

MEMORANDUM

TO: Council and AP Members  
FROM: Chris Oliver *Chris*  
Executive Director  
DATE: May 20, 2002  
SUBJECT: CDQ Program

ESTIMATED TIME  
8 HOURS

**ACTION REQUIRED**

Final action on CDQ policy amendment package.

**BACKGROUND**

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 current goals and purpose of the program as stated in Federal regulation, 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 action was categorically excluded under NEPA from further environmental review and the requirement to prepare an environmental review document, as it was determined that the action does not have the potential to pose significant individual or cumulative impacts on the human environment.

The analysis (RIR/IRFA) considers eight policy issues that would change the administration of the current CDQ Program. The complete list of alternatives, as revised at the April Council meeting, is attached to this memo as Item C-4(a). 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 eight issues under consideration are:

- Issue 1: Determine the process through which CDQ allocations are made
- 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: Extent of government oversight (Definition of a CDQ project)
- Issue 7: Allowable investments by CDQ groups (fisheries-related restriction)
- Issue 8: 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 (H.R. 553) in the 107<sup>th</sup> 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 policy issues listed above.

Also attached to this memo (Item C-4(b)) is draft FMP language to mirror the alternatives that staff has proposed should be incorporated into the FMP. The majority of the issues on which the Council is going to take action will be promulgated in Federal regulations. However, staff has suggested that two specific issues should also be included in the FMP (in addition to Federal regulations): 1) the role of government in Issue 3, and 2) the goals and purpose of the CDQ Program in Issue 7. Should the Council take no action on Issue 3, no changes to the FMP would need to be made with respect to that issue. Note however that staff suggests that the Council add language describing the goals and purpose of the program to the FMP, even if the Council chooses no action as its preferred alternative under Issue 7. While staff has provided draft FMP language based upon the alternatives and options proposed in the analysis under only these two issues, the Council may recommend revisions to the wording of the FMP related to any of the issues addressed in the analysis.

The Council approved sending the analysis out for public review at the December 2001 meeting, with the intent that the analysts would complete the document, including recommended modifications and analysis of several new alternatives and options. In February, the Council received a status report of staff's progress on the analysis. In April, the Council reviewed the public review draft of the analysis and requested specific modifications and analysis of several new options. Final action on the amendment is scheduled for this meeting. The public review draft was mailed to the Council on May 16, 2002.

**Issues and Alternatives for the CDQ Policy Analysis (BSAI Amendment 71)**  
(As revised and adopted by the Council in April 2002)

**ISSUE 1: Determine the process through which CDQ allocations are made**

Issue 1 problem provides three alternatives for the process that will be used in the future to make allocations of groundfish, crab, halibut, and prohibited species quota among the CDQ groups. The alternatives do not address the total amount of each of these species allocated to the CDQ Program annually (the CDQ reserves) - only the process through which the CDQ reserves are divided up among the CDQ groups.

**Alternative 1:** No Action: NMFS's regulations governing the CDQ allocation process would not be revised. The administrative process described in Section 3 would continue.

**Alternative 2:** Improved Administrative Process: NMFS and the State would continue to make CDQ allocations through an administrative process. However, NMFS regulations would be revised to provide the opportunity for the CDQ groups to comment on the State's initial CDQ allocation recommendations and to appeal NMFS's administrative determination to approve the State's allocation recommendations.

**Alternative 3:** Rulemaking: CDQ allocations among the CDQ groups would be established in NMFS regulations through proposed and final rulemaking following the same process used by to allocate other federally managed fishery resources. The Council would develop CDQ allocation recommendations, and NMFS would implement the Council's recommended allocations in NMFS regulations. 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. The State of Alaska could remain involved in the CDQ allocation process by making recommendations to the Council rather than to NMFS.

**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

**Option 4:** 10-year allocation cycle

**Suboption 1:** 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.

**Suboption 2:** Allow the State to recommend reallocation of CDQ mid-cycle following a three-step intervention process:  
Level 1 - advisory (State advises groups of serious concerns)  
Level 2 - State mandates the group to make changes  
Level 3 - consider CDQ reallocation

**Suboption 3:** Allow the State to recommend suspension of CDQ allocations mid-cycle under extraordinary circumstances. The Council and NMFS would have to approve the State's recommendation.

**Alternative 3:** Make long-term allocations to the CDQ groups.

**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 BSAI FMP 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;
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 that training, employment, and education benefits are being provided to the communities and residents; and
6. Ensure that the CDQ Program is providing benefits to each CDQ community and meeting the goals and purpose of the program.

**ISSUE 4: CDQ Allocation Process - 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

Allocations of CDQ among the CDQ groups are categorized as defined below:

**Foundation quota** - some proportion of the CDQ allocations are fixed or based on demographic characteristics.

**The remaining quota** is allocated competitively among the groups using the evaluation criteria as determined under Issue 5. These criteria may include such factors as financial performance, feasibility of proposed projects, needs of the local fishery, income, proximity to the fishery, and other criteria not considered in the foundation quota.



**Option 1:** Foundation quota: 50% of the CDQ reserve is divided equally among the CDQ groups. The remaining 50% of the quota 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. The remaining quota 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. The remaining quota 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. The remaining pollock quota and the quota for all other species would be allocated competitively among the CDQ groups.

**Option 4:** Foundation quota: 50% of the CDQ pollock reserve is allocated to the CDQ group on the basis of population of the communities represented by the group. The remaining pollock quota and the quota for all other species would be allocated competitively among the CDQ groups.

#### **ISSUE 5: CDQ Allocation Process - The Evaluation Criteria**

Issue 5 addresses the evaluation criteria used to make CDQ allocations among the CDQ groups. The current evaluation criteria is published in State of Alaska regulations at 6 AAC 93, but is not published in NMFS regulations. The Council is considering the following three alternatives for regulations governing CDQ evaluation criteria in the future:

**Alternative 1:** No action - Do not publish CDQ evaluation criteria in NMFS regulations. The State could continue to publish CDQ evaluation criteria in State regulations.

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

The following criteria shall be used as the basis for allocating CDQ among the CDQ groups or eligible communities:

1. Number of participating communities, population, and economic condition.
2. A Community Development Plan that contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional or community economic development.
3. Past performance of the CDQ group in complying with program requirements and in carrying out its current plan for investments, service programs, infrastructure, and regional or community economic development.
4. Past performance of CDQ group governance, including: board training and participation; financial management; and community outreach.
5. A reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group.
6. Training, employment, and education benefits are being provided to residents of the eligible communities.
7. In areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.
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.

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

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

**Alternative 1:** No Action. NMFS regulations governing the extent of government oversight of the business activities of the CDQ groups and affiliated businesses would not be revised.<sup>1</sup> An October 4, 2000, legal opinion by NOAA GC concludes that NMFS’s regulations on the extent of oversight of the subsidiaries and affiliated businesses are unclear and need to be revised.

**Alternative 2:** NMFS regulations would be revised to clarify that government oversight of the CDQ Program applies to the activities of the CDQ group and to affiliated businesses.

The following options define which subsidiaries of the CDQ groups would be required to submit financial information to the State and NMFS and to obtain approval for significant investments.

**Option 1:** Subsidiaries that a CDQ group owns 50 percent or more or, or has effective management control of, would be required to submit financial information to the State and NMFS and to obtain prior approval for significant investments.

**Option 2:** Subsidiaries that a CDQ group owns *more than 50 percent of* would be required to submit financial information to the State and NMFS and to obtain prior approval for significant investments.

**Option 3:** Subsidiaries that a CDQ groups owns *51 percent or more of* would be required to submit financial information to the State and NMFS and to obtain approval for significant investments.

**Option 4:** Any subsidiary wholly owned (100 percent) by a CDQ group or any subsidiaries created by the CDQ group to invest CDQ assets and manage other CDQ investments would be required to submit financial information to the State and NMFS and to obtain approval for significant investments. This option would not apply requirements for prior approval of significant investments to existing fishing businesses in which the CDQ group owned an equity interest of less than 100 percent.

**Alternative 3:** Revise NMFS regulations to clarify that oversight requirements for review and prior approval apply only to the activities of the CDQ group and do not apply to the subsidiaries or other affiliated businesses.

**Alternative 4:** (From H.R. 553) Revise NMFS regulations to clarify that government oversight extends only to activities of the CDQ group that are funded by royalties from the CDQ allocations.

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

## ISSUE 7: 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.*

**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 annual maximum amount of investment in non-fisheries related projects. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum.

**Option 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.

**Option 4:** Allow each CDQ group to invest up to \$1,000,000 in non-fisheries related projects.

### Suboptions for Alternative 3 related to limits on non-fisheries related investments:

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

**Suboption 2:** Require that any non-fisheries related projects be:

(A) for education, vocational training, scholarships, or other human resource programs for residents of the CDQ communities; or

(B) community development projects associated with infrastructure development in the communities or region of Alaska represented by the CDQ group.

### Suboptions for Alternative 3 related to the goals and purpose of the CDQ Program:

**Suboption A:** The goal and purpose statement in Federal regulation (50 CFR 679.1(e)) is amended to read as follows (additions to existing regulations are underlined):

*The goals and purpose of the CDQ Program are to allocate CDQ to qualified applicants <sup>as a first priority</sup> representing eligible western Alaska communities ~~primarily~~ to provide the means for investing in, participating in, starting, or supporting commercial fisheries business activities that will result in*

*Concurrence by BP*

*KD  
6/2/02*

*an ongoing, regionally-based fisheries economy, ~~and secondarily to strengthen the non-fisheries related economy in the region.~~*

*OK as a second priority  
OK*

**Suboption B:** The goal and purpose statement in Federal regulation (50 CFR 679.1(e)) is amended to read as follows (additions to existing regulations are underlined and deletions are stricken):

*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~~ diversified economy.*

**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*)

**Suboption** for Alternative 4 related to the goals and purpose of the CDQ Program:

**Suboption A:** Revise the goals and purpose of the CDQ Program as proposed in H.R. 553:

*The goals and purpose of the CDQ Program are: (A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries; and (B) to assist eligible communities to achieve sustainable long-term diversified local economic development.*

## **ISSUE 8: Other CDQ Administrative Issues**

**Alternative 1:** No Action

**Option 1:** Allow transfer of CDQ between groups only after review by the State and NMFS

**Option 2:** Allow the transfer of PSQ between groups only during the month of January, only with a substantial amendment to the groups' CDPs, and only when the transfer is associated with a transfer of CDQ

**Option 3:** Approve alternative fishing plans only after review by both the State and NMFS

**Alternative 2:** Simplify the quota transfer and alternative fishing plan process

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

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

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



Staff Suggestions for Revisions to BSAI FMP for Amendment 71  
(May 13, 2002)

Proposed additions are in bold. Informational text is in bold [ ]. Alternatives are in bold italics.

13.4.7.3 COMMUNITY DEVELOPMENT QUOTAS

- (a) **PURPOSE AND SCOPE.** The Western Alaska Community Development Quota Program is established to provide fishermen who reside in western Alaska communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands groundfish fisheries, to expand their participation in salmon, herring, and other nearshore fisheries, and to help alleviate the growing social economic crisis within these communities. Residents of western Alaska communities are predominantly Alaska Natives who have traditionally depended upon the marine resources of the Bering Sea for their economic and cultural well-being. The Western Alaska Community Development Quota Program is a joint program of the Secretary and the Governor of the State of Alaska. ~~Through the creation and implementation of community development plans, western Alaska communities will be able to diversify their local economies, provide community residents with new opportunities to obtain stable, long-term employment, and participate in the Bering Sea/Aleutian Islands fisheries which have been foreclosed to them because of the high capital investment needed to enter the fishery.~~

[Council select one of the following or develop an alternative statement of the purpose of the program. The same statement will be promulgated in NMFS regulations.]

[(i) current NMFS regulations at §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.*

[(ii) proposed statement from Issue 7, Alternative 3, suboption A]

*The purposes of the CDQ Program are to allocate CDQ to qualified applicants representing eligible western Alaska communities primarily to provide the means for investing in, participating in, starting, or supporting commercial fisheries business activities that will result in an ongoing, regionally-based fisheries economy, and secondarily to strengthen the non-fisheries related economy in the region.*

[(iii) proposed statement from Issue 7, Alternative 3, suboption B]

*The purpose of the CDQ Program is 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, diversified economy.*

[(iv) proposed statement from Issue 7, Alternative 4, suboption A (H.R. 553)]

*The purposes of the CDQ Program are: (A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries; and (B) to assist eligible communities to achieve sustainable long-term diversified local economic development.*

The NMFS Regional Director shall hold the designated percent of the annual total allowable catch (TAC) of groundfish for each management area in the Bering Sea and Aleutian Islands for the western

Alaska community quota as noted below. These amounts shall be released to eligible Alaska communities who submit a plan, approved by the Governor of Alaska, for its wise and appropriate use. Not more than 33 percent of the total Western Alaska community quota may be designated for a single CDQ applicant, except that if portions of the total quota are not designated by the end of the second quarter, applicants may apply for any portion of the remaining quota for the remainder of that year only.

The Western Alaska Community Quota program will be structured such that the Governor of Alaska is authorized to recommend to the Secretary that a Bering Sea Rim community be designated as an eligible fishing community to receive a portion of the reserve. To be eligible a community must meet the specified criteria and have developed a fisheries development plan approved by the Governor of Alaska. The Governor shall develop such recommendations in consultation with the Council. The Governor shall forward any such recommendations to the Secretary, following consultation with the Council. Upon receipt of such recommendations, the Secretary may designate a community as an eligible fishing community and, under the plan, may release appropriate portions of the reserve.

**[Add Council's preferred alternative for Issue 3, for example]**

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

- 1. Ensure that the CDQ Program is providing benefits to each CDQ community and meeting the goals and purpose of the program.**
- 2. Detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest;**
- 3. Ensure community involvement in decision-making;**
- 4. Ensure that internal investment criteria and policies are established and followed;**
- 5. 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**
- 6. Ensure that training, employment, and education benefits are being provided to the communities and residents.**

#### **13.4.7.3.2 ELIGIBLE WESTERN ALASKA COMMUNITIES.**

The Governor of Alaska is authorized to recommend to the Secretary that a community within western Alaska which meets all of the following criteria be eligible for the western Alaska community quota program (hereinafter "the Program"):

- (1) be located on or proximate to the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands or a community located on an island within the Bering Sea, that the Secretary of the Interior has certified pursuant to section 11(b)(2) or (3) of Pub. L. No. 92-203 as Native villages are defined in section 3(c) of Pub. L. No. 92-203;**
- (2) be unlikely to be able to attract and develop economic activity other than commercial fishing that would provide a substantial source of employment;**
- (3) its residents have traditionally engaged in and depended upon fishing in the waters of the Bering Sea coast;**

- (4) has not previously developed harvesting or processing capability sufficient to support substantial participation in the commercial groundfish fisheries of the Bering Sea/Aleutian Islands because of a lack of sufficient funds for investing in harvesting or processing equipment; and
- (5) has developed a community development plan approved by the Governor, after consultation with the North Pacific Fishery Management Council.

Also, Akutan will be included in the list of eligible CDQ communities.

#### 13.4.7.3.3 Fixed Gear Sablefish CDQ Allocation

The NMFS Regional Director shall hold 20 percent of the annual fixed-gear Total Allowable Catch of sablefish for each management area in the Bering Sea/Aleutian Islands Area for the western Alaska sablefish community quota. The portions of sablefish TACs for each management area not designated to CDQ fisheries will be allocated as QS and IFQs and shall be used pursuant to the program outlined in Section 13.4.7.1.

#### 13.4.7.3.4 Pollock CDQ Allocation

For a Western Alaska Community Quota, 50% of the BSAI pollock reserve as prescribed in the FMP will be held annually. This held reserve shall be released to communities on the Bering Sea Coast which submit a plan, approved by the Governor of Alaska, for the wise and appropriate use of the released reserve.

#### 13.4.7.3.5 Multispecies Groundfish and Prohibited Species CDQ Allocations

CDQs will be issued for 7.5% of the TAC for all BSAI groundfish species not already covered by another CDQ program (pollock and longline sablefish). A pro-rata share of PSC species will also be issued. PSC will be allocated before the trawl/non-trawl splits. The program will be patterned after the pollock CDQ program, but will not contain a sunset provision.

CDQ Policy Amendments

Agenda C-4  
June, 2002

Issue 2 - Suboptions Related to Suspension and Termination of CDQ Allocations (page 59)

NMFS regulations currently allow the State to recommend suspension or termination of CDQ allocations mid-cycle. See page 68 of the analysis.

Suspension means that a CDQ group would be prohibited from harvesting an allocation that had been approved by NMFS, but that these allocations would not be re-allocated to another CDQ group.

Termination means that an allocation made to a CDQ group would be taken from that CDQ group and reallocated to another group.

Council could adopt one of the suboptions or elements of the suboptions if it believes that current regulations should be revised.

Main elements of the suboptions are:

1. Add term "extraordinary circumstances" to regulations. Suboptions 1 and 3 use this term.
2. Add requirement that State obtain Council approval before submitting recommendations for changes in CDQ allocations to NMFS ("approve" vs "consult"). Current regulations require Council consultation on initial allocations, but not on suspension or termination. Suboptions 1 and 3 would require Council approval. Suboption 2 does not mention Council approval.
3. Suboption 2 would add some specific steps the State must take before recommending termination and reallocation of CDQ.
4. Unclear whether the suboptions restrict the recommendations that could be made by the State. Current regulations allow both suspension and termination. Suboptions 1 and 2 refer only to termination. Suboption 3 refers only to suspension. If you select one of these suboptions, do you want to prevent the State from recommending the action not specifically mentioned in the suboption (either suspension or termination)?

NMFS recommends the following revisions to current regulations, regardless of whether Council selects a suboption or not (see page 69):

1. Revise regulations to reflect that suspension or termination of CDQ allocations would be an administrative determination by NMFS and that the CDQ groups involved would be allowed an opportunity to appeal NMFS's initial administrative determination on any changes in CDQ allocations.
2. Remove paragraph (h)(2) which states that a decision to reduce a CDQ allocation could be considered approved if NMFS does not respond to the State's recommendations.
3. Remove requirement to publish a notice in the Federal Register about suspension or termination of a CDQ allocation. Such notice is not required for an administrative determination.



**Issue 6**  
**Extent of Government Oversight**

Main elements of CDQ program oversight are requirements to:

- provide information about activities and investments to the government,
- obtain prior approval from the government for significant investments and other activities.

1

Oversight requirements for the CDQ group (a non-profit corporation) include:

- Community Development Plan,
- Amendments for certain changes in the CDP
- Annual audited financial statements
- Other quarterly and annual reports (pg 143)

Prior approval by the government for activities and investments occurs at the time the initial CDP is approved and when substantial amendments are submitted.

2

Substantial amendments require prior approval by State and NMFS for:

- Changes in communities
- Changes in fishing partners
- Investments over \$100,000
- >20% increase in budget for a project
- >20% increase in administrative budget
- change in any project if the change is considered "material" by State or NMFS
- quota transfers and additional vessels

3

Issue 6 considers whether the requirements for prior approval of significant investments apply to just the CDQ group, (the non-profit corp.) or also to its subsidiaries.

Subsidiaries include:

- 100% owned, for-profit corporations or LLCs to manage and invest CDQ assets,
- Investments in existing fishing businesses,
- New businesses created by the CDQ group for for specific fisheries-related purposes.

4

**APICDA**  
(non-profit)

APICDA Joint Ventures  
for-profit corp.  
100% owned by APICDA

APICDA Vessels  
100% AJV

Farwest Leader  
(25% AVI)

8 Smaller  
Fishing Vessels  
(100% AVI)

MUM Ak, LLC  
(AJV 15%)

Prowler, LLC (25%)  
B. Prowler, LLC (25%)  
O. Prowler, LLC (20%)

Starbound  
(AJV 20%)

Golden Dawn, LLC  
(AJV 25%)

Nelson Lagoon  
Storage  
(AJV 50%)

Puffin Seafoods, Inc.  
(AJV 50%)

Atka Pride Seafoods  
(AJV 50%)

Ocean Logic  
(AJV 100%)

Bering Pacific  
Seafoods, LLC  
(AJV 100%)

Nazan Bay Inn  
(AJV 100%)

Konrad, LLC  
(AJV 100%)

Ugladux Lodge  
(AJV 50%)

Kayux Dev, LLC  
(AJV 50%)

**BBEDC**  
(non-profit)

**Arctic Fjord, Inc.**  
30%

**Bristol Mariner, LLC**  
45%

**Neahkanhie, LLC**  
30%

**Nordic Mariner, LLC**  
45%

**Bristol Leader Fisheries, LLC**  
50%

**Northern Mariner, LLC**  
45%

**Cascade Mariner, LLC**  
40%

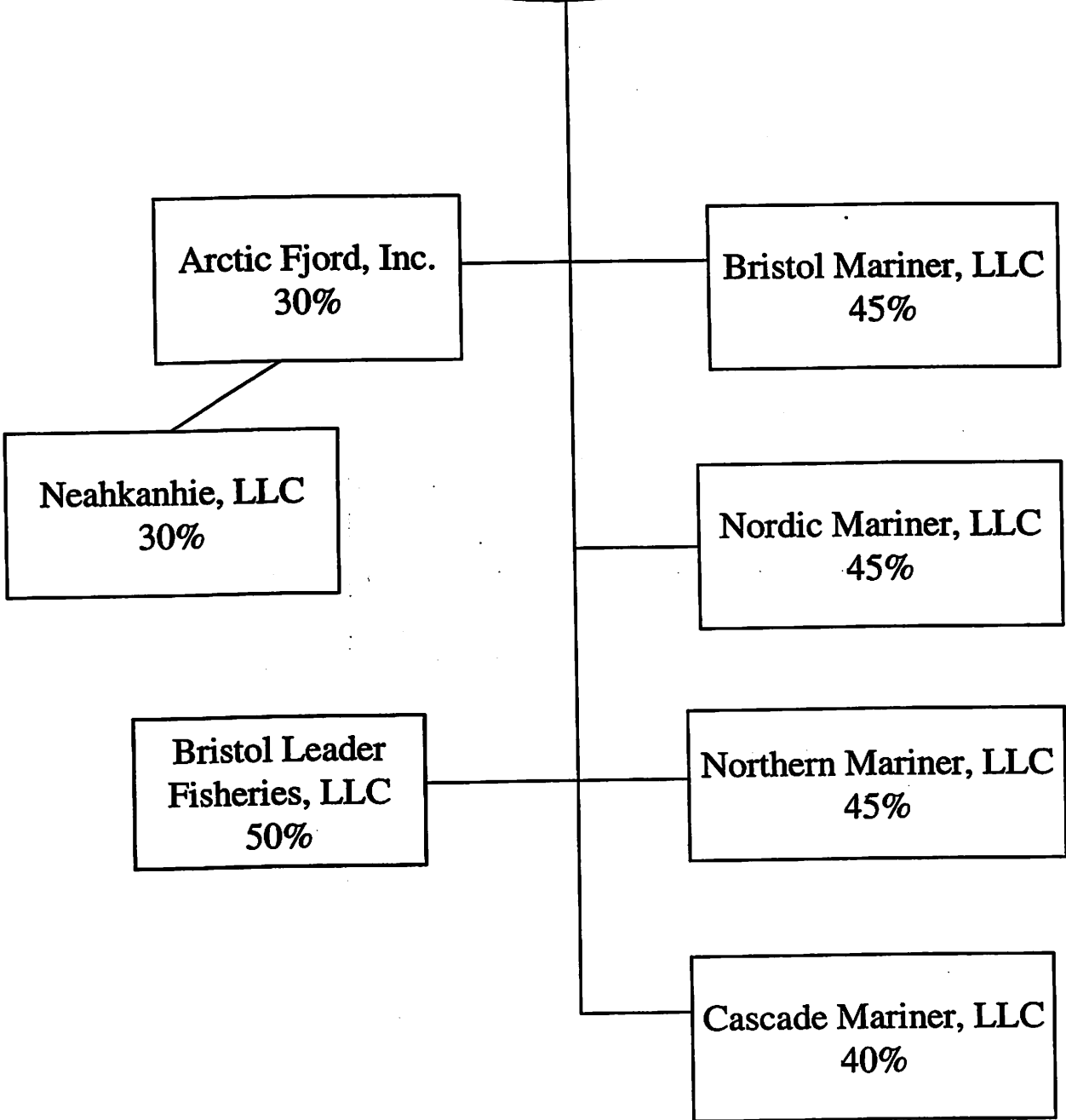


Table 4.17: Businesses in which a CDQ group holds more than 50 percent ownership

CDQ Group	Investment	Description	CDQ % ownership
APICDA	APICDA Joint Ventures, Inc.	For-profit management corporation	100%
CBSFA	CBSF's Corporation	For-profit corporation	100%
CVRF	Angyat, Inc.	For-profit management corporation	100%
NSEDC	Norton Sound Investment Co.	LLC	100%
YDFDA	Yukon Delta Fisheries, Inc.	For-profit corporation	100%
APICDA	Bonanza (AVI)	Longline catcher vessel (38.8')	100%
APICDA	F/V AP#1, AP#2, AP#3, AP#4, AP#5 (AVI)	Longline catcher vessels (36')	100%
APICDA	Grand Aleutian (AVI)	Sportfish Charter Vessel (32')	100%
APICDA	Nikka D (AVI)	Longline catcher vessel (28')	100%
APICDA	Stardust (AVI)	Longline catcher vessel (56')	100%
APICDA	Nazaan Bay Inn	Hotel and services	100%
APICDA	Konrad 1, LLC	Trawl catcher vessel (58')	100%
APICDA	Bering Pacific Seafoods LLC	Shoreside processing facility	100%
APICDA	Ocean Logic, LLC	Software development and sales	100%
CVRF	Kuskokwim Bay facility	Processor	100%
NSEDC	N. Sound Seafood Products	Seafood buyer, processor and retailer	100%
YDFDA	Lisa Marie	Multiple gear catcher vessel( 79')	100%
YDFDA	American Beauty (Alakanuk Beauty LLC)	Trawl catcher vessel (105')	75%
YDFDA	Ocean Leader (Emmonak Leader LLC)	Trawl catcher vessel (103')	75%

Table 4.18: Businesses in which a CDQ group holds 50 percent equity ownership

CDQ Group	Investment	Description	CDQ % ownership
APICDA	Atka Pride Seafoods	Shoreside processing facility	50%
APICDA	Kayux Development, LLC	St. George property development	50%
APICDA	Nelson Lagoon Storage	Vessel and gear storage	50%
APICDA	Nikolski Lodge, LLC	Sport fishing lodge	50%
APICDA	Puffin Seafoods	Shoreside processing facility	50%
BBEDC	Bristol Leader	Longline catcher/processor (167')	50%
CVRF	Silver Spray	Crab catcher vessel (116')	50%
NSEDC	Alaskan Beauty	Crab catcher vessel (97')	50%
NSEDC	Glacier Fish Company	Management company for 2 trawl c/ps, one longline c/p; salt cod processing facility	50%
NSEDC	North Pacific	Crab catcher vessel (97')	50%
NSEDC	Ocean Olympic	Crab catcher vessel (155.7')	50%

Table 4.19: Businesses in which a CDQ group holds less than 50 percent equity ownership

CDQ Group	Investment	Description	CDQ % ownership
APICDA	Farwest Leader (AVI)	Crab catcher vessel (105')	25%
APICDA	Bering Prowler	Longline catcher/processor (124')	25%
APICDA	Golden Dawn	Trawl/pot catcher vessel (149')	25%
APICDA	Prowler	Longline catcher/processor (115')	25%
APICDA	Ocean Prowler	Longline catcher/processor (155')	20%
APICDA	Starbound	Trawl Catcher/Processor (240')	20%
BBEDC	Bristol Mariner	Crab catcher vessel (125')	45%
BBEDC	Nordic Mariner	Crab catcher vessel (121')	45%
BBEDC	Northern Mariner	Crab catcher vessel (110')	45%
BBEDC	Cascade Mariner	Crab catcher vessel (100')	40%
BBEDC	Arctic Fjord	Trawl catcher/processor (275')	30%
BBEDC	Neahkanie	Trawl Catcher Vessel (110')	30%
CBSFA	Ocean Cape	Crab catcher vessel (98')	35%
CBSFA	Zolotoi	Crab catcher vessel (98')	20%
CBSFA	American Seafoods	7 trawl catcher/processors	3.47%
CVRF	Ocean Harvester	Longline catcher vessel (72')	45%
CVRF	Arolik River Sportfishing	Sportfish guiding	33%
CVRF	American Seafoods	7 trawl catcher/processors	22.67%
CVRF	Cape Horn	Trawl catcher/processor	20.6%
CVRF	Ocean Prowler	Longline catcher/processor (155')	20%
YDFDA	Golden Alaska Seafoods	Mothership	19.6%

## **Four Alternatives**

**Alternative 1: No action.**

**Alternative 2: Oversight extends to subsidiaries  
With four options for defining which  
subsidiaries are subject to oversight.**

**Alternative 3: Oversight applies only to the CDQ  
group (the non-profit corporation).**

**Alternative 4: Oversight applies only to the CDQ  
groups' expenditures of royalty revenues.**

5

## **Alt. 2: Oversight extends to subsidiaries**

**Option 1: 50% or more ownership by CDQ group and  
effective management control**

**Option 2: More than 50% ownership by CDQ group**

**Option 3: 51% or more ownership by CDQ group**

**Option 4: 100% owned businesses and any subsidiary  
created for investment of CDQ assets or management  
of other for-profit investments.**

6

### Potential Benefits of Extending Oversight to Subsidiaries under Alt. 2

- CDQ groups use the subsidiaries to provide benefits to the communities through revenue that is used for other CDQ projects or through employment.
- State believes that oversight of both the CDQ groups and the subsidiaries they control is necessary to ensure that CDQ assets are being used to benefit the communities.
- Requiring prior approval reduces need for after-the-fact enforcement or addressing problems through CDQ allocations.

### Potential Benefits (cont.)

- Before approving significant investments, State determines whether
  - > investment consistent with purpose of program
  - > will provide benefits to at least one community.
  - > adequate research has been prepared,
  - > the investment meets the CDQ group's investment guidelines, and
  - > investment decision was made by the board of directors (who represent the communities).
- Raising threshold to \$250,000 would reduce investments that require substantial amendments.



### Potential Negative Impacts of Extending Oversight to Subsidiaries under Alt. 2

- Doesn't provide CDQ groups with the authority and autonomy that some groups seek. Some groups resent what they believe is unnecessary interference by government.
- Requires additional information to be submitted.
- May discourage potential partners from allowing CDQ groups to buy controlling interest in larger fishing companies because of uncertainty associated with government oversight.

9

### Alternative 2, Option 1

- would require prior approval for significant investments by the subsidiaries listed in Table 4.17 (CDQ group owns >50%).
- Would also apply oversight to businesses in Table 4.18 (=50%) if the CDQ group had control of these businesses.
- Review of audited financial statements indicate that none of the CDQ groups have effective management control of the 50% owned businesses.

10

### Alternative 2, Option 2

- would require prior approval for significant investments by the subsidiaries that the CDQ group owns more than 50 percent of.
- includes all subsidiaries listed in Table 4.17
- these subsidiaries are controlled by the CDQ group
- consistent with AFA definition of "control"
- includes the wholly-owned management subsidiaries and fisheries-related businesses

11

### Alternative 2, Option 3

- would apply oversight to the subsidiaries that the CDQ group owned 51 percent or more of.
- Requested as an option by Council at April meeting
- Similar to Option 2, but would exclude any subsidiaries that a CDQ group owned between 50% and 51% of.
- Analysts added Option 2 (>50%) in case it better represented Council's intent.

12

### Alternative 2, Option 4

Would require prior approval for significant investments by two categories of subsidiaries:

(1) any subsidiary created for management and investment of CDQ assets, regardless of the level of ownership by the CDQ group

- > examples are first five subs in Table 4.17
- > all of these are 100% owned by CDQ group

(2) any subsidiary 100% owned by a CDQ group

- > includes existing fishing businesses or new for-profit businesses created by the CDQ group

13

### Alternative 3

- Would apply requirements for prior review and approval of significant investments only to the CDQ group itself (the non-profit corporation).

- The CDQ group would not be required to obtain prior approval for significant investments by any of its subsidiaries, including those 100% owned by the group.

14

### Impacts of Alternative 3

- CDQ group could transfer assets to subsidiaries and make investments that would not be subject to review by State and NMFS.
- Govt. could still collect information about subsidiaries.
- State and NMFS would review groups' and subsidiaries' performance in allocation process and could reduce allocations for significant negative performance.

15

### Alternative 4

- Represents intent of H.R. 553
- Would apply oversight only to investments by CDQ groups using royalty revenue (71% of revenues in 2000)
- Would not apply oversight to any subsidiaries or to expenditures by CDQ group of non-royalty revenue.
- State and NMFS would review groups' and subsidiaries' performance in allocation process and could reduce allocations for significant negative performance.

16

#### Impacts of Alternative 4

- Provides maximum autonomy to CDQ group for deciding how to spend CDQ revenues and how to provide benefits to communities.
- Would require additional reporting on source of revenue used for investments (track royalty revenue separately from other revenues).
- State and NMFS would still be able to review groups' and subsidiaries' performance in allocation process and could reduce allocations for significant negative performance.

C-4

# North Pacific Fishery Management Council

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Pages 78, 83, 86 and 88 were inadvertently left out of Amendment 71.  
Please replace pages 77-88 with the attached pages.

## PUBLIC REVIEW DRAFT

In addition, Alternative 1 would maintain the current NMFS regulations that specify requirements for the State of Alaska in the daily management activities of the CDQ program. These include conducting the CDQ allocation process, specifying in regulation the necessary contents of the CDPs and the process for amending the CDPs, and the submission of periodic reports. The NMFS regulations are consistent with the FMP and early documents establishing the CDQ Program which make it clear that the State of Alaska was to have a primary role in determining CDQ allocations and managing the economic development aspects of the CDQ Program. Alternative 1 would maintain the roles of government oversight that are implicit in the requirements and structure currently outlined in the BSAI FMP and regulations.

It is important to note that the current oversight role of government is not identified any more explicitly in regulation than is described above. While the Federal and State regulations describe the daily management duties of the State and the role of government in the allocation process, there is nothing in regulation that identifies the broad responsibilities of the government, for instance, to ensure that the CDQ communities benefit from the program. In effect, the Federal regulations do not explain why government oversight is necessary, nor do they describe the services government provides to the CDQ Program overall. It may be necessary, in the context of this issue, to reflect on what benefits are realized by requiring the current level of government oversight, and whether this system should be modified to better meet the goals of the program as it evolves. The main concern under this issue is related to the current level of oversight the government has in the *business* decisions of the CDQ groups. There is a question whether that level of oversight is justified and necessary and a concern that the elements of government responsibility are not specifically identified in regulation.

Government oversight may also be useful in that it helps to validate the non-profit tax status of the CDQ groups. The CDQ groups are non-profit organizations, and yet some activities and investments in their overall investment strategies are in for-profit businesses. Part of the government's implicit role is then to ensure that the groups are undertaking activities for the purpose of a non-profit community economic development organization. The condition of government oversight may help the groups to prove that they are operating for the purpose in which they have stated in their applications for non-profit status.

The NRC report (1999a) provides additional insight regarding the design of the oversight system in the CDQ Program. The NRC report states:

*"The structure of the CDQ portion of the system was influenced by Alaska's experience with village and regional corporations created by the Alaska Native Claims Settlement Act (ANCSA). In its structure, ANCSA created both for-profit and nonprofit corporations, and some of these corporations experienced severe business difficulties. The system of oversight designed for the CDQ Program was motivated, in part, by a desire to avoid these problems that developed with the ANCSA corporations." (p. 84)*

Since one of the motivations for the CDQ Program was the high level of poverty in the eligible communities, the supervision and oversight of the groups' business decisions by the State was considered a reasonable way to counteract the lack of business experience in the communities at the outset of the program. The report goes on to say:

*"The oversight of the CDQ groups by the State provides a way for difficulties in the management of any one of the six groups to be addressed. This feature of the CDQ Program distinguishes it from the preceding economic development effort under the Alaska Native Claims Settlement Act. The fact that the CDQ groups are not individual membership corporations also distinguishes this program from the ANCSA corporations." (p. 94)*

## PUBLIC REVIEW DRAFT

The State is responsible for reviewing the CDPs, applying the criteria in State regulations, and making a recommendation to the Secretary on the allocations to each CDQ group. The NRC report questions whether the overriding goal of government oversight (the State role, in this case) is to provide an equitable division of the quota allocated to the communities or to provide a check upon possible mismanagement (e.g., poor investments, misallocation of royalty payments) by the CDQ groups. The NRC states that it appears that the system is working as a mix of these two goals: the allocation process is intended to focus on an equitable distribution of quota, but the procedures in place for developing a CDP and the actual evaluation criteria can be used to serve the purpose of minimizing potential mismanagement. The NRC also notes that in its desire to prevent mismanagement, the State of Alaska uses its oversight powers to induce better performance (p. 90).

Whether or not the current system represents an appropriate application of government oversight is difficult to determine. Several of the CDQ groups have expressed concern with the ambiguity regarding the current limits to government oversight and would like a much more limited role for government in the CDQ Program. Because neither the BSAI FMP nor the Federal regulations specifically identify the limits to government oversight, several of the CDQ groups have expressed significant confusion and frustration with the allocation process, citing a lack of consistency in the application of government oversight of the CDQ projects. This confusion will likely continue under the status quo.

### **Alternative 2 - Amend the BSAI FMP to add role of government in administration and oversight of the economic development aspects of the CDQ Program**

Alternative 2 would amend the BSAI FMP to specifically identify elements of the government's responsibility for administration and oversight of the economic development aspects of the CDQ Program. Under Alternative 2, government oversight of the program and the CDQ groups would be limited by the following purposes:

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

Alternative 2 proposes to limit the government's oversight responsibility to the five elements listed above. Note that Issue 6, which addresses whether government oversight should apply to businesses owned by the CDQ groups directly related to this issue. Should the Council decide that government oversight should apply to the groups' subsidiaries, the responsibilities determined under this issue would apply.

The State of Alaska was consulted in order to determine whether the duties described above constitute new government responsibilities or whether they detract from the State's current oversight role. The State confirms that Alternative 2 essentially restates the compliance requirements currently being conducted by the State.



## PUBLIC REVIEW DRAFT

Thus, it does not significantly change the practical role of government oversight in the CDQ Program. Note however that the current oversight responsibilities are embedded in various State regulations, while the list under Alternative 2 would be added to the BSAI FMP and implemented through Federal regulations. Any State regulations authorizing State oversight would need to conform with both the BSAI FMP and Federal regulations. Thus, the primary effect of Alternative 2 is to clarify the government's oversight responsibilities in Federal regulations.

The State (DCED) provided information to clarify the responsibilities proposed under Alternative 2 and to identify the current State regulations that authorize these requirements. The following text describes the six elements of the proposed government role and the mechanisms the State currently uses to accomplish these responsibilities:

### **1. *Ensure community involvement in decision making***

*Community involvement in a CDP is an important component of a CDQ group's compliance with the overall mission of the CDQ program. The state requires CDQ groups to demonstrate, through a variety of regulatory requirements that every community involved in a CDQ group is in full support of a proposed CDP.*

*Per 6 AAC 93.025(7)(b) communities must provide a statement of support from the governing body of each community that the organization represents. The statement of support may be a copy of a resolution, letter, or other appropriate expression of support. 6AAC 93.030 requires the CDQ team to perform an initial evaluation of a proposed CDP to determine whether the CDP is complete. Under this requirement, several proposed CDPs, during the initial phase of the 2001-2002 CDP application cycle, were required to provide a statement of support from each community before their CDP would be accepted as being complete.*

*Per 6 AAC 93.017 (CDQ Program Standards), a CDP must provide specific and measurable benefits to each community participating in a CDP, and a proposed CDP must have the support of all participating communities.*

*Per AAC 93.050, CDQ groups are also required to perform regular and meaningful outreach efforts to member communities, which must be detailed in a proposed CDP. Groups must include a description of community outreach activities in the quarterly reports, which are verified in the annual audits. 6 AAC 93.025 requires that CDQ communities provide evidence that an applicant has developed an effective outreach program to keep participating communities informed about the CDQ group's activities and to facilitate community input throughout the course of the CDP.*

### **2. *Detect and prevent misuse of assets through fraud, dishonesty, or conflict or interest***

*CDQ groups, through quarterly reports and the annual audit, are required to keep the state informed on all non-profit and for-profit activities. 6 AAC 93.050 requires that the quarterly reports be subject to an independent audit, performed by a reputable accounting firm. The CDQ group's selection of an accounting firm is subject to the CDQ team approval. However, it should be noted that auditors perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Auditors do not have the responsibility to examine the effectiveness of internal control and therefore do not provide assurance on internal control. Accounting estimates are prepared by the CDQ groups and are used by the auditors as basis of fact in evaluating financial statements.*

PUBLIC REVIEW DRAFT

*Per 6 AAC 93.050, CDQ groups are required to provide comprehensive financial statements in quarterly reports and annual audits, including a consolidated balance sheet with an income statement that clearly identifies revenues and expenditures by CDQ project. Groups are also required to submit financial statements for the CDQ group's subsidiaries and to provide all contractual service arrangements dealing with legal, lobbying, audit, accounting, allocation management, investment research, fund management and similar services. Annual audits must include the same financial statements and in addition, include a report that indicates whether the CDQ group is meeting the milestones and objectives of its CDP. In addition, with the exception of fund and cash management of CDQ projects, budget reconciliation reports between all CDQ projects and administrative budgets, including actual expenditures must be provided.*

**3. *Ensure that internal investment criteria and policies are established and followed***

*CDQ groups must include, in a proposed CDP, guidelines that describe the investment parameters, including financial rate of return, that are applicable to all investment decisions undertaken by the organization. Business transactions must comply with the investment parameters set forth by these guidelines in the CDP, including infrastructure projects and fund and cash management projects. Groups also have individual milestones that describe specific performance aspects of for-profit and non-profit investments. Milestones are reviewed for compliance by the state, and by an independent auditor during the annual audit process, which is a requirement of the state.*

*Generally, any investment activity that takes place after initial approval of a CDP, whether proposed or active, requires a substantial amendment to a CDP. During the amendment approval process, the state uses the group's internal guidelines to gauge the future performance of the prospective investment. In addition, during the allocation process, internal investment guidelines provide a benchmark for analysis of the actual performance of an investment.*

*6 AAC 93.017 requires that CDQ groups exercise a level of due diligence that reflects the value of an investment, the risk involved, and the type of project. CDQ groups are also required to demonstrate that a reasonable likelihood exists that a for-profit CDQ project will earn a financial return. Furthermore, state regulations require that CDQ groups engage in investment activity only after it has been demonstrated that legal and financial risk has been minimized.*

**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***

*Please see number three.*

**5. *Ensure that training, employment, and education benefits are being provided to the communities and residents.***

*The State believes that training, employment and education benefits are the cornerstone of the CDQ program. The CDQ program in large part is about economic development and creating self-sustaining local economies in CDQ-eligible communities in western Alaska. An important component of this objective is the appropriate development of local human resources. Before any amendment to the CDP is approved by the State, CDQ groups must demonstrate how the change to the CDP achieves the mission of providing local residents with the appropriate skills necessary to conduct fisheries and other job related activities.*

PUBLIC REVIEW DRAFT

Per 6 AAC 93.040, Final Evaluations Of Proposed CDP's, CDQ Groups must provide information in their CDP relative to:

- (8) *The experience of the applicant's industry partners, if any.*
- (9) *The applicant's CDQ projects for employment, education, and training that provide career track opportunities.*

*The state requires that the CDP be a working document that is updated on a regular basis. CDQ groups are required to provide quarterly and annual reports on the progress of all employment, training and education programs. Because the program is expanding at a rapid rate and CDQ-related benefits are becoming increasingly multi-faceted, the state has worked with the CDQ groups to ensure that reporting requirements are adequate for the groups to distinguish and report the comprehensive nature of benefits being provided to regional residents.*

*The state CDQ groups are required in 6 AAC 93.050 to provide year-to-date data in quarterly and annual reports. The regulation reads:*

- (1) Information describing how, during the period covered by the report, the CDP group has met the milestones and objectives of the CDP as set out in the CDP.*
- (4) Complete year-to-date data regarding training, education, and employment under the CDP, provided in a formatted specified by the CDQ team.*
- (6) Any other information that the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program.*

- 6. ***Ensure that the CDQ Program is providing benefits to each CDQ community and meeting the goals and purpose of the program.***

*The state believes that the benefits being provided to CDQ communities are a primary component of government involvement in the oversight of the CDQ program. In 1999, the state created in regulation, the CDQ Program Standards, 6 AAC 93.017. This established a framework for specific guidelines for the conduct of all not-for-profit and for-profit activities in a CDP, including the requirement that a CDP provides specific and measurable benefits to each community participating in a CDP. The CDQ Program Standards ensure that all activity undertaken by a CDQ group must adhere to the premise that the overriding purpose of the program is to provide benefits to CDQ communities and their residents.*

The discussion provided by the State focuses on the State regulations, primarily the program standards (6 AAC 93.017), that outline the requirements of the CDQ groups with respect to the CDPs. These are requirements that the State feels are necessary to carry out the State's role under Federal regulations, and they correspond generally to the government duties as proposed in Alternative 2. However, there is not currently a section in State or Federal regulations that describes the overall *responsibilities* of the government—the purpose of which would be to drive the *requirements* of the program. The program may benefit from explicitly identifying in regulation the limits to and reasons for government oversight, as proposed under Alternative 2. These government responsibilities would guide the implementation of the program, meaning that any requirement of the CDQ Program would need to be tied to the overall responsibilities. The government could not establish program requirements that would go beyond the needs of the government in performing these duties.

## PUBLIC REVIEW DRAFT

While the government's role in the program is not explicitly identified in regulation, the State's assessment of the proposed government responsibilities under Alternative 2 indicates that this alternative does not represent a scaled back role for government; rather it serves to clarify the current role and provide a more concise list of government responsibilities. In addition, the primary goal of government oversight as proposed under Alternative 2 appears to be to guard against mismanagement of the CDQ assets. This is consistent with the NRC's assessment of the program. The NRC noted that the purpose of government oversight is unclear and questioned whether the overriding goal of government oversight is to provide an equitable division of quota allocated to communities or to provide a check upon possible mismanagement. The NRC asserted that the system was working as mix of these two goals, and while difficult to assess after such a short time period, appeared to agree that the minimum precautions taken by the government, such as the completion of due diligence procedures, are both necessary and appropriate. The risk of micro-management of the CDQ groups by the State was noted by the NRC but it did not assess whether or not this is a serious problem (NRC 1999).

Because the proposed list under Alternative 2 mirrors the current responsibilities undertaken by the State, the impact of Alternative 2 would be limited. At most, it would assist the CDQ groups in understanding the limits to government oversight and help to ensure that these limits are applied consistently among the CDQ groups' activities. In effect, it would serve to limit the government authority to the roles described in the list above. If the government is performing an oversight role that is beyond the duties described in the list, the CDQ groups would be able to reference Federal regulations to propose to limit that authority. This may be a very important effect with regard to controlling the ability of the State to use their oversight authority in the CDQ Program to promote general State fisheries policy. There has been concern among the CDQ groups that the State is able to use the CDQ Program as a means to promote general fisheries policy, which directly affects the type of investments the CDQ groups are allowed to undertake. The phrase "government oversight of the program and the CDQ groups *would be limited* by the following purposes" conveys this limitation under Alternative 2; neither the Federal nor State government would be allowed to extend their authority beyond the responsibilities proposed in this list. There is, however, no specific provision proposed that would explicitly prohibit the government from using the program to promote its fisheries policy.

Note that neither Alternative 1 nor Alternative 2 reduce the role of government oversight to a notable extent. Both of the alternatives would continue the current government role, the difference is that Alternative 2 would clarify that role in Federal regulations.

## PUBLIC REVIEW DRAFT

### NMFS Recommendations on Alternative 2:

NMFS recommends that the Council consider reorganizing of the elements of government oversight in Alternative 2, as follows:

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

1. Ensure that the CDQ Program is providing benefits to each CDQ community and meeting the goals and purpose of the program.
2. Detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest;
3. Ensure community involvement in decision-making;
4. Ensure that internal investment criteria and policies are established and followed;
5. 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
6. Ensure that training, employment, and education benefits are being provided to the communities and residents.

This suggested revision to Alternative 2 places the most general and important government oversight responsibilities at the top of the list. Those are the oversight responsibilities associated with providing benefits to the eligible communities, ensuring that the goals and purpose of the program are met, and monitoring for misuse of assets. These three oversight responsibilities all are related to each other and to the fundamental oversight responsibilities that are implied in the MSA. NMFS is responsible under the MSA to establish the CDQ program, allocate quota to the program, and limit participation to the eligible communities. Implicit in the MSA is the responsibility to ensure that the benefits of the CDQ allocations are provided to the eligible communities. The Council, State, and NMFS established the CDQ groups as the managing organizations for the CDQ allocations. Any misuse of assets by the staff or board of directors would undermine the requirement to provide benefits to the eligible communities.

The MSA currently does not include a statement of the goals and purpose of the CDQ Program, other than to provide benefits to the eligible communities. However, NMFS regulations do include the following statement of the goals and purpose of the CDQ Program 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.*

Under the current regulations, NMFS is responsible to ensure that the goals and purpose of the CDQ Program are being met through the CDQ allocations and the administration of the economic development aspects of the program. In addition, if the Council recommends Alternative 2 as the preferred alternative, one of the specific government oversight responsibilities would be to ensure that these goals and purpose are being met. **Therefore, NMFS also recommends that the Council review the goals and purpose of the program and either affirm that they continue to represent the Council's intent or recommend revisions.**

## PUBLIC REVIEW DRAFT

The goals and purpose of the CDQ Program also should be specifically stated in the FMP in exactly the same words as are used in NMFS regulations, to avoid any confusion. Currently, the wording of the goals and purpose in the FMP is slightly different than the wording of NMFS regulations (see both texts in section 1.2.1 on page 3). The most important issue to consider in the statement of the goals and purpose of the CDQ program is its focus on using CDQ allocations to support fisheries-related economic development versus general economic development. This issue is discussed in more detail in Issue 7.

