program can be called successful. During its short tenure, the CDQ program has created significant employment opportunities in the BSAI groundfisheries for residents of Western Alaska, and CDQ groups are steadily increasing their equity ownership in Seattle and foreign-based harvesting companies. However, the challenge of creating contemporary economic stability in remote villages, whose residents have been reliant on subsistence lifestyles for centuries, is a long-term undertaking.

The state recognizes that there must be changes in the state's oversight role as the CDQ program evolves. As the program has grown, state CDQ regulations have been revised on several occasions. The last revision took place in August of 1999. More recently, in response to a few of the CDQ groups' concerns, the state began working with the groups in early 2000 to recommend program changes to further streamline and simplify the Community Development Plan (CDP) amendment process. After review and approval of the state's conceptual changes by the NPFMC, NMFS drafted proposed federal regulatory changes to provide the groups more discretionary authority in their business transactions. These proposed changes were presented to the NPFMC in October 2000. During this period, Congressman Young introduced H.R. 5565, proposing to make substantial changes to the governments' oversight roles regarding the program; that bill was subsequently reintroduced this session as H.R. 553.

The quota given to the six CDQ groups constitutes a grant of a public resource to achieve a government-sanctioned goal of fostering economic development in western Alaska. As such, the CDQ program was not designed as a direct allocation of quota to businesses, but rather was set up with government oversight to ensure accountability that the public resources were being used to achieve certain social and economic goals. H.R. 553 would shift the focus of the program from a community-centered program to a profit-making regime. The state endorses individual initiative, but we do not want to lose sight of the original purpose of the CDQ program. As stated by the National Research Council in its 1999 report, *The Community Development Quota Program in Alaska*, "for a program like this, care must be taken not to use strictly financial evaluations of success." NRC Report, page 3. The challenge for all of us is to find the right balance between the profit motive and fostering local economic development in these regions.

In general, the State supports the recommendations from the CDQ Policy Committee. We think it is best to maintain the state's input in the allocation and oversight processes, since the state works directly with and provides services to the 65 CDQ communities on a regular basis. This relationship is important in providing recommendations for the complex allocation process and for managing the activities of the groups on a daily basis.

The NPFMC has repeatedly expressed support for the CDQ program. The Council is the best forum to address, in the first instance, issues regarding the operation and management of the CDQ program. The Council process ensures that all interested parties are able to voice their positions and generally results in a product that is best for the program and the people it serves. The State supports the Council process and believes it to be an important component of the overall management of the CDQ program.

The CDQ Policy Committee was presented with several possible alternatives for government oversight, ranging from continuation of the status quo, to shifting primary oversight responsibilities to NMFS, to elimination of oversight through fixed, permanent allocations to communities. The committee's discussion, however, focused on modifications to the existing system, with the state retaining primary oversight responsibilities, rather than wholesale change to the allocation and oversight system. Based upon these discussions, we presume that although there is support for improving the current system, there is far less support for changing the relative responsibilities of the government oversight agencies.

We will address each issue identified in the staff analysis:

(1) Define the role of NMFS, the State of Alaska, and the Council in making CDQ allocations.

The state supports Alternative 1 – Status Quo/No Action. The State should continue to make CDQ allocations recommendations, and NMFS should maintain its current limited role in reviewing and approving the State's recommendations.

As part of the CDQ allocation process, the state CDQ Team, comprised of the governor's designees, establishes a schedule for the receipt of applications, initial application evaluation, public hearings and private meetings, and final application review. Each group must decide which activities are best suited for its region and constituents and submit a CDP application. The proposed CDP must include the allocation requested for each species, a description of the goals and objectives of the CDP, the length of time necessary to achieve these goals, the number of individuals expected to be employed through the program, and a description of vocational and educational training programs the CDP will generate. The CDP details the fishery-related infrastructure in the applicant's region and describes how the CDQ group plans to enhance existing harvesting and processing capabilities.

