

MEMORANDUM

TO: Council, SSC, and AP Members

FROM: Chris Oliver *David for*
Executive Director

DATE: March 27, 2006

SUBJECT: Community Development Quota (CDQ) Program

ESTIMATED TIME
4 HOURS

ACTION REQUIRED

- (a) Review and comment on State of Alaska CDQ allocation recommendations for 2007 – 2011 and 2006 crab
- (b) Status report on CDQ cost recovery program analysis
- (c) Initial review/final action on CDQ community eligibility FMP and regulatory amendments
- (d) Status report on BSAI Amendment 71

BACKGROUND

- (a) Review and comment on State of Alaska CDQ allocation recommendations for 2007 – 2011 and 2006 crab

At its April 2005 meeting, the State consulted with the Council on its draft 2006 – 2008 CDQ allocation recommendations. Upon this review, the Council expressed concerns about the CDQ allocation process and oversight of the program. In response to the Council's concerns, the State created a Blue Ribbon Panel to review the CDQ Program and make recommendations to the Governor. Governor Murkowski accepted the recommendations of the Blue Ribbon Panel on October 4, 2005, and the report was presented to the Council at its October meeting. The report included recommendations on changes to both the allocation process, government oversight of the program, and allowable investments. One of these recommendations was to lengthen the allocation cycle to a ten-year period to correspond with the U.S. Census, such that each group would be evaluated using new criteria applied at the beginning and end of the ten-year period. The first cycle would occur during 2012 – 2021.

On December 7, 2005, the Governor issued a press release stating that he would submit new CDQ allocation recommendations to NMFS in May 2006 for the allocation period 2007 – 2011. The statement also included recommended allocations for pollock (**Item C-1(a)(1)**). The State subsequently issued a public notice to change the allocation cycle from 2006 – 2008 to 2007 – 2011 (**Item C-1(a)(2)**). In March, the State requested consultation with the Council at this April meeting on the new State allocation recommendations. A State consultation with the Council is required under Federal regulations before the State may submit its recommendations to NMFS for review (50 CFR 679.30(c)).¹

¹Council consultation: Before the State sends its recommendations for approval of proposed CDPs to NMFS, the state must consult with the council and make available, upon request, the proposed CDPs that are not part of the state's recommendations (50 CFR 679.30(c)).

Recall that on August 8, 2005, NMFS issued an initial administrative determination (IAD) to extend the 2003-2005 CDQ allocations and Community Development Plans (CDPs) beyond their expiration date of December 31, 2005. The IAD became final agency action on September 7, 2005, meaning the 2003 - 2005 CDQ allocations remain in effect until they are replaced by a future final agency action or Congressional action for new CDQ allocations. The IAD to extend CDQ allocations did not include the 2005 allocations of Eastern Aleutian Islands golden king crab and Adak red king crab, because these allocations had not yet been made at the time this IAD was issued. These two new allocations to the CDQ Program were made in 2005 as part of the crab rationalization program. Therefore, new allocation recommendations are needed from the State for these two species for 2006. It is thus expected that, in addition to the allocation recommendations for 2007 – 2011, the State will be consulting with the Council on its 2006 allocation recommendations for Eastern Aleutian Islands golden king crab and Adak red king crab at this meeting.

The State's recommendations will be distributed at the meeting. Note that in the analysis for Amendment 71, these allocations would form the baseline to which the new evaluation criteria would apply for future allocation cycles under the alternative that mirrors the Blue Ribbon Panel recommendations (Alternative 3).

Note that at least three CDQ groups submitted letters regarding the 2007 – 2011 allocation process. BBEDC sent a letter (1/19/06) to NMFS expressing concern with the process undertaken by the State with regard to pollock allocations for 2007 – 2011, as announced in the Governor's December press release. NMFS responded with a letter dated 3/1/06. In addition, CVRF sent a letter (1/25/06) to Governor Murkowski objecting to the allocation recommendations in the December press release and requesting several documents related to the process for determining those recommendations. NSEDC sent a letter to Alaska DCCED Commissioner Noll (3/17/06) in response to the State's request for consultation with NSEDC on its 2006 – 2008 CDP, and the process undertaken for the 2007 – 2011 period. These letters are attached as **Item C-1(a)(3)**.

(b) Status report on CDQ cost recovery program analysis

NMFS has been working on an analysis of the Magnuson-Stevens Act requirements at Section 304(d) and 305(i)(3) that require collection of a fee to recover the actual costs of management and enforcement of the CDQ Program. NMFS will provide a status report on this project at the April Council meeting. NMFS is also organizing an informational meeting/workshop to further discuss the analysis and receive input from the public, including the CDQ groups. This meeting is tentatively scheduled for May 18 in Anchorage. Initial review of the analysis for this proposed action is tentatively scheduled for the October 2006 Council meeting.

(c) Initial review/final action on CDQ community eligibility regulatory amendment

NMFS has prepared an RIR analysis for BSAI FMP Amendment 87, BSAI crab FMP Amendment 22, and supporting regulatory amendments to clarify the community eligibility criteria and community eligibility status for communities participating in the CDQ Program. This action is necessary to make community eligibility criteria and community eligibility status in the above FMPs and Federal regulations consistent with the Magnuson-Stevens Act and the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU). Neither the FMP nor Federal regulations contain CDQ community eligibility criteria that exactly conform to the community eligibility criteria that were added to the MSA in 1996. The proposed action would make the eligibility criteria consistent with the MSA, as well as add a reference to these criteria in the BSAI crab FMP.

There are currently 65 communities that NMFS has determined eligible to participate in the CDQ Program. Table 7 to 50 CFR Part 679 includes 57 communities. Eight additional communities were determined to be eligible by NMFS on April 19, 1999, through an agency administrative determination that was not formalized through rulemaking, due to emerging legal questions about community eligibility. In a legal opinion issued on

August 15, 2003, NOAA GC identified the inconsistencies described above between the eligibility criteria in the MSA and 50 CFR Part 679 and recommended that NMFS amend the regulations to conform with the MSA. In addition, NOAA GC advised that the eligibility status of all 65 participating communities needs to be re-evaluated "to determine whether each community meets all of the statutory eligibility criteria." In a discussion paper presented to the Council at its October 2003 meeting, Council and NMFS staff concluded that, if such a re-evaluation were done, some of the 65 communities currently participating in the CDQ Program would likely not meet all of the CDQ Program eligibility criteria in the MSA.

Upon release of the legal opinion and discussion paper, the CDQ groups and the State of Alaska asked Congress to clarify its intent with respect to the eligibility status of the 65 communities participating in the CDQ Program. Congress provided this clarification through passage of the SAFETEA-LU, in August 2005. This statute confirmed the eligibility status of the 65 communities currently participating in the CDQ Program.

NOAA GC has since examined the eligibility criteria in the MSA and the SAFETEA-LU and concluded that the SAFETEA-LU did not repeal the community eligibility criteria in section 305(i)(1)(B) of the MSA. SAFETEA-LU addresses specific communities that are eligible for the CDQ Program, and the MSA includes eligibility criteria for future entrants. Analysts have identified nine currently unpopulated or seasonally populated communities that meet some of the MSA community eligibility criteria. Therefore, the potential exists for additional applications for community eligibility under the MSA criteria if any of these communities were to become populated in the future.