The remaining four elements of government oversight responsibility proposed in Alternative 2 are more specific and focused on how the government should ensure that benefits are being provided to the eligible communities and monitor the financial and managerial performance of the CDQ groups. These oversight responsibilities would specifically instruct NMFS and the State to monitor to ensure that the community representatives on the CDQ groups' boards of directors are involved in decision making, that the board develops investment criteria and uses it as a basis for decision making, that the board conducts research before making an investment decision, and that the investment decisions by the board provide training, employment, and education to residents of the eligible communities. If the Council supports these oversight responsibilities, it would be affirming the basis of the oversight and monitoring program currently described in NMFS and State regulations.

### KPMG Comments on Role of Government in Oversight

NMFS requested KPMG to provide comments on the oversight responsibility related to detecting and preventing the misuse of assets by fraud. Specifically, NMFS asked KPMG the following questions:

- What tools or processes are available, or should be, to government managers to fulfill this proposed responsibility?
- Is it sufficient to require independently audited financial statements? What types of problems may not be identified by auditors?
- Provide options for additional requirements that could be made to increase the information available from the annual audits or make it more useful to government managers.

*{KPMG provided the following information.}*

### Fraud Detection Through Financial Audits

Having audited financial statements for a CDQ group is not a guarantee that fraudulent activity in an organization would be discovered and disclosed. Financial audits are designed to assess the risk of fraud that results in a material misstatement of the financial statements. As written in the professional standards for auditors, "The auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud."

In the audit process, auditors look for risk factors for fraud as they gain an understanding of the internal controls in an organization. The types of fraud they would specifically look for would be fraud that would cause material misstatement of the financial statements. Those types of fraud would be fraudulent financial reporting and misappropriation (theft or embezzlement) of material assets. It should be noted that financial audits are not the primary way fraud is usually discovered in an organization (the main reasons fraud is discovered are listed in the section "KPMG Fraud Survey").

## PUBLIC REVIEW DRAFT

Examples of the risk factors considered are:

- The motivation for management to engage in fraudulent financial reporting.  
The motivation for management to engage in fraudulent financial reporting can come from pressure to achieve unrealistic financial results when management compensation is based on those results.
- A failure by management to display and communicate an appropriate attitude regarding internal control and the financial reporting process.  
Does management have an ineffective means of communicating and supporting the entity's values or ethics, or communication of inappropriate values or ethics?
- Adverse consequences on significant pending transactions, such as a business combination or contract award, if poor financial results are reported.
- Risks related to misappropriation of assets.  
An example of this risk is not having adequate record keeping for assets subject to misappropriation. Or not having segregation of duties or independent checks for employees handling cash or investments that are subject to misappropriation

Auditors look for conditions that may signal the risk of fraud, such as missing documents, inventory, or physical assets of significant magnitude. The identification of risk factors may cause the auditor to perform more testing during the audit. The actual discovery of material fraud must be reported if discovered in an audit. If the risk factors are so great that the auditor cannot offer an opinion on the financial statements due to fraudulent financial reporting or misappropriation of assets, they would need to withdraw from the engagement and communicate the problems to management.

Some reasons that fraud may not be discovered during an audit could be:

- Document falsification, if theft of cash is concealed through forging signatures on checks it may not be detected. Auditors are not trained or expected to be experts in forgery.
- Collusion among management, employees, and third parties. An auditor may go to a third party for confirmation of a transaction. If the third party is in collusion with the employee or manager engaged in fraud, they can present false evidence that a transaction took place.

Putting controls in place in a non-profit organization to reduce the risk of fraud requires a different type of diligence than what exists in a for-profit corporation. In a for-profit organization the owners or shareholders are motivated to maximize profits and will engage in fraud prevention steps to ensure their share of profits are protected.

In a non-profit organization if fraud occurs and there is a loss to the organization it will impact the ability of the organization to deliver services. The people receiving those services have the most at stake in any fraud prevention program but usually are not involved in its design or oversight.

## PUBLIC REVIEW DRAFT

### Types of Fraud

Types of fraud that can occur in an organization are generally categorized as follows:

Embezzlement: Embezzlement is where individuals are stealing cash or other assets from the organization. This is one of the most frequent types of fraud occurrence. Cash can be embezzled from an organization by setting up fraudulent vendors, forging checks, check kiting, or abuse of expense accounts. In small organizations it can be difficult to separate duties so there are adequate controls over cash disbursement. Frequently individuals will steal small amounts of money over a long period of time to avoid detection. The small losses can add up to become quite large however.

Fraudulent Financial Statements: The generation of false financial information to cover up the true financial situation of an organization. This involves three types of intentional misstatements:

- Manipulation, falsification, or alteration of accounting records or supporting documents from which financial statements are prepared.
- Misrepresentation in, or intentional omission from, the financial statements of events, transactions, or other significant information.
- Intentional misapplication of accounting principles relating to amounts, classification, manner of presentation, or disclosure.

Bribery: Bribery exists if someone in the organization is either offering or accepting money for preferential treatment. Bribery, or kickbacks, can be involved where contracts for services or purchases orders are given to vendors based on bribes they have provided to those in charge of the purchasing decisions. The impact to the financial statements could include higher costs for materials or supplies that otherwise would have been paid.

Bribery could also be involved where investments in poorly performing companies were made that do not benefit the organization.

Inventory Theft: Theft of assets that were to be used by the organization. For the CDQ groups a related type of fraud would be if the companies harvesting the allocation were not reporting all of the royalty volumes caught.

Payroll Fraud: Generating false timesheets to be paid for time not worked.

Other types of fraud that exist that may or may not be discovered as part of the normal risk assessment in an audit are:

Conflict of Interest - having a undisclosed financial interest in a related party to the organization. The key here is disclosure, it is not necessarily fraudulent for any employee or vendor to have a financial relationship with another organization doing business with the CDQ group. But any such relationships need to be disclosed so the proper steps can be taken to ensure that there is appropriate separation of duties in any financial decisions with those organizations.

Bootlegging and Drugs - dealing in illegal drugs or alcohol for profit.



## PUBLIC REVIEW DRAFT

Tax Fraud - evading taxes by filing a fraudulent tax return.

Insurance Claims fraud - making a false representation to obtain an insurance payout.

### **KPMG Fraud Survey**

KPMG conducts a periodic fraud survey that includes 5,000 organizations representing businesses, Federal agencies, and local governments. The most recent survey (1998) asked these organizations about fraud occurrences, the existence of policies and internal controls, and what they are doing to prevent fraud.

Some of the top steps in fraud prevention are:

- Establish a code of conduct for employees and management
- Conduct reference checks on new employees
- Review and improve internal controls
- Conduct fraud audits

Sixty-two percent of respondents said they were aware that fraud occurred in their organizations in the last year. Some of the types of fraud that occurred most frequently were:

- Check fraud (forgery and counterfeiting)
- False invoices and phantom vendors
- Expense account abuse
- Inventory theft

Poor internal controls were noted as the top reason fraud was allowed to take place. Second was management override of internal controls. The third reason was collusion between employees and third parties.

The top reason for the discovery of the fraud was notification by an employee. Second was the presence of internal controls, and third was an internal auditor review. Thirty-seven percent of the time the discovery of fraud was by accident.

The survey highlights the fact that having adequate internal controls not only prevents but also helps to discover fraud when it occurs. Having an audit of the financial statement that requires the auditor to review and test internal controls could be beneficial in preventing fraud. For government to minimize the risk of fraud in the CDQ groups, the first action would be to have the CDQ group management explain what internal controls are in place for fraud prevention, and how actively those controls are monitored.

### **Fraud and Government Oversight**

Oversight tools to reduce the risk of fraud should be composed of the following:

#### **Annual financial audits**

At a minimum government oversight needs to ensure that annual financial audits are performed and that any concerns raised by auditors are addressed. The financial audit would provide reasonable assurance that internal controls regarding the financial statements were in place. Government oversight should consider adding in CDQ regulations the need to require auditors to review and test internal controls as part of the

## PUBLIC REVIEW DRAFT

financial statement audit. The limitations of fraud detection through the financial audits should be understood.

### Understanding of CDO group structure

The discussion of the management team, and board performance and training, in the CDP application should include whether or not any specific fraud detection and prevention training was attended. The evaluation of management should include whether or not the management structure consolidates too much power within a small group of people with no compensating oversight by the board of directors. Would the employees of an organization have a way to communicate their concern if they suspect fraud, or the high potential for fraud, has occurred?

### Discussions with CDO group management regarding fraud prevention and detection

The most important part of fraud prevention is having a management team that understands the importance of internal controls in preventing fraud. Management needs to set expectations for employees that those controls will be followed. The CDQ group boards also need to understand the internal controls in place and whether or not they are being followed. Government oversight could include requiring a discussion in the the CDPs of management's understanding of fraud prevention steps taken in their organizations. Discussions could also be held in person. Management should also have an understanding of fraud prevention in their consolidated subsidiaries.

We realize that this is often a difficult and emotional subject for any organization to discuss, and for this reason it is often avoided until an actual fraud situation is discovered.

*(End of KPMG comments)*

### **CDQ Policy Committee Recommendations on Issue 3**

The CDQ Policy Committee developed and recommended the first four responsibilities under Alternative 2. (#5 and #6 were added by the Council at the December 2001 meeting.) The majority of the committee supported the proposal to limit and specify government oversight in regulation as noted above. The motion passed with one objection (Moller, APICDA) on the basis that Alternative 2 effectively reflects the current oversight responsibilities of the State even though they are not specified in regulation. APICDA supported a very limited government oversight role, applied to the program as whole, and not to each individual group.

W170

C-4 Supp



## CENTRAL BERING SEA FISHERMEN'S ASSOCIATION

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

May 28, 2002

To: Chris Oliver, Executive Director  
Members of the Council and AP  
North Pacific Fishery Management Council

From: Phillip Lestenkof, President  
CBSFA

COMMENTS OF THE  
CENTRAL BERING SEA FISHERMEN'S ASSOCIATION  
TO THE PUBLIC REVIEW DRAFT ANALYSIS  
FOR PROPOSED AMENDMENT 71  
to the FMP for BSAI Groundfish

**ISSUE 1: Determine the process through which CDQ allocations are made**

There has been a fair degree of unanimity that the allocations process must be made more "transparent." It is also clear that one of the key ingredients in making the process more transparent is by regulatory revisions. Current regulations are extremely rudimentary and do not attempt to deal with the transparency issue. Although Judge Holland validated the current process in the APICDA lawsuit, he described the current regulatory framework as "admittedly sparse."

The staff has concluded at p. 42 of the analysis that "NMFS regulations must be improved to describe how NMFS will receive and consider comments or challenges to the State's CDQ allocation recommendations and to include a process through which the CDQ groups can appeal NMFS's initial administrative determination on CDQ allocations".

CBSFA strongly agrees with the staff on this point. For this reason, CBSFA supports Alternative 2 under Issue 1, because this is the alternative that proposes to revise the NMFS regulations to provide for the above.

Since the development of a scorecard has been proposed, CBSFA will make a comment, even though it does not appear as an alternative. A scorecard could be helpful in

promoting objectivity and transparency in the CDQ allocation process. However, in order to be beneficial, a scorecard must be carefully designed to reduce subjectivity as much as possible. It must also promote accountability: the card must be designed so that those doing the scoring will be required to explain and justify the scores.

The current treatment of confidentiality also needs to be revised. There should be a regulation defining what is confidential, and the definition should be as restrictive as possible. State decisions that are based on confidential information are essentially unaccountable.

## **ISSUE 2: Periodic or Long-Term CDQ Allocations**

CBSFA believes that the current periodic, one and two year, competitive allocation process has many negative side effects. Since the allocations are a zero sum game, each CDQ group has an incentive to work against the other groups every year.

Instead, the CDQ groups should be provided with an incentive to work together, to cooperate in ways that produce win-win situations for all groups. But so long as the system is a periodic, competitive process, such cooperation is not in the best interests of each group.

One way of reducing the destructive aspects of the competitive process would be to have a fixed allocation cycle as in Alternative 2 under Issue 2. Such a system would have the added benefit of giving each group some certainty to its business plans. Currently, when income changes in one and two year increments, it is very difficult to plan for economic development projects that will take more than two years to complete. CBSFA supports Alternative 2, Option 2 under Issue 2, a 3-year allocation cycle.

CBSFA recognizes that in a fixed allocation cycle, there must be a way for oversight to correct potential mismanagement by a group. This could be achieved through the escape clause listed as Suboption 2 under Issue 2, which CBSFA supports.

Any system under the fixed allocation cycle will need to insure that the initial allocations are done in a fair way, and with a set of criteria that are properly reflective of the purposes of the CDQ program. CBSFA will discuss this issue further in its comments regarding a foundation quota under Issue 4.

## **ISSUE 3: Define the role of government in oversight of the CDQ Program**

CBSFA supports Alternative 2 under Issue 3. CBSFA believes that it is important to define the role of government oversight. If the role of the government is not defined within definite limits, there is always the danger that, for the best of motives, the government will expand its role and direct the CDQ program in directions that seem good in Juneau but are out of touch with the needs and desires of the people in Western Alaska.

#### **ISSUE 4: CDQ Allocation Process - Type of Quotas**

CBSFA supports Alternative 2, Option 1 and Suboption 1 under Issue 4, which would establish a foundation quota for pollock only. As mentioned before, a system in which the entire quota is allocated on the basis of competition between the groups discourages cooperation between the groups. The foundation quota would help to eliminate the undesirable features of an entirely competitive system.

Two important points need to be made about a foundation quota system. First, it should not be based on all the CDQ species, especially halibut. Halibut allocations are intended by current regulations to promote and support local fishery development in the CDQ communities. It is a species that is harvested using small local boats and by local residents in many CDQ communities. Spreading the CDQ Groups halibut allocations throughout the vast Bering Sea halibut areas simply will not work and will only destroy the progress made so far by some communities in developing a local halibut fleet. By contrast, pollock is ideally suited to a foundation quota system. This species provides the lion's share of the income for all of the groups, and it is an offshore fishery that does not become complicated by the local circumstances of each CDQ group. For this reason CBSFA supports Suboption 1 under Issue 4, because it limits the foundation allocation to pollock only.

Second, a foundation quota must be allocated fairly among the CDQ groups. All but one of the options under Alternative 2, Issue 4, proposes that the foundation quota be allocated on the basis of population or number of communities.

There is nothing in the CDQ regulations to suggest that allocations be made solely on the basis of number of communities. There is also no regulation that allocations should be made solely on the basis of population. Even if population is considered to be a valid criterion, it is clear that population is only one of many factors that should be considered in making an allocation. CBSFA strongly opposes an allocation process that will use only one criterion, out of several that should be used, in determining the foundation quota.

The concept of a foundation quota was first proposed in the NRC study. However, the NRC did not propose that this quota be based on only population. Although the NRC did mention population, it also mentioned "income, employment, and proximity to the fishery" as other criteria that should be used in awarding a foundation quota.

Examples of other criteria which should be included in any foundation quota allocation are: proximity to the fishery, degree of dependence on a fisheries economy in the communities within a group, and potential for development of a fisheries related economy. All of these criteria are much more closely related than population to the purpose of the CDQ program, which is, the development of an ongoing, regionally-based, fisheries-related economy in Western Alaska.

Therefore, with regard to Issue 4, CBSFA strongly supports Option 1 under Alternative 2. This is the only option that allocates a foundation quota on some basis other than population or number of communities. CBSFA also supports Suboption 1, because it limits the foundation quota to only the pollock allocation. CBSFA believes that Option 4 has serious problems because it determines the foundation quota solely by population. Accordingly, CBSFA could support Option 4 only if it were amended to add criteria other than population.

#### **ISSUE 5: CDQ Allocation Process - The Evaluation Criteria**

CBSFA strongly believes that the allocation process needs to be changed. The current process is not "transparent" enough and is subjective. Sometimes, the State will not explain the reasons for its decisions because it claims it cannot offer explanations without divulging confidential information. As a result, CDQ groups frequently are at a loss to understand why their allocations are cut, or increased, or allowed to remain the same.

Another reason why the allocation process is subjective is because there are too many evaluation criteria. There are currently 20 evaluation criteria in 6AAC93.040, and an additional 9 CDQ program standards in 6AAC93.017. The sheer number of the current criteria creates subjectivity and unaccountability in the allocation process: there are so many criteria that the State can always find a reason to justify a cut in a group's allocation even if the state wants to do so for other reasons.

For this reason, CBSFA supports Alternative 2 under Issue 5, which calls for the CDQ evaluation criteria to be revised. However, CBSFA believes that the proposed criteria listed under Alternative 2 could be improved.

For example, criteria such as number 1 in the list of the proposed new criteria, should not be worded so generally that they lose all significance. This criteria is so general in nature that it places no constraints whatsoever on the State's actions. More definitive criteria would mention some of the same factors but make it clear that population, for example, is not simply based on numbers. For example, the 500 people who live on St. Paul Island are nearly 100% dependent on a fisheries-based economy for their livelihood. Other communities may have more people, but may not be as dependent on a fisheries-based economy.

As another example, investments should not be evaluated solely on the rate of return. CDQ money that is invested in out of region fisheries is not guaranteed to improve local, onshore economic conditions, and should be given less weight than investments in local infrastructure and local fisheries development projects.

Criteria number 8 (proximity to the resource) is important because it is directly related to fisheries development in region, and as such, is closely tied to the purpose of the CDQ program. Criteria number 9 is also important for this reason.

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

CBSFA agrees with the legal opinion by NOAA GC that the NMFS regulations on the extent of oversight of the CDQ Group's subsidiaries and affiliated businesses are unclear and need to be revised. CBSFA supports Alternative 2, Option 1 under Issue 6. We agree that a group must have effective management control over its subsidiaries to be required submit financial information to the State and NMFS and to obtain prior approval for significant investments.

**ISSUE 7: Allowable Investments by CDQ Groups – Fisheries Related Projects.**

CBSFA supports Alternative 2 under Issue 7. Some groups have claimed that they no longer have sufficient fisheries related investment opportunities for all of their money. That is certainly not true for CBSFA and for some of the other groups. Until all of Western Alaska has realized its fisheries related potential, the original intent of the program should not be abandoned.

CBSFA still has significant ongoing, regionally-based, fisheries-related projects. We are in the middle of a harbor improvements project at St. Paul that includes construction of a small boat harbor to support our local fisheries, a multi-species development project and continual improvement to our local fleet and vessel support services.

Alternative 2 would preserve the original intent of the program, along with need to clarify the regulations to ratify the current practice by the groups with regard to their investment accounts, scholarships and charitable programs.

**ISSUE 8: Other CDQ Administrative Issues**

CBSFA supports Alternative 2 under Issue 8. Because of unforeseen problems that the groups could encounter while prosecuting a CDQ fishery, we agree with simplifying the quota transfer and alternative fishing plan process.



C-4  
Supplemental

May 28, 2002

David Benton, Chairman  
North Pacific Fisheries Management Council  
605 West Fourth Avenue, Suite 306  
Anchorage, AK 99501

Dear Mr. Benton:

Enclosed are Norton Sound Economic Development Corporation's comments for proposed Amendment 71, To implement policy and administrative changes to the Western Alaska Community Development Quota Program.

We would appreciate your including these comments in the supplemental packet of comments to Council members.

Thank you very much for the time you and your staff have given to this rulemaking.

Sincerely yours,

Eugene Asicksik  
President and CEO

Enclosure



# **NORTON SOUND ECONOMIC DEVELOPMENT CORPORATION**

## **Written Comments For Amendment 71**

### **To implement policy and administrative changes to the Western Alaska Community Development Quota Program**

Norton Sound Economic Development Corporation (NSEDC) submits the following comments with respect to Amendment 71 to the FMP for BSAI Groundfish.

The CDQ program provides an equitable way for western Alaskans to participate in the offshore fisheries of the Bering Sea, which in the aggregate are highly valuable. At the time of Americanization of these fisheries, these communities did not have the capital to enter them. Once other, better-capitalized entities established their presence, their market shares became entrenched and it was inequitable to expect the western Alaskans to fight their way into the market later. The CDQ program was a way to address the inequity. The National Academy of Sciences report on the CDQ program observed that the CDQ program is one more in a long series of “allocation[s] of economic opportunities.” The NAS report goes on to cite “The EEZ, the Processor Preference Amendment, the American Fisheries Promotion Act, the creation and subsequent closure of joint ventures, the individual fishing quota (IFQ) program, the inshore/offshore allocation, and the CDQ program” as a consistent theme of government-backed development.

However, what is different about the CDQ program is the extent to which the entities receiving the allocation of economic opportunity are expected to be subject to ongoing governmental oversight and control. The NAS report went on to talk about the values of self-determination as an integral component of development. This view is consistent with the federal government’s approach to rural Alaskan development, which for the past thirty years has evolved away from the BIA government agency control model to the commitment to self-determination that ANCSA best epitomizes. This

rulemaking represents an opportunity for the Council to move the CDQ program in a direction which will help the program achieve its full potential.

In that light, our comments reflect a general view that a CDQ group, having direct representation from the communities it represents, should be provided the latitude to maximize the value of its CDQ allocation for the betterment of its communities and people. This means that the range of activities which the CDQ group undertakes should be as permissive as possible, the investments that the CDQ group makes should be free to maximize value for the CDQ group, and the allocation process should not be a mechanism by which a CDQ group can potentially be required to do something different from what the CDQ group determines is in its communities' best interest .

*Issue 2) Periodic or Long Term CDQ Allocations*

The CDQ allocation process is highly time-consuming and distracts from the other activities of the CDQ group for months. In addition, the uncertainty of future cash flow from royalties (because of uncertainty of allocations) hinders longer term planning. NSEDC supports longer term allocations. Our support, however, is tempered by the concern that the allocation process is still perceived by many, including the National Academy of Sciences, as subjective. If NSEDC were ever to suffer an unfairly low allocation, longer term allocations would cause us to live with it for a longer time. In light of the above we support a three year allocation, and could support an allocation cycle greater than three years, or fixed allocations, depending on the extent to which the allocation criteria are objective, such as population and other demographic criteria.

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

We agree with staff analysis which observes that the alternatives are appropriate only if there continue to be periodic, competitive allocations among the CDQ groups. Assuming this is the case, we would support a version of Alternative 2, but the list of purposes contained in Alternative 2 needs to be clarified. It should be made clear that the policies of government entities in regard to fisheries and regional development will not supersede 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 wherewithal to develop locally based economies within the parameters set down in the FMP and by Congress. The current draft language (Alternative 2) is too broad to effectively define government oversight and limit additional policy goals of government agencies. We could support Alternative 2 with the following changes:

- Delete Purpose #1, “Ensure community involvement in decision-making”, because in most CDQ groups the communities have authorized a board of directors to represent their interest, and the board actually makes the decisions or controls any further delegation of decision-making authority. In most cases the directors are residents of the communities that the board represents. The communities control their CDQ groups through the election of directors, but it is impractical to expect a community referendum on each decision made in the CDQ program.
- Purposes 5 and 6 are unnecessary, because all of NSEDC’s communities are represented on NSEDC’s board of directors, and the board has made education, training and employment a significant priority. However, if Purposes 5 and/or 6 are adopted, the language should be clarified to say that these desirable objectives apply to a CDQ group’s activity in the aggregate and not applied on an activity-by-activity basis. Some individual activities are undertaken for a purpose other than education, training and employment, but the overall CDP definitely provides substantial education, training and employment. Some individual activities may benefit one or more communities but not necessarily all, even though the aggregate activity of the CDQ group benefits all communities. We are concerned that unless the language is deleted or clarified, these requirements may be used to deny approval of some project, activity, or investment which is desired by the communities. Possible additional language would read, “Ensure that in the aggregate, a CDP provides for....”
- Further, if a version of Purpose 6 is adopted by the Council, the language “and meeting the goals and purpose of the program” should be deleted because, in

implementation, it could be interpreted to allow governmental policy goals to supersede the priorities of the CDQ communities. The amount of debate in this rulemaking about what the goals and purposes of the program are, or were, illustrates the inherent ambiguity which would come from including such a clause.

*Issue 4) CDQ Allocation Process—Type of Quotas*

If the Council recommends a foundation quota, the only equitable foundation quota would be based upon population, and should be greater than 50% of the entire amount to be allocated.

*Issue 5) CDQ Allocation Process—The Evaluation Process*

We support reducing the number of criteria used in the evaluation process. The list of criteria is still too long. We are particularly concerned about one recent addition to the list of criteria, “Proximity to the resource.” In the past, close proximity to certain species, (e.g. halibut and some species of crab) has led to greater allocation of that species to CDQ eligible communities closest to the fishing grounds. However, it should not be added as a criterion for the larger, most valuable fisheries in which all six groups have participated. This criterion should be deleted.

The recent addition of another criterion, “The extent to which the CDP will develop a sustainable fisheries-based economy” should also be deleted, because the addition of this criterion can serve to defeat the diversification of the CDQ groups’ activities as recommended by NAS and as reflected in other issues taken up in Amendment 71.

We support Alternative 3 and could support alternative 2 with the following changes (deletions are shown with a strikethrough, and additions are underlined):

- Criterion #3 should be changed as follows: “Past performance of the CDQ group in using its CDQ allocations for ~~complying with program requirements and in~~

~~carrying out its current plan for~~ investments, service programs, infrastructure, and regional (or community) economic development.”

- Criterion #5 should be changed to “A reasonable likelihood exists that a for-profit investment of CDQ project royalties will earn a financial return to the CDQ group.”
- Criterion #7 should be changed as follows: “In areas of fisheries harvesting and processing, past performance of the CDQ group in promoting to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitat.”
- Criteria # 8 and #9 should be deleted

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

NSEDC and the other CDQ groups are making investments in companies using a portion of their CDQ royalties. This portfolio is growing. If the activities of these investments are subject to governmental oversight, this means an ever-increasing role for government—the exact opposite of self-determination.

The status quo alternative, Alternative 1, is at least a blurry regulatory playing field where the companies in which we have invested can operate effectively. Alternative 2 would for the first time expressly establish governmental oversight over companies in which CDQ groups have invested. We are very opposed to Alternative 2, which would give the government the ability to engage in prior review and approval of business decisions. The analysis of Alternative 2 at the top of page 161 correctly describes the consequence: the state and NMFS would have a greater ability to fulfill their oversight “...through day-to-day management rather than through after-the-fact enforcement actions or allocation adjustments” [underline added]. None of the recently-added options for Alternative 2 remove the negative effect Alternative 2 would have on the future of the CDQ program.

We support Alternative 4, which clarifies that oversight does not extend to the decisions of businesses owned in whole or in part by the CDQ group, when new CDQ royalty funds are not being contributed to the business or entity as part of that decision, and we oppose adoption of any regulation which grants to the oversight process the right of prior review and approval of such business decisions. This is consistent with the position taken by the Secretary of Commerce in 1992 during the promulgation of the original CDQ regulations: "The risk of making a poor business decision is inherent in virtually all businesses. It would be difficult and probably not appropriate for the Federal government to intervene in this area..." [Response to Comment 19, Federal Register 54939, November 23, 1992]

*Issue 7) Allowable investments by CDQ groups—Fisheries-related projects.*

Current program restrictions are hindering the abilities of our eligible communities to develop locally based economies. The board of directors of each CDQ group is best positioned to participate with its member communities in designing an economic development strategy and to assess which economic development requests from its communities should be funded. As a result, the board of directors of each group is best positioned to assess the appropriate percentage of its activity which should be fisheries-related. Furthermore, the appropriate percentage may differ from group to group, and it would be unproductive for NMFS to adopt a one-size-fits-all percentage to be applied to all CDQ groups.

For these reasons, we support Alternative 4. If the Council does adopt an across-the-board percentage, then we request that the limit be as flexible as possible, and that the regulation apply only to royalties and not to second-generation proceeds (i.e. from investments).

We also believe that it is appropriate for CDQ groups to make grants to its member communities from second-generation proceeds, for the communities to use for their highest and best use. It is difficult to understand opposition to payments of \$10,000, \$20,000, or even \$50,000 per community when the economies in many Western Alaska communities are so cash-starved and the source of funds is self-sustaining.

*Issue 8) Other CDQ Administrative Issues*

We support Alternative 2, options 1, 2, and 3. The three options are not exclusive of each other.

## DRAFT AP MINUTES

### ADVISORY PANEL MINUTES June 3-8, 2002 Unisea Central, Dutch Harbor, Alaska

Advisory Panel members in attendance:

Alstrom, Ragnar	Fraser, Dave
Benson, Dave	Mayhew, Tracey
Boisseau, Dave	Nelson, Hazel
Bruce, John (Chair)	Norosz, Kris
Burch, Alvin	Preston, Jim
Cross, Craig	Ridgway, Michelle
Ellis, Ben	Steele, Jeff
Enlow, Tom	Stephan, Jeff

#### C-4 CDQ

The AP recommends that the Council adopt the following alternatives and options for the eight issues contained in the analysis:

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

Alternative 2: Define the process in regulation, an expanded state hearing and comment process, but with no formal NMFS appeals process.

Issue 2: Periodic or long term CDQ allocations:

Alternative 2, Option 2, suboption 1: Set fixed 3 year allocations with possible mid-cycle adjustment for extra-ordinary circumstances.

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

Issue 3: Role of Government Oversight:

Alternative 2: Amend the BSAI FMP to specify government oversight purposes as described in the analysis.

Issue 4: CDQ allocation process - Types of quotas:

Alternative 1: No action

Issue 5: CDQ allocation process - the evaluation criteria:

Alternative 2: Publish allocation criteria in the NMFS regulations with the following changes to the criteria:

7. In areas of fisheries harvesting and processing, past performance of the CDQ group, to the extent practicable, in promoting conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

8. Apply proximity to the resource only to these species: halibut, Norton Sound red king crab, Pribilof red king crab, St. Matthew blue king crab.



**Issue 6: Extent of Government oversight:**

Alternative 4: (From HR 553) Revise NMFS regulations to clarify that oversight requirements for review and prior approval apply only to the activities of the CDQ group and do not apply to the subsidiaries or other affiliated businesses. *Motion passed 9/8.*

*The minority is supportive of making adjustments to the maturing CDQ program where it is now appropriate.*

*We believe that due in large part to conservative management and accountability to the communities, the success of the program can continue. However, Alternative 4 erodes that accountability and offers large opportunity for CDQ management changes that could bring the future of the program into question.*

*Signed: Jeff Steele, Ragnar Alstrom, Dave Boisseau, Hazel Nelson, Lance Farr, Al Burch, John Bruce, Michelle Ridgway.*

**Issue 7: Allowable investments by CDQ groups - fisheries related projects:**

Alternative 3, with the following amended option 2, suboption 1 for limits on non-fisheries related projects, and sub-option A to make Goals and Purposes primarily fisheries related: Allow investments in non-fisheries related economic development in-region projects up to 20% of the previous years' pollock royalties.

**Issue 8: Other CDQ Administrative Issues:**

Alternative 2: Simplify quota transfer and Alternative fish plan process.

*Motion passed unanimously.*

J Bandmt  
7:01P 2nd DE.

FAILS

C-4  
P. 2  
prior approval  
con. AP  
Min.

Issue 6: Extent of Government Oversight:

~~Alternative 4: (from H.R. 553)~~ Revise NMFS regulations to clarify that government oversight extends only to activities of the CDQ group that are funded by royalties from the CDQ allocations. *Motion passed 9/8.* ~~For~~ *by debt incurred by the CDQ group*

*The minority is supportive of making adjustments to the maturing CDQ Program where it is now appropriate.*

*We believe that due in large part to conservative management and accountability to the communities, the success of the program can continue. However, Alternative 4 erodes that accountability and offers large opportunity for CDQ management changes that could bring the future of the program into question.*

*Signed: Jeff Steele, Ragnar Alstrom, Dave Boisseau, Hazel Nelson, Lance Farr, Al Burch, John Bruce, Michelle Ridgway.*

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

Alternative 3, with the following amended option 2, suboption 1 for limits on non-fisheries related projects, and suboption A to make goals and purposes primarily fisheries-related. Allow investments in non-fisheries related economic development in-region projects up to 20% of the previous years' pollock royalties.

Issue 8: Other CDQ Administrative Issues:

Alternative 2: Simplify quota transfer and alternative fish plan process.

*Motion passed unanimously.*

DATE 6/06

TIME 6:00p

AGENDA ITEM G-4

**\*\*\*BALSIGER VOTES LAST ON EMERGENCY RULES**

**ROLL CALL TALLY**

	YES	NO
ANDERSON	+ ✓	✓
AUSTIN	+ ✓ ✓	✓
DR. BALSIGER (or Salveson) EMERGENCY RULE?	+ ✓ ✓ ✓	
BUNDY	✓ ✓	+ ✓
DUFFY (or Krygier)	✓ +	✓ ✓
DR. FLUHARTY	+ ✓ ✓	✓
HYDER	+ ✓ ✓	✓
MADSEN	+ ✓	✓ ✓
PENNEY	+ ✓ ✓	✓
SAMUELSEN	+ ✓	✓ ✓
BENTON	+ ✓	✓ ✓

<sup>6:00pm</sup> MOTION JB Amendment to BP Amdmt: fails 7-4

BP Amendment: passes 6-5

<sup>6:17</sup> ~~RS Main Motion~~ KD amendment: passes 8-3

+ RS Main Motion: passes 10-1 (7:27pm)



AP friendly amendment  
5:34P  
JH  
RH

6/06  
5:00 PM

RS amend to own motion  
JH  
SM  
C-4

**Samuelson Motion**  
**CDQ Program Revisions - Amendment 71**  
**June, 6 2002**

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

- ✓ **Issue 1: Determine the process through which CDQ allocations are made:**  
The council adopts Alternative 2, define the process in regulation, an expanded state hearing and comment process, but no formal appeals process.
- ✓ **Issue 2: Periodic or long term CDQ Allocations:**  
The council adopts Alternative 2, Option 2, suboption 1: Set fixed 3 year allocations with possible mid-cycle adjustments for extra-ordinary circumstances.
- ✓ Additionally, the council recommends that the regulations must be revised to reflect that suspension or termination of the CDQ allocations would be an administrative determination by NMFS and that the CDQ groups involved would be allowed an opportunity to appeal NMFS's initial administrative determination on any changes in CDQ allocations. The council also recommends removing the requirement to publish a notice in the Federal Register about suspension or termination of a CDQ allocation.
- ✓ **Issue 3: Role of Government Oversight:**  
The council adopts Alternative 2, amend the BSAI FMP to specify government oversight purposes as described in the analysis.
- ✓ **Issue 4: CDQ Allocation Process - Types of quotas:**  
The council adopts Alternative 1: No action

**Issue 5: CDQ Allocation Process - evaluation criteria:**

The council adopts Alternative 2, publish the criteria in the NMFS regulations with the following change<sup>s</sup> to the criteria:

- 7. In areas of fisheries harvesting and processing, ~~based on~~ past performance of the CDQ group, <sup>and proposed fishing plans</sup> to the extent ~~practicable~~, in promoting conservation-based fisheries by taking action that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

- 8. <sup>only to the species, Hal, NSRKC, Phib RKC, & St. Matthew BKC.</sup> Delete proximity to the resource ~~as an evaluation criteria.~~

**Issue 6: Extent of Government oversight:**

The council adopts Alternative 2, Option 2. Clarify that government oversight extends to subsidiaries <sup>controlling</sup> controlled by CDQ groups. <sup>To have effective agent control or ownership in vessel</sup> ~~a company must have 51%~~ <sup>ship in</sup>

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

The council adopts Alternative 3, with the amended option 2, suboption 1 for limits on non-fisheries related projects, and sub-option A to make the Goals and Purposes primarily fisheries related: Allow investments in non-fisheries-related economic development <sup>projects in region</sup> ~~projects~~ up to 20% of the previous years' pollock CDQ royalties. <sup>within Alaska for projects</sup>

**Issue 8: Other CDQ Administrative Issues:**

The council adopts Alternative 2, with all 3 options: Simplify quota transfer and Alternative fish plan process.

Use AP's #8

DATE 6/06

TIME 6:55p

AGENDA ITEM C-4

**\*\*\*BALSIGER VOTES LAST ON  
EMERGENCY RULES**

**ROLL CALL TALLY**

	YES	NO
ANDERSON		✓✓+
AUSTIN	✓✓	+
DR. BALSIGER (or Salveson) — EMERGENCY RULE?	✓✓+	
BUNDY	✓	✓+
DUFFY (or Krygier)	+	✓✓
DR. FLUHARTY	✓✓+	
HYDER	✓✓	+
MADSEN	+	✓✓
PENNEY	+	✓✓
SAMUELSEN		✓✓+
BENTON	+	✓✓

MOTION DrB amndmt to RS main motion: fails 7-4.  
(delete 5 words ... in Issue 1)

JB amdm on Issue 6 - 7:01pm fails 6-5.  
+ DF amdm on Issue 5 Language (7:22p) passes 6-5.



JTB: 8:57 6/07  
Motion

## Issue 6: Extent of Government Oversight - Other Entities

The following rules apply to separate legal entities owned in whole or in part, directly or indirectly, by a CDQ Group.

Investment by a CDQ Group in such ~~entities~~ an entity is a CDQ Project which may be subject to a CDP amendment.

Investment by such an entity which involves commitment of the resource royalty of a CDQ Group is a CDQ Project which may be subject to a CDP amendment.

Other investments by such an entity are not CDQ Projects. However, the CDQ Group shall provide all information reasonably required by Government Oversight concerning such other investments to ensure compliance by the CDQ Group with oversight purposes as described in the analysis.

DATE 6/07

TIME 8:27

AGENDA ITEM C-4

**\*\*\*BALSIGER VOTES LAST ON EMERGENCY RULES**

**ROLL CALL TALLY**

	YES	NO
ANDERSON	✓ +	✓
AUSTIN	✓ ✓ +	
DR. BALSIGER (or Salveson) <b>EMERGENCY RULE?</b>	✓ +	✓
BUNDY	✓ ✓ +	
DUFFY (or Krygier)		+ ✓ ✓
DR. FLUHARTY	✓ ✓ +	
HYDER		✓ + ✓
MADSEN	✓ +	✓
PENNEY	✓ ✓ +	
SAMUELSEN	✓ +	✓
BENTON	✓ +	✓

MOTION ✓ Motion to reconsider RS main motion passes 9-2.

8:50 KID ammnt: ~~carried~~ carried, no obj. ~~fail~~

✓ JB motion 8.57A - fails 6-5.

Hand out

+ FINAL ACTION - Main - unanimous.

(back on table from yesterday.)

**Comments of State of Alaska on  
Amendment 71 to BSAI Groundfish FMP  
Regarding CDQ Program Revisions  
May 31, 2002**

The State of Alaska (state) submits the following comments on the Public Review Draft for Amendment 71 to the BSAI groundfish FMP regarding proposed changes to the Western Alaska Community Development Quota (CDQ) program.

**Summary of State Position on Issues**

<u>Issue</u>	<u>State's Recommendation</u>
Issue 1: Determine the process through which CDQ allocations are made.	Alternative 1: No Action. Oppose any formal appeal process for allocations, but comment period[s] acceptable.
Issue 2: Periodic or Long-Term CDQ Allocations	Alternative 2, Option 2, Suboption 1: Fixed 3-year allocations, with possible mid-cycle adjustment for extraordinary circumstances.
Issue 3: Define the Role of Government in Oversight of the CDQ Program	Alternative 1 or 2: Status Quo, or Amend BSAI FMP to specify gov't oversight of program.
Issue 4: CDQ Allocation Process – Type of Quotas	Alternative 1: No Action. Oppose any foundation quota.
Issue 5: CDQ Allocation Process – The Evaluation Criteria	Alternative 1 or 2: Status Quo, or Publish allocation evaluation criteria in NMFS regs.
Issue 6: Extent of Government Oversight (Definition of a CDQ Project)	Alternative 2, Option 2: Clarify that gov't oversight extends to subsidiaries controlled by CDQ groups.
Issue 7: Allowable Investments by CDQ Groups – Fisheries-Related Projects	Alternative 3, w/ Amended Option 2, Suboption 1, and Suboption A: Allow investments in non-fisheries-related economic development in-region projects up to 20% of pollock royalties.
Issue 8: Other CDQ Administrative Issues	Alternative 2: Simplify quota transfer and alternative fishing plans processes.

**Introduction**

The state recognizes that there must be changes in the oversight roles of the state and NMFS 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.<sup>1</sup> After review and approval of the state's conceptual changes by the NPFMC in June 2000, 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 in 2001 as H.R. 553. The state and NMFS regulatory amendment projects were put on hold pending conclusion of the Council's current CDQ review process.

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 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 developed by the Council's CDQ Policy Committee in 2001. 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 considered 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, gravitated toward modifications to the existing system with the state retaining primary oversight responsibilities, rather than wholesale change to the allocation and oversight system.

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<sup>1</sup> "Bright New World" is the shorthand title the state has used in referring to this regulations revision project begun in 2000.

Based upon these discussions, we presume that although there is support for improving the current system, there is far less support among program participants for changing the relative responsibilities of the government oversight agencies.

### **Discussion of Issues**

We will address each issue identified in the staff analysis.

*(1) Determine the process through which CDQ allocations are made.*

The state supports Alternative 1: No Action. The state should continue to make CDQ allocation 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 Council 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.

In the analysis, however, NMFS is recommending adoption of Alternative 2, which creates a formal administrative appeal process for any group[s] aggrieved by an allocation decision. NMFS argues that this process is required under Constitutional due process guarantees. Analysis at 43. The state disagrees.

There are several problems with NMFS' conclusion that a formal internal agency appeal process is constitutionally required. First, the current process, as followed during the 2000 allocation cycle, has already been upheld by Judge Holland in APICDA v. NMFS. Second, asserting that the current system has legal problems presumes that the system as put in place nearly 10 years ago has been legally suspect throughout; if so, why is this issue only now being raised, *after a judge has upheld it as acceptable*? Third, NMFS' legal argument is undermined by its own acceptance of the current system for use during the 2002 allocation cycle. "NMFS believes that the current regulations and the improvements proposed above [comment periods before state makes its recommendations and before NMFS makes its decisions, but no formal appeal process] will provide a CDQ allocation process that complies with all applicable federal laws." Analysis at 45-46. Either the current process is legal or it's not - NMFS cannot have it both ways. Fortunately Judge Holland has already told us the current process is legally acceptable.

The state does not object to the proposed comment periods, and in fact intends to implement that process for the 2002 allocations. However, the state does object to adding a formal appeal process with several negative impacts, including the need for additional staff for the state and NMFS, a 15-month allocation application period requiring the state and NMFS to rely on outdated information in making their decisions, additional legal expenses for all groups in the event of an appeal by any single group, and the need to develop some as yet undisclosed "*contingency plan*" (Analysis at 49) in case appeals are not resolved before existing allocations expire.

We must also note that those arguing for the new, expanded appeal process are clearly not looking to what is best for the program. The length of time for allocations under Alternative 2 is a major concern for all, even many who may otherwise support a formal appeal process. The time is predicated on the arbitrary assumption that NMFS will need six months to resolve any appeal, and that NMFS will also need an additional 60 days to issue its initial decision after the state makes its recommendations. Meanwhile the state's time to review the applications - the comprehensive substantive analysis of the groups' proposals -- and make its recommendations is reduced from the current two months to six weeks. Although the state does not object to the reduction in its review time, it is hard to understand why NMFS would need more time than the state to make its initial decision. We believe that if Alternative 2 is preferred and a formal appeal process is adopted, the entire application process should be made to fit within no more than 12 months, and that consultation with the Council should occur at the June meeting, not in April.

For these reasons, the state supports maintaining the current system, although the state would not object to formalizing in regulations the process to be used for the 2002 allocation cycle, including the two comment periods.

*(2) Periodic or long-term CDQ allocations*

The state supports Alternative 2, Option 2, with Suboption 1: Establish a fixed allocation cycle in regulation for a three-year period, with a possible reallocation mid-cycle under extraordinary circumstances.

Regarding the appropriate length of the allocation cycle, the state has argued that a two-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 three-year allocation cycle, along with an "escape clause" identified in the analysis as Suboption 1. The state accepts this recommendation as a reasonable compromise to address the groups' concerns with more frequent allocations. The state opposes Suboption 2, with its longer administrative process, as unworkable. The state also opposes Suboptions 2 and 3 because they only work for cases where reallocation is used to address some inappropriate behavior by a group, but they fail to address the situation where reallocation is necessary to deal with a fishery failure.

*(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.

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 simply clarify this governance responsibility.

If Alternative 2 is preferred, the state also supports NMFS' recommendations to reorganize the elements of government oversight as outlined in the Analysis at 83. The state also appreciates the comments of KPMG and assumes their recommendations for program administration will be incorporated in the rule-making/regulatory adoption 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 each CDQ group for every 1,000 people represented by the group and the remainder 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.

We would further recommend adoption of Suboption 1, applying any foundation quota to pollock allocations only. 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 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 intends to utilize a scorecard during this fall’s allocations. Evaluation criteria will be 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 will 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 should also assist NMFS in reviewing and understanding the state's allocation recommendations.

In the analysis, staff 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. Also, the state has no objection to sharing more detailed confidential information with NMFS and the subject group.

If the Council prefers to adopt Alternative 2, we concur with the recommendations of NMFS/Council staff that it is unnecessary to put the scorecard system into federal regulations. The state will pilot this scorecard system this fall and, if successful, will consider adopting state regulations requiring the use of the scorecard system in future allocations.

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

The state supports Alternative 2, Option 2: Revise NMFS regulations to clarify that government oversight applies to the activities of the CDQ group and its subsidiaries, defined as entities controlled by the CDQ group (also referred to as consolidated affiliates).

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.

If the council prefers Alternative 2, we recommend adoption of a motion saying that oversight extends to affiliates over which the groups exercise control (which would encompass either Options 1, 2 or 3), and then let NMFS come up with an appropriate definition of "control. The distinction between "50% or more" with an opportunity to prove lack of control (Option 1), "more than 50%" (Option 2), and "51% or more" (Option 3) is meaningless from a practical perspective. The definition of controlling interest could either be developed for the regulations by KPMG, or NMFS could adopt

the AFA definition, whichever appears easier to administer. This appears to be the approach advocated by staff in the Analysis at 154.<sup>2</sup>

In considering Alternative 2, Option 4, and Alternatives 3 and 4, it is important to look at the issue in the real world. Only two subsidiaries currently fall into the 51-99% ownership situation, the two Yukon Delta Trawl Catcher Vessels. See Table 4.17, Analysis at 150.<sup>3</sup> The simple question is, should oversight extend to these operations and others like them. Since the groups clearly treat these companies as part of their CDQ operations and not as investments, the state contends that oversight should apply. Furthermore, it is not uncommon for a boat owner to give the skipper a small ownership interest in the vessel on which he works. Does it make sense to allow this transaction to automatically exempt the business from state oversight? We think not.

The analysis contains several references to the state's proposed "Bright New World" regulations, which were drafted and first introduced to the Council in 2000. Although we anticipate using that draft as a starting point for any subsequent regulation drafting project after Council action on this matter, it is important for the Council to understand that we anticipate many changes to the current draft, based not only on the Council's actions but also on changes that have occurred within the program since 2000. For instance, for those group affiliates over which we have minimal oversight, such as minority-ownership investments, we will reassess what information is needed to meet our needs to assure program accountability.

Relatedly, the analysis may overstate the oversight required if Alternative 2 is adopted. For instance, the analysis assumes that even for minor investments, the state and/or NMFS will require groups to submit information sufficient for the state to determine if a substantial amendment should have been filed. Analysis at 160. However, one reason the Council and the state are going through the current review process is to try to reduce the administrative workload for all parties. We may very well decide that the groups may make their own determinations of whether or not an amendment is necessary, without independent state or NMFS review. In short, the extent of the reporting requirements will be determined through rulemaking, and to discuss it now merely bogs down the Council's review.

The state continues to maintain that the entire argument regarding possible discouragement of investment by adoption of oversight rules (Analysis at 161) is a red herring. As we have stated on several occasions, not a single instance has ever been cited where an investment opportunity was lost due to potential government oversight. Of course, any business would prefer not to have any government oversight over their business operations. The At-Sea Processors Association's comments (Analysis at 161) merely confirm this obvious preference, and furthermore only appear to apply where a CDQ group is an "investor" in, as opposed to a controlling owner of, an APA company.

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<sup>2</sup> As noted above, the state prefers Option 2, which appears to utilize the more widely accepted definition of control.

<sup>3</sup> The table also shows Ocean Logic as 67% owned by APICDA; APICDA has since purchased the remainder of the company and is now 100% owner.

If a company is going to give up management control to a CDQ group, it is no longer in a position to be concerned with government oversight – that becomes a matter for the controlling party, the CDQ group, to deal with. And it seems clear that giving up control of the company to the CDQ group would be a much bigger issue to the seller than whether or not the company would thereafter have to undergo some relatively minimal government oversight.