Under current regulations, the state makes its allocation recommendations after holding a public hearing and meeting privately with each group (we hold private meetings because

of the proprietary nature of certain information submitted by the groups in their CDP applications). After taking into consideration the CDP applications, quarterly reports, annual audits, public testimony, and information gained through the private meetings with each group, and applying the criteria set out in state regulations, the state CDQ Team develops the recommended allocations. The state then consults with the NPFMC before the recommendations are submitted to NMFS, who conducts a separate review to ensure that the state complied with applicable federal procedural requirements in making its allocation recommendations. Any group unhappy with its allocation can testify before the Council at this time. NMFS then provides their recommendations to the Secretary of Commerce for final approval and implementation.

We believe the current system works well to provide fair and equitable allocations that maximize, as much as possible, the benefits to residents of the CDQ communities.

(2) Periodic or long-term CDQ allocations

The state supports Alternative 2, Option 1: Establish a fixed allocation cycle in regulation for a two-year period.

Regarding the appropriate length of the allocation cycle, the state agrees with one Policy Committee member's recommendation that a 2-year cycle is appropriate in order to keep the groups accountable for their actions. At the same time the CDP process could also be simplified so that it would be easier for the groups to prepare an application every two years. Significantly longer allocation cycles begin to approach an IFQ system, with many other serious policy considerations. If a significantly longer approach is preferred by the Council, we recommend federal legislation to avoid all oversight and program administration, and simply make allocations fixed and permanent.

The CDQ Policy Committee recommended a fixed 3-year allocation cycle (Alternative 2, Option 2), along with an "escape clause" identified in the analysis as Sub-option 1. The state accepts this recommendation as a reasonable compromise to address the groups' concerns with more frequent allocations.

(3) Define the role of government in oversight of the CDQ program

The state supports either Alternative 1 or 2. Alternative 1 is status quo; Alternative 2 proposes amending the BSAI FMP to specifically identify elements of the government's responsibility for administration and oversight of the economic development elements of the CDQ program. If Alternative 2 is preferred, the state recommends that a criterion directly relating to employment and training benefits be added:

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;
5. Ensure compliance with legal program requirements; and
6. *Ensure employment and training, education and other socio-economic benefits are being provided to communities.*

As discussed and recommended by the CDQ Policy Committee, the principal role for government in the CDQ program is "Governance". Also, government can offer business assistance and advice, and evaluate all available information, including performance, community benefits and future plans, in making allocation decisions. The elements proposed in Alternative 2, with our recommended amendment, simply clarify this governance responsibility.

Because the state works regularly with and best understands the needs of the communities of western Alaska, it remains the most qualified to make CDQ allocation recommendations, and there is no reason for NMFS to second-guess or duplicate the state's efforts. Likewise, it is inevitable that the state will review CDP's through its public-policy perspective, in order to maximize the benefits that flow to the region as a whole and not just to each individual CDQ group/corporation. This is consistent with the recognized goals of the program, and as long as there are goals, including benefiting the people of the region and encouraging the development of a local economy (whether fisheries based or not), allocation and oversight decisions necessarily will be based, in part, on subjective analysis by the government participants in the process. Thus, a shift of oversight responsibility from the state to NMFS should occur only if one believes (1) NMFS knows better than the state how to meet the program's goals for western Alaska, or (2) no consideration should be given to program goals in the allocation process.

(4) CDQ allocation process – Type of Quotas.

The state supports Alternative 1 – No Action.

Contrary to the opinion of the National Research Council report, the state does not support a foundation quota. Any "foundation" quota amount becomes truly an entitlement in the nature of an IFQ; the policy implications of this option need thorough analysis before consideration. As discussed in the analysis, a foundation quota raises many issues and concerns, including possible instability through encouraging the splintering of groups, with attendant increased administrative costs; possible loss of local, small-boat fisheries; and significant changes to existing group allocations and business plans.