In sum, the action proposed in the FMP and regulatory amendments serves to clarify and correct the BSAI FMPs and Federal regulations to conform to the MSA and SAFETEA-LU. For this reason, initial review and final action are scheduled for this April meeting. The analysis was mailed to you on March 14.

(d) Status report on BSAI Amendment 71

The Council made recommendations on eight issues related to the CDQ allocation process and oversight of the program under BSAI Amendment 71 in June 2002. In March 2005, NMFS implemented regulations for Issue 8 to simplify and streamline administrative regulations related to quota transfers, authorized vessels, and alternative fishing plans. However, NMFS has not been able to implement regulations for the remaining seven issues that address the purpose of the CDQ Program, the process for allocating quota among the CDQ groups, and oversight of the economic development aspects of the CDQ Program.

NMFS has identified a number of legal and policy issues that slowed progress and required repeated consultations with the Council. These issues include advice from NOAA GC that: (1) NMFS must include an administrative appeals process for decisions about the approval of allocations among the CDQ groups, the CDPs, and amendments to the CDPs; (2) administrative determinations to approve CDQ projects in the CDPs or in amendments to the CDPs are likely Federal actions subject to the Endangered Species Act and the National Environmental Policy Act; and (3) NMFS must establish the confidentiality status of information submitted by the CDQ groups and by the State on behalf of the CDQ groups. The administrative and financial implications of these legal issues were not included in the analysis reviewed by the Council at the time it took final action on Amendment 71.

In addition, a decision issued by the Alaska Region in response to an administrative appeal reversed NMFS's longstanding interpretation of its regulations that the CDQ groups may invest only in fisheries related economic development projects. The result of the decision is that NMFS must only consider whether the CDP as a *whole* is consistent with the fisheries related purpose of the CDQ Program. The June 2002 analysis for Amendment 71 assumed that NMFS's regulations required all individual CDQ *projects* to be 'fisheries related,' and this assumption provided the basis for the status quo alternative. The OAA decision modifies the status quo in such a way that was not considered by the Council in June 2002.

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

Given the above events, and the fact that the panel's recommendations would also require changes to Federal regulations, in October 2005, the Council requested that staff provide a proposed structure for alternatives and options for a revised Amendment 71 analysis which incorporates the recommendations of the Blue Ribbon Panel. This proposed structure, as well as issues requiring further clarification, was presented to the Council at its December 2005 meeting.

In December, the Council thus rescinded its final action on Issues 1 – 7 of BSAI Amendment 71 taken at its June 2002 meeting, and adopted three primary alternatives and several options for analysis of a new amendment package (Item C-1(d)). These alternatives are related to the purpose of the CDQ Program, the process for allocating quota among the CDQ groups, and oversight of the economic development aspects of the program that NMFS has not been able to implement to date.

Note also that the State of Alaska noticed the public of proposed changes to State regulations (Title 6 of the Alaska Administrative Code) that implement some of the Blue Ribbon Panel recommendations related to administrative reporting requirements. The full suite of proposed changes is at <http://www.commerce.state.ak.us/bsc/CDO/proposedregs.htm>. The public comment period closed on January 6, 2006. These regulations have not yet been implemented.

In addition, in February 2006, Senate Commerce committee staff asked NMFS to comment on several iterations of draft amendments to the CDQ section of the MSA (Section 305(i)). The draft legislation addressed allocations to the CDQ Program, allocations among the CDQ groups, eligible communities, administration of the program, and the oversight roles of NMFS and the State of Alaska. These amendments could be included in the U.S. Coast Guard authorization bill now in conference committee, made through other legislation, including the MSA reauthorization bill, or may not be made at all. However, considering the apparent intent of Congress to amend the CDQ sections of the MSA and other agency priorities, staff have not actively worked on revising the Amendment 71 analysis since the December 2005 Council meeting.

If these amendments are approved by Congress and the President, many primary issues currently under consideration in Amendment 71 will be decided and will not need to be further analyzed. Note, however, that FMP and regulatory amendments will still be necessary to implement MSA amendments. If MSA amendments are made before the June 2006 meeting, staff plans to prepare an assessment of the legislation and its impact on the Amendment 71 analysis for the Council's consideration at the June meeting. If the MSA amendments are not made before the June Council meeting, staff will proceed with the analysis of Amendment 71 for initial review by the Council at the October 2006 meeting, unless directed otherwise by the Council.

State of Alaska
OFFICE OF THE GOVERNOR

Frank H. Murkowski
Governor
P O Box 110001
Juneau, Alaska 99811-0001
NEWS RELEASE



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Press Spokeswoman
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FOR IMMEDIATE RELEASE: December 7, 2005

No. 05-202

Governor Murkowski to Submit New CDQ Allocations

(Juneau) – Governor Frank H. Murkowski announced today that he will submit new Community Development Quota allocation figures to the National Marine Fisheries Service using a new allocation period, which will run from 2007-2011.

In October, the Governor announced a process, using new state regulations based in part by the Blue Ribbon Panel, that would submit the allocation numbers in May, 2006. The six regional CDQ groups have been pushing to have a quicker resolution and the timeline has been accelerated.

"It became very clear that the timeline we had set out, while aggressive, wasn't fast enough for the six groups," said Murkowski. "This program is one of the best economic development tools in Alaska. It's a program that should be kept in the hands of the state to ensure maximum benefit to residents in Western Alaska."

"In my view this is a state's rights issue," said Murkowski. "It's clear that Alaskans should manage this critical economic development program for the benefit of Alaskans."

Commerce Commissioner Bill Noll said the successful program needs stability and state management. "There is a lot of pressure on those in Congress to put the allocations in federal law," said Noll. "We need to bring this process to a conclusion and put an end to the in-fighting for the stability of the communities affected."

After reviewing the March 16, 2005 allocation recommendations from the CDQ team for the Western Alaska fisheries allocations, the Governor determined immediate changes needed to be made due to the change in the allocation cycle from three, to five years. The program will have a ten-year allocation cycle starting in 2011 to coincide with the federal government's ten-year census cycle. The ten-year cycle was recommended by the Blue Ribbon Panel.

To arrive at the allocation numbers, the Governor used the administrative record, information gathered by his CDQ Blue Ribbon Panel, historic allocation figures and the Blue Ribbon Panel criteria based on population, job creation, in-region investment, scholarship and training investment and community economic development

-more-

December 7, 2005

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Based on the analysis, the recommended allocation numbers for Pollock are:

- Aleutian Pribilof Island Community Development Association	15%
- Bristol Bay Economic Development Corporation	20%
- Central Bering Sea Fishermen's Association	10%
- Coastal Villages Region Fund	20%
- Norton Sound Economic Development Corporation	20%
- Yukon Delta Fisheries Development Association	15%

A public notice announcing a public hearing regarding the changes in the allocation cycle is forthcoming.

