

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



ESTIMATED TIME
2 HOURS

DATE: April 13, 1999

SUBJECT: MS-CDQ Issues

ACTION REQUIRED

- (a) Receive status report on eligible communities.
- (b) Comment on the analysis to reduce observer coverage on longline catcher vessels ≥ 60 ft.
- (c) Review analysis and take final action to reduce CDQ observer coverage at shore plants.
- (d) Review analysis for AFA omnibus amendments to the MS-CDQ program.
- (e) Comment on proposed regulatory changes to the State-managed CDQ program.
- (f) Receive status report and CDQ Implementation Committee report on staff tasking of amendments.

BACKGROUND

Eligible communities

NMFS staff will report on the agency's response to the State's recommendation that eight additional Bering Sea communities (listed below) be deemed eligible to participate in the CDQ programs. The State letter of recommendation is attached as Item C-9(a). The proposed communities were originally excluded in 1992 because eligibility determinations were based on statute miles instead of nautical miles.

Levelock	Oscarville	Napaskiak	Grayling
Ekwok	Napakiak	Mountain Village	Portage Creek

(b) Observer coverage on longline catcher vessels ≥ 60 ft

At the February 1999 meeting, the Council requested that NMFS require 30 percent observer coverage in all CDQ fisheries for longline catcher vessels meeting the following requirements: (1) the vessel is between 60 ft and 80 ft LOA, (2) the vessel participated in a CDQ fishery prior to December 31, 1998, and (3) has sufficient halibut IFQ or CDQ to cover halibut bycatch in their groundfish CDQ fisheries.

After the February Council meeting, NMFS completed analysis of this issue and developed a preferred alternative that differs slightly from the Council's recommendation. This draft analysis was mailed to you on April 7. Sally Bibb, MS-CDQ Coordinator, will summarize the draft EA/RIR. She also will address additional issues that NMFS has identified in review of the draft analysis since it was mailed to you. The analysis contains the four

alternatives listed below. Alternatives include no action, the Council recommendation, and Alternatives 3 and 4 which were added to the analysis by NMFS.

Alternative 1: No Action Do not change observer coverage requirements for catcher vessels using non-trawl gear while participating in the CDQ fisheries.

Alternative 2: The Council's Recommendation

Require "30% observer coverage" for catcher vessels between 60 ft LOA and 80 ft LOA using non-trawl gear while groundfish and halibut CDQ fishing if these vessels (1) had participated in the fixed gear halibut and sablefish CDQ fisheries before December 31, 1998, and (2) have sufficient amounts of halibut IFQ or CDQ so that any legal sized halibut caught while CDQ fishing could be retained rather than discarded as prohibited species.

Alternative 3:

Require "30% observer coverage" for catcher vessels equal to or greater than 60 ft and less than 125 ft LOA using non-trawl gear (hook-and-line, pot, or jig) while groundfish or halibut CDQ fishing if vessel operators have sufficient amounts of halibut IFQ or CDQ so that any legal sized halibut caught while CDQ fishing could be retained rather than discarded as prohibited species. Vessel operators without sufficient halibut IFQ or CDQ would be required to carry one CDQ observer at all times while groundfish CDQ fishing. In addition, NMFS would revise regulations to clarify catch accounting and equipment requirements for observed and unobserved trips.

*Sablefish
CDQ?*

Alternative 4:

Require "100% observer coverage" for catcher vessels equal to or greater than 60 ft LOA using non-trawl gear while groundfish or halibut CDQ fishing. Revise NMFS regulations to allow unsampled sets so that no more than one CDQ observer would be required and to clarify catch accounting and equipment requirements.

*CDQ as per
other than
sablefish*

Observer coverage at shore plants

In February, the Council also requested that NMFS reduce CDQ observer coverage at shore plants. Sally Bibb has prepared an analysis for Council review. The Council may take final action at this meeting, however, it is unlikely that a final rule could be implemented by NMFS until late 1999. The alternatives in the analysis, which was mailed to you on April 7, are listed below.

Alternative 1: Status Quo - continue to require that each delivery by all catcher vessels groundfish CDQ fishing and by all catcher vessels \geq 60 ft LOA be observed by a CDQ observer at the shoreside processor.

Alternative 2: Groundfish and halibut CDQ deliveries would be monitored by observers required under the general groundfish regulations based on a processor's monthly groundfish production.

Option 1: Require that the CDQ deliveries that occur when an observer is required be monitored by a "lead CDQ observer."

Option 2: Do not require that the observers in the shoreplants be qualified as a "lead CDQ observer."

Alternative 3: Base CDQ observer coverage on one or more characteristics of the vessel or the CDQ delivery.

- Option 1:** Require a lead CDQ observer for all deliveries from catcher vessels \geq 60 ft LOA while groundfish CDQ fishing or halibut CDQ fishing. This option would remove the requirement for a CDQ observer to monitor deliveries by catcher vessels less than 60 ft LOA.
- Option 2:** Require a lead CDQ observer for all deliveries from catcher vessels \geq 60 ft LOA while groundfish CDQ fishing. This option would remove the requirement for a CDQ observer to monitor deliveries by catcher vessels less than 60 ft LOA while groundfish CDQ fishing and to monitor deliveries by a vessel of any size while halibut CDQ fishing.
- Option 3:** Require a lead CDQ observer for all CDQ deliveries by catcher vessels using trawl gear.
- Option 4:** Require a lead CDQ observer for all CDQ deliveries by catcher vessels using non-trawl gear.
- Option 5:** Require a lead CDQ observer for catcher vessels delivering more than a specific amount of CDQ species in the CDQ delivery as measured by the total round weight of groundfish CDQ species and halibut CDQ in the delivery. Select a minimum delivery weight ranging from 1,000 pounds to 500,000 pounds.

(d) AFA omnibus amendments

An emergency interim rule was published on January 26, 1999 to implement CDQ Program-related requirements of the American Fisheries Act for the start of the 1999 fishing year. This emergency rule is effective through July 19, 1999 and will need to be extended by NMFS for the remainder of 1999. The EA/RIR for the emergency action serves as the initial review document for permanently implementing these same regulatory amendments for 2000 (Item C-9(d)) and provides the Council the opportunity to identify any other alternatives that should be analyzed. Final action is scheduled for June 1999. The analysis was mailed to you on April 7; the alternatives are listed below.

Alternative 1: No action.

Alternative 2: THE PREFERRED ALTERNATIVE

Implement regulations that would:

- (1) allow pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established by section 206(b), and
- (2) remove the allocation of squid from the CDQ Program to allow the CDQ groups to fully harvest the pollock CDQ directed fishing allowance.

Under Alternative 2, directed fishing for pollock CDQ will be defined as fishing that results in the following catch composition:

- (a) For each haul by a catcher/processor, the round weight of pollock represents 40 percent or more by weight of the total weight of all groundfish in the haul; and
- (b) For each delivery by a catcher vessel, the round weight of pollock represents 40 percent or more by weight of the total weight of all groundfish delivered to a processor from a fishing trip.

(e) State CDO regulatory changes

The State of Alaska is proposing revisions to the CDQ program regulations (Item C-9(e)). The revisions aim to clarify the role of the state in the CDQ program, provide a more defined framework for administrative procedures, and address issues brought forth by the CDQ groups and the National Academy of Sciences report. The comment period for the State regulatory package is scheduled to end on April 19, but the State will accept Council comments on the proposed changes. The changes are scheduled to become effective in August 1999. State CDQ Manager Glenn Haight is available to present a summary of these proposed changes.

If revisions are adopted by the State, it is anticipated that complementary changes to the federal CDQ regulations would likely be necessary at a later date, thereby requiring Council action. NMFS comments on the proposed changes may be available at the time of Council discussion.

(8) Staff tasking

An updated schedule of NMFS activities in implementing changes to the MS-CDQ program are attached as Item C-9(f)(1). Part I indicates those actions already published as proposed and final rulemakings (see also Item C-9(f)(2)). Part II, Items 1-8 are currently being prepared. Analyses for Items 9-11 have not yet been prepared.

The CDQ Implementation Committee convened on April 9, 1999 to review the schedule and analyses described above. Committee recommendations are provided in Item C-9(f)(3).

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

March 8, 1999

TONY KNOWLES, GOVERNOR

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Steve Pennoyer, Director
Alaska Region/NMFS
P.O. Box 21668
Juneau, Alaska 99802

RE: New CDQ Communities

Dear Mr. Pennoyer:

The State of Alaska is pleased to forward the National Marine Fisheries Service (NMFS) the attached Evidentiary Brief on Potential New CDQ Communities. After receiving a request by the community of Levelock for reconsideration to be included into the CDQ program, it was found there might have been an error in the determination of eligible CDQ communities. In all, it was preliminarily found that eight new communities required consideration under the eligible community criteria. The eight communities include:

Ekwok
Grayling

Levelock
Mountain Village

Napakiak
Napaskiak

Oscarville
Portage Creek

The CDQ Team, in cooperation with NMFS's Sustainable Fisheries Division, sought authoritative evidence regarding whether these new communities met all eligibility requirements listed in 50 C.F.R. 679. From this evidence, provided in the attached Brief, the state has concluded that all eight communities meet the eligibility requirements for the CDQ program.

Based on these findings we recommend NMFS approve these communities to be included into the CDQ program. If you have any questions regarding this issue, please contact Glenn Haight, CDQ Manager at (907) 465-5536.

Sincerely,


Lamar Cotten
Deputy Commissioner

cc: Potential CDQ Communities
CDQ groups
State of Alaska CDQ Team

EVIDENTIARY BRIEF ON POTENTIAL NEW CDQ COMMUNITIES

Pursuant to 50 CFR 679, the State of Alaska has been delegated oversight responsibilities for the CDQ program. In 1992 the North Pacific Fishery Management Council (Council) approved the community eligibility criteria for the CDQ program. In that same year, the state made initial recommendations regarding eligible communities. The Council and the Secretary of Commerce approved these recommendations. Several years into the CDQ program it has been made known that there are eight western Alaskan communities that were inadvertently omitted from the initial recommendation. At this point, the state would like to provide your office with its findings on this issue and recommend action authorized to the National Marine Fisheries Service (NMFS) through 50 CFR 679.2.

Background

On the May 21, 1998, the Department of Community and Regional Affairs (DCRA) received a letter from Howard Nelson, President of Levelock Natives Ltd., requesting reconsideration of Levelock as an eligible CDQ community. (See Exhibit A) Upon review of the request, it was determined Levelock did deserve reconsideration under the regulations governing the CDQ Program.

In its petition for reconsideration, Levelock asserted it was within 50 nautical miles of the Bering Sea, an eligibility requirement pursuant to 50 C.F.R. 679.2. After a preliminary investigation into the matter, it was concluded that Levelock did appear to meet the proximity requirement. When the evaluation of eligible communities was conducted in 1992, it appears the surveyors of the program might have measured community proximity in statute miles. A nautical mile is approximately 15% longer than a statute mile. The difference between 50 nautical miles and 50 statute miles is approximately 7.5 statute miles. This serves to indicate there may be a band just over 7 miles long up the coast of western Alaska that includes communities that deserve reconsideration of eligibility into the CDQ program.

Following this preliminary finding, the State of Alaska's CDQ Team and NMFS's Sustainable Fisheries Division began a cooperate effort to research and obtain authoritative evidence on each of the eligibility criteria.

Eligibility Criteria

50 C.F.R. 679.2 provides the eligibility criterion that determines entry for communities into the CDQ program.

Eligible community means a community that is listed in Table 7 to this part or that meets all of the following requirements:

(1) The community is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea.

(2) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92-203) to be a native village.

(3) Whose residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI.

(4) That has not previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The community of Unalaska is excluded under this provision.

Review of Criteria

Proximity: For a clear determination of the proximity criteria, NMFS requested assistance from the National Ocean Survey (NOS) on July 29, 1998. Dennis Romesburg, Chief Cartographer with NOS responded on October 7, 1998, with a finding that there were seventeen (17) communities that fit under the proximity criteria that were not listed in the CDQ program. (See Exhibit B) Of those communities, nine (9) were omitted after it was determined they did not have a current population. (See Exhibit C)

The remaining communities (and the respective populations) that meet the proximity criteria include:

1. Ekwok (pop.120);
2. Grayling (pop. 195);
3. Levelock (pop.128);
4. Mountain Village (pop.793);
5. Napaskiak (pop.391);
6. Napakiak (pop.373);
7. Oscarville (pop.60); and
8. Portage Creek (pop 14).

Native Village Status: To determine whether communities had obtained status of Native Village under the Native Claims Settlement Act, this office contacted Warren Hisler, of the Bureau of Indian Affairs, Department of Interior. Mr. Hisler provided information that confirmed each community had been determined by the Secretary of Interior as a Native Village under the Native Claims Settlement Act. (See Exhibit D).

Reliance on Fishing and Fishery Resources: To gain insight on the commercial and subsistence harvest activity of each community, this office obtained information from the DCRA community profiles (Exhibit E), the Alaska Commercial Fisheries Entry Commission (CFEC) (Exhibit F), Alaska Department of Fish and Game, Division of Subsistence (Exhibit G), and each of the communities under consideration (Exhibit H).

Under a strict interpretation of the criteria, it appears that precise poundage of each community's harvest must be determined along with some definition of where the fishing occurred. The evidence will provide some specific poundage numbers and fishing areas however, the state believes the intent of this criteria is to restrict access into the CDQ program to those communities that are traditionally reliant on fishing or fishery resource. In researching the criteria, founding documentation of the CDQ program describes its intent was to make the previously unattainable groundfish fishery available to fishermen of western Alaska.¹ (Exhibit I)

As this provision is intended to assure that communities with a predominant reliance on fisheries resource would receive consideration under the CDQ program, substantial evidence was gathered regarding these communities reliance on fishing and fisheries resources. The evidence indicates the communities do have a high reliance on fisheries resources.

- **Community Profiles:** The communities profiles in Exhibit D provide a brief description of each community's reliance on commercial and subsistence fishing under the Cultural and Economic sections.
- **CFEC harvest records:** CFEC records under Exhibit F indicate each community has a strong reliance on commercial harvesting activities however, it may be noted that activity

¹..eligible communities [are restricted] to those in close proximity to the Bering Sea, whose residents already participate in commercial and/or subsistence fisheries in the Bering Sea, who are not already heavily involved in the groundfish fishery... ", Implementation of the Western Alaska CDQ program in the BS/AI Management Areas, EA/RIR/IRFA; NMFS, November 5, 1992.

"The Western Alaska Community Development Quota Program is intended to provide fishermen who reside in western Alaska communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands fisheries, ...", correspondence to Ronald Berg, Chief, Fisheries Management Division, NMFS/Alaska Region from Edgar Blatchford, Commissioner of the Department of Community and Regional Affairs, State of Alaska, October 23, 1992.

appears to have been generally declining in the last few years. This is likely attributable to the poor fishing climate in western Alaska in the last few years.

- Division of Subsistence: The input received by the Division of Subsistence confirms that each community has a strong reliance on subsistence and marine mammal harvests.
- Community Information: Each community responded positively and provided compelling evidence that it had a history of reliance on commercial and subsistence fishing.

Existing Groundfish Processing Capacity: As explained in the eligibility regulations, this criteria was meant to exclude a community such as Unalaska that currently has substantial groundfish processing capacity. Upon review of material submitted by each community, the community profiles and empirical knowledge of the groundfish fishery, it has been concluded none of these communities possess the processing capacity necessary to warrant exclusion from the CDQ program.

Conclusion

Based on the evidence in this brief, it the recommendation of the State of Alaska that the National Marine Fisheries Service find the eight communities listed on page 2 to be determined as eligible for the CDQ program. We are pleased that this inadvertent omission of communities may be rectified and look forward to these new communities involvement in the CDQ program.

APRIL 1999

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

MUNICIPAL & REGIONAL ASSISTANCE DIVISION
COMMUNITY DEVELOPMENT QUOTA PROGRAM

TONY KNOWLES, GOVERNOR

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CDQ MANAGER
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March 18, 1999

Clarence Pautzke
NPFMC
605 W. 4th Avenues, Ste. 306
Anchorage, Alaska 99501-2252

RECEIVED

MAR 22 1999

N.P.F.M.C

RE: 6 AAC 93 Regulations Rewrite

Dear Dr. Pautzke:

Given the expanding nature of the CDQ program, the State of Alaska CDQ Team is amending its regulations to handle increases in workload. Please find the pertinent documents attached to this letter. If you have any questions regarding these regulations, please contact me at (907) 465-5536.

Sincerely,


Glenn Haight
CDQ Manager

cc: CDQ Team

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. **Adopting agency:** Office of the Governor
2. **General subject of regulations:** Updating Community Development Quota (CDQ) program regulations to create more efficient administrative process to accommodate program expansion in light of a fixed budget for state oversight and clarify state's role in CDQ program.
3. **Citation of regulation:** 6 AAC 93.010 - 900. (Federal regulations providing authority for these regulations are under 50 C.F.R. 679)
4. **Reason for the proposed action:**
 - Development of program standards
 - Accommodate expansion of program activities

1. **Program category and BRU affected:**
 - Community Development Program - Municipal & Regional Assistance Division - Community & Economic Development

1. **Cost of implementation to the state agency and available funding (in thousands of dollars)**


	Initial Year FY 1999	Subsequent years
Cost	\$ 0	\$ 0
General funds	\$ 0	\$ 0
Federal funds	\$ 0	\$ 0
Other funds	\$ 0	\$ 0

7. **The name of the contact person for the regulations:**

Name: Glenn Haight
Title: CDQ Manager
Address: P.O. Box 112100
Juneau, Alaska 99811-2100
Telephone: (907) 465-5536

8. **The origin of the proposed action:**
 - staff of state agency

1. **Date:** March 18, 1999

Prepared by: 

Name: Glenn Haight
Title: CDQ Manager
Telephone: (907) 465-5536

**NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE OFFICE OF THE GOVERNOR
Community Development Quota Program**

Notice is given that the Governor, under the authority of Art. III, Sec. 1 and Art. III, Sec. 24, Alaska Constitution, proposes to adopt and amend regulations in Title 6 of the Alaska Administrative Code dealing with the administration of the Community Development Quota Program (CDQP). Most sections of the current regulations are affected under this notice. The amendments are necessary to accommodate the expansion of the CDQP under the current oversight structure. The federal regulations covering the CDQP are currently being revised, and the Alaska State regulations must be consistent with the federal regulations. Upon completion of revisions to the federal regulations, state regulations may need to be revised to match federal regulations. These changes include the following:

1. 6 AAC 93 is proposed to be amended by changing citations to federal regulations to conform to changes in federal regulations.
2. 6 AAC 93.010 is proposed to be amended by setting out the role of the state and describing the guiding principles of the CDQP.
3. 6 AAC 93.015 is proposed to be amended by stating that the CDQ Team will provide technical assistance to the CDQ groups.
4. 6 AAC 93.020 is proposed to be amended by adding a reference to the reconsideration process as a component of the application process.
5. 6 AAC 93.025 is proposed to be amended by requiring more precise detail in CDP applications as a way to trigger specific administrative procedures and strengthen performance monitoring.
6. 6 AAC 93.040 is proposed to be amended by adding new evaluation criteria that the CDQ Team must use in the final evaluation of CDPs, clarifying the term CDQ project, and adding a reference to the reconsideration process for CDP applicants.
7. 6 AAC 93.050 is proposed to be amended by requiring that the budget reconciliation requirement be conducted by an independent auditor.
8. 6 AAC.93.055 is repealed and readopted to provide a more specific regulatory framework for amending CDPs. The section also provides for an exemption process to move specific CDQ projects out of the "core CDQ project" category.
9. 6 AAC 93.057 is proposed to be added to create a separate regulation to cover requests for an increase in allocation.
10. 6 AAC 93.060 is proposed to be amended by adding a reference to the reconsideration process for the CDQ groups.

**NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE OFFICE OF THE GOVERNOR
Community Development Quota Program**

11. 6 AAC 93.090 is proposed to be amended to provide the CDQ groups with a process to seek reconsideration for decisions by the CDQ Team.
12. 6 AAC 93.900 is proposed to be amended to define terms used in the sections described above.