If the Council is going to give serious consideration to eliminating state oversight over any subsidiaries or affiliates (Alternatives 3 and 4), the state respectfully requests that the Council simply eliminate the government oversight responsibilities altogether. If oversight were to extend only to the initial investment by the CDQ group, and the group is free to create 100% owned "investment companies", then virtually all royalty and revenue funds will flow directly to the investment company and the government will not have any real ability to oversee it. Furthermore, since the state would be prohibited from criticizing or analyzing the investment companies' activities (they wouldn't be subject to oversight, and it is unlikely the state would know much about their activities anyway), oversight would become meaningless. At that point, we would recommend that the state and NMFS save the expense (and headaches) of oversight and have the Council adopt a model where activities and program results are simply analyzed at allocation time.<sup>4</sup>

Regarding Alternative 4 specifically, which proposes permitting oversight only over royalties but not other revenues, with groups increasingly owning significant percentages of their fishing partner companies, separating royalty from other partner distributions is increasingly difficult. If one assumes 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.

*(7) Allowable investments by CDQ groups – Fisheries-related projects*

The state supports permitting some non-fisheries related investments (Alternative 3), provided that Suboption 1 is adopted, restricting such investments to in-region economic development projects only. The state prefers Option 2 under Alternative 3, allowing each CDQ group to invest up to 20% of their pollock royalties in non-fisheries related projects. However, the state does not believe the proposed \$500,000 annual cap on such investments is appropriate, since this is overly restrictive for those groups that include several communities and relatively higher annual revenues.<sup>5</sup> In fact, such a cap could become an incentive for a group to split, in order to increase the amount available for these kinds of projects. The state also supports adoption of Suboption A, clarifying that

<sup>4</sup> It should also be noted that if the Council adopts either Alternative 3 or 4, then Issue 7 becomes meaningless, because there will be virtually unlimited funds available for non-fisheries-related investment outside the realm of government oversight.

<sup>5</sup> Based on 2000 pollock royalties, the amount available for investment by CDQ groups in non-fisheries-related investments under this scenario would be approximately \$6.6 million, or about \$100,000 for each CDQ community.



the goals and purpose of the CDQ program should be amended to state that the primary purpose is fisheries-related investment and development, and the secondary purpose is the promotion of other economic development in the region.

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.<sup>6</sup>

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 under Issue 7 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, and basing that limitation on a group's pollock royalties is relatively simple to calculate and administer. 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 merely a corporate welfare program. Permissible non-fisheries related 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. 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,

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<sup>6</sup> 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.

which specifically prohibits profit distributions. See Analysis at 192 and Alaska Statute 10.20.136.

Regarding implementation issues, and specifically whether or not to weight fisheries vs. non-fisheries investments equally when making allocation decisions, we believe this issue can be addressed through the rule-making process. Although the state believes that fisheries-related for-profit investments probably deserve more weight than non-fisheries-related for-profit investments, the state has also always placed a great deal of importance on other group activities, such as education and training. Thus, if weighting is going to be defined in regulations, the state encourages care to ensure that other important group activities are also considered.

*(8) Other CDQ Administrative Issues*

The state supports Alternative 2: Simplify the quota transfer and alternative fishing plan processes.

The state fully supports Alternative 2, Options 1 through 3 to allow CDQ groups to transfer quota and submit alternative fishing plans directly to NMFS. The state would be informed by NMFS of the changes submitted by the CDQ groups. Options 1 through 3 would respond to time constraint concerns expressed by CDQ groups and result in an in-season management function of NMFS rather than a joint state/NMFS CDP Modification Process.

Thursday, June 6th, 2002

PUBLIC TESTIMONY SIGN-UP SHEET FOR  
AGENDA ITEM C-4 COQ Policy Am.

PLEASE SIGN ON THE NEXT BLANK LINE.  
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	NAME	AFFILIATION
1.	John Lamont	YDFDA
2.	Ragna Alstrom	"
3.	Morgen Crow, Deborah Vo, Robert Williams	Coastal Villages Region Fund
4.	Trevor McCabe	At-sea Processors Assn.
5.	Eugene Asick, Steve Riegen, Don Mitchell	NORTON SOUND ECONOMIC DEVELOPMENT CORP
6.	ERR OLSON	BBEDC
7.	Larry Catter	APICDA
8.	Phillip Lestenkoff, Myron Melquiclav	CBSFA
9.	Ben Enticknap *REEFH out of order testimony per David Bent	Alaska Marine Conservation Council
10.	Diana Parker	Arctic Storm
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C-2

PLEASE SIGN UP

Comments of  
**Coastal Villages Region Fund**

**Public Review Draft for Proposed Amendment 71 to the FMP for BSAI  
Groundfish - To implement policy and administrative changes to the Western  
Alaska Community Development Quota (CDQ) Program**

**June, 2002**

**North Pacific Fisheries Management Council – Dutch Harbor**

Thank you for the opportunity to comment on the Public Review Draft for proposed Amendment 71 to the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands (BSAI) Groundfish – To implement policy and administrative changes to the Western Alaska Community Development Quota program.

For the record, my name is Morgen Crow and I am the Executive Director of the Coastal Villages Region Fund (CVRF or Coastal), serving 20 CDQ communities from Scammon Bay to Platinum. These comments reflect and emphasize Coastal's current position on issues and alternatives that are covered in the *Public Review Draft*.

We believe that the current CDQ program is a successful program. Coastal has been able to participate in the program under its current goals, rules and regulations, and has enjoyed many successes. The most rewarding successes come when a project has direct benefits to our member communities. We hope that this process can continue to lead to even greater benefits to all CDQ eligible communities in the future.

**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 the current allocation process where the State of

Alaska has an active role (Alternative 1 or 2). CVRF has expended considerable resources to gain understanding and participate in the current process with the current players.

***Issue 2) Periodic or long-term CDQ allocations***

Given the likelihood that the allocation process will be lengthened due to the institution of an appeals process, CVRF supports three-year allocations (Alternative 2, Option 2). We could also support five-year allocations (Option 3), but prefer three-year allocations at this time.

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

CVRF supports Alternative 2 – CVRF intended that the policies of the government entities in regard to fisheries and regional development were not going to replace 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 wherewithal to develop locally based economies within the parameters set down in the FMP and by Congress. It was not created to further other policy goals of the NMFS or the State of Alaska.

Coastal believes that the current draft's language (Alt 2) on this issue is too broad to effectively define government oversight and limit additional policy goals of government agencies.

***Issue 4) CDQ Allocation Process – Type of Quota***

CVRF supports Alternative 1 – No action. While CVRF could benefit under some proposed 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***

In previous testimony, we expressed our opposition to Alternative 2, as a new criterion “Proximity to the Resource” was added. The CDQ Policy Committee did not consider this new criterion. We felt this could have a tremendous effect on future allocations.

If the Council believes that proximity is not adequately addressed in the current eligibility requirements for CDQ communities, CVRF supports the action of the Advisory Panel, which limits the use of this criterion to the species where proximity has been used in previous years.

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

As CVRF testified in June, and again in December, 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 7) Allowable investments by CDQ group – Fisheries related projects**

CVRF supports Alternative 3, Option 2, Suboption 1 as a way to change current program restrictions that are hindering current abilities of our eligible communities to have flexibility to develop locally based economies, without significantly altering the CDQ program's original intent, or supplanting current government programs.

**Issue 8) Other CDQ Administrative Issues**

CVRF supports changes to administrative rules and regulations that will give the most flexibility to managers and participants of the CDQ program.

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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 other opportunities to comment and participate in this process in the near future.

BSAI Amendment 71, Administrative Changes for the CDQ Program  
North Pacific Fishery Management Council  
June 6, 2002, Dutch Harbor, Alaska

NOTE: To save time and space, routine requests for the recognition to speak, and the Chairman's response, were not included in this transcription.

**Tape 1** (approx. 2/3 into tape)

CHAIRMAN DAVID BENTON: . . .Then, that probably brings us to our first agenda item, which is agenda item C-4, as we announced, CDQ policy amendment. Ms. Madsen?

STEPHANIE MADSEN (Council Member): Mr. Chairman, I just have one other comment, . . .  
[comments not related to the CDQ issue]

BENTON: . . .Anyway, Agenda item C-4, Mr. Oliver.

CHRIS OLIVER (Executive Director): Nicole. . .I'll let Nicole and Sally go through the staff report on this item, Mr. Chairman.

SALLY BIBB (NMFS Staff): Good morning. The Council is scheduled to take final action on Amendment 71 to the Bering Sea/Aleutian Islands FMP, which has to do with some revisions in the administrative regulations for the CDQ Program. So, Nicole and I are going to go through some of the new elements of that analysis. We won't do a complete review because we have discussed this analysis as it's been drafted at the December, February, and April meetings. And, we added a few new items to the document and sent it out to you in mid-May, so we'll highlight those changes and then also highlight for you one of the things that we mailed out in May along with the draft analysis, which was ideas that Nicole and I had on what elements of this analysis might be appropriate for the FMP amendment, the actual amendment. Part of this. . .most of these issues probably would result in regulatory amendments, but there are a couple of items that we thought might be appropriate for FMP amendments. This morning I handed out to you three things: one is the AP minutes on the CDQ issue that will be reported to you after the staff reports

and then two handouts; one on Issue 2 that talks about suspension and termination of CDQ allocations, and that's a one-page document, and then I handed out a packet of overheads for Issue 6 and so I won't actually put the overheads on the wall but go through that packet of handouts when we get to Issue 6.

The Action Memo that you have for C-4 includes a summary of the eight issues and the alternatives associated with these issues and then the last pages of the Action Memo are suggestions for the FMP amendment text.

So, I'm going to start. We're going to just give you a brief overview of all of the issues and, as I said, highlight the issues that we added new information to. The first issue has to do with the process that we use for making CDQ allocations and we made no changes to the discussion of Issue 1. We have three alternatives. One is to take no action, make no changes to our regulations; Alternative 2 is what we're calling an improved administrative process. The current process for making CDQ allocations involves the State of Alaska, the Council, and NMFS, with the State of Alaska developing the recommendations for allocations of CDQ among the six CDQ groups. They consult with the Council and then they submit their written recommendations to NMFS and we review those recommendations. We consider whether the State followed the process that we have outlined in our regulations and whether they provided an adequate explanation of the percentage allocations that they're recommending and NMFS makes what is called an administrative determination to approve the allocation recommendations made by the State, so it's an administrative process.

We're recommending some improvements to that process, primarily to add the opportunity for the CDQ groups to comment on the State's recommendations in writing and have the State respond to those comments before the State consults with the Council, so that gives us



an opportunity to identify if there are some major issues that the CDQ groups have with the State's recommendations before the State actually finalizes those recommendations.

Then, we're also recommending, based on advice from our legal counsel that we need to have a more formal appeals process in NMFS regulations so that the CDQ groups have an opportunity to appeal the initial determination made by NMFS on the State's allocation recommendations.

The third alternative that we've presented for this process is that we could make CDQ allocations through rulemaking which is the way that we make most of the other allocation decisions through the Council and NMFS and that would involve preparation of an analysis and recommendations by the State directly to the Council, have the Council consider that information and have it be the Council that makes recommendations to NMFS about the CDQ percentage allocations and then we would implement those through proposed and final rulemaking. I'm going to stop after every issue and just see if there's any questions, but that's all I'm going to say about Issue 1 because I think we've had a fairly thorough discussion of those two processes and our recommendations on those.

BENTON: Are there any questions with regard to Issue 1 for staff? Mr. Samuelson?

ROBIN SAMUELSEN (Council Member): Thank you, Mr. Chairman. Sally, in reference to the APICDA lawsuit and the rendering of the opinion that Judge Holland put forth. Judge Holland, the way I interpret the analysis, did not have a problem with the process that was taken by the State of Alaska and NMFS and State oversight of the program. [Note: Tape quality is very poor and there is a lot of background noise during Mr. Samuelson's comments] In fact, . . . [unintelligible]. . . requested in the analysis more information from the State, . . . [unintelligible]. . . for the State to clarify to NMFS and the record and Judge Holland recognized that as a real

critical point in rendering his. . .[unintelligible]. . . I'm kind of alarmed (?) that the NOAA General Counsel has said that they need a more formal appeals process because based on Judge Holland's ruling, Judge Holland said the process that the State of Alaska and NMFS is going through is fine [with him????]. The record is substantial enough to. . .[unintelligible]. . . Maybe you can explain for me why a more formal appeals process beyond. . .[unintelligible]. . .

BIBB: [Tape clears up] O.K., I'll try to address those concerns. I think there are two parts to the appeals process issue. There's a legal part and there is a policy part to it as well. And I think that one thing that's very clear to us is that when we're making an administrative determination, when NMFS is responsible for the final decision on the allocations among the CDQ groups, the CDQ groups must have an opportunity to appeal or provide information to NMFS if they believe that there was some error in process or fact that the State made. They have that right to appeal administrative determination. That's a legal right and we will provide that opportunity to the CDQ groups. And we did provide that opportunity to them in the last allocation cycle. We don't acknowledge that in our regulations. We don't tell the CDQ groups that they have a right to appeal to us and we don't give them any information about how they should provide that information or that appeal to us and I think that we definitely need to do that. Our regulations need to be improved so that all of the groups know what their rights are and they all, in a sense, have equal access. What happened at the last allocation process was that I don't think that any of this group knew that they could provide additional information to NMFS after the Council consultation. Two of the groups did provide what they called letters of challenge, which those are in a sense an appeal of the State's recommendations, and we considered. . .[Change to Tape 2]. . .those letters in our review and we addressed the issues that were brought up in those letters in our determination, our decision memo, on the CDQ allocations. And I think that is what

Judge Holland reviewed and what he saw was that although we did not have any regulations to guide our process, and I think his comment was, our regulations were sparse, which I believe does give us an indication that we need to make some improvements there, but that we did provide the due process that the CDQ groups were legally entitled to. But I think that we had never factored that into the time that we had given ourselves for this process and typically in an appeals process you have one person making an administrative determination and then if an appeal of that determination is made you need to have another independent person review that appeal and we don't have that process in NMFS right now. What happened in the last allocation cycle is that the same people who drafted the decision on the State's allocation recommendations also reviewed the letters of challenge and responded to the appeal and we did that in a fairly short period of time. So what we're trying to do is to lay out a process that is admittedly. . .our current process is nine months and what we're proposing is a 15-month process, so it's adding six months to the process and I think that's where the policy aspects of it come in. We have put in Alternative 2 what we think is the best appeals process that provides the groups with the full opportunity to provide information to NMFS and for NMFS to have a full opportunity to review that and consider it, . . .if one CDQ group appeals, we have an opportunity for the other CDQ groups to also provide their input on that appeal as well as having the State provide their input on that appeal. But the downside of a 15-month process, I think, and this is where you have to balance how thorough your process with the time involved, is that when you have a 15-month process you end up making your decisions on the basis of older data, for one thing, because you have to. . .the State has to make its recommendation six months earlier so they don't have advantage of the most current six months' data. So, that's one of the downsides of the process that we proposed, and I think the other thing that people are concerned about is that we will get

caught in this endless loop of appeals and if one CDQ group appeals, something might be changed about the allocations and then of course you've set up a situation where the other groups affected would appeal. We don't envision that type of event occurring in these appeals process because I think that we have put into our process up front enough opportunity for us to know if there are major issues that are going to be problems with the State's allocation recommendations. We are planning to have those things identified for us before the State submits its recommendations to NMFS. We are going to limit the basis of the appeals to errors in process or factual errors, and we're going to require the CDQ groups to identify those factual errors early in the process and the appeals process will not allow new evidence to be introduced. So, it's not as if we would wait until the eleventh hour and then have a CDQ group be able to come and provide new information. So I think that we want to develop an appeals process that is limited in its scope while providing what is legally due to the CDQ groups. But, I think the policy part of that is how good is the process that we develop and how long does it take and how long do we give ourselves to take each of these steps in the process. We haven't provided any alternatives to what we're recommending is the best appeals process and I want to, I guess, say that right now. . .I don't want us to get into a situation where we've laid out an appeals process the Council believes is unacceptable and then get into a . . .in a sense. . .a conflict on it. I think it is most important that we recognize that the CDQ groups do have a legal right to an appeal and that the area where there might be some room for discussion is how lengthy or how thorough is the appeals process, so we are interested in your comments on that aspect of it, or your suggestions of any way that we might have a process that is providing more than is necessary.

JOHN BUNDY (Council Member): Sally and Nicole. I want to sort of line up your report as we go through the issues with what the AP did and get your comments, just so I'm understanding,

you know, how things are going. If I get what the AP did there, it said at the end. . ."Alternative 2, but with no formal NMFS appeals process." So, I take it that they're saying, leave things the way it is, it's not the best process, but it's not illegal and they don't want. . .they're not recommending the long appeal process, I think, but I just wanted to get your comments on what the AP has done.

BIBB: The AP did not have a lot of discussion about this particular element of their recommendations, but I believe that they wanted to acknowledge the legal aspect of Alternative 2, that the CDQ groups did have a legal right to appeal, so they weren't challenging. . .they were questioning, does it have to take this long, and does it have to be this formal appeals process where we might get caught up in groups just. . .They were, I think, concerned that there wouldn't be an end to the process.

BENTON: Any other questions at this point? O.K., why don't you go ahead, Sally.

BIBB: Issue 2 deals with the length of the allocation cycle. Right now we don't have anything in NMFS regulations that requires the State to make CDQ allocations on a particular period of time. The allocations in the past have ranged from one to three years. Alternative 2 would establish this allocation cycle in NMFS regulations, so it would require the State to make CDQ allocation recommendations on a particular cycle. We have four options there, a two-year allocation cycle, three years, five years, and ten years. We also have some suboptions that deal with the suspension and termination of CDQ allocation and I'll go through those in a little more detail because we did add some new information on the suboptions. But then just to say that the third alternative is to make long-term allocations to the CDQ groups. And, long-term allocations could be made in one of two ways: either the Council could decide that they wanted to pursue long-term allocations and continue to develop this analysis with specific percentage allocations

to the groups, or the recommendation could be made that the State come up with long-term allocation recommendations and we go with some process with the State's recommendations to make a decision on those. The one thing I wanted to emphasize on Alternative 3 is we don't believe that the analysis that's before you right now is complete with respect to long-term allocations; it's just presented as an alternative to continuing the periodic competitive allocations.

The new information on the suboptions starts in the analysis on page 67 and I've also given you a one-page handout to kind of highlight some of the issues about suspension and termination. . .let me find that page. That one page is the page that starts, "CDQ Policy Amendments" and then right below it, it says Issue 2-Suboptions. Up until the April Council meeting we had two suboptions for suspension and termination of the allocations in mid-cycle. The first suboption would allow the State to recommend reallocation of CDQ mid-cycle under extraordinary circumstances, and it would also require that the Council and NMFS have to approve the State's recommendations on reallocation. And suboption 2 would allow the State to recommend reallocation but also add some requirements for the process that the State would have to follow in making those reallocation recommendations. First they would have to advise the CDQ group that they had concerns that were serious enough that might lead them to recommend reallocation; the second, that they would make some requirements of changes that a CDQ group would have to make in response to these concerns and only after those two levels of communication with the CDQ group could the State proceed with making reallocation recommendations. At the April Council meeting you recommended the addition of an additional suboption that would allow the State to recommend suspension of CDQ allocations and require that the Council and NMFS approve those recommendations. So, we were using some different words prior to this meeting. We were using terms like 'escape clause' and 'deallocation' so I kind

of put those in the same words that we have in our existing regulations. 'Suspension' means that a CDQ group would be prohibited from harvesting and allocation that had been approved but that allocation wouldn't be given to another CDQ group. And 'termination' means that an allocation that had been made to a CDQ group would be terminated; it would be taken from them and allocated to another group. The State had provided a couple of examples of things that they considered extraordinary circumstances, both in categories of biological or resource-related conditions. If something changed dramatically in one of the species groups that had been allocated to the CDQ groups, that may trigger the need for reallocation. And then the other category of circumstances would be a very serious performance problem with the CDQ group or a complete failure of a CDQ group, or some major changes in the communities and population represented by the group.

The first thing I wanted to emphasize on the suboptions is that we do currently have a regulation that allows the State to recommend either suspension or termination of CDQ allocations in the middle of a cycle and I included our current regulations on page 68. These regulations allow the State to make these recommendations and they require the State to submit them directly to NMFS, so while the initial CDQ allocations require Council consultation, our current regulations don't require the State to consult with the Council or seek Council approval if they're recommending a reallocation mid-cycle, and that's one of the issues that are addressed in the suboption. So, I think that if the Council makes recommendations on these suboptions it would only be if there was something in our regulations that needed to be changed, and I made a list on this handout of a couple of things that are different in the suboptions than our current regulations, and the first thing is the use of this term 'extraordinary circumstances.' We don't currently have any. . .we don't use that term in our regulations. And, I guess, personally I'm not

sure that it's necessary for us to add that term to our regulations because I think it's fairly clear to me that it would only be an extraordinary circumstance that would lead the State to use the current regulations to recommend suspension or termination of an allocation. So, I'm not sure that it really adds anything to our regulations to add this term without some specific definition of it and we really don't have a specific definition of things that would constitute extraordinary circumstances that we would want to add to our regulations that would limit the State to only considering these circumstances. So, there's the question of whether we want to add these words to our regulations or not. The other question, and I think is probably an important one, is whether the State should be required to consult with the Council or seek Council approval on reallocations and I think that is something that you. . .if you select the suboption that you should address. The only issue that I would bring up in requiring the Council consultation is if. . .is that there would be some time involved in scheduling a consultation with the Council at whatever the next meeting would be and I think a Council consultation could add, you know, at least a month or so to the process of making reallocations and that might be an issue if you truly had extraordinary circumstances, you would want to consider the time for all the steps in the administrative process. But, that is an option that the Council could add through either suboptions 1 or 3. Suboption 2 doesn't mention Council approval but it could be added if you wanted to recommend that.

Right now we don't have a lot of regulations that tell the State the steps that they have to go through or the communication that they have to have with the CDQ groups before they recommend suspension or termination. Suboption 2 would add some specific steps. Suboption 1 and 3 do not add any required steps or process for the State. The other thing that is not entirely clear to me in these suboptions is, our current regulations allow the State to recommend either



suspension or termination depending on what they think is appropriate for the circumstances. The suboptions 1 and 2 refer only to termination of CDQ and reallocation to another group; Suboption 3 refers only to suspension, meaning that you can't reallocate it to the other groups. So I think in selecting the suboption that it would be good for the Council to indicate whether they want to continue to have the regulations allow the State to recommend either suspension or termination, or do we want to somehow limit the actions that the State can take in their reallocation recommendations.

And, in looking over our regulations and preparing this new section, we came across a couple of things that, from NMFS's perspective, that we would recommend revising in these regulations regardless of the action that the Council took on these suboptions and I included those three things at the bottom of this one-page handout. The first. . .and those are also discussed in the analysis on page 69. The first is to recognize that suspension and termination of CDQ allocations is also an administrative determination by NMFS, as are the initial allocations and that we would have to provide the CDQ groups an opportunity to have input in this process before we made our final decision on the State's recommendations. That involves an opportunity to appeal, but we're not making a suggestion that it's a lengthy appeals process as we would do for the initial allocations, but it would provide the opportunity for the groups to give input on this recommendation.

The second is that we have a paragraph in our regulations that states that if the State submits recommendations to NMFS and we do not respond to those recommendations they are approved, and in retrospect I think that we don't think that's a good thing to have in our regulations, that we need to be required to respond to all recommendations submitted to us by the State and not just let things happen by default. And, the third thing we're recommending is to

remove the requirement to publish a notice in the *Federal Register* about suspension or termination because this is an administrative determination and we're not required to publish notices in the *Federal Register* on those.

So, that's kind a brief overview of those suboptions and some recommendations that we have on suspension and termination. And, the AP did make some recommendations supporting the NMFS's recommendations but I'm sure if you want to deal with the AP. . .

BENTON: Let's see if there are any questions. . .are there any questions with regard to Issue 2?

[No response] There you go.

NICOLE KIMBALL (Council staff): O.K., Issue 3 deals with the role of government and oversight of the CDQ groups and that starts on page 75, and I actually should have said this ahead of time, there's a little replacement section in your supplemental folders for pages 77 through 88, and that is the majority of Issue 3. If you would just replace that section with what's in your document you'll have the complete section. There was a little copying error, so a couple of pages were missing. Under Issue 3 there's one alternative to the status quo that would define the role of government in oversight of the program. Currently there's no language in the Bering Sea FMP that defines the role of government in the economic development aspect of the CDQ program. So, Alternative 1, the no-action alternative, would maintain the role of government that's actually implicit in the FMP and the structure that's currently outlined in State and Federal regulations. These regulations describe the daily management duties of the State and NMFS but, as I said, there's nothing currently in regulations or the FMP that identifies the broad responsibility of government and why government oversight is necessary in the program.

Alternative 2 provides a specific list of government roles and these are listed on pages 75 and 76, there's six responsibilities and the intent of Alternative 2 is to add elements of

government responsibility for administration of the CDQ program to the Bering Sea FMP. And this is part of the draft FMP language that's attached to your Action Memo. It's one of the things that we thought should actually be in the FMP. Essentially, Alternative 2 would limit the government's responsibilities to those that are on this list, these six that are on pages 75 and 76. There's nothing new to these alternatives; there's been a couple of wording changes but essentially it's the same alternative that you saw in April so I won't go over them in detail. I'll just say that the State was consulted and confirmed that Alternative 2 essentially restates the compliance requirements that are in State regulations; it restates what the current. . .the State is currently doing as far as government oversight, so it doesn't change the practical role of government oversight very much. All it does is explicitly state those same responsibilities in Federal regulations. I should say again that the Council could adopt this entire list or they could . . .just specific elements of the list. If you want to change the government's oversight responsibility from what it is currently you would either want to be adding or deleting something from the list here. That's the basic thing.

There's also some staff recommendations on page 83, and this is one of those missing pages if you haven't inserted your supplemental piece, to recommend consider reorganizing the elements so that at least the top two reflect the fundamental priorities of NMFS in the program. So, staff has suggested reordering to make the top two responsibilities—Number one would be 'insure that the CDQ program's providing benefits to each CDQ community and meeting the goals and purpose of the program,' and Number two would be 'to detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest.' That suggestion is based on the fact that in the Magnuson-Stevens Act NMFS is responsible to establish the CDQ program, to allocate quota to the program, and to limit the allocations to eligible CDQ communities. So, it's implicit

in the Magnuson-Stevens Act and in current Federal regulations that NMFS is responsible to ensure that the benefits of the CDQ allocations get to those eligible communities and that's what we're getting at with responsibility number one. Any misuse of assets clearly is going to undermine that responsibility and that's what is addressed in responsibility Number two. And, really, the rest of the responsibilities in list are getting at how we would be doing that, how we would ensure that benefits are provided to eligible communities and how to monitor the groups' performance. So, I should also say that if the Council did recommend Alternative 2, including this responsibility to ensure that the goals and purpose of the program are being met, that's really a very, very broad statement and the current goal and purpose statement is in the document. The Council may want to review the goal and purpose statement of the program at this point in time and ensure that it still meets the intent that you want it to. This is addressed specifically in Issue 7 when we talk about investments in non-fisheries versus fisheries-related projects. So we can get to that later. I just wanted to highlight that, that we're putting this as a specific government responsibility, we want to ensure that that goal and purpose statement is exactly what we want for the program.

The last thing I'd note on Issue 3 is that the CDQ Policy Committee recommendation is on page 88, and that committee developed and recommended the first four responsibilities under Alternative 2 and the last two, number five and six were actually added by the Council at the December meeting. The majority of the committee did support limiting government to those responsibilities, one through four, and the motion passed with one objection, that Alternative 2 effectively reflects the current government oversight role and that group supported the much more limited role for government. So that is the essence of Issue 3 and as I said, nothing has changed from the prior review draft.

BENTON: Let's see if there are any questions. Any questions on Issue 3? [No response] O.K.

KIMBALL: Issue 4 deals with the CDQ allocation process and the type of quotas and this starts on page 89. Issue 4 has two primary alternatives. Alternative 1 is no action and Alternative 2 provides four options to establish a foundation quota in the program. This means under a foundation quota that two processes would be used to determine a group's total allocation. You would have a foundation quota based on some objective factors as described by these options 1 through 4 listed on page 89, and you would have the remaining quota which would be allocated competitively, how we do it now, and based on the evaluation criteria that we're actually going to discuss in Issue 5. The consideration of this foundation quota was recommended by the National Research Council and we discussed it a lot during initial review. There's no new options added to this section, so I'm just going to be very brief on what we have here. The allocations for the 2001-2002 cycle are shown in Table 4.5 on page 89 and I guess the only thing I'd say under Alternative 1 is that currently the State uses several factors related to equity to determine the allocations, population, number of communities, residents below poverty level, per capita income, and the groups are also evaluated, as you know, on the basis of how they met their milestones that they identified in their Community Development Plans and how they brought benefits to the region, how successful they are in their investments. So, there's this balance between these objective factors and performance factors and the concept of establishing a distinct foundation quota was trying to weed out. . .give part of the quota based purely on equity, factors related to equity and something objective, that you could have a formula in determining and you would be guaranteed this portion of the quota and then the remainder of the quota would be allocated competitively, how we do it currently.

Alternative 2 has four options to establish this foundation quota and these are on page 89.

Option 1 would divide 50 percent of the CDQ reserve for each species equally among the CDQ groups. And then the remaining 50 percent would be allocated competitively so this would result in 8.3 percent of the entire CDQ reserve guaranteed to each group.

Option 2 would allocated 1 percent of each CDQ reserve to each group for each community represented by the group. So, because there's currently 65 CDQ communities this means that 65 percent of the total quota would be allocated based on this foundation formula and then the remaining 35 percent would be allocated competitively based on evaluation criteria that you approve.

Option 3 would allocate 1 percent to each CDQ group for every thousand people they represent and since the total population of the CDQ communities is a little over 27,000 people, Option 3 would allocate about 27 percent of the total CDQ reserve based on this foundation formula and then the remaining 63 percent would be allocated competitively. There's also a suboption applied to each of those three options that I just described which would apply the foundation quota only to the pollock allocation.

And, lastly, Option 4 would allocate 50 percent of the pollock CDQ to groups on the basis of population and then the remaining 50 percent of the pollock quota and the allocations of all other species would be allocated competitively. So, there's a wide breadth of options if you want to determine a foundation quota.

Just briefly, I think the primary point that we talked about in prior meetings was that some of the species allocations are not well suited to a foundation quota. We talked about how both . . . well halibut; the current Federal regulations for halibut is that the halibut CDQ is allocated to communities that are either within or in close proximity to that IPHC management area; crab as well is also allocated based at least partially on the location and proximity to the

fishery. So some of these fisheries like halibut and crab aren't well suited to a foundation quota in which each group would receive a piece of that quota no matter where it was and that's, I think, addressed by the suboption in Option 4 which applies the foundation quota only to pollock. There's several tables starting on page 98 that show the impact of each of these options on the CDQ groups' allocations. We went over these in December and April; I just want to point out that they're there. And, then lastly, I think the other thing that was added in April was that the primary impact of the foundation quota is the potential, I think, for splintering some of the groups and the Council had asked for some discussion on that. This is discussed under each of the options and also in the summary section. There's definitely additional incentive for the groups under each of the options 1 through 4 to sever from their existing group, create their own CDQ group, seek eligibility status for that from NMFS and then be guaranteed a portion of the quota and the State has definitely discouraged single community groups because of the high administrative costs. NMFS created the CDQ program so that we would have CDQ groups representing several eligible communities, so that's potentially a big impact of a foundation quota. And then, finally, establishing a foundation quota under any of these options would, I think, make it necessary to modify the current Federal regulations that describe the allocation process. Not only would we need to put the method for the foundation quota in regulations, but we would probably, for instance if we created a foundation quota based on population, you would likely want to take population out of the evaluation criteria that is used to allocate the remainder of the quota that's done competitively. So, we would want to look at that evaluation criteria, I think, again if we did go with any of the options for a foundation quota under Alternative 2. And evaluation criteria is the next issue. I'm done with that one.

BENTON: O.K., any questions? [No response]. . .you guys are on a roll. I'm waiting for Mr.

Bundy to ask about the AP motion, but. . .O.K., fair enough.

BIBB: Issue 5 deals with the evaluation criteria used by the State as the basis for making their CDQ allocations and that discussion starts on page 115 in your analysis. We haven't made any changes to this section, so I'll just briefly go over what is at issue here. Currently the evaluation criteria that the State uses for CDQ allocations is published in State regulations but not in NMFS regulations so we don't give the State any specific instructions on what factors they should consider in making allocations, on what basis should they evaluate the CDQ groups' proposals or past performance or. . .[Change to Tape 3]. . .how to make their allocation recommendations. So, Alternative 1 would continue that process where the evaluation criteria would be published in State regulations and NMFS would review that criteria and the State's explanation of how it applied that criteria at the time we received the recommendations from the State. So, that would be no action, not placing any more instructions in our regulations to the State.

Alternative 2 would be to both revise the evaluation criteria that's currently in State regulations and to publish the criteria in NMFS regulations. And, that would mean that the State must consider all of the criteria in NMFS regulations and must consider only that criteria; they couldn't base CDQ allocations recommendations on other criteria that were not in NMFS regulations. We have ten criteria ranging from the demographic and descriptive information about the number of communities, the population, and the economic condition, the Community Development Plan, and how the group proposes to use allocations to provide benefits to the eligible communities, and the past performance of the group in using its allocations in the past to provide benefits to the communities. Criteria 5 emphasizes that one of the things the State would consider is that if a CDQ group is proposing a for-profit project that. . .a for-profit investment. . .that the information that they have available to them at the time of making that investment



would indicate that there's a reasonable likelihood it would be profitable. The State would consider training, employment and education benefits being provided to the residents. The State would consider whether the CDQ group had promoted conservation-based fisheries, minimizing bycatch, addressing full retention and full utilization, and minimizing impact on essential fish habitat. The eighth factor is proximity to the resource, and I'm going to talk just a little bit more about this criteria because it was a subject of discussion in the AP. So, just to give you a little background on what that criteria means to us. The ninth is the extent to which the CDQ develops a sustainable fisheries-based economy, and then, the last criteria allows the State to make CDQ allocation recommendations for some species on the basis of the incidental catch or prohibited species bycatch needs to support the target species allocations that they're making.

These ten criteria are not significantly different than what the State has been using as a basis for CDQ allocations since the program was implemented in 1992. There's some consolidation and some refinement of the words, but I think the main message to me from these criteria is that it still provides the State the opportunity to emphasize fisheries-based economic development uses for the allocations and that primarily the State will consider the characteristics of the communities represented by the group, what the group proposes to do, and what the group has done in the past. So, it's very much a similar process to what we have right now. One of the things that we put in the analysis that I think is probably fairly important is an explanation, a little bit more of a detailed explanation, of how we interpreted each of these evaluation criteria. And, the way that we've described this is that we would be putting in our regulations what the State must consider, but we're not telling the State how to consider these criteria or how to balance these criteria; that each time there's a CDQ allocation cycle, that is the State's job to develop their explanation of how they applied these criteria, the facts that they used, the information that they

based it on, and to provide that to us in a written recommendation. So, in all cases the State has to balance all of these criteria in developing their regulations, or developing their recommendations, and they still have quite a bit of latitude about deciding how to apply those.

On page 133 we gave a little bit of information about the criteria that's called 'proximity to the resource' because that one was not necessarily self-explanatory just in the statement of the criteria itself. And I understood that criteria to mean that the State could recommend CDQ allocations for a particular species for CDQ groups that represent communities physically located near the commercial fisheries for this species and the rationale would be that this allocation would provide residents of local communities the opportunity to participate in the fisheries for this species and thereby contributing to the economic development in that community and providing revenue directly to the residents in that community. So, that was my understanding of that evaluation criteria, that it was primarily the basis on which the State would recommend allocations and give priority to communities that could actually harvest the species in question.

We did have an option associated with Alternative 2 that would require the State to develop a quantitative process for their CDQ allocations. That was called a score card, and the State would develop numerical scores for the categories of evaluation criteria and provide that information to NMFS and the Council at the time they made their recommendations. I think that we asked that the Council consider this as an option because we're recommending that it not be adopted as part of the evaluation criteria because of the difficulty we see in developing a strictly quantitative process to apply many of these criteria that are very difficult to quantify. So, we didn't feel that the concept of the score card had been developed well enough for us to be comfortable that we understood how to apply that in regulations. So, we were recommending. . . NMFS, from our perspective, recommending that this not be specifically included in our

regulations, but it doesn't mean. . .the State certainly could develop a more quantitative process and include that as part of the recommendations, but we wouldn't be requiring them to do so without a better understanding of exactly what we meant by that. So, that is an overview of Issue 5 and evaluation criteria.

BENTON: O.K. Any questions or comments on Issue 5? Mr. Austin.

DENNIS AUSTIN (Council member): Thank you, Mr. Chair. Sally, would these type of allocation criteria which are a little subjective, well, a lot subjective and require judgement, I don't think I fully understand your vision of the appeal that then goes to NMFS. Are you simply. . .is the likely outcome, that you're simply substituting NMFS judgement of the balance of all this criteria verse the State's judgement? Or is it simply. . .there might have been a factual error that they would be appealing to you that would cause a different outcome of balancing these criteria. I see it as very subjective and I wouldn't ever want to get, personally, into that kind of an appeal process.

BIBB: I think that we. . .I clearly understand your question, and we have no intent to have NMFS make the CDQ allocations independently of the State and the Council process that we've established and we absolutely don't intend to have NMFS substituting its judgement for the State. On the areas of the CDQ allocations that require the State to make decisions about how to balance things like need, quality of proposed projects, how to provide benefits from the CDQ program to the communities, that will be the State's job to decide and we will not. . .we cannot in the process that we've outlined, take an independent decision on that. And so we envision this to be a limited appeals process—limited to looking at whether the State followed the process in our regulations and I would be very surprised if anyone could ever appeal on a process problem because our process is fairly straightforward, requiring the State to have a CDQ application

period, to accept CDPs from the groups, to have a public hearing where they took input from the general public on the CDPs, to make written allocation recommendations, to consult with the Council, and then submit those recommendations to NMFS, so it's a very straightforward process and I don't think we would have an appeal on the basis of process. We may have an appeal on the basis of the State used an incorrect fact; they based their allocation recommendations. . .the simplest one I guess to envision is if they based part of their allocation recommendations on population but there was in fact an error in the population figures that they used. And, that was one of the issues that came up in the appeal that we got on the 2001-2002 allocations. So, I think our vision of this is that the basis of appeal would be limited to process and factual errors and it would not be. . .we would not review whether the State made the right decision about which CDQ group was doing a better job of providing benefits to its communities as far as whether it was more important to have a very profitable investment versus provide jobs in a local community with a less profitable investment. Those are not the types of things that we envision reviewing upon appeal and I think the only thing that our appeals officer could do if they found a problem in our initial decision on the State's recommendations is that we would have to document specifically what that problem was and then that would have to go back to the State for a remedy. It would not be a situation, as far as we can envision right now, it would not be a situation where we would say, 'there's a problem and here's what we think the solution is'. I think under those circumstances and the process that we've laid out, I think it would be very unusual where we would end up having to overturn the State's recommendations. What we're going to try to do is focus on making those initial recommendations of the highest quality possible to document the State's decisionmaking process and then that's what the decision will be.

AUSTIN: In my mind, key to what you said is that there is no intent in these rules to exchange

the State's judgement call in balancing and considering all these criteria with NMFS or the Council. We're not going to get into that type of game with this stuff.

BIBB: That is the way the way the current process has. . .well, that's the way the process has operated since we've implemented the program and there's nothing in this analysis or these alternatives that would change that. I mean, obviously that's an option, but it's not anything that we're recommending or, as far as I could see would be any result of any of these issues and alternatives unless YOU decided to do CDQ allocations by rulemaking, selecting Alternative 3 under Issue 1.

AUSTIN: That's what I heard you say; I just wanted to make sure I was hearing it right. Thank you.

BUNDY: Sally, two questions. One, on the AP minutes it looks to me like the AP supports the retention of the ten currently used criteria that you've gone over with wording refinements to number seven and eight, is that. . .do you view it the same way?

BIBB: The AP recommended the same ten evaluation criteria; they made some wording changes in number seven, and that one has to do with the conservation based fisheries. They wanted to specifically add that we're looking at the past performance of the CDQ group in these activities. And, they made some restrictions on the proximity to the resource criteria so that proximity to the resource, or giving priority for local fisheries. . . allocations for local fisheries would be limited to halibut and, they said, Norton Sound red king crab, Pribilof red king crab, and St. Mathew blue king crab. So they put some fairly. . .recommended some fairly significant limits on the proximity to the resource. Right now those, I think, are the primary species that are allocated on the basis of a local fishery.

BUNDY: Second question. Going to the score card, I wanted to just go over a little bit of history

to see if I understand where we are. As I recall the score card discussion in the past, the State, and Bryce might want to comment on it later on. . .the State said we have no problem with the score card; we will write out the findings that we make about the CDQ groups up against the criteria; we will put that in writing, but what we can't do, or don't wish to do, is quantify or weight this precisely by numbers, each criteria. And then the Agency's response to that is that, well we think that you should quantify this by weighting it precisely. I'm not commenting on who's right or . . .so, now we're at point where the Agency's saying, well, it's not been developed enough and we should not. . .so, you're recommending that the Council should not adopt a regulation that would require the score card at this point. Is that an accurate. . .of where we are?

BIBB: Yes, that's what we're recommending, and I'll make just one comment on it, because you brought up something that I didn't mention. One of our concerns about the score card proposal is that one element of it said that there would be some aspects of the scores that would remain confidential, that they would be the basis on which the State made allocation recommendations, but we wouldn't know all of the information about those scores. And, we were concerned because we think that when the State makes its allocation recommendations the entire basis of those recommendations needs to be fully described. So, that was one other aspect of the score card. Any element of the scoring that would remain confidential would be difficult for the State to use and explain in their recommendation document. But, I agree with what you said—the basis of our recommendation I think is that we don't feel that this proposal is developed in enough detail where we could make a good regulation, you know, make it good in regulation.

BENTON: Any other questions? I've got one. On the proximity issue in terms of criteria, and looking at what the AP said, that is indeed, at least my recollection, those are the ones that in the plan right now are dealt with on a proximity basis. But, that's sort of in the FMP or regulations

about that particular aspect of the CDQ program, like the halibut regulations, etcetera. And, my recollection about some of the discussions about using proximity to the resource as a broader criteria has to do with those species that are not specifically dealt with in the plan and it would be just one of those factors that will be looked at in the overall attempt to balance a number of criteria and considerations when you're looking, if you're the State regulators, the State policy folks, looking at trying to make a division amongst those different CDQ groups, recognize it's a zero sum game. In other words, if everything else is equal, need, population, quality of the projects, everything, then the State might consider proximity to the resource as a factor in making a decision about who got how much. Conversely, if proximity to the resource or some of these other criteria were all the same and population was the only issue, then population might be the criteria that is used to make an allocation decision amongst the CDQ groups. Am I missing something here? It seems to me there's a difference between where the Council and the Agency made a very specific decision with regard to the plan or the regulation at the outset of the program. We very explicitly on halibut said communities in this management area, they qualify for halibut from this management area; communities in this management area, they qualify for halibut in THIS management area. . .isn't there a difference between the two?

BIBB: I think there is, particularly for halibut because it is written specifically in our regulations that the halibut CDQ allocations are to be made available to the communities that are in that area. I'm not sure that we have that specifically for crab although crab has been allocated on that. . .some of the crab have been allocated on that basis. The only one I know for sure we have an additional regulation for is halibut. I think the proximity to the resource. . .it was unclear exactly what that criteria meant at the time it was suggested and I think that maybe the concern is that we are already allocating. If there is a local fishery that can be developed on a CDQ species, that is

one of the main purposes of the CDQ program and we don't even need this evaluation criteria to allocate CDQ to local fisheries. I mean, even if it wasn't here we'd still would have other criteria and other basis for allocating to the local fisheries. I think the concern that I've heard is that how would this criteria, proximity to the resource, be applied to the species groups that are not what we're thinking of as local fisheries. Like, how would you apply this to pollock, for example, and that might be the biggest concern, because what does proximity to the resource mean in terms of the pollock allocations or some of the larger groundfish species allocations. So, I think you are describing it correctly, that we do have some additional regulations that deal with the halibut fishery and the question here is whether you want to develop some similar regulations for other species and say that these particularly must be given priority to local fisheries development or just leave this as a criteria that the State could consider if they wanted to. However, there are other criteria that also would allow them to make allocation and give precedence to local fisheries, not just proximity to the resource. For example, the next criteria that talks about developing a sustainable fisheries-based economy I think would be also a reasonable basis for allocating based on proximity to the resource.

**BENTON:** The criteria are not mutually exclusive although there can be tension between different criteria and it's that weighing and balancing which is what in terms of the appeals process you're trying to make sure that we don't get in the middle of that weighing and balancing on a policy matter and so those criteria can be broad and there could be a number of them that can be selected from, given sort of the circumstances, recognizing the State has to consider all of them when they make a decision.

**BIBB:** Yes. And, I think you did say it right, and we've said that in the analysis. It's a balancing act and each of these criteria is really only important if you're saying all other things being equal,



this could be a reason that the State could recommend either a higher or a lower allocation and they need to then explain why that particular criteria was the reason that they made a particular recommendation.

BENTON: Mr. Samuelson.

SAMUELSEN: Thank you, Mr. Chairman. You know, in the suite of options that we're looking at I think proximity to resource is, to be eligible you need to be within 50 nautical miles of the Bering Sea, a community does, so I just look at this as a step further, and I think the Council really needs to take a hard look at this issue. Something that comes to mind is that when the State does their. . .and NMFS does their allocation to the CDQ groups, it was just a few years ago St. Paul had a disaster with opilio. I'm from Bristol Bay, representing Bristol Bay Economic group; a number of us got in the northern districts. . .because of the disaster affecting St. Paul. . . when the regulators looked at a whole comprehensive package they had to adjust our Bristol Bay red king crab allocations and they slid some of that allocation to St. Paul because St. Paul had lost all the opilio processing because of the downturn in the opilio fisheries. So, it's a balancing act that I don't think WE need to get involved in but the regulators need to get involved in, and they've got to look at a comprehensive picture. And I use St. Paul as the example that was. . .you know, if we just say close proximity to the resource and it's a black and white situation, then why should St. Paul get Bristol Bay red king crab, or why should Bristol Bay get Norton Sound red king crab; it should be 100 percent Norton Sound and there's a balancing act there that takes place within the regulation. How do we define it is pretty cumbersome and I don't know if we want to get down to that finite of a detail. I know I don't. Thank you, Mr. Chairman, a comment.

BENTON: I was just waiting for the question for staff, cause we're not in debate, yet, but I think

your point's well taken. Are there any other questions with regard to Issue 5? If there's not, because I think Issue 6 is going to be a little bit more. . .I'm anticipating it being a little bit more of a debate and discussion, why don't we take a break now; come back in 15 minutes and we'll take up Issue 6.

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BENTON: Council will come back to order. Mr. Oliver.

OLIVER: Mr. Chairman, just quickly, when you came back to your chair you may have noticed another piece of paper sitting in front of you--that's a corrected page 2 to the AP minutes. So you can take that single piece of paper that was just handed out and replace page 2 of your AP minutes. Thank you.

BENTON: That's the one that starts off at the top, 'Issue 6, Extent of Government Oversight'.

O.K. Just for the record. All right, we're back on the record. We are on agenda item C-4, CDQ program; I think we're down to issue number six. Ms. Bibb?

BIBB: Issue 6 deals with the extent of government oversight of the CDQ groups and their subsidiaries and in the document that discussion starts on page 143. We have. . .I've prepared some overheads that I'm not going to actually do as overheads, but I just put together a package of overheads on Issue 6 because I think it's probably one of the more complicated issues in the analysis and also one that we went through the initial review in April. We've added some additional information to the discussion and a couple of different options. I'm doing my discussion primarily from this document of overheads called 'Issue 6, Extent of Government Oversight.'

The main elements of oversight in the CDQ program, I think, can be divided into two categories. The information that the CDQ groups are required to prepare and submit to the government and then the government uses that information to monitor the activities of the groups

and as the basis for making CDQ allocation recommendations. And then the other element of oversight and the primary issue involved with Issue 6 is that we have a requirement that the CDQ groups obtain prior approval before making significant investments. And the question that we're discussing here is whether that requirement for prior approval of significant investments applies to the investments made by the CDQ group itself, the non-profit corporation, or whether it also applies to the subsidiaries that the CDQ group either creates or invests in. The main vehicles through which we require prior approval is in the Community Development Plan. When the plan is submitted to the state and to NMFS part of making CDQ allocations is reviewing and approving the Community Development Plan and that plan includes proposals for investments that the CDQ group might make in the future. So, we have an opportunity at the time we're reviewing the plan to make decisions on proposed investments and then once the plan has been approved and is in operation we also require that the groups submit amendments for significant changes to the plan called 'substantial amendment'. We also monitor the group's performance through annual audited financial statements and other quarterly and annual reports that are described more in the document on page 144. The substantial amendments. . .our current regulations require substantial amendments for changes in the communities that the CDQ group represents, changes in their fishing partners, new investments over \$100,000, more than 20 percent increases in the budget for a particular CDQ project, more than 20 percent...**Change to Tape 4]**. . .increase in the administrative budget for the group as a whole. We also have a element of our regulation that allows the State or NMFS to define any change in a CDP as a material change that would require a substantial amendment and then we require substantial amendments for some types of quota transfers and additional vessels that would be fishing CDQ, and that last element is part of what we discuss later under Issue 8.