The remaining species allocations will be sent to NMFS in the time frame specified by federal and state regulations.

"This is one of the first steps to implementing all of the recommendations from the Blue Ribbon Panel," said Governor Murkowski.

Commissioner Noll said the Governor's decision to allow CDQ groups to expand investment opportunities to include non-fishery regional economic and social development projects will be one of the most beneficial changes made to the program. "Diversifying and expanding economic development will help ensure strong communities in Western Alaska," said Noll.

Since the program's inception in 1992, the CDQ Program has grown to be a major source of revenue, employment and economic sustainability in Western Alaska fishery communities. During the life of the program, nearly \$650 million in revenues and over \$125 million in wages, the six CDQ groups on behalf of nearly 29,000 residents have generated education, and training benefits. In 2004, the CDQ program generated over \$130 million in revenues to the six CDQ groups. About 1,800 new jobs are generated annually by the CDQ Program.

For more information, contact: Jennifer Payne, Communications Specialist, 907-269-4568

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NOTICE OF 2006 CRAB ADDENDUM AND 2007 – 2011 ALLOCATION CYCLE

On August 15, 2004, the State of Alaska (State) published a public notice announcing the opening of an application period for the 2006-2008 Community Development Plan (CDP) Applications for groundfish, halibut, and crab quota, and bycatch and prohibited species for the Community Development Quota (CDQ) program.

Per 6 AAC 93.020(c), the State CDQ Team determines that it is necessary to change the allocation cycle from 2006-2008 to 2007-2011. The State will utilize the information submitted by the CDQ groups pursuant to 6 AAC 93.025, 6 AAC 93.035, and non-confidential information submitted pursuant 6 AAC 93.050 in accordance with 6 AAC 93.075 and other pertinent information as authorized by 6 AAC 93.075(a).

Questions concerning this notice can be answered by writing or calling: Greg Cashen, Department of Commerce, Community and Economic Development, PO Box 110807, Juneau, AK 99811-0807, (907) 465-5536.

Individuals with disabilities who require special accommodations, auxiliary aids or services, or alternative communication formats in order to comment, may contact Greg Cashen at the above address and phone number or TDD (907) 465-5437.

Item C-1(a)(3)

DONALD C. MITCHELL
Attorney at Law
1335 F Street
Anchorage, Alaska 99501
(907) 276-1681 dcraigm@aol.com

March 17, 2006

William C. Noll
Commissioner
Alaska Department of Commerce,
Community and Economic Development
550 West Seventh Avenue Suite 1770
Anchorage, Alaska 99501-3510

Re: Request for Consultation Regarding
Norton Sound Economic Development
Corporation 2006-2008 Community
Development Plan

Dear Commissioner Noll:

I am writing on behalf of the Norton Sound Economic Development Corporation (NSEDC) in response to your letter, dated March 10, 2006, to Eugene Asicksik, the president and CEO of NSEDC, in which you requested an opportunity to consult with NSEDC regarding the community development plan (CDP) for 2006-2008 that NSEDC submitted to the State of Alaska on November 1, 2004.

The western Alaska community development quota (CDQ) program is a federal program which the Secretary of Commerce established by regulation in 1992, and which Congress codified in 1996 as section 305(i)(1) of the Magnuson Stevens Fishery Conservation and Management Act. In 1999 the Alaska State Legislature enacted A.S. 44.33.020(a)(11), which delegates to the Alaska Department of Commerce, Community and Economic Development authority to "implement the state's role in the federal community development quota program." (emphasis added).

The Secretary of Commerce has established the "state's role" in various subsections of 50 C.F.R. 679.30. With respect to that role, 50 C.F.R. 679.30(a) authorizes the State to announce a "CDQ application period" during which NSEDC and the other groups that

William C. Noll
March 17, 2006
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are participating in the CDQ program each may submit a CDP to the State for its review. 50 C.F.R. 679.30(d) then imposes a nondiscretionary duty on the State to "transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS [i.e., the National Marine Fisheries Service], along with the findings and the rationale for the recommendations, by October 15 of the year prior to the first year of the proposed CDP."

Pursuant to 50 C.F.R. 679.30(a), on August 16, 2004 the State announced a CDQ application period for the 2006-2008 fishing years. In response to that announcement, NSEDC and the other groups participating in the CDQ program timely submitted to the State CDPs for those years. Aware that 50 C.F.R. 679.30(d) required the State to submit its recommendations regarding those CDPs to NMFS by October 15, 2005, Edgar Blatchford, your predecessor as Commissioner, on March 15, 2005 submitted to Governor Murkowski for his review and final decision the recommendations of the State CDQ Team regarding its "allocation recommendations for the 2006-2008 Multi-Species and 2005 Crab CDP allocation cycle."

Although he was requested repeatedly by the groups participating in the CDQ program to do so, Governor Murkowski decided that he would not make a final decision regarding the CDQ Team's recommendations prior to October 15, 2005. As a consequence, the State did not transmit the CDPs and its recommendations, findings, and rationale to NMFS by that date. NMFS responded to that dereliction of nondiscretionary legal duty by extending the CDPs and CDQ percentage allocations in effect for the 2003-2005 fishing years "until December 31st of the year in which a final agency action that replaces those CDPs and CDQ percentage allocations with new CDPs and CDQ percentage allocations is issued by the NMFS."

William C. Noll
March 17, 2006
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Two months later, Governor Murkowski compounded the legal confusion which his purposeful refusal to allow the State to comply with the mandatory October 15, 2005 deadline had engendered by on December 7, 2007 announcing publicly that he recently had made a final decision regarding CDQ percentage allocations for the 2007-2011 fishing years, and that the State would submit those allocations to NMFS for implementation by the Secretary of Commerce. Since the CDPs that the groups participating in the CDQ program submitted to the State for the 2006-2008 fishing years do not contain descriptions of the CDQ projects the groups will undertake during the 2009-2011 fishing years, even if it were timely and made in compliance with the nondiscretionary requirements of 50 C.F.R. 679.30, a final decision regarding CDQ percentage allocations for the 2009-2011 fishing years would be arbitrary, capricious, and hence unlawful, because there would be no factual basis for the decision.

In summary, with respect to the CDQ application period the State announced on August 16, 2004 to which the groups participating the CDQ program responded by submitting CDPs for the 2006-2008 fishing years, the State's refusal to participate in the administrative process for CDP review, approval, and implementation that 50 C.F.R. 679.30 mandates has, as a matter of law, fatally invalidated the administrative process for that application period.

If, pursuant to 50 C.F.R. 679.30(a), the State wishes to announce a new CDQ application period for the 2007-2011 fishing years and then by October 15, 2006 transmit to NMFS its recommendations regarding the CDPs that the groups participating in the CDQ program submit in response to that announcement, 50 C.F.R. 679.30 and A.S. 44.33.020(a)(11) authorize the State to do so. But, as a consequence of the State's failure to comply with the October 15, 2005 deadline that 50 C.F.R. 679.30(d) mandated, there no longer is anything for the State to consult with NSEDG and the other groups that are participating in the CDQ program about regarding the CDQ percentage allocations that the groups requested in the CDPs they submitted for the 2006-2008 fishing years.