If the Council believes some form of foundation quota is appropriate, the state would prefer Alternative 2, Option 3, where 1% is allocated to the CDQ group for every 1,000 people represented by the CDQ group and the remainder of the quota goes to each group on a performance basis. The year 2000 federal census shows there are approximately 27,000 people in the 65 CDQ communities. If there is a split in allocations between "foundation" and "performance based", the former must be based on population, the only truly objective measure available that reflects the needs and reasonable entitlement of

communities in the region. If that approach is used, we would further suggest the Council consider amending Alternative 2, Option 3 to require that 50% of pollock be allocated proportionally to population, and 50% be allocated based on performance.

We would further recommend adoption of Suboption 1, applying any foundation quota to pollock allocations only. As we discussed at the April CDQ Policy Committee meeting, a foundation quota may be possible for pollock but is very difficult to implement for other species, such as halibut or crab, which tend to be more appropriately allocated based on individual group attributes, including proximity to the resource, in-region processing facilities, etc.

(5) CDQ allocation process – The evaluation criteria.

The State could support either Alternative 1 or 2. Alternative 1 is the continuation of the status quo. Alternative 2 would require revising the CDQ evaluation criteria and publishing them in NMFS regulations. However, we believe that Alternative 2 is unnecessary, since the state has always been willing to amend its regulations to be consistent with Council intent, and development of a scorecard will occur regardless of Council action.

The state agrees that the allocation process needs to be as transparent as possible. There are currently 20 criteria in the state regulations that are used in making allocation decisions. In order to make the process more transparent so groups better understand the state's rationale for its allocation recommendations, the state has developed a draft scorecard based on current state regulations. The draft scorecard is attached as Appendix 1.¹ Each CDQ group has been asked to submit comments and provide suggestions towards the format of the final version of the scorecard.

Current evaluation criteria should be regularly reviewed and, when appropriate, reduced in number. Under the proposed scorecard system, which the state currently plans to utilize during the 2002 allocation process, the evaluation criteria are consolidated into related categories for scoring purposes. When the state team reviews allocation requests, each team member will score each group on each category. After reviewing the scorecards, the decision-makers can make allocation decisions with more concrete analysis in hand, and the cause of any changes in allocations will be apparent from review of these scorecards. Aggregate scores from the cards would then be tabulated for each category and become public documents available for each group to compare the team's assessment of its performance and plans with every other group. The scorecards will also enable CDQ board members and CDQ group staff to better understand the weaknesses and strengths of their respective organizations as viewed by the state. This

¹ The state will revise the draft scorecard based on input from the groups and direction from the Council, if any.

should also assist NMFS in reviewing and understanding the state's allocation recommendations.²

If the Council prefers to adopt Alternative 2, we concur with the recommendations of NMFS/Council staff contained in the analysis. The intent of this proposed change, as we understand it, is to clarify the criteria, not change them. Thus, to the extent some of the current criteria were omitted from the changes proposed in Alternative 2, we recommend they be reinserted. Also as suggested by staff, we believe it is important to clarify that the allocation for "incidental catch species" or "prohibited species" may be related to the recommended target species allocations.

(6) Public comment on Allocation Recommendations – Appeals Process.

The state supports Alternative 1 - No Action.

The state does not believe a more formal administrative appeals process makes sense for CDQ allocations. First, there is no legal right to such a process, since these decisions involve handing out a government benefit, and there is no right to any of these benefits. The CDQ program by federal regulation is a voluntary program with allocations of CDQ treated as harvest privileges that expire upon the expiration of the CDP, with further allocations neither implied nor guaranteed. Thus, the allocations are treated the same as grants, which do not include formal administrative appeal rights. Second, because these allocation recommendations are made in the state department commissioners' offices, there currently are no appropriate state government personnel to whom an "elevation" could occur. Thus, if an elevation appeal process were desirable, initial allocation decisions would have to be made at the staff level without commissioner's office involvement, with appeals brought to the commissioners' offices. We do not believe this would be advisable given the magnitude and complexity of the programmatic issues involved. Finally, and perhaps most importantly, since this is a zero sum game any appeal would have to involve all groups, since they would all have a potential interest in any adjustment of quota. Thus, any adjustment through appeal would likely result in further appeal by any other affected group[s], creating a chain-reaction that would place a serious administrative burden on the program and could threaten the start of the January fisheries for the entire CDQ program.