So, as I said, Issue 6 considers whether these requirements apply to the group or its subsidiaries and the subsidiaries. . .I've categorized the subsidiaries into three groups: The 100 percent owned for-profit corporations, or LLCs, that the CDQ groups create themselves to manage and invest CDQ assets; the second category of subsidiaries are investments that the CDQ groups have made in existing fishing businesses; and the third category are new business that the CDQ group has created for a specific fisheries-related purpose. And I've included. . .we have the organizational chart for all the CDQ groups are in the document in Figures 2.1 through 2.6 and I've included a kind of simplified version of two of those organizational charts to illustrate a couple of points about the subsidiaries. Five of the six CDQ groups have created wholly owned subsidiaries that are. . .the CDQ groups themselves are non-profit corporations. . .and they've created wholly owned for-profit corporations, or LLCs, that they use to manage and invest their CDQ assets and so five of the six have some type of for-profit subsidiary created for this purpose. And APICDA is an example of one of the CDQ groups that do that so you can see in this chart here for APICDA that directly below the non-profit corporation is a subsidiary called APICDA Joint Ventures. And APICDA uses this subsidiary to manage their other for-profit investments that you can see there – their investments in the vessels and the processors, the catcher processors, catcher boats, processing plants in the communities that APICDA represents, and their investment in a software company called Ocean Logic.

So, in the case of APICDA and when we talk about extending oversight to the subsidiaries, we're talking about oversight of both APICDA Joint Ventures and oversight of the companies that they've invested in that APICDA has controlling interest in. The Bristol Bay group, and that's the other chart that I've shown you, the one CDQ group that does not go through a wholly owned subsidiary to manage some of their other investments. BBEDC, the non-profit

corporation, directly manages its investments in the fishing companies that it's a partner in.

So, I'm making this distinction because one option under Alternative 2 distinguishes between these types of subsidiaries created by the CDQ group for managing CDQ assets versus investments in business for a specific purpose. The one thing that I think that the subsidiaries they've created for managing their assets have in common is that, well, the CDQ groups owns 100 percent of that subsidiary and also the Board of the Directors, or the decision makers for the CDQ group, are usually the same as for that management subsidiary. So, it is clearly a management arm of the CDQ group as opposed to an existing business that's operating for a specific business purpose.

Tables 4.17, 18 and 19, these are taken out of the analysis, but we've categorized the CDQ subsidiaries and affiliated businesses based on the percentage ownership by the group, so the first table shows the subsidiaries that the groups own more than 50 percent of. Table 4.18 are the subsidiaries that they own exactly 50 percent of, and Table 4.19 are the businesses that the CDQ group owns less than 50 percent of so they don't have a controlling interest in those businesses. Also, in our review of the financial statements I think that at least initially we've concluded, and KPMG who we contracted to help us on this analysis, concluded that the CDQ groups also did not have controlling, effective management control, over any of the business that they owned exactly 50 percent of.

So, now I'm going to go back and talk a little bit about the alternatives after that kind of overview of the groups and their subsidiaries. You have four alternatives under Issue 6. The first alternative is 'no action'; that would mean that we wouldn't change our regulations to add any additional information about the extent of the State and NMFS's oversight of the groups and their subsidiaries. And, we are recommending against selecting this alternative because several

years ago we requested an opinion from NOAA General Counsel about whether oversight extended to the subsidiaries and their review indicated that our regulations were unclear on that very important point and we needed to clarify our regulations with respect to this issue. We developed three alternatives to clarify these regulations.

Alternative 2 is to extend oversight to the subsidiaries with four options for defining which subsidiaries would be subject to oversight. Alternative 2 was originally developed in the CDQ Policy Committee with significant input by the State of Alaska, so one of the options under that alternative represents what the policy committee developed and the other options have been developed since that time.

Alternative 3 is something that NMFS suggested be included in this analysis and that was to provide a real alternative to extending oversight to the subsidiaries. So, Alternative 3 would just apply oversight to the CDQ group itself, the non-profit corporation; it would not extend the requirements for prior approval of significant investment to any of the subsidiaries of the CDQ groups.

And Alternative 4 is taken from H.R. 553 which is Don Young's bill that would amend the Magnuson Act for the CDQ program and that alternative would apply oversight only to the CDQ groups' expenditure or investment of royalty revenues.

So, I'll go over a little bit more each of those alternatives, but that's just an overview of the four alternatives. Up until the April Council meeting what is now called Option 1 under Alternative 2 was the alternative and there were no alternative definitions of controlling interests or what subsidiaries the oversight would apply to. And that option would apply oversight to the subsidiaries that were owned 50 percent or more by the CDQ group AND that the CDQ group had effective management control of. So, the main difference between this option and the other

options is this would apply oversight to the 50 percent-owned subsidiaries if the group had management control of them. And, as I said before, at least initially without doing a really thorough review of any legal arrangements, just looking at the financial statements, it appears to us that the CDQ group does not have management control over any of its 50 percent-owned subsidiaries.

At the April Council meeting the Council requested addition of an option which we are calling Option 3 here, which was to apply oversight to the subsidiaries that the CDQ group owned 51 percent or more of. We didn't have a long discussion about that option and I thought that possibly that what we actually were talking about there was what we're now calling Option 2. Rather than 51 percent or more, what we really meant was more than 50 percent, because there is that one percent area between 50 percent and 51 percent where technically the CDQ group could have controlling interest. So, we included Option 2 which would be to apply oversight to the subsidiaries that were more than 50 percent owned by the CDQ group assuming that if they owned more than 50 percent they did have control of the subsidiary and that is consistent with how we define management control for the American Fisheries Act in our regulations.

And then we also added Option 4, and this was something that I thought would be a good addition to the analysis because it distinguishes between the subsidiaries that the CDQ group creates to manage and invest CDQ assets from the subsidiaries that are businesses that the CDQ group has invested in, so it's a fishing vessel or a processing company or a subsidiary business that is organized for a specific business purpose. So, Option 4 would apply oversight to the 100 percent owned business, any subsidiary that the CDQ group owned 100 percent of, that meant they were fully in control of, and any subsidiary that the CDQ group created to manage and invest their assets. It would exclude from oversight any subsidiaries that the CDQ group owned

less than 100 percent of, that they invested in that were existing businesses created for a specific business purpose. So, that would exclude from oversight any of the fishing vessels or processing companies that they may have controlling interest of but they also have other partners involved in that business and it is a specific business. So, I hope that that gives you a little bit of information about the distinctions between the three new options that we added for defining controlling interests and gives the Council a pretty wide range of alternatives for applying oversight to subsidiaries if you choose to select Alternative 2.

The potential benefits of extending oversight to the subsidiaries under Alternative 2 is that the CDQ groups use these subsidiaries to provide benefits to the communities and it's through that revenue that they develop other CDQ projects or provide employment to their residents. So there's a clear link between the activities of these subsidiaries that the CDQ groups control and their ability to provide benefits to their communities. Alternative 2 has been supported by the State because the State believes that oversight of both the CDQ groups and the subsidiaries they control is necessary to ensure that the CDQ assets are being used to benefit the community. And, one benefit is that if you do require prior approval of significant investments it does give you an opportunity to review the information that the CDQ group has prepared for these investments to make sure that the investments are consistent with the goals and purpose of the program and it reduces to some degree the need to deal with inconsistencies with our regulations or obvious concerns with the investment after the investment has been made. So, I'm saying that there's to some degree an enforcement type or a monitoring advantage to taking prior approval versus looking at a after the fact review.

In the analysis the State describes the things that they consider in reviewing the investments before they make a recommendation on approval and there's a fairly lengthy list



there, but I summarize that by saying that they consider whether the investment is consistent with the purpose of the program, provides benefits to at least one community, meets the CDQ group's investment guidelines, that adequate research has been prepared to inform the board of directors, and that the investment decision was made by the board of directors who represent the CDQ community. One of the things that the State is proposing is. . .our current threshold for significant investment is \$100,000. . .the State is proposing to raise that threshold to \$250,000. So if we make that revision that would reduce some of the investment that would require substantial amendments in the future.

The potential negative impacts of extending oversight to the subsidiaries is that it doesn't provide the CDQ groups with the authority and the autonomy that some of the groups seek, and some of the groups believe that requiring prior approval of investments, and particularly investments made by the subsidiaries, is unnecessary and is discouraging potential partners from participating in the CDQ group and increasing the risk associated with those businesses making decisions when they have to consult with the government before they're able to complete their investment decision.

I think we've gone through a description of those options already that are in the next five (?). One of the things that came up at the April Council meeting with respect to Alternative 2 was a request to do a more thorough analysis of how the potential partners of the CDQ groups felt about government oversight and a requirement for prior approval of significant investment and, particularly with a focus on whether this might discourage the CDQ groups from having controlling interest of larger fishing vessels or larger fishing companies. And right now most of the subsidiary businesses that the CDQ groups have controlling interest in are relatively small businesses, in most cases unlikely to be making what we consider to be significant investments

as a subsidiary. The only two exceptions to that may be the larger catcher vessels that Yukon Delta currently owns I think 75 percent of. We weren't able to. . .and I think I mentioned that at the April Council meeting, that there really wasn't time for us to do a more thorough survey of this question and I felt that we really had in our analysis already acknowledged that this was a concern by some of the groups and some of the subsidiaries and also acknowledging that, at least from my perspective, it was pretty clear that if a business was given the opportunity to either not have government involvement or have government involvement in their investments they would clearly choose to not have the government involved just because it adds an element to the process and some risk and uncertainty to their decisionmaking process. The one thing that I did do was to include in the document a recommendation from the At-Sea Processors Association and that's on page 161, so I added about a half a paragraph on their March 2002 meeting. The At-Sea Processors Association represents seven companies and 19 catcher processor vessels and they had made a statement about government oversight associated with the CDQ program and said that their position was that the oversight should not extend to the business decisions of APA member companies or their subsidiaries in which the CDQ group have an equity interest. So, we were able to at least get that information into the document without doing a more thorough survey of the rest of the industry. I think that's all I want to say on Alternative 2.

And, briefly, Alternative 3 would apply the oversight requirements just to the CDQ group, the non-profit corporation, and this would mean that the group would not be required to obtain prior approval for significant investments made by any of its subsidiaries, including those subsidiaries that it had created to manage and invest CDQ assets. And, I think that that one of the concerns that I have with Alternative 3 is that while I think. . .well, before I say my concern I want to talk a little bit about enforcement and monitoring and the balance between making a

requirement for prior approval of these significant investments versus reviewing the CDQ group's performance after the fact. And, we discussed this, I guess. . .or, this was a major point that I made at the April Council meeting but I guess I'll reiterate that monitoring the CDQ groups' activities and how they use the CDQ allocations and whether they're operating consistently with the goals and the purpose of the program. We have several ways that we can do that. One is in the prior approval of their plan and significant investments which is what we've been talking about under Issue 6. But we also have the CDQ allocation process where past performance of the CDQ group in its investments and the activities of its subsidiaries and how it's provided benefits to its communities, those are very important evaluation criteria that the State uses and considers in making future CDQ allocation recommendations. So, one of the things that I think that at least NMFS feels fairly comfortable with as long as we are staying with a relatively short allocation cycle, that that allocation process provides a fairly significant way through which we can monitor the activities of the CDQ group after the fact and make judgements about whether the investments that they're making are consistent with what they propose and are, in fact, providing benefits to their communities. So, with each of these alternatives, and particularly Alternative 3 and Alternative 4 where we are reducing or not applying our oversight to the activities of the subsidiaries, I just wanted to make sure that you realize that we still have the CDQ allocation process that would apply under all of these alternatives that gives us an opportunity to look back on the activities of the group and make some judgment about how well they've done. But, having said that, Alternative 3 I think maybe was a little bit simplistic when we first thought about it and when we first suggested it about a year ago and I think at that time I didn't fully understand how the CDQ groups are using the for-profit subsidiaries that they create to act on their behalf. So, like the APICDA Joint Ventures and four of the other CDQ groups have some type of subsidiary,

that in some cases they even could set up a situation where they provide revenues from the CDQ allocations to these subsidiaries and then these subsidiaries are the entity through which the CDQ group makes its investments. So, I think that I wasn't aware when we initially started talking about Alternative 3 about the nature of the close relationship between a CDQ group and its non-profit corporation and its for-profit corporation and that is why we ended up adding Option 4 to Alternative 2 to kind of provide a middle ground between applying oversight to all of the subsidiaries versus not applying oversight to any of the subsidiaries and just to the non-profit corporation. And, I can talk more about that if you have some questions later about whether those distinctions are clear.

Alternative 4, representing the intent of H.R. 553, would apply oversight to the investments of the CDQ group, the non-profit corporation using royalty revenues, and in 2000 royalties were about 70 percent of the revenues with the remaining 30 percent of revenues coming mainly from the CDQ group's return on its investments. Alternative 4 would not apply oversight to any of the subsidiaries and it also would not apply the requirements for prior approval of significant investments to any of the investments that the CDQ group made using non-royalty revenues, so that other 30 percent of their revenue. . .and it's 30 percent in 2000 but we expect as the years go on and the CDQ groups' investments are profitable that it's likely that royalties will become a decreasing percentage of the revenues of the CDQ groups. So, Alternative 4 represents I think probably the least level of oversight among the four alternatives in that it just applies to the royalties of the CDQ groups. But, again, under Alternative 3 or 4 we still have the authority to collect information from the CDQ groups about their ongoing activities through annual reports, or quarterly reports, the Community Development Plan, and we also have the CDQ allocation process that we can use to look back on their past performance. So I think

that covers what I wanted to say as far as an overview of these alternatives and I'll take questions on Issue 6 at this time.

BUNDY: Sally, this point that you're talking about right now. Let's see if I can get the. . . I just want to be sure that we're communicating this right. The AP minutes refer to Alternative 4 and it says that 'government oversight extends only to activities of the CDQ group that are funded by royalties'. Now, the definition of oversight. If the word oversight there means preapproval of investments, then I'm following. But the point that you just made, I think indicates that even under this situation, if this scenario occurs there's still a lot of oversight if you are including the CDP to create the subsidiary, the annual reports, the allocation process. Now, it's post-review, it's not preapproval, but I've always thought of that as oversight, so I just wondered if you could comment on this.

BIBB: Yes, I think that I consider oversight to include both the information that we require from the CDQ groups and this aspect where we require prior approval of significant investments. So, when we say, under Alternative 4, 'apply oversight only to the royalty revenues', that is referring to the aspect of oversight that is prior approval of significant investments. And, I don't think it means don't collection any information about the CDQ groups' subsidiaries or what the CDQ groups are spending their non-royalty on because those activities are the complete package through which the CDQ group provides benefits to its communities and I think that the CDQ groups would want to have that information provided because that's the basis of their allocation in the future. But I think I would clarify again that I have, I guess, divided oversight into two categories, the information requirements and then also the requirement for prior approval. And I think what the AP approved and is just dealing with the prior approval issue and when they selected Alternative 4, I think that their intent was to recommend that we only require prior

approval of significant investments for the CDQ groups' investments using royalty revenues.

One thing I'll add is that we organized Alternative 4 around a number of different elements of H.R. 553 and that included a new definition of a CDQ project that was focused only on investments made with royalties, the information that can be required in the CDP, the goals and purpose of the program—there were a lot of different elements of H.R. 553 that are related to this issue, but I think that the AP was really only discussing that most basic issue of requiring prior approval of investments made with royalties.

STEPHANIE MADSEN (Council member): Thank you, Mr. Chairman. Sally, I got a little confused. Is the definition of control in all cases always the definition of control in the American Fisheries Act?

BIBB: No. Under the different options in Alternative 2, there are. . .the first three options have alternative definitions of. . .they're not strictly definitions of control, but they apply oversight to three different categories of subsidiaries and so Option 1 was what we originally developed and that included the 50 percent-owned subsidiaries. But then it went on to say 'only the subsidiaries that the CDQ group had effective management control of,' so that meant. . .I think that we assumed that the CDQ groups have control of businesses that they own more than 50 percent of and the question was whether they also controlled the business that they owned exactly 50 percent of. So that's the distinction with Option 1. And then, Option 2 is more than 50 percent. That is consistent with the AFA definition in our regulations right now and that's the ONLY option that's consistent with the AFA because Option 3 is then more than 51 percent and that is not consistent with the AFA just because of the difference between more than 50 versus more than 51. . .[Change to Tape 5]. . .[not sure if anything lost in transition]

MADSEN: So, it seems to me that there needs to be some kind of definition of effective

management control, unless I'm reading it wrong because it says that you have one threshold of 50 percent or more and then there's an 'or effective management control' and I'm wondering how you're going to determine if it's not on an ownership percentage, how that company, that CDQ group may or may not have effective management control.

BIBB: I think that that was one of the issues that KPMG looked at for us and they were the ones that ended up. . .they did a couple of things. First they said that in looking at. . .they provided us with a lot of information about defining effective management control and they said that you can look at percentage ownership and you can also look at contractual relationships between the CDQ group and its subsidiaries, and they did not actually look at those contracts, but they said if you are going to have this concept of effective management control that might involve more than just looking at percentage ownership you have to take that one step further and do some research into the legal relationships between each CDQ group and each subsidiary. And, one of the ways that you can get a fairly good indication of that is to look at whether the subsidiary is consolidated with the CDQ group in the annual financial statements and it was through that research that KPMG concluded that the groups did not have effective management control over any of the businesses that they owned 50 percent of because those businesses were not consolidated with the CDQ group in its financial statements. But we didn't actually pursue it much further beyond that besides recognizing that if we do have this '50 percent or more or effective management control' that we would have to very clearly define effective management control in our regulations and that's when KPMG said why don't you use your AFA regulations which are not what is said in Option 1; it's actually what is said now in Option 2. So, we ended up adding Option 2 and I think the end result right now with the organization of the CDQ groups right now is that Option 1 and Option 2 affect the same subsidiaries.

BENTON: O.K., any other questions? Sally, I'm not sure this is exactly on point, this question, but it's sort of a follow-up to the question Mr. Bundy asked you. If you went with something like Alternative 4 which would, I assume, have the same reporting requirements but not the preapproval part of the oversight component, would. . .and then the mechanism for ensuring that a CDQ group is meeting the goals and objectives of the program is simply the allocation process, that's what I understood you to say, which one of the criteria do we have before us now tie you directly back, because you said previously, I thought, under criteria, that the State had to use those, and only those, criteria pretty much to make a decision. Which one of those criteria would you tie it back to? And, what I'm thinking is, to me, my way of thinking, the purpose of this program is to provide the maximum benefit to those communities that are in the CDQ program; it's not to provide the maximum benefit to the CDQ corporations, or the State of Alaska. It's all about those communities. That's sort of the focus, or should be the focus of the program, and so how do you. . .what in those criteria do we tie that back to, if it's only in the allocation process?

BIBB: I think that you have a number of criteria that you could tie back to. The first one would be number three and I'm reading on page 115, or in your Action Memo. But, number three would look at the past performance of the group in complying with program requirements and in carrying out its current plan for investment, service programs, infrastructure, and regional or community economic development. That, I think, would allow you to look at how the group had used its investments in subsidiaries to provide benefits to the communities. You could use also the past performance of the CDQ group governance, the board participation, financial management. I think that you also could use the fifth criteria, 'a reasonable likelihood exists that a for-profit CDQ project will earn a financial return; and that might be worded a little awkwardly but I think that one clearly indicates that there's concern that the investments that the group



intends to be for profit investments to earn revenues for the CDQ group do in fact meet that goal, and I think that you also could look and maybe one of the most important ones would be the training, employment and education being provided to the residents of the communities. So, I think there are. . .and also the extent to which the CDP develops a sustainable fisheries-based economy. I think there are a number of criteria that would allow the State to look at the past performance of the group and I think that the allocation process, at least from my perspective, is clearly a judgment of how well the CDQ groups have provided benefits to their communities and gives the State the opportunity to give more allocation to a group who has done a better job of that. But, this wasn't your question, but I'd like to add this point because this was kind of a downside of using the allocation process I want to make sure and mention, is that the allocation process is not a good way to address what I would call minor concerns. It is something that you would only be able to address, really major performance problems or continuing small problems that never get resolved. But it has to be a pretty important thing for, I think, for the State to take an action that would reduce a CDQ group's allocation. So, it's through this. . .the level of oversight that we have now and so much interaction with the CDQ groups and the concept of prior approval, and the day-to-day oversight, it does give the State an opportunity to address maybe what you would call minor concerns through this day-to-day oversight so that they don't build up to a major concern. And if you. . .some of these alternatives that would reduce oversight, and you can view that as a good thing or a bad thing, it reduces the day-to-day involvement of the government with the groups. It really allows you. . .it gives the groups much more autonomy and the government has to step back and deal only with the big issues in the allocation process.

BENTON: Meat cleaver versus scalpel.

BIBB: I think, yeah. . .I call it a blunt instrument. . .

BENTON: I want to follow up, though, on how you laid out that about the criteria cause I've . . .that really actually heightened my concern about the allocation process. I'll give you some examples. None of the criteria you talked about specifically mentioned benefits to the communities in the CDQ group. The, for example, past performance in complying carrying out their CDP, okay, which is embodied in number three. A CDQ group could lay out in its plan. . .here's what we're going. . .here's. . .you give us this much fish, here's the royalty we're going to get, here's the kinds of investments we're going to make, here's everything we're going to do, set up subsidiary corporations that then take some of those funds and put them off into something that has nothing to do with the communities and would still meet the letter of that criteria, potentially. And that's true I think for all. . .each one of these. It comes down to. . .it really comes down to an interpretation issue of these as opposed to the letter and given that we're trying to make this more precise so that we can avoid confusion and avoid litigation, what I see here is that simply relying on the allocation process and these criteria don't give you the ability maybe to fine tune them, which was your other point. You look at number five, and it says, 'reasonable likelihood to earn a financial return for the group. That doesn't get you to the point of, then what happens with those funds. So if you're, again, looking at past performance and looking at what happened previously and then trying to make a decision it doesn't necessarily lead you to that overarching goal, per se. I guess maybe that's what I'm hearing you say and I'm just in my own mind trying to understand how, and I think you may have answered my question, but I really am trying to understand how we could rely solely on the allocation process to ensure that what we say we're trying to do here is actually what happens as opposed to also building into the program a way for people to circumvent that intent and go off and do other things because that was the

initial idea when we put this program together. I think it's still the idea now, is to maximize that benefit to the communities.

BIBB: One thing I'll just mention is that we also have in the goals and purpose of the CDQ program, and we have previously had evaluation criteria that said something like that the past performance of the group in operating consistently with the goals and purpose of the program. And I think I had originally recommended that. Since the goals and purpose of the program can always change I didn't really know what that meant, but one of the things that we're going to talk about in Issue 7 is to have the Council reconfirm the goals and purpose of the CDQ program and that does have a little bit more focus on what the purpose of the CDQ allocations are and one suggestion may be to reconsider whether you want to either take words from the goals and purpose of the program and put it in the evaluation criteria or add a criteria that references the goals and purpose of the program if that gets you back to making sure that the CDQ groups are responsible to provide benefits to the residents of communities. And we also have, I think, in the role of government and oversight in Issue 3, . . . number six in there is the role of government oversight to ensure that the CDQ program is providing benefits to each community and meeting the goals and purpose of the program. And there are some words there in the role of oversight that might be something to consider for an evaluation criteria.

SAMUELSEN: Sally, on a follow-up question to Chairman Benton's question to you. Isn't number two, although it doesn't. . . isn't explicit, it's implicit that when you develop a Community Development Plan, in that plan which has to be approved by communities, these CDQ groups have one member from every community that makes up the regional entity, and when a Community Development Plan is put forth it's a board comprised of village members that develops the programs and those programs in turn spawn the benefits back to the communities

and the residents of those communities. So, instead of having it explicit in here, it's in the CDPs that are developed.

BIBB: Yes, that's true. It's the plan that the CDQ group has for how it provides benefits to its communities, that is what the CDP is. . .the main information that the CDP provides. . .that is supposed to be developed by the communities and the board and in addition to that any changes made to that plan are also supposed to be made with the consideration of all of the community input.

BUNDY: Kind of following up on this discussion. I guess the question kind of goes to the sort of the process or timing of review. If a subsidiary is set up. . .I think that has to be done pursuant to a CDP. . .and in that process, at least I'm aware of experiences where a CDQ group has to justify its investment and it's questioned as to why it's doing this and let's just use as an example it's doing this in order to make profits to use in the communities for salmon restoration and scholarships and whatever else. And so those might be part of that CDP package, they might also be translated into milestones. And in that regard, then the review is quarterly or at least annually so that you can agree as part of that process between the State and the CDQ group that certain information is to be provided. In this example I assume you're getting sort of current review and not leaving everything to the allocation process although that may be a hammer at the end.

BIBB: I think that if you don't have a requirement for prior approval then we can collect the information and we can ask the CDQ groups to provide us information about their ongoing activities but you have no required government action that would prevent a CDQ group from doing something, they may. . .I guess with a caveat. . .unless it involves an investment of money. Of course, if it's a new project or a new subsidiary the CDQ group is investing money or

incurring debt, under all of these alternatives that would still require prior approval by the government, with the exception of Alternative 4 that would only require it if it was royalties. But I guess what I'm saying is if the activity of the CDQ group is the ongoing performance of an investment that's already been made, there is no government action that can make any. . .you know, there's no corrective action that the government can make during this allocation cycle if it thinks that something is not going right. But that's probably the case right now as well. The only thing that triggers a government action is if the CDQ group wants to invest more money in it and so that it does, we can collect the information and we can monitor what is going on with the investments, but as you said the allocation process is the big. . .the place where the major evaluation is done.

BENTON: One question always leads to another, doesn't it? Sally, just to continue along that line just for a moment. Let's say that you are getting quarterly reports, as Mr. Bundy pointed out, and you're getting annual reports and all of this is sort of going on, and it's a 3-year allocation cycle. And let's say somewhere, either at the end of that three years or during the course of that three years a review of the reports from a particular CDQ group shows that they're doing something that is not in keeping with the goals and objectives of this program or not in the interest of their communities, I mean, I don't know what it would be. . .you know, maybe they've set up, like, a subsidiary of a subsidiary of a subsidiary and are providing funds through a series of subsidiaries that go off and do something, you know, invest in real estate in Puerto Rico, or something, I don't know. Is there any mechanism in this program right now under that circumstance where the allocation process is the only sort of hammer, I think was the word that was used. Is there anything in here right now that provides a mechanism for the Secretary to recover those lost assets or assets that might be lost to the communities and those benefits? I

guess what I'm getting at is with a . . .and I'm trying to understand this. . .I can see where with a prior approval, or sort of the system that's in place right now which is sort of the monitoring and collaborative back and forth between the State and the CDQ groups in terms of how they go forward with their projects--there's sort of a check and balance there--before the money's committed or shortly thereafter, or however that goes, but something that's one, two, maybe three years down the road, what happens to those assets and is there any mechanism in here to deal with that.

BIBB: As far as I know, there is no mechanism to recover lost assets--that's the risk of the CDQ program and the investments and the activities that the groups are undertaking and I think your question had brought up a couple of points. So, I think to answer your main question, as far as I know there is no way to recover lost assets. But, you were talking about the difference between having prior approval of an investment versus just letting the CDQ groups make the investments and making some evaluation at the time of the allocations and I think that there may be some cases where government review of research, due diligence, financial statements, may pick up some important fact that a CDQ group or their board of directors had not found. That may happen in some cases, but probably the things that result in a business failure or a loss of assets are probably something unexpected that the government oversight, I guess just from my own perspective and as a person who does some of this work, it's unlikely that I'm going to be able to pick out major things that might happen to cause a loss of assets that the CDQ group itself or the financial managers that they have hired would not also be able to pick out. So I think the government oversight is more focused on whether the CDQ group is following the process required--are they conducting some research, are they comparing what is projected for the investments with their investment guidelines, are they consulting with their board, rather than

providing really vital information about whether that investment is likely to be successful or not. So I think that. . .I'm not sure that the government oversight protects the CDQ groups very much from a loss of assets and I don't think there is a way to recover from it, to recover those assets for the group. And the other thing that you mentioned was if they are violating the regulations or if something is going. . .a CDQ groups is operating inconsistent with our regulations, I guess I just wanted to mention that for all of our fisheries regulations we have NMFS Enforcement, NOAA General Counsel, and we have a process through which we monitor fishing activities and if we find that someone is violating a regulation we have a process through which we can pursue an enforcement action against them and we have not done anything like that for the CDQ program. It's available to us if we have a specific regulation. . .a CDQ group must submit a particular report or they must conduct activities in a certain way, we have the opportunity to pursue that through the National Marine Fisheries Service Enforcement and NOAA General Counsel's enforcement attorneys, but we haven't done that and that whole group of people is organized to enforce fishery regulations and they do not have the expertise in the types of activities that we regulate through the CDQ program administrative regulations. So, I just wanted to. . .we've mentioned that in the analysis, but I just wanted to mention that. We do rely fairly heavily on the State's day-to-day oversight and on the allocation process and in the CDQ program we don't rely on our enforcement and penalty process in NMFS.

ROY HYDER (Council member): Thank you, Sally. Just to follow up on your last statement—you don't rely on NMFS enforcement at this time. If problems become apparent of significant concern, however, you could, with application of the appropriate skills.

BIBB: Yes, we would have the authority to use our enforcement and General Counsel to enforce any NMFS regulation, so we do have that authority; we haven't used it and we don't really have

the expertise developed but you're right, we could.

**KIMBALL:** Issue 7 starts on page 173 and addresses allowable investments by the CDQ groups.

Issue 7 addresses whether to relax or eliminate the requirement that the investment and projects of the CDQ groups be fisheries-related, and there are four alternatives under this issue, listed on page 173. None of the primary alternatives have changed since the April public review draft.

The only new options are one suboption under Alternative 3, related to the types of non-fisheries related investment that would be allowed, and there are also three suboptions related to the goals and purpose of the program, should that need to be modified under either Alternative 3 or Alternative 4.

I'll go through each of the alternatives briefly. Alternative 1 would not make any changes in Federal regulations. It would maintain the current Federal regulations which implement the Council's original intent to restrict the spending of the revenue generated by CDQ allocations to fisheries-related projects, to benefit communities that are eligible for the program. So, the NMFS regulations is what currently expresses the Council's original intent and it's through this goal and purpose statement that's at the top of page 175: 'The goal 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.' So, that's what we rely upon currently for this fisheries-related restriction. The CDQ team who reviews the Community Development Plans and makes the allocation recommendations has generally asserted that any for-profit CDQ investments must have a tangible link with the commercial fishing industry and then the evaluation criteria that's been developed that you went over in Issue 5 is focused then on developing the fishing industry in the region. The current Federal and State regulations, however, do not include specific



investment guidelines or a list of allowable investments that the CDQ groups can undertake. So, as Sally was saying, currently the allocation process is the mechanism by which the CDQ team can keep the CDQ groups' investments and projects within the bounds of the Council's intent. I think a couple things spurred this alternative, or this issue. One was the National Research Council report and then also the CDQ groups themselves. The NRC recommended that over time there should be some more flexibility in the rules governing the allocation of benefits in the CDQ program. They related that some groups may have member communities that have very limited fishery-related opportunities, either now or that were foreseeable in the future, or they have non-fisheries related investment needs that may take priority over fisheries-related investments, and they use examples such as general infrastructure—health clinics, things like that. The NRC and the groups themselves also have made the case that some of the communities have a significant amount of their subsistence and economic activity that is land-based and it may be more difficult to find fisheries-related investments that have a reasonable chance of success. So, if we have a fisheries-related restriction that potentially forces a CDQ group to undertake an investment that won't be as successful, then they may be penalized in the allocation process when they don't show either good financial return or significant benefits brought back to their community as a result of that investment. So that's kind of what spurred this alternative to allow some non-fisheries related investments and with that . . .oh, . . . Alternative 2 also. . .this is on page 177. . .would not change the type of projects that the CDQ groups could invest in; all it would do would clarify in Federal regulations that the CDQ groups could invest only in fisheries-related projects. So it would make it very clear that we would have a specific prohibition against CDQ groups investing in non-fisheries related projects and we would also clarify that this prohibition doesn't apply to a certain category of investments that the CDQ groups are currently

investing in, like scholarships and training, stocks and bonds, things like that that have generally been allowed, acceptable under the program, but aren't necessarily fisheries-related. So that would be Alternative 2.

Alternative 3 starts on page 180, and Alternative 3 would modify the current Federal regulations to allow the CDQ groups to invest in non-fisheries related investments up to a limited amount. And that would be a limited annual amount and there are four options listed under Alternative 3: Option 1 would allow each group to invest up to five percent of its pollock royalties in non-fisheries related projects; Option 2 would allow each group to invest up to 20 percent of its pollock royalties, or a maximum of half a million dollars; Option 3 would allow each group to invest up to 50 percent of its total revenues in non-fisheries related projects; and Option 4 would allow each group to invest up to a million dollars in non-fisheries related projects. And, as I said before, this would be an annual limit and the percentages would be based on the previous year's either royalties or revenues, however that method was selected.

Page 185 has some draft regulations, what that might look like under any of those options. And, what it shows is that there would be a list of allowable investments, expenditures or investments, that have no annual limit and those are things like the administrative expenses, the scholarships, the training, things that would not have to be fisheries related and also wouldn't have an annual limit. The second part of those draft regulations show that there would be expenditures and investments that in total are limited annually to whatever percentage of the CDQ group's annual royalties or revenues and those would be investments in fisheries-related projects. So, Options 1 through 4 do not limit the type of non-fisheries related projects allowed; the overall affect is that the CDQ group could invest in general infrastructure projects, they could invest in land-based businesses within the community, outside of the community. All it does is

clarify that there is an annual limit on the amount of non-fisheries related investments that they can undertake. Table 4.23, also on page 185, shows the maximum allowable investment in non-fisheries related investments under all of these different options. It shows the estimated maximum amount by all six groups, collectively, in the CDQ program. And it also shows an estimated range of expenditures per group, since obviously each group has a different royalty, different revenues annually, and so that would vary each year depending on how well the group did.

These haven't changed, so I'm just going to be really brief under Alternative 3. And, there's a discussion of the impacts of each option starting on page 183 and it goes through Options 1 through 4. There are also two suboptions that would apply under Options 1 through 4 under Alternative 3. And this starts on page 189. Suboption 1 would require that any .

**[Change to Tape 6]** . .of the non-fisheries related investments would be made in economic development projects in the region of Alaska represented by the CDQ group, so this means that the CDQ group could invest in economic development projects within the entire region bounded by the communities, but it wouldn't have to be specific to each of their member communities.

The other part of this suboption which requires that the investment be in an economic development project that is self-sustaining—we interpreted that as meaning that the proposed investment must show a reasonable likelihood of a positive financial return, so only economic development projects with an expectation of profit over time would be allowed under this suboption. So, this suboption essentially allows for investments in for-profit businesses that aren't fishing-related; it would also allow for general infrastructure or community development projects as long as the project was expected to generate a positive return at some point in the future. Suboption 2, which also applies to Options 1 through 4, would require that any non-

fisheries related investments be either (a), for educational, vocational training, scholarships, or other human resource programs for residents of the CDQ communities, or (b), community development projects associated with infrastructure development in the communities or region of Alaska represented by the CDQ group. And, the discussion of suboption 2 starts on page 190. So, this suboption appears to narrow the range of allowable non-fisheries related investments more so than suboption 1. We defined infrastructure development as types of permanent installations such as buildings, roads, docks, water and sewer projects, recreational facilities, tangible structures like that. So, based on this interpretation, suboption 2 appears to prevent a group from investing in a business or a profit-bearing opportunity within a community that may be a land-based opportunity if it's not an infrastructure project and that creates some concerns for groups who have good potential investment opportunities in non-fishing related businesses in their communities that could create revenues for the CDQ group but that aren't associated with general infrastructure development. So, that was one of the points brought out under suboption 2. Another primary point under suboption 2 is that it appears to limit the amount of funding that can be invested in training, education, scholarships, and human resource programs which are currently categories of investment that aren't currently subject to a specific annual limit. And, what we showed in Alternative 2 and Alternative 3 without this suboption is that the draft regulations would propose to make these categories of allowable investments, the training and scholarships, make it explicit in Federal regulation that they don't have to be fisheries-related, you wouldn't have to be in a training program related to fisheries or in a scholarship in fisheries management and that they wouldn't have an annual limit. So, the CDQ group could choose how much to invest in education and training in the eligible communities and that would be left to the group to decide. We assume that by applying suboption 2 to this alternative that changes this

intent since you would need to start identifying some educational investments as non-fisheries related and then apply this annual limit to those investments and then you'd have to also be identifying any educational or training opportunities that were fishing related and those would not be subject to an annual limit. So, it proposes that level of complexity that I think Alternative 2 and Alternative 3 were trying to get away from. I think another point to be made under this alternative and the suboption is that of the community grants programs and this is discussed on page 191. Several of the groups have expressed interest in developing programs where they could make unencumbered grants to each community. And, Options 1 through 4 would allow the groups to do that, but if you apply either of the suboptions which specifically restrict those non-fisheries related investments to the types of investments described under the suboptions, then you could not make those unencumbered grants to communities. You could not just give them a chunk of money and let them decide how to spend it.

There are also two other suboptions, suboptions (a) and (b), we called them, related to the goals and purpose of the program, and those start on page 192, and these are new also as a result of the April meeting. So, currently the goal and purpose statement of the program is in Federal regulations and that's at the top of page 193, and that's what I read initially. We propose to put the goal and purpose statement in the FMP, so that's the second part of this draft FMP language that's attached to your Action Memo. The first part was the goals and purpose of the program and the second part were the government oversight responsibilities and those are the only two things that we had suggested putting in the FMP language. So, regardless of whether you chose to do a new goal and purpose statement, or keep the current one, we would propose to put that in the FMP since it's not currently there.

So, there are two alternative goal and purpose statements suggested under Alternative 3,

and suboption (a) is listed. . .they're actually both on page 193. The first is the goals and purpose of the CDQ program are to allocate to CDQ to qualified applicants representing eligible Western Alaska communities, primarily to provide for the means of investing, participating in, starting or supporting commercial fisheries business activities that will result in an ongoing regionally based fisheries economy. And, secondarily, to strengthen the non-fisheries related economy in the region. So, that is suboption (a).

Suboption (b) would amend the current statement to read, 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 diversified economy. So you can see under suboption (b) the only wording change there is taking out 'fisheries-related' and adding in 'diversified'.

So, should the Council decide to allow some level of non-fisheries related investment under Alternative 3, these are the options proposed to amend the goal and purpose statement. Because, and we note in this section, the goal and purpose statement is supposed to be this very broad statement expressing the overall intent of the program most, I think, of the options under Alternative 3 would not require you to change the goal and purpose statement in order to be consistent with those options. We talked about this, that options 1, 2, and 4 in which the focus is still on fisheries-related projects but you're allowing some non-fisheries related investment, you probably wouldn't need to amend the goal and purpose statement. You definitely still could, but it wouldn't be inconsistent with that type of a change. If you look at, I think, Option 3 in which 50 percent of the revenues would be able to go into non-fisheries related projects or Alternative 4, which I'll get to, in which there would be no restrictions on fisheries versus non-fisheries related investments, then you may want to seriously consider amending the goal and purpose

statement to make it more consistent with that type of a shift. And, I think that the last thing that I would note in that section is that in the past, and we talked about this in the AP, that we used the goal and purpose statement as a primary source of guidance to express the Council's intent that the CDQ groups should be investing in fisheries-related projects. And, if we're taking action on this alternative, on this issue, we would have as a result of this specific, unless you chose no action, we'd have specific Federal regulations which would be our source of guidance on this issue, specific regulations that would limit the amount of non-fisheries related investments. So, that's a difference from what we have currently.

Alternative 4, just briefly, has not changed since April. It starts on page 195 and it would change current Federal regulations so there would be no restrictions on what the CDQ groups could spend money on or what type of projects they may invest in, and we talked about this previously, that we think this represents the intent of H.R. 553 as proposed in Congress. It would give the CDQ groups complete freedom in determining their own investment mix and the general impacts associated with that are also described under Alternative 3, the difference of course is that there would be no proposed limit under Alternative 4. And, again, this would be a distinct transition from the program's purpose as it's currently stated, so there is a suboption under Alternative 4, and that starts on page 196, to amend the goal and purpose of the program if you chose Alternative 4. And, that goal and purpose statement was taken directly from what is proposed in H.R. 553 and it's at the top of page 197. It reads, 'the goals and purpose of the CDQ Program are (a), to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries, and (b) to assist eligible communities to achieve sustainable long-term diversified local economic development. So, that is an option to consider amending the statement if you went with Alternative 4. The last thing I would say about this issue is that we

talked about previously that current evaluation criteria that's in State regulations is geared very specifically toward evaluating fisheries-related projects, so a considerable shift away from fisheries-related projects may make that criteria less applicable. There's several criteria currently in State regulations and also one of the new proposed criteria under Alternative 2 that says the extent to which a CDP will develop a sustainable fisheries-based economy, that are very specific toward evaluating those types of projects. So, if the Council determined to allow some limited non-fisheries related investments, we would assume then that fisheries-related projects would still be the primary focus of the program with some level of allowable investments in other projects. And, we talked about this again in the AP, that the effect is that the State could weight fisheries-related projects more heavily in the allocation process than non-fisheries related projects, but there's nothing in this that would require the State to do that, and the Council may want to be explicit under this option or under Issue 5 if that's the way that you want to go. I think that was something that was very important to several of the groups that are still trying to develop their fisheries-related activities in their communities, whether they would then be judged. . . those projects would be judged equally with non-fisheries related investments that may be very financially successful, but there's still a lot to do in some of these other communities related to fisheries projects that may not be quite as financially successful. So, that was something that came up in the AP and is discussed also in the document. That's all on Issue 7.

MADSEN: Thank you, Mr. Chairman. Nicole, going back to the suboptions 1 and 2 for Alternative 3 related to non-fisheries. . . and the inability for CDQ groups under these options to give grants to communities for. . . kind of block grants or something, wouldn't an option be that. . . and I guess I'm looking for the reason why, and is that because the inability to determine whether those grants would be used for self-sustaining projects? And, if that's the case, if this an option



that the Council wanted to support, if giving a certain amount per community from the profits was something we wanted to do, couldn't we just drop the 'self-sustaining' part of it and then that would allow grants to go to communities with no expectations on the outcome?

KIMBALL: Mr. Chairman, Ms. Madsen. I think there's two parts of that. If we dropped the self-sustaining, I still don't think in our interpretation you could give an unencumbered grant to a community because you would still be requiring that it be made in an economic development project, and I think a community could still under these suboptions come to a CDQ group and say, here's something we want to do, make a proposal to do that, and the CDQ group could follow up on that and allocate money to that community to do that project. But I don't think, even if you dropped the self-sustaining aspect of that suboption, you would be able to give them a chunk money and let them subsequently be able to decide what to do with that money, maybe if there was very tight monitoring on what they actually did.

BOB PENNEY (Council member): Mr. Chairman, Nicole. Every time I go through this I keep relating coming back to the Native corporations, how they are structured and put together and my layman's understanding of watching them over the last 25 years. And during that period of time they've had a lot of ups and downs, a lot of failures. But at the same time, either two or three of those are amongst the ten largest businesses in the State of Alaska and are very, very successful. So, . . .the same one Stephanie's talking about, suboption 1, under Alternative 3, it says 'in the region of Alaska represented by the CDQ group'. Now if you had somebody that wants to make an economic investment in one of those areas they might have a hard time finding any kind of a place that you could make one, so gee we want to be involved in this, we want to make one, so I think that would lead them to make investments that may not be a good investment and therefore subject to failure. Now, if the intent of that is keep them from buying real estate in Costa Rica,

or Puerto Rico, then why wouldn't the same thing be effective and work to be able to say the region the Alaska, and I think every Native corporation in the State has investments in Anchorage, most of them have investments in Fairbanks, and because they've been able to go in the area of high economic opportunity, they're less risk free. They make better investments. So, when you restrict it to an area of the CDQ group, I really think you restrict your. . .causing to have more risk. If the intent is to keep it local why couldn't you just say region of Alaska, and not just their area?

KIMBALL: Mr. Chairman, Mr. Penney. I think that's an option, to strike that language if you want to open up that suboption to Alaska. I can't speak to the exact intent of this suboption, but I think it was to keep it in the region of Western Alaska in which the CDQ groups are located. But, that's a potential option for the Council if they'd like to open it up to all of Alaska.

BUNDY: Mr. Chairman, Nicole. Would you please look at the AP minutes and take us through that and just tell us what you think that they mean, on this item?

KIMBALL: Mr. Chairman, Mr. Bundy. Under Issue 7 they chose Alternative 3 in which they allow some non-fisheries related projects to be undertaken by the CDQ groups. And they chose Option 2 which would allow each group to invest up to 20 percent of its pollock royalties and then they dropped that maximum of a half a million dollar cap, so they'd allow each group to invest 20 percent of its pollock royalties in non-fisheries related projects. I assume that means the remainder of the pollock royalties and all of their revenues would still be restricted to fisheries-related projects. They also chose the suboption 1, to require that any non-fisheries related investment be made in economic development projects in the region of Alaska represented by the CDQ groups and be self-sustaining. So, they did choose to restrict those projects to Western Alaska and that they would be in for-profit. . .or at least investments in

businesses or activities that they assume would have a foreseeable chance of getting a profit in the future. So, they went fairly straightforward through the alternatives and the only part that they amended was under Option 2 they struck the \$500,000 cap. They also chose suboption (a), to amend the goal and purpose to explicitly state that it would be primary fisheries-related projects, but to allow for some diversified non-fisheries related investments. Is that enough?

BALSIGER: Mr. Chairman. Nicole, the way you explained that was... on Mr. Bundy's question, in the region of Alaska represented by the CDQ group, and you said that was Western Alaska. I was reading it more narrowly, so if it was for example, the Central Bering... CBSFA... they would have to be perhaps on the Pribilofs rather than Western Alaska. It looks like it's a region represented by that single CDQ group instead all of Western Alaska. Is that correct?

KIMBALL: That's a good question. We were reading this alternative as not bounded by... like you wouldn't have invest in your specific member community. But I think the Council should specify whether they want each group bounded by their CDQ group's region or whether they could invest in any of the region that's bounded by the 65 CDQ communities. And, the AP did not speak to that.

SAMUELSEN: Yeah, Nicole, did the committee that was formed by the Council address this issue and what was their wishes?

KIMBALL: They did, and that CDQ Policy Committee recommendation on Issue 7 is on page 199, and they were fairly split, but five of the committee members, and this is right from the text of the document, reported (?), Alternative 3, Option 2, which would allow each group to spend up to \$500,000 annually on non-fisheries related projects, and that's how that option was stated originally. Again, the options were both structured differently and described differently when the CDQ Policy Committee first identified them, then they've been through the Council process two

or three times to be amended. It states here, at the time of the Committee meeting the requirement that the projects be self-sustaining wasn't part of suboption 1, but the Committee did also recommend suboption 1, and neither option 4 nor suboption 2, or any of the suboptions to amend the goal and purpose of the program, none of those were in front of the CDQ Committee, but they did support Option 2.

BIBB: Issue 8 is kind of some miscellaneous simplification, I guess, of the amendments and the quota transfer and are alternative fishing plans. And so, we have suggested under Alternative 2, and these recommendations come primarily from NMFS because they involve the aspects of the CDQ Program that we're most involved with, which is monitoring the fisheries. So, we have made three suggestions about some ways to simplify quota transfer and the alternative fishing plan process. And right now, transfers of quota between the CDQ groups are considered part of the Community Development Plan and must be made by an amendment to the plan so that means that the group has to submit their transfer request first to the State and then the State submits it to NMFS, NMFS reviews it and approves it. And, with the transfer of the prohibited species quota there are some additional restrictions on that. In addition to being amendments to the plan and having to go through the State before it comes to NMFS, the CDQ groups are restricted to transferring their prohibited species only during the month of January and only when the transfer is associated with a transfer of groundfish CDQ. And then the third thing that is dealt with under Issue 8 are alternative fishing plans and we have some fairly significant regulations for how the groups must account for their catch of CDQ species which includes weighing catch at sea on the trawl catcher processors, providing observer sampling stations, and having an observer to monitor all of the CDQ catch, and requiring that those observers have prior experience as an observer. Under some circumstances we allow the CDQ group to propose to us an alternative

fishing plan that they believe would provide us the information that we need but would not meet all of the regulations that we have for catch accounting, and we've used those primarily with the longline catcher processors where they propose to do their CDQ fishing with one observer as opposed to our required two, and they give us a plan for how they're going to conduct that fishery in a way that that one observer can collect all of the data we need. I think we've approved about ten alternative fishing plans; they work very well for us but they are primarily a negotiation process between NMFS and the vessel. Right now they're required to go through the State and we think that the requirements to have the State review quota transfers, that's the annual allocation of CDQ, not the percentage allocation, but once the CDQ allocations are transferred into actual quota amounts. We're proposing to allow the groups to make those transfer requests directly to NMFS, that's Option 1 under Alternative 2. Option 2 is allow them to make their prohibited species quota transfer requests directly to NMFS to allow them to transfer that prohibited species during any month of the year and to allow that prohibited species transfer without an associated transfer of CDQ. We haven't had any requests for transfer of prohibited species yet in the program; we've only been transferring the groundfish allocation, but we wanted to suggest these as simplifications in the regulations and allowing the CDQ groups more flexibility to manage their fisheries within the year and balance their needs as far as their groundfish and their prohibited species quota that they need to maximize their catch of the target species, and the third option that we're suggesting is that the CDQ groups could submit their alternative fishing plans directly to NMFS rather than having to go through the State in an amendment process.

So, three areas where we think we could simplify some of the paperwork and the process on the fisheries side.

BENTON: Any questions? O.K., then that concludes staff report and then we're going to get a report from the State. . .are we getting a report from the State? O.K., why don't we do that after lunch time, and so we'll come back at one o'clock.

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BENTON: O.K., you all ready? Council will come back to order. We're back on Agenda item C-4, CDQ Program, and we're getting now a presentation from the State of Alaska. Bryce?