William C. Noll

March 17, 2006

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If I can be of any further assistance in clarifying NSEDC's position regarding the legal status of the CDP it submitted to the State for the 2006-2008 fishing years, please do not hesitate to contact me.

Sincerely,



Donald Craig Mitchell

Attorney for Norton Sound Economic
Development Corporation

cc: Eugene Asicksik
CDQ groups
State CDQ Team
North Pacific Fishery Management Council
NMFS - Alaska Region
NOAA - General Counsel

January 25, 2006

Frank H. Murkowski, Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

RECEIVED
JAN 27 2006
N.P.F.M.C.

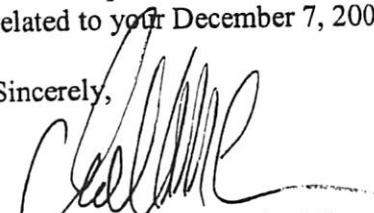
RE: New CDQ Allocations for 2007-2011

Dear Governor Murkowski:

Coastal Villages Region Fund (CVRF) has been successful in maximizing the value of our CDQ allocations, creating job opportunities for the current and future fishermen of our region, and building infrastructure. We are Number One in using CDQ to transfer ownership of Bering Sea assets from foreign lands to Alaskan soil. Your recent actions appear to forsake the fishermen of our region, in favor of foreign interests.

Enclosed please find a copy of our request for information from the State of Alaska related to your December 7, 2005 announcement of 2007-2011 CDQ allocations.

Sincerely,


Morgen Crow, Executive Director
COASTAL VILLAGES REGION FUND

cc: Bill Noll, Commissioner – Commerce, Community and Economic Development
McKie Campbell, Commissioner – Fish and Game
Alan Austerman
John Katz
James W. Balsiger, Administrator – NMFS Alaska Region
✓Stephanie Madsen, Chair – North Pacific Fishery Management Council

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January 25, 2006

Greg Cashen
CDQ Program Manager
Alaska Department of Commerce, Community
and Economic Development
Division of Banking, Securities and Corporations
P. O. Box 110807
Juneau, Alaska 99811

Dear Mr. Cashen:

Please be advised that I represent Coastal Villages Region Fund ("CVRF"). CVRF has objections to the proposed allocation recommendations contained in the November 30, 2005 memorandum from Commissioner Bill Noll to Governor Murkowski, and subsequent press release from the Governor's office. In order to properly investigate and pursue CVRF's objections and/or request for reconsideration of the proposed allocation recommendations should they become final, it is necessary for CVRF to obtain records and documents of the Department of Commerce that were utilized to support the allocation numbers contained in the November 30, 2005 memorandum. Pursuant to AS 40.25.110, *et seq.*, CVRF formally requests the following categories of documents to be produced in accordance with the aforementioned statute:

1. All documents generated by or received by the State and considered in concluding that recommended allocation numbers contained on the third page of the aforementioned memorandum are appropriate;
2. All documents utilized that suggest or support the recommendation on page two that CVRF's generation of substantial assets is a basis for the group's quota to be adjusted downward from the historical average;
3. All documents supporting or relied upon for a conclusion that APICDA's area has fewer resources and can use pollock allocation royalties to pay for the development of onshore processing plants and fishing infrastructure that benefits the fishing fleets as a whole;

Greg Cashen
CDQ Program Manager
Alaska Department of Commerce, Community
and Economic Development
Division of Banking, Securities and Corporations
January 25, 2006
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4. Any documents possessed by the State relating to the management of APICDA or contracts by the managers of APICDA or any business interests of theirs and companies doing business with APICDA;
5. All documents possessed by the State which reflect, support or demonstrate the State's consideration of population/poverty level for each CDQ group;
6. All documents possessed by the State which reflect, support or demonstrate consideration of the number of jobs created by each CDQ group;
7. All documents possessed by the State which reflect, support or demonstrate consideration of the amount of in-region investment in both fisheries and non-fisheries for each CDQ group;
8. All documents possessed by the State which reflect, support or demonstrate consideration of the amount and number of scholarship and training investments by each CDQ group; and
9. All documents possessed by the State which reflect, support or demonstrate consideration of community economic development.

In accordance with AS 40.25.110, *et seq.*, please be advised that CVRF will pay all reasonable copying costs for the documents. Please inform me as to when the documents will be available. Thank you for your cooperation with this matter.

Sincerely,

Michael N. White

MNW:jw
cc: Coastal Villages Region Fund



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

March 1, 2006

Robin Samuelson
Bristol Bay Economic Development Corporation
P.O. Box 1464
Dillingham, Alaska 99576

Dear Mr. Samuelson:

Thank you for your letter dated January 19, 2006, asking for the National Marine Fisheries Service's (NMFS's) advice about the process that the State of Alaska (State) is using to develop its 2007-2011 Community Development Quota (CDQ) allocations. Specifically, you asked if the decisions that the State has made thus far in its CDQ allocation process are legally permissible and consistent with existing federal and state law and regulations. You also asked if NMFS will use the same standard of review for the State's 2007-2011 CDQ allocation recommendations as we used to review the State's 2005 crab allocation recommendations.

Federal regulations at 50 CFR part 679 governing the CDQ allocation process provide for NMFS's review of the State's CDQ allocation recommendations and rationale only after those recommendations are submitted to NMFS in writing for review. The State has not submitted its 2007-2011 CDQ allocation recommendations to NMFS for review. Therefore, it is not appropriate for NMFS to make any comments on or determinations about the legality of the process the State has used thus far to develop its recommendations.

If the State submits 2007-2011 CDQ allocation recommendations to NMFS for review, the State's written rationale must include an explanation about how the process the State followed to develop its recommendations complies with Federal regulations. In order for NMFS to conduct a record review of the State's CDQ allocation recommendations, the CDQ groups must be provided an opportunity to comment to the State about its recommendations and rationale before the State submits its recommendations and rationale to NMFS. Any comments submitted by the CDQ groups to the State and the State's response to those comments will be reviewed by NMFS as part of the record supporting the State's recommendations. The CDQ group must identify in its comments to the State any errors it believes the State made in its process or any errors in the facts the State relied on in developing its CDQ allocation recommendations. The CDQ group also must present any new information it believes the State should consider. Additional information about the importance of the State's comment period and the CDQ groups' participation in this comment period is contained in the attached February 18, 2005, letter from NMFS to the CDQ groups.