Under the current program the CDQ groups or public can testify before the Council to raise objections, concerns, or express support for the recommendations, and this testimony can be considered before final recommendations are submitted to the Secretary.

² In the draft analysis, staff apparently raise the question whether the state may base scoring on confidential information. As long as the groups insist on preserving the confidentiality of their business information, which represents a significant part of their operations, the state will necessarily have to rely on this information in making allocation recommendations. Nonetheless, the state believes sufficient information can be disclosed in the scoring documents to explain the scores (e.g. "Group A was fifth in pollock royalty value among the groups") while preserving group confidentiality.

(7) Extent of Government Oversight (Definition of a CDQ Project).

The state supports Alternative 2: Implement revisions to the CDQ Program administrative regulations based on the State of Alaska's proposal. These revisions would reduce the number of cases where state or NMFS approval of expenditures would be required and clarify that government oversight includes oversight over businesses owned by CDQ groups. Alternative 2 also includes a provision easing state oversight over subsidiaries 50% or more owned by a CDQ group, if the group demonstrates that it does not exercise effective management control over the business operations.

The state feels the need for accountability to the program and to the region's residents, and this requirement does not end with a group's initial investment in a subsidiary. Thus, whether the CDQ group acts through its CDQ royalties or through its investment returns, and whether it acts directly or through one or more of its subsidiaries (many of whom are wholly owned and virtually indistinguishable from their parent group), the group needs to remain accountable to its communities. We understand that some CDQ groups support increased flexibility in their investments at the subsidiary level. However, it is critically important that the public policy goal that the benefits derived from the program continue to flow to the region's residents continues to be met.

This is the approach taken in the "Bright New World" regulations developed by the state last year in consultation with, and with the general support of, the CDQ groups.³ Regarding oversight over revenues other than royalties, with groups increasingly owning significant percentages of their fishing partner companies, separating royalty from other partner distributions is increasingly difficult. See Appendix 2. Assuming a reasonable argument can be developed that a distinction should exist between royalties and investment revenues with respect to meeting the goals of the program, then perhaps the government agencies should not be overseeing non-royalty investments. But (a) we do not believe a reasonable distinction exists to justify different treatment of revenues vs. royalties, and (b) auditing revenues to distinguish between royalties and investment income would be extremely difficult.

In addition, concerns have been raised in the past by some CDQ groups and fishing industry representatives that constraints placed upon the CDQ groups under the current program might cost the groups business investment opportunities. Although the state is unaware of any CDQ business investment opportunity that has been lost as a result of federal or state regulatory constraints, we agree that there is a need for quick review of all CDP amendments, and we are committed to minimizing even the potential for lost business opportunities. Beginning with the consolidation of all state CDQ staff in a

³ "Bright New World" is the shorthand title the state has used in referring to a regulations revision project begun in 2000, in response to demands of the groups for more flexibility in investments, a simplified process for making CDP amendments, and simplification of the application for quota allocations. At the June 2000 Council meeting, the Council passed a motion requesting that NMFS proceed with development of regulatory amendments to implement the state's Bright New World proposal and to clarify that "CDQ projects include investments." These regulations have been on hold since then, pending conclusion of this Council review process.

central location in the Department of Community and Economic Development in 1999, the state has placed a high priority on the expeditious processing of CDP amendments. The state's success in these efforts is clear: for example, when Coastal Villages Region Fund sought state approval of its multi-million dollar investment in American Seafoods Company, the state CDQ Team was able to review and approve the amendment in just three working days. This occurred because there was open communication between the state and CVRF while negotiations were ongoing.

(8) Allowable Investments by CDQ Group – Fisheries related projects.