BRYCE EDGMON (DCED): Mr. Chairman, my name is Bryce Edgmon, I work for the Department of Community and Economic Development. I'm sitting in for Jeff Bush who would ordinarily have been here but due some travel restrictions and the weather problems we had up in Anchorage, wasn't able to be here today. To my right is the new CDQ Manager who took over my old position about a week ago, Greg Cashen, and he'll be helping me with the testimony and fielding some of the questions. My testimony, just to alert you, is going to be rather brief and I'll be essentially paraphrasing what Jeff would have provided you which for the most part is just a re-statement of some of the prior testimony with our positions essentially being consistent from the CDQ Policy Committee back dating to May of last year.

In general, we support the positions of the Policy Committee and we have been an active participant throughout the whole process. From the perspective of the State we feel that we are best suited to be involved in the day-to-day functions of the program being that we work directly through our agency and through other facets of State government with the 65 communities on a regular basis. We also believe that the Council process is where this debate should be taking place and we at the State level are very much in support of the Council process and this being a first instance of where everyone gets an opportunity to participate in the debate that's taking place.

Just jumping right into the alternatives, Mr. Chairman, on Issue 1, the State recommends

Alternative 1, no action. Just to quickly state, we are opposed to any formal appeal process for allocations. I think you've heard Jeff speak to that on a number of instances before. We feel that the appeals process is inherent, is problematic at best, it's lengthy, it's going to be costly to both NMFS and to the State in terms of staff time. It's going to push the whole process back so that the allocation process won't be able to use the most recent annual audits from the CDQ groups and most recent quarterly reports which are all very vital to measuring the performances of the groups and figure out how they're actually accomplishing their goals and objectives as stated in their CDPs.

Mr. Chairman, if I'm moving too fast, let me know, because I'm going to go right into Issue 2.

BENTON: I'll tell you what. . .with the NMFS and Council staff we were doing it issue by issue, so why don't we just go ahead and follow that pattern and see if there's any questions of the State as we go through issue by issue. Mr. Bundy.

BUNDY: Bryce, I think it comes up here. On the issue of the score card that was mentioned earlier, does the CDQ plan team plan this year, this allocation round, to use the score card that I know you guys had worked on a little bit earlier, to use the score card format as a way to measure CDPs and then to write up the reports, is that the plan now?

EDGMON: We do. We do plan the pilot to use the score card. It's never been used before; the recommendation for a score card came out of the CDQ Policy Committee. Going back. . .[unintelligible]. . .we wrote all the CDQ groups and asked for their input on devising the score card; we put together a draft model and at that point it was based on the current evaluation criteria that's in place. Depending on what happens here at the Council level, that score card will certainly be revised and it will be revised in conjunction with the groups and also with NMFS if

they wish to participate. [No further questions on this Issue]

Issue 2, periodic or long-term CDQ allocations. The State supports Alternative 2, Option 2, with suboption 1. Originally the State approached the CDQ Policy Committee level of supporting a 2-year allocation; we later agreed to compromise to a 3-year allocation cycle with an escape clause for any action that might be required during a mid-term cycle adjustment. Let me just move on to say that the State opposes suboption 2 with its longer administrative process because we view it as essentially being unworkable and really in some instances not being practicable, being able to work with a CDQ group during the length of the CDQ cycle and give them a warning, offer them a mandate, then actually go in and have some kind of suspension or termination or some kind of enforcement action against that CDQ group. We view that process as clearly taking longer than the length of a CDQ cycle, assuming that the CDQ cycle in the future stays at 3 years or some similar period of time. [No further questions on this Issue]

**[Change to Tape 7]**

Issue 3, define the role of government oversight of the CDQ Program. The State supports either Alternative 1 or 2. Clearly, Alternative 1 is status quo and number two proposes amending the BSAI FMP to put specific elements into the government's responsibility for administrative oversight of economic development, elements of the CDQ Program, put that into regulation. As discussed and recommended by the Policy Committee the principle role for the government. . .[unintelligible]. . .clearly is governance, and the elements offered in Alternative 2 simply clarify the government's responsibility. If Alternative 2 is preferred the State also supports NMFS's recommendations to reorganize the elements of government oversight as outlined in the analysis on page 83, and certainly the State also appreciates the fact that NMFS consulted with KPMG and included their comments into the overall analysis package. Mr. Chairman, that was very



brief, but that's our position on number three. [No further questions on this Issue]

Number four is going to be equally as brief, CDQ allocation process, type of quotas, essentially, foundation quota or non-foundation quota, and the State supports Alternative 1, no action. This also came out of the CDQ Policy Committee. We believe that a foundation quota, the whole essence of the program is based on the groups' ability to prove to the oversight official that they are indeed doing their utmost to make sure that the benefits reach their communities and, certainly to do a foundation quota type allocation system would fundamentally change the program, or certainly would alter the entire way that the program works today. If some form of foundation quota were to be implemented, the State would prefer Alternative 2, Option 3, where one percent is allocated to each CDQ group for every thousand people represented by the group and that would leave the rest of the quota to be allocated on a performance basis. We would also further recommend adoption of suboption 1, applying any foundation quota to pollock allocations only. Certainly a foundation quota system may be possible for pollock but is very difficult to implement for other species such as halibut or crab which tend to be appropriately allocated based on individual group attributes and management areas and do include the element to proximity to resource.

BENTON: Any questions on that? I had one. This is sort of. . . maybe this is more a philosophical question, but this seems to be the place to do it. The way you would look at a foundation quota sort of intrigues me because it seems to bring up what might be sort of the State's philosophical approach to this, which is out of all the issues that you might look at when you're making allocation decisions, it seems like population is the overriding thing, is that the overriding. . . at one point performance seemed to be. . . performance and, sort of, need, which is different than population. . . seemed to be more emphasized by the State. Has there been a

change in that, or . . . ?

EDGMON: Well, certainly economic need is a big part of the whole allocation process and performance also is very important. This fall we'll have the opportunity to now have the 1990 census which we've been using for several allocation cycles, but we also have the 2000 allocation information hopefully by the time the public hearings roll around on August 27, followed, of course, by the private hearings, we'll have access to individual median household information statistics that we can also use in terms of our calculating and assessing the needs in the various regions in the CDQ program. So, both those elements are very important. I don't really know how to answer it any better than that, Mr. Chairman.

BENTON: O.K., so it's not an overriding. . . population's not an overriding consideration now. I mean, you almost gave me the impression that population has become the overriding consideration.

EDGMON: Well, population is a very important consideration.

BENTON: But not overriding, or is it?

EDGMON: Well, it's certainly very. . . you know, we've got 20 evaluation factors that we lean on when we do our analysis and population is listed as the number one criteria, so it's very important. For me to sit here and say that it's the overriding criteria, I don't think would be entirely accurate.

MADSEN: I guess on this discussion about population it seems like it's a chicken and the egg situation. If, and I guess Mr. Chairman if this is out of order, but I'm concerned that. . . is the State not concerned that if you are looking at population as one of the key factors, regardless of whether it's overriding or not, but as an area loses population, it loses access, potential access to allocation, but if it had the allocation it might be able to maintain its population because there

may be projects and work in the communities that would provide enough employment so that community can sustain that population. And if there's an economic downturn that causes the population to leave, it seems like that you're going to exacerbate the exit of that community because they're not going to be able to use the CDQ program to kind of shore up their economic base if it continues to deteriorate if they lose population. Is that not a concern of the State?

EDGMON: I certainly think that's a valid point, and one thing we've done the last couple of years is we've really made it more of a . . . we've really emphasized more interaction with the groups. In this past calendar year, for example, we met twice with each group to hear from their perspective what was happening in the region, how they were going about meeting the goals and objectives of the CDPs, and so forth. The census data, and certainly I'm not an expert on the issue, but just from the first glance is very interesting. The case can be made that, in a couple of communities in the CDQ program, population is understated, and a couple of other communities, the converse can be applied where the population is overestimated. Now that certainly is very subjective because there's nobody that may have the true accurate numbers and we'll certainly relying on the Department of Labor and also our own Department of Economic Development staff to help us with that assessment of community members and their populations, but we'll be leaning very much on the census data.

MADSEN: Mr. Chairman, not to belabor this but I don't think he answered my question. My question is, and you can almost look at the State as a whole on what's happening in coastal Alaska, and as coastal Alaska loses population the political power of the State becomes in the urban areas which exacerbates the problem in coastal Alaska and I'm concerned that I could see the same scenario in using population as a important criteria in the CDQ allocation process. As you lose population you lose allocation which forces you to lose more population, and I guess I'm

going to have to in my mind figure out if that needs to be balanced somehow.

EDGMON: I would just make the brief comment that I'm not really here to debate that issue. I wish that the senior member of the team were here to talk more with you on the public basis. But let me just say, though, that anecdotally having worked in this region for 13, 14 years, I know that the population trends at least in the southern part of the CDQ program even pre-dating the beginning of the program, the trend was not increasing, it was decreasing, and we're vice versa in the northern part of the CDQ program; the population trend is actually increasing, where the birth rates, for example in the Yukon Delta area, in the age category of 16 and 20 in terms of a rural county, and certainly we don't have counties in Alaska, but using that definition, is the highest in the United States.

AUSTIN: When I look at your recommendations and you don't make a recommendation on Alternative 1 or 2, and then listen to this conver. . .initially I concluded, because they were essentially redundant and that's really not necessary. But now when I hear the discussion I'm thinking that they're different and yet you're still not making a recommendation on whether it should be Alternative 1 or 2 and I'm not sure I totally understand that. Is my conclusion that they are different; we've got ten criteria setting in front of us here that are being proposed to be codified into the Federal regs and I heard you reference 20 criteria the State uses. Doesn't that just suggest we're going to get into a conflict in the appeal and review process if we're not using the same criteria. And if we were using the same criteria then I'm back to my original conclusion that the reason you didn't make a recommendation here is because it's redundant and it doesn't make any difference whether we go 1 or 2 from a State perspective. Buried in that is a bunch of questions and I hope you can ferret them out.

EDGMON: Well, the State certainly supports. . .there's an alternative that's. . .an issue that's

coming up that would. . . asks for reduction of the 20 evaluation criteria down to a lesser amount and the State certainly supports that effort, if that's where you're going.

AUSTIN: I'll figure it out. Thanks.

SAMUELSEN: On Issue 4, Bryce, CDQ allocation processes. Looking in the analysis here we've got CDQ groups that range from anywhere from 532 for the whole region to 8,488, and I've been a participant in the CDQ program and also a member of the committee. I don't know if you sat in on those committees representing the State; I can't remember that far back, but this was thoroughly discussed and in the analysis there's the Committee recommendations which was chaired by. . . appointed by this Chairman and appointed Mr. Lauber. We came out with recommendations. In our Committee meetings if I remember correctly there was heavy discussion on this, both pros and cons and then the groups came to a consensus. There was those regions that had a large amount of people in them that wanted to go based on population; on the flip side of that coin there was those regions with close proximity to the resource, that that was their club, and it was compromise amongst all of the CDQ groups. Is my assessment fairly accurate?

EDGMON: It is, that's my recollection. We spent I think the better part of an afternoon talking about this issue and at one point it appeared that there would be some kind of a recommendation come out of the Policy Committee but I think that in the end there was no specific recommendation and so the State certainly agrees to support Alternative 1 which is status quo.

BENTON: Anything else on. . . I've got one follow-up, Bryce. Listening to the. . . I'm still a little bit. . . I'm trying to still understand how the State now looks at this issue between performance, number of communities, and population, and the thought while I was listening to all this that was going my mind is that. . . what kind of measure one uses when one's trying to evaluate the mix

between population on performance and one of those measures I guess would be employment. And, as you are very familiar with, we have high unemployment rates in a large part of rural Alaska and this program was supposed to help deal with that and has done a pretty good job of it. So, let's see if I can get this example so I understand it and you can understand it so you can respond. Let's say we had two different CDQ groups and one CDQ group had a population of . . . a high population, let's say 3,000 and another one had a lower population, let's say 1,000. And they got a quota awarded and they went off and did their thing, and let's say that the CDQ group that had 1,000 generated 500 jobs and let's say that the CDQ group that 3,000 as a population base generated, you know. . . these numbers don't make any sense in the real world, but it's just illustrative. . . and let's say they generated 800 jobs, O.K.? Now, clearly there's a higher population in the one group and they generated more jobs numerically but the sort of ratio between population and jobs as a performance measure the group with the lower number of population generated a higher ratio of jobs. How would. . . I mean, does the State. . . I guess what I'm really curious. . . does the State sort of look at that kind of thing? Does that factor in how you do things? Because I could see a situation where if population was an overriding or maybe it's not overriding, but really that the Sate in the end just really relies on, I could see where performance becomes really a minimal issue, or it becomes minimized and yet we could have groups that are out there generating. . . really doing a good job, they're going to get penalized. And I can see the flip side of that. I'm just wondering if you could help me understand how the State approaches that, it would be very useful.

EDGMON: Well, I think the score card is going to be beneficial not only for the groups, the board members, the staff, anybody involved out in the community level, but I think the score card is also going to be beneficial for us at the State level in terms of breaking down the analysis

which does include at present a category for milestone achievement and certainly jobs and employment and any other benefits that would be directly related to milestones of the groups. But, we'll be able to put some kind of a score to each group and to each hypothetical situation that you just raised, where one group would perhaps get the higher score for their achieving more economic opportunities, more jobs than the other would even though the other has certainly a larger population basis to draw from. So, I'm probably not answering your question, but I don't know how to sit here and sort of, in absolute terms tell you how in a very subjective process how that is accomplished and especially we have not yet begun to do our analysis for this upcoming allocation process and certainly what happens here is going to weigh very heavily on what we do in the upcoming next couple of months. I almost feel like my response would be 'maybe I can tell you more in a month or so', but. . .

BENTON: And I can appreciate that. I know the difficulty all too well, know the difficulty of the job you guys have to do, and I wasn't trying to put you on the spot. I really am trying to understand because I'm just getting the sense that population is becoming more of a driver in the State's equation and maybe this kind of thing will come out through a further discussion after you guys are done and we get into the meat of the issue or through public testimony, but given my past history with how this program is operated I'm just curious how those things get factored in and maybe it's the kind of thing that Mr. Duffy and others want to think about if we get into the substance here when we look at some of the criteria and how this is evolving. So, anyway I wasn't intending to put you on the spot at all, except your answer is being responsive to my question, how's that? Is there anything else? Mr. Bundy.

BUNDY: Mr. Chairman, as you said, sometimes questions beget questions. This question is not about population but it is about the job issue and I'm thinking back about some things that have

happened in the past. When you count up jobs in terms of performance, does the CDQ team look at the sustainability of the job, that is whether or not the jobs being created are going to peter out because they are really not economically sustainable, or as opposed to jobs that appear to be sustainable and will stick around for a long time. Is that looked at at all in the past?

EDGMON: That's a very interesting question. In terms of our measuring of jobs, we don't really require the groups to provide us that type of information in terms of, you know, an individual getting employed on a boat on a lower deck level and eventually working their way up and maybe some day even being captain of the boat. Certainly those instances are very few and we know about any similar instance where somebody actually worked their way up on a vessel, for example, but the question is do we require the groups to provide us sort of maybe a logbook of the progression of individuals starting at entry level jobs and working their way up to, maybe you know, management levels somewhere down the line. The answer is no, but I would also respond that the program is very young, it's only ten years old and there clearly is a progression where you look at the six CDQ groups and look at the upper management level staff that more and more people from local communities are rising through the ranks through internships, through scholarship programs, through whatever means it might be, so from that perspective the CDQ program definitely is very beneficial. But, at present we have a commission with Northern Economics firm out of Anchorage to do a phase 1 study of the CDQ program that attempts to measure some primary, secondary, source data about the impacts of the program from 1992 to the present and I certainly envision down the road that maybe some more in-depth trend analysis certainly could be undertaken and I think your question is very well taken and it's something that needs to be done in terms of measuring how valuable the program is to the communities that are involved. . . job retention and progression and career fields is very applicable. [No further



questions on this Issue]

Number 5 is CDQ allocation process, the evaluation criteria. The State supports either Alternative 1 or 2, and Alternative 1 certainly is the status quo. Alternative 2 would require revising the CDQ evaluation criteria and publishing them in NMFS regulations. As I mentioned and we talked about earlier, the State agrees that the allocation process needs to be as transparent as possible and there are currently 20 criteria in the State regulations that are used in making allocation decisions and that obviously ties into our earlier discussion about the score card as well. To reemphasize this, the State will be for the first time ever using a score card system this fall and if it's successful and if it turns out to be a really useful tool, it's something that the State would consider putting into regulations and making it a permanent tool and so I think that this is sort of an important juncture in terms of the allocation procedure and how information's communicated not only back to the staff of the groups but every bit as important to the board members of the group who we certainly encourage to be involved as much as possible in the decisionmaking and the strategic directions of their companies.

PENNEY: Could you tell me how closely you based on what you just said, that the State complies or does not compatible with the minutes from the AP, specifically on those two things, 7 and 8?

EDGMON: Yes, just take a second here to grab. . . a stack of paper. Well, in terms of number 7, ..[Change to Tape 8]. . . we would support number 7. Number 8, apply proximity to resource only these species: halibut, Norton Sound red king crab, Pribilof red king crab, and St. Mathew blue king crab, to me there seems to be a redundancy in there, because right now halibut gets allocated. . . it's area specific so. . . Atka, for example, is going to get halibut in Area 4B, St. Paul in 4C, and so on and so forth. Norton Sound red king crab right now in terms of CDQ quota is

allocated to two groups, NSEDC and YDFDA, and Pribilof red king crab and St. Mathew blue king crab, and Greg you can correct me, whether allocations thereof are allocated to CBSFA. So, in terms of proximity to the resource, to me that already has taken place and so, yes to number 7, and number 8, you know I would just again say that it's redundant.

BENTON: Any other questions on that? What is the constructive or practical difference between 7 that's in the Action Memo and the alternatives in 7 from the AP?

EDGMON: I think the biggest difference is past performance between the two, Mr. Chairman.

BENTON: So, I guess I'm still trying to understand that. When a CDQ group comes forward with a proposed CDP they come with a fishing plan that says 'here's what we're going to do.' And some of that has to do with bycatch and some of these things listed here. So, what you're saying is instead of looking at what they're proposing to do, you're going to look at what they did do, or are you going to look at both, or how does that work?

EDGMON: Yeah, there appears to be clarifying language to point directly back to the past performance of the CDQ group in achieving conservation measures. That's the way that I read it.

BENTON: What if they were using one thing before. . .let's say the previous CDP they were using a longliner for cod and they were now proposing to use a trawl vessel for cod. How would you deal with that?

EDGMON: I would defer to my colleague from the Dept. of Fish and Game on that one.

BENTON: Excellent answer! Maybe your colleague from the Dept. of Fish and Game wants to wait on that question, I don't know. I see him nodding his head.

EDGMON: It certainly would be a question that we would deliberate on and we would discuss it; I don't have an answer for you right now and I wish I would have been at the AP meeting but we weren't there.

KEVIN DUFFY (Council member): I was just going to add, Mr. Chairman, you seem to be asking questions about what the intent of the AP was to some degree and neither of the staff had the opportunity to participate or listen to the AP discussions the last couple of days; they just got in on the plane last night.

STOSH ANDERSON (Council member): Mr. Chairman. Bryce, when I look at number 1, it has a component of population and economic conditions, but it doesn't state what that means. It means if you have equal population and economic conditions, whatever tool you're using to measure is greater or less, does it give it more preference or less preference? I don't know how you're measuring economic condition number 1, is that annual income or. . .I just don't know your unit there and if the unit is annual income and if the two populations are equal and their annual income is greater in one community than the other, does that give it more preference or less preference.

EDGMON: Well, in terms of participating communities, the answer is fairly obvious and that's easy to delineate—population, characteristics, we tend to use the most recent data. And, again, this year we'll use 2000 census numbers. In terms of the actual weighting of those criteria, I think that will come out more in the crafting of the regulations, a process that will involve certainly the agencies and the groups, so again I don't have a specific answer for you other than that. [No further questions on this Issue]

Issue 6, extent of government oversight, definition of a CDQ project, in parentheses. Our position has not wavered on this issue from essentially the CDQ Policy Committee level and certainly before. We support Alternative 2, Option 2, revise NMFS regulations to clarify that the government oversight applies to activities of the CDQ groups and all subsidiary activities, which is defined as entities controlled by a CDQ group and also minority owned investment companies,

or consolidated affiliates as the accounting term is. Accountability to the CDQ program is very important and having been CDQ manager for the last three plus years I guess I can vouch first hand that there certainly has been an increasing number of subsidiaries and a lot of, if not a majority, of activities with the exception of one group, occurring in those for-profit subsidiary companies. And if the State were not going to have any control or any monitoring abilities over activities of subsidiary companies then it would be very easy for the CDQ groups to go off and do things that the State would not have any idea about or any control over or any notion about and certainly we would have. . . I guess under this scenario, would have the ability to look at the annual audits and the quarterly reports when they come in. But, annual audits depending on what type that you actually employed can come with some pretty big limitations. So our position is pretty firm on this issue. We feel that if oversight is removed for subsidiary companies and for any investment companies owned by CDQ groups then we should just do away with oversight completely because it renders our efforts virtually moot and it would save us a lot of time and a lot of headaches and a lot of efforts in trying to track the performance of companies that we have no interaction with as we do today in terms of trying to monitor and ensure that they're doing their very best to take every royalty dollar from the Bering Sea or wherever it arises from and to make sure that dollar translates into some job for somebody in Tuntutuliak (sp?) or someone in Stebbins or one of the Nushugak (sp?) villages, or wherever the community might be in the APICDA region for example. So, my testimony thus far has been fairly brief on all these issues and it's very brief and to the point on this one, too, Mr. Chairman.

PENNEY: My career in business has kind of always taught me and I think it's pretty much a consensus that the less we have government involved in things in business matters and let the capital system work. I think historically across the nation that's really proved to be the case. I

can't think of too many things that the State's in business in. Can you tell me why you think the State is so eminently qualified to oversee these second tier things when they aren't in other areas?

EDGMON: Mr. Penney, the State supports a streamlining of the regulatory process and the State supports giving the groups more flexibility on their business decisionmaking investments. I will tell you from somebody who has grown up in Western Alaska and is a member of a regional corporation and who now has the opportunity to speak directly about the CDQ program having worked with it day to day, . . . [unintelligible]. . . there certainly is value to oversight to all six of the groups and quite frankly it's more valuable to some groups than it is to other groups, but it does play a role, it certainly plays a role in ensuring that the groups undertake investments in a very comprehensive manner when it comes to due diligence. We have a checklist that is extremely thorough and a process that is very rigorous and by the time the groups get done going through the hoops with the State, if you will, chances are that that investment has been well researched and well thought out and has a pretty good chance of succeeding. Now, the counter to all that is, one could sit in the audience and say, well, you know the substantial. . . [unintelligible]. . . is very cumbersome and it's actually cost us an investment opportunity or two. Well, let me tell you again from first-hand experience I know of no single incidence where a group has approached me or my staff or any member of the team saying that they lost a business because of the oversight process being too slow to approve an amendment to the CDP, if you will. We've put into place a system that perhaps we'll have the opportunity to actually codify in regulations where the groups work sort of on a real-time basis with the State and the National Marine Fisheries Service to some extent as the whole amendment process is developing so that when the final package does arrive on our desk we're very familiar with it, we can make our decisions instantly almost in some cases, and you know, I would take this opportunity to compliment my

counterpart at the National Marine Fisheries Service and her staff in doing the same thing. And so I think with that this one area of oversight that we really have stressed and really have improved.

HYDER: Earlier you indicated that if your recommendation, Alternative 2, Option 2, wasn't accepted that you would prefer to eliminate oversight entirely. Would you elaborate on what you meant about eliminating all oversight?

EDGMON: Why, my comment was made in the context of if we do away with oversight of CDQ subsidiary companies then in effect oversight for the most part is rendered meaningless because a large part of investment activities within CDQ groups these days are being conducted through for-profit subsidiary companies and so if the royalty dollar comes from the ship, goes directly into the administrative office in Anchorage, Dillingham, wherever it might be, and disappears into a subsidiary company and we have no real way of knowing where that dollar went unless we were to conduct an extensive audit, do that on an annual basis, certainly the whole aspect of being able to monitor the activities of the CDQ groups would be diminished considerably if subsidiary companies are not involved in the oversight process.

ANDERSON: Mr. Chairman, Bryce. You mentioned that in an amendment process that your agency and the National Marine Fisheries Service agency works with the applicant and you made the statement that sometimes the decision can be made almost instantaneously. Can you give me a range, if that's possible, on the shortest possible time it would take, the average time, or the longest it might take. So, if a person has an opportunity, what is his expectations as far as getting a response time from you?

EDGMON: I would say that we're talking in days here and very likely less than a week and it certainly depends on the amount of effort that the group has used in working directly with the

CDQ staff and all the groups have done I think a great job of working with us and when a group gets set to buy an investment a lot of the paperwork comes in sort of at different times, the contractual agreements, the vessel surveys, the investment analysis, the board minute approval, the business plan, all that can be developed at different stages. I think the groups have done a really good job of making sure that we get the appropriate information as it's being developed. One example I can tell you is Coastal Villages' purchase into the American Seafood Company. Well, we turned that investment around in less than three days when the final package actually arrived on our desk.

PENNEY: During the 50-some years I've lived here I've had many, many exposures and been involved very much in the Department of Commerce and I think I have a feeling for how it works and the point you made, you made very well, saying that you're beneficial and it's assisting.

Well, if that's the case and the State's doing a good job here, do you think it would be beneficial to the public if the State's ability would be expanded to other kinds of business in the State so that the State has more oversee into the private sector everywhere?

EDGMON: The Banking and Securities Division is just down the hallway where I work and so is the Division of Insurance and to look at their regulations and their black books frightens me, and the CDQ program gets off very easy compared to them. I don't mean to be flippant with you, but really if you do compare it to other private sector oversight in the State, the CDQ program, and mind you we are working with the groups although we have philosophical disagreements with more than one group on how to actually get there, but we're working with the groups to streamline the whole process and to reduce the flow of amendments and increase the dollar threshold that the groups are required to amend their CDP, so that's the best way I know how to respond to your question.

SAMUELSEN: Thank you, Mr. Chairman. Kind of lost me there for a minute. I guess we're on Issue 6. . . .I guess in response to Mr. Penney's question on possibly recommending that State oversight be dismantled, it isn't State oversight, it's Council oversight. If my memory serves me correctly, this is a Council-created program. The Council asked the State of Alaska to be the lead agency with NMFS participation and oversight. The Secretary of Commerce took that under consideration and signed it into being, so it isn't State oversight. We the Council did not have a mechanism nor were we as close to the communities as the State of Alaska and that's why we brought these guys in. So, it isn't State oversight, per se, it's what the Council requested and I think there's a distinctive difference there on how we're trying to phrase and whose oversight is it. You're managing the oversight at the Council's direction, at the Council's request; this is the Council's program and I want that clarification to be remembered when we get to debate.

BENTON: I KNOW there was a question there someplace. . .but I think the point's well taken.

[Short exchange here between among members on process, not relevant to current report/questions]

BUNDY: Bryce, I want to test a little bit about what oversight might mean under this criteria. Let's just assume that the CDQ group has investment in a company that manufactures and sells worldwide seafood products and the company decides that it would be to their advantage to apply some new technology to extract protein from fish waste in a plant in Mexico, so that's what they are going to do. Now, first question, is this a quote, new investment, end quote, under the bright new world that requires them to go to the State? And, second question, is, what is the State's. . . .assuming that it is something that need prior approval, what is the State's interest and involvement there and what questions are you going to ask and is it limited to whether or not it's a reasonable decision or might it go further to question whether they ought to put the plant up in



Alaska, maybe near the airport. . .but that's not fair. . .but, should the inquiry stop with is it a reasonable decision, or does it go beyond that?

EDGMON: Is the assumption that the CDQ group owner is a minority owner? Or is it a majority owner with effective control of the day-to-day operations?

BUNDY: That's not important to me. But let's say it's anywhere between. . .let's say it's whatever it is that requires prior approval, so 51 plus, I guess.

EDGMON: We don't have any instances like that in the CDQ program today where a CDQ group is actually the controlling owner of a operation that would have that capability, so in some ways your question is clearly theoretical it just doesn't apply to any of the groups today. I firmly believe it will at some point, recognizing the very rapid growth in the program. You know, the only way I know how to answer your question is from the perspective of the CDQ group being a minority owner and not having really a say-so in the board room in terms of the decision that's being made. In that instance there wouldn't be a substantial amendment being required if that's the nature of your question. [No further questions on this Issue]

Issue 7, Mr. Chairman, is allowable investments by CDQ groups, fisheries-related projects. The State supports permitting some non-fisheries related investments providing that suboption 1 is adopted, which would restrict those investments to in-region economic development projects only. The State actually prefers Option 2 under Alternative 3, allowing each CDQ group to invest up to 20 percent of their pollock royalties in non-fisheries related projects. At the CDQ policy level we supported the proposed cap of \$500,000, but we have since changed our position and believe that is overly restrictive for some of the larger groups that have more communities and have higher annual revenues, or royalties I should say. The State also supports suboption (a), clarifying that the goals and purposes of the CDQ program should be

amended to state that the primary purpose is fisheries-related investments and development and that the secondary purpose is the promotion of other economic development in the region. I guess one other comment to add is that certainly whatever alternative the Council chooses, it's important that the rules be clarified to account for and allow groups to engage in education and training and scholarships and charity events because to some degree the groups have sort of grandfathered themselves in and have been certainly wanting to be the good corporate citizen, quote, unquote, out in their communities and have been doing these activities anyway and it's for the most part to a fairly small degree but it should be addressed in the regulatory process. Mr. Chairman, one final last comment would be regarding the weighing of fisheries versus non-fisheries investments when making allocation decisions, the State believes that this issue can be addressed through the rulemaking process and certainly the State believes that fisheries related for-profit investments deserve more weight than non-fisheries related for-profit investments and we've always placed a great deal of importance on other group activities such as education and training. We sent a letter out to all the groups, I think maybe it was two months ago or so, highly encouraging them not to get ahead of the Council process and the regulatory process and we asked them not. . .we encouraged not to put non-fisheries related projects in their upcoming CDP. So, the hope is that the groups comply with that request and we can evaluate the incoming CDPs strictly on a fisheries-related basis and certainly act accordingly when the regulatory framework is changed.

PENNEY: I appreciate your testimony and I really appreciate your depth of knowledge of the issues here. Looking at Issue 7, and looking at the AP draft, they're a little bit different, but would you give me a. . .am I correct in assuming that the AP minutes and the State's position are very close to being the same?

EDGMON: Yes, that's correct, Mr. Penney.

BUNDY: Bryce, on this subject, the AP minutes I think used the phrase 'economic development' for purposes of the 20 percent, if we're talking about the same thing? In your mind, does economic development necessarily mean income producing or might it mean community infrastructure also?

EDGMON: Economic development would mean income producing. You know, we've certainly required the groups and I think this goes back to Day 1 to not engage in providing any services that might be construed as basic government services or services that the Executive Branch or the Legislature might be involving themselves in because the program has been very specific to, at least from our point of view, towards encouraging fisheries-related economic development out in the communities.

SAMUELSEN: Just a follow up, Bryce, to that issue on economic development. You responded to Mr. Bundy, income producing. My understanding being in the committee that any non-fisheries in-region economic development, there would be investment criteria developed and that those investments, as well as any other investment, not in the CDQ, when you make an investment I think it's one out of three businesses now go belly-up, so what we're looking at here, and what most of the CDQ groups, not all of them, agreed to, was that it had a strong likelihood of a stand-alone project, and it had a potential for income producing. Whenever you make an investment you don't know if it's going to produce or not, but the investment had to be in-region and it had to meet a litmus test on whether it could be a stand-alone project and make money, had a high likelihood of making money.

EDGMON: That's correct, and not only making money but we certainly on the oversight end of things would also require that employment and training benefits were also maximized. That

would certainly be part of the amendment approval process, too. But the two points that you raise about non-fisheries-related projects having to be within region, and also having to be economic development in nature, actually produce a return, I think if approved by the Council will certainly give bellwethers in construction of the regulations that occur after this process is completed.

BENTON: Any other questions? I've got one. Bryce, the term 'in-region' was the subject of some questions and discussion with NMFS staff and it's still not clear in my mind. Does 'in-region' mean Alaska, so as Mr. Penney asked, could that be projects in Fairbanks, does 'in-region' mean anywhere in Western Alaska, you know, north of the Aleutians and south of Bering Strait, or does 'in-region' mean that Yukon-Delta does it within their CDQ sphere of influence and Norton Sound does it in their CDQ sphere of influence, and is that the definition of region? How would the State interpret that?

EDGMON: Mr. Chairman, I think that we interpret it to be within the CDQ program boundaries as a whole and it's my recollection that this whole issue, I think, began with each area being defined as being the boundary of each individual CDQ group, but I will tell you that we sat in the audience with great interest and listened to the previous staff, their testimony, and I think that we would support the clarification from the Council on just exactly what that means because it does seem to lend itself to individual interpretation.

BENTON: Would it be the State's, sort of, philosophical approach that those benefits should accrue to the CDQ communities, though? I mean, as opposed to some other kind of way of looking at this?

EDGMON: Yes, it would be.

SAMUELSEN: Follow up on 7. I guess the additional language of the 'previous year's pollock

royalties'—do you agree with that statement in the AP motion?

EDGMON: Yes, yes we do.

SAMUELSEN: So, if this motion passes, the 20 percent would be from the previous year's pollock allocations in the CDQ groups.

EDGMON: Yes, we do, and Greg, do you have those numbers at hand?

GREG CASHEN (DCED): Let's see, for 2000?

EDGMON: Yes, for 2000 and 2001 unaudited.

CASHEN: Mr. Chairman, Mr. Samuelsen. I guess the 20 percent of the pollock royalties, based on the 2000 financials, would be about \$6.6 million which would effectively be \$100,000 per community from the CDQ region. And the 2001, I haven't compiled the 2001 financials from the audits yet; just received the audits May 30<sup>th</sup>.

SAMUELSEN: But you concur with Bryce, it'd have to be based on a previous year's pollock royalties.

CASHEN: Yes, that's correct, and I think the intent of the previous year is to make sure that the royalties have been audited so you have a hard number to base your royalties on.

SAMUELSEN: O.K., thank you.

BENTON: Mr. Bundy.

BUNDY: Sorry, Greg, I wasn't following your math. You said \$100,000 per group or per community, what did you mean to say there?

CASHEN: Basically, based on the year 2000 pollock royalties, excuse me, I may not have made that clear, that would be. . .[Change to Tape 9]. . .6.6 million dollars, divided by 65 communities in the CDQ region, that would be approximately \$100,000 per community for non-fisheries related.

BUNDY: Just to follow up. You're not assuming by this that somehow this money has to be divided up equally among communities.

CASHEN: No.

BENTON: There's another piece to this on Issue 7 that was raised by NMFS staff and Council staff, I believe, and it's in our Action Memo in the packet behind it. And it has to do with the goals and purpose statement for the program. Currently that goals and purpose statement speaks strictly to commercial fisheries business activities, I believe. There's some alternatives to that language and there was a suggestion that the Council might want to consider modifying that goals and purpose statement to clarify that non-fishery related activities are also part of the program. If we were to do that, would it be the State's, let's say philosophical approach again instead of thinking about specific words, but the State's philosophical approach that if we were to . . . given that we're also talking about a non-fishery related project are in sort of a limited capacity, however we decide to limit it whether it's using that 20 percent rule or a set amount, however that comes out, that the first priority remains fishery-related economic development and the second and lesser priority is non-fishery related projects? Would that be the State's approach?

EDGMON: Yes, Mr. Chairman, and that's by virtue of our choosing to support suboption (a), which speaks to that and the revised goals and purposes.

BENTON: O.K., gotcha. Thank you. Anything else? Go ahead.

EDGMON: Lastly, on number 8, on other CDQ administrative issues, the State fully supports Alternative 2, options 1 through 3, to allow CDQ groups to transfer quota and submit alternative fishing plans directly to National Marine Fisheries Service. It's envisioned that the State would be kept in the process by being informed by NMFS on a regular basis and would thus participate

that way through the whole process.

BENTON: O.K., any questions on Issue 8? I hate to do this, but I'm going to ask one anyway. If we were to do that, what's the purpose of having the fishing plan in the CDP any longer?

EDGMON: Well. . .by definition, and this almost reminds me of putting a budget into the CDP, that what goes in originally often at the very end of a allocation cycle can look very different based on unforeseen circumstances. So, I think that applies to fishing plans as well, that whether it's economic circumstances or even a boat breaking down or a CDQ group for example not having. . .it could be just a number of things that require a transfer of quota from one group to another that certainly results in the transferring group to still retain their value of that quota, their dollar value but also being able to help the second CDQ group that's getting the transfer of quota in the process as well. So, I don't think I'm doing a very good job of responding. Greg, do you want to. . .

BENTON: Maybe I should clarify my question a little bit because it might help a bit. As my recollection, which is getting faultier by the day, but my recollection is that the fishing plan was put in. . .the notion of having a fishing plan was put in as a requirement in the CDPs when we went to the multi-species CDQ program. And, in recognition that there was a lot of interaction between the various target species quotas and bycatch, both PSC bycatch and also within those quotas, target species. And, that relationship had to do with the thing that you raised, in part, value. It also had to do in part with the evaluation criteria for making the allocation decisions that dealt with promoting conservation based fisheries, minimizing bycatch, etcetera. The idea being once again that if everything else was equal, population, performance, all the other evaluation criteria, that you might look at whether or not one group is doing something that had a lower bycatch than another group in terms of making your allocation decision. That assumes

everything was equal, which of course they're not, but. . .so and then the transfer provisions were simply there to ensure that that fishing plan had meaning, that these guys actually thought it through, figured out what they had to do, and had a plan that really demonstrated that they could meet that performance, that part of the performance and evaluation criteria requirements that they said they would do. So if you put in Alternative 2, it says they can just move this stuff around freely, and I'm not arguing whether or not that's a good idea, it strikes me that there's no real reason any longer to have the fishing plan in the CDP because really it doesn't matter. They can move quota back and forth, they can basically do it however they want to; it would just be a notification thing to the State. So the evaluation criteria about bycatch control and that kind of thing becomes a non-issue, I mean, they're just going to run their fishery and how that goes becomes a non-issue. So, am I missing how that works?

EDGMON: This would still require the technical amendment process to be approved, so the groups would still have to have an amendment being approved. What it would do largely is remove having to have a substantial amendment for the transfer of ten percent or greater of an often obscure bycatch species, if you will, that one group has an excess capacity of and wants to transfer over to Group B and would really eliminate the whole process of putting together substantial amendments on something that really should require a technical amendment and could be something that could be done quickly so that the groups can make this happen without having to put together a substantial amendment, send it to us for analysis and approval. But, we all know that there's an allocation cycle coming up this fall and we'll be working on our bycatch matrix model and that'll set up a system where we can plug in various scenarios and devise bycatch numbers in accordance with the primary target numbers that we put in the model, so we're very much aware of the pattern between the groups; we keep an amendment log of all the



transfers so we know if there's an inordinate amount of transfer of one species, for example, one group that may not be doing their best to prosecute that fishery and so on and so forth, and certainly conservation is very important to the program as well and so that whole issue is very important to the program. But we view number 8 as a streamlining—the whole bureaucracy in terms of this transfer process in allowing technical amendments to take the place of this unwieldy substantial amendment and maybe an amendment process that is not required.

BENTON: Have you had to process a PSC transfer? I think Ms. Bibb said there has not been a request for that.

EDGMON: I don't think so.

CASHEN: I don't believe so, I'd have to check the regulations but I think PSC transfers normally took place between January 1st and January 30<sup>th</sup>, I think there was a window. I'd have to double check on the regs, but I don't remember processing one myself.

BENTON: O.K., any other questions with regard to Issue 8? O.K., anything else from you guys?  
[negative response] All righty. I think that takes us to. . .do we have SSC report?

OLIVER: We have an AP report that I guess Sally and/or Nicole is going to give.

KIMBALL: Mr. Chairman, on Agenda item C-4, the CDQ policy amendment, the AP recommends that the Council adopt the following alternatives and options for the eight issues contained in the analysis:

"Under Issue 1, determine the process through which the CDQ allocations are made:

Alternative 2—define the process in regulation and expand State hearing and comment process, but with no formal NMFS appeals process.

Under Issue 2, periodic or long-term CDQ allocations:

Alternative 2, Option 2, Suboption (1)—set a fixed 3-year allocation with possible

mid-cycle adjustment for extraordinary circumstances. Additionally, the AP recommends the regulations must be revised to reflect that suspension or termination of CDQ allocations would be an administrative determination by NMFS and that the CDQ groups would be allowed an opportunity to appeal NMFS's initial administrative determination on any changes in CDQ allocations. The AP also recommends removing the requirement to publish a notice in the *Federal Register* about suspension or termination of a CDQ allocation. "

And, those pieces are part of NMFS's recommendation that were under that alternative.

Issue 3 is the role of government oversight:

"Alternative 2, amend the Bering Sea/Aleutian Islands FMP to specify government oversight purposes as described in the analysis."

Issue 4, CDQ allocation process, type of quotas:

"Alternative 1, no action."

Issue 5, CDQ allocation process, the evaluation criteria:

"Alternative 2—publish allocation criteria in NMFS regulations with the following changes to the criteria: Number 7 is 'In areas of fisheries harvesting and processing, past performance of the CDQ group, to the extent practicable, in promoting conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.'"

And, then also, change to Number 8:

"Apply proximity to the resource only to these species: halibut, Norton Sound red king crab, Pribilof red king crab, and St. Mathew blue king crab."

Under Issue 6, extent of government oversight:

"Alternative 4—revise NMFS regulations to clarify that government oversight extends only to activities of the CDQ group that are funded by royalties from the CDQ allocations."

This was a separate amendment and that motion passed 9 to 8. There's a minority report under that amendment. It says,

"The minority is supportive of making adjustments to the maturing CDQ program where it is now appropriate. We believe that due in large part to conservative management and accountability to the communities the success of the program can continue. However, Alternative 4 erodes that accountability and offers large opportunity for CDQ management changes that could bring the future of the program into question."

That is signed by Jeff Steele, Ragnar Alstrom, Dave Boisseau, Hazel Nelson, Lance Farr, Al Burch, John Bruce and Michelle Ridgway.

Under Issue 7, allowable investments by CDQ groups, fisheries-related projects, it's Alternative 3, with the following amendment to Option 2:

"Suboption 1. For limits on non-fisheries related projects and suboption (a), to make the goal and purpose primarily fisheries related."

In essence, this would allow investments in non-fisheries related economic development in-region projects up to 20 percent of the previous year's pollock royalties.

Under Issue 8, other CDQ administrative issues:

Alternative 2, simplify quota transfer and alternative fish plan process.

And then the entire motion was voted on and passed unanimously.

BENTON: O.K., any questions with regard to the AP report. Mr. Hyder.

HYDER: Thank you, Mr. Chairman. Nicole, can you tell us if there was any discussion of the meaning of 'in region'; we just previously a little while ago had a question about that.

KIMBALL: Mr. Chairman, Mr. Hyder, I don't think there was any specific discussion of that 'in region' and I noted that in the analysis I discussed it as within the bounds of the CDQ program, so within the region of the 65 communities and not limiting each specific group to only investing in their group's region. But then, again as I discussed earlier, you can amend you that as you wish. The AP did not address that specifically.

MADSEN: Nicole, I don't see anything in here referencing revising the goal and purpose statement, although they did pick Alternative 4 which substantially changes the way that you treat non-fisheries and I thought that you said if Alternative 4 was picked we most certainly probably would need to go back and revisit the problem. . .goals statement. Marginally we would if you were going to limit it to pollock royalties, but did the AP just choose not to get into that discussion, or. . .

KIMBALL: No, Mr. Chairman, Ms. Madsen. They did embed it Issue 7, they chose Alternative 3, to allow this 20 percent in non-fisheries related projects, and then they also did, I kind of skimmed over it, they did choose suboption (a) and that would amend it to make it primarily fisheries-related.

BENTON: Any other questions with regard to the AP report? O.K., that's good. That takes us to public comment on Agenda item C-4, CDQ policy amendment, and we've got ten folks signed up for public comment. Again, I want to remind the public we have the sort of 3- and 6-minute rule, 3 minutes for individuals, 6 for organizations and I'd ask the public, if you would, when you come up here if you have written materials, hand them to Shannon and we'll get them distributed

around and also would you please very quietly. . .very quietly, excuse me. . .very clearly and succinctly identify yourself and the organization you're with, O.K., so we can make sure we get that clear in the record. Sometimes we have a little problem with that and the sound in here is a little difficult, so with that, let's get started. First up is John Lamont, and next is Ragnar Alstrom who's up there with him, so I assume I can mark you off, too, right Ragnar? [Alstrom: Please] After these gentlemen will be Morgan Crow and company.

LAMONT: Mr. Chairman, members of the Council, I have lost my voice during my 2-day vacation at the Anchorage International Airport. . .My name's John Lamont, I'm here on behalf of the Yukon Delta Fisheries Development Assn. Since inception, the Community Development Quota Program has had a positive impact upon our CDQ communities. Hundreds of residents gained seasonal employment, internships and job training, vocational and higher education. And, most importantly, the ability of our young people and communities to become self-reliant. The CDQ program has had an overall positive economic impact upon our communities. We're thankful for the program and its benefits to us. Yukon Delta Fisheries Development Association would like to see continual improvement in the Community Development Quota Program so that it will continue to benefit our communities. It is a growing program and like any other company that matures it takes changes along the way and that is why we believe in implementing the following policy and administrative changes. Basically, we support everything the AP had supported with the exception of Issue 6. Under Issue 6 we supported Alternative 2, Option 2. Another comment, under Issue 7, supporting Alternative 3, Option 2, Suboption (1), Suboption (a), the comment would be Yukon Delta would like equal weight given to any region, fisheries and non-fisheries related, for profit, self-sustaining projects. And, my last comment would be soon as final action is taken at this meeting Yukon Delta would like National Marine Fisheries

Service to fast track the development of these regulatory changes. Thank you, Mr. Chairman; I'll turn it over to our Executive Director, Mr. Alstrom.

ALSTROM: Mr. Chairman, my name is Ragnar Alstrom, the Executive Director for Yukon Delta. I would just LIKE to emphasize a couple of issues and positions of Yukon Delta. As my chairman said, we support the AP's motion with one exception, and that was Issue 6, the extent of the government oversight. Yukon Delta believes the CDQ program is still a relatively new program. We believe that continued oversight by the State and National Marine Fisheries Service is need to provide assurances and a level of comfort to the public and to the people served by the CDQ groups that maximum benefits are being provided back to the region served by that CDQ group. We believe that there needs to be a relaxation of some of the regulations, but we're willing to work with the North Pacific Council's CDQ Policy Committee along with the National Marine Fisheries Service and the State of Alaska to relax regulations that we may have a problem with. But, we don't believe that wholesale changes to the program need to occur now. We believe that the oversight needs to extend through the subsidiaries that we own more than 50 percent of. . . It's such an important program for us out there on the Yukon that we don't want to see it go away and we think that maybe opening this up would lend mischief to some folks to give people an opportunity for the program to sunset and we don't want to see that. We are what's left out there. If I could continue, Mr. Chairman, under Issue 7, which is allowable investments by the CDQ group, Yukon Delta would like to emphasize that we support the allowance of 20 percent of the pollock royalty to be used for non-fisheries related projects that are in-region. And when I first thought about this I kind of thought of in-region as being the Yukon Delta region, the villages we serve, and I thought maybe we'd want to invest in the Tana (?) Barge Lines that serves the Yukon. It may not be based in one of our villages, so I expanded

that to mean within the CDQ group region. But, if it comes down to it we support it within our own region, but we can see expanding that. I'd like to emphasize that these would be self-sustaining economic development projects. We do not support CDQ money being spent for infrastructure projects such as water and sewer, airports or roads even though these types of projects are needed in our region. I kind of take this personally, I still carry my waste in a 5-gallon bucket and my drinking water in another 5-gallon bucket, but we feel that these types of projects are the purview of government to provide, these types of infrastructure projects. CDQ projects need to be self-sustaining and economic development. One other concern that Yukon has is that these non-fisheries projects be given the same weight in the allocation process as fishery-related projects. If those non-fisheries related projects are self-sustaining, profitable projects, we don't feel that they should be given a lesser weight than the fishery-related projects.

Thank you, Mr. Chairman.

BENTON: Questions? O.K., thank you very much. I've had a request for a break so why don't we go ahead, why don't we take a break for 10 minutes and then we'll come back and first up will be Morgan Crow with Deborah Bow and Robert Williams.

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BENTON: Council will come back to order. We're on Agenda item C-4, CDQ, public comment. We have the Coastal Villages group, Morgan Crow, Deborah Bow, and Robert Williams. Mr. Crow.

CROW: Thank you, Mr. Chairman. My name is Morgan Crow, I'm the Executive Director of Coastal Villages Region Fund serving the 20 communities from Scammon Bay (?) south to Platinum. With me is Robert Williams, our quota manager, Deborah Bow, our Community Development person. Our comments reflect and emphasize Coastal's current position on issues and alternatives covered in the public review draft. First of all, we believe that the CDQ program

is a successful program. Coastal has been able to participate in the program under its current goals, rules and regulations and has enjoyed many successes. The most rewarding successes come when a project has direct benefits for member communities and we hope that this process can continue to lead to greater benefits to all CDQ-eligible communities in the future.