The answer to your second question is yes. In the future NMPS intends to follow the same standard of review that we used to review the State's 2005 crab allocation recommendations, with modifications as necessary to address issues specific to the CDQ allocation recommendations and rationale under review. This standard of review was explained in the initial administrative determination for the State's 2005 crab allocation recommendations. Please contact us again if you have any further questions about the CDQ allocation process.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

Attachment

cc: G. Cashen, ADCCED
CDQ groups



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21688
Juneau, Alaska 99802-1688

February 18, 2005

CERTIFIED - RETURN RECEIPT
CERTIFIED NO: 7003 2268 0007 2185 2926

Robin Samuelson
BBEDC
P.O. Box 1464
Dillingham, AK 99576-1464

Dear Mr. Samuelson:

We are aware that on February 9, 2005, the State of Alaska (State) released its initial 2006-2008 multispecies and 2005 crab CDQ allocation recommendations (hereinafter referred to as "CDQ allocation recommendations"). The State has provided a 30-day comment period during which CDQ groups may request that the State reconsider its initial CDQ allocation recommendations. Additionally, the State has recently announced that it intends to provide CDQ groups with another opportunity to comment on the State's final CDQ allocation recommendations prior to the submission of its CDQ allocation recommendations to NOAA Fisheries Service (NMFS). In anticipation of the State's upcoming submission to NMFS of its CDQ allocation recommendations, I would like to take this opportunity to inform you that NMFS will provide the CDQ groups with an administrative appeal process of NMFS' initial administrative determination (IAD) concerning the State's CDQ allocation recommendations and that NMFS intends to conduct a record review of the State's CDQ allocation recommendations. Because NMFS will conduct a record review of the State's CDQ allocation recommendations, it is extremely important that (1) the State provide the CDQ groups with an opportunity to comment on the complete CDQ allocation recommendations and rationale the State intends to submit to NMFS and (2) the CDQ groups raise all factual issues and present all information during the comment periods provided by the State on its CDQ allocation recommendations.

In 2003, NMFS informed the North Pacific Fishery Management Council (Council) that procedural due process requires that notice of NMFS' IAD on the State's CDQ allocation recommendations be provided to the CDQ groups and that CDQ groups be afforded an opportunity to appeal NMFS' IAD before the agency makes a final decision on the State's allocation recommendations. Therefore, even though NMFS has not yet amended the regulations at 50 CFR 679.30(d) to provide for an administrative appeals process, this letter is to inform you that NMFS will provide an administrative appeals process for the agency's review of the State's CDQ allocation recommendations. Briefly, when NMFS receives the State's CDQ allocation recommendations, the Sustainable Fisheries Division will review the State's record and rationale for its recommendations and issue an IAD



either approving or disapproving the State's CDQ allocation recommendations. During its review of the State's CDQ allocation recommendations, CDQ groups will not be provided an opportunity to comment to the Sustainable Fisheries Division on the State's CDQ allocation recommendations. Upon issuance of the IAD by the Sustainable Fisheries Division, CDQ groups will be provided an opportunity to appeal the IAD to NMFS' Office of Administrative Appeals (OAA) regardless of whether the IAD approves or disapproves the State's CDQ allocation recommendations. If one or more CDQ groups file an appeal of the IAD, the OAA will provide the other CDQ groups and the State with an opportunity to respond to the appeal in writing. NMFS will provide more detailed information on the appeals process in the IAD.

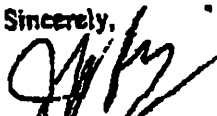
As previously stated to the Council in 2003, NMFS intends to review the State's CDQ allocation recommendations based on the record submitted by the State. This "on-the-record" review means that NMFS will not review any factual disputes with the State's CDQ allocation recommendations or any new factual information from the CDQ groups if the State's recommendations and rationale were provided to the CDQ groups, and if the State provided the CDQ groups with an opportunity to comment on those recommendations and its rationale prior to the State's submission of its CDQ allocation recommendations to NMFS. Therefore, CDQ groups must raise with the State all factual errors they believe exist in the State's recommendations during the comment periods provided by the State and before the State submits its allocation recommendations to NMFS.

NMFS believes it is appropriate to limit the issues that can be raised on appeal for two reasons. First, NMFS' regulatory standard for review of the State's CDQ allocation recommendations is limited to one of review and is not one of independent evaluation. NMFS' review of the State's CDQ allocation recommendations is limited by regulatory design to conducting a careful inquiry of the record provided by the State for its CDQ allocation recommendations and determining whether the State considered relevant factors and articulated a satisfactory explanation for its action, including a rational connection between the facts found and the recommendations made by the State. Under this regulatory standard, the State is the entity best suited to consider the information available and the factual issues that form the basis of the CDQ allocation recommendations. Therefore, CDQ groups should raise factual disputes or present new information to the State during the State's development of its CDQ allocation recommendations. Second, NMFS intends to provide CDQ groups with an appeals process that meets the requirements for procedural due process in as timely a manner as possible. The introduction of new information after the submission of the State's CDQ allocation recommendations to NMFS may necessitate additional opportunities for comment on the new information. Any additional opportunities to submit and respond to new information will extend the time needed to reach a final agency action on the State's CDQ allocation recommendations, possibly extending NMFS' review of the State's CDQ allocation recommendations beyond the intended start of the new allocation cycle.

For the reasons presented above, it is imperative that CDQ groups present all information and raise all factual issues to the State during the State-provided comment periods and before the State submits its final recommendations to NMFS.

If you have any questions concerning this letter, please contact Sally Bibb, NMFS Alaska Regional Office, at 907-586-7389.

Sincerely,



James W. Balsiger
Administrator, Alaska Region

cc: Edgar Blachford, State of Alaska, DCCED
Greg Cushen, State of Alaska, DCCED

2007-2011 CDQ Allocations

Bay Economic Development Corporation

Whitingham, Alaska 99576 • (907) 842-4370 • Fax (807) 842-4338 • 1-800-478-4370



January 19, 2006

Ms. Sally Bibb, CDQ Manager
National Marines Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

RE: NMFS Review of 2007-2011 CDP's

Dear Ms. Bibb:

BBEDC is troubled about the process recently employed by the State of Alaska in making Pollock quota allocation recommendations for calendar years 2007-11. We are writing to request that NMFS advise us whether these decisions were legally permissible and consistent with existing federal and state law and regulations.

In its recent announcement the State indicated that it had developed rationale in support of its Pollock recommendations for 2007-2011 years. This process did not involve any consultation with the CDQ groups or involve any additional substantiation beyond what was submitted to the State for the proposed 2006-2008 CDP. Further, in making the decision, we are uncertain whether the state applied the evaluation criteria established in state regulations.

From the Governor's press release of December 7, 2005:

"To arrive at the allocation numbers, the Governor used the administrative record, information gathered by his CDQ Blue Ribbon Panel, historic allocations figures and the Blue Ribbon Panel criteria based on population, job creation, in-region investment, scholarship and training investment and community economic development.

Based on the following analysis, the recommended allocation numbers [2007-2011] for Pollock are:

Aleutian Pribilof Island Community Development Association	15%
Bristol Bay Economic Development Association	20%
Central Bering Sea Fishermen's Association	10%
Coastal Villages Region Fund	20%
Norton Sound Economic Development Corporation	20%
Yukon Delta Fisheries Development Association	15%

These recommendations apparently nullify, at least for Pollock, the March 2005 State allocation recommendations developed for the 2006-2008 allocation process. This earlier process was a product of the CDQ groups spending a considerable amount of time and resources to conform to the CDQ program guidelines and evaluation criteria as required

by State and federal law and regulation. After the Governor's press release was issued, one member of the state CDQ team stated rather forcefully from his seat at the NPFMC that these recommendations were firm and would not be altered. Then, as an apparent afterthought, the following day the state placed an ad in the newspaper indicating the prior 2006-2008 allocation process would somehow take in calendar years 2009-2011, which were not previously part of any of the CDPs or state analysis.