Notice is also given that any person interested may present written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, by writing to Glenn Haight, CDQ Manager, Department of Community and Regional Affairs, CDQP, P.O. Box 112100, Juneau, Alaska 99811-2100, so that they are received no later than April 19, 1999.

If you are a person with a disability who may need a special accommodation in order to participate in the process on the proposed regulations, please contact Glenn Haight at (907) 465-5536, no later than March 29, 1999, to ensure that any necessary accommodations can be provided.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to: Glenn Haight, CDQ Manager, Department of Community and Regional Affairs, CDQP, P.O. Box 112100, Juneau, Alaska 99811-2100.

After the close of the public comment period, the Governor will either adopt these or other proposals dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

DATE: _____

3/18/99



Glenn Haight, CDQ Manager
Municipal and Regional Assistance Division

CHAPTER 093

WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM

6 AAC 93.010 is amended to read:

6 AAC 93.010 PURPOSE OF REGULATIONS. (a) This chapter is adopted by the governor to implement the governor's role in the Western Alaska Community Development Quota Program as required under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea/Aleutian Islands Area as established in 50 C.F.R. 679.1 and 50 C.F.R. 679.30, both as amended as of January 21, 1999. [JANUARY 31, 1997.]

(b) The State of Alaska will provide accountability to the CDO program by:

(1) monitoring CDP performance;

(2) seeking consistency between the CDO Program guidelines under 6 AAC

93.010(c) and proposed core CDO projects or proposed major variations to core CDO projects;

(3) providing technical support to the CDO groups; and

(4) allocating quota.

(c) The state will seek consistency with the following CDO Program guidelines when

implementing the requirements of this chapter and 50 C.F.R. 679 as amended January 21, 1999:

(1) CDPs must provide specific and measurable benefits to the CDO communities;

(2) CDPs must have the broad support of the CDO communities;

(3) Due diligence prior to initiating a CDO project must be of the highest quality;

(4) CDO assets expended on for-profit CDO projects must demonstrate a reasonable likelihood of earning a financial return to the CDO group;

(5) Legal and financial risk are minimized to the best abilities of the CDP applicant;

(6) CDO projects must be related to developing sustainable, fisheries-related economies in western Alaska.

(History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am __ / __ / __, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24.

6 AAC 93.015 is amended to read:

6 AAC 93.015 DELEGATION OF AUTHORITY; FINAL RECOMMENDATIONS. (a) The commissioners of the Department of Community and Regional Affairs, Department of Fish and Game, and Department of Commerce and Economic Development, or the commissioners' representatives, acting jointly, are the governor's designees for the purposes of this chapter. The Department of Community and Regional Affairs is the lead agency and will be the primary recipient of all required CDQ material. The governor's designees constitute the CDQ Team. The CDQ Team shall (1) solicit community development plan applications from eligible communities; (2) conduct the initial review and evaluation of proposed CDPs; for the purposes of this paragraph, "proposed CDP" means the material which will require an amendment for any changes for the duration of a CDP; (3) make recommendations for community development quota allocations to the governor; (4) review and recommend for approval amendments to existing CDPs; [AND] (5) monitor the

performance of each CDQ group in achieving the group's goals and milestones for its CDP and (6) provide technical assistance to the CDO groups.

(b) The governor will make all final recommendations regarding CDP applications and CDQ allocations to the United States Secretary of Commerce in accordance with 50 C.F.R. 679.30(a) - (d) as amended as of January 21, 1999 [50 C.F.R. 679.30(b) - (f)] and this chapter.

(History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am __/__/__, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24

6 AAC 93.020 (a) is amended to read:

6 AAC 93.020 COMMUNITY DEVELOPMENT PLAN APPLICATION PROCESS. (a) The CDQ Team shall establish a schedule for the receipt of CDP applications, initial application evaluation, public hearings, [AND] final application review, and a reconsideration process under 6 AAC 93.090. Within a reasonable time before the beginning of the application period, the CDQ Team shall

(1) publish a notice of the CDP application schedule in at least one newspaper of general circulation in Western Alaska and one newspaper of general circulation in the state; and

(2) mail a copy of the notice to eligible communities.

(History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am __/__/__, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24

6 AAC 93.025(a), (c), (e), (f), (i), and (l) – (o) are amended to read:

6 AAC 93.025 COMMUNITY DEVELOPMENT QUOTA ALLOCATION APPLICATIONS. (a)

To receive a CDQ allocation, a qualified applicant must submit to the department a complete CDP application and quota request, before the end of the CDP application period established in 6 AAC

93.020 (a). A CDP application is complete if the CDP application includes

(1) for each species allocation,

(A) the information described at 50 C.F.R. 679.30(a), as amended as of January 21, 1999 [50 C.F.R. 679.30(b), AS AMENDED AS OF JANUARY 31, 1997] and this chapter;

(B) a statement from the applicant that the applicant is a "qualified applicant" as defined at 50 C.F.R. 679.2 and 50 C.F.R. 679.30(a)(2)(ii), as amended as of January 21, 1999 [50 C.F.R. 679.30(d)(6), AS AMENDED AS OF JANUARY 31, 1997]; and

(C) a statement from the applicant that each community participating in the CDP application is an eligible community as described at 50 C.F.R. 679.30(a)(1)(iv), as amended as of January 21, 1999 [50 C.F.R. 679.30(d), AS AMENDED AS OF JANUARY 31, 1997];

(2) a list of eligible communities participating in the CDP application;

(3) a letter of support or election results for each board member from the board member's eligible community and a statement of support from the governing body of each eligible community participating in the CDP application;

(4) a certificate of incorporation evidencing that the applicant is a non-profit corporation formed under AS 10.20; and

(5) evidence, such as a contract with a business partner, that the CDQ applicant has not and does not intend to obligate future quota allocations to a third party.

....

(c) An eligible community may not participate in more than one Community Development Plan. The provisions of this subsection do not apply to prevent an eligible community from participating in halibut allocations that are restricted by regulatory areas of the International Pacific Halibut Commission and 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997].

.....

(e) If a managing organization will participate in the fishery on behalf of an applicant for a CDQ, but is not the applicant, the managing organization must

(1) provide a statement of support from the governing body of each community that the organization represents; and

(2) document the legal relationship between the applicant and the managing organization, through a contract or other legally binding agreement [,] that clearly describes the responsibilities and obligations of the parties.

(f) In addition to the information required under (a) and (d) or (e) of this section and under 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997], a qualified applicant shall provide with the CDP application all information regarding the particular benefits that a CDQ allocation under the CDP application would generate for the Bering Sea/Aleutian Islands region, the state, or the United States.

.....

(i) Each CDP application must provide CDQ project investment policies for the CDQ applicant for:

- (1) capital projects;
- (2) infrastructure projects;
- (3) fund management and cash management projects; and
- (4) other CDQ projects [ACTIVITIES].

....

(l) Each CDP application must provide a detailed description of all the CDQ projects the applicant intends to pursue during the course of the applicant's CDP. In addition, the CDP applicant must identify the core CDO projects and provide a description of the normal scope of the operation of the project.

(m) Each CDP application must include a milestone table that sets out specific and measurable objectives for each proposed and active CDQ project [A DETAILED LIST OF MILESTONES, GOALS, AND OBJECTIVES, INCLUDING EMPLOYMENT AND TRAINING GOALS,] that the CDP applicant intends to initiate or is engaged in [ACHIEVE] during the course of the applicant's CDP.

(n) In addition to the information required to be submitted to the CDQ Team by (a), (d) or (e), as appropriate, (f), and (h) - (m) [(j)] of this section, a qualified applicant shall submit additional information that the governor or the CDQ Team determine to be necessary to determine whether to recommend the complete CDP application to the secretary for approval.

(o) Except for circumstances that are found by the CDQ Team to have been beyond the control of the qualified applicant, the CDQ Team will not evaluate a late CDP application.

(History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am __/__/__, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24.

6 AAC 93.030(b) is amended to read:

6 AAC 93.030 INITIAL EVALUATION OF CDP APPLICATIONS

(b) Upon receipt of a CDP application, the CDQ Team shall schedule a public hearing in accordance with 50 C.F.R. 679.30(b), as amended as of January 21, 1999 [50 C.F.R. 679.30(a)(2), AS AMENDED AS OF JANUARY 31, 1997], and with 6 AAC 93.035.

(History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am __/__/__, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24.

6 AAC 93.035(c) is amended to read:

6 AAC 93.035 PUBLIC HEARING.

(c) A public hearing must be tape recorded and transcribed. The transcript of a public hearing conducted under this section will be made available to the public, upon request, at the same time that the transcript is submitted to the secretary in accordance 50 C.F.R. 679.30(b), as amended as of January 21, 1999 [50 C.F.R. 679.30(a)(2), AS AMENDED AS OF JANUARY 31, 1997].

(History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am __/__/__, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24.

6 AAC 93.040 (a) – (e) and (g) – (i) is amended to read:

6 AAC 93.040 FINAL EVALUATION OF COMPLETE CDP APPLICATIONS. (a) Following the close of the CDP application period, the CDQ Team shall evaluate all complete CDP applications for CDQ allocations to determine if the applications meet the requirements of 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997], and this chapter.

(b) The CDQ Team shall consider the following factors when reviewing a complete CDP application

- (1) the number of eligible communities participating in the CDQ program;
- (2) the size of the allocation of fishery resource requested by the qualified applicant and the proper allocation necessary to achieve the milestones, goals, and objectives as stated in the CDP application;
- (3) the degree to which the proposed or active CDQ projects are [IS] expected, if any, to develop a self-sustaining local fisheries economy, and the proposed schedule for transition from reliance on a CDQ allocation to economic self-sufficiency;
- (4) the degree to which the proposed or active CDQ projects are [IS] expected, if any, to generate capital or equity in the local fisheries economy or infrastructure, or investment in commercial fishing or fish processing operations;
- (5) the contractual relationship among the qualified applicant and joint venture partners, if any, and the managing organization;
- (6) the diversity in the applicant's harvesting or processing partners, or both, and the vessels and gear type to be used in the applicant's operations;
- (7) the coordination or cooperation with other CDQ groups on CDQ projects;
- (8) the experience of the industry partners of the qualified applicant, if any;

(9) the involvement and diversity of the qualified applicant in all facets of harvesting and processing;

(10) the applicant's employment and training programs set out in the project which provide career track opportunities;

(11) the benefits to the state's economy or to the economy of communities that are not eligible to participate in the CDQ program that exceed the benefits generated by the CDP for eligible CDQ communities;

(12) a demonstration, through 6 AAC 93.025 (i), that the applicant has a formal effective administrative process that sets out sound business principles and due diligence that the applicant will exercise before entering into CDQ [CAPITAL INVESTMENTS AND] projects;

(13) the degree to which the CDP employs harvesting and processing techniques which promote conservation, minimize bycatch, and provide for full retention and utilization of the community development quota by the qualified applicant;

(14) the development of innovative products and processing techniques as well as innovation in harvesting gear for conservation and maximum utilization;

(15) the ability of a CDQ group to maintain control over each of its allocations;

(16) the capital or equity generated by the applicant's proposed and active CDQ projects for seafood business investment;

(17) the past performance of the qualified applicant and the applicant's industry partners, as appropriate;

(18) the degree of community input in developing the CDP;

(19) the development of an effective outreach project that demonstrates how the CDP applicant will notify the participating communities of the CDO group's activities and facilitate community input throughout the duration of the proposed CDP;

(20) the input provided by other agencies, organizations and the interested public;

(21) [(18)] the applicant's objectives; and

(22) [(19)] the inclusion in the CDP, as required by 6 AAC 93.025 (m), of realistic measurable milestones for determining progress.

(c) The CDQ Team shall transmit to the governor for the governor's review each complete CDP application evaluated by the CDQ Team. The governor will then make a written finding that the complete CDP application

(1) satisfies the requirements of 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997], and this chapter, and will be recommended to the secretary for approval for a CDQ allocation in the amount requested by the qualified applicant;

(2) satisfies the requirements of 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997], and this chapter, and will be recommended to the secretary for approval with a reduced CDQ allocation from the amount initially requested by the qualified applicant; or

(3) does not satisfy the requirements of 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997], and this chapter, and will not be recommended to the secretary for approval.

(d) If there is sufficient quota of fishery resource available to meet the combined total CDQ allocations requested in all of the complete CDP applications that satisfy the requirements of 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997], and this chapter, the

governor will, in the governor's discretion, recommend all of these applications to the secretary for approval.

(e) If there is an insufficient quota of fishery resource available to meet the combined total CDQ allocations requested in all of the complete CDP applications that satisfy the requirements of 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997], and this chapter, the governor will, in the governor's discretion and after consultation in accordance with (f) of this section,

(1) apportion the available quota among the qualified applicants and recommend the apportionment to the secretary for approval; or

(2) select those complete applications that the governor believes best satisfy the objectives, requirements, and criteria of the CDQ program and recommend those applications to the secretary for approval; a recommendation under this paragraph may also include a recommendation for an apportionment in accordance with (1) of this subsection.

(g) A CDP applicant may request reconsideration under 6 AAC 93.090 of any CDQ Team allocation recommendation under this section.

(h) [(g)] In apportioning the quota of fishery resource under (e) of this section, the governor shall consider the information specified in 50 C.F.R. 679.30 and this chapter, and seek to maximize the benefits of the CDQ program to the greatest number of participating eligible communities.

(i) [(h)] Before forwarding recommendations to the secretary under 6 AAC 93.045 , the governor, or the CDQ Team, will consult with the North Pacific Fishery Management Council regarding the complete CDP applications to be recommended by the governor for CDQ allocations and will incorporate any comments from the council into the written findings required under (c) of

this section and 50 C.F.R. 679.30(c), as amended as of January 21, 1999 [50 C.F.R. 679.30(d)(5), AS AMENDED AS OF JANUARY 31, 1997].

(History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am __/__/__, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24.

6 AAC 93.050(a),(b) and (d) are amended to read:

6 AAC 93.050 ANNUAL AND QUARTERLY REPORTS. (a) In order for the CDQ Team to monitor a CDP as required under 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997], a CDQ group shall submit to the department:

(1) an annual report for each calendar year in which the CDP is in effect; and

(2) a quarterly report for each calendar quarter in which the CDP is in effect.

(b) A report submitted under this section must include information describing how, during the period covered by the report, the CDP has met the milestones [, GOALS,] and objectives of the CDP as stated in the complete CDP application.

(d) In addition to other information identified in (b) of this section, an annual report must specifically include

(1) the CDQ group's CDQ harvesting and processing data from CDQ harvesting activity;

(2) an independent audit performed by a regionally recognized accounting firm; the CDQ group's selection of an accounting firm is subject to the approval of the CDQ Team; the independent audit that is provided as part of the annual report under this paragraph must include:

(A) a report that indicates whether the CDQ group is meeting the milestones, goals, and objectives that, under 6 AAC 93.025 (m), are set out in its CDP application; if the CDQ Team has required the CDQ group to meet with an auditor to develop agreed upon procedures as guidelines for the content of the CDQ group's reports, the content of the report submitted under this subparagraph must follow those agreed upon procedures;

(B) consolidated financial statements for each CDQ group and, if applicable, supplemental schedules reporting the financial position and results of operations for each of the CDQ group's consolidated subsidiaries;

(C) a note to the financial statements in which the auditor details how financial results were determined and any other relevant information;

(D) a supplemental schedule detailing the CDQ group's general and administrative expenses; and

(E) a budget reconciliation between all program and administrative budgets, and actual expenditures; and

(F) [(E)] a management report or letter;

(3) complete year ending training and employment data, provided in a format developed by the department;

[(4) A BUDGET RECONCILIATION BETWEEN ALL PROGRAM AND ADMINISTRATIVE BUDGETS, AND ACTUAL EXPENDITURES;] and

(4) [(5)] any other information deemed necessary to the administration of the CDQ program by the CDQ Team; the information required by this paragraph shall be submitted to the CDQ group in writing five working days before the CDQ group's annual report is due.

(History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am __/__/__, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24.

Editor's Notes - The mailing address for the Office of the Commissioner, Department of Community and Regional Affairs, is P.O. Box 112100, Juneau, Alaska 99811-2100.

6 AAC 93.055 is repealed and readopted to read:

6 AAC 93.055 AMENDMENTS TO A CDP (a) A CDP is a working business plan and must be kept up to date. A CDQ group that seeks to amend a complete CDP under 50 C.F.R. 679.30, as amended as of January 21, 1999, shall submit to the CDQ Team a written request for approval of the amendment under the appropriate administrative process described in 50 C.F.R. 679.30, as amended as of January 21, 1999, and this section. When reviewing amendments, the CDQ Team will determine whether the requested amendment to the CDP is consistent with the guidelines described under 6 AAC 93.010 (c).

(1) A substantial amendment requires the CDQ Team's recommendation for approval and the Secretary's approval subject to 50 C.F.R. 679, as amended as of January 21, 1999, and this chapter, prior to engaging in any activity under the amendment. A substantial amendment is necessary when a CDQ group intends to make:

(A) a change to a CDP that meets the requirements under 50 C.F.R. 679.30 (g)(4)(iv), as amended as of January 21, 1999;

(B) any proposed major variation of a core CDQ project beyond its normal scope of operation as defined under 6 AAC 93.025 (l); and

(C) any proposed CDQ activity that will move a non-core CDQ project into the status of a core CDQ project.

(2) An administrative amendment requires certain procedural approvals by the CDQ Team and/or the Secretary. An administrative amendment is required when a CDQ group:

(A) intends to pursue a proposed CDQ project that is clearly identified in the CDP text and budget, if determined necessary by the CDQ Team;

(B) intends to pursue a major variation to the normal scope of operations of a non-core CDQ project, if it is determined necessary by the CDQ Team;

(C) submits a new fishing plan to its CDP or intends to engage in a CDQ transfer that requires National Marine Fisheries Service action under 50 C.F.R. 679, as amended as of January 21, 1999.

(3) A technical amendment requires that the CDQ Team and the Secretary are notified of a technical change to a CDP. A technical amendment is required when a CDQ group:

(A) has a change in its Board of Directors and administrative staff;

(B) has a change in an administrative contract that is not substantial; or

(C) make any other change that the CDQ Team determines as technical in nature.

(b) If the CDQ Team believes an amendment will reduce the ability of a CDP to successfully meet its milestones and objectives, or finds the amendment inconsistent with 50 C.F.R. 679, as amended as of January 21, 1999 or 6 AAC 93.010(c), the CDQ Team will deny the amendment.

(1) The CDQ group may request reconsideration of the CDQ Team's decision under 6 AAC 93.090.

(c) If a CDQ group has a core CDQ project that the CDQ group believes should be exempted from the listing of "core CDQ project", the CDQ group may petition the CDQ Team to have the core CDQ project status removed. The CDQ Team will consider factors in a petition filed under this section including:

- (1) the business cycle and profitability of the project;
- (2) the success of the project in meeting its goals and milestones; and
- (3) the overall impact the project has on the success of the CDQ group's CDP.

(d) A petition for exemption from core project designation for a specific CDQ project may only be submitted once a year between June 15 and August 15.

(History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am __/__/__, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24.

6 AAC 93 is amended by adding a new section to read:

93 AAC 93.057 REQUESTS FOR INCREASE IN ALLOCATION. If a CDQ group seeks to increase any of its CDQ allocations under a multi-year CDP, the CDQ group shall submit a new complete CDP application to the CDQ Team for approval as required under this chapter and under 50 C.F.R. 679.30, as amended as of January 21, 1999.

(History - Eff. __/__/__, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24.

6 AAC 93.060 is amended to read:

6 AAC 93.060 SUSPENSION OR TERMINATION OF CDP. (a) The governor will, in the governor's discretion, recommend to the secretary in writing that a CDP be partially suspended, suspended, or terminated if the CDQ Team notifies the governor that the CDQ Team has determined that the CDQ group

(1) has failed to comply with

(A) this chapter; or

(B) 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997];

(2) has not successfully met its milestones [, GOALS,] or objectives; or

(3) appears unlikely to successfully meet its milestones [, GOALS,] or objectives.