**BOW:** On Issue 1, define the role of NMFS, the State of Alaska, and the Council when making CDQ allocations, Coastal Villages believes that Council and NMFS staff have done an adequate level of analysis on this issue. At this time we continue to support the current allocation process where the State of Alaska has an active role, Alternative 1 or 2. CVRF has expended considerable resources to gain understanding and participate in the current process with the current players. On Issue 2, periodic or long-term CDQ allocations, given the likelihood that the allocation process will be lengthened due to the institution of an appeals process Coastal Villages supports 3-year allocations, Alternative 2, Option 2. We could also support 5-year allocations, which is Option 3, but at this time we prefer 3-year allocations. On Issue 3, define the role of government in oversight of the CDQ program, Coastal Villages supports Alternative 2. CVRF intended that the policies of the government entities in regard to fisheries and regional development were not going to replace 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 wherewithal to develop locally-based economies within the parameters set down in the FMP and by Congress. It was created to further other policy goals of NMFS or the State of Alaska. Coastal believes that the current draft language in Alternative 2 on this issue is too broad to effectively define government oversight and limit additional policy goals of government agencies.

**WILLIAMS:** Issue 4, CDQ allocation process, the type of quota. Coastal supports Alternative 1,



no action. While CVRF could benefit under some of the proposed formulas and lose under others, we believe that the current system, as modified by Issue 5, is still preferred. Issue 5, the CDQ allocation process evaluation criteria: In previous testimony we expressed our opposition to Alternative 2 as a new criteria when proximity to the resource was added. The CDQ Policy Committee did not consider this new criterion. We felt that this single criterion could have a tremendous effect on future allocations. If the Council believes that proximity is not adequately addressed in the current eligibility requirements for CDQ communities, Coastal supports the action of the Advisory Panel, AP, which limits the use of this criteria to the species where proximity has been used in previous years. Issue 6, extent of government oversight. As Coastal testified in June and again in December, we support the removal from oversight of financial decisions by businesses owned in whole or in part by a CDQ group when new CDQ funds are not contributed to the business or entity. Issue 7, allowable investments by a CDQ group. Coastal supports Alternative 3, Option 2, Suboption (1). This is a way to change the current program restrictions that are hindering abilities of our eligible communities to have flexibility to develop locally based economies without significantly altering the CDQ program's original intent or supplanting current government programs. Issue 8, we support changes to the administrative rules and regs that will give the most flexibility to the managers and the participants of the program. Thank you, Mr. Chair.

BENTON: O.K., questions? . . . **[Change to Tape 10]**. . . O.K., thank you very much. Next up is Trevor McCabe followed by Eugene Asicksick., and Steve Rieger, Don Mitchell.

McCABE: Mr. Chairman, my name's Trevor McCabe, I'm the Executive Director of the At-Sea Processors Association. By way of background, the current level of CDQ ownership in the groundfish fisheries that the Council oversees, a significant part is in the Bering Sea pollock

catcher processors that comprise the APA. CDQ groups own four of the seven APA companies at levels ranging between 20 percent and 50 percent. The level of CDQ . . . value of CDQ ownership is not in the hundreds of millions of dollars, even with modest returns we're probably at the beginning of the era in which revenues from CDQ investments will exceed revenues from CDQ allocation royalties and the complexity of the oversight of this program, which has increased already in the past 10 years, is going to continue to increase and become more complex. Also, reflecting here that in the past 10 years the program has been a tremendous success for our companies, for the CDQ groups, and so I wanted to just. . . Mr. Samuelson's last meeting, acknowledge that the mission has been accomplished and then some, I think. Most of us that have watched this would agree, since the early '90s when it started. The APA position is on one point in the AP motion, that's Issue 6. Our position is that State and NMFS oversight should not extend to the business decisions of APA companies in which CDQ groups have an ownership interest. We take this position regardless of the level of CDQ ownership and as I mentioned, our range right now is between 20 percent and 50 percent in four of the companies. Our position is also intentionally APA centered; we don't have a position about the appropriate degree of oversight of the business decisions of the for-profit subsidiaries that Bryce mentioned or the other CDQ investments. But, we do believe that the APA companies, the CDQ groups, and the CDQ program are better served if business decisions are made by industry professionals than by Agency professionals. Two clarifications on that point. One is that more and more, the industry professionals are going to be the CDQ leaders and personnel themselves. They've gained a substantial amount of experience in the last ten years and we have younger members of the CDQ groups whose entire professional careers have not been in the Bering Sea industry as a result of the CDQ program. The second clarification is that our position is not in any way a

criticism of the Agency personnel; the current program managers at all levels—State, NMFS and Council staff—are fantastic. Our position is just a recognition that there's different areas of expertise and that the decision of whether to buy \$300,000 worth of packaging material from a new vendor or a million dollars for new processing equipment ought to be with company people, with people whose expertise is in those kinds of areas. We feel with enough oversight to have the rigorous scrutiny by the program managers prior to the CDQ decision to invest in established fishing and processing companies and then some degree of periodic review thereafter, maybe during the CDP process where you see the overall performance of the CDQ groups. The AP motion, the recommendation in the AP motion on Issue 6 is consistent with our position. I think Sally Bibb provided a good explanation of some of the other alternatives that attempt to differentiate levels of oversight between established companies like AP members and maybe the other types of endeavors like the for-profit subsidiaries that Bryce mentioned. That concludes my testimony.

BENTON: O.K. Questions? Mr. Penney.

PENNEY: Trevor, you're going right to the heart of the thing I'm wrestling with and it seems to me it's going to be a major issue here, and that's rights of whether or not the businesses can make the decision as a business decision and stand or fall by those. It's not the entire aspect of the whole thing. Could you give us any more experience you've seen or your group has had over the period of time of what's happened because what I'm looking at is what's going to be 10 to 20 years from now. The 6.6 million may compound into something that's really significant in the future and be a major issue that a business group has to be able to make decisions, and not call up IRS and say gee, how's this going to be next week with you. Could you expand for me on if you've had any experience with this oversight or how it's affected any deals that you may have

done?

McCABE: I guess the best answer would be. . .my area of expertise doesn't even extend to the kinds of business decisions they were talking about and I probably on a daily basis see more and know a little bit more about these companies than a lot of people do. I guess, you're asking over the next 10 or 20 years, I think a lot of us would expect that there's going to be a merging between the heads of the CDQ companies and the personnel, because they're going to grow, and the management of these companies and in our case a lot of the guaranteed jobs in our plans are jobs on boats on so forth, but I think most of us would agree that the long-term real benefit will be if the people from the villages are in management level jobs throughout the investments of CDQ groups.

SAMUELSEN: Trevor, for the seven companies you represent that are associated with CDQ groups, under the present regulations, I hear you talking 10 to 20 years out, but have any of your companies been affected by the 50 percent rule and if so, can you elaborate on it a little bit.

McCABE: Well, at present we have only one company at the 50 percent ownership level. I guess the only thing I would say about that is we have another company where the ownership level is less than half that but the dollar value, what's at stake, is much greater than that, and that's partly why I think we don't think that you can apply a percentage. Each circumstance is going to be different, but in any of the circumstances in our case we feel that the decisions are going to be better made by the people whose expertise is running those companies.

SAMUELSEN: The question is, have any of the companies you represented that are associated with the CDQ groups been affected?

McCABE: Yes.

SAMUELSEN: In what way?

McCABE: Well, I'm not qualified to talk about some of the specific ways, but I know from talking to the companies that in a number of ways, projects, and I'm not saying entirely negatively, but the State's interest in their projects has had an effect, or the oversight interest.

MADSEN: Trevor, I guess I'm a little concerned about oversight and the example that you gave was if a company, a factory trawler company, wanted to make a purchase of fiber, and my understanding is that would not fall into the oversight of the current State requirements. It would be new investments, not the day-to-day operations of that company. But if that company was going to make a major investment, I think a significant amendment was the language, that that is where the oversight comes in. So, your example of deciding to purchase a significant amount of fiber, I don't understand the relevance to the State's oversight in that regard.

McCABE: Well, what I said was, I tried to pick a dollar amount and example that would get it to the edge, and I said 'with a new vendor' and I was picturing a scenario where maybe it's not just a direct purchasing relationship, but some decision to come to some kind of long-term arrangement with a vendor that would be above the kind of dollar amounts that are under consideration that would rise to the level of what would be considered significant enough to have to receive prior approval. Maybe it wasn't an exact, but that was the idea. There's lot of other examples that you could use.

MADSEN: I guess I'm also interested in your opinion about how you ensure that the benefits go back to the communities. I understand about jobs, but given the closed class of catcher processors and the amount of jobs available in management and on board, when those are achieved and we continue to have significant royalties and you get return on investments with no oversight, how does this Council, because I agree with Mr. Samuelson, that this is not really the State oversight, we have delegated the oversight to the State. How do we ensure that, in my

opinion, the primary goal of the program and that is to get the benefits back to the communities, how do we feel comfortable that that's going to occur?

McCABE: I guess the first thing I'd say is that that is the most important role that the oversight function has. But under our position we would say you get that by looking at the performance on the periodic basis that you're talking about. You rigorously scrutinize the investment before it happens and then you let it do its thing and if you come back and it hasn't performed, then you figure out how to take corrective action whether it's the review of the Community Development Plan. But you don't. . . part of this is just practical. These things are growing, not exponentially, but very very significantly and it's going to be impractical for an agency, unless it grows also, to monitor each decision that's made as the CDQ groups collectively get to the sizes that they're headed toward, but. . .

BENTON: Any other questions? O.K., thank you very much. Eugene Asicksick, Steve Rieger, and Don Mitchell, followed by Eric Olson.

ASICKSICK: Thank you, Mr. Chairman, members of the Council. My name is Eugene Asicksick, President/CEO of Norton Sound Economic Development Corporation. I'll have the other gentlemen introduce themselves for the record. As stated at the AP, Norton Sound Economic Development Corporation is represented by 15 communities and each community has equal representation to the organization. Each community elects a representative and that representative represents that community and in turn becomes a board of director to serve on Norton Sound Economic Development Corporation. And Norton Sound Economic Development Corporation is filed with the State of Alaska as a non-profit private corporation. We have articles, rules, regulations, bylaws, investment policy guidelines. And, the reason I say that, there seems to be some concern that these organizations might go afoul. NSEDC does provide

quarterly reports to the State of Alaska, also to each member community and I should state that each elected representative is certified by the city government after the municipal election. And, we also provide quarterly reports to each one of our municipal governments, to our board of directors. Each community has a liaison in it that we do provide information to. We do submit Community Development Plans to the State of Alaska. Each community and each board of director and liaison receives a Community Development Plan from NSEDC. So, if the board was to go afoul, I think that there is enough checks and balances there and there seems to be some concerns that the organizations are trying to do things. This issue was first raised in '98 after NSEDC's purchase of 50 percent ownership of Glacier Fish Company and we are here today to finally, hopefully, finalize it and there's been many changes along the way and different organizations and different bills and stuff that have come about. As I testified before the AP, we did provide written comments to the analysis, or Amendment 71, and we are pretty much in agreement with the AP motion. With that I'll turn it over to Steve Rieger.

RIEGER: For the record, my name is Steve Rieger. I wanted to elaborate primarily on a couple of points that are in our written comments which are supportive of the AP motion. To start, it's important to clarify what is the status quo, before this rulemaking. The status quo with respect to the control of businesses that CDQ groups have bought into is that no business operating as an individual business has submitted a plan amendment before making a business decision. That's in the analysis on page 161. The status quo is that in the original 1992 rulemaking where the Federal Secretary of Commerce responded to comments on those original CDQ program rules, the comment was that it would be inappropriate for the government, or the Federal government, to get involved in those business decisions. The status quo is that royalties, when they are used to make an investment into one of these operating companies are subject to a plan amendment and

they are reviewed and approved under the CDQ process and, finally, the status quo is that those activities are reported quarterly and annually and the after-the-fact accountability for how those investments have performed exists. What is new is that some of the proposals that would have expanded the status quo into State prior review and approval of business decisions made by these companies. That is not what is happening today. It is not as if the AP recommendation on Issue 6 is some dramatic turning loose of something that today has been rigidly controlled. This, in fact, would be the reverse, it would be the movement of CDQ oversight into an area where it doesn't exist today. The second half of the AP motion on that same issue had to do with where. . . actually there is an incremental reflection of the evolution of the program. . . the AP motion looks to what do you do with second generation proceeds and they have essentially given the use of those proceeds a broader license to be subject to the board of directors of the CDQ groups and the after-the-fact review but not subject to the same restrictions that have been applied to royalties. This fulfills the goal of self-determination, or moves in the direction that was set forth by NAS and just to clarify for those who are concerned of just how incremental this step is, if today that type of money is only about \$6 million out of the \$57 million dollars listed in the analysis and it does maintain all of the after-the-fact review that the NMFS staff has touched on. And again, the use of those funds are still controlled by the board of directors. I think there's plenty of assurance that those will be used for the priorities of those communities, used in the region that that CDQ group represents. So, it is those funds which made some of the restrictions that are actually new in the AP motion on Issue 7 workable and livable because Issue 7 does for the first time close off, if it were taken exactly now, it would close off for example scholarships in non-fisheries related fields or grants to infrastructure projects which were not income-producing and NSEDC has in fact made grants for infrastructure projects that have not been



income-producing in the past, contrary to maybe some of the testimony earlier. But with the second generation moneys I think we can cover those holes and make this program and make this motion work just fine.

[Time ran out, the Chairman gave two extra minutes to Don Mitchell]

MITCHELL: For the record, I am Don Mitchell. I will in the interest of the Chairman's generosity, share two rather than three very quick points. And the two points I wanted to make—the first is that this process actually began in September of 1996 when Congress included a provision in the Sustainable Fisheries Act that asked the National Academy of Sciences to investigate a number of the policy areas that you're struggling with this very afternoon. It has taken us six years to get to this afternoon decision. It is unlikely that we are going to be back here again for many, many years in the future. With all due respect to Bryce, he did not answer clearly Mr. Bundy's question. What happens in the next few years when in fact a majority owned company that is involved in worldwide fishery operations wants to make an investment in Mexico in a fish meal plant? What is the State interest there and how will the State establish standards to evaluate that interest. And, again, with all due respect to the State, the State had no answer for that. That is just the environment we're going to be in over the next 20 years—that's not an acceptable policy result from the point of view of many people. And then the last quick thing I would mention is that the State said that if in fact the Council were to accept the AP recommendation on Issues 6 and 7, that the practical consequence would be to render State oversight authority, quote, virtually moot, close quote. I would suggest to you in the alternative that what it would do would be to limit the jurisdiction of State oversight to the appropriate level of governmental interest. The royalty reflects a decision on the United States government and in

the guise of this Council among people to give a public resource, a share of it, to a particular group of people, in this case Alaskans in certain communities. They certainly have an obligation to account to the public as to how they take advantage of the use of that public resource. No CDQ group has ever contested that, and that is exactly the appropriate level of State accountability that is reflected in the AP recommendations on Issue 6, and it is just not a correct statement of fact with respect to at least a policy analysis of what's really at stake here in terms of State interests to say that if in fact the AP recommendation were to be accepted, that the role of the State would be rendered moot. And, Mr. Chairman, I appreciate the extra time and I'm sure you would have enjoyed the three or four thousand other points I could have shared with you had I had that opportunity. Thank you.

BENTON: Thank you very much. Questions for these gentlemen?

PENNEY: Eugene, et al, I don't think I've heard anything since I've been around on the Council that I feel better about hearing the common thought that the CDQ groups are working, they're great, they're helping. I don't know anything we can do in the State more important to Western Alaska than support the economy, support the jobs. I'm so encouraged to see that working and anything that I can see that would help do that, I'm really going to try and work for, and that leads me to my points to you. Understand from what you've said and what your position is that you'd like to use some of the second generation proceeds to do economic activities outside the realm of the State's total overview and I also understand, if I'm correct, that only equates to 10 percent of what the total is, so you're putting at risk, in my opinion, 10 percent that you want to have laissez faire with, you want to do your own thing. So, my question to you is this: You said, Eugene, that there was 15 entities within your group and you have a board of directors. Did those entities support what you're asking here today and could you more specifically elaborate on the need for

you to have those funds to do something different today.

ASICKSICK: Yes, the board of directors and Chairman Ivanoff stated that you protect our investments and your protect the second generation earnings. And, when we received our first distribution from our ownership into Glacier Fish Company I just wanted to receive that check, divide it by 15, and send it off to the communities and I've told myself during one of the breaks that I should have counted the number of times that benefits to the community or community benefits was used today. I think that was one way of direct community benefits in the investments from the royalties that NSEDC receives from its fish. To your second. . .I think I might have answered your question. . .but we've struggled with fisheries in Norton Sound and we are the only buyer up there and we just got done with the herring season and at late came Norquest who also bought some herring, but we're looking at being the salmon and crab and halibut buyer in the region. And, with disasters that are occurring it's kind of hard to do business and make a profit when the Governor of Alaska at one side is saying that there's a disaster here and he needs some help and he's appealing to Congressional delegation in Washington, DC, and then we also have another arm of the government, or the State, asking that you have to do fishery-related economic development, and we're forced to go into operations that we know we're going to lose money. We've gone as far as Kotzebue which is not in our region to feed a plant that we were involved in building and I was a little confused with the statement earlier where moneys have to be used where it was income generation. We had to give a loan to a Native corporation who was building a plant and eight months later we were asked to give 3 million dollars to the city of Nome who wanted to build a port, which we don't get a return on, and now the native village of Unalakleet is questioning why did you guys give them 3 million and you're not getting nothing in return, they're not paying you back, yet you have to give us a loan. So, it's

sort of like pick and choose what's good for the atmosphere of today or tomorrow and there are other projects that we can do within the region. I guess I was the one person that didn't vote for percentages or set amount on discretions of funds that could be second generation earnings that could be used on non-fishery related projects, so. . .I've stated them in the past, there's teacher housing for example, and as airports are getting further away from communities there is potential for generating some income and economic development in terminal facilities and benefitting the communities in. . .[unintelligible]. . .and also making it comfortable for the residents of those communities and I'm sure that there are other economic development opportunities in communities. Not all my communities are fishery based, so, maybe too little long of an answer.

HYDER: A question for any one of the three witnesses. Would you please respond to a point made earlier by a previous witness that continued oversight would prevent, and I'm paraphrasing here from my note, would prevent the kinds of things happening, errors or mistakes that might result in this program overall being sunsetted and I believe sunsetted was the term. Would you please elaborate on that point if you. . .

MITCHELL: Certainly. I'll just say something about the statutory situation and then Steve might have something to say about the practical consequences of your question. The allegation since this policy conversation about the CDQ program started that somehow if, but for State oversight, if there is any behavior amongst the CDQ group that that is going to bring the entire program down over the heads of everyone. Aside from this somewhat histrionic nature of the allegation to begin with, in 1996 in the Sustainable Fisheries Act we were successful in persuading Senator Stevens and Congressman Young and the Congress to amend the Magnuson Act not only to mandate the establishment of the program, but also to mandate an allocation to the program from each Bering Sea fishery. In order, even under the worst case scenario, for the program to

implode on itself someone would have to go through a Congressional hearing process and get Congress to amend the Magnuson Act by omitting that statute. As someone who spends a fair amount of time in Washington, DC, I can tell you that that will happen over the dead bodies of both Senator Stevens and Congressman Young. It is just red herring issue, with all due respect to the people that asserted it.

MADSEN: I guess I have two questions. The first one is, when a public resource is distributed, for example to a non-CDQ, the way that the public receives benefits from that is usually from taxation. And I know that in the original application of CDQ funds I think that the CDQ groups were able to receive their non-profit status and protect that non-profit status because of the fisheries-related issue and I'm wondering if there's not concern about the expansion of these uses with implications on taxes and the non-profit status. And, I guess if there isn't concern, why shouldn't the public be concerned about the extent to where the royalty, the non-profit status and the ability to be tax exempt stops. When you start making investments in some of the subsidiary companies, where does that stop. And is there some concern by CDQ groups about IRS implications on expanding the program. . .[Change to Tape 11]. . .and the ability for those royalties to be used.

RIEGER: I think that there's several ways to approach that. Each group has had its own tax advice. There hasn't been a collective tax ruling. But I think that the most straight forward way to answer that is that I don't think that State involvement in the issues that are at stake in the AP motion will change the outcome of that question. So, although it's an important question and people think about it, I don't think it would change the position of NSEDC as far as wanting to do the thing that makes the rational, best sense for its 15 member communities. I don't know if that really hits your question on point, but I think it's the best we can say in the context of what's in

front of us in that motion.

ASICKSICK: I would also like to add. . .at first I thought you were going to go with landing taxes, but CDQ groups and through their harvesting partners do pay landing taxes, but you went into the non-profit status, so.

MITCHELL: Two other brief points on that subject. One is that I certainly am not a tax lawyer; this has been discussed by the tax lawyers who work for CDQ groups, but I would say that in terms of non-fisheries related it would not be all that different, at least in thinking about it, from the Alaska Permanent Fund. The Alaska Permanent Fund does not pay income tax, it does not pay any taxes at all. There's obviously been some policy grumbling about that, but no one has questioned legally whether it was supposed to be doing that. But, the second thing which I think is related to your question, which is, again back to the history of all this, the CDQ program was the first program out of the box with respect to the Council where we started giving away, for lack of a less pejorative word to be blunt, giving away a public resource to a group of private folks to do something that the people that made the decision thought was a good idea. And we have never questioned in the CDQ community the responsibility to account to the public for how that public opportunity is used. Since that time, however, it has been very frustrating for us, or speaking for myself I guess personally, that along comes halibut and sablefish ITQs. None of those people are subject to State oversight with how they use that public resource. They can do with it as they will. Along comes the American Fisheries Act, a massive allocation to private citizens. It's great. . .I'm not questioning the policy wisdom of either of those programs other than to say that the treatment that the recipients of those programs have received is far different from what has happened with the CDQ program and I think a lot of it is just the luck of the draw in terms of the sequence of how it all happened. But I don't think it is unfair to say why on earth

is everybody going through the CDQ process for the CDQ program when nobody else who's also been given a public resource has to have this level of accountability.

BENTON: Any other questions? All right. Thank you very much. Eric Olson, followed by Larry Cotter.

OLSON: That's a pretty tough act to follow, I think. Mr. Mitchell probably forgot more about the public policy process in the last year than I've learned in my entire professional life, but that's the card I drew and I'm going to give it a shot. I'm going to go through this just as quickly as possible, and in short I'm going to say we support the AP motion with one critical change and that's with regard to Issue 6. The AP went with Alternative 4. When BBEDC was looking at the alternatives we support or don't support we pretty much went off the CDQ Policy Committee's recommendations and any change from that in our view I think is going to be a wholesale change to what we believe was a pretty successful program. And any change to that, boy, we just don't support. The reason we don't support Alternative 4 and support Alternative 2, Option 2 of Issue 6 is that, as I said, this could be a wholesale loss of accountability that could lead to leakage of benefits outside the CDQ region and I think back to the dialogue that the Chairman had with NMFS staff and many of those iterations that they were going through and that cut to the heart of BBEDC's concern and I'll just leave it at that. I'll speak briefly on Issue 1, determine how CDQ allocations are made. BBEDC supports Alternative 2, an approved administrative process without a formal appeals process. Again, that was the AP motion. And the reason we don't, that there's a formal appeals process is that in essence the CDQ program is a grant of a public resource for a specified amount of time, the CDP cycle. Last year it was two years, it's going to be three years. At the end of that three-year cycle your grant runs out, you don't have any more future property rights to that same allocation. So, an appeal in that regard we don't think is

necessary. It's been upheld in court and Judge Holland said so in no uncertain terms. I'm not going to rehash the other ones, I think they're self-explanatory in the AP motion. I wasn't going to bring up Issue 8, but I think I have to. This was the other administrative issues. BBEDC supports Alternative 2 with all three suboptions. This one kind strikes near and dear to my heart. I'm the quota manager for BBEDC, I think all the other quota managers from the other CDQ groups support this option; it's going to streamline a lot of things. The CDQ groups have been coming to the Council through the first CDQ Implementation Committee, then the CDQ Policy Committee requesting streamline changes but through, I don't know what the correct term is, emergency of the day, be it AFA, whether it be Steller sea lions, this issue got sort of pushed to the back burner, and rightfully so, it's small compared to some of those other ones, but if we miss the boat on this one, when's the next train going to leave the station for some of these important issues to come to the table? I'd like to point out in the State of Alaska's written testimony that's been submitted to the Council before, I'll just read it briefly. . . 'The State supports Alternative 2, Options 1 through 3, to allow CDQ groups to transfer quota and submit alternative fishing plans directly to NMFS. The State would be informed by NMFS of the changes submitted by the CDQ groups. Options 1 through 3 would respond to time constraint concerns expressed by CDQ groups and result in a inseason management function of NMFS rather than a joint State/NMFS CDP modification process.' And, I can give you a real-time example of this. Within the last couple of weeks BBEDC was going to submit a substantial amendment because when you transfer greater than ten percent of your quota you have to submit a substantial amendment which requires the signature of all three Deputy Commissioners. One of the Deputy Commissioners was out of town, the other one I believe was in Anchorage, and there was one in Juneau. So, that was right before we were coming to this Council meeting, so I believe that that substantial



amendment is on hold until after the Council meeting. So some of these changes will really, really streamline the way that things are done and I guess I'll just end there and respond to any questions you may have.

BENTON: Questions? Mr. Penney.

PENNEY: Mr. Olson, for the record could you state your organization?

OLSON: Oh, I'm sorry. Bristol Bay Economic Development Corporation.

PENNEY: Could you answer this, sir. We've heard some other people testify twice before, how does your organization feel about State oversight of your percentage of the ten percent of the royalties? Do you believe the State should have oversight on that or would you rather have less restrictions?

OLSON: I think we fully support that, Mr. Chairman, Mr. Penney, we fully support that for the reasons that I mentioned in my testimony that we think that the State serves as an important backstop to benefits leaking outside of the region. And I really don't see that as the State trying to meddle in whether or not a fishing company wants to buy a new engine or get a new net; I really don't see the State's functioning in that role. What I see the State's function as, is will the benefits that are derived by that particular investment going to come back to the people of the region and that's the role that I see the State doing and I fully support that role.

BENTON: Any other questions? O.K., thank you very much. Larry Cotter.

COTTER: Good afternoon, Mr. Chairman, members of the Council. My name is Larry Cotter and I'm CEO for APICDA. A lot has been made of Judge Holland's decision of last year on the APICDA lawsuit, but I think that a couple points need to be made without revisiting that issue too much. Judge Holland in essence ruled that the State has carte blanche authority to do whatever it wants in the allocation process. NMFS's position in the process was that the only

responsibility NMFS has is to determine whether or not the State had, quote, a rationale, end quote, for its recommendation. There was no obligation, according to NMFS, to make any determination whether or not the rationale was correct or not. That in essence removes any concept of due process or any protection for any group against any arbitrary or capricious decision that may be made in the allocation process. In fact, one of the reasons that the State used to justify their reduction of APICDA's allocation was factually in error. To use an analogy, NMFS would then say that their responsibility is simply to determine whether or not the State said 'the light changed,' not to determine whether or not the State's claim that the light changed from yellow to red was correct when in fact it changed from yellow to green. We do need an appeal process. The only reason we did not appeal our decision to the 9<sup>th</sup> Circuit Court of Appeals is we simply could not afford to have the 9<sup>th</sup> Circuit affirm a decision that provides carte blanche authority to the State of Alaska, or any other entity, and deprive the groups, any group, of a due process to appeal a decision that we believe was faulty and in error. In the absence of an appeal process each group will still retain the ability to go to court whether it is in this venue or whether it is in a different venue to raise the same issues again and perhaps find a judge that views things differently from Judge Holland. I would urge the Council to incorporate an appeal process. It is appropriate, it is necessary, and I would also urge the Council to ask NMFS to broaden their approach to the appeal so that they do in fact determine that the State's decision was not arbitrary and capricious and was in fact based upon the mandate of the allocation process and the criteria as identified by the Council. I agree with Mr. Samuelsen, that this Council is in charge of this program. It is the Council's program, it is not the State's program. Therefore, I think it is very important that when you look at issue 5, allocation criteria, that you pay particular attention to the criteria. The criteria right now is written so broadly that without any greater

specificity someone, in this case the State, is in the position to make a determination of what it means, what is their interpretation. Chairman Benton asked some question about what constitutes a job earlier. That's a very important issue to us. The State said APICDA produced the second lowest number of jobs for any CDQ groups. Well, if you look at our jobs in terms of a percentage of our population, we produced the highest numbers of jobs. If you look at our jobs in terms of the numbers of dollars and cents represented per job, we had the highest. It depends how you look at that criteria and in the absence of the Council or somebody else determining the criteria, you are deferring that to some other entity who may or may not interpret your intent the same way that you would have them interpret it. The issue of population versus proximity. I was on the Council when this program was developed and adopted. Population was not a criteria identified by the Council in the allocation process. It was not a criteria. The State later decided to make it a criteria and it has since become a very important part of the allocation process. I can tell you that proximity to the resource was important to the Council at that time and I think that if population is going to be part of the criteria process it is also appropriate to take into account the community's proximity to the resource. None of the criteria specified right now says how the State is supposed to apply it in making allocations. . . . testified a moment ago, I think the State should have greater requirements in that area but I think proximity to the resource is very important as well. In terms of non-fishery related projects, it would be in APICDA's best interest to say 'absolutely not'. This program was put together to help communities develop fishery-related economies; it is funded with fish from the fishing industry and until the program is complete on fishery development related economies no non-fishery related projects should be allowed. We're not going to make that cry to you. Instead, we're going to recognize that there are in fact very good reasons why some regions should be allowed to invest in non-fishery related

projects. But we are going to say to you, please say to the State that fishery-related projects must be given greater weight in the allocation process than non-fishery related projects. Otherwise, you are changing the nature of this program totally away from its original intent. Thank you.

BENTON: Questions for Mr. Cotter. Mr. Bundy.

BUNDY: Larry, on the appeals issue. Now, as I understand it, the Agency and some CDQ groups are saying that to do what I think you're asking would elongate the process to 15 or so months and that they don't like that because it's difficult enough as it is and so they would rather keep it the way it is even though the appeals process that you went through was imperfect, it was an appeals process that was legal. Is it your position that we ought to go to the 15- or 16-month process and start real early, or do you have some other idea to get an appeal in?

COTTER: I don't think anybody likes the 15-month CDQ allocation process, but if that's what it's going to require in order to incorporate a proper appeal mechanism, we would say let's go with the 15 months. We would also say, in that case, the Council may want to consider a 5-year allocation as opposed to a 3-year allocation. And we would also say that this year's proposed 3-year allocation should be changed to a 1- or a 2-year allocation to give time for the Council's actions to be implemented and the appeals process incorporated.

BUNDY: Second question. With regard to fishery-related, I want to ask you this question because I know that you are a very honest person and will give me a straightforward answer. As the salmon industry and similar aspects of the seafood industry is virtually falling down around our ears, and given the fact that a lot of these local fishery-related investments have to do with salmon, I have to wonder whether it's not the height of folly for a government to require these groups to invest in fishery-related investments. The question is, what portion—if you go around to all the CDQ groups over the last three years right up to now—what portion of the local fishery

investments have been successful and what portion have been failures in terms of losing money in spite of Mr. Samuelson's criteria that well we can invest in things that we think might make money sometime?

COTTER: There's two answers to the question, because I think when you look at in-region business investments you have to look at them in two ways. One, you look at it in the pure profit and loss perspective, and two, you look at it in the return to community perspective. From the profit and loss perspective I would guess that probably ten percent of the in-region business investments have been yielding profits. That's my guess. I may be low, but I don't think low by very much. A lot of them by the way may be marginal, meaning they're right on the line, so they could go either way. In terms of community impact, I think they have been hugely successful because they have generated lots of jobs, lots of economic activity in the community. So I think you have to look at them in both perspectives.

BENTON: Any other questions? O.K., thank you, Larry. Phil Lestenkof and I think it's Myron Melovidov (?), followed by Donna Parker.

MELOVIDOV: Good afternoon, Mr. Chairman, Council members. My name is Myron Melovidov, I'm the Chairman of the Central Bering Fishermen's Association board of directors, and I would like to say the CDQ program has worked successfully for our community out in St. Paul. We are a one-community group and just to say that we know you guys have a big job to administer and run the program and you guys are doing a good job. And, I'll turn it over to Phillip who will address the issues of our board.

LESTENKOF: Chairman Benton and members of the Council, my name is Philip Lestenkof; I'm the President of Central Bering Sea Fishermen's Association, St. Paul Island CDQ group. I'll just read down my list of comments on all the issues. Under Issue 1, determine the process through

which CDQ allocations are made. CBSFA supports Alternative 2, an improved administrative process that would revise NMFS regulations to provide the opportunity for the CDQ groups to comment on the State's initial CDQ allocation recommendations and to appeal NMFS's administrative determination to approve the State allocation recommendations. Although we would like to have a formal appeals process we don't know if it can be made to work within the current framework of the CDQ program. Under Issue 2, periodic or long-term CDQ allocations, CBSFA supports Alternative 2, establish a fixed allocation cycle in regulation and Option 2, a 3-year allocation cycle, and Suboption (2), allow the State to recommend reallocation of CDQ mid-cycle following a three-step intervention process. CBSFA believes that the current periodic competitive allocation process has a negative side effect of causing divisiveness among the CDQ groups. Instead, the CDQ program should provide ways for the groups to work together. One way of reducing the destructive aspects of the competitive process would be to have a fixed allocation cycle as in Alternative 2, rather than the current one and two-year allocation cycles. Issue 3, define the role of government in oversight of the CDQ program. CBSFA supports Alternative 2, amend the BSAI FMP to specifically identify elements of the government's responsibility for administration and oversight of the economic developments of the CDQ program and the six purposes that are listed that define the limits of government oversight. Issue 4, CDQ allocation process, type of quotas. CBSFA supports Alternative 2, establish a separate foundation quota and Option 1 where 50 percent of the CDQ reserve is divided equally among the CDQ groups, and suboption (1), the foundation quota applies only to a portion of the pollock allocation and the remaining pollock quota and all other species would be allocated competitively among the CDQ groups. CBSFA has lost 60 percent of its pollock allocation since the beginning of the program in 1992. We have been steadily ratcheted down since the 1994-95 allocation

cycle. CBSFA suffered significant financial losses as a result of these cuts. CBSFA does not agree with these cuts and view the foundation quota as one way of mitigating this type of financial loss in the future. As mentioned before, a system in which the entire quota is allocated on the basis of competition discourages cooperation between the groups. The foundation quota would work to reduce this negative side effect. We understand that there is no support for the foundation quota and Alternative 1 will most likely be selected, but if a foundation quota is considered it should not be based on all the CDQ species, especially halibut. The halibut allocations are intended by current regulations to promote and support local fishery development in the CDQ communities. It is a species that is harvested using small local boats by local residents in many CDQ communities. Spreading the CDQ groups' halibut allocations throughout the vast Bering Sea halibut area simply will not work and will only destroy the progress made so far by some communities in developing a local fisheries economy based on local harvesting and processing of their halibut allocations. Under Issue 5, the CDQ allocation process, the evaluation criteria, CBSFA supports Alternative 2, revise the CDQ evaluation criteria and publish them in NMFS regulations. We support the ten on the list in the review draft analysis. We are strongly opposed to the AP's recommendation to put restrictions on number 8 of the evaluation criteria, which is proximity to the resource. CBSFA supports proximity to the resource to be applied to all the species. We believe it is a reasonable criterion to be used in the CDQ allocation process. It is only logical to consider a community's proximity to the available resources as a means to help develop a sustainable economy in that community. Look at Dutch Harbor and Unalaska as an example. The development there was made possible because of its proximity to the fisheries resources. Another important fact to consider is out of the ten evaluation criteria, criteria number one, number of participating communities, population and economic condition and criteria

number eight, proximity to the resource, all other things being equal, are the only criteria that can give an advantage to some groups over others in the allocation process. If proximity to the resource is restricted and its consideration or weight is reduced, it will disadvantage some of the groups in the allocation process by regulation if it is adopted by this Council.

BENTON: You need to wrap it up there, Phil.

LESTENKOF: O.K., . . . [Change to Tape 12]. . . Well, extent of government oversight, CBSFA supports Alternative 2, NMFS regulations be revised to clarify that government oversight of the CDQ program applies to activities of the CDQ group and to affiliated business and we support Option 1 or 2, we really didn't discuss that too much and the impacts of those on CBSFA. Under Issue 7, allowable investments by CDQ groups, fisheries-related projects. CBSFA supports Alternative 2, continue to require that the CDQ groups invest in only 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. CBSFA still has significant ongoing regionally based fisheries related projects. We are in the middle of a harbor improvements project at St. Paul that includes construction of a small boat harbor to support our local fisheries, a multi-species development project, and continual improvement to our local fleet and vessel support services. Because of the competitive allocation process and the fact that CBSFA still has ongoing fisheries-related projects that should receive the support of the CDQ program we don't want to be competing with non-fisheries projects until the original intent of the program has been fully realized. Under Issue 8, CBSFA supports Alternative 2, under Issue 8. Because of unexpected problems at the group's. . . [unintelligible]. . . while prosecuting the CDQ fishery we agree with simplifying the quota transfer and alternative fishing plan



process. Thank you.

BENTON: O.K., thank you very much. Questions for Philip or Myron?

AUSTIN: On Issue 5, the AP under Alternative 2, made a change to number 7, where they added the past performance of the CDQ group and you didn't note that change. Does it make any difference to whether you support the AP's motion?

LESTENKOF: Yes, while reviewing their change I couldn't quite understand what they were getting at and why . . . I saw them add the word 'practical' from something else and I saw them add 'past performance'; I don't know. I guess in CDQ evaluation proposed criteria always considers past performance on just about everything. I wouldn't really have an opinion or understand what the significance of those minor changes were.

ANDERSON: I just need one clarification. With regard to the appeals process, did I understand that you favor the current process rather than adding a appeal process that would extend the process to 15 months—that would be under Issue 1?

LESTENKOF: We support the improved administrative process that provides the groups to comment on the State's initial recommendations before they bring it to the Council so that added a new element to the current system. We're not allowed to provide comment on the initial allocations, but just listening, we couldn't determine whether it could be made to fit. I mean, if it was a 15-month or not, it just seems that everybody was arguing that there wasn't enough time before January when crab starts and pollock starts, whether there was time to appeal. So we really don't have a strong stance on that except that we agree with adding the comment period.

BENTON: Any other questions? O.K., thank you very much. Donna Parker. [She passed]

And, last I've got Ben Enticknap. Ben has to leave town and he wanted to testify out of order on the EFH agenda item issue, so I said he could do that now – . . . [comments on the rules].

ENTICKNAP: Thank you, Mr. Chairman, members of the Council. I really appreciate you accommodating me and my travel plans. I did want to speak real briefly to the CDQ package. There was one thing that caught my eye when I was listening to this and that was Issue 8, Alternative 2, Option 2, allowing NMFS to approve prohibited species quota transfer. And, I just wanted to raise a flag here and I hope that this as well raises a flag with you. I'm not sure if allowing the transfer of prohibited species quota provides incentives for vessels to minimize and avoid bycatch. I hope that the Council will scrutinize this option with the intent of minimizing and avoiding bycatch of salmon and other species. With that, I'm going to move on to essential fish habitat. [Suspended transcription of this testimony; there were no Council questions of Mr. Enticknap on the CDQ issue]

BENTON: We've been going quite a little bit. I think we can wrap up CDQs tonight if we went til 5:30, 6 o'clock. I propose that what we do right now is take a short break, 5 minutes or so, maybe a little bit longer, not too much longer, and then come back and get into the CDQ issue in whatever detail you please. So, let's take a short break, come back in, oh, let's say seven minutes.

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BENTON: Council will come back to order. We're on Agenda item C-4, CDQs, Mr. Samuelson.

SAMUELSEN: Thank you, Mr. Chairman. I have a motion and Shannon will be passing it out to you. This motion will be revised, Mr. Chairman. I wrote it during my lunch hour, I wasn't trying to circumvent public testimony, it's going to be revised based on public testimony I've heard, somewhat.

BENTON: O.K., for the record, while this is being distributed, we're on final action so we have a written motion in front of us titled, Samuelson motion, CDQ program revisions, Amendment 71, June 6, 2002. Mr. Samuelson, why don't you go ahead and make your motion.

SAMUELSEN: Thank you, Mr. Chairman.

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

Issue 1: Determine the process through which CDQ allocations are made. The Council adopts Alternative 2, defined in the process in regulation as expanded State hearing and comment period, but no formal appeals process.

Issue 2: Periodic or long-term CDQ allocations. The Council adopts Alternative 2, Option 2, suboption (1), set fixed 3-year allocation with possible mid-cycle adjustments for extraordinary circumstances. Additionally, the Council recommends that the regulations must be revised to reflect that suspension or termination of the CDQ allocations would be administrative determination by NMFS and that the CDQ groups involved would be allowed an opportunity to appeal NMFS's initial administrative determination on any changes in the CDQ allocations. The Council also recommends removing the requirement to publish a notice in the *Federal Register* about suspension or termination of a CDQ allocation.

Issue 3: Role of government oversight. The Council adopts Alternative 2, amend the BSAI FMP to specify government oversight purposes as described in the analysis.

Issue 4: CDQ allocation process, types of transfer, types of quotas. The Council adopts Alternative 1, no action.

Issue 5: CDQ allocation process, evaluation criteria. In this, Mr. Chairman, there'll be some changes. The Council adopts Alternative 2, publish the criteria in the NMFS regulation with the following changes to the criteria: Number 7: In areas of fisheries harvesting and processing, and you need to add the words, 'based on', past performance of the CDQ group, additional language here, 'and proposed fishing plans'. You will delete 'to the extent practical' and substitute 'proposed fishing plans', in promoting conversation-based fisheries by taking

action that will minimize bycatch., provide for full retention and increased utilization of the fishery resource and minimize impacts on essential fish habitat. Number 8, delete 'proximity to the resource' as a evaluation criteria. I would recommend deleting that and substituting "apply proximity,' and, Mr. Chairman, it's issue 5, 8 in the Advisory Panel minutes, that reads 'apply proximity to the resource only to these species: halibut, Norton Sound red king crab, Pribilof red king crab, St. Mathew blue king crab.

BENTON: O.K., point of clarification. So, what you're saying is on the typed motion that we have in front of us you would substitute the AP's recommendation with regard to Issue 5, number 8, instead of the language you have here.

SAMUELSEN: Yes.

BENTON: O.K., thank you..

SAMUELSEN: Issue 6, extent of government oversight. The Council adopts Alternative 2, Option 2, clarify that government oversight extends to subsidiaries controlled by CDQ groups. A new sentence to be added: To have effective management control or controlling interests in a company, the ownership needs to be at a minimum 51 percent. I'll read that again. To have effective management control or controlling interests in a company, the ownership needs to be at a minimum 51 percent.

Number 7, allowable investment by CDQ groups, fisheries-related projects. The Council adopts Alternative 3, with an amended Option 2, suboption (1) for limits on non-fisheries related projects, and suboption (a) to make the goals and purposes primarily fisheries-related. Allow investments in non-fisheries related economic development projects in-region projects up to 20 percent of the previous year's pollock CDQ royalties.

Issue 8, other CDQ administrative issues. The Council adopts Alternative 2, with all

three options: Simplify quota transfer and alternative fish plan process.

MADSEN: Seconded.

BENTON: Seconded by Ms. Madsen. Just a couple of editorial things, Mr. Samuelsen, then you can speak to your motion. In fact, maybe just one. Under Issue 7, the last sentence, it doesn't read, unless I'm mis-reading it, somebody help me out here. But, it seems to me that perhaps there's too many 'projects' in this. So, should this read, 'Allow investments in non-fisheries related economic development projects in-region up to 20 percent of the . . .and scratch that. . .delete that word projects there.

SAMUELSEN: Yes, thank you, Mr. Chairman.

BENTON: Any other things for clarification before he speaks to it. Dr. Fluharty, is it about just the wording or is it about his intentions because he's got to speak to his motion.

DAVE FLUHARTY (Council member): This is about the wording, and it's in the same sentence you were referring to where it's years, apostrophe, or years, apostrophe s. Is it the intent to limit to the year just prior to, or the cumulative years?

SAMUELSEN: The year prior to, so it won't be years, it'll be up to 20 percent of the previous year pollock CDQ royalty. . . [persons in background speaking, can't hear]. . .year, apostrophe s?

BENTON: Good catch, I missed it, now that was subtle.

[Miscellaneous comments, not relevant]

BENTON: O.K., Mr. Samuelsen, you want to speak to your motion.

SAMUELSEN: Thank you, Mr. Chairman. I'll go back to the analysis. This Council in 1992 formed the CDQ community. During public testimony when the State was up, I addressed the State that this wasn't a State program, this was a Council program. The folks sitting around this table that developed this program and put it in place wanted the communities in Western Alaska

to get involved in fisheries, they wanted checks and balances to assure that this program had a high chance of success. I don't think there's any question in anybody's mind that the program has far exceeded expectations, even the most pessimist person around. The Council, hearing from the CDQ groups at various time, finally put together a committee, a committee made up of representatives of the all the CDQ groups, they put Council members on, Mr. Bundy was on it, it was chaired by former Chairman Rick Lauber, the State of Alaska was on it, NMFS was there, to iron out the problems. There was expansion in the CDQ program; along with that expansion came growing pains. At the same time this process was going on, the CDQ groups sat down and along with the State of Alaska and worked through a brave new world concept and a bright new world concept that is still on the drawing boards that needs to come forth to address the concerns of the CDQ groups on oversight. My guiding principle on this was the committee process, trying to be consistent with past Councils, to have this program live up to the expectations that the original framers thought the program should do.

Issue number 1, determine the process through which CDQ allocations are made: the Council adopts Alternative 2, improve the administrative process, and no formal appeal process. I've read and re-read Judge Holland's ruling. Not once did I read in there that something was broke. The closest Judge Holland came to ruling an adverse ruling, and NMFS picked up on it, was to get the State to clarify and rationalize why they made a decision. The State responded to NMFS and Judge Holland picked up on that very strongly. This isn't a State program at the political whims of the State, dependant on who's governor, decisions got to be made; there is a process in place and that process, according to Judge Holland, was followed through. He didn't fault the process. I think that's pretty significant being that this program has been in place for ten years, it was the first major, quote, court action that really put the program under scrutiny, under

microscope, and I don't know Judge Holland but I heard that when you've got ten points, if you get five points out of Judge Holland ruling, you're lucky because he'll usually scold you on the last five. He scrutinized the State, he scrutinized NMFS, and he concurred that process-wise they followed the process and did not rule in favor of the plaintiffs in this case. He ruled in favor of the State of Alaska and NMFS. So, that's why I did number 1, if it's not broke, why try fix it? Nothing else has stood up to the scrutiny as number 1 has.

Number 2 issue: periodic or long-term CDQ allocations. Three years, Mr. Chairman, happens very fast. These CDPs, community development plans that the CDQ groups put together are very extensive, time-consuming proposals to the State, to NMFS to look over. It distracts the CDQ groups from doing other things. When a CDQ group sits down and does its strategic planning, long-range planning with its villages, its city governments, knowing that we had to go through a one-year. . .**[Change to Tape13]**. . .then we went through a two-year allocation process, was mighty distracting to all the CDQ groups and time-consuming. We had extensive discussions in the committee meeting with the CDQ groups and for those that were in the majority and those that were in the minority in the committee process there was always majority and there wasn't always minority members, it was a pretty interesting process in my eyes to walk down through. But, having a one-year or a two-year is very disruptive to run a business and CDQs is a business, a business providing opportunities to our village residents in our respective regions. When you. . .**[unintelligible]**. . .for a CDQ allocation, your CEOs, your accountants, your board, is totally focused on that CDP that you're going to put forth to the State of Alaska and NMFS because you live and die in the CDQ world by a CDP. It's the most important thing, issue, facing the CDQ group. So we strongly recommended six years, er. . .three years. . .**[something happened to the tape—strange noises blocking out all voices; not sure**

**how much of Mr. Samuelson's comments lost, but looks like rest of comments on issue 2, plus all of issue 3, and most of issue 4]. . .**

. . .adopts Alternative 1, no action. The majority of the CDQ groups supported this, Mr. Chairman. I felt that I didn't want to go anywhere with it. Who knows the program better than those individuals. We didn't hear from the State or NMFS they had major heartburn with it, so I went with it.

Issue number 5, CDQ allocation process, evaluation criteria. The Council adopts Alternative 2, publish in NMFS regulation with the following changes to the criteria: In areas of fisheries harvesting and processing, based on past performance of CDQ groups and fishing plans, promoting conservation-based fisheries by taking action that will minimize bycatch, provide for full retention, increase utilization of the fishery resource, and minimize impact on essential fish habitat. Mr. Chairman, you know as well as I do that CDQ groups. . . maybe you don't. . . but, we've been leaders in bycatch reduction, we've been leaders at this Council table in asking for areas to be closed off, we stepped up to the plate when 200 percent observers was only implemented and put on CDQ groups in the pollock fisheries. The CDQ groups were willing to put additional observers on crab boats to get better data. You've heard me scold this Council by saying why are you imposing additional burdens on CDQ groups when the information that we're getting, and NMFS says it's the best information, the best biological data they're getting, why we don't impose observers, two observers, on other fisheries? It costs the CDQ groups, but in our meetings amongst ourselves, in our meetings in our villages, and all the CDQ groups said this, that this is what their people wanted. They wanted accountability. They wanted us to prove beyond doubt that we weren't killing their salmon, that we weren't doing habitat damage, and Mr. Chairman, them feelings are still alive and well in any village you go to today from Norton



Sound to APICDA's villages in the southern end. Our people have that same feeling.