Question

Assuming that the State transmits their 2007-2011 Pollock recommendations to NMFS as they have said they would, we assume that NMFS must apply applicable federal regulations in reviewing the recommendations. Among other things, NMFS will presumably want to see a detailed accounting of how each of six CDQ groups has met the applicable requirements in 50 CFR 679 for the period 2007-2011. As you know, the CDPs are silent about 2009-2011, because the state changed the rules so precipitously that it did not have time to undertake the normal processing of CDPs under its own rules and, among other things, obtain information about 2009-2011. NMFS would also want to ensure the state applied the evaluation criteria established in state regulations.

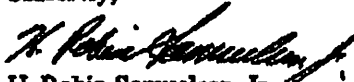
BBEDC hereby requests that NMFS advise us whether it will employ the same standard of review for these Pollock recommendations as it used in its review of the State's 2005 Eastern Aleutians Islands and Adak Red King Crab allocations. As you know, in that case NMFS determined that the State did not provide a reasonable explanation for its recommendations as required by 50 CFR 679.30(d).

In its September 19, 2005 letter to the State and the six CDQ groups, NMFS ruled:

"Specifically, the State's rationale does not demonstrate that the state applied all the evaluation criteria that it said that it focused on in its allocation recommendation, and the State did not provide an adequate explanation about how it used its conclusions about the evaluation criteria it applied to determine the specific percentage allocations it recommended for each group."

I appreciate your assistance in responding to the inquiry in this letter. If can provide any further clarification on this request, please do not hesitate to contact me.

Sincerely,


H. Robin Samuelson, Jr.
President/CEO

CC: State of Alaska
Congressional Delegation
CDQ Groups

**Council Motion on BSAI Amendment 71
Community Development Quota (CDQ) Program
December 11, 2005**

The Council hereby rescinds its final action on Issues 1-7 of BSAI Amendment 71 taken at its June 2002 meeting, and adopts the following revised alternatives and options for analysis.

ALTERNATIVE 1. No Action

CDQ Program Oversight

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

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

Component 2. Extent of government oversight

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

Component 3. Allowable investments

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

Component 4. CDQ Program purpose

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

CDQ Allocation Process

Component 5. Process by which CDQ allocations are made

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

Component 6. Fixed versus performance-based allocations

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

Component 7. CDQ allocation evaluation criteria

Evaluation criteria are not specified in Federal regulations.

Component 8. Duration of the allocation cycle

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

ALTERNATIVE 2. Council Preferred Alternative from June 2002

CDQ Program Oversight

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

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

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

Component 2. Extent of government oversight

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

Component 3. Allowable investments

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

Component 4. CDQ Program purpose

Amend Federal regulations and the BSAI FMP to state:

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

(Fisheries related projects will be given more weight in the allocation process than non-fisheries related projects.)

CDQ Allocation Process

Component 5. Process by which CDQ allocations are made

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

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

Component 6. Fixed versus performance-based allocations

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

Component 7. CDQ allocation evaluation criteria

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

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

Component 8. Duration of the allocation cycle

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

ALTERNATIVE 3. State of Alaska Blue Ribbon Panel Recommendations

CDQ Program Oversight

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

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

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

Component 2. Extent of government oversight

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

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

Component 3. Allowable investments

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

Component 4. CDQ program purpose

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

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

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

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

CDQ Allocation Process

Component 5. Process by which CDQ allocations are made

Allocations would continue to be made through NMFS informal adjudication.

1

Component 6. Fixed versus performance-based allocations

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

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

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

Component 7. CDQ allocation evaluation criteria

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

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

Option 1. The criteria and weighting/prioritization are established in the FMPs and Federal regulations. The analysis will need to address the following at a minimum:

1. Ranges of weighting for each criteria from 10-35%
2. How the different criteria would be defined and measured
3. How changes in weighting of each criteria might affect the different groups' allocations depending on their current levels of population, poverty, number of jobs created to date, amount/number of scholarships and training provided, etc.

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

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

Component 8. Duration of the allocation cycle

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

**Western Alaska Community Development Quota Program
Statutory Requirements for the CDQ Cost Recovery Fee Program**

Section 304(d) of the Magnuson Stevens requires that the Secretary of Commerce establish a fee collection program for the recovery of the actual costs directed related to management and enforcement of the CDQ Program. The statutory language is reproduced below:

304(d) ESTABLISHMENT OF FEES.--

(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any--

(i) individual fishing quota program; and

(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C) (i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

305(i) ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT PROGRAMS--

* * *

(3) The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.

[Revision to Appendix 3 in the Eligible Communities RIR to show proposed text to be added to the FMP in bold.]

Amendment 87 to Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area

Amend Section 3.7.4 of the BSAI groundfish FMP by adding the text in bold and deleting the text in strikeout below:

3.7.4 Community Development Quota Multispecies Fishery

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

The NMFS Regional Administrator shall hold the designated percent of the annual total allowable catch of groundfish for each management subarea in the BSAI for the western Alaska community quota as noted below. These amounts shall be released to eligible Alaska communities who submit a plan, approved by the Governor of Alaska, for their wise and appropriate use.

~~The CDQ program is 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 specified criteria and have developed a fisheries development plan approved by the Governor of Alaska. The Governor shall develop such recommendations in consultation with the Council. The Governor shall forward any such recommendations to the Secretary, following consultation with the Council. Upon receipt of such recommendations, the Secretary may designate a community as an eligible fishing community and, under the plan, may release appropriate portions of the reserve.~~

Not more than 33 percent of the total western Alaska community quota for any single species category may be designated for a single CDQ applicant, except that if portions of the total quota are not designated by the end of the second quarter, applicants may apply for any portion of the remaining quota for the remainder of that year only.

3.7.4.1 Eligible Western Alaska Communities

In August 2005, Congress confirmed the eligibility of 65 communities to participate in the CDQ Program (Public Law 109-59). In addition, section 305(i)(1)(B) of the Magnuson-Stevens Act contains eligibility criteria for the CDQ Program. Any community that meets the Magnuson-Stevens Act eligibility criteria may apply to the Secretary following the procedure described in Federal regulations at 50 CFR part 679. To be eligible to participate in the CDQ Program, a community shall:

1. 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;
2. not be located on the Gulf of Alaska coast of the north Pacific Ocean;

3. be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) to be a Native village;
4. consist of residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea or waters surrounding the Aleutian Islands; and
5. not have previously developed harvesting or processing capability sufficient to support substantial participation in the groundfish fisheries in the Bering Sea, unless the community can show that the benefits from an approved Community Development Plan would be the only way for the community to realize a return from previous investments.

All communities eligible for the CDQ Program are listed in Federal regulations at 50 CFR part 679.