The State supports permitting some non-fisheries related investments (Alternatives 3 and 4), provided that Alternative 3, Sub-option 1 is adopted, restricting such investments to in-region economic development projects only.⁴

This issue has garnered many debates in recent years among program participants. The goal of the CDQ program, as set out by the NPFMC at the program's formation and codified in federal regulations, is to provide fishery related economic opportunities for western Alaska residents. The National Research Council stated, "We recommend that the restriction that CDQ revenues [are] to be invested only in fishery-related activities should be removed, at least for some portion of the revenues." NRC Report, page 76. Recognizing that the opportunities for fisheries-related investments in the region are limited, the state has long supported some loosening of the current limitations.⁵

Although it is important that some allowance now be made for investing in non-fisheries related activities, it is equally important that this allowance be done in a manner that maintains the program's integrity. Each group is under pressure from its member communities to provide other benefits to their residents, who have many serious and very worthwhile needs. But we need to ensure that current government program funding levels are maintained and that this program is not used as a replacement for education or other state-funded responsibilities in these regions.

Alternatives currently under consideration range from no allowance for non-fisheries related investments to full allowance at each group's discretion. In the short run, we believe that there needs to be a maximum amount permitted for these investments, based on a percentage of either a group's pollock revenues or net profits. The limit chosen should allow the groups to make significant initial investments in non-fisheries related projects while still combating any perception that this program is either a substitute for other municipal assistance or general economic development efforts in the region, or

⁴ If the Council decides under Issue 7 that CDQ oversight extends only to royalties, and not revenues, then this issue becomes virtually moot, since each group would be free to utilize as much non-royalty income as it wished on non-fisheries related projects. At present, non-royalty revenues are approximately 35% of total revenues.

⁵ On January 18, 2000, before the U.S. Senate Subcommittee on Oceans and Fisheries, Alaska Community & Economic Development Deputy Commissioner Jeff Bush testified that the state would support an expansion of allowable investments to include some non-fisheries related activities, provided the expansion was done carefully and within well-defined regulatory parameters.

merely a corporate welfare program. Permissible non-fisheries related investments should be limited to (1) in-region (defined as within the entire CDQ region, not just the group's communities) economic development projects (Sub-option 1) and (2) non-profit activities for the direct benefit of region residents, such as scholarships and drug/alcohol programs (if preferred, these could be a separate exemption as proposed in Alternative 2). At least at first, permissible investments should not include general community development/infrastructure activities, such as water/sewer projects or road construction, unless the project is related to other fisheries related development.⁶ Otherwise, if these "investments" were permitted, the result would be (1) internal pressure on the CDQ groups to assume a quasi-government function, and (2) external pressure from the legislative or executive branch, which could use such actions as permission to reduce spending for community infrastructure.

Whatever alternative the Council chooses, it is important that the rules be clarified to allow groups to continue to engage in education and training, scholarships, and charity. However, the rules must also remain clear that distributions of profits to communities for purposes or projects not specifically sanctioned or permissible by the groups is not allowed. This is particularly important to preserve the groups' current non-profit status, which specifically prohibits profit distributions. See Alaska Statute 10.20.136.

(9) Other CDQ Administrative Issues

The State supports Alternative 2: Develop proposed regulatory amendments to simplify and streamline recordkeeping and reporting requirements.

The State believes there is almost universal support for finding a way to simplify the CDP amendment process and reduce requirements of CDP's. This is why the state initiated its "Bright New World" regulation revision project in early 2000. The concepts developed in that process remain valid, and we believe the Council should proceed to adopt regulations consistent with the Bright New World Concept Draft first proposed by the state to the Council in June 2000. The essential elements of that proposal are as follows:

- 1) For projects that are fully described and budgeted in the CDP, the notification process would apply and no plan amendment will be required except as provided in item two below.
- 2) A substantial plan amendment to a CDP will be required only if the proposed investment by a CDQ group, or a CDQ partnership where the CDQ group has controlling interest (50% or greater) or effective management control in the entity making the investment, meets one or more of the following conditions:

⁶ Staff discussion on this point at page 126 of the draft analysis is incorrect. Economic development projects are very different from community development projects and must not be confused. To qualify as an investment under Sub-option 1, the investment must be an economic development project, i.e. it must meet the group's internal investment criteria and show a reasonable likelihood of a positive financial return on investment.