(b) If the CDQ Team receives an allegation that a CDQ group has failed to comply with 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997], or with this chapter, the CDQ Team will send a written notice of the allegation to the CDQ group at the address on file at the department for the CDQ group. The CDQ group may, within 10 days after receipt of the notice, submit to the department a written response to the allegation. The CDQ Team will consider the CDQ group's written response, if any, in deciding whether to make a recommendation under (a) of this section.

(1) Prior to making the recommendation to the secretary, the CDO Team will inform the CDO group of the governor's decision under subsection (a) of this section. The CDO group may request reconsideration of the governor's decision under 6 AAC 93.090.

(c) If the CDQ Team makes a recommendation under (a) of this section, the CDQ Team will include the CDQ group's written response, if any, with the recommendation when it is transmitted to the secretary.

(History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24

6 AAC 93 is amended by adding a new section to read:

6 AAC 93.090 RECONSIDERATION PROCESS. (a) An eligible CDP applicant may file a request for reconsideration of a decision by the CDQ Team or the Governor as set out in this chapter. The request for reconsideration must be filed within 20 calendar days after receipt or other notice of the decision. The CDQ Team shall order or deny reconsideration within 20 days after receipt of the request for reconsideration. If the CDQ Team takes no action during the 20 day period following the receipt of the request, the request for reconsideration is considered denied. Denial of a request for reconsideration is a final administrative decision.

(b) Following its final administrative decision, the CDQ Team will forward its findings on the matter to the Secretary.

(c) The CDQ Team will, in the CDQ Team's discretion, reduce the notice requirements of this section if the CDQ Team determines that an eligible community will be competitively or financially harmed by a delay in issuing the final administrative decision.

(History - Eff. __/__/__, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24.

6 AAC 93.900 is amended to read:

6 AAC 93.900 DEFINITIONS. In this chapter

(1) "allocation" or "CDQ allocation" means a percentage of a CDQ reserve as defined in 50 C.F.R. 679.31, as amended as of January 21, 1999 [JANUARY 31, 1997], that is assigned to a CDQ group for a defined period of time when the secretary approves a proposed CDP;

(2) "CDP" or "community development plan" means a development plan with CDQ projects that are intended to promote [FOR THE] economic and social development of a specific Western Alaska community or group of communities through fishery related investments under the CDQ program at 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997];

(3) "CDP application" means a comprehensive plan that a qualified applicant must submit to the department to be considered for any CDQ allocations;

(4) "CDQ" or "community development quota" means the annual amount of a species of fish, in metric tons or percentage of CDQ reserve, that the North Pacific Fishery Management Council has allocated and that a CDQ group is permitted to harvest based on a CDQ allocation as requested in a proposed CDP and approved by the secretary as part of the Western Alaska Community Development Quota Program established under 50 C.F.R. 679.30, as amended as of January 21, 1999 [JANUARY 31, 1997];

(5) "CDQ activity" means any activity pursued by a CDQ group which is paid for by the use of the CDQ, either directly or indirectly;

(6) "CDQ group" means a qualified applicant with a current CDP;

(7) "CDQ project" or "project" is an activity or venture [MEANS A PROGRAM,] paid for from CDQ [THE] assets, held as a CDQ asset, or held as a CDQ liability of a CDQ group that is for the economic or social development of a community or of a group of communities participating in the CDQ group; the components of a program may include infrastructure development, CDQ investment, employment and training programs, and administration of the community development program;

(8) "CDQ reserve" means the portion of CDQ species which the North Pacific Fishery Management Council has allocated to the CDQ program;

(9) "CDQ species" means the fish species which the North Pacific Fishery Management Council has allocated to the CDQ program;

(10) "CDQ Team" means the state officers identified in 6 AAC 93.015 acting jointly for the purposes described in this chapter;

(11) "council" means the North Pacific Fishery Management Council established in 16 U.S.C. 1852, as amended as of JANUARY 31, 1997;

(12) "department" means the Department of Community & Regional Affairs;

(13) "eligible community" means a community that meets the requirements of 50 C.F.R. 679.2, [50 C.F.R. 679.30(d)(2)(i) - (iv)] or that is listed in Table 7 of 50 C.F.R. 679, as amended as of January 21, 1999 [JANUARY 31, 1997];

(14) "governing body of an eligible community" means a city council, traditional council, or Indian Reorganization Act (IRA) Council of an eligible community;

(15) "managing organization" means an organization that would assume responsibility for managing all or part of a CDP;

(16) "qualified applicant" means an organization described in 50 C.F.R. 679.30(d)(6), as amended as of January 21, 1999 [JANUARY 31, 1997];

(17) "resident fisherman" means a resident fisherman as defined in 50 C.F.R. 679.30(d)(7), as amended as of January 21, 1999 [JANUARY 31, 1997];

(18) "secretary" means the United States Secretary of Commerce.

(19) "CDQ asset" means any property of a CDQ group that is represented on the CDQ group's balance sheet as required under 6 AAC 93.050 (d)(2)(B) and 6 AAC 93.050 (e)(2)(A).

(20) "CDQ liabilities" means any debt of a CDQ group that is represented on the CDQ group's balance sheet as required under 6 AAC 93.050 (d)(2)(B) and 6 AAC 93.050 (e)(2)(A).

(21) "active CDQ project" means a CDQ project that was initiated through a previous CDP or through the amendment process and maintains its status as a CDQ asset or CDQ liability.

(22) "proposed CDQ projects" means a CDQ project that has yet to be initiated through a previous CDP or through the amendment process.

(23) "core CDQ project" means an active CDQ project where:

(a) the collective CDQ ownership is in excess of 49%;

(b) the collective CDQ ownership demonstrates effective managing control; or

(c) at least two of the following criteria are met:

i) the CDQ project constitutes 25% of a CDQ group's asset holdings;

ii) the CDQ project has total debt holdings in excess of 25% of a CDQ group's asset

holdings;

iii) the CDQ project, if it is a for-profit project, has not achieved a positive cash flow in the last three years of its business cycle while operating in the CDQ program;

iv) the CDQ project has been determined by the Annual Progress Report required under 50 C.F.R. 679.30(g)(1)(ii), as amended as of June 8, 1998, to not meet CDP performance measures for two consecutive years; and

v) the CDQ project receives funding from the CDQ group in the course of a calendar year.

(24) "For profit CDQ project" is a CDQ project where the core activity involves an ongoing exchange of good or services for compensation between two or more parties.

(History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am __/__/__, Register)

Authority - Ak. Const., art. III, Sec. 1; Ak. Const., art. III, Sec. 24.

Update on Regulatory Actions and Requested Analyses for the
Multispecies Community Development Quota Program
DRAFT - April 1, 1999

I. Rulemakings Published Since January 1, 1999

Action	Date Published	Citation
Notice of approval of 1999 pollock CDQ allocations	January 11, 1999	64 FR 1539
Final rule on Amendment 45 (extend pollock CDQ) and Emergency Rule for AFA	January 26, 1999	64 FR 3877
Proposed rule for Halibut CDQ Fisheries	February 8, 1999	64 FR 6025
Final rule for Halibut CDQ Fisheries	April xx, 1999	64 FR xxxxx

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II. Requested rulemakings and analyses, in order of priority

	Action	Status (date)
1	Finalize determination of new eligible CDQ communities	NMFS determination of State's recommendation on eligible communication in preparation. Discuss at April Council meeting
2	Proposed rule to reduce observer coverage requirements for catcher vessels using nontrawl gear in CDQ fisheries	Under review in Alaska Region, review started 3/19/99
3	Analysis of alternatives to reduce observer coverage requirements for shoreside processors in CDQ fisheries	Draft analysis complete, discuss at April Council meeting
4	Review State's proposed revisions to CDQ regulations and determine what revisions will be necessary in Federal regulations	
5	Extend emergency rule for pollock CDQ under AFA for July-December, 1999	Revise emergency rule package for changes made since 1/26/99 and resubmit package for review by May 15
6	Proposed rule for pollock CDQ under AFA	Preparation of rulemaking package should start by June 15
7	Final rule for pollock CDQ under AFA	Preparation of rulemaking package should start by October 1, 1999
8	Approval of 2000 pollock CDQ allocations	Conduct review of State's recommendations in October, 1999 and publish FR notice by December 31, 1999. No work necessary until 10/99.
9	Alternative CDQ quota management measures (underage, overage, remove CDQ species, etc.)	Prepare analysis for Council review. Work on this analysis has not yet begun.
10	Remove term "calendar year" from crab CDQ reserve specification	No analysis or rulemaking package has been started yet.
11	CDQ trawl season start date	Prepare analysis for Council review. Work on this analysis has not yet begun.

4. Section 583.6 would be amended by revising paragraphs (a), (c)(1)(ii), (c)(3)(ii), and (c)(6) to read as follows:

§ 583.6 Procedure for determining U.S./Canadian parts content.

(a) Each manufacturer, except as specified in § 583.5(f) and (g), shall determine the percentage U.S./Canadian Parts Content for each carline on a model year basis. This determination shall be made before the beginning of each model year. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. All value otherwise added at the final assembly point and beyond, including all final assembly costs, is excluded from the calculation of U.S./Canadian parts content. The country of origin of nuts, bolts, clips, screws, pins, braces, gasoline, oil, blackout, phosphate rinse, windshield washer fluid, fasteners, tire assembly fluid, rivets, adhesives, grommets, and wheel weights, used in final assembly of the vehicle, is considered to be the country where final assembly of the vehicle takes place.

* * * * *

(c) * * *

(1) * * *

(ii) To otherwise have the actual percent of its value added in the United States and/or Canada, rounded to the nearest five percent.

* * * * *

(3) * * *

(ii) To otherwise have the actual percent of its value added in the United States and/or Canada, rounded to the nearest five percent.

* * * * *

(6) If a manufacturer or allied supplier requests information in a timely manner from one or more of its outside suppliers concerning the U.S./Canadian content of particular equipment, but does not receive that information despite a good faith effort to obtain it, the manufacturer or allied supplier may make its own good faith value added determinations, subject to the following provisions:

(i) The manufacturer or allied supplier shall make the same value added determinations as would be made by the outside supplier;

(ii) The manufacturer or allied supplier shall consider the amount of value added and the location in which the value was added for all of the stages that the outside supplier would be required to consider;

(iii) The manufacturer or allied supplier may determine that particular value is added in the United States and/

or Canada only if it has a good faith basis to make that determination;

(iv) A manufacturer and its allied suppliers may, on a combined basis, make value added determinations for no more than 10 percent, by value, of a carline's total parts content from outside suppliers;

(v) Value added determinations made by a manufacturer or allied supplier under this paragraph shall have the same effect as if they were made by the outside supplier;

(vi) This provision does not affect the obligation of outside suppliers to provide the requested information.

* * * * *

5. Section 583.7 would be amended by revising paragraph (a) to read as follows:

§ 583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.

(a) Each manufacturer, except as specified in § 583.5(f) and (g), shall determine the countries, if any, which are major foreign sources of passenger motor vehicle equipment and the percentages attributable to each such country for each carline on a model year basis, before the beginning of each model year. The manufacturer need only determine this information for the two such countries with the highest percentages. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. In making determinations under this section, the U.S. and Canada are treated together as if they were one (non-foreign) country. The country of origin of nuts, bolts, clips, screws, pins, braces, gasoline, oil, blackout, phosphate rinse, windshield washer fluid, fasteners, tire assembly fluid, rivets, adhesives, grommets, and wheel weights, used in final assembly of the vehicle, is considered to be the country where final assembly of the vehicle takes place.

* * * * *

6. Section 583.8 would be amended by revising paragraphs (b) and (d) to read as follows:

§ 583.8 Procedure for determining country of origin for engines and transmissions (for purposes of determining the information specified by §§ 583.5(a)(4) and 583.5(a)(5) only).

* * * * *

(b) The value of an engine or transmission is determined by first adding the prices paid by the manufacturer of the engine/transmission for each component comprising the engine/transmission, as delivered to the

assembly plant of the engine/transmission, and the fair market value of each individual part produced at the plant. The assembly and labor costs incurred for the final assembly of the engine/transmission are then added to determine the value of the engine or transmission.

* * * * *

(d) Determination of the total value of an engine/transmission which is attributable to individual countries. The value of an engine/transmission that is attributable to each country is determined by adding the total value of all of the components installed in that engine/transmission which originated in that country. For the country where final assembly of the engine/transmission takes place, the assembly and labor costs incurred for such final assembly are also added.

* * * * *

7. Section 583.10 would be amended by revising paragraph (a)(5) to read as follows:

§ 583.10 Outside suppliers of passenger motor vehicle equipment.

(a) * * *

(5) For equipment which has less than 70 percent of its value added in the United States and Canada,

(i) The country of origin of the equipment, determined under § 583.7(c); and

(ii) The percent of its value added in the United States and Canada, to the nearest 5 percent, determined under § 583.6(c).

* * * * *

Issued on: January 29, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99-2970 Filed 2-5-99; 8:45 am]

BILLING CODE 4910-69-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981221311-8311-01; L.D. 113098C]

RIN 0648-AL21

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes amendments to the regulations governing the Western Alaska Community Development Quota (CDQ) Program. The proposed amendments would define how halibut CDQ fishing would be managed in 1999 and thereafter; remove or revise regulations governing groundfish and halibut CDQ fishing consistent with the combination of the management regimes for the fixed gear halibut and sablefish CDQ fisheries, the pollock CDQ fisheries, and the multispecies (MS) groundfish CDQ fisheries starting in fishing year 1999; and make miscellaneous technical and editorial revisions. This proposed action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Comments must be received at the following address by March 10, 1999.

ADDRESSES: Comments should be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907-586-7228. Send comments on collection-of-information requirements to the above address and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Management Background and Need for Action

NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels and implementing the FMP appear at 50 CFR parts 600 and 679.

For the 1998 fishing year, four separate CDQ fisheries existed under

current regulations: (1) The fixed gear halibut and sablefish CDQ fisheries; (2) the pollock CDQ fisheries; (3) the multispecies (MS) groundfish CDQ fisheries; and (4) the crab CDQ fisheries.

NMFS published a final rule implementing the administrative and catch monitoring requirements for the MS groundfish CDQ fisheries under Amendment 39 to the BSAI FMP in the Federal Register on June 4, 1998 (63 FR 30381). That rule establishes a single management program for the fixed gear sablefish CDQ fisheries, the pollock CDQ fisheries, and the MS groundfish CDQ starting in 1999. Regulatory amendments are necessary to remove or revise sections of the regulations that govern the separate CDQ fisheries in 1998, and to further define how the halibut CDQ fisheries will be managed in 1999 and thereafter. The crab CDQ fisheries will continue to be managed as separate CDQ fisheries by the State of Alaska.

The proposed regulatory amendments fall into three categories: (1) Those governing vessels used to harvest halibut CDQ and the processors or registered buyers taking deliveries from these vessels; (2) those removing or revising sections of the regulations governing the fixed gear sablefish CDQ fishery in 1998; and (3) those executing other miscellaneous technical or editorial revisions to the MS groundfish CDQ regulations.

Management of the Halibut CDQ Fisheries

NMFS established the fixed gear halibut and sablefish CDQ fisheries with the fixed gear halibut and sablefish Individual Fishing Quota (IFQ) Program. The IFQ regulations provide for the reporting of halibut and sablefish CDQ caught with fixed gear through the end of 1998. As the recipients of annual allocations, CDQ groups were required to obtain a CDQ permit from NMFS. Each individual who landed fixed gear halibut or sablefish CDQ was required to have a NMFS-issued CDQ card and to telephone NMFS to provide 6 hours prior notice of landing. Registered buyers were required to report CDQ landings to NMFS using the electronic reporting system and transaction terminals.

In the proposed rule to implement Amendment 39 to the FMP, NMFS proposed to consolidate all of the CDQ fisheries under one set of monitoring and catch accounting regulations to implement the Council's and NMFS's intent that all catch in the groundfish and halibut CDQ fisheries be accounted for by CDQ allocations (62 FR 43865, August 15, 1997). Although NMFS

proposed different observer coverage, equipment, and reporting requirements for different size and gear type vessels, no distinction was made between the requirements for vessels of the same size fishing in the halibut CDQ fisheries versus fishing in the groundfish CDQ fisheries.

Public comment on the proposed rule stated that the proposed regulations combining vessels and processors participating in the groundfish and halibut CDQ fisheries under one set of regulations were burdensome for participants in the halibut CDQ fishery, did not consider the differences between the groundfish fisheries and the halibut fisheries, and had information collection requirements not worth the additional effort and cost to the CDQ participants or NMFS. Specifically, requirements for CDQ observers in shoreside processors taking deliveries of halibut CDQ, retention and delivery of all groundfish CDQ species by small vessels, CDQ check-in/check-out reports for all vessels, and weekly summaries of the catch by all vessels were not considered necessary for the halibut CDQ fisheries.

Due to the large number of persuasive public comments that halibut CDQ fisheries are inherently different from other CDQ fisheries, NMFS did not implement many of the MS CDQ requirements for the halibut CDQ fisheries in the final rule. NMFS agreed that differences exist between the small vessel halibut CDQ fisheries and the other groundfish CDQ fisheries, including fixed gear sablefish. In 1997, 1,884,000 lb (854 mt) of halibut CDQ was allocated to six CDQ groups. At least 75 percent of the 1997 catch was landed by small boats and skiffs under 32 ft (9.73 m) length overall (LOA) at about 10 small shoreside processors or at buying stations in Western Alaska villages. These processors did not submit other landing reports to NMFS and were not required to have observer coverage. In contrast, NMFS expects that most of the groundfish CDQ will be harvested by catcher/processors or large catcher vessels delivering to groundfish shoreside processing plants located in relatively large ports.

Based on the public comment on the proposed rule, and on recommendations made by the Council at its October 1998 meeting, NMFS is proposing the following revisions for management of halibut CDQ in 1999 and thereafter:

A. Remove the definition of "fixed gear sablefish and halibut CDQ fishing."

B. Add a new definition for "halibut CDQ fishing" to mean fishing that results in the landing of halibut CDQ in a delivery by a catcher vessel or a set by

a catcher/processor in which the following conditions are met:

(1) Retained halibut CDQ represents the largest proportion of the catch by weight, and

(2) The weight of other retained groundfish does not exceed the maximum retainable bycatch amounts for each groundfish species or species group.

C. Remove the requirement at § 679.30(a)(5) to list in the Community Development Plan (CDP), halibut CDQ cardholders, vessels less than 60 ft (18.3 m) LOA that land groundfish harvested while halibut CDQ fishing, and processors or registered buyers who purchase halibut CDQ or groundfish harvested while halibut CDQ fishing from vessels less than 60 ft (18.3 m) LOA. Listing these entities in the CDP is not necessary because this information is available from the Restricted Access Management Division.

D. Revise the prohibition at § 679.7(d)(1) to clarify that catcher vessels less than 60 ft (18.3 m) LOA are not prohibited from discarding groundfish while halibut CDQ fishing, unless they are required to retain these fish under improved retention/utilization requirements. NMFS notes that § 679.7(f)(8), prohibits discarding Pacific cod and rockfish while IFQ halibut or IFQ sablefish are onboard, but does not prohibit this discard when CDQ halibut or CDQ sablefish are onboard.

E. Maintain a separate paragraph (f) in § 679.32 for halibut CDQ fishing that would:

(1) Require that the IFQ regulations would continue to govern the permitting, harvesting and landing of halibut CDQ.

(2) Require vessels harvesting halibut CDQ while groundfish CDQ fishing, as defined at § 679.2, to comply with all requirements for the MS groundfish CDQ fisheries with respect to their catch of groundfish CDQ.

(3) Require the shoreside processor to report on the CDQ delivery report and the CDQ group to report on the CDQ catch report, all groundfish CDQ harvested by vessels equal to or greater than 60 ft (18.3 m) LOA while halibut CDQ fishing. This groundfish CDQ would be subtracted from the CDQ groups' CDQ amounts for these species.