Number 8, see the AP motion. Apply proximity to the resource only to these species: halibut, Norton Sound red king crab, Pribilof red king crab, St. Mathew blue king crab. This was a very heated discussion within and amongst the CDQ groups. Everybody was jockeying for position. Us bigger villages were saying base it on population; the smaller villages to the south were saying proximity to the resource. You've heard testimony from the State of Alaska and I also provided some insight, and I use the example when the opilio crash came it really hurt the community of St. Paul. Most, if not all, the CDQ groups gave up on Bristol Bay red king crab. The maximum was two percent, some of them lower. I think that the State and NMFS needs flexibility. We can't micromanage this. . .as a Council we can't micromanage; they've got to look at the whole picture. We've gone through regime shifts since I first got appointed to this Council and we've seen what regime shifts have done. St. Paul realized solely their city coffers, their employment numbers, revolved around the opilio crab fishery. With that collapsing we went into a CDQ process and the State deemed it necessary to shift some of the allocation to St. Paul. Did I like it? I got to be honest, no I didn't like it. But that wasn't my job, that was the State's job to do a balancing act, so I think that proximity to the resource for these species, as we heard testimony, from both the state and some folks in the industry, is appropriate.

Extent of government oversight. The Council adopts Alternative 2, option 2, clarify that government oversight extends to subsidiaries controlled by CDQ groups. We've heard discussions of second-generation dollars, third generation dollars. Mr. Chairman, the CDQ program is a springboard, in my eyes it's a springboard. Second-generation dollars are the same as first-generation dollars in my eyes. They should provide the people from our villages with employment, they should provide the people in our village, those second generation dollars, third

generation dollars, fifth generation dollars, with training opportunities; they should provide upward mobility. Whether they're first generation, second, third, if it walks like a CDQ duck, it sounds like CDQ duck, by God, it must be a CDQ duck. Don't allow us to start playing shell games. You allow us to start playing shell games and I'll guarantee you we'll hire the best people in the business to not employ our people, to spend money the way we want, and it'll be perfectly legal and we'll get a tax write-off on it to boot. People do it in corporations all the time. Some of you may be thinking, well, what is Robin getting at here? This program is not about Robin, it's about people in villages, providing the opportunity for them people.

Number 7, allowable investments by CDQ groups, fisheries-related projects. The Council adopts Alternative 3, with amended Option 2, suboption (1) for limits on non-fisheries related projects and suboption (a) to make the goals and purpose as primary fisheries-related, and on investments in non-fisheries related economic development projects in-region for up to 20 percent of the previous year's pollock CDQ royalties. Under the existing rules that CDQ groups abide by, you have Norton Sound, the furthest north CDQ group, Mr. Asicksick's group. Their fishery is probably the most devastated salmon fishery in the State of Alaska. There is very little fisheries-related investments that Mr. Asicksick can make within his region because of the sustainability of his fish. That region is in a Tier II situation in one of the biggest cities, Nome. Just south of Mr. Asicksick's region is the Yukon region. The Yukon has major major problems, it's a river that is shared and managed not only by the United States, but Canada, a very important river for both countries, we have subsistence users on both sides not even to mention the commercial fisheries, very little, and their CEO has made the arguments in our committee meetings that he was pulling out his hair to try to come up with a mechanism to provide some kind of economic opportunities for his people. He could build fish plants, but Fish and Game

won't open the fisheries. He'd just provide some carpenters some employment. We heard from the Coastal Village people, the same thing. And if you read the Anchorage Daily News just the other day, even our subsistence fisheries on the Kuskokwim River has now been altered where they're fishing. The commercial fishery is gone and now they're fishing subsistence fisheries three days a week and the regulators HOPE subsistence needs can be met. We sat around and argued back and forth what was the Council's original intent on this issue for a long time in committee, and I'll remind you that Chairman Lauber, who was sitting at this table as Chairman, was sitting at that table chairing that meeting. I think that the CDQ groups made compelling cases that they would love to make in-region fisheries-related investments but because of the state of their fisheries they couldn't and they had people in their region that would not leave their region, they wanted to participate within the CDQ program, but to go out and work on a factory trawler they didn't want to because of family, because of whatever reasons and they need to make in-region non-fisheries related economic development projects. I think 20 percent is a major major step from the original intent of this Council, but I think it's one of the major things that we as a Council could do to address the concerns of the CDQ groups that put this forth.

Under Issue 8, other CDQ administrative issues. The Council adopts Alternative 2 with all three options: simply quota transfers and alternative fish plan processes. Mr. Chairman, that proposal came from a number of folks that were sitting around the table as well as the quota managers of the various CDQ groups. That regulation was put into effect when only pollock was allocated to the CDQ groups. Next came multi-species and I've heard that, oh, this is one of those that CDQ groups want to get around bycatch issues, especially under Option 2, allow NMFS to approve PSQ transfers directly and allow the transfer of PSQ during any month of the year and allow PSQ transfer without an associated transfer of CDQ. It isn't, Mr. Chairman. The

quota managers cannot make a decision in January – we've got a window of opportunity to make a decision on this stuff and it happens in January. Hell, I don't even know what I'm going to be doing in. . .[unintelligible]. . .in January, let alone trying to manage a resource. They raised this issue; they wanted to simplify the process. If my understanding is not fully on this issue, and I'm not an expert on this issue by a long shot, and if any other Council member feels that they have a better understanding and would like to a friendly amendment on this to clear it up, I'm not advocating any additional bycatch by the CDQ groups, unregulated bycatch. That is not my intent here and I want to be open and up with you guys on it; it is to simplify the process.

With that, Mr. Chairman, I will. . .I think that was my justification and I have no other further comments. . .Oh, I do, I do. I also went to the National Standards, Mr. Chairman, I'm going to call the Council's attention t--and I'm not trying to beat Larry's Cotter's record explaining a motion or whatever--but the National Standards start on page 204 and I read the National Standards, there's two full pages of them, of nice fine print, and this does not affect any of the National Standards. I thought that was important to put on record because many times people refer to this as, quote, the Native program, a Native program, or those Natives' program. National Standards clearly spells it out; this is not a Native program; it's a community-based program and the only requirement is that you stay within that community or within that region. I thought that was very important. Thank you, Mr. Chairman.

PENNEY: Mr. Chairman, a point of protocol to the Chair and possibly a friendly amendment. First of all, Mr. Samuelson served with honor for nine years on this Council, he's probably as much respected on CDQs as anybody around. This is his last meeting and, as a point of protocol, Mr. Chairman, I have to ask you is it the Council's intent, now do we have to be polite to him if we have amendments? Do we just give in to what he wants, Mr. Chairman, or can we just have a

regular old program, could you answer that, please?

BENTON: I think that because Mr. Samuelson. . .this will be a ruling of the Chair, by the way. . .that because it is Mr. Samuelson's final meeting that you should think of all the nasty things you would like to do for him for the next several years and try and accomplish that goal in the next few days.

PENNEY: Mr. Chairman, from that, I have friendly amendment. If it's not friendly, I'll lay it out on the floor, please.

BENTON: O.K., this is actually a good time to do this. I am going to discourage friendly amendments unless they are truly small, simple, editorial issues. Otherwise, we're going to vote and I'm saying this now because this issue is actually probably one of the simpler things we're going to be dealing with over the next few days and so I want to put that up front right now. So, when you propose your amendment, Mr. Penney, I'll make a decision at that point about whether or not that can be entertained as friendly, I'll ask that question, O.K., because at our last meeting we got into this a fair amount and I found it much more effective and efficient to just go ahead and vote the issue more often than not. So, with that caveat, certainly, you have the floor.

PENNEY: I leave to the Chair to decide whether I'm being friendly or just whatever I am with Robin. Mr. Chairman, amend to Issue 7, the second to the last line presently reads, to wit: ' . . .economic development in region projects up to 20 percent,' etcetera. Move to strike 'in region' and insert the words 'within Alaska for', so it now reads: 'Non-fisheries related economic development within Alaska for projects up to 20 percent,' etcetera, and ask for a second.

BENTON: Yeah, that's substantive enough we'll have to vote on it. So, O.K., you're proposing an amendment to the main motion. Is there a second to proposed amendment.

HYDER: Mr. Chairman, I'll second that for discussion.

BENTON: O.K., you want to speak to that briefly?

PENNEY: Yes, Mr. Chairman. Robin touched very eloquently on what's happened to the salmon fisheries throughout a lot of Western Alaska and he's a hundred percent right, and he's also touched what's happened to the economics in those areas and it really is important that when in an area whenever an entity wants to make an investment they have to look to the area of risk of that investment and if you force them as I read this to stay within that investment in that CDQ area you're going to in most cases raise the level of risk. Very quickly, for an example, a real estate market which a lot of the Native corporations and other have invested, a real estate investment under a government guaranteed lease or some such thing might have what's called a six or seven cap. That means if it has a six or seven cap the investor is satisfied to have a six or seven percent return per year. The higher the risk the higher the cap. You come to Seattle and make an investment, it's probably an eight cap; you come to Anchorage and make an investment and it's probably a nine or a ten. You go to Shishmaref or some of the smaller villages and if you want the financial community to be involved in it, it can be a 12, 15 or 20 cap, so the risk area goes up two to three times and it's not in any entity's best interest to have a restriction that's forced them to take more risk. For an example, let's say that one of the CDQ groups wanted to make an economic investment, wanted to get returns for the shareholders as Mr. Samuelsen touched on, then they should be able to do so. But to tell them that they have to stay within their own district and there may not be an economic opportunity there or the proper kind, may cause them to take an undue risk and that's not the intent of what they're trying to accomplish. So, the purpose of the motion is to stay within the State of Alaska is to really restrict it as much as possible. If somebody is in a community, let's say it's Nome and he wanted to make an economic development, they're going to do that in Nome if they can because it's their home ground, they

can watch their eggs, it's in the same basket, they're going to make that. But if the opportunity's not there, they should be able to go to a place within the state where the economic opportunity is there and carries less risk. So, it's for the purpose of that it is not to let them get rampant and run all over the country or all over the world, but to allow them to invest throughout the rest of the state as all the Native corporations and all the Native villages do. I don't know of any entity that has this type of restriction. Thank you.

AUSTIN: This isn't a really a discussion, but looking at my notes, Mr. Samuelsen is speaking to his motion on issue 6, my notes say he defined what effective management control as 51 percent as a minimum and I didn't hear him reiterate that. . .

BENTON: Wait a minute, we have an amendment on the floor.

AUSTIN: Oh, I'm sorry, Mr. Chair, thank you.

BENTON: All right, is there any further discussion of the proposed amendment? O.K., Mr. Anderson, then Bundy, then Madsen.

ANDERSON: Mr. Chairman. I'm going to be opposing this amendment. Respectfully to the motion maker, if we were to use his logic then we shouldn't restrict it to Alaska. I mean, if we're looking at trying to maximize investments with reducing risk, then there shouldn't be any restriction whatsoever. I believe the intent of the program, I mean what the Council has done in the past, is it's allocated a public. . . a Federally public resource. . . to a group of individuals within a specific region. I believe that the expenditures at this 20 percent level should be within the region. From personal experience, I've lived in rural Alaska for 15 years or better and even though you wouldn't maximize your return on investment I believe the investment in that population is quite appropriate and needed. Thank you.

BUNDY: The parliamentarian just left; I had a question for him so I'll just ask the Chair. I

would like to make an amendment. . .I would like to propose an amendment to this amendment.

BENTON: You can amend an amendment.

BUNDY: O.K., I would like to. . .the purpose of this amendment is to simply to increase the amount that would be free of a fishery-related requirement So, if you have Mr. Samuelsen's motion, there in the very last line of Issue number 7, after the word 'projects' that has been crossed out, insert 'in an amount equal to', so then it would read, 'in an amount equal to up to 20 percent of the previous year's pollock CDQ royalties,' and then I would add at the end of that sentence, 'plus 100 percent of profit distributions to the CDQ group in the previous year.' So, that the proposed amendment to the amendment and if I have a second I'll speak to that.

BENTON: Well, even before you even seek a second, let's get it clear what we've got here.

What we have is Mr. Penney's amendment and that amendment, as I think I have it, reads, 'related economic development projects in Alaska for projects up to 20 percent. . .'. Now, I'm trying to understand, so if somebody wants to second your amendment to his amendment, how that reads. So, would you read the sentence in its entirety?

BUNDY: Allow investments in non-fishery related. . .I'm not sure where 'in Alaska' is inserted. .  
.Mr. Chair, if you would remind me.

BENTON: Mr. Penney, read your sentence one more time. That way we'll make sure we've got it right.

PENNEY: . . .[away from microphone-can't hear first words]. . .economic development, insert 'within Alaska for' projects up to 20 percent. Take out 'in-region' and insert 'within Alaska for'.

BENTON: . . .projects up to 20 percent. O.K., now then, Mr. Bundy.

BUNDY: Mr. Chairman, so then the sentence would read, 'Allow investment in non-fishery related economic development projects in Alaska. . .



BENTON: No. It would read, 'Allow investment in non-fishery related economic development within Alaska,' so 'projects in region' are gone. 'Within Alaska,' then it would be 'for projects up to 20 percent.' That's how it would read. So he sort of reversed where the word 'project' went, changed it around a bit. So, you got it?

BUNDY: I think so, so picking up there 'in Alaska for projects. . .[Benton interjects 'up to 20 percent']'. . .in an amount equal to. . .[Benton interjects: now, this is your change-Bundy replies, 'this is my change']'. . .

BENTON: O.K., so we would delete the word 'up' and it would be 'in an amount equal to 20 percent', and continuing on.

BUNDY: Right, well, . . .'in an amount equal to up to 20 percent of the previous year's pollock CDQ royalties and 100 percent of profit distributions to the CDQ group in the previous year.'

BENTON: O.K., do that one more time.

BUNDY: O.K., at the end, add, 'plus 100 percent of profit distributions to the CDQ group in the previous year.'

BENTON: Let's see if there's a second to this motion before we go any further. Is there a second.

PENNEY: Mr. Chairman, I'll second it for clarification. Are we going to vote on this and then come back to my amendment?

BENTON: No. . .

PENNEY: They're not combined, is that correct?

BENTON: I'm not sure you can second an amendment to your amendment. I'll have to look at the parliamentarian. You stepped out for a minute, Mr. Parliamentarian. Here's the situation where we're at. . .you got it?

DAVE HANSON (Council member): Since the individual can't amend his own motion it would seem to follow. . .

BENTON: You need a different second.

SAMUELSEN: Question, Mr. Chairman. If Mr. Bundy's motion, amended motion passes, then that takes precedent over Mr. Penney's, so Mr. Penney's motion is history.

HANSON: No, he's amending the motion. We still have that motion.

BENTON: What we have is our main motion, he amended it, he's got a proposed amendment on the table. He's making an amendment to the amendment. If his passes, if Bundy's passes, that amends the amendment, then we would vote on the amended amendment.

HANSON: That's correct.

BENTON: And it would read as Mr. Bundy's language. . .

HANSON: Unless Mr. Bundy just makes it a substitute and incorporates it and then you only have to vote once.

BENTON: O.K., so if it's a sub. . .well, he didn't do that, so it's an amendment to an amendment. First off, Mr. Oliver.

OLIVER: Just want to be clear on the language, Mr. Chairman. Mr. Bundy, your. . .**[Change to Tape 14]**. . .new language stated 'economic development within Alaska for projects equal to 20 percent', is that correct? Not up to, but equal to, specifically equal to 20 percent.

BUNDY: No, in an amount equal to. . .up to 20 percent plus the 100 percent.

BENTON: Let me see if I've got the language here correct. I'm going to read the whole sentence. "Allow investments in non-fisheries related economic development within Alaska for projects in an amount equal to up to 20 percent of the previous year's pollock CDQ royalties, plus 100 percent of profit distributions to the CDQ group in the previous year.' Is that correct?

BUNDY: That's correct.

BENTON: Is there any further discussion of the motion. . .do you want to speak to your motion?

BUNDY: Yes, I would, Mr. Chairman. I mean, the purpose of it is pretty simple. In a spirit of allowing CDQs groups a bit more freedom with regard to profits that they have made from their investments this would allow them to make economic development investments in the State of Alaska up to a greater amount, not requiring them to do that, but each CDQ group would be free through their individual processes, through their boards, etcetera, to adopt an investment policy that would allow up to this much to be invested in the State of Alaska outside of the fishery-related requirement.

BENTON: O.K., just a point of clarification for my own benefit. The end result of what you're proposing, what this language would do then is that it would be 20 percent of the previous year's pollock royalties plus all of the profit distributions that might come to a CDQ group.

BUNDY: That would define the maximum that a group could invest outside of fishery-related.

BENTON: What's left over?

BUNDY: Eighty percent of pollock royalties plus 100 percent of all other royalties.

BENTON: O.K., I see what you're saying. O.K., any further discussion? We'll start with. . .I'm going to start over here, Madsen, Samuelsen, then Anderson.

MADSEN: I can't support this amendment to the amendment. I'm willing to entertain allow non-fisheries related economic development projects up to 20 percent, but to include 100 percent of the profits is too far for me. I'm not willing to take that risk at this point. I think that once we have time to see what those non-fisheries related projects are, how it works, how comfortable people feel, then we can look at expanding that program. But, it's a significant change from the original goals and purpose of the program. I'm willing to give some flexibility to it and look at it,

but the proposed amendment is too big of a step for me.

SAMUELSEN: I would like to ask staff the potential of what does 100 percent of the profits mean in terms of dollars, besides the 20 percent. Just give me an estimation within \$10 million and I'll be happy.

BENTON: Um. . .Nicole or Sally? Can you project this, or do you have anything like this in the analysis? You might as well come up to the table, by the way. I can see we're going to get into some of those. No? You can come up here and tell us you don't have an answer, too, that's quite all right.

BIBB: I'm just going to look at the information that KPMG prepared for us on a description of the CDQ groups and. . .

BENTON: I'll tell you what. Why don't you go ahead and review that and I'm going to go around, we've got some. . .maybe these will not involve staff and I'll come back to you when you go through the information a little bit. Mr. Anderson, do you want to speak to this motion?

ANDERSON: Yes, Mr. Chairman. I'm a little confused because I think the amendment to the amendment really wasn't germane to the amendment in that we were discussing a geographic area and then we've added funds from different sources. So, if this amendment would pass, would we be able to reach discussing the adding of Alaska because it's already imbedded in the amendment, without consideration?

BENTON: Well, what he did was. . .the reason it's germane he took the same sentence and he is continuing with what Mr. Penney did and adding additional criteria, if you would, in terms of what the money amount would be, so that's why I allowed that.

ANDERSON: But, the question is would we be able to address the geographic area of 'in region' if this. . .[unintelligible]. . .

BENTON: The way this would work is, and the parliamentarian should step in here and clarify this if I'm incorrect, O.K.?, which I very well could be. If his amendment passes as we're presently doing it, then what you would have before us would be an amended amendment which would include both the 'within Alaska' as opposed to the 'region' AND the money thing, right, which he changed. If you voted then for that amended amendment it would be this language. If you voted against this, you would go back. . .if the amended amendment failed you'd be back with the original main motion.

ANDERSON: So, to address the geographic area you would have to reconsider.

BENTON: Wait a minute. . .

HANSON: Either way, if it passes or fails you still go back to Mr. Penney's amendment.

BENTON: But if this amendment to his amendment passes, what would be before you would be this language and if that then was adopted through the second vote, . . .

HANSON: Penney's was adopted by the second vote, then you're done with it.

BENTON: Right, as amended. Now then, if his amendment fails, you'd still be back to Mr. Penney's. O.K., Mr. Anderson, does that answer the question?

ANDERSON: It does not, Mr. Chairman. If the amendment to the amendment passes, and then we're back to the amended motion, if that passes, can we address the geographic location by amendment, or do we have to reconsider? That's the question.

HANSON: Mr. Chairman, I think you'd have to reconsider because you've pretty much addressed it and perhaps there is some way to modify it, I don't know what you have in mind, but off the top, no, you're done with it at that point.

BENTON: Would you fellows like a 5-minute break so you can sort through this because I would.

ANDERSON: No, what I understand is. . .the next two motions if we pass, then to address the geographic location we have to have a motion for reconsideration. That's what I wanted to clarify. Thank you.

BENTON: O.K., we'll keep on going around the table then, unless you have the answer.

BIBB: I think we have some information from the analysis. And, just to repeat the question, Mr. Samuelsen was asking about what would be the amount of the. . .what were the words that you used. . .distribution of profits. And, I'm looking at the information on page 18 where KPMG summarized the source of revenues for the CDQ groups in 2000, and the category that they called 'businesses' which is 10 percent of 2000 revenues, or \$6.12 million dollars. They describe that as the CDQ groups' equity earnings in businesses they have entered with fishing vessels, processors, other related fishing businesses and investments. And I think that is the best information that we have in the document that would be consistent with what Mr. Bundy was described, so that's \$6.12 million. And then, as Nicole had in Issue 7, the 20 percent pollock royalties we estimate at about \$6.6 million, so they're almost the same amount, based on the best information we have in this analysis.

SAMUELSEN: Yeah, addressing Mr. Bundy's amendment, I'll be voting against the amendment, Mr. Chairman. I think that just having a 20 percent, \$6 point some million dollars is a major deviation from the program. Allowing the 100 percent of the disbursement of profit to be used also I think is. . .it's mind boggling to me because how do you track it, where's the accountability, and another six and a half million, so we're up to \$13 million dollars. This is archaic information, in 2000, all of the CDQ groups. I'd venture to say it's half again as much in 2002 and by the time this regulation is signed by the Secretary it'll be a very substantial amount of money and I can't support the amended language.

DUFFY: Thank you, Mr. Chairman. As much as I like working with Mr. Bundy on all these issues, kind of my philosophy on this CDQ program and making changes, I'm looking more at a concept of mid-stream adjustments to the program, streamlining, some of those issues, and I think I'll get to that later. But as opposed to wholesale policy changes in what we're doing, however, I do support the 20 percent of pollock royalties to non-fisheries related investments. I consider that a significant policy change but I think it's one that reflects a maturing program and I support this, but this additional step that I really haven't had much time to think about and just an initial reflection, it's a significant magnitude in terms of dollar amounts. I don't think I'm going to support this amended amendment to the motion.

FLUHARTY: I think that this really does deserve some support. I mean, there's no CDQ program that's required to implement what is proposed here. I think that the testimony from the public and in Mr. Samuelsen speaking to the motion suggested that there are very different circumstances among the CDQ players. If you're going to insist that this be invested in the region or in Alaska, it's staying here. It's staying for the benefit of each of these programs and we're allowing, with a high degree of oversight, the various groups to make decisions that are in their perceived best interests and I therefore think that this provides some flexibility for the program and I'll support it.

BENTON: O.K., are you ready for the question; the question is to vote on the amendment to the amendment, so it's the Bundy amendment to the Penney amendment. Call the roll.

OLIVER:

Mr. Penney           No

Mr. Samuelsen       No

Mr. Anderson        No

Mr. Austin	Yes
Dr. Balsiger	Yes
Mr. Bundy	Yes
Mr. Duffy	No
Dr. Fluharty	Yes
Mr. Hyder	No
Ms. Madsen	No
Mr. Benton	No

OLIVER: Motion fails, 7 to 4.

BENTON: O.K., is there any further discussion of the Penney amendment? Call the roll. O.K., Ms. Madsen. You pass? You want to speak to it some more? You can. . .Mr. Penney. . .Oh, I thought you wanted to speak to the motion. I'm sorry, my apology, I misunderstood. Re-state the motion.

OLIVER: Mr. Chairman, this would amend the language in the last sentence of Issue 7, would delete the words 'in region' and essentially substitute 'within Alaska' for the words 'in region' and the rest would remain the same, and it would still be for projects up to 20 percent of the previous year's pollock royalties.

BENTON: Let's read the sentence. The sentence would read: 'Economic development within Alaska for projects up to 20 percent' and then continue on. That is the amendment to the main motion. Call the roll.

OLIVER:

Mr. Samuelson	No
Mr. Anderson	No



Mr. Austin	Yes
Dr. Balsiger	Yes
Mr. Bundy	Yes
Mr. Duffy	No
Dr. Fluharty	Yes
Mr. Hyder	Yes
Ms. Madsen	No
Mr. Penney	Yes
Mr. Benton	No

OLIVER: Motion passed, 6-5.

DUFFY: On Issue 7, I would like to propose an amendment. I'm going to make the assumption it isn't friendly unless you tell me it is. But, there is a suboption (a) to make the goals and purposes primarily fisheries-related. That language, I believe is reflected on the bottom of page 5 of the Action Memo: Issue 7, suboption (a), goals and purposes. It's also on the top of page 193 of the analysis and I have a recommended change.

BENTON: So, just by the way of clarification, Mr. Duffy, you're going to propose an amendment that might incorporate some language like this with some changes, is that correct?

DUFFY: I'm proposing an amendment that would modify the suboption (a) proposed language. Under line 2, where it says, 'representing eligible Western Alaska communities,' I would replace and I would put in a colon and replace the word 'primarily' with 'as a first priority', rather than 'primarily'. And then, continuing on, 'to provide the means for investing in', carrying on the last section then that goes, 'regionally based fisheries economy, and as a second priority'; insert 'as a second priority' instead of 'secondarily', . . . 'to strengthen the non-fisheries related economy in the

region.' So, essentially the proposed revised goal and purpose statement of the program which I think is pretty significant, rather than say primarily as proposed I am going to replace 'primarily' with 'as a first priority' and 'secondarily' with 'as a second priority.' If there's a second I'll speak to it.

PENNEY: Second.

DUFFY: To me, 'as a first priority' provides a weight that I think as part of the CDQ allocation team I understand well when we get into the allocation cycle and I think compared to 'primarily' versus 'secondarily' I think it's a little bit fuzzier and I would like to be real clear that investing in and participating in, supporting commercial fisheries business activities is indeed still the first priority of the CDQ program and that as a second priority, then, it would be non-fisheries related investments. So I would request from the Council consideration of that further clarification of that issue.

MADSEN: To the maker of the motion, Mr. Duffy, does this then, as part of the CDQ team, does this then add a criteria for evaluation that fisheries-related projects would carry more weight when it came to determining allocations?

DUFFY: Yes, in my opinion that's correct.

MADSEN: Mr. Chairman, if it's on the record that it is the intent of the State that they will use this revised goals and purpose statement and that they will recognize that fisheries-related projects are a priority and given more weight, then I am supportive of this amendment.

FLUHARTY: Mr. Chairman, I would just point out, and this is a semantic argument, that first and second priorities don't necessarily do that, and so if Stephanie has clarified what this does, I think the original language gives a much stronger sense of what Mr. Duffy is trying to do. But I don't want to take this into semantics at this time of the day.

PENNEY: I intend to support the motion, Mr. Chairman. I think it covers the point that the AP didn't necessarily pick up and I think it's very clear.

[Call for the question]

BENTON: O.K., so you all understand the language. Let's make sure that the Executive Director has it right. Mr. Oliver.

OLIVER: I would ask Mr. Duffy to please walk me through that one more time.

DUFFY: Through the Chair, yes. Mr. Oliver, where in the second sentence, depending on where you're reading, but where it says 'primarily', replace that word with 'as a first priority', and then toward the end of the goal statement where it says, 'and secondarily', replace the word 'secondarily' with 'and as a second priority'.

BENTON: Just a question, Mr. Duffy, for my own benefit. Given Ms. Madsen's question, your intent is that fisheries-related projects are THE first priority. So, they get sort of the first cut, or they're the most important, and then as a second but lesser priority would be the other non-fishery related economic development activities. Have I got that correct?

DUFFY: You've got it correct; that's my intent.

BENTON: I mean this is sort of semantical, but should you say in that first part 'as THE first priority' and then in the second part just say 'and as a second priority'.

DUFFY: Yeah, . . . a friendly; I don't know if the Chair. . .

BENTON: Well, I can't really propose an amendment.

DUFFY: I think that's a great idea if somebody came up with it.

MADSEN: Mr. Chairman, I would move that.

BENTON: That's a editorial thing; Mr. Parliamentarian, do you think I need the vote on that?

HANSON: I don't think so.

BENTON: O.K., with the concurrence of the second. Second concurs so that's a friendly amendment. Any further discussion of the amendment?

BUNDY: Mr. Chairman, this is. . . maybe this question's already been answered, but this is a question for the maker of the motion for clarification. I think I've already expressed myself, what I think about the policy of requiring people to invest in fishery-related, but I'm generally supportive of this easing up at this point. But I'm concerned about this motion if what it means is that if you take two CDQ groups and all things being equal, one has invested in 100 percent fishery-related and the other one has used the flexibility that we allow to invest something in non-fishery related, that the second group is going to somehow get penalized in the allocation process. Now, if that's the intent of the motion then I'm against it. But, I wanted to ask the maker if that's what you're doing.

DUFFY: Through the Chair, Mr. Bundy, no that's not what I'm doing. When we get into the allocation cycle and we start looking at the criteria, the concept of all other things being equal I don't think is going to occur very often. There are a number of criteria we're going to use, so my intent is just to reinforce that as a first priority the investments in fishery-related activities remains the primary purpose of the CDQ program. I too acknowledge and support investments in non-fisheries related activities in the region, but I want the first priority to remain the original intent of the program and that's how I'm looking at this.

SAMUELSEN: I'm going to be in support of the motion. I think that clearly the intent of the Council has always been that the primary purpose of the CDQ program is fisheries-related, and that any other permitted investments are secondary. I think this does two things. It clarifies and also a number of us have been working on tax issues although I haven't been involved in that, but most of our CDQ groups are non-taxable entities but we get into this abyss about taxes and we've

had the best tax people around and their recommendation was to keep fisheries-related as a primary purpose and if the IRS did have questions on the secondary investments that only those would be taxable, so I'm going to support the motion. I think it does several things. Like I said, it clarifies and also protects the CDQ groups.

[call for the question]

MADSEN: I just want to, again, make clear that although Mr. Bundy talks about a CDQ group that chooses to invest in non-fisheries related as being penalized, I don't see it that way, but Mr. Duffy had answered me that the State would take this into consideration in the evaluation criteria and he's shaking his head and I believe that that's what he will do. My concern about not putting this as a priority is that if you are using performance-based measures and you invest in non-fishery related projects where the return on investment may be greater, that that group because it's non-fisheries related may perform better than a fishery-related project, and I think that is against the original goals and purpose of the program. And I want to make clear that to balance out the ability for CDQ groups to have flexibility on non-fisheries related, that there will be consideration given to those CDQ groups that continue to invest the money the way the program was originally set up and I recognize that all CDQ groups are not made the same, but I am sincerely concerned about the original intent of the program and I don't want the community groups that are investing in fisheries-related projects to be penalized when they look at performance and I think I've made myself clear and I hope the record is clear that the State representative intends to use this in consideration during allocation process.

FLUHARTY: I guess that would be I think kind of strange. I mean, here we're allowing people to use up to 20 percent, if this goes through as proposed here, as this is set up, we're allowing them to do that. So, even under the rules that we've set up, if what Ms. Madsen is suggesting is

the case, then you maximize your change of increasing your allocation of fish, of the TACs, by not investing in non-fishery related, which essentially puts everybody else behind in their ability to gain revenues from fishing that can be reinvested. So, I think we're getting into a really strange place here and I'm not very comfortable with it.

BALSIGER: My sentiments are somewhat aligned with Dr. Fluharty's. It seems foolish for us to set up a program and develop some rules that allow the CDQ communities to do something, but then at the other hand warn them that if they do that they're not going to be successful in future allocations. I was satisfied with Mr. Duffy's explanation of how he interpreted first priority and second priority, but I think Ms. Madsen confused me with her statement on the record that it would in fact probably, in my opinion, penalize those people following the rules, investing in non-fisheries things, even though we've set up to allow it. So, with Mr. Duffy's explanation on the record I'm prepared to support the motion.

BENTON: Are you ready for the question? [call for the question] O.K., now that I know you're all ready for the question, I want to say something about this particular thing, and only briefly. I will support this and I'm glad that it's in there because given the change Mr. Penney made, the whole notion of non-fishery related projects could potentially greatly distort the intent of this program. And I'll give you my take on it. Somebody who was involved in drafting the very first guidelines that this Council did, somebody that was involved in developing the first State regulations, reviewing the first CDPs, assisting the Federal government in developing their first regulations and having some experience in original intent. And that was that the benefits of this program were supposed to accrue to the communities in that region. The change that Mr. Penney made under Issue 7 would allow investments in economic development outside of those villages for non-fishery related projects. If we did not have this in here, it strikes me that the benefits for

those communities gets very nebulous and we are dangerously close to converting this program over something that's designed to build an economy in those villages and communities into something that's far, far different. Now, can we call roll?

OLIVER:

Mr. Anderson            Yes

Mr. Austin              No

Dr. Balsiger            Yes

Mr. Bundy              No

Mr. Duffy              Yes

Dr. Fluharty            No

Mr. Hyder              Yes

Ms. Madsen             Yes

Mr. Penney             Yes

Mr. Samuelson         Yes

Mr. Benton             Yes

OLIVER: Passes, 8 to 3.

BENTON: O.K., are there any other amendments? Then, I want to take a 5-minute stand-down because I have a whole different issue that's not related to this that I need to confer with the Executive Director on and then after I do that I want to discuss with the Council before we break for the day. I intend, with the Council's concurrence, to get through this issue and then we will break. O.K., is that all right? Five minutes.

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**Change to Tape 15**

BENTON: Council will come back to order. We are on Agenda item C-4, we have an amended

main motion in front of us. I have Ms. Madsen's hand up. . .I was asking if there are any other amendments, proposed amendments, and you raised your hand. . .apparently that wasn't for an amendment. You want to think about it for a minute, because I've got some guys over here that. . .all right. Dr. Balsiger.

BALSIGER: Mr. Chairman, on Issue 1, the Agency probably will not be able to approve the CDQ program if there is not a formal appeals process provided for. Mr. Lepore, our attorney, could address that if you would like to hear the legal aspects of that. Alternately, I would propose an amendment to add a NMFS formal appeal process into the Issue 1.

BENTON: Why don't you, just to expedite this, why don't you put your proposed amendment on the table and then if you want your attorney to speak to it, then maybe he can speak to it. Let's do it that way, if you can get a second, which I assume you can.

BALSIGER: Mr. Chairman, I would amend it by, under Issue 1 on Samuelson's motion, 'The Council adopts Alternative 2, define the process in regulation and expand the State hearing and comment process.' And then the analysis speaks. . .the motion is. . .adopts language from the analysis anyway, so that would include the formal NMFS appeal process.

BENTON: O.K., before either you or Mr. Lepore speak to this, I want to make the sure Executive Director has got the amendment correct.

OLIVER: I got it this time, Mr. Chairman.

BENTON: Okey dokey, right? Want to speak to your motion? It had actually been seconded before by, I think, Mr. Anderson, yes.

LEPORE: O.K., Mr. Chairman. I do this with some trepidation because I know that this is an issue that we want to move forward and everything, but I know a lot of 'with all due respects' have gone out and I'm going to throw one more out there. With all due respect to people reading



the opinion of Judge Holland, that is very risky and dangerous to assume law principles from a particular case. And in this situation, I mean going through Judge Holland's decision, if you look at it, he made the statement that the regulations were extremely sparse, however the Agency did the right thing. In other words the function of the Agency was correct. As we probably well know, procedural due process is constitutionally required. It's not something that's taken lightly. I would clarify that a formal internal Agency appeals process is not constitutionally mandated, but procedural due process is. It could be done several ways. One of the ways that was suggested was rulemaking; the other is an appeals process. Just because the particular situation of the APICDA lawsuit was correct, in other words, the Agency took the correct action in that case doesn't mean that it would always be correct in every factual situation or that we would always have the same personnel in place. The concern that I have and I think it's a legal concern is we could have other personnel in place who might not afford that same procedural due process. We have an appeals process in place. I know that sometimes we look at it and say, do we really want a Cadillac model, do we want a Ford instead. Well, in this situation we already have a Cadillac and the back seat is empty. There's room there. We have an appeals process, we have appeals officers that work on this type issue and I know that there was some concern about timing as well. There was a discussion that this would be a 15-month process as opposed to a 9-month process, so it might add 6 months onto what we currently have for allocations. However, I would want to articulate that that may occur at any rate even with the ad hoc process that we used with APICDA. I mean, there's nothing that says that process would be accelerated much quicker than, say, an appeals process that we have. I just think that for the protection of the Agency and the protection of personnel within the Agency it's important to put this in regulations.

DUFFY: I have a question for John. When you started out you started talking about Judge

Holland and his ruling and you said it's never safe to rely on one case or agency precedent. And you said that one of the key things that he said was the regulations are very sparse on this issue, I think that's what you said. Keeping in mind that under Issue 5 the Council may approve publishing the evaluation criteria in NMFS regulations, does that mitigate for that issue to some extent, if the regulations are published, the evaluation criteria is published, I should say?

LEPORE: That would provide us a little more clarification in the criteria used. It still doesn't address the procedural due process issue, that every one. . .according to Supreme Court opinions, it has been articulated that procedural due process means having. . .let me pull up my notes here. . .has to have adequate notice and a meaningful opportunity to be heard. Judge Holland, when he looked at what the Agency did in the particular case of the APICDA lawsuit, said those functions were fulfilled. And that can happen under procedural due process. In other words, an agency can on its own accord actually provide that procedural due process. However, if it's not formalized in regulations we don't have a process in place and we could falter. We never know who is going to make that decision unless it's in the regulations. And so, because it worked this time doesn't mean it'll work in the future. And I guess that's what I want to communicate, just because it worked in this case, without having it formalized, we could be in danger.

DUFFY: Thank you, John. I'm trying to work you here a little bit, see if I can get somewhere. The second part of it is, under Issue 1, the Council it looks like will also possibly approve an expanded comment period relative to the State decisionmaking process. Does that, combined with the evaluation criteria being published in Federal regulations put us in a better position relative to a future appeal than we were under the Judge Holland ruling?

LEPORE: Again, I think this would be helpful. However, the decision is ultimately the Secretary's and any person who is aggrieved would have an appeals right to the Secretary,

notwithstanding having an expanded appeals process at the State level, or an expanded hearing process. So, again, for the safety of the Agency and its personnel I believe that the best way to do that is to formalize the process in regulations. And as I said before, we already have a process formalized.

BENTON: Point of clarification, just to help us all out. It was a little unclear to me what the... the way the amendment was put together, but it's my assumption that what we're talking about is the kind of appeals process that was described by Ms. Bibb earlier, which strictly confines itself to an appeal on findings of fact and issue related to process and is not an appeals process that second-guesses policy decisions or determinations in that regard for allocations.

LEPORE: Mr. Chairman, you are correct. I think Ms. Bibb clarified that as she talked about the appeals process.

SAMUELSEN: Thank you. I guess, to the maker of the amendment, I'd like to know what type of time frame you're looking at here. We've talked about 15 months. Being a member of a CDQ group and you heard the concerns in public testimony that we've got major businesses to run and if BBEDC decides to appeal, appeal, appeal because they don't like their allocation or for whatever reason, we're going to tie up some major businesses here and NMFS is sometimes very quick and sometimes very slow, so I want a definitive time here on how long it's going to take and I'll tell you right now 15 months is totally unacceptable to me.

BALSIGER: Well, Mr. Chairman, I would defer to probably Ms. Bibb who could probably tell you a little bit more about the appeals process and the required lengths of open windows for appeals and that kind of stuff. There may be some opportunity, slightly shorter, but I wouldn't want...if I could...

BIBB: Mr. Chairman. On pages 46 and 47 we've laid out a schedule for the CDQ allocation

process that would include a formal appeals process. So, our current process is 9 months from the time the State starts the CDP application process to the time that the fisheries start the next January and we are adding to that process 6 months to accommodate appeals and I'm sure that if we get no appeals then, of course, we won't need any of that 6 months and we will have made a decision on the CDQ allocations by July 1 and have that in time for the fisheries in January. But based on discussions with our appeals officer and General Counsel we decided to provide 6 months for that process because that appeals process involves the date that any CDQ groups can submit an appeal and then it provides an opportunity for the other CDQ groups to read that appeal and know what that issue is and provide their response to that appeal as well as the State providing a response to that appeal and then the time for the appeals officer to review all of that information and the other groups in the State can submit a brief on their response to that appeal for the appeals officer to consider. Then, the appeals officer has to review the determination that's made by NMFS in the Sustainable Fisheries Division and review the information submitted by the State and all the information submitted in the appeal and render a decision and that decision is either to uphold NMFS's initial determination or perhaps the appeals officer will find that there was some problem with the process or the facts or the State's rationale. And then that has to go back to NMFS initially and to the State. So we're providing ourselves enough time to remedy any situations that the appeals officer finds problems with and we're hoping that we will not have to do that, but we need to provide ourselves the time to do an adequate appeal. So, that's our proposal, to provide ourselves 6 months. We also have a contingency if the appeal can't be resolved in the time that the CDQ allocations expire that we would put in our regulations that at the time the CDQ allocations expire what we would use in the interim until the appeals are resolved is the lower of the allocation amount of what the CDQ group got in the previous

allocation cycle or what the State recommends in the initial allocation. So that gives you at least the lower allocations to start your fisheries with, which should be a considerable percentage of the full allocation that's due to each CDQ group.

SAMUELSEN: Thank you, Mr. Chairman, CDQ groups sign major contracts; 9 months is. . . you know, I read your analysis, Sally, but even 9 months, if BBEDC decides to file an appeal there's five other CDQ groups that are being held hostage as well as five other pollock partners, longline partners, it's not just pollock partners, it affects the whole range of business activities within a CDQ group and you'll use the allocation as you said from the previous, but what does a CDQ group do contractually with outside partners, our partners that are involved in the crab boats and the longliners and a major decision comes down and, Mr. Chairman, it's just a nightmare and there's got to be some kind of faster process.

MADSEN: Mr. Chairman, could someone explain to me what would happen if I voted against this motion? Does that mean that National Marine Fisheries Service will not approve this package?

BENTON: Well, that's sort of what he said.

BALSIGER: Well, Mr. Chairman, if I could. Maybe I didn't exactly say it, but we have fairly adamant legal advice from our attorneys that they will recommend to the Secretary that this not be approved absent an appeals process. And, of course, the Fisheries Service usually does what the attorneys say, but not always. It depends on a number of things, I suppose. I would think there would be a high likelihood that the Secretary would go along with the attorneys but I don't know how to make it more. . .

BENTON: This is where institutional memory becomes a burden. I recall this debate back in. . . when was this, back in 1992. . . about this whole appeals issue and due process. At that time it

was believed by the Council and the State and ultimately by the Secretary because the Secretary approved the program, that the process that was in place was an adequate process and included due process. In fact, at the time the State was sort of asked to incorporate in its way of handling its recommendations some mechanism whereby if they made a recommendation and a group disagreed with that then they had a chance to go back and revisit it. We sort of went through all this and we were very concerned, the collective 'we', very concerned about the endless do loop you get yourself into because of multiple appeals because it's a zero sum game and no matter which way you go there's a whole range of parties that are affected. I only bring that up to remind us that this is not new ground. It's been plowed many times around this table on this program, because we did it at the initial development of the regulations, we also revisited this issue when we did the multi-species program under license limitation, and I believe we may have even had this discussion when we did the halibut sablefish IFQ program and incorporated halibut into the CDQ program, I can't recall that for sure. I'm wondering, two things struck me. One is that Sally said something which caused me some concern. . .I was leaning towards voting for this until Ms. Bibb indicated that the hearing officer might make a finding of inadequacy in the State's rationale. That's quite different than fact versus. . .and process. That's some concern; we might want a little clarity on that. Secondly, the question of the role of the Council comes to my mind and I would like to hear how and what way the Council is or isn't involved in any kind of process for review. And, I guess what's coming to my mind is the State develops a set of recommendations, the State brings it to the Council. All the CDQ groups and any member of the public who has anything to say about that has an opportunity to see that and comment on it to the Council. In a way, that's an appeals process itself and I'm wondering how that fits into the scheme here and I don't know whether I should look at Mr. Lepore or Ms. Bibb.

LEPORE: Mr. Chairman, I think I'm going to jump in here. Again, agreed, by having the public come in front of the Council, there is an airing of their concerns, however, the ultimate decision is finally with the Secretary and the Secretary has to ensure that procedural due process rights are safeguarded. If the Council went through the rulemaking process and provided adequate notice and an opportunity to be heard, that would work. The APA does provide that, the Magnuson Act does provide the FMP and rulemaking process to do that. But otherwise, there has to be some procedural safeguards and having an ad hoc procedure within the Agency doesn't meet that requirement.

BENTON: And rulemaking, again, bear with me for one second to get clarity from the counselor, rulemaking meaning, rulemaking that would establish a procedure whereby the Council was the appeals process or rulemaking every time we did a allocation, I was unclear what you meant.

LEPORE: The second.

SAMUELSEN: I'll be supporting the amendment. Do I like it? Hell, no. This is, you know, NMFS coming out in the eleventh hour and we've heard through public testimony people have been working on those issues six years, if it boils down to this issue, whether the Secretary possibly even entertains on signing it or not, and Counsel is very adamant that this needs to be in place then I have to support it; I have no other options.

AUSTIN: Thank you, Mr. Chair. Before I can vote for this I once again have to ask the question of what is being appealed, and Sally's comment about rationale to me translates into substituting Council, NMFS judgement for the State's. In my earlier quest of an answer on that said no, that wasn't the intent. The intent was only to make sure the proper process was done and that it was done using correct facts, that we weren't going to get into second-guessing and re-judging and

etcetera. If that's still true, which is where my question is, the second phase of that, I can't see why that takes six months.

BIBB: Mr. Chairman, I'd like to ask John if he would help me to explain the distinction that I'm trying to make between having to examine the State's rationale versus substituting our judgment for the State's judgment. And I believe that we have a responsibility to examine the rationale and the explanation that the State provides for its CDQ allocation recommendations to make sure that there is a connection between the information that the State is describing and the conclusions that the State comes to and I do not interpret that to be substituting our judgment. But I would like to ask John if maybe you could explain that in a little more clear terms. If I am in fact making a proper distinction.

LEPORE: Yes, Ms. Bibb, I'll go ahead and do that. Hopefully I can clarify it a little more. But, I guess the best thing is to look at the example of when an administrative agency makes a decision and that is appealed to a court. In that situation the court does not substitute its judgment; the court looks at it and determines whether the agency articulated on the record a reason for why they made their decision. They can't act in an arbitrary and capricious manner. The agency, similarly, would look at any decision that came before it, not substituting its judgment for the action agency which in this case would be the State, but instead insuring that it didn't act in an arbitrary and capricious manner and articulated on the record a reason for why they made their decision. So, they would look at that rationale and if that rationale was insufficient, it would sent it back and say, you need to clarify your rationale. That's not second-guessing when it has a clearly articulated rationale. That's saying, what a second, there are ten criteria, there are 15 criteria, however many criteria there are, you have to point to which criteria you used and why.



BENTON: Are you ready for the question? O.K., one minor thing here; I think this is still minor. I apologize, but in relationship the answer that we got to Ms. Madsen's question about if the Secretary rejects our recommendation here because we don't do an appeals process, does that mean that the Secretary could reject or suspend the entire CDQ program? I mean, if we don't make a recommendation on an appeals process, what happens.

LEPORE: Mr. Chairman, I don't think that it reaches that level. And in fact, I think this is an amendment, right? This is Amendment 71, so there could be the possibility of a partial disapproval which would deal directly with that issue, with the appeals issue.

BENTON: O.K., let me see if I've got this straight so everybody understands what we're voting on. A partial disapproval does not necessarily mean the Secretary is going to institute a Secretarial plan amendment for a formal appeals process. That means that the Secretary would write us a letter back saying you gotta do a formal appeals process, go develop one. Is that correct?

LEPORE: That is correct, Mr. Chairman.

BENTON: So, if we. . .and I hate to do this, but I'm going to ask, so if I got that straight, just so we all understand this, if that were to occur then what we would do is we would get into the mode of looking into what an appeals process ought to be like in more depth, or in some depth, maybe what we've got here in front of us or some other alternative, correct?

LEPORE: Correct?

BENTON: So, does everybody understand where we sit with this? Mr. Samuelsen.

SAMUELSEN: [not in front of mike, words very faint]. . .I said I was supporting it, after that little explanation I'm opposing it. Call for the question.

BENTON: Is there any further discussion of the motion? Mr. Hyder.

HYDER: I was pretty comfortable with Mr. Samuelson's declaration he was going to support the motion because it made the best sense. Then the Chairman helped me a lot by offering a cloudy crystal ball, and I'm going to support the motion. I'm uncomfortable with adding . . . processes that make the allocation more difficult, however I think that if appeals are needed they will happen and they'll happen through litigation or they'll happen through other appeals at the Department of Commerce and I think the amendment resolves the question rather than voting down the amendment and putting the question off to be untied at a later time, so I will support the amendment although I'm like Mr. Samuelson, somewhat reluctant.

PENNEY: Very quickly. Small question to help me clarify this. As Ms. Sally said if I heard her correctly. No matter what happens it's going to take 9 months. Now, if the appeal process comes into play, it'll take another 6 months. Now does that 6 months. . . [Change to Tape 16]. . . run from the day of the filing or after the 9<sup>th</sup> month? If that takes place in the 4th month, does that mean the 9 months that we have to go through anyway is there, or does it mean it has to go 15 months if there's an appeal made?

BENTON: Ms. Bibb, did you understand. . .

BIBB: No, sir, I didn't, I'm sorry.

BENTON: I think it's pretty straightforward. It takes roughly 9 months right now from the time somebody submits a proposed CDP to getting it approved. Basically, if we understand it right, it's nine months for that, then if the appeals process goes into place there would be an additional 6 months after that for a grand total of 15 months. Mr. Penney's question was, is that 15 total months, or could that appeals process start somewhere earlier in that process or somewhere later in that process?