~~The Governor of Alaska is authorized to recommend to the Secretary that a community within western Alaska which meets all of the following criteria be eligible for the CDQ program:~~

- ~~1. be located on or proximate to the Bering Sea coast from the Bering Strait to the western-most of the Aleutian Islands or a community located on an island within the Bering Sea, which the Secretary of the Interior has certified pursuant to section 11(b)(2) or (3) of Pub. L. No. 92-203 as Native villages as defined in section 3(c) of Pub. L. No. 92-203;~~
- ~~2. be unlikely to be able to attract and develop economic activity other than commercial fishing that would provide a substantial source of employment;~~
- ~~3. its residents have traditionally engaged in and depended upon fishing in the waters of the Bering Sea coast;~~
- ~~4. has not previously developed harvesting or processing capability sufficient to support substantial participation in the commercial groundfish fisheries of the BSAI because of a lack of sufficient funds for investing in harvesting or processing equipment; and~~
- ~~5. has developed a community development plan approved by the Governor, after consultation with the Council.~~

~~Also, Akutan is included in the list of eligible CDQ communities.~~

3.7.4.2 Fixed Gear Sablefish Allocation

The NMFS Regional Administrator shall hold 20 percent of the annual fixed-gear total allowable catch of sablefish for each management subarea in the BSAI for the western Alaska sablefish community quota. The portions of fixed-gear sablefish TACs for each management area not designated to CDQ fisheries will be allocated as quota share and IFQs and shall be used pursuant to the program outlined in Section 3.7.1.

3.7.4.3 Pollock Allocation

Ten percent of the pollock TAC in the BSAI management area shall be allocated as a directed fishing allowance to the CDQ program. This quota shall be released to communities on the Bering Sea coast which submit a plan, approved by the Governor of Alaska, for the wise and appropriate use of the quota.

3.7.4.4 Multispecies Groundfish and Prohibited Species Allocations

In addition to the CDQ allocations authorized in Section 3.7.4.2 and Section 3.7.4.3, 7.5 percent of the TAC for all BSAI groundfish species or species groups, except squid, will be issued as a CDQ allocation from the groundfish reserve. A pro-rata share of PSC species also will be issued. PSC will be allocated before the trawl/non-trawl splits. The program is patterned after the pollock CDQ program.

**CDQ Consultation
Presentation**

FOR THE

**North Pacific Fisheries
Management Council**



April 5, 2006
Commissioner William C. Noll



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Office of the Commissioner

Frank H. Murkowski, Governor
William Noll, Commissioner

April 5, 2006

Ms. Stephanie Madsen, Chair
North Pacific Fisheries Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Re: Governor's Recommended Community Development Quota
Percentage Allocations Numbers for 2006-08

Dear Ms. Madsen:

This letter shall serve as our conveyance of supporting material for the mandated consultation with the Council.

In the packets you will find a copy of an explanatory letter distributed yesterday to Alaska's congressional delegation and Governor Murkowski's adjusted recommended percentage allocations for the CDQ Program. These allocations are based on a lengthy record and a thorough examination of the materials submitted by each of the six CDQ groups in support of their respective allocation requests. Both a Federal and a State scorecard were developed for this purpose.

On April 6th the full commentaries will be provided to the CDQ groups, and a 30-day period will commence for reconsideration requests.

It is a pleasure to provide the Council with this packet of updated CDQ information. It is my hope that this information is helpful to you in the consultation process.

Sincerely,

William C. Noll
Commissioner



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Office of the Commissioner

Frank H. Murkowski, Governor
William Noll, Commissioner

April 4, 2006

The Honorable Don Young
United States Congressman
2111 Rayburn Building
Washington DC 20515

Re: Governor's Recommended Community Development Quota Percentage Allocations
Numbers for 2006-08

Dear Congressman Young:

I am pleased to present you (Enclosure #1) with Governor Murkowski's recommended percentage allocations for all species for the important and vital CDQ Program for Western Alaska. These allocations are based on a lengthy record and upon a thorough examination of the materials submitted by each of the six CDQ groups in support of their respective allocation requests.

Importantly, these allocation recommendations take into consideration the criticism leveled at CDQ allocation recommendations that were issued by then Commerce Commissioner Blatchford on March 14, 2005. These March 14, 2005 allocation figures were criticized by the North Pacific Fisheries Management Council (NPFMC) and subsequently by the National Marine Fisheries Service (NMFS) in a formal Initial Administrative Decision (IAD) which refused to approve crab allocations based on the same administrative record and methodology used to develop the March 14, 2005 allocation recommendations.

The State listened and took into account that both NPFMC and NMFS had questioned the process used, and the administrative record relied upon, to generate the March 14, 2005 allocation figures. The State took seriously the admonition that it should use all of the criteria listed in applicable regulations to evaluate each CDQ group's request for allocation and to engage in an open and rational scoring process.

The allocation recommendations transmitted with this letter respond to these critiques, and properly reject the March 14, 2005 figures. In contrast to the March 2005 figures, these allocation recommendations are based on a thorough review of each group's submission to the state. In contrast to the March 14, 2005 numbers, these allocation numbers are based on a process of scoring each criteria set forth in the regulations separately, for each CDQ group.

The Scoring Process

The allocation recommendations transmitted with this letter are based on a scoring process using criteria that are set out in regulation. For example, the State regulations contain 20 criteria to be used in evaluating a group's Community Development Plan (CDP). The CDP is akin to a business plan and is a report by each group stating how it has performed and what it plans to do in the upcoming allocation cycle. The Governor's Team

scored each of these criteria separately for each of the six CDQ groups. The scores were based primarily on what was contained in each of the group's CDP filed with the State.

The scores were arrived at independently of any other score for the same group or another group. That is, each group's CDP was scored for what it had submitted based on what is required to be in a CDP under both State and Federal regulations. At the end, the individual scores for each of the scored criteria were added together to develop an overall scorecard for each group. A copy of this scorecard is available.

Additionally, the Governor's team created a document to describe the scoring process and to set out what it found for each scored criteria for each of the six CDQ groups. This commentary document is also available.

Rejection of the March 14, 2005 Allocation Recommendations

The scorecard and the commentary document support the Governor's recommendations and his rejection of the March 14, 2005 recommendations. Indeed, the Governor's recommendations reflect the wishes of NPFMC and reflect the suggestions made by NMFS in the two IADs it issued regarding the CDQ Program in August and September of 2005.

Timeline of the Process

In order to put this process in context, it is useful to examine the timeline which produced these allocation numbers.

The Department of Commerce solicited each of the CDQ groups to submit its allocation requests in the autumn of 2004. Public hearings were held regarding the CDPs in December of 2004, and Commissioner Blatchford released allocation recommendations in a short letter dated February 9, 2005. On March 14, 2005, a longer letter was issued which set forth the process used. The March 2005 letter expressly states that the CDQ Team decided not to score all of the criteria listed in the State regulations and noted that some criteria were deemed to be duplicative. No scorecard was used.