Shoreside processors would be required to report all groundfish, landed by vessels halibut CDQ fishing, to NMFS on logbooks and weekly production reports. They also would be required to report these landings to the State of Alaska on fish tickets. However, groundfish retained by catcher vessels less than 60 ft (18.3 m) LOA that are

halibut CDQ fishing would not accrue against the CDQ groups' groundfish CDQs. Accounting for this incidental groundfish catch under the MS groundfish CDQs would require that shoreside processors or registered buyers taking deliveries of incidentally caught groundfish with a halibut CDQ delivery, fill out the IFQ/CDQ landings report (for the halibut CDQ) and a CDQ delivery report (for the groundfish CDQ). NMFS believes that the cost of requiring the submission of CDQ delivery reports from deliveries by catcher vessels less than 60 ft (18.3 m) LOA, to both the industry and NMFS, would exceed the benefits that would be gained by tracking what is expected to be small amounts of retained groundfish. In addition, allowing this incidental catch of groundfish to accrue against the non-CDQ total allowable catch (TAC) specifications is not expected to reduce the non-CDQ directed fisheries for the bycatch species.

F. Shoreside processors taking deliveries from catcher vessels less than 60 ft (18.3 m) LOA that met the definition of halibut CDQ fishing would not be required to have a CDQ observer to monitor those halibut CDQ deliveries. However, these shoreside processors would be required to comply with the general groundfish observer coverage requirements in § 679.50 that apply to all shoreside processors with a Federal processor permit.

This action proposes catch accounting regulations for operators of vessels less than 60 ft (18.3 m) LOA and halibut CDQ fishing, that are distinct from the catch accounting regulations for the same vessels if they are groundfish CDQ fishing. Specifically, if these vessel operators are halibut CDQ fishing they would not be required to retain all groundfish and deliver it to a shoreside processor, and their groundfish bycatch would not accrue against the groundfish CDQs. Shoreside processors taking deliveries from these vessels would not be required to have CDQ observers to monitor CDQ deliveries.

Under this proposed rule, the same catch accounting requirements would apply to operators of catcher vessels equal to or greater than 60 ft (18.3 m) LOA and catcher/processors while halibut CDQ fishing as would apply to the operators of the same vessels while groundfish CDQ fishing. This would include the accrual of all groundfish CDQ catch against the CDQ group's groundfish CDQ allocations, and the requirement to carry CDQ observers (one for catcher vessels and two for catcher/processors) in order to monitor and verify their catch of groundfish

CDQ species that accrue to the MS groundfish CDQs. In addition, catcher vessels equal to or greater than 60 ft (18.3 m) LOA would be required to notify NMFS in the CDP whether they were going to (1) retain and deliver all groundfish CDQ species to a shoreside processor (Option 1 under § 679.32(c)(2)(ii)(A)), or (2) discard some groundfish CDQ species at sea (Option 2 under § 679.32(c)(2)(ii)(B)), in which case the owner or operator of the catcher vessel must provide an observer sampling station that complies with the requirements of § 679.28(d). Finally, shoreside processors would be required to have deliveries by catcher vessels equal to or greater than 60 ft (18.3 m) LOA monitored by a CDQ observer at the shoreside processor.

The proposed rule would revise § 679.32(a) and (c) to require vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing to comply with requirements necessary to account for their bycatch of groundfish CDQ.

Management of the Sablefish CDQ Fisheries in 1999 and Thereafter

No significant changes are proposed to the regulations for management of the catch of sablefish CDQ using fixed gear. However, NMFS is proposing to remove regulations that expired on December 31, 1998, and to add a prohibition against discarding sablefish caught with fixed gear (discussed below under Proposed Technical and Editorial Revisions).

The following description of the management of the sablefish CDQ fisheries in 1999 and thereafter is presented for clarification for CDQ groups, vessel operators, and processors who will be making a transition from the fixed gear halibut and sablefish CDQ fisheries managed under the IFQ regulations in 1998.

Under the final rule implementing Amendment 39 to the FMP (63 FR 30381, June 4, 1998), all operators of vessels harvesting sablefish CDQ and all processors taking deliveries of sablefish CDQ after December 31, 1998, are required to comply with the MS groundfish CDQ requirements in § 679.32. Sablefish CDQ will no longer be reported under the IFQ program requirements. CDQ groups will no longer be required to obtain sablefish CDQ permits, and individuals will no longer be required to obtain sablefish CDQ cards to harvest sablefish CDQ or to deliver sablefish CDQ to registered buyers. No prior notice of landings, or landings report will be submitted to NMFS. There will no longer be a requirement to report sablefish CDQ on

Shipment Reports. Vessels harvesting sablefish CDQ will be required to carry CDQ observers if they are catcher/processors or catcher vessels equal to or greater than 60 ft (18.3 m) LOA. Shoreside processors will be required to have deliveries from vessels groundfish CDQ fishing observed by a CDQ observer. All groundfish CDQ catch, including sablefish CDQ, must be reported on the CDQ delivery report and CDQ catch report and will accrue against a CDQ group's allocation. Estimates based on observer data will be used to determine the catch of all CDQ and prohibited species quota (PSQ) species (including sablefish CDQ) on all catcher/processors and on any catcher vessel using non-trawl gear and electing to discard groundfish CDQ species at sea (see § 679.32(d)(2)(iv)(B), Option 2).

Two sablefish CDQ reserves currently exist. The "fixed gear sablefish CDQ reserve", established in 1995 under Amendment 15 to the FMP, consists of 20 percent of the fixed gear allocation of the sablefish TAC (see § 679.20(b)(1)(iii)(B)) and may be harvested only with fixed gear. With implementation of the MS groundfish CDQ reserves in 1998, 7.5 percent of the trawl allocation of the sablefish TAC also was allocated to the CDQ program as the "sablefish CDQ reserve"; however, no gear restriction was implemented for this CDQ reserve. Therefore, while only fixed gear may be used to harvest the fixed gear sablefish CDQ reserve, any legal gear may be used to harvest the sablefish CDQ reserve.

Current regulations at § 679.23(e)(3) specify that fishing for halibut and sablefish CDQ with fixed gear may occur only during the IFQ fishing season, which in 1998, was between March 15 and November 15. This requirement was implemented under the fixed gear halibut and sablefish IFQ and CDQ programs, and no changes to these seasons were implemented under the MS groundfish CDQ program or are proposed to be implemented in this proposed rule.

Between January 1 and the start of the IFQ fishing season, and between the end of the IFQ fishing season and December 31, sablefish CDQ may be retained, but the retained catch weight of sablefish CDQ must not exceed the maximum retainable bycatch amounts specified under § 679.20(d)(1)(iii). In addition, under current regulations governing the annual establishment of groundfish specifications, no sablefish is allocated to the fixed gear sablefish CDQ reserve until the BSAI specifications are final. Therefore, under current regulations, any sablefish harvested with fixed gear prior to the date the BSAI groundfish

specifications become final will accrue against the sablefish CDQ reserve (non-gear specific reserve). After the BSAI specifications become final, any catch of sablefish with fixed gear first accrues against the CDQ group's fixed gear sablefish reserve. Once the fixed gear sablefish CDQ reserve has been harvested, any catch of sablefish CDQ with fixed gear will accrue against the non-gear specific sablefish CDQ reserve. Catch of sablefish CDQ with trawl gear will accrue only to the non-gear specific sablefish CDQ reserve.

Fishing IFQ and CDQ Together

NMFS proposes to revise § 679.7(d)(15) to remove the prohibition against catching IFQ and CDQ species together in the same set. NMFS has revised observer data collection forms and procedures to allow the harvest of IFQ and CDQ together in the same set. Therefore, this prohibition is no longer necessary. This proposed rule would require that IFQ species and halibut CDQ be reported to NMFS under the IFQ regulations, as discussed in a previous section.

Other Proposed Technical and Editorial Revisions

In addition to the regulatory amendments discussed in the preceding text, the proposed rule would also:

A. Correct a cross reference error in the definition of "Prohibited species quota PSQ".

B. Remove the reference in § 679.7(d)(4) to "halibut CDQ" so that vessels less than 60 ft (18.3 m) LOA harvesting only halibut CDQ are not required to be listed in the CDP.

C. Clarify that the prohibition at § 679.7(d)(11) against discarding groundfish CDQ species applies only to vessels groundfish CDQ fishing and not to vessels halibut CDQ fishing.

D. Consolidate the prohibitions at § 679.7(d)(19) and (d)(20) addressing requirements for catcher/processors using trawl gear and motherships to weigh total catch and to conduct daily tests of the scale used to weigh catch at sea.

E. Remove the prohibition at § 679.7(d)(22), which addresses the use of certified bins in the pollock CDQ fisheries. This prohibition is not necessary in 1999 and thereafter because all catcher/processors and motherships harvesting pollock CDQ will be required to weigh all CDQ catch on a scale. Volumetric estimates made by observers using certified bins will no longer be allowed.

F. Remove the prohibition in paragraph § 679.7(d)(26), which

addresses legal gear for halibut, because this prohibition is redundant. Regulations issued by the International Pacific Halibut Commission define legal gear for halibut fishing.

G. Add a prohibition at newly redesignated § 679.7(d)(24) against discarding sablefish CDQ harvested with fixed gear. This prohibition is required under the FMP for both IFQ and CDQ sablefish, but had not been previously included in the CDQ prohibitions.

H. Revise § 679.7(f), the prohibitions for the IFQ fisheries, to clarify which of these prohibitions also apply to halibut CDQ. NMFS is proposing to require that the prohibitions in paragraphs (f)(3), (f)(5), (f)(6), and (f)(10) apply to halibut CDQ as well as to halibut and sablefish IFQ. This proposed rule would revise paragraph (f)(3) to clarify that sablefish CDQ may be retained without an IFQ or CDQ permit or card by vessels fishing for a CDQ group with available sablefish CDQ.

I. Correct a cross reference error in § 679.21(e)(2)(ii).

J. Correct a paragraph numbering error in § 679.23(e)(3). The final rule published on June 4, 1998 (63 FR 30381), added paragraph (e)(3)(iv); however, there is no paragraph (e)(3)(iii), so the paragraph (e)(3)(iv) would be redesignated as paragraph (e)(3)(iii). In addition, a portion of the last sentence of this paragraph that addressed the season starting date for the 1998 MS groundfish fisheries would be removed.

K. Correct an error in § 679.30(a)(5)(i)(A)(2)(ii) by removing pots as a gear that is included under "hook-and-line" gear.

L. Remove § 679.31(d)(3) that referenced the 1998 crab CDQ reserve allocation that states "(3) For calendar year 1998 (applicable through December 31, 1998), 3.5 percent".

M. Remove § 679.31(f) that provided the authority to reallocate CDQ and PSQ in 1998. This paragraph expired on December 31, 1998.

N. In § 679.32, remove paragraphs (a)(2) and (a)(3) which expired on December 31, 1998.

Classification

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). OMB approved the proposed collection of information about halibut CDQ (50 CFR 679.32(e)) under OMB control number 0648-0272 (the halibut and sablefish IFQ program).

OMB has approved the collection of information associated with the Community Development Plans (50 CFR

§ 679.30) under OMB control numbers 0648-0269. This proposed rule would reduce some of the approved requirements for vessels less than 60 ft LOA while halibut CDQ fishing and for shoreside processors taking deliveries from these vessels.

Additions to the collection of information approved under OMB control number 0648-0269 (the CDQ program) that would be made by this rulemaking have been submitted to OMB for review and approval. No new forms are proposed with this rulemaking.

This proposed rule would require vessels equal to or greater than 60 ft (18.3 m) LOA to comply with the reporting requirements for the groundfish CDQ program while they are halibut CDQ fishing. The only new information collection that would apply to the owners or operators of the catcher vessels would be the requirement to provide an observer sampling station if they elected in their CDP to discard groundfish CDQ species at sea.

Shoreside processors taking deliveries of groundfish CDQ from catcher vessels equal to or greater than 60 ft (18.3 m) LOA that had been halibut CDQ fishing would be required to notify the CDQ observer in the plant prior to delivery of CDQ groundfish, to print and retain the scale print-outs, and to report all groundfish CDQ in a CDQ delivery report. The CDQ group would be required to report any groundfish CDQ caught by vessels equal to or greater than 60 ft (18.3 m) LOA on a CDQ catch report.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The estimated time for the owner of a catcher vessel to submit a request for an observer sampling station inspection and to maintain a copy of the observer sampling station inspection report on the vessel is 2 hours; the estimated time for the shoreside processor to print and retain the scale print-out is 15 minutes; the estimated time for the shoreside processor to notify the CDQ observer prior to the delivery of CDQ catch is 2 minutes; the estimated time for a shoreside processor to complete the CDQ delivery report is one hour; and the estimated time for the CDQ group to complete the CDQ catch report is 15 minutes.

The estimated response times include the time needed to review instructions, search existing data sources, gather and

maintain the data needed, and complete and review the collection of information.

Public comment is sought regarding whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

Send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to NMFS and to OIRA, OMB (see ADDRESSES).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see ADDRESSES). The preamble to this proposed rule supplements that IRFA. The analysis made the following conclusions with respect to impacts on small entities.

All of the participants in the halibut CDQ fisheries are small entities, including the approximately 250 fishing vessel owners or operators who harvest halibut CDQ, the approximately 20 registered buyers who purchase halibut CDQ, the six CDQ groups who are allocated halibut CDQ, and the 56 western Alaska communities that are eligible for the CDQ program. All of these small entities incur some economic impact due to an increase in annual compliance costs as a result of recordkeeping and reporting requirements. For example, this proposed rule would require the CDQ groups to incur costs associated with obtaining CDQ permits and submitting the CDQ catch reports. It would also require vessel operators and registered buyers to incur costs associated with CDQ landings reports as well as the requirement that owners or operators of vessel equal to or greater than 60 ft (18.3 m) LOA incur costs associated with the requirement to carry a CDQ observer.

NMFS has determined that a regulation has a significant economic impact for the purposes of the Regulatory Flexibility Act (RFA) if it is likely to result in more than a 5-percent decrease in annual gross revenues; annual compliance costs (e.g., annualized capital, operating, reporting)

that increase total costs of production by more than 5 percent; compliance costs as a percent of sales that are 10 or more percent higher for small entities than compliance costs for large entities; capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or is likely to result in 2 or more percent of the small entities affected being forced to cease business operations.

NMFS believes that the proposed action will not reach these thresholds. However, the agency does not currently have sufficient information about the operating and production costs of the potentially affected small entities.

Therefore, NMFS determines that the preferred alternative may have a significant impact on a substantial number of small entities and has provided the requisite analytical information required for an IRFA.

NMFS considered the alternative of allowing current regulations to expire on December 31, 1998, which would result in no regulations governing the permitting, catching, recordkeeping, reporting, and monitoring of halibut CDQ catch. While this alternative may appear to minimize the economic impact of the proposed rule on small entities, it is not consistent with NMFS's fisheries management objectives and obligations under the Magnuson-Stevens Act and the North Pacific Halibut Act. Furthermore, it would not be supported by the fishing industry, the CDQ groups, the State of Alaska, or the International Pacific Halibut Commission, all of whom have an interest in the collection of catch data to manage the halibut CDQ fisheries.

The proposed rule would satisfy NMFS's fisheries management obligations in a manner consistent with the RFA by removing some requirements and compliance costs for small entities. Specifically, it would remove the requirement that the CDQ groups (1) list vessels less than 60 ft (18.3 m) LOA that conduct halibut CDQ fishing only, and the processors taking deliveries of CDQ only from these vessels in their CDPs, and (2) submit technical amendments to their CDPs to add or remove these vessels and processors. It would also remove the requirement for observers in shoreside processing plants that take deliveries from vessels less than 60 feet (18.3 m) LOA who have been halibut CDQ fishing.

The President has directed Federal agencies to use plain language in their communications with the public.

including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 1, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq., 1801 et seq. and 3631 et seq.

2. In § 679.2, the definition for "Fixed gear sablefish and halibut CDQ fishing (applicable through December 31, 1998)" is removed; the definition for "Prohibited species quota (PSQ)" is revised; and the definition for "Halibut CDQ fishing" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

Halibut CDQ fishing means fishing that results in a delivery by a catcher vessel or a set by a catcher/processor in which the following conditions are met:

- (1) Retained halibut CDQ represents the largest proportion of the retained catch in round weight equivalent, and
(2) The round weight equivalent of other retained groundfish does not exceed the maximum retainable bycatch amounts for these species or species groups as established in § 679.20(e) and (f).

Prohibited species quota (PSQ) means the amount of a prohibited species catch limit established under § 679.21(e)(1) and (e)(2) that is allocated to the groundfish CDQ program under § 679.21(e)(1)(i) and (e)(2)(ii).

3. In § 679.7, paragraphs (d)(4), (d)(11), (d)(15), (d)(19) through (d)(24), and paragraphs (f)(3), (f)(5), (f)(6), and (f)(10) are revised; paragraphs (d)(25) and (d)(26) are removed; paragraphs (d)(27) and (d)(28) are redesignated as (d)(25) and (d)(26) respectively.

§ 679.7 Prohibitions.

(d) ***

(4) Harvest groundfish CDQ on behalf of a CDQ group with a vessel that is not listed as an eligible vessel on an approved CDP for that CDQ group.

(11) For the operator of a catcher vessel using trawl gear or any vessel less than 60 ft (18.3 m) LOA that is groundfish CDQ fishing as defined at § 679.2, discard any groundfish CDQ species or salmon PSQ before it is delivered to an eligible processor listed on an approved CDP.

(15) For the operator of a catcher/processor or a catcher vessel required to carry a CDQ observer, combine catch from two or more CDQ groups in the same haul or set.

(19) For the operator of a catcher/processor using trawl gear or a mothership, sort, process, or discard CDQ or PSQ species before the total catch is weighed on a scale that meets the requirements of § 679.28(b), including the daily test requirements described at § 679.28(b)(3).

(20) For the manager of a shoreside processor or the manager or operator of a buying station that is required elsewhere in this part to weigh catch on a scale approved by the State of Alaska under § 679.28(b), fail to weigh catch on a scale that meets the requirements of § 679.28(b).

(21) For a CDQ representative, use methods other than those approved in the CDP to determine the catch of CDQ and PSQ reported to NMFS on the CDQ catch report.

(22) For the operator of a vessel using trawl gear, harvest pollock CDQ in 1998 with trawl gear other than pelagic trawl gear.

(23) For a CDQ group, report catch of sablefish CDQ for accrual against the fixed gear sablefish CDQ reserve if that sablefish CDQ was caught with fishing gear other than fixed gear.

(24) For any person on a vessel using fixed gear that is fishing for a CDQ group with an allocation of fixed gear sablefish CDQ, discard sablefish harvested with fixed gear.

(3)(i) Halibut. Retain halibut caught with fixed gear without a valid IFQ or CDQ permit and without an IFQ or CDQ card in the name of an individual aboard.

(ii) Sablefish. Retain sablefish caught with fixed gear without a valid IFQ permit and without an IFQ card in the name of an individual aboard, except as provided under an approved CDP.

(5) Possess, buy, sell, or transport IFQ or CDQ halibut or IFQ sablefish harvested or landed in violation of any provision of this part.

(6) Make a IFQ halibut, IFQ sablefish, or CDQ halibut landing without an IFQ or CDQ card in the name of the individual making the landing.

(10) Make an IFQ halibut, IFQ sablefish, or CDQ halibut landing other than directly to (or by) a registered buyer.

4. In § 679.21, paragraph (e)(2)(ii) is revised to read as follows.

§ 679.21 Prohibited species bycatch management.

(e) ***
(2) ***

(ii) The amount of 7.5 percent of the non-trawl gear halibut PSC limit set forth in paragraph (e)(2)(i) of this section is allocated to the groundfish CDQ program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

5. In § 679.23, paragraph (e)(4)(iii) is removed; and paragraph (e)(4)(iv) is revised to read as follows:

§ 679.23 Seasons.

(e) *****
(4) ***

(iii) Groundfish CDQ. Fishing for groundfish CDQ species, other than fixed gear sablefish CDQ under subpart C of this part, is authorized from 0001 hours, A.L.T., January 1, through the end of each fishing year, except as provided in paragraph (c) of this section.

6. In § 679.30, paragraph (a)(5)(i)(C) is removed, paragraphs (a)(5) introductory text, paragraphs (a)(5)(i)(A)(1), (a)(5)(i)(A)(2)(ii), (a)(5)(i)(B) are revised to read as follows:

§ 679.30 General CDQ regulations.