BIBB: What we've done, and in the schedule that's on page 46 and 47, we have backed up the

process by 6 months, starting at 6 months earlier. Right now the State starts the CDP application process in April of 2002 and what we're suggesting is that they would have to start that in October in order to provide enough time for them to consult with the Council at the April Council meeting. And one of the things that affects this schedule is the Council consultation and the timing that that can occur during the year. Right now we do it at the October Council meeting. That Council meeting occurs too late, so we have to move back to the April Council meeting in order to provide enough time for this appeals process. But, I think that, based on the process that we've laid out, there isn't much opportunity for the appeals process to start before NMFS issues its initial determination on the State's allocation recommendations and we cannot do that until after the State consults with the Council. So, I don't think there is much opportunity to have different parts of this process occurring at the same time. But what we have put into this process, early in the process, is . . . we're proposing a requirement that the State have a comment period in their process. And we're hoping that many of the issues, or any of the issues that would be issues that would come up on appeal would be identified by the CDQ groups in that early part of the process so that they could potentially be resolved by the State before the State even consults with the Council. So we're trying to, in a sense, force the CDQ groups to bring up their issues very early in the process so they're not left to the end in the appeals process.

BENTON: Any further discussion; are you ready for the question? Let's go ahead and call the roll.

OLIVER: This would delete the five words, 'but no formal appeal process', is the essence of Dr. Balsiger's motion.

BENTON: And would then incorporate the appeals process in the analysis, correct? O.K.

OLIVER:

Mr. Austin	Yes
Dr. Balsiger	Yes
Mr. Bundy	No
Mr. Duffy	No
Dr. Fluharty	Yes
Mr. Hyder	Yes
Ms. Madsen	No
Mr. Penney	No
Mr. Samuelson	No
Mr. Anderson	No
Mr. Benton	No

OLIVER: That motion fails, 7 to 4.

BENTON: Are there any other motions? Mr. Bundy.

BUNDY: Just so the chair knows, I have a quick clarification and then I have a motion. On the clarification, to Mr. Samuelson a question with regard to his Issue 7, part of his motion. I assume that the current practices of the CDQ groups are unaffected by this motion, in other words are not included in the 20 percent. Those current practices involve investments in education, scholarship, charitable contributions and investment accounts, pending use of the money later on.

SAMUELSON: My, my, we're getting smarter are breaks. Yes, on page 185 of the analysis, I conferred with Nicole and to be consistent with the Council's intent we have basically listed non-fisheries related expenditures are exempt from this limit and there's . . . 1, 2, 3, 4, 5, items on page 185 that are exempt. The simple answer is yes.

BUNDY: Mr. Samuelson, would you read those items if you would to make sure I have them

right?

SAMUELSEN: Sure, allowable investments and expenditures--the following is a list of allowable expenditures and investments that may be made by a CDQ group.

Expenditures or investments that may be made with no annual limit:

1. Administrative expenses of the CDQ group;
2. Investments of cash and financial instruments such as stocks, bonds, certificates of deposit;
3. Investments in fisheries-related economic development projects;
4. Education, scholarships, training;
5. Charitable contributions.

BUNDY: Thank you. I do have a motion. I have a motion with regard to Issue 6, and this would be. . .it would be simplest, Mr. Chairman, if people have the corrected AP minutes. I don't know if everybody remembers at this point, Nicole passed around a one-page, it looks like this, a one-pager that changed the language with regard to Issue 6. All right, so if you have that in front of you, Mr. Chairman, the motion would be that language with a little bit of a tweak, so that Issue 6, extent of government oversight, would read as follows. . .First I would drop the Alternative 4 and also reference to H.R. 553 because I'm changing the language a bit. So, the motion. . .first of all, Mr. Chairman, I think I will make this as a substitute motion unless I'm cautioned otherwise because I think that's the cleanest way to vote this up or down and because if it passes then it substitutes for Mr. Samuelson's Issue 6. If it fails, . . .

BENTON: . . .That's appropriate.

BUNDY: So, Issue 6, reading from Nicole's corrected AP minutes: 'Revise NMFS regulations to clarify that', then I insert two words, 'prior approval', then continuing, 'government oversight

extends only to activities of the CDQ group that are funded by royalties from the CDQ allocations,' and then I continue the sentence, 'or by debt incurred by the CDQ group', period, end quote. So, I will do it again, all the language. . .

BENTON: So, for the record, we're reading from the document, the bottom of the page it says 'mydocument/revise AP minutes 6/6 page 2, wordperfect, Issue 6, extended government oversight'. It was handed out earlier today and replaced the Issue 6 language that was on the back of the AP minutes we received previously. So, could you read it in its entirety as it would appear, Mr. Bundy?

BUNDY: I will do so, Mr. Chairman. 'Revise NMFS regulations to clarify that prior approval government oversight extends only to activities of the CDQ group that are funded by royalties from the CDQ allocations, or by debt incurred by the CDQ group.' And if I have a second, then I'll explain my intent of this motion and we can discuss it.

FLUHARTY: The question is. . .this substitutes for the whole Issue 6 portion, including the 51 percent ownership?

BUNDY: That's correct.

BENTON: It would substitute for all of that?

BUNDY: That's correct.

FLUHARTY: So, for purposes of discussion, I second it.

BUNDY: I think the most important part of my remarks is that there's a whole bunch of review and oversight still left and so I'm not taking out oversight. During the course of this discussion, and really all day, we all appeal to various forms of authority, including the CDQ committee and NRC and the Council and Congressman Young, etcetera, but we should remember that what we're doing here, we are making the policy right here today and we're making it for many years to

come and these issues are all important. And, I think that the motion is simply a superior policy than the one. . . I think the AP has come up with a superior policy that we ought to adopt. My intent here is to limit the PRIOR approval authority with regard to subsidiaries but not to remove oversight. I wish to remind the Council members of discussions that have occurred today that any time that a CDQ royalty would be invested or credit of the CDQ groups is pledged the prior approval authority would come into play under my amendment. For example, if there's an investment in a for-profit enterprise, that will require a CDP and in that process expectations relative to the CDQ program, its goals and objectives will be identified and then monitored by regular quarterly and annual reporting. In addition, at allocation time generally everything is subject to review, in my experience, and tested against the allocation criteria, including benefit to the communities and performance measured by the original CDP that allowed the business investment in the first place. What is not involved under my motion is prior approval of business activity by the for-profit separate entity that does not risk resource royalty. This is very consistent with the status quo and it's not a big step. This is what the program has been doing. Although the power of prior review is limited, there is plenty of post review including typically audited financial statements. This is consistent with the NRC report which stresses the value of self-determination as to what is best for the local communities. Money cannot be hidden; royalties cannot be sheltered in shells and so forth without the State authority. The State is involved every step of the way with regard to royalties. The requirement of prior approval is unnecessary and slows down the decisionmaking of the business. So, that's my intent and the purpose of the reasoning for the motion.

PENNEY: I'm sympathetic to part of your motion, Mr. Bundy, the second part concerns me because the purpose of the 20 percent is to limit the extent of what this kind of investment can be

made, but then you added 'or debts incurred', so to me that opens up a big door to where if somebody wants to get around this all they have to do go and try and fund it with debt and lets it really fly wide open. For that reason, if that's in there I don't think there's a control there and I can't support this.

BUNDY: To respond to that, actually I'd be happy to take out the debt part, however, I put it in there because I felt that people who are concerned about State oversight would want that in there. When a CDQ group receives a resource royalty I can understand and agree with the State's concern about oversight as to what is happening and how that royalty is invested. Likewise, if the CDQ groups goes out and incurs debt, which needs to be paid back out of royalties you have the same thing. And so if a CDQ groups goes and makes an investment with debt instead of the royalty the degree of oversight ought to be the same and it ought to be thorough. So that's the purpose of my putting in the debt language.

SAMUELSEN: I'm looking at the AP motion, it's a 9 to 8 vote. That's a pretty confusing vote, and a close vote. It wasn't a clear mandate by the AP. I can't go along with this. I think it goes right to the crux of the program on oversight. Let's just do away with oversight—100 percent—we heard the State. We're asking the State to manage this program; we're asking for credibility of this program and we're nickel and diming oversight. Hell, I offer an amendment—do away with all oversight of the program, anyone that takes up on it is considered fully developed and not qualified for the CDQ program. I mean, that's where we're going here, that's where we're rapidly going, and if that's what the Council wants to do with absolutely no oversight, I'm willing to make the damned motion. But I'll tell you what, the people in the villages are going to suffer and there's going to be some CEOs and some FOs getting mighty rich at the stake of the people back in the villages. That isn't what the Council tried to put in place. You guys, this Council,



previous Council members, put a program in place to benefit people in the villages. I don't like sitting as the head of a CDQ company with a gun to my head, I don't like it any better than the next CDQ guy because that gun says Robin, you and your board perform for the people in your villages that you represent, otherwise look out. It keeps me and my board on my toes and if we have to be ballerinas on toes to dance to the CDQ music, we'll dance. Maybe we ought to adjourn, Mr. Chairman, I'll go up in my room tonight and I'll write a proposal that those that don't want CDQ will be. . .[unintelligible]. . .they could opt out. If they want to take 50 percent of their money and opt out, they'll be 50 percent out, fully developed CDQ groups, and 50 percent in. They don't need oversight, they're grown up, they're big boys, let's let them go. I don't want to. . .[unintelligible]. . .one CDQ group, but as long as there's a CDQ program, there better be oversight and I think Mr. Bundy just guts the whole program and he's going to have chaos running in the program and the benefits will not reach the people in the villages.

BUNDY: My theory is that the way you make Mr. Samuelson happy is to get him wound up like that. In the legal industry what you have there is a 'parade of horrors' which just is not true. I'm saying that with regard to royalties or debt that has to be paid back by royalties, the oversight is precisely what you would like. With regard to other investments by mature companies, I'm just saying that there is no prior approval process that you have to go through, but still the investments have to be monitored and reviewed quarterly and so forth and they have to be. . .data is gathered. There's penalties to be paid if people are making mistakes or taking money and that sort of thing, and what I've proposed is consistent with the way the program has been operating up to this date.

BENTON: Mr. Bundy, I have just a point of clarification here for me. I want to make sure I've got this correct and this is final action so I always maybe double check the words a bit. And I

look at Mr. Samuelson's Issue 6 and basically it says that it's a clarification, it's more or less a restatement I think and clarification of Council policy that the oversight role that we've delegated to the State extends to subsidiaries with some criteria. Maybe I'm misreading the words here from the revised AP motion, but that would have oversight apply ONLY to activities funded by royalties and then you've included debt. And maybe because it's late in the day, but I read that to mean that oversight would not apply to any activities that are a direct result of the allocation. For example, let's say you give the allocation off to a group to put it on a vessel. I think when the State looks at this program they look at things like the jobs that are generated on that vessel and all those kinds of things. Those don't accrue directly from the royalties. What accrues from the royalties are, they get the royalty and then they go buy something. That's what's funded by the royalties. All those other things don't really. . .they're not there, and it almost seems like the way this is worded it turns it on its head unless I'm missing something. That those kinds of activities that are a result of the allocation but don't require the expenditure of the royalties, they're not subject to oversight, but that those activities where the group gets a royalty from a company and then goes and buys something or does something with that money, that is what is now the sole province of the oversight. That's what those words say. I'm not sure that's your intention.

BUNDY: That's why I spent some time expressing what my intent was. The AP motion was very sparse language; it was very simple. So I tried to keep it that way, but I want to be sure that everybody understands I am dealing with prior approval-type of oversight authority and limiting that to the royalty or debt that must be paid by royalty. And with regard to every other type of investment that the subsidiary makes, the current post review function remains the same. That's my intent—milestones, the CDP process that one goes through in order to make that investment in the first place, measuring you against what you've agreed to in that CDP, the ability for the

oversight at allocation time to say, look, what you're doing is not consistent with the goals and purpose of the program, all that stuff. I agree, it's not precisely in the wording in the motion, but that's why I wanted to spend some time expressing the intent.

[Call for the question]

OLIVER: I assume, Mr. Chairman, you want me to call the roll on Mr. Bundy's amendment.

BENTON: Yes.

OLIVER:

Dr. Balsiger Yes

Mr. Bundy Yes

Mr. Duffy No

Dr. Fluharty Yes

Mr. Hyder Yes

Ms. Madsen No

Mr. Penney No

Mr. Samuelson No

Mr. Anderson No

Mr. Austin Yes

Mr. Benton No

OLIVER: Motion fails, 6-5.

BENTON: Are there any other amendments to the main motion? Dr. Fluharty.

FLUHARTY: A quick clarification and then possibly an amendment. On Issue 5, part 8, in comparing the text from the analysis where it's a simple proximity to the resource as a criterion, compared with the text that is in Mr. Samuelson's motion, this seems to be very selective and

potentially highly allocative and I just want to hear what the rationale was for doing it the way that is proposed by Mr. Samuelson.

SAMUELSEN: I didn't hear it all, but I think I got the gist of it. In my 5-8, I said 'delete proximity to the resource' as an evaluation criteria and substituted the AP minutes, Issue 5-8, apply proximity to resource to these species: halibut, Norton Sound red king crab, Pribilof red king crab, and St. Mathew blue king red. Based on the public testimony, Mr. Chairman, I changed my mind during public testimony and those species are very important to. . .you know, Norton Sound red king crab, we heard from Norton Sound that there's only two groups that are allocated that CDQ, it's very important to Norton Sound and the adjacent community Yukon Delta. Both are small boat fishermen and if it's allocative, that's it; I think within the CDQ community we live with it on those small species.

FLUHARTY: In reviewing these Norton Sound, those are super-exclusive, halibut's already taken care, so this is either redundant or allocative. I mean, I think we're better off as a Council with taking the more generic statement so that it can be used by those making the decision when it's appropriate to allocate in the manner prescribed. It's much more consistent with these others. Therefore, I would move to substitute the language from page 116, where it says, 'proximity to the resource' for the Samuelson language.

BENTON: Is there a second to the motion? Seconded by Mr. Penney. I think you sort of spoke to it; do you feel like you need to speak to it any further?

FLUHARTY: I think what I said was this is more consistent with the other allocative criteria; I think it can be used much more flexibly. I'm certainly in sympathy with some of the reasons why Mr. Samuelson brings up and mentions those specific areas and I think that's how it would be applied, but I would not want to presume that I know all of the places where it would be

appropriate to apply proximity criterion.

SAMUELSON: I'll be in opposition to the motion, Mr. Chairman. The Bristol Bay Economic Development Corporation is right next to the Bristol Bay red king crab fishery. Does that mean the Bristol Bay Economic Development Corporation should get all the Bristol Bay red king crab because their names match up? No, absolutely not, and I think we're getting into the realm of micromanaging. I was willing to go along with a few species here, but to include all the species, pollock, etcetera, we already have qualification that 50 nautical miles, a person, a community's got to be 50 nautical miles from the Bering Sea and now we seem to be getting into the realm of micromanaging and I think that I recognize species that through public testimony that demanded special attention by the regulators, both Federal and State, and now it's, to me, it's just going political. I'll be opposed to it.

MADSEN: Just real briefly. I'm going to support the motion. I think that we developed a list of criteria and how the State uses it is up to their discretion and I guess I support this because I recall during the days of the CDQ development, I was in the audience at the time, that one of the rationale was that the villagers were looking off their coast and they were seeing the vessels harvesting the product and they were not in a position economically to get out there and take advantage of that, and that this program was originally set up as a bootstrap to get them financially set up so they could get in and participate to those resources that were off their coast. I recognize that there has been some change to that philosophy but I do remember that that was one of the reasons we went down the path. I also think that this could allow the State some flexibility in balancing the population issue with proximity and I wouldn't want to be in the State team's shoes, but I hate to delete this ability for the State to at least consider it, so I'm going to support it.

BENTON: Ready for the question? Call the roll.

OLIVER:

- Mr. Bundy            No
- Mr. Duffy            Yes
- Dr. Fluharty        Yes
- Mr. Hyder            No
- Ms. Madsen         Yes
- Mr. Penney          Yes
- Mr. Samuelson      No
- Mr. Anderson        No
- Mr. Austin           No
- Dr. Balsiger        Yes
- Mr. Benton          Yes

OLIVER: Passes, 6-5.

BENTON: Any other amendments, motions, are you ready for the question on the main motion?

O.K., Mr. Oliver.

OLIVER:

- Mr. Duffy            Yes
- Dr. Fluharty        Yes
- Mr. Hyder            Yes
- Ms. Madsen         Yes
- Mr. Penney          Yes
- Mr. Samuelson      Yes

Mr. Anderson        Yes  
Mr. Austin            Yes  
Dr. Balsiger         Yes  
Mr. Bundy            No  
Benton                Yes

**[Change to Tape 17]**

OLIVER: Passes, 10 to 1.

BENTON: And, I think that concludes our business under C-4?

OLIVER: I believe that it does.

BENTON: I just want to take note of something here and then I've got a couple of things I want to discuss with the Council. The thing that I want to take note of is that it was in, I believe, 1995 in Dutch Harbor when we're doing license limitation, which I believe was about my third meeting in the State seat if I recall correctly, somewhere in that neighborhood that we took a major vote the CDQ program and included crab and all the other groundfish species in the CDQ program and Mr. Samuelsen led us through that, led the charge on that, and today put his stamp again on this stage of the program and I think that we all should recognize Mr. Samuelsen for that. I think he's served his region really well and I want to congratulate you, Robin, on getting us through this part with the committee and getting this CDQ program to where it's a success. And, it's very rare that we ever have a program where all the groups that are participating in it, not one of them can say the program's a failure and none of them could actually point to any particular harm that they've been in, it's just how much more good can they get. And I think that's all that we were arguing about today and I think Robin Samuelsen, or anybody else is responsible for that, so I just want to acknowledge that and say, good job. [applause]

[Benton makes other announcements – not relevant to CDQ issue]

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June 7, 2002

[Still on Tape 17, approx 3/8's of the way into the tape]

BENTON: . . . I also understand that we may not be done with the CDQ issue and I'm hoping. . . I mean, we spent an entire day on that and I understand there's one issue there that might surface here the minute I stop talking, so all I am going to mention to Council members is that it's my hope that we don't go through and revisit each and every one of the issues that we went through all day yesterday. That maybe if there are some matters that need to be dealt with that this will be surgical, to the point, then we can move along in our agency. Obviously, if people have real issues and they feel compelled to bring them up, I'm not going to stifle that debate. It is a substantive matter for final action. I'm just urging that we try to be as deliberative and business like as we possibly can. So, with that, Mr. Penney.

PENNEY: Just as a real quick aside out of curiosity, are the members that were on the AP yesterday still the same or are there vacancies over there now, or is everything pretty much the same as it was yesterday?

BENTON: I cannot answer that question. I don't know. Chris, do you know?

OLIVER: I think yesterday maybe early a few seats changed but it was the same today.

PENNEY: I was being facetious, Mr. Chairman. Yesterday I voted on the affirmative on the Samuelsen motion on the CDQ program on June 6, and I'd like to give a motion of reconsideration at this time.

BENTON: Is there a second? [Madsen may have seconded, not sure] Mr. Parliamentarian, we have allowed. . . trying to remember now. . . debate on motions to reconsider? [Affirmative answer from Mr. Hanson] Is there any discussion of the motion to reconsider? Is there any



objection to the motion to reconsider? Mr. Samuelsen.

SAMUELSEN: How can I object or be in favor when I don't know why we're reconsidering. It's just a reconsideration. . .then the issues come up?

BENTON: O.K. if you would like, Mr. Penney do you want to state what's on your mind?

PENNEY: Yes, I'd like to make a motion to change my specific part of the motion that passed yesterday as it relates to item number 7, the fourth paragraph which I amended 'in region' to say 'within Alaska for'.

BENTON: So, it's your intention, if reconsideration passes, to then revisit that issue only?

[Affirmative answer from Mr. Penney] Other Council members, of course, because it brings the whole motion back before us, other Council members can propose other changes. Just so everyone understands all issues would be back before the Council from the motion.

SAMUELSEN: I'm not going to be surgical. I'm not trying to preempt Mr. Penney from making a motion but I am fully prepared to bring up all seven issues besides the seventh issue and that would be my intention after Mr. Penney's motion to again revisit every issue of the CDQ program.

HANSON: I would just point out to the Council in case somebody's thinking of going back through everything, you cannot make a motion again that failed yesterday. If it was voted down yesterday you can't make the same motion again today.

BENTON: In that respect, if somebody wants to change the word. . .I mean, if somebody wanted to amend the main motion to reflect what Mr. Penney said. . .which is instead of. . .his motion passed to substitute the words, in Alaska for the region, is that still reachable under that rule?

HANSON: If I recall, the way. . .[unintelligible]. . .the other one wasn't voted down.

BUNDY: Mr. Chairman, and I want to advise Mr. Samuelsen, if this is reopened I do have a

motion with regard to Issue 6; it's different from the motion yesterday, it's written out. I consider it surgical, it's something that will not take a lot of time, and so Mr. Samuelson might. . .in fact, I think it's so reasonable I think he'll vote with me, but he should take this into consideration when he votes on this motion.

BENTON: Well, gee, you know, I've got about 15 amendments right here I could pass this over to Mr. Austin as well and maybe we could really have some fun, or maybe I'll just go over and sit in the AP for while you guys have fun. I'm being facetious as well this morning; nobody's laughing, however.

MADSEN: Mr. Chairman, I'm not in favor of opening every single issue up. I think we did a good job of understanding the policy direction that we wanted this to go and put details to it and move forward. I am concerned, though, overnight about the legality of having a part of the motion exclusive to Alaska and I'd like to have NOAA GC give us his perspective on whether we're in legal trouble when we are discriminating among states in an action that we're taking. And, that's my only concern. If there is a legal problem, I'm not sure how to get out of the box, because I'm not in favor of supporting any other changes to this. This is not another chance to wordsmith and go through back doors, but I am concerned that all of the work we did yesterday, except I guess maybe the Secretary would partially disapprove that along with the appeal process and we'd be OK and if that's a possibility I may not support the reconsideration vote.

LEPORE: Mr. Chairman, it was brought to my attention that when the CDQ program was originally envisioned there was some discussion and debate over this very issue, the issue whether this could be statewide or in fact divide up the state so we would not run afoul of National Standard 4 which says that we cannot discriminate between the residents of different states. So it's my understanding, going back over the history. . .I must admit my institutional

knowledge is not as great as some of the other members around this Council, but to avoid that problem, to avoid issues of National Standard 4, the dividing line was made in the state, and Western Alaska was divided out, so we wouldn't run afoul of it, so I think there are some concerns there about National Standard 4, if the language remains as it is now in the motion.

SAMUELSEN: Yes, last night I heard two different stories and I'm sure you got the same stories, it was west of Cape Suckling and then it was. . .one former Council member said it was west of Cape Suckling was all right; another former Council member said no. So, do you have anything more concrete on that than what we've picked up in the hallway?

LEPORE: I can't say I have anything more concrete than that. After some discussions with other people, NOAA General Counsel, the concern is with National Standard 4 and discrimination between residents of different states. What I would ask the Council to do is to articulate on the record clearly the reasons why they are choosing to expand this to the state instead of just regional as it was in the original program. I'm not going to say that even with the best articulated rationale that it would withstand legal challenge, but if the Council chooses to move in that direction I would advise them to put that rationale on the record.

SAMUELSEN: To the parliamentarian, clarification. Mr. Hanson, on Issue 1 we voted on Alternative 2 yesterday. We didn't vote on Alternative 1 or Alternative 3. By selecting 2, based on your comments and the Chairman's comments this morning I would assume that Alternative 1 and 3 would be an option for reconsideration over Alternative 2. I couldn't go back and amend Alternative 2, but Alternative 1 and 3 is my option?

HANSON: Actually, you could go back and alter what you selected or bring up other things that were not voted down yesterday, so you have both options. You just can't make the same motion that failed yesterday.

MADSEN: I guess I'd like to go back to the Counselor because it's my understanding that today, with direct royalties invested in fisheries-related projects, there is no limitation on where that money can be spent because we have factory trawler companies that are based in Seattle that are operated in Federal waters that have been approved and not denied by the Secretary. So my understanding is the shift now is that we are saying that we're opening up the program so that 20 percent of the royalties can be used for non-fisheries related and we're putting restrictions on it. So, it's different than the status quo of how they're able to expend those royalties today. So, I don't think that you can say that we're changing what we've done today with the royalties. What we've done is, we've made two changes. We changed the types of projects that they can spend money on and we're adding a limitation on where they can spend that non-fisheries related money. And, Mr. Chairman, thinking about it a little bit more, I am willing to take that risk because I don't think that there has been enough precedent about the funds spent where versus eligible communities where, and I think thinking out loud I will not support the reconsideration motion.

BENTON: . . .I just want to point out that we're getting into a debate about the merits about what may come up and I don't think that that is appropriate. We wanted a clarification along the lines of what issues might come up. In order to understand the ramifications we asked the Counselor to give us his judgment about that particular matter. But let's not get into debate about merits of a motion that's not even there because we haven't even reconsidered this thing yet.

HANSON: I was just going to answer Stephanie, since I brought this issue up to John, I thought I just at least jump in and help him a bit and then I would agree with you exactly—we're debating the merits. But I think in the past, yes, you could go outside and what you're now doing is restricting, backing that down to where you can no longer do it outside, so you're just limiting it

to Alaska where before, yes, you could go outside. So, that's what's really going on.

BENTON: O.K., we understand what we might be talking about if we're going to reconsider.

Are you ready for the question on reconsideration?

AUSTIN: The reason I'm going to support reconsideration is because it goes beyond the scope of the CDQ program, gets into the relationships between states. We've gone over this and over this where Southern interests don't always match State of Alaska's interests and we've been repeatedly told that we can discriminate within the State of Alaska but you cannot discriminate between states, very simple. That's what we've done, unintentionally, but that's what we've done and we need to readdress that. But my question comes. . .can the Secretary approve the package but amend just a piece of it, i.e., this. I mean, she's not going to approve anything that's illegal and we've heard it on the record that this would be illegal, but can she. . .he approve the rest of it?

LEPORE: I'm currently looking at the Magnuson Stevens Act, Section 304, and there are two provisions there. There's provision (a) which talks about the review of plans and then there's provision (b) which talks about the review of regulations. Both for fishery management plans passed by the Council and regulations that are recommended by the Council the Secretary does have the ability to disapprove both. With that, he has to provide a reason for that disapproval and send it back to the Council for correction. So, yes we have that ability, the Secretary has that ability.

BENTON: Point of clarification and cut to the chase. This would be changes to the plans and regulations. The Secretary can either approve, disapprove in whole, or partially approve, partially disapprove. What that means is that the Secretary can not. . .we have the words 'in Alaska', the Secretary can't approve it but substitute the words 'in region'. The Secretary has to disapprove that part, send it back to us with advice and then we would have to act. If we don't

act and there's a national interest in having that action take place then the Secretary can do a Secretarial regulatory or plan amendment, but it has to come back to the Council. The Council has to fail to act and the Secretary has to find that there's a significant enough national interest to do a Secretarial plan or regulatory change. Is that right?

LEPORE: Mr. Chairman, you have explained that quite well. **[Change to Tape 18]**

BENTON: Now, are you ready for the question on reconsideration? Let's just call the roll on this.

OLIVER:

- Dr. Fluharty            Yes
- Mr. Hyder                No
- Ms. Madsen             Yes
- Mr. Penney              Yes
- Mr. Samuelson         Yes
- Mr. Anderson          Yes
- Mr. Austin              Yes
- Dr. Balsiger            Yes
- Mr. Bundy               Yes
- Mr. Duffy                No
- Mr. Benton              Yes

OLIVER: Passes, 9 to 2.

PENNEY: I would like to make a motion to amend the motion I made yesterday. Issue 7, fourth sentence, my amendment was adding the words 'Alaska for', so the sentence reads 'economic development within Alaska for projects up to 20 percent.' I'd like to amend that motion and

change it, strike the words 'within Alaska for' and replace 'in region' and if I can have a second I could address it. . .[Someone said 'second' - couldn't recognize voice]. . .

BENTON: Hold on a second because I'm going to ask the parliamentarian who's been trying to get my attention here. Dr. Hanson, is that in keeping with our rules? What he's doing is actually he's amending the main motion, what we have in front of us is the main motion, which was made by Mr. Samuelson and seconded I believe by Mr. Penney.

HANSON: That's correct, he did amend part of his amendment, that amendment was approved by the Council, so you could rule either way. I think the Council's taken action and so it's. . .[unintelligible]. . .to get back into it.

BENTON: O.K., so he's not amending his amendment. . .it's reachable by him, that's my question, if I rule that way. [Affirmative answer from Mr. Hanson] All right. So, I'm going to rule that because we've taken the action and he is now amending the main motion that he can make his proposed amendment which was seconded by Mr. Duffy. O.K., now then, for the record, for clarity's sake, Mr. Penney could you just restate that one more time, please sir, so everybody understands?

PENNEY: Take out the language 'within Alaska for' and replace as it originally was with 'in region'.

BENTON: Does everyone understand the motion? I see a lot of heads nodding yes.

FLUHARTY: I possibly don't understand the motion and is 'in-region', is that the Pacific Northwest, it that a region of Alaska, and I guess if there's a legal issue with either one of those I'd like to hear it because we've operated. . .I'd like to understand the nature, if any, of a change in the way we've been operating this program for the past . . .

BENTON: Mr. Penney, would you like to speak to your amendment?

PENNEY: Yes, I would, Mr. Chairman, and I'm welcome for a friendly amendment to more specifically limit this. And I'd like to touch base very quickly on it if I can, but my esteemed colleague to my left, Major Hyder of the Oregon State Police, has told me several times he has one ticket left in his billfold and he's told me in front of Mr. Austin he's saving it for me. And I've talked about this several times, I've tried to be very careful in his presence so I don't get that ticket. And he told me one time, ignorance of the law is no excuse, so if you do something wrong, you're gonna get a ticket and I'm in jeopardy, Mr. Chairman, members of the Council because my motion yesterday I didn't realize was a potential of being illegal. Now, I ask my Council members who sit around here and who were there then, who were part of it, why didn't somebody advise me of this yesterday. Why didn't the parliamentarian or the attorney or somebody else bring up before we had our vote because now I stand in the position of getting the ticket through ignorance of the law by Major Hyder, so that is the purpose I'm rescinding it because I've been told it's probably illegal.

BENTON: Well, I think you're safe, but if you go to Oregon you might be in trouble. Mr. Anderson has been seeking recognition for quite a bit here.

ANDERSON: I think we heard from staff, both Council staff and National Marine Fisheries staff that the term 'in-region' is not specifically defined and I would like the motion maker, the original motion maker Mr. Samuelson, to define the term in-region as he envisioned it in his original motion.

SAMUELSEN: Being part of the committee that was formed by this Council, when we talked in-region within committee it was within the CDQ communities. In-region meant, like in APICDA, those communities that made up the APICDA region, and Bristol Bay, those communities that made up the Bristol Bay region. Same with Yukon, Norton Sound groups. The



definition of those communities are within 50 statute miles or nautical miles, whatever was finally settled on, from the Bering Sea, those villages that qualified. That was our intent of in-region. We wanted the benefits of non-fisheries related dollars to have major effects on the communities of the CDQ groups, so the region was those communities that met the criteria to become a CDQ group.

BENTON: I just want to remind everyone that what we're talking about here is investments in non-fishery related activities, correct, Mr. Samuelsen?

SAMUELSEN: Yes, there was a price to pay to go from the present program to non-fisheries related, and the group felt very strongly that if we went that way, . . .there was some real apprehension around this Council about going to non-fisheries related, it's a significant difference and so the CDQ groups felt that we need to prove to the Council that we wanted this money if it was non-fisheries related to have the maximum benefit to those communities that qualified under the CDQ program so in-region meant those communities.

BENTON: And just so that I make sure I've got it straight—when we're talking about in-region, you're talking about the CDQ region, so that as sort of as a whole as we've defined it. It's not necessarily that Yukon Delta can only invest in non-fisheries related projects only their four villages—there might be something that collectively the CDQ groups would do in one part of the region or another—is that correct? [Affirmative answer from Mr. Samuelsen] O.K. Everyone understand? O.K.

HANSON: I'm not thin-skinned, but since Mr. Penney chose to mention me specifically for not bringing this up, I would bring back to your memory, Mr. Chairman, that you asked me to meet with Mr. Penney and Mr. Samuelsen to discuss this very issue because I wanted to get it resolved before so it didn't end up for reconsideration and I believe Mr. Samuelsen will back me up, those

conversations did occur and they occurred before the final vote.

BUNDY: Mr. Chairman, the same point that you made. . .and also maybe BBEDC, for example, could invest this type of funds in the Norton Sound region, I mean it does not have to be collective, I assume. Is that correct, Mr. Samuelsen?

SAMUELSEN: Yes, that's how I understood it.

BENTON: The point being that it's within that region, that scope that we've defined being the area of the communities involved in the CDQ program, Western Alaska CDQ program.

PENNEY: The maker of the motion would welcome a friendly amendment that legally specifies in region. Dr. Fluharty touched on the same problem I had originally with this when it says, 'in-region'. I didn't know what that meant either. I've never seen a situation quite like this before. But, I'd be happy to see a friendly amendment that specifically defines the area that is legal with the law.

BENTON: Well, I think we have the intent. It probably would be useful, given this discussion, to make it explicit in the language, but, I think that if we do that, that is a substantive change and so I would suggest this not be done as a friendly amendment but actually be voted on. So, is there anyone that has a . . .do you want to stand down for five minutes and confer about this and then somebody come up with an amendment. . .that might be a useful thing, or not? Counselor?

LEPORE: Mr. Chairman, I believe this is addressed in the analysis on page 189 under suboption (1), specifically mentioning what in-region was envisioned to be, so maybe we could avoid too much deliberation by just going directly to that.

BENTON: I think can that we can avoid too much deliberation by taking five minutes. So, we'll stand down for five minutes. If some of you guys could get together and come up with the appropriate wording, I think that would be very helpful. So, let's do that, be back in five.

BENTON: Council will come back to order. We're back on Agenda item C-4, we've reconsidered it. We have the main motion in front of us, we have an amendment to the main motion to change 'in Alaska' to 'in region'. We were discussing what 'in region' meant. What's your pleasure? Mr. Duffy.

DUFFY: I would like to propose an amendment to define what we mean by 'in region'.

BENTON: So, it would be an amendment to the amendment?

DUFFY: Right. It would be an additional sentence that would say, and this is consistent with the advice we received from Counsel before we took a break, it's on page 189 of the analysis—the language: 'In region extends to the borders of the 65 communities that currently participate in the CDQ program.'

PENNEY: Accept that as a friendly amendment, Mr. Chairman.

BENTON: The way we're dealing with friendly amendments was this—if anyone objected to something being considered friendly, or if in the judgment of the chair that it was a substantive enough change that really we should not consider it a friendly, then we were going to at least take a vote on it and we can do that by a 'no objection' kind of thing. But first of all we need to get a second. . .[Samuelson seconded the amendment]. . .O.K., you want to speak to that briefly, Mr. Duffy.

DUFFY: Well, Mr. Chairman, I am merely going back to the analysis where the staff identified what their understanding was within the context of this issue what 'in region' meant and I'm picking up that language for clarification purposes.

BENTON: So, it is within the boundaries of the CDQ program. . .

DUFFY: Correct, and the 65 communities included in the CDQ program.

BENTON: O.K., but not within the municipal boundaries of each one of those individual

communities. [Duffy responds 'no'] O.K., just to make sure that we've got it straight. Any discussion of the proposed amendment to the amendment?

SAMUELSEN: I'll be supporting the amendment. I think it's consistent with what the committee that the Council formed wanted and if Mr. Duffy's motion passes I'll be voting in favor of Mr. Penney's motion. I think that this is a regulatory process, a evolutionary process, and things change and in the committee, the groups, as I stated earlier, wanted this money to go back into non-fisheries related projects in the communities. I'll use the example, Mr. Chairman, the rules of becoming eligible in the CDQ community were extended to 50 nautical miles and there's a number of communities that were left out of the original CDQ program were then added. Throughout the committee meetings it became apparent not only in my region but in other regions that because of the stringent requirement of fisheries-related projects a lot of our communities were above the salmon commercial fishing districts and herring commercial fishing districts within their respective CDQ regions and those people were questioning why they were even in the program when no fisheries-related projects could be built 20 miles upriver. Well, why would you want to put a processing plant 20 miles upriver above a commercial fishing district. So we put on our thinking hats and came up with this definition and for example, if the village of Ekwok which is 15-20 miles above the commercial fishing district, if this amendment were to pass, they could build a building using local labor and maybe lease that building out to the Alaska Department of Fish and Game, U.S. Fish and Wildlife Service, and they'd get a steady stream of income from the rentals on that; they've provided employment, jobs, and they've increased the quality of life in their village by adding new buildings. I think is where we want to go. It has a maximum benefit and there's other scenarios as we talked about, but I think it's consistent, I think it's got to be restrictive otherwise we're going to start deviating. Is this a done

deal in my eyes? No, I think there'll be other problems that will come up before the CDQ groups. As a regulatory board you guys are going to have to address them, just like we did on a whole host of issues – these issues were festering, they were annoying to the CDQ groups, they were annoying to the State of Alaska oversight committee, they were annoying to NMFS; we didn't have clarification so we had to come back to this Council and ask for clarification. The Chairman appointed a committee and we identified the issues and the process began and that's why we're sitting here today. I don't think this is the end of amendments to the CDQ program by a long shot. As it evolves and matures there should be restrictions relaxed and it'll be up to the Council that's sitting here whether they want to do it or not, so I'm going to be voting in favor of this motion. Thank you.

PENNEY: Mr. Chairman, to the Counsel, if Mr. Duffy's motion and my motion pass, is this a legal act?

LEPORE: It's hard for me to make a determination on whether something's going to be legal or not legal. What I do is provide advice. I think that, in fact, by going down this path, the path that we're currently doing with the amendment to the amendment and the amendment to yesterday's motion, we're on firmer legal ground than we were yesterday.

BENTON: Ready for the question. This is on the amendment to the amendment. Is there any objection to the motion? O.K. hearing none, we now have the amended amendment before us. Are you ready for the question on that? Is there any objection to the motion? No objection, passed. Is there anything else on the main motion or are you ready for the question on main motion? Mr. Bundy.

BUNDY: Mr. Chairman, I have a motion to make. I'm going to pass it around, it's written out. I think I can guarantee this will take less time than what we've just been through. My motion is to

amend the main motion with regard to Issue 6, and I will just read this.

Extent of government oversight—other entities. The following rules apply to separate legal entities owned in whole or in part, directly or indirectly, by a CDQ group. Investment by a CDQ group in such an entity is a CDQ project which may be subject to a CDQ amendment. Investment by such an entity which involves commitment of the resource royalty of a CDQ group is a CDQ project which may be subject to a CDP amendment. Other investments by such an entity are not CDQ projects, however, the CDQ group shall provide all information reasonably required by government oversight concerning such other investments to ensure compliance by the CDQ group with oversight purposes as described in the analysis.

That's the motion.

BENTON: Is there a second to the motion? Seconded by Dr. Fluharty. You want to speak to your motion? And, when you do, could you at least give some perspective on what problem you're trying to deal with.

BUNDY: I will try to do that, Mr. Chairman. I guess first I want to be sure with the parliamentarian that the motion is in order.

HANSON: Mr. Chairman, I was reading it while you. . .did you do a substitute for the language that was there already?

BUNDY: No, I didn't specify that, but I think that's the appropriate thing for me to do.

BENTON: You didn't specify it, but I thought that was your intent. So, it would substitute for the language that's there now, and I think that's in order, is that correct?

HANSON: That is in order.

BUNDY: The problem, Mr. Chairman, perceived by some people is the . . .and also it has been perceived by people on the CDQ team in the past and I think presently. . .is the potential for the CDQ team to involve itself in business decisions by separate legal entities which are not the CDQ group. When the subject has been spoken about among us and the CDQ team, certainly the current CDQ team, Jeff Bush and Bryce and all of them, agree that they should not do that, never should do that. However, it's not quite clear in our analysis to date that that cannot be done and that such separate legal entities are secure from having policies interpreted by a future CDQ team, sort of inserting themselves into business decisions of separate legal entities. So, that's the perceived problem, and what this motion tries to do, and I apologize yesterday for not communicating this properly, I think, to you, Mr. Chairman, and also to Mr. Penney who raised the issue of debt which got confusing. The goal here is to simply specify more clearly exactly how the oversight works and frankly I think that this is a better policy for the State as well as the CDQ groups and it is not an attempt to duck in any way oversight. Full reporting is required, judgments will be made about the performance of these separate legal entities, so that's what I'm trying to achieve here.

SAMUELSEN: Looking back at my notes, I don't know who made the motion yesterday, but there was a motion, my notes are even hard to read, 'in an amount equal or up to 20 percent pollock CDQ or 100 percent of the profits of the previous years could be used for non-. . .in any way, shape or form, and when I get down to the fourth paragraph to Mr. Bundy's motion, it's very similar to that motion yesterday in my eyes and I'd like some clarification.

BUNDY: Mr. Samuelson, I think that, at least my mind, you're confusing two different issues. The motion with regard to 100 percent of profit distributions was simply a motion to increase the amount of non-fishery related money that could be spent in-region or however we've ended up

defining it. I just thought it would be best to have more money in that type of investment. I lost that motion. This is something entirely different, and this has only to do with oversight and how much data, information is going to the oversight team and that's all this is involved in. So I think the two issues are very different.

SAMUELSEN: Can I ask Sally and Nicole to come up and explain the implications of Mr. Bundy's motion?

BENTON: Yes, you may. And, I in my own mind am trying to decide, trying to understand whether or not this is the same or not as one of the motions that was dealt with yesterday. And in the interest of allowing debate and to make sure because this is final action that we're not unduly cutting somebody off, we're discussing this right now and I know that there's still some question about whether or not this is substantively so similar to stuff that happened yesterday that it may not be appropriate, but I haven't made a ruling on that one way or another. The parliamentarian is also considering the matter as we're sitting here.

HANSON: There were two motions made yesterday by Mr. Bundy that failed and it is not clear to me how, if you tie those two together, this is substantially different. So while we're getting an explanation you might figure out an explanation for the Chair of how these are different when you link those two motions together that failed. On the surface, in a quick review, with Mr. Oliver, it looks like it may be the same.

BENTON: Well, he'll get some chance to think about that and I'm hopeful and confident he'll come up with the rationale that makes it so we can go ahead and vote on this thing and move along. Mr. Samuelson, you had some questions for staff?

SAMUELSEN: Sally, Nicole, what's your understanding of the full crux of Mr. Bundy's motion, how does it deviate from the status quo.



BIBB: Well, I guess first we're just reading this so I'm not sure that we fully understand all of what it means. But, in comparison to what you voted on in the main motion, if I remember that right, on Issue 6 from Mr. Samuelsen's motion, the Council adopts Alternative 2, Option 2, clarifying that government oversight extends to the subsidiaries controlled by the group and you made a change in that, the original option said more than 50 percent ownership defined controlling and you changed that to 'at a minimum of 51 percent'. So what is being proposed here would be to change that aspect of the motion to read as Mr. Bundy's motion which would not apply the requirement for prior approval of significant investments to the subsidiaries, as I understand it. So, it's different in that respect and it's outlining what would constitute oversight of the subsidiaries, which we've called the subsidiaries but which in this motion are called the 'separate legal entities owned in whole or in part, directly or indirectly, by a CDQ group'. And so this is actually more like what is in the analysis under Alternative 3, as I understand it right now. It applies the requirements for prior approval of significant investments in other activities defined as substantial amendments to the activities of the CDQ group, the non-profit corporation. It doesn't apply that part of oversight to the subsidiaries but it does go on to clarify that there continues to be oversight of those entities through information reasonably required by government concerning these investments. And, I know that your question was how that compared to the status quo and I actually told you how it compared to the motion that you approved yesterday.

SAMUELSEN: So, the fourth paragraph down, other investments by such an entity are not CDQ projects, however the CDQ group, blah, blah, blah, the way it reads there. . .is that consistent with what's in the analysis?

BIBB: I believe it's consistent with what's in the analysis under Alternative 3.

BENTON: By way of clarification, Sally, or Nicole. . .Oh, go ahead.

BIBB: I just want to say that Nicole is pointing out something to me in paragraph 3, that is not exactly like. . .that is not reflected in Alternative 3. The investment by such an entity, which is the entity owned in whole or in part by the group, which we have called the subsidiaries, I guess. Investment by these entities when it involves a commitment of the resource royalty of a CDQ group is a CDQ project subject to the requirements for prior approval. So that would mean if through a subsidiary a CDQ group is committing some of its royalty revenues then that would be subject to prior approval. So, it's got a little bit of a mix between what's in Alternative 3 and Alternative 4 because it does have some specific reference to the royalty revenues.

BUNDY: Mr. Chairman, in response to you, I must admit in all candor that this is similar to what I was trying to accomplish yesterday. This is an improvement and this is different because. . .**[Change to Tape 19]**. . .the present motion that's been passed gets involved with trying to make distinctions based upon ownership percentages, control, and then you have to worry about subsidiaries of subsidiaries of subsidiaries. I know how games can be played just as well as everybody else, and that's why I tried to make this comprehensive and even-handed and in the first paragraph say, these are the rules with regard to separate entities owned in any percentage, directly or indirectly. You can have any kind of a configuration you want. We're still going to have these oversight rules apply in this fashion. But with regard to a separate entity, its investments are not CDQ projects. The significance of that, and Sally can correct me if I'm wrong, you don't have to go and get a CDP amendment to do it. Now, you may get in trouble for doing it, though, because you do have to get the CDP amendment to make the investment in the first place. You do have to get a CDP amendment if you involve royalties and you will be reviewed at allocation time. All that review, I want to make very clear, is involved. So, Mr.

Chairman, I admit that it's similar to what I was trying to accomplish yesterday, but it's different and it's better.

BENTON: I think that in the interest of fairness to the issue, fairness to yourself, Mr. Bundy, and efficiency, I think I'm just going to rule that this not so similar that it's unreachable. In other words, we will vote on this, and it may or may not be. . .in fact, it is very similar, but it's not the exact same thing so I'm just going to as Chairman rule that unless somebody wants to challenge this ruling that we can, which I'm not suggesting they do, that we go ahead. I'm going to allow this substitute amendment to be voted on and then we can move along. So, you've already spoken, I think, to the motion. We've had a fair amount of discussion, we've heard from staff. Is there any further discussion of this motion?

SAMUELSEN: I'll be voting against it. I think it's lax, we've discussed this pretty extensively in the committee, in the committee minutes on A-9, Issue 6, the same people. . .and Mr. Bundy brought this issue up, he was on the committee also. . .it says, 'Alternative 4, CDQ group strongly supports Alternative 4 with very limited government oversight'. I think that that's the intent of this Council, . . .[unintelligible]. . .and like I said yesterday, it's less oversight and less accountability. I think the success of this program has been the accountability, the accountability not only to this Council but the accountability to the villages that those that are in charge, the corporate executives and what not are held accountable and we're relaxing that stage and I'm just very uncomfortable at this time relaxing that stage. Most of the CDQ regions have been declared economic disasters; the people in the villages are screaming for dollars into those communities; we're going through a whole shift in our villages because of the collapse of the salmon and herring markets. They have absolutely nothing out there but CDQs and our votech people, our dollars are being maximized, our scholarship dollars are being maximized, and CDQs is a band-

aid; we can't be everything to everybody in our communities—and here we are thinking about lacin (?) that? No, I want the gun held to my head as well as the other five CDQ groups' CEOs and administrators and to provide people in those villages the benefits and the opportunities.

And to relax the criteria at this point in time, maybe in the future, but at this point in time I think that the CDQ program is more important and more needed than ever in Western Alaska, so I'll be voting against the motion.

FLUHARTY: A question to the maker of the motion. Am I reading this correctly, that under this arrangement, particularly with the motion that we just passed, 'in-region', that this applies to non-fishery investments and could result in significantly more funds being invested, non-fishery funds, being invested in these communities as opposed to outside them?

BUNDY: Actually, Dr. Fluharty, as I've been through this issue and written this up and made this motion, I've assumed all along that this is fishery-related, although that's a good question. But, that's my assumption—this is fishery-related.

BENTON: I think it applies to all. I doesn't differentiate, so it would apply whether it's fishery or non-fishery related. My read of this and looking at how this is all structured, that would be that this kind of a proposal would apply to any activity the CDQ group is doing. Is there any further discussion of the motion? I normally don't do this, but I'm going to vote against this as well, and I just want to align myself with the remarks of Mr. Samuelson on why I'm doing that and it really comes down to, in my opinion, is what we've got here is a program that's working, it's working well. Nobody came up here and said I'm being harmed by what's in the program. Everyone that came up here just had a different view on how to make the program better and we're doing things to make the program better, it's just how far do you want to go at what stage. I just wanted to indicate where I'm coming from on the record. Is there any further discussion?

Go ahead and call the roll on this one.

OLIVER:

Mr. Hyder Yes

Ms. Madsen No

Mr. Penney Yes

Mr. Samuelson No

Mr. Anderson No

Mr. Austin Yes

Dr. Balsiger No

Mr. Bundy Yes

Mr. Duffy No

Dr. Fluharty Yes

Mr. Benton No

OLIVER: Fails, 6-5.

BENTON: Is there anything further on the main motion?

[Call for the question]

BENTON: Call the roll, Mr. Oliver. This is final action.

OLIVER: This is on the main motion, Mr. Chairman? [Affirmative answer from Chair]

Ms. Madsen Yes

Mr. Penney Yes

Mr. Samuelson Yes

Mr. Anderson Yes

Mr. Austin Yes

Dr. Balsiger	Yes
Mr. Bundy	Yes
Mr. Duffy	Yes
Dr. Fluharty	Yes
Mr. Hyder	Yes
Mr. Benton	Yes

OLIVER: Passes unanimously.

BENTON: O.K., that takes us through Agenda item C-4, yet again, and that concludes our business on that.