- a) If a cumulative investment, including any phasing of a project, is greater than \$1 million in total expenditures;
 - b) An investment in a new venture includes any new processing capacity (upgrades to existing processing operations would not be subject to this provision); or
 - c) An investment is made in a vessel equal to or exceeding 125-feet in length.
- 3) A plan amendment will not be required if the CDQ group is a minority partner (less than 50% ownership) and is not directly contributing to the investment either by assuming debt or providing funds.
 - 4) In the absence of a plan amendment, a CDQ group will be required to provide the state with timely written notification of all investment transactions or other CDP changes in accordance with the existing notification policy.

Appendix One

Draft Allocation Scorecard

Current regulations 6 AAC 93

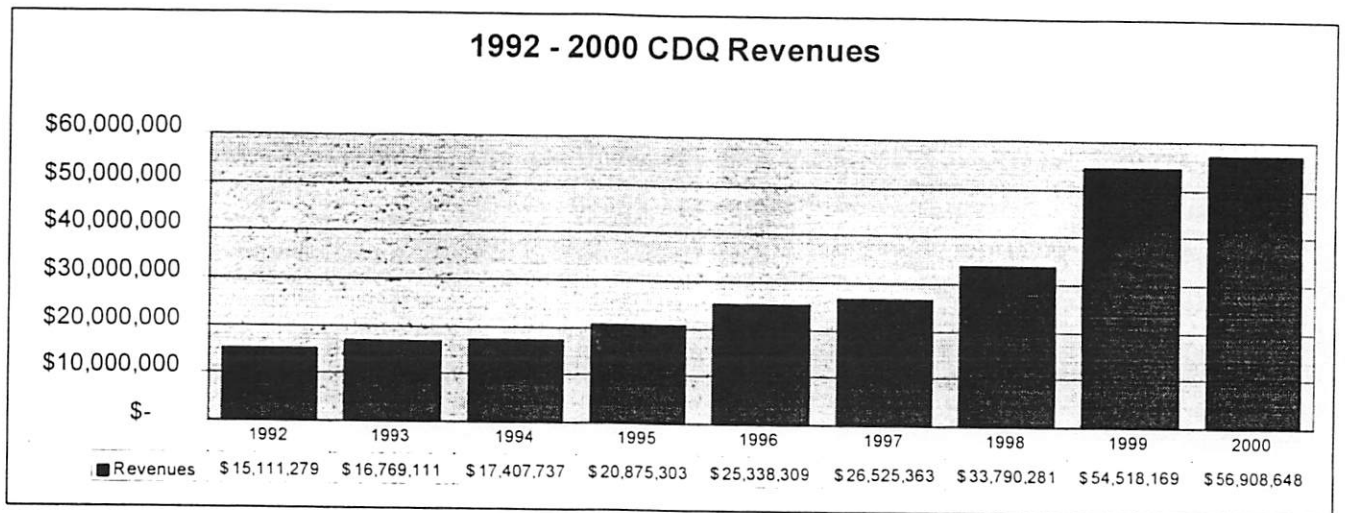
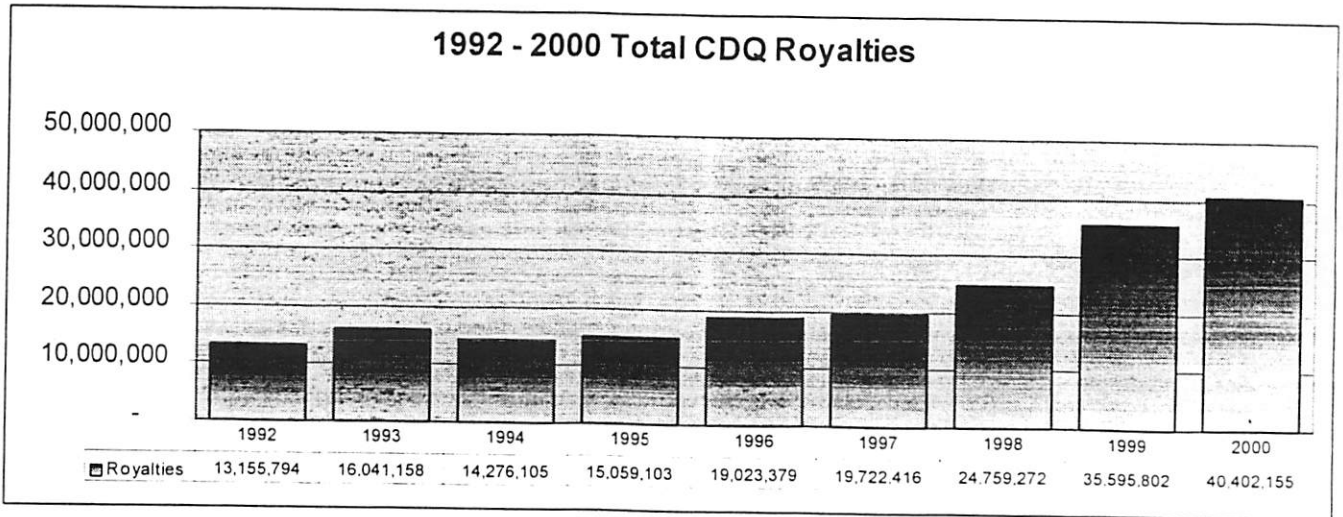
<i>Category</i>	<i>General Considerations</i>	<i>Source of information</i>	<i>Score</i>
Population & Economic Needs	Evaluation of population and economic conditions of eligible CDQ communities participating in a proposed CDP.	<ol style="list-style-type: none"> 1) Analysis of 2000 U.S. Census reports, including population and individual household information. 2) Consultation with the Alaska Dept. of Labor and Dept. of Community & Economic Development for demographic information. 3) Consultation with Department of Revenue, Division of Permanent Fund per applications mailed to each community. 4) Analysis of proposed CDP and annual audits from prior CDP cycle. 5) Interviews with CDQ applicants 	1-10
Milestone Achievement	Achievement of CDP milestones & objectives. Factors include allocation requests for all species and the proper allocation necessary to achieve CDP milestones.	<ol style="list-style-type: none"> 1) Verification of completion of milestones in independent annual audit during previous CDP cycle. 2) Evaluation of measurable milestones in proposed CDP. 3) Interviews with CDQ applicants. 	1 - 10