(a) ***

(5) Fishing plan for groundfish and halibut CDQ fisheries. The following information must be provided for all vessels that will be groundfish CDQ fishing, all vessels equal to or greater than 60 ft (18.3 m) LOA that will be halibut CDQ fishing, and for all shoreside processors that will take delivery of any groundfish CDQ species from vessels that will be groundfish CDQ fishing or vessels equal to or greater than 60 ft (18.3 m) LOA that will be halibut CDQ fishing.

(i) List of eligible vessels and processors—(A) Vessels—(1)

Information required for all vessels. A list of the name, Federal fisheries permit number (if applicable), ADF&G vessel number, LOA, gear type, and vessel type (catcher vessel, catcher/processor, or mothership). For each vessel, report only the gear types and vessel types that will be used while CDQ fishing. Any CDQ vessel that is exempt from the moratorium under § 679.4(c)(3)(v) must be identified as such.

(2) ***

(ii) Average and maximum number of hauls or sets that will be retrieved on any given fishing day while groundfish CDQ fishing.

(B) **Shoreside processors.** A list of the name, Federal processor permit number, and location of each shoreside processor that is required to have a Federal processor permit under § 679.4(f) and will take deliveries of, or process, groundfish CDQ catch from any vessel groundfish CDQ fishing or from vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing.

7. In § 679.31, paragraphs (d)(1) and (d)(2) are revised; paragraphs (d)(3) and (f) are removed, and paragraph (g) is redesignated as paragraph (f) as follows:

§ 679.31 CDQ reserves.

(d) ***

(1) For calendar year 2000, and thereafter, 7.5 percent; and

(2) For calendar year 1999 (applicable through December 31, 1999), 5 percent.

8. In § 679.32, paragraphs (a), (c) introductory text, (c)(3)(i), (c)(3)(v), and (f) are revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) **Applicability.** The CDQ group, the operator or manager of a buying station, the operator of a vessel groundfish CDQ fishing as defined at § 679.2, the operator of a vessels equal to or greater than 60 ft (18.3 m) LOA halibut CDQ fishing as defined at § 679.2, and the manager of a shoreside processor taking deliveries of groundfish CDQ from these vessels must comply with the requirements of paragraphs (b) through (d) of this section for all groundfish CDQ and PSQ. The CDQ group, the operator of a vessel harvesting halibut CDQ, the shoreside processor, and the registered buyer must comply with the requirements of paragraph (f). In addition, the CDQ group is responsible for ensuring that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all

requirements of this section while harvesting or processing CDQ species.

* * * * *

(c) **Requirements for vessels and processors.** In addition to complying with the minimum observer coverage requirements at § 679.50(c)(4), vessel operators and shoreside processors meeting the requirements of paragraph (a) of this section must comply with the following requirements:

* * * * *

(3) ***

(i) **Prior notice to observer of offloading schedule.** Notify the CDQ observer of the offloading schedule of each CDQ delivery at least 1 hour prior to offloading to provide the CDQ observer an opportunity to monitor the sorting and weighing of the entire delivery.

* * * * *

(v) **CDQ delivery report.** Submit a CDQ delivery report described at § 679.5(n)(1) for each delivery of groundfish CDQ.

* * * * *

(f) **Halibut CDQ—(1) Applicability.** The CDQ group, the operator of a vessel harvesting halibut CDQ, the shoreside processor, and the registered buyer must comply with the requirements of this paragraph for halibut CDQ.

(2) **Accounting for halibut CDQ catch.** The CDQ group, vessel owner, registered buyer, and shoreside processor must comply with the following requirements for the catch of halibut CDQ.

(i) **Permits.** The CDQ group must obtain a halibut CDQ permit issued by the Regional Administrator. The vessel operator must have a copy of the halibut CDQ permit on any fishing vessel operated by, or for, a CDQ group that will have halibut CDQ onboard and must make the permit available for inspection by an authorized officer. The halibut CDQ permit is non-transferable and is issued annually until revoked, suspended, or modified.

(ii) **CDQ cards.** A person must have a valid halibut CDQ card issued by the Regional Administrator before landing any halibut CDQ. Each halibut CDQ card will identify a CDQ permit number and the person authorized by the CDQ group to land halibut for debit against the CDQ group's halibut CDQ.

(iii) **Alteration.** No person may alter, erase, mutilate, or forge a halibut CDQ permit, landing card, registered buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(iv) **Landings.** A person may land halibut CDQ only if he or she has a valid halibut CDQ card, and that person may deliver halibut CDQ only to a person with a valid registered buyer permit. The person holding the halibut CDQ card and the registered buyer must comply with the requirements of § 679.5(l)(1) and (l)(2).

(v) The CDQ group, vessel owner or operator, and registered buyer must comply with all of the IFQ prohibitions at § 679.7(f).

(3) **Accounting for catch of groundfish CDQ while halibut CDQ fishing.** The shoreside processor must report on a CDQ delivery report described at § 679.5(n)(1), all groundfish CDQ landed from vessels equal to or greater than 60 ft (18.3 m) LOA while halibut CDQ fishing. The CDQ group must report on a CDQ catch report described at § 679.5(n)(2), all groundfish CDQ landed from vessels equal to or greater than 60 ft (18.3 m) LOA while halibut CDQ fishing. This groundfish CDQ will accrue to the CDQ group's groundfish CDQ allocations. The shoreside processor is not required to report on the CDQ delivery report and the CDQ group is not required to report on the CDQ catch report, groundfish caught by vessels less than 60 ft (18.3 m) LOA while halibut CDQ fishing, and this catch will not accrue against the CDQ group's groundfish CDQ allocations.

(4) **Groundfish CDQ retention requirements.** Operators of vessels less than 60 ft (18.3 m) LOA are not required to retain and deliver groundfish CDQ species while halibut CDQ fishing. Operators of vessels equal to or greater than 60 ft (18.3 m) LOA are required to comply with all groundfish CDQ and PSQ catch accounting requirements in paragraphs (b) through (d) of this section, including the retention of all groundfish CDQ, if option 1 under § 679.32(c)(2)(ii) is selected in the CDP.

(5) **Observer coverage requirements.** The owner or operator of a vessel equal to or greater than 60 ft (18.3 m) LOA halibut CDQ fishing as defined at § 679.2 or shoreside processors taking deliveries from vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing must comply with observer coverage requirements at § 679.50(c)(4) and (d)(4).

9. In § 679.50, paragraphs (c)(4) and (d)(4) are revised to read as follows

§ 679.50 Groundfish Observer Program applicable through December 31, 2000.

* * * * *

(c) ***

(4) **Groundfish and halibut CDQ fisheries.** The owner or operator of a vessel groundfish CDQ fishing or

halibut CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period and the CDQ observer is

required to sample no more than 9 hours in each 24-hour period.

* * * * *

(d) * * *
(4) *Groundfish and halibut CDQ fisheries.* Each shoreside processor required to have a Federal processor permit under § 679.4(f) and taking deliveries of CDQ or PSQ from all vessels groundfish CDQ fishing as defined at § 679.2 or taking deliveries from vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing must have at least one lead CDQ

observer as described at paragraph (h)(1)(i)(E) of this section present at all times while CDQ is being received or processed. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period, and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

* * * * *

[FR Doc. 99-2796 Filed 2-5-99; 8:45 am]
BILLING CODE 3510-22-F

**CDQ Implementation Committee
Minutes
April 9, 1999 Meeting**

The CDQ Implementation Committee met on April 9, 1999 in Juneau, Alaska with CAPT Vince O'Shea (chairman), Sally Bibb, Larry Cotter, Glenn Haight, John McNair, John Henderschedt, and Paul Peyton in attendance. Agency staff in attendance were Jane DiCosimo, Obren Davis, Bryce Edgmon, Alan Kinsolving, Ken Kruse. Members of the public attending were Norman Cohen, Chris Mierzejek, Eric Olson, Dick Tremaine, John Zuck. The meeting convened at 1 p.m.

I. Sally Bibb (NMFS) reported on the status of the proposed rule to reduce observer coverage on longline catcher vessels ≥ 60 ft and the analysis provided to the Council for initial review in April. The committee endorsed the NMFS preferred alternative (Alternative 3, "30% observer coverage"), except for the Alaska State representatives who expressed concerns over loosening observer requirements.

II. Sally Bibb reported on the analysis to reduce observer coverage at shoreplants. The committee discussed the analysis in detail and CDQ representatives will provide additional material to be addressed by the analysis. Some of the CDQ group representatives on the committee did not endorse Alternative 2 because they felt it reduced observer coverage requirements beyond what was necessary to address the specific problem of the cost of observer coverage at Atka Pride Seafoods or a similar small, remote processing plant. However, they did not endorse any of the options currently listed under Alternative 3 which would require CDQ observer coverage in the plant based on characteristics of the vessel or CDQ delivery. The CDQ group representatives agreed to discuss the alternatives after the committee meeting and to either reach a consensus recommendation on an option under Alternative 3 or suggest additional alternatives for NMFS to analyze.

III. Sally Bibb reported on the analysis to conform the MS-CDQ program with the American Fisheries Act. Three rulemakings are scheduled for implementation in 1999: (1) emergency rulemaking to extend the definition of directed fishing for pollock and exempt squid from the CDQ program through the remainder of 1999, and proposed and final rulemaking to make these changes permanent. The committee recommended that the Council add two alternatives to the analysis prior to public release of the document: (1) use the current maximum retainable bycatch standard approach for defining directed fishing for pollock, and (2) for catcher/processors, apply the 40% threshold over a weekly reporting period rather than the haul.

IV. Jane DiCosimo raised two additional issues under other business: (1) eligible communities; and (2) proposed regulatory changes to the State-managed CDQ program. The committee briefly discussed the State regulatory package but did not make a specific recommendation. The committee endorsed the state position to add the additional eight communities to the MS-CDQ program. Larry Cotter raised the list of priorities and emphasized the need to implement the changes proposed in items #9-11 for 2000. Sally described the status of the ongoing and future actions as requested by the Council at its last meeting. The committee discussed the difficulty in meeting that timeline as a result of the statutory requirement to have other regulatory and plan amendment changes in place in 2000, and continued to encourage NMFS to have these changes implemented in a timely fashion.

V. The committee adjourned at 4:15 p.m.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
 P.O. Box 21668
 Juneau, Alaska 99802-1668

C-9

April 16, 1999

RECEIVED

APR 16 1999

N.P.F.M.C

Richard B. Lauber, Chairman
 North Pacific Fishery Management Council
 605 West 4th Avenue, Suite 306
 Anchorage, Alaska 99501-2252

Dear Mr. Lauber:

We are providing additional recommendations on actions taken at the February 1999, North Pacific Fishery Management Council (Council) meeting regarding observer coverage requirements for catcher vessels using longline gear and shoreside processors participating in the Community Development Quota (CDQ) fisheries. Draft Environmental Assessment/Regulatory Impact Reviews (EA/RIRs) for these two issues were mailed to the Council for review in early April and are in your April, 1999, Council meeting notebooks under agenda items C-9(b) and C-9(c).

Catcher Vessels using Longline Gear (Agenda C-9(b))

At its February 1999, meeting the Council took final action on this issue and recommended that NMFS prepare proposed rulemaking that would reduce observer coverage requirements to 30% for catcher vessels using longline gear in the groundfish and halibut CDQ fisheries that met the following conditions: (1) The vessel was between 60 ft length overall (LOA) and 80 ft LOA; (2) the vessel had participated in the fixed gear halibut and sablefish CDQ fisheries before December 31, 1998; and (3) the vessel operator or crew had sufficient amounts of halibut IFQ or CDQ so that any legal sized halibut caught while CDQ fishing could be retained rather than discarded as prohibited species. A complete analysis providing information about the impacts of this alternative or discussion of other alternatives was not available at the time the Council took final action.

While completing the analysis to accompany the proposed rule, NMFS identified ten catcher vessels equal to or greater than (≥) 60 ft LOA using longline gear that had landed CDQ prior to December 31, 1998 (see enclosed revised Table 3 from the draft EA/RIR). However, only six of these vessels were between 60 ft LOA and 80 ft LOA. Due to this conflict in the criteria and because NMFS was attempting to implement the reduced observer



coverage requirements for the 1999 fishing year, we included a third alternative in the analysis and identified it as the preferred alternative. Alternative 3 would increase the length category from the Council's recommendation of 80 ft LOA to 125 ft LOA and remove the requirement for CDQ landings prior to December 31, 1998, to qualify for the reduction in observer coverage requirements. In addition to the potential conflict between two elements of the Council's recommendation, NMFS also believed that the provision to reduce observer coverage requirements only for vessels that made landings prior to December 31, 1998, would require more lengthy analysis to (1) justify different catch monitoring requirements for vessels with the same characteristics fishing in the same CDQ fisheries based solely on whether they had harvested CDQ catch before a certain date, and (2) address the economic advantages afforded vessels that qualify for the reduced observer coverage requirements in comparison with vessels that participate in future CDQ fisheries.

However, upon further discussion of the draft EA/RIR and the consequences of Alternative 3, NMFS withdraws endorsement of this alternative as the preferred alternative and requests further Council discussion on the information provided in the analysis. Notwithstanding the recommendation of the Council at the February, 1999, meeting, NMFS's preferred alternative is Alternative 4 which would require one lead CDQ observer for all catcher vessels \geq 60 ft LOA at all times while groundfish and halibut CDQ fishing. Under Alternative 4, NMFS recommends revising current regulations to remove the requirement that all CDQ sets be sampled so that no more than one observer would be required on these catcher vessels.

NMFS recommends 100% observer coverage for these catcher vessels in order to verify that the objectives of the MS CDQ Program are being met. The Council and NMFS designed the MS CDQ Program to allocate quotas for all groundfish and prohibited species to the CDQ groups and to hold vessels and processors participating in the CDQ fisheries accountable for the catch of all CDQ and PSQ species, including many species that currently are discarded at sea. Without an observer on the vessel, NMFS cannot verify that the catch of all CDQ and PSQ species are accurately reported. Unobserved fishing trips provide the opportunity to discard CDQ and PSQ species without reporting them, thereby undermining the CDQ Program accounting objectives developed by the Council and NMFS.

Shoreside Processors (Agenda C-9(c))

At its February, 1999, meeting, the Council requested that NMFS prepare proposed rulemaking that would base CDQ observer coverage in the shoreside processing plants on the amount of groundfish processed each month. However, because no analysis of alternatives addressing this issue was available at the February meeting, NMFS is requesting that the Council review the draft EA/RIR mailed out to you in early April (agenda C-9(c)) and identify a preferred alternative based on this analysis or suggest additional alternatives for analysis.

The problem identified by the Council focused on the effect on Atka Pride Seafoods of requiring an observer for deliveries from all catcher vessels groundfish CDQ fishing and from catcher vessels > 60 ft LOA halibut CDQ fishing. NMFS cannot develop a regulation that exempts a specific shore plant from observer coverage requirements. Rather, we must develop criteria that would apply equally to all processors that met the criteria. NMFS examined the alternative recommended by the Council and several other options relating observer coverage requirements in the shore plant to characteristics of the vessel or the delivery. In many cases, the criteria in the alternatives would eliminate the observer coverage requirements for Atka Pride Seafoods, but also would reduce observer coverage requirements for CDQ deliveries at other shoreside processing plants. The CDQ Implementation Committee was unable to select a preferred alternative from those in the current EA/RIR.

Even if the Council were to take final action at this meeting, NMFS could not implement a final rule to reduce CDQ observer coverage requirements for the shoreside plants until late in 1999, at the earliest. Therefore, any reduction in observer coverage requirements probably would not effect CDQ fishing until 2000. If the Council identifies additional alternatives at the April, 1999, meeting, NMFS would add these alternatives to the analysis, send it out for public review, and the Council could take final action in June.

Sincerely,



Steven Pennoyer
Administrator, Alaska Region



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 National Marine Fisheries Service
 P.O. Box 21668
 Juneau, Alaska 99802-1668

C-9a

April 16, 1999

Jude Henzler
 Bering Sea Fishermen's Association
 725 Christensen Drive
 Anchorage, Alaska 99501

Dear Mr. Henzler:

This letter responds to your letter of March 10, 1999, in which you state that an error has been made in interpreting and defining the northern boundary of the Bering Sea coast for purposes of determining which communities are eligible for the Western Alaska Community Development Quota (CDQ) Program. Specifically, you believe that the boundary for community eligibility should be extended north to Point Hope because this is the northern boundary of the Bering Sea and Aleutian Islands area in the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (crab FMP).

We do not believe that the National Marine Fisheries Service (NMFS) erred in interpreting the State of Alaska's (State) and North Pacific Fishery Management Council's (Council) intent about the northern boundary of the Bering Sea coast for purposes of community eligibility for the CDQ Program. Our reasons for this determination are summarized below.

The CDQ Program was created by the Council and NMFS under Amendment 18 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI groundfish FMP). The specific language in the BSAI groundfish FMP that refers to community eligibility is as follows:

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 the Alaska. ...

The Council adopted the State's recommendations for a more specific definition of a Bering Sea Rim community at its April, 1992 meeting. A copy of the Council minutes from this meeting and the State's recommendations, as amended by the Council, are



enclosed. These recommendations included a list of the communities that the State determined were eligible for the CDQ Program. The most northern communities on this list are Wales on the mainland and Inalik (later listed as Diomedes/Inalik) on Little Diomedes Island. The following criteria was adopted by the Council:

An eligible community is defined as any community which is 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,

...

NMFS implemented the Council's recommendation in a final rule published in the Federal Register on November 23, 1992 (57 FR 54936), with the following requirement (which was implemented as 50 CFR 675.27(d)(2)(i)):

The community must be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering Sea.

In their comment on the proposed rule for this action (enclosed), the State reconfirmed the list of communities that met this criteria, including Wales as the farthest north community on the mainland.

The part of the eligibility criteria that states "from the Bering Strait..." defines the northern boundary of CDQ Program as the transition point between the Bering Strait and the Bering Sea. Because, as you state, no legal definition exists for the point of land associated with the Bering Strait, the State of Alaska selected Wales as the farthest north community on the mainland eligible for the CDQ Program. The Council adopted this recommendation and NMFS implemented it. These actions determined the northern boundary of the CDQ Program.

At the time the State made their recommendation, and the Council adopted it, the definition of the BSAI crab management area existed in the crab FMP. The crab FMP extends the BSAI management area beyond the Bering Strait and into the Chukchi Sea so that Federal crab management areas are consistent with State crab management areas. Neither the State nor the Council used this management area definition as a basis for defining a "Bering Sea Rim community" under the FMP amendment language implementing the CDQ Program, although they could have chosen to do so.

Therefore, NMFS does not consider the decision by the State and the Council about the northern most community eligible for the CDQ Program to be an error, but rather a decision of how to interpret the BSAI groundfish FMP language that they had developed.

Sincerely,



Steven Pennoyer
Administrator, Alaska Region

Enclosures

cc: Lamar Cotten, Ak. Dept. Community and Regional Affairs (DCRA)
Glenn Haight, (DCRA)
Clarence Pautzke, (NPFMC)
CDQ group representatives



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

Agenda C-9(a)
April, 1999

April 19, 1999

Richard Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Mr. ^{Rich}Lauber:

In a letter dated March 8, 1999, the State of Alaska (State) notified the National Marine Fisheries Service that eight additional western Alaska communities are eligible for participation in the Western Alaska Community Development Quota (CDQ) Program. A copy of the letter and background information provided by the State is enclosed, as is a copy of our response to their letter.

We have reviewed the information submitted by the State and agree that the following eight communities meet all of the eligibility criteria for the CDQ Program specified at 50 CFR 679.2.

Ekwok	Levelock	Napakiak	Oscarville
Grayling	Mountain Village	Napaskiak	Portage Creek

Therefore, NMFS has determined that these eight communities are eligible to participate in the CDQ Program. In a future rulemaking, we will update Table 7 to 50 CFR 679, which lists the eligible CDQ communities, to reflect this determination. Rulemaking to update Table 7 is not necessary at this time for these communities to fully participate in the CDQ Program.

Sincerely,

Steven Pennoyer
Administrator, Alaska Region





National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

April 19, 1999

Lamar Cotten
Alaska Department of Community
and Regional Affairs
P.O. Box 112100
Juneau, Alaska 99811-2100

Dear Mr. Cotten:

Thank you for your letter of March 8, 1999 forwarding recommendations that the following eight western Alaska communities be recognized as eligible for the Western Alaska Community Development Quota (CDQ) Program:

Ekwok	Levelock	Napakiak	Oscarville
Grayling	Mountain Village	Napaskiak	Portage Creek

We have reviewed the information you submitted and agree that these communities meet all of the eligibility criteria for the CDQ Program specified at 50 CFR 679.2.

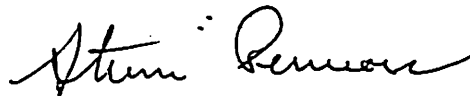
1. Each of the eight communities is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. This determination is based on the evaluation of each communities' location relative to the baseline that was conducted by the Dennis Romesburg, Chief Geographer for the National Oceanic and Atmospheric Administration and documented in his October 7, 1998 letter, which was included in the information you submitted to us.
2. Each of the eight communities is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92-203) to be a native village. This determination is based on information provided to you by the U.S. Department of Interior on July 21, 1998.
3. The residents of each of the eight communities conduct more than half of their current commercial or subsistence fishing effort in the waters of the Bering Sea and Aleutian Islands area (BSAI). This determination is based on the evaluation conducted by the State of Alaska and described in attachments to your letter.



4. None of the eight communities have previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI. This determination is based on information submitted to the State of Alaska by these communities and on the State's general knowledge of these communities.

Therefore, the National Marine Fisheries Service determines that these eight communities are eligible to participate in the CDQ Program. In a future rulemaking, we will update Table 7 to 50 CFR 679, which lists the eligible CDQ communities, to reflect this determination. Rulemaking to update Table 7 is not necessary at this time for these communities to fully participate in the CDQ Program.

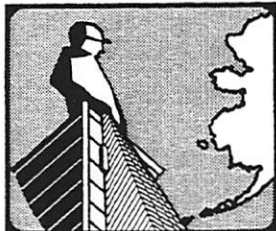
Sincerely,



Steven Pennoyer,
Administrator, Alaska Region

cc: Richard Lauber, NPFMC
Glenn Haight, ADCRA
CDQ group representatives

BSFA



Bering Sea Fishermen's Association

725 Christensen Drive
Anchorage, Alaska 99501
(907) 279-6519
FAX (907) 258-6688

Serving western Alaska small boat fisheries since 1980

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MAR 30 1999
N.P.F.M.C

March 30, 1999

North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Re: NPFMC Meeting 4/21-26/99 item C-9 (a) Status report on eligible [CDQ]
Communities

Gentlewomen & Gentlemen:

Regarding the above-referenced item, if it is timely, and if it is appropriate, you may wish to add the enclosed copy of a letter of 3/10/99 to NMFS and Council Member Steve Pennoyer to your package for the upcoming NPFMC meeting.

Thank you for your attention to this matter, and, if you have any questions, please call.

Sincerely,

A handwritten signature in black ink that reads "Jude Henzler". The signature is written in a cursive, flowing style.

Jude Henzler
Executive Director

BSFA**Bering Sea Fishermen's Association**

725 Christensen Drive
Anchorage, Alaska 99501
(907) 273-6519
FAX (907) 258-1688

Serving western Alaska small boat fisheries since 1931

March 10, 1999

Mr. Steven Pennoyer
Administrator, Alaska Region
National Marine Fisheries Service
P. O. Box 21668
Juneau, Alaska 99802-1668

Re: Inadvertently, overlooked villages qualifying for inclusion in the CDQ Program

Dear Mr. Pennoyer:

Our organization, Bering Sea Fishermen's Association (BSFA), receives congressional funds to support and help CDQ Program-eligible-community residents realize the potential of this excellent program. It is incumbent upon us to use those congressional funds to benefit the residents of the communities qualifying for the CDQ Program—all the qualifying communities.

In 1992, and forward from that time, the state of Alaska and the federal government extended and continue to extend financial and agency assistance and embracement to residents of (originally 56, and now) 57 Alaska villages to help them organize, configure themselves and participate in the CDQ Program. (After the 1992 initiation of the CDQ Program, Akutan conjoined APICDA villages [bringing the total of CDQ communities to 57], and that with the blessings of the state and federal governments.) You probably know now that, at that same time as the initiation of the CDQ Program, and through no fault of their own, the residents of seven, (or, perhaps, even eight) functioning and ANCSA-listed Alaska communities, namely: Levelock; Ekwok; and, perhaps, Portage Creek; Oscarville; Napakiak; Napaskiak; Mountain Village and Grayling, and, which communities rest within the easterly boundary (50 nautical miles) of the CDQ Program limits, were inadvertently and mistakenly omitted from that same financial and agency assistance and embrace from the state of Alaska and the federal government. I am not certain of this, but I believe the mistake that omitted these villagers from CDQ entry assistance may be getting rectified at this time for the residents of the eight above-mentioned communities, and they will soon begin to enjoy the benefits of the CDQ Program (please see the enclosed Anchorage Daily News article of 4/26/1999).

We believe the oversight came about because a state of Alaska agent or agency mistakenly used statute miles instead of nautical miles to interpret the easterly limits of the CDQ Program, and no one within the federal or state government noticed the error until recently.

We want to point out to you now that another mistake occurred at the same time as that above-mentioned mistake involving the cited eight villages. And that error was incorrectly interpreting and ambiguously defining the northerly limit of the CDQ Program which resulted in inadvertently omitting approximately eleven other functioning and ANCSA-listed communities from realizing the benefits of the CDQ Program. These communities are: Shishmaref; Deering; Buckland; Kotzebue; Kivalina; and Point Hope; and, depending on where 50 nautical miles falls, probably, Noatak; Kiana; Noorvik; and Selawik.

Please understand that this letter is not a suggestion to "grandfather" additional villages into the CDQ Program. Grandfathering implies an exemption, but, the way we read it, these villages were all overlooked by mistake; neither do we consider this letter an argument for expanding the CDQ Program. We advocate that the program be limited to and stay within the existing boundaries namely, 50 nautical miles of the base line on the east, and the Bering Strait on the North.

But, to put it mildly, the northern boundary of the CDQ Program, lacks specificity. Let me explain. It is our understanding that the intent of the CDQ Program was to benefit residents within the vicinity of the Bering Sea Fishery Management Plan for Groundfish (properly known as the Fishery Management Plan for the Bering Sea/Aleutian Islands Groundfish [BS/AI/FMP]). As explicated above, it is already clear and well known that a mistake was made interpreting the clearly delineated physical, easterly boundary of the CDQ Program. That the northerly boundary was inconclusively and ambiguously established is a ripening piece of information.

In January 1998 BSFA personnel asserted to members and staff for the International Pacific Halibut Commission (IPHC) (and, of which Commission you are a member) at the annual meeting of the IPHC (in Anchorage that year) that the protocol language defining the jurisdiction of the IPHC clouded said jurisdiction in regard to any area north of the Bering Sea. We do not believe any commissioners or IPHC staff agreed with our assertion. Be that as it may, it did lead to further investigation on our part of the location of the dividing line between the Bering Sea and the Chukchi Sea. It seemed essential to us to identify that line for several reasons including positively identifying which communities are within the CDQ Program.

What we thought we learned relatively early on in 1998 is that there is no legally or politically recognized dividing line between the Bering Sea and the Chukchi Sea. But we could find no authoritative source to substantiate our amateur and standingless opinion.

However, we recently received a copy of the October 7, 1998 letter of Chief Surveyor for the (U. S.) Coast Survey, Denis Romesburg, to you in which he states: "there are no official, defined limits for the Bering sea [sic] or the Bering Strait..." and which completely corroborates our own opinion of the matter (please see the enclosed copy of this letter). As equally important, in that same October 7, 1998 letter, Mr. Romesburg goes on to state, "I would recommend using the shortest distance between Little Diomede Island and Cape Prince of Wales, Alaska as your northern Bering Sea/ Bering Strait limit." This statement of Chief Surveyor, Romesburg, is clear evidence no such line yet exists as of October 7, 1998, six years after the inception of the CDQ Program, or, at least none of which the Chief Surveyor of the U. S. Coast Survey is aware.

When we look at the regulatory language in both the Council-originated regulations for qualifying for the CDQ Program and the later-established congressional language for same contained in the Magnuson/Stevens Act, we see that it states: "[eligibility] is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands...." In any circumstance, a strait is a long, narrowed body of water connecting oceans or seas, etc., *e.g.* the Magellan Strait, Davis Strait, etc. As I have already pointed out, the Bering strait has no beginning point, and, therefore, whoever authored that language erred, has defined nothing, and is, in a sense, 90° awry.

Clearly, eligibility for the CDQ Program for northern communities, hinges on what line, if any, existed on the north in regulation in the BS/AI/FMP at the time the CDQ Program was established by the NPFMC.

Recently we learned of and downloaded federal fishing regulations for the BS/AI. These define the northern limit of the BS/AI/FMP for commercial King and Tanner crab fisheries as the latitude of Point Hope (please see the enclosed copy of our letter to you January 13, 1999 and NMFS response of 1/28/99).

Here is a very important point. In those same downloaded regulations, the BS/AI/FMP defines the northern limit of the BS/AI/FMP for groundfish as the line between Cape Dezhnev on the Chukchi Peninsula and Cape Wales on the Seward Peninsula. Such a boundary would seem to exclude the eleven northern communities I referenced above from the CDQ Program. But the groundfish boundary was established after the creation of the CDQ Program. At the time of the creation of the CDQ Program the only northern boundary in existence for the BS/AI/FMP was the latitude of Point Hope (please see the enclosed chronologically-arranged cover sheets for federal fishing regulations provided to me 1/21/99 by Patsy Beardin of NMFS).

I attended the IPHC annual meeting in Prince Rupert in January 1999, and I took advantage of some of my time to speak about this to some of the NMFS and NOAA personnel who also attended that meeting. I spoke with both Jonathon Pollard and Bill Hines and apprised them of the facts of the complication, and I also spoke with Mr. Phil Smith about it as well. And, (although it is not germane to this discussion of CDQ

eligibility) in a letter to the Commission, we advised it, as a point of information, of the lack of a recognized legal or political boundary between the Chukchi Sea and the Bering Sea.

Upon my return to Anchorage, I attended the February 1999 meeting of the North Pacific Fishery Management Council (NPFMC) (of which you are a council member), and there I spoke of and exhibited the facts of the complication with Sally Bibb, Jay Ginter, and Gretchan Harrington, all NMFS personnel. And Ms. Harrington provided me with the final piece of information which establishes the above-referenced northern communities as being within the CDQ Program, and that is a 1989 date for the existence of the Point Hope latitude as the northern limit

At the conclusion of the NPFMC meeting I called Patsy Beardin of NMFS in Juneau to ask her the inspiration for NMFS delineating the south boundary of the Chukchi Sea (NMFS Reporting and Statistical Area 400) for the BS/AI Groundfish Fish Fishery Management Plan? She said that she did not recall, but she said often NMFS referenced U. S. Coast Guard charts as their source of such delineations. She gave me a Coast Guard phone number, and, ultimately, I ended up speaking with Lt. Commander Karl Moore on 2/16/99. He advised me there was no such Coast Guard chart (or other known charts) with such a line drawn at the narrowest part of the Bering Strait. Lt. Comm. Moore did advise me that personnel in his office had looked at this issue last week, and they did bring to his attention the language of the "Law of the Seas" which recommends that dividing lines between connected, semi-enclosed bodies of water be located at the narrowest place. Such definition would fit the definition of the immediately above-referenced southern boundary of the Chukchi Sea NMFS Reporting and Statistical Area 400 southern boundary ("(Cape Dezhnev, Alaska...[to] ...Cape Prince of Wales, Alaska)"). However, the Law of the Seas has never been accepted and ratified by the U. S. Senate, and may have little bearing on this issue. Furthermore, the referenced NOAA chart "INT 814 Bering Sea (Northern Part)" itself contains no such line between Cape Dezhnev and Cape Prince of Wales, but, rather, lays out the north south boundary between the economic spheres of the U. S. and the U. S. S. R. [sic] (please see the enclosed copy of a portion of that chart).

(And the inclusion of the "Chukchi Sea" as a reporting area within the BS/AI Groundfish Fishery Management Plan may well thereby open eligibility for the CDQ Program to villages in Alaska even farther north than Pt. Hope, but we do not think so. Lawyers and courts may sort it out differently.)

March 3, 1998 I received a phone call from Capt. Robert Pawlowski the navigation agent for NOAA in Alaska. He advised me that he had located a map which laid out the Bering Strait, and he identified that map for me. I enclose a copy of that map and thereference (Bering, Chukchi, and Beaufort Seas, Coastal and Ocean Zones Strategic Assesment: Data Atlas). Probably it is a resource map that is more a "convenient suggestion" than a

map with standing. Nonetheless, please note that in this referenced atlas, the Bering Strait is laid out as approximately an elongated triangle with the northerly coast of St. Lawrence Island as one leg of the triangle and the vicinity of Pt. Hope, Alaska as the approximate apex. As pointed out in earlier paragraphs, this map is further evidence that it is difficult, if not impossible, to divine what the authors of the CDQ eligibility criteria had in mind when stating geographical eligibility requires residence within a line, "from the Bering Strait to the western most of the Aleutian Islands...."

March 8, 1998 we examined the document, Chukchi Sea Oil & Gas Lease Sale 126 Final Environmental Impact Statement Volume I, and the map in Figure III-B-2. It clearly delineates the "Bering Strait Region," and that region in this document clearly extends on the North to Pt. Hope, Alaska (please see the enclosed copy of the referenced document and figure).

As stated above, we at BSFA receive specific federal funds to assist CDQ-eligible residents to realize the benefits of that program. It is incumbent upon us and demanded of us to use those federal funds for the benefit of all CDQ-eligible residents regardless of any instance that may exist of the failure of the State of Alaska to correctly identify all the CDQ-eligible residents.

Please understand that, in the event the federal government advises us at BSFA that none or only some of the eight communities residing within the eastern 50 nautical miles boundary are CDQ-eligible communities and none or only some of the eleven communities residing within the latitude of Pt. Hope south to Cape Prince of Wales are CDQ-eligible communities, we will immediately cease expending any Congressional CDQ-related funding on their behalf. But until that happens, it seems to us that we have no choice, and we would be derelict to do otherwise.

All these communities seem to meet the criteria necessary for inclusion in the CDQ Program, and to the same extent as those 57 communities that the State of Alaska apparatus currently identifies and embraces. It is possible that the State of Alaska may be taking a closer look at some of the criteria, and, in a sense, "raising the bar," for the more recently identified, potentially CDQ-eligible communities. But the history of all this that we are familiar with does not include any effort on the part of the State of Alaska to emphasize any criterion but location.

The subject communities (the "eastern eight" and the northern eleven) all appear to meet the location criterion; whether some or all of them or the already included 57 villages meet the other criteria is a matter that the State of Alaska has not heretofore diligently examined, nor has BSFA.

To date this is where matters stand as we understand them. We hope that we have clarified and not befogged this vital issue of boundaries and timing of boundaries relating

6.

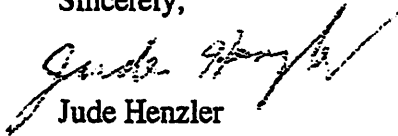
to eligibility for the CDQ Program. Obviously it ought to be fixed for once and for all. Rigor needs to be brought to this issue.

Bob Alverson, who was a NPFMC member at the time of the establishment of the CDQ Program, testified to the Council February 7, 1999, The NPFMC wanted to get villagers into the Bering Sea Fishery when it established the CDQ Program in 1992. With the cooperation of the state of Alaska, the Council established an arbitrary but not capricious line of 50 nautical miles for inclusion of communities into the CDQ Program. We at BSFA have always supported that line since its creation. Had that line originally been at 40 nautical miles or 60 nautical we would have supported either of those equally as well.

We promoted the establishment of the concept of the CDQ Program, and the program has been a good program and a successful program. As many western Alaskans as possible must benefit from this program. It must be as inclusive as possible within the defined geographical limits of the regulations, and not exclusive. Where the regulations establishing qualification for inclusion in the CDQ Program are ambiguous or contradictory, they need to be generously interpreted. By doing so, none will be diminished in any meaningful sense, and more may gain. It is as happy an outcome as we can imagine. Please do all you can to expedite a thorough and defensible conclusion to the issue of the boundary of the CDQ Program.

Thank you for your attention to this matter, and, if you have any questions, please call.

Sincerely,



Jude Henzler
Executive Director

cc: The Congressional Delegation
Honorable Tony Knowles, Governor Alaska
Glen Haight, Alaska Dept. of Comm. & Reg. Aff., Juneau
David Benton, Alaska Dept. Fish & Game, Juneau
Sally Bibb, NMFS, Juneau
BSFA Board Members
Kotzebue IRA Council

encl: Item 1. Anchorage Daily News article of 2/26/1999
2. Romesburg letter of 10/7/98
3. BSFA letter to NMFS of 1/13/99 and NMFS response of 1/28/99
4. Chronologically-arranged federal fishing regulations
5. Portion of NOAA chart 814
6. Portion of map from Bering, Chukchi, (etc.) ...Data Atlas
7. Figure III-B-2 from Oil & Gas Lease Sale 126

FAX TRANSMITTAL

1 of pages > 3

To: Jude Hreber	From: S. Bobb
Dept./Agency	Phone #
Fax # 907-258-6688	Fax #
FORM 1540-11-317-7288	5029-101
GENERAL SERVICES ADMINISTRATION	

UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL OCEAN SERVICE
 Office of Coast Survey
 Silver Spring, Maryland 20910-3282

OCT 7 1998

ITEM
2.

Mr. Steven Pennoyer
 Administrator, Alaska Region
 National Marine Fisheries Service
 P.O. Box 21668
 Juneau, Alaska 99802-1668

Dear Mr. Pennoyer:

I have concluded my determination of which Alaskan communities are eligible to participate in the Western Alaska Community Development Quota (CDQ) Program based on the location criteria provided by you and your staff.

Seventeen of the forty-four community locations provided were found to be eligible. Twenty-seven were not eligible (see enclosure). I am forwarding, under separate cover, the National Ocean Service (NOS) reference charts plus the overlays that portray the appropriate baseline points and 50 nautical mile (nm) limit line that were used to make my determinations. If desired for future determinations less cluttered, stable based reproducible of the charts may be obtained from the NOS Reproduction Division for a fee (estimate \$320 per chart).

I would like to bring three areas of concern to your attention.

1. Initial community location source data.

Several communities are located very near the 50 nm limit line. Their eligibility may be open for debate based on the accuracy and source used to determine the individual community locations. The Nation's official repository of domestic geographic names including positions for all federal maps and charts is the United States Geological Survey's Geographic Names Information System. This database, developed in cooperation with the U.S. Board on Geographic Names has a positional accuracy of ± 5 seconds.

2. Alaska Peninsula - 50 nm limit.

I ceased using the 50 nm limit line as an eligible determinant at the point where the width of the Alaska Peninsula became less than 50 nm (approximate latitude 57°30"). No community on your list was south of this latitude. For future considerations any

Figure 2.



2


Alaska Peninsula or Aleutian Island community south of this latitude would be within 50 nm of the Bering Sea baseline but may be on the Gulf of Alaska coast. Therefore, you will have to adopt some other method (drainage pattern, equal distance limit, etc.) to determine community eligibility for this area.

3. Bering Sea - Bering Strait limits.

International Hydrographic Organization Special Publication 23, "Limits of Oceans and Seas," lists the northern limit of the Bering Sea as 66°33' but also uses a disclaimer stating that "The limits described in this publication have been drawn up solely for hydrographic purposes. It must not be construed as having any legal or political connotation whatsoever." As there are no official, defined limits for the Bering sea or the Bering Strait I would recommend using the shortest distance between Little Diomed Island and Cape Prince of Wales, Alaska, as determined from the largest scale NOS nautical chart (16200) as your northern Bering Sea/Bering Strait limit. The point on Cape Prince of Wales would be approximately latitude 65°38.5'N, longitude 168°07.5W.