Community Regional & Statewide Benefits	Evidence a CDP provides fisheries related social and economic benefits to each eligible CDQ community and to the state, derived from maximum utilization and control of CDQ allocations and CDQ investments.	<ol style="list-style-type: none"> 1) Analysis of project sheet forms in proposed CDP. 2) Performance of investments as determined through audited financial statements. 3) Verification of milestone achievement in annual audits. 4) Interviews with CDQ applicants 	1 - 10
Community Outreach & Involvement	Evidence that the applicant has developed an effective outreach program to keep participating communities fully informed about CDQ activities and to facilitate community involvement throughout the CDP cycle.	<ol style="list-style-type: none"> 1) Analysis of audited milestones. 2) Verification of contact with community through analysis of annual & quarterly reports, newsletters, websites, and board & committee minutes. 3) Interviews with CDQ applicants. 	1 - 10
Management Efficiency	Demonstration of management effectiveness & efficiency, including board training, participation, management oversight, including formal effective administrative process utilizing sound business principles while exercising a sufficient level of due diligence to complete the goals and objectives of the proposed CDP. Demonstration of effective management of allocations relative to enforcement measures.	<ol style="list-style-type: none"> 1) Completion of audited milestones. 2) Appropriate use of consultants to perform management duties & technical analysis. 3) Number of CDQ region residents employed in management & administrative positions. 4) Analysis of overall program & administration costs in annual audited reports. 5) Interviews with CDQ applicants. 	1-10