If you have any questions after reviewing my determinations on the charts and overlays, contact me at 301-713-2780, extension 142 or Dennis.Romesburg@noaa.gov.

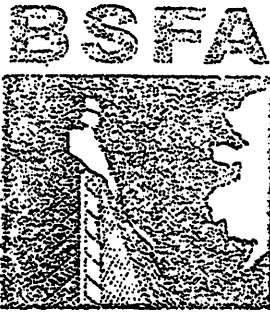
Sincerely,



Dennis J. Romesburg
Chief Geographer
Coast Survey

Enclosure
Separate cover

Not	Eligible	Community	Latitude	Longitude
	X	Eligible	50° 54' N	161° 25' W
	X	Artek	50° 55' N	161° 13' W
	X	Arvik	52° 35' N	160° 12' W
	X	Atanarjuak	60° 51' N	152° 15' W
	X	Bedford	50° 47' N	151° 45' W
	X	Bill Moore's	52° 57' N	153° 48' W
	X	Stouffville	52° 57' N	153° 48' W
	X	Chuloomnik	53° 04' N	154° 24' W
	X	Council	54° 54' N	153° 40' W
	X	Erveck	59° 22' N	157° 30' W
	X	Graveling	62° 57' N	160° 03' W
	X	Hamilton	52° 53' N	163° 53' W
	X	Ingvig	59° 20' N	155° 55' W
	X	Katag	54° 20' N	158° 43' W
	X	Kasiguk	60° 52' N	162° 32' W
	X	King Island	64° 58' N	168° 05' W
	X	Kokhanek	59° 28' N	154° 45' W
	X	Kobganek	59° 48' N	157° 25' W
	X	Koyukuk	54° 53' N	157° 42' W
	X	Kwethluk	60° 49' N	161° 28' W
	X	Lavelock	58° 07' N	156° 51' W
	X	Lower Katakag	51° 30' N	160° 21' W
	X	Marshall	51° 53' N	162° 05' W
	X	Mary's Igloo	55° 09' N	165° 04' W
	X	Mountain Village	52° 05' N	163° 43' W
	X	Napakak	60° 41' N	162° 07' W
	X	Napakak	60° 42' N	161° 54' W
	X	New Stryatuk	59° 29' N	157° 20' W
	X	Newhalen	59° 43' N	154° 54' W
	X	Nondaton	59° 58' N	154° 51' W
	X	Nulato	54° 43' N	158° 08' W
	X	Nunapitchuk	60° 53' N	162° 29' W
	X	Ongemalik	51° 34' N	161° 52' W
	X	Oscarville	60° 43' N	161° 46' W
	X	Painuta	51° 42' N	165° 50' W
	X	Pedro Bay	58° 47' N	154° 08' W
	X	Pilot Station	61° 56' N	162° 52' W
	X	Pitcairns Point	62° 02' N	163° 17' W
	X	Ponage Creek	58° 54' N	157° 43' W
	X	Russian Mission	61° 47' N	161° 19' W
	X	Shageluk	62° 41' N	159° 34' W
	X	Solomon	64° 34' N	164° 28' W
	X	St. Mary's	52° 03' N	163° 10' W
	X	Tulituk	51° 05' N	160° 58' W
	X	Umburniuk	60° 30' N	165° 12' W



Bering Sea Fishermen's Association

725 Christensen Drive
Anchorage, Alaska 99501
(907) 278-6519
FAX (907) 252-6688

Serving western Alaska small boat fisheries since 1990

Mr. Steven Pennoyer
Administrator, Alaska Region
National Marine Fisheries Service
P. O. Box 21668
Juneau, Alaska 99802-1668

January 13, 1999

**ITEM
3.**

Re: Identifying the process and agency that defined the Bering Sea/Aleutian Island Area for crab management as north to "68°21' N. lat" adjacent to Pt. Hope, Alaska

Dear Mr. Pennoyer:

Here at our office when we download "Federal Fishing Regulations Pertaining To The Exclusive Economic Zone Off Alaska" from website <http://www.fakr.noaa.gov/regs/679a.txt>, we learn on page 6 (of 61) in regard to crab management that the:

Bering Sea and Aleutian Islands Area, for purposes of regulations governing the commercial King and Tanner crab fisheries, means those waters of the EEZ off the west coast of Alaska lying south of Point Hope (68°21' N. lat), and extending south of the Aleutian Islands for 200 nm west of Scotch Cap Light (164°44'36" W. long).

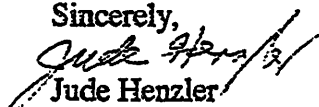
As you know from issues of jurisdiction and the location of the northern boundary of the Bering Sea that we raised at the International Pacific Halibut Commission meeting in Anchorage last January, and in more recent inquiries by others regarding the boundaries of the CDQ Program (see for instance letter of Dennis Romesburg, Chief Geographer Coast Survey to Steve Pennoyer 10/1/98), the north boundary of the Bering Sea has never been agreed.

As ambiguity is the factual status in regard to that northern boundary, we are asking specifically what process and what body, what legal authority and, in fact, if it is available, what individual or individuals established and forwarded the King and Tanner crab fisheries boundaries?

We have no argument with it; we would simply like to find out the mechanics of how this is done, and, of course, we would also like to examine what such an existing definition may imply for other jurisdictional questions.

Thank you for your attention to this matter, and, if you have any questions, please call.

Sincerely,


Jude Henzler
Executive Director



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Alaska Marine Fisheries Service
P.O. Box 21666
Juneau, Alaska 99802-1666

January 28, 1999

Jude Henzler
Bering Sea Fishermen's Association
725 Christensen Drive
Anchorage, Alaska 99501

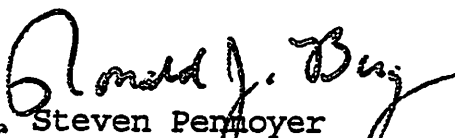
Dear Mr. Henzler:

Thank you for your letter inquiring about the northern boundary of the Bering Sea/Aleutian Islands Area for management of the commercial king and Tanner crab fisheries.

As you stated in your letter, Federal fishing regulations define the Bering Sea/Aleutian Islands Area for purposes of regulating commercial king and Tanner crab fisheries as the area south of Point Hope (68°21' N. lat.) and extending south of the Aleutian Islands for 200 nm west of Scotch Cap Light (164°44'36" W. long.) (50 CFR 679.2). These regulations implement the boundaries established in the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands. They were adopted by the North Pacific Fishery Management Council and approved by the National Marine Fisheries Service (NMFS) to correspond with the State of Alaska's king crab registration area Q (Bering Sea) (5 AAC 34.900). Registration area Q is intended to encompass northern areas where commercial king crab fisheries might occur.

I hope this information sufficiently responds to your query. Please contact Gretchen Harrington of the NMFS Alaska Region at 907-586-7445 if you need additional clarification or information.

Sincerely,


Steven Penmoyer
Administrator, Alaska Region



WITHERELL

ITEM
4.

FISHERY MANAGEMENT PLAN
FOR THE
COMMERCIAL KING AND TANNER CRAB FISHERIES
IN THE
BERING SEA/ALEUTIAN ISLANDS

January 24, 1989

North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

5.0 DESCRIPTION OF FISHERY MANAGEMENT UNIT

This FMP applies to commercial fisheries for red king crab Paralithodes cambratica, blue king crab P. platypus, brown (or golden) king crab Lithodes aquianina, scarlet (or deep sea) king crab Lithodes setacea, and Chionoecetes bairdi (or snow) Tanner crab, C. opilio (or snow or green) Tanner crab, grooved Tanner crab, C. tanneri, and triangle Tanner crab C. angulatus in the BS/AI area.

To date, commercial landings have only been reported for red, blue, and brown king crab, and C. bairdi and C. opilio Tanner crab and hybrids of these two species of Tanner crab. The other species of king and Tanner crab are included in this FMP because the State now provides for a fishery for these species under the conditions of a permit issued by the Commissioner of ADF&G. Other crab species may be added at a later time.

The BS/AI area is defined as those waters of the EEZ lying south of Point Hope (68°21'N.), east of the U.S.-U.S.S.R. convention line of 1967, and extending south of the Aleutian Islands for 200 miles between the convention line and Scotch Cap Light (154°44'35"W. longitude) (Figure 5.1).

The BS/AI area contains several stocks of king and Tanner crabs (see Appendix E) that are discrete from stocks in the Gulf of Alaska. In addition, the physical environment of this area

Do not remove
Pals
1992

**RECORDKEEPING AND REPORTING REQUIREMENTS
FOR
FEDERAL GROUND FISH FISHERIES OFF ALASKA
1992**

REFERENCE MANUAL

**U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Alaska Region**

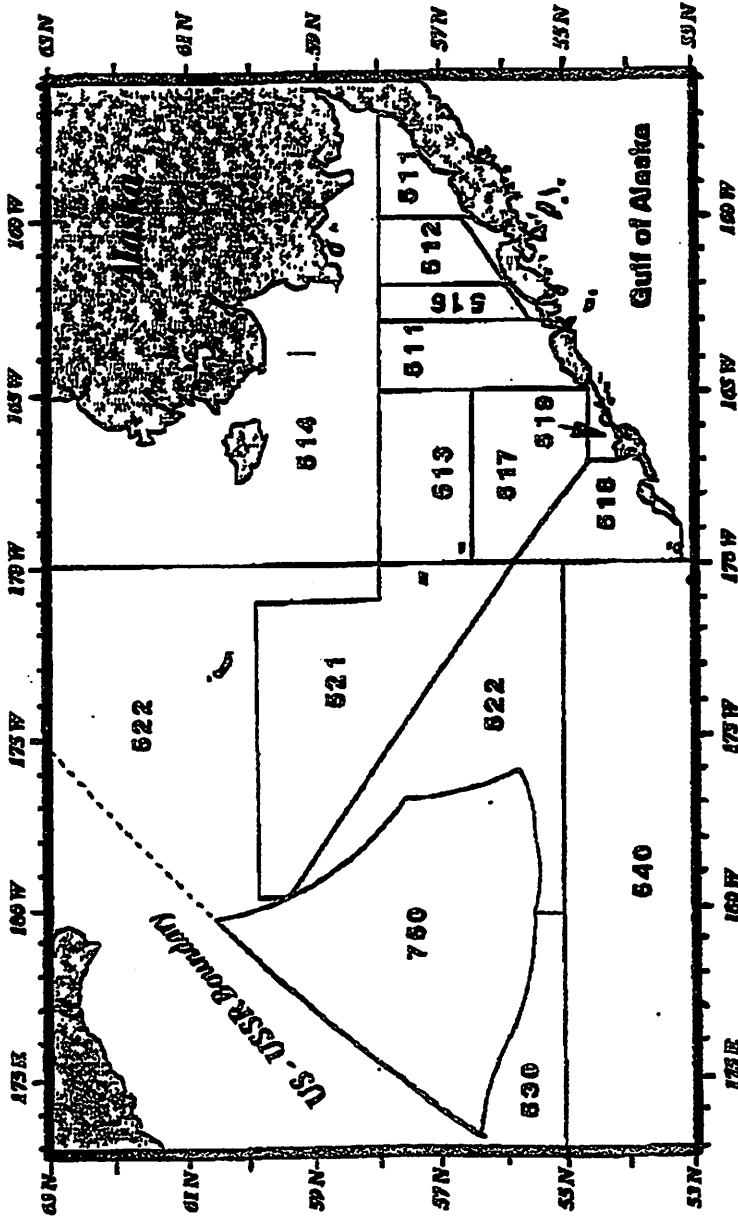


**Edited by
Patsy A. Bearden**

Issued December, 1991

**Fisheries Management Division
Juneau, Alaska**

This manual does not supersede, amend, or detract from federal regulations or law as printed in the Federal Register, Code of Federal Regulations, or the United States Code Annotated. This summary does not, nor is it intended to create any rights, substantive or procedural -- enforceable at law by any party in any matter, civil or criminal -- and it may not be relied on for any such purpose. THIS SUMMARY IS FOR GENERAL INFORMATIONAL PURPOSES ONLY.



10/01

Chart 1. BSAI Federal Reporting Areas

Vii

Reporting Requirements
(December 1991)

TABLE 1. Bering Sea/Aleutian Islands Federal Reporting Areas (12/12/91)

- 511 South of 58 00 N lat between 163 00 W long and 165 00 W long, and south of 58 00 N between the Alaska Peninsula and 160 00 W long
- 512 South of 58 00 N lat, north of the Alaska Peninsula between 160 00 W long and 162 00 W long
- 513 South of 58 00 N lat, north of 56 30 N lat, west of 165 00 W long, east of 170 00 W long
- 514 North of 58 00 N lat, and east of 170 00 W long
- 516 South of 58 00 N lat, north of the Alaska Peninsula, and between 162 00 and 163 00 W long
- 517 South of 56 30 N lat, east of 170 00 W long, and west of 165 00 W long; and north of straight lines between 54 30 N lat, 165 00 W long and 54 30 N lat, 167 W long, and 55 46 N lat, 170 00 W long
- 518 Bogoslof District: South of a straight line between 55 46 N lat, 170 00 W long and 54 30 N lat, 167 00 W long, east of 170 00 W long, west of 167 00 W long, and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed:
 52 49.2 N, 169 40.4 W
 52 49.8 N, 169 06.3 W
 53 23.8 N, 167 50.1 W
 53 10.7 N, 167 51.4 W
- 519 South of a straight line between 54 30 N lat, 167 00 W long and 54 30 N lat, 164 54 W long; east of 167 00 W long; west of Unimak Island; and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed:
 53 59.0 N, 166 17.2 W
 54 02.9 N, 166 03.0 W
 54 07.7 N, 165 40.6 W
 54 08.9 N, 165 38.8 W
 54 11.9 N, 165 23.3 W
 54 23.9 N, 164 44.0 W
- 521 The area bounded by straight lines connecting the following coordinates in the order listed:
 55 46 N, 170 00 W,
 59 25 N, 179 20 W,
 60 00 N, 179 20 W,
 60 00 N, 171 00 W,
 58 00 N, 171 00 W,
 58 00 N, 170 00 W,
 55 46 N, 170 00 W
- 522 North of 55 00 N lat, west of 170 00 W long, east of 180 00 W long, excluding Statistical Area 521
- 530 North of 55 00 N lat, west of 180 00 W long
- 540 Aleutians subarea: South of 55 00 N lat, west of 170 00 W long
- 750 Donut Hole: International Waters of the Bering Sea between the EEZ of the United States and the EEZ of the Soviet Union

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**RECORDKEEPING AND REPORTING
REQUIREMENTS FOR
FEDERAL GROUND FISH FISHERIES OFF ALASKA
1993**

REFERENCE MANUAL

**U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Alaska Region**



**Edited by
Patsy A. Bearden**

**Fisheries Management Division
Juneau, Alaska**

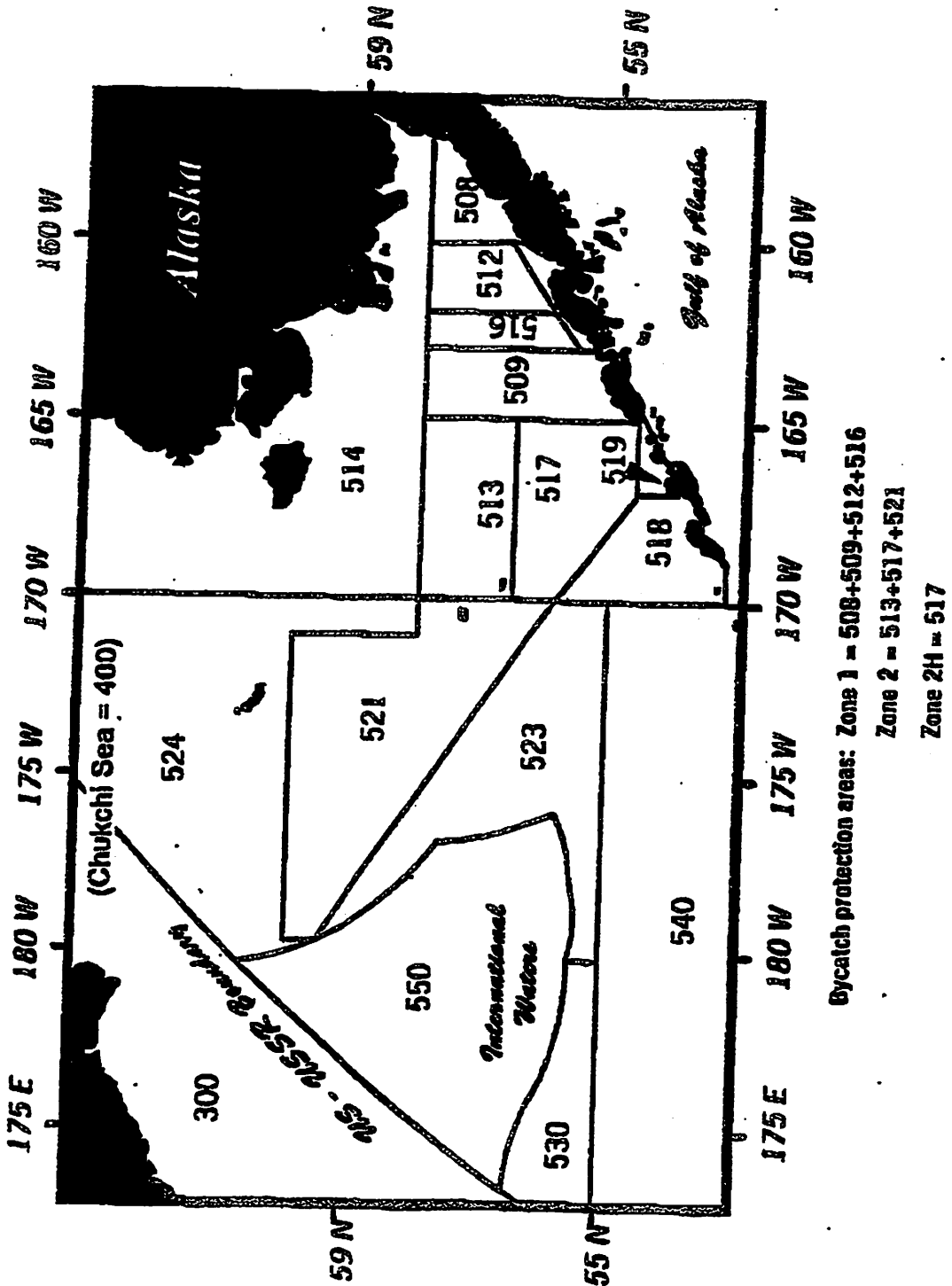
Fourth Edition, November 1992

This manual does not supersede, amend, or detract from federal regulations or law as printed in the Federal Register, Code of Federal Regulations, or the United States Code Annotated. This summary does not, nor is it intended to create any rights, substantive or procedural – enforceable at law by any party in any matter, civil or criminal – and it may not be relied on for any such purpose. THIS SUMMARY IS FOR GENERAL INFORMATIONAL PURPOSES ONLY.

TABLE 6. Bering Sea/Aleutian Islands Federal Reporting Areas (9/25/92)

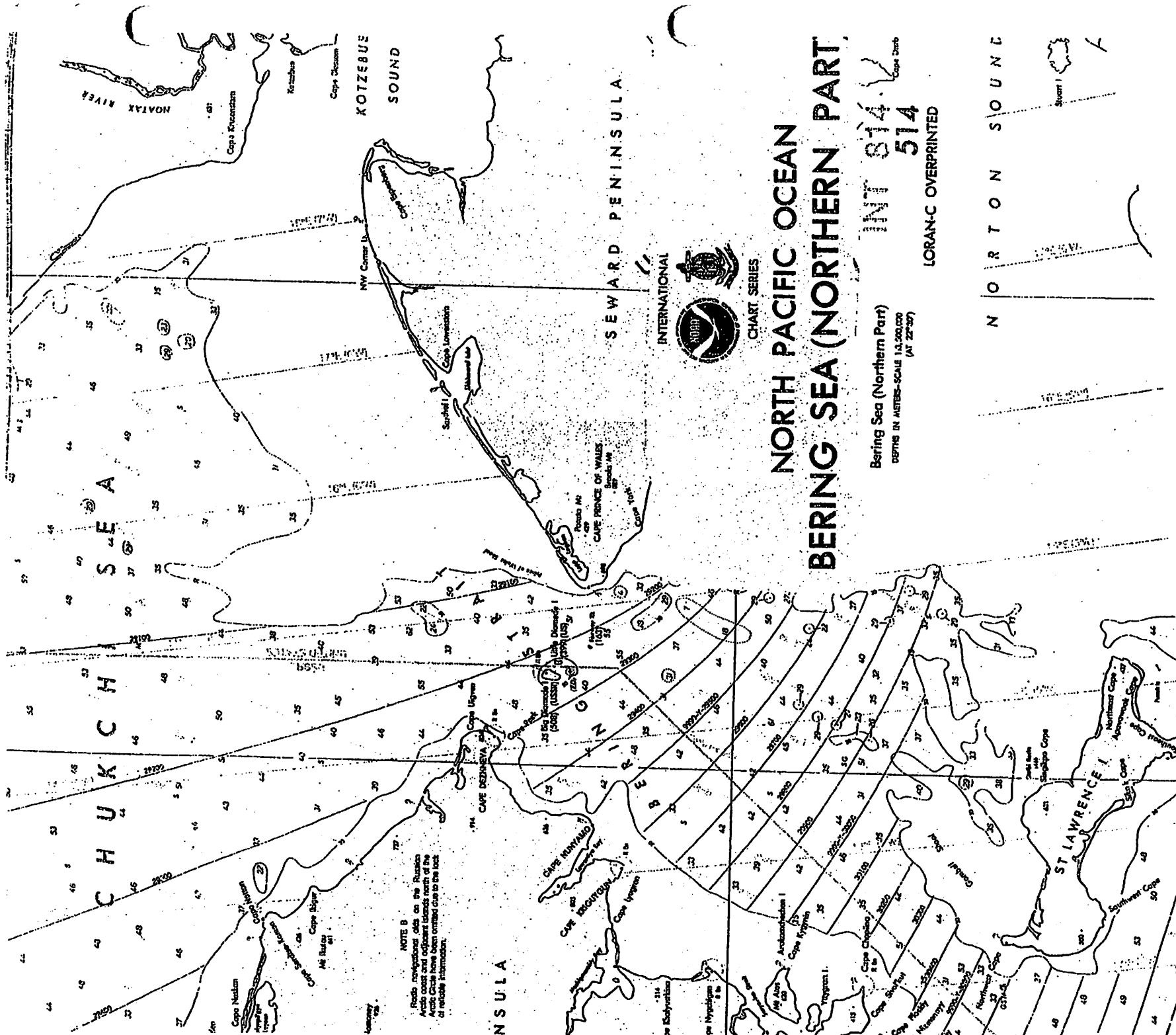
Code	Description	Code	Description
300	Russian waters. Those waters inside the Russian 200 mile limit as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart INT 814 Bering Sea (Northern Part).		54 11.9 N, 165 23.3 W 54 23.9 N, 164 44.0 W
400	Chukchi Sea. North of a diagonal line between 66 00 N, 169 42.5 W (Cape Dezhneva, Russia); and 65 37.5 N, 168 7.5 W (Cape Prince of Wales, Alaska) and to the limits of the US EEZ as described in the current edition of NOAA chart INT 814 Bering Sea (Northern Part).	521	The area bounded by straight lines connecting the following coordinates in the order listed: 55 46 N, 170 00 W, 59 25 N, 179 20 W, 60 00 N, 179 20 W, 60 00 N, 171 00 W, 58 00 N, 171 00 W, 58 00 N, 170 00 W, 55 46 N, 170 00 W
508	South of 58 00 N between the intersection of the 58 00 North latitude with the Alaska Peninsula and 160 00 W long	523	The area bounded by straight lines connecting the following coordinates in the order listed: 59 25 N, 179 20 W; 55 46 N, 170 00 W; 55 00 N, 170 00 W; 55 00 N, 180 00 W; and north to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
509	South of 58 00 N lat between 163 00 W long and 165 00 W long	524	The area west of 170 00 W bounded south by straight lines connecting the following coordinates in the order listed: 58 00 N, 171 00 W; 60 00 N, 171 00 W; 60 00 N, 179 20 W; 59 25 N, 179 20 W and the to limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
512	South of 58 00 N lat, north of the Alaska Peninsula between 160 00 W long and 162 00 W long	530	The area north of 55 00 N lat and west of 160 00 W long to limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part)
513	Between 58 00 N lat and 56 30 N lat, and between 165 00 W long and 170 00 W long	540	<u>Aleutian Islands area.</u> The area south of 55 00 N, west of 170 00 W, and bounded on the south and west by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands)
514	North of 58 00 N to the southern boundary of the Chukchi Sea, area 400, and east of 170 W long.	550	<u>Donut Hole.</u> International waters of the Bering Sea outside the limits of the US and Russian EEZs as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
516	South of 58 00 N lat, north of the Alaska Peninsula, and between 162 00 and 163 00 W long		
517	South of 56 30 N lat, between 165 00 W long and 170 00 W long; and north of straight lines between 54 30 N lat, 165 00 W long and 54 30 N lat, 167 W long, and 55 46 N lat, 170 00 W long		
518	<u>Bogoslof District:</u> South of a straight line between 53 46 N lat, 170 00 W long and 54 30 N lat, 167 00 W long, and between 167 00 W long and 170 00 W long, and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 52 49.2 N, 169 40.4 W 52 49.8 N, 169 06.3 W 53 23.8 N, 167 30.1 W 53 18.7 N, 167 51.4 W		
519	South of a straight line between 54 30 N lat, 167 00 W long and 54 30 N lat, 164 54 W long; east of 167 00 W long; west of Unimak Island; and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 53 59.0 N, 166 17.2 W 54 02.9 N, 165 03.0 W 54 07.7 N, 165 40.6 W 54 08.9 N, 165 38.8 W		

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Bycatch protection areas: Zone 1 = 508+509+512+516
 Zone 2 = 513+517+521
 Zone 2H = 517

Chart 3. BSAI Federal Reporting Areas



NORTH PACIFIC OCEAN BERING SEA (NORTHERN PART)

Bering Sea (Northern Part)
 DEPTHS IN METERS-SCALE 1:15,000,000
 (AT 22°30')

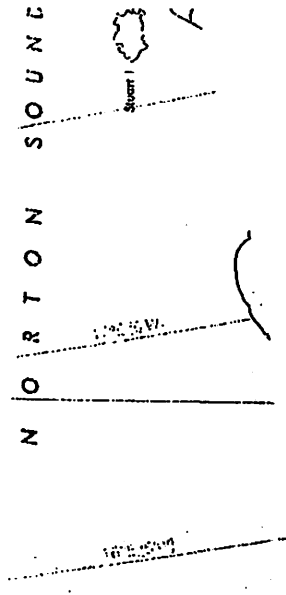
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NOTE B
 Radio navigational aids on the Russian Arctic coast and adjacent islands north of the 60°S line have been omitted due to the lack of reliable information.



ITEM

5.



Bering, Chukchi, and Beaufort Seas Coastal and Ocean Zones Strategic Assessment: Data Atlas

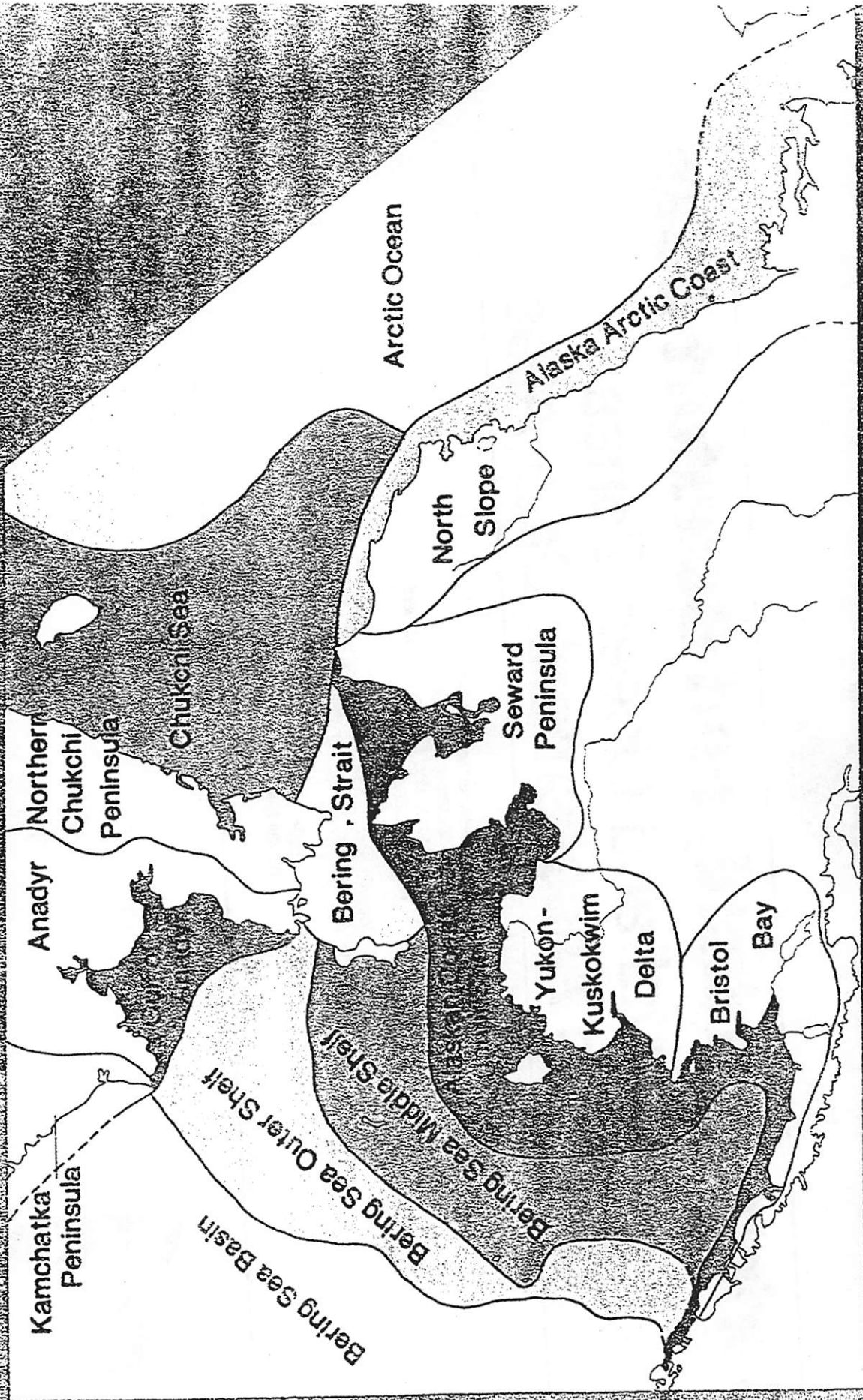
Strategic Assessment Branch
Ocean Assessments Division
Office of Oceanography and Marine Assessment
National Ocean Service
of the
National Oceanic and Atmospheric Administration
UNITED STATES DEPARTMENT OF COMMERCE

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BOSTON, MASS. 02109-1099



Alaska Outer Continental Shelf

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Chukchi Sea Oil & Gas Lease Sale 126

Final Environmental
Impact Statement

Volume I

ITEM
7.

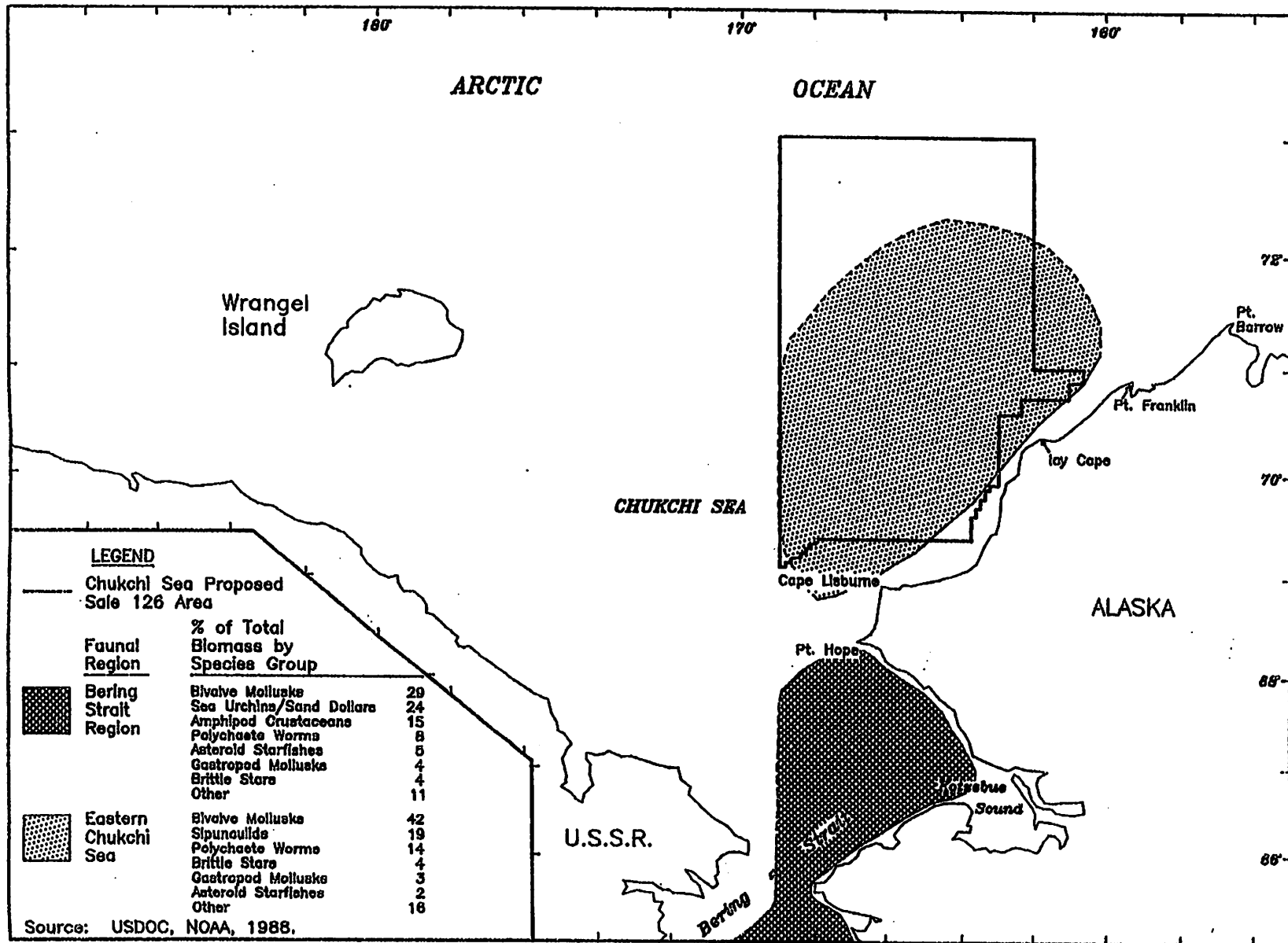


Figure III-B-2. Infaunal Invertebrate Biomass in the Sale 126 Area

Supplemental Information on the CDQ Related Requirements of the AFA

Council Action Requested by NMFS: Review initial analysis (EA/RIR prepared for the emergency rule) and recommend additional alternatives or analysis to be included in the draft EA/RIR before it is sent out for review.

Final Council Action: June, 1999

Final rule must be effective by: December 31, 1999

Problem: The AFA requires NMFS to distinguish between pollock caught while directed fishing for pollock CDQ and pollock caught incidentally to other CDQ fisheries.

Current Status: Emergency rule effective through July 20, 1999 will be extended through 1999. Alternative 2 in the analysis represents what was implemented under the emergency rule:

- (1) allow pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established by section 206(b), and
- (2) remove the allocation of squid from the CDQ Program to allow the CDQ groups to fully harvest the pollock CDQ directed fishing allowance.

Directed fishing for pollock CDQ is defined as fishing that results in the following catch composition:

- (a) For each haul by a catcher/processor, the round weight of pollock represents 40 percent or more by weight of the total weight of all groundfish in the haul; and
- (b) For each delivery by a catcher vessel, the round weight of pollock represents 40 percent or more by weight of the total weight of all groundfish delivered to a processor from a fishing trip.

Background and additional information

I. Pollock CDQ versus pollock bycatch in CDQ fisheries

The emergency rule definition of directed fishing for pollock CDQ accomplishes pollock CDQ accounting only. It does not require the CDQ groups to identify vessels pollock CDQ fishing and distinguish them from vessels fishing for other CDQ species and there are no prohibitions against a vessel catching 40% or more pollock in the haul or delivery. The emergency rule provides for pollock CDQ accounting. If a haul (c/p) or delivery (c.v.) has 40% or more pollock, all of that pollock accrues against the CDQ groups pollock CDQ allocation. If it has less than 40% pollock, this pollock accrues against the pollock incidental catch allowance.

Additional alternatives suggested by the CDQ Implementation Committee

Alternative 3: Apply 40% threshold over a weekly reporting period instead of a haul for catcher/processors. It is unclear whether or how this would affect the definition for deliveries by catcher vessels.

Alternative 4: Define directed fishing for pollock CDQ in the same way directed fishing is defined for non-CDQ fisheries - by requiring vessels that are NOT directed fishing for pollock CDQ to discard catch that exceeds the maximum retainable bycatch amounts.

The CDQ group would identify the vessels that are going to directed fish for pollock CDQ. All pollock caught by these vessels would accrue against the pollock CDQ. Any other vessel would be prohibited from retaining in excess of the MRB of pollock. All pollock caught by these vessels would accrue against the pollock incidental catch allowance.

Table 1. Pollock Catch in the 1999 CDQ Fisheries (through April 15, 1999)

	Vessels Identified by the CDQ Group as:		
	Pollock CDQ Fishing	Not Pollock CDQ Fishing	
		< 40% Pollock	>= 40% Pollock
# Hauls/deliveries	611	13	7
Groundfish (mt)	45,667	132	100
Pollock (mt)	44,570	10	59
Percent pollock in each haul or delivery			
Average %	98%	7%	59%
Minimum %	66%	<1%	47%
Maximum %	100%	33%	70%

II. Should squid be removed as a CDQ species?

All species allocated to the CDQ Program are considered CDQ species and each CDQ group is prohibited from exceeding their allocation of any CDQ species. Under these regulations, it is very likely that the CDQ groups will reach quotas for CDQ species considered to be bycatch species before they fully harvest all of their CDQ allocations.

Pollock CDQ catch data for 1998 indicated that the squid CDQ may be reached before the CDQ groups fully harvested their pollock CDQ. Squid bycatch also could limit other CDQ fisheries because, once the squid CDQ is reached, further catch of squid by any vessel fishing for the CDQ group would result in an overage of the squid CDQ allocation.

In the emergency rule, NMFS temporarily removed squid as a CDQ species because it appeared that the intent of the AFA was that the CDQ groups be able to fully harvest their pollock CDQ. In addition, because squid bycatch occurs primarily in the pollock fisheries, the CDQ groups could not relieve this potential problem by limiting squid bycatch in other CDQ fisheries.

Table 2 summarizes pollock and squid catch in 1998 and 1999 (through April 15, 1999).

Table 2. Pollock and squid catch in the 1998 pollock CDQ fisheries and the 1999 Multispecies Groundfish CDQ fisheries (through 4/15/99) and pollock and squid CDQ allocations, in metric tons.

	1998	1999
Jan 20 - April 15 (A season)		
Pollock (mt)	37,463	44,606
Squid (mt)	49	6
Squid as a % of Pollock	0.13%	0.01%
April 15 - Dec. 31 (B season)		
Pollock (mt)	45,787	
Squid (mt)	290	
Squid as a % of Pollock	0.63%	
Total		
Pollock (mt)	83,078	
Squid (mt)	339	
Squid as a % of Pollock	0.41%	
Pollock CDQ Allocation	83,250	99,200
Squid CDQ Allocation	148	148
Squid as % of Pollock Alloc.	0.18%	0.15%