<p>CDQ Program Standards</p>	<p>Evidence that a CDQ applicant has minimized legal and financial risk by exercising sufficient due diligence and demonstrating a reasonable likelihood that for-profit CDQ projects will earn a financial return, meet measurable CDP milestones, utilize conservation-based fisheries and further the overall goals and purposes of the CDQ program.</p>	<ol style="list-style-type: none"> 1) Analysis of financial statements in audited reports. 2) Analysis of investment guidelines and due diligence on past and proposed investments. 3) Analysis of milestones in annual audited reports. 4) Analysis of proposed CDP and plans for CDP cycle. 5) Input from public concerning the goals and objectives of the proposed CDP. 6) Interviews with CDQ applicants. 	<p>1-10</p>
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Assumptions:

- 1) For practical purposes, the term "CDQ applicant" is synonymous with "CDQ group".
- 2) Past performance of a CDQ applicant includes, but is not limited to previous CDP cycle.
- 3) Independent annual audits of prior CDP cycle(s) will be taken into consideration during analysis of goals & objectives of a CDQ applicant.
- 4) Interviews will be conducted with each CDQ applicant in a public and private meeting as considered appropriate.
- 5) Other sources will include quarterly reports and all correspondence between the state and the CDQ applicant during the previous and current CDP application cycle.
- 6) The scores for each category will be considered a separate value and will not be combined into a cumulative numerical score.
- 7) Scores range from a low value of 1 to a high value of 10.

Appendix Two



Draft Analysis of Revisions to the CDQ Program (Allocations and Oversight Issues)

Questions or recommendations about the initial draft analysis that could be addressed by the Council:

1. Review the problem statement on page 8 and recommend revisions or additions. Consider adopting problem statement.
2. Remove Issue 6 (page 116) as a separate issue and incorporate discussion of the appropriate appeals process or public comment periods with Issue 1 (page 44) under discussion of the process that would be used for CDQ allocations.
3. Issue 3 (role of government oversight), Alternative 2, consider:
 - (a) Removing element #5 (ensure compliance with legal program requirements) because it does not describe a specific oversight responsibility and could be misinterpreted. Discussion on page 73.
 - (b) Adding an element that government is responsible to “ensure that the CDQ Program is providing benefits to each CDQ community and meeting the goals and purpose of the program.
4. Issue 5 (allocation evaluation criteria), Alternative 2 which would specify evaluation criteria in NMFS regulations (page 101), consider:
 - (a) If the intent is that CDQ allocations would be based only on the evaluation criteria published in NMFS regulations, revise the introductory paragraph for Alternative 2 as follows (or something similar):

“[T]he following evaluation criteria shall be used as the basis for allocating CDQ among the CDQ groups or eligible communities.”

This would remove the phrase “should include but are not limited to.”
 - (b) Clarify the intent of the apparently similar criteria listed as #6 and #9 (related to developing a sustainable fisheries-based economy). If they are the same, consider removing #6.
 - (c) Consider clarifying the role that employment, education, and training would play in the CDQ allocation process.

(d) Add an evaluation criterion that explains the basis of CDQ allocations for incidental catch species or prohibited species. NMFS suggests the following:

For species identified as “incidental catch species” or “prohibited species,” CDQ allocations may be related to the recommended target species allocations.

(e) Consider addressing what would happen if the CDQ groups request allocation percentages that add up to 100 percent for a particular species or species group.

(f) Consider specifying the proposed scorecard as an option under Alternative 2, rather than a required element of the alternative that would be published in NMFS regulations. Then, the Council would have the option at the time of final action to recommend implementing evaluation criteria in NMFS regulations without requiring the State to develop a “scorecard” in advance or to have this scorecard in NMFS regulations.

(g) If the scorecard concept is retained as an option in the analysis, request additional assistance from the State to revise the scorecard so that it is consistent with the evaluation criteria proposed in Alternative 2.