Consultation with the NPFMC in April 2005

In compliance with 50 C.F.R. 679.30(c) and 6 AAC 93.040(b), Commissioner Blatchford consulted with NPFMC about the CDQ Team's allocation recommendations. This consultation, in contrast to past practice, was not well received. Commissioner Blatchford was questioned by Council members about the methods and process used to arrive at the March 14, 2005 percentage allocation figures. The transcript of the proceedings shows that NPFMC had grave doubts about these March 2005 state allocation recommendations.

On April 8, 2005, NPFMC passed an extraordinary resolution and on April 11, 2005 sent the Governor a letter which stated that NPFMC was concerned about "the way in which the [CDQ] program standards and evaluation criteria in State regulations are applied by the State CDQ Team in its evaluation of the Community Development Plans and development of the allocation recommendations..."¹ NPFMC recommended that the Governor create a CDQ Blue Ribbon Panel to evaluate the current operation of the CDQ Program. The Governor did so in May 2005.

¹ Cited in an Initial Administrative Decision ("IAD") issued by NMFS on August 8, 2005 at page 3.

The Response by NMFS

While the Blue Ribbon Panel was conducting its work, NMFS on August 8, 2005 unilaterally issued an IAD. Under the applicable Federal regulations, the State had until October 15, 2005 to submit its recommendations to NMFS [per 50 C.F.R. 679.30(d)]. The NMFS August 8th IAD allowed a rollover of the 2003-2005 CDQ percentage allocations until new State recommendations were accepted and approved by NMFS. See NMFS August 8, 2005 IAD at p. 2.

Before the Blue Ribbon Panel completed its review, NMFS issued a second IAD affecting the CDQ Program.² This Golden King Crab IAD disapproved State percentage allocations for two crab species which had been forwarded to NMFS for approval in a letter from the Governor to NMFS dated July 14, 2005. Commissioner Blatchford's crab allocation recommendations used the same administrative record and scoring process used for the March 14, 2005 multi-species allocations.

NMFS' Golden King Crab IAD indicated that the federal agency had concerns about the record the State used to arrive at its crab allocations. The Golden King Crab IAD stated that the State "did not provide a reasonable explanation for its recommendations as required by 50 C.F.R. 679.30(d)." See Golden King Crab IAD at p. 2. NMFS determined that the State's rationale for its crab allocations "did not provide an adequate explanation about how it used its conclusions about the evaluation criteria it applied to determine the specific percentage allocations it recommended for each CDQ group." (Ibid.)

NMFS determined that the State's July 2005 crab percentage allocation recommendations suffered from two major defects:

- (1) The State's rationale does not demonstrate that the State applied all of the evaluation criteria it said (on pages 3 and 4 of the State's rationale) that it focused on its allocation recommendations.
- (2) The State did not provide an adequate explanation about how it used its conclusions from the evaluation criteria it applied to determine the specific percentage allocations it recommended for each CDQ group. See Golden King Crab IAD at pp. 17-21.

NMFS further concluded that the failure to fully explain the rationale for the State's recommendations as required under 50 C.F.R. 679.30(d), made the recommendations unsupported (Ibid at p. 21). NMFS determined that the July 14, 2005 Golden King Crab State recommendations did not establish that the State actually applied all of the evaluation criteria it stated it used, and did not adequately explain how it used its conclusions about these evaluation criteria to determine the specific percentage allocations it recommended for each CDQ group. (Ibid.)

These rejected crab allocation recommendations were based on the same record and methodology used to arrive at the March 14, 2005 allocation numbers. The criticisms made by NMFS of the crab allocations could therefore apply equally to all March 14, 2005 allocation recommendations.

² This IAD is dated September 19, 2005 and is entitled: "Initial Administrative Determination about the State of Alaska's Percentage Allocation Recommendation for Eastern Aleutian Islands Golden King Crab and Adak Red King Crab and Associated Amendments to the 2003-2005 Community Development Plans under the Western Alaska Community Development Quota Program". [Hereinafter cited as "Golden King Crab IAD"].

The Rollover of the of the 2003-05 Allocations

On May 31, 2005 Commissioner Blatchford sent NPFMC a letter informing the Council that he was holding back the allocation recommendations pending a report from the CDQ Blue Ribbon Panel. NMFS on August 8, 2005 issued an IAD which determined that the 2003-05 allocations could be rolled over so that all groups could continue fishing while the Blue Ribbon Panel was completing its work.

The CDQ Blue Ribbon Panel Report

On October 13, 2005, the CDQ Blue Ribbon Panel presented its report to the Governor who accepted it. While no allocation recommendations were made in the Blue Ribbon Panel Report, the Report echoes the comments of NPFMC that the allocation process used in 2002, and begun again the applicable Federal and State regulations and State program standards.

The Governor's December 2005 CDQ Numbers

After the Blue Ribbon Panel presented its report, the State was asked by the delegation about its views of how the allocation cycle should be set and what allocations numbers would be appropriate if the panel's suggested 10 year allocation cycle was put into effect.

The March 14, 2005 numbers had been based on two premises. The first was that they would last for only three years. Secondly they were based on an assumption that they could be changed at the end of that relatively short three-year period. The Blue Ribbon Panel suggested a major change in which 90% of a group's allocation would be fixed and only 10% of the allocation could be changed once every 10 years.

The task facing the Governor was to present the delegation with the type of allocation numbers which would be appropriate for a very long period of time and which would not appreciably change over time. Furthermore, the delegation insisted on seeing the allocation recommendations almost immediately, giving the Governor about one week to make his decisions.

In response, in December of 2005, the Governor announced his allocation numbers for Pollock, which were policy numbers making allocations so that large and small groups would be treated fairly if allocations were largely frozen and the allocation period was extended to 10 years.

The Governor's Directive to the Governor's CDQ Team

Following that phase, the Governor directed the Governor's CDQ Team to produce CDQ percentage allocation recommendations for all species for all six CDQ groups that would use all of the criteria identified by NMFS in its IADs issued in August and September of 2005 which would be consistent with the comments of NPFMC and the Blue Ribbon Panel. The Governor's CDQ Team created the record required under 6 AAC 93.040 using the 20 Criteria and the Program Standards, plus other discretionary factors described in this scorecard comments under each criteria and allowed the Governor may use under 6 AAC 93.075 (a) and which are permitted under the federal regulatory scheme.

The CDQ Team has now scored: all the criteria listed in the program standards in 6 AAC 93.017; all the evaluation criteria set out in 6 AAC 93.040(b) and (g) [adjusting some scores as provided the Governor under 6 AAC 93.075 (a)]; and, as directed in 6 AAC

93.040(g), has considered all the information specified in the State regulations and materials in 50 C.F.R. 679 in order to "seek to maximize the benefits of the CDQ program to the greatest number of participating communities" per 6 AAC 93.040(g).

The Future of the Program

The numbers being presented to NPFMC tomorrow are for the 2006-08 allocation cycle. This is the allocation cycle for which each CDQ group prepared a CDP, and the scoring of these CDPs is the basis for the allocation recommendations. This allocation cycle was used, therefore, so that allocation numbers could be based on a carefully considered administrative record prepared in accordance with State and Federal regulations. Use of the 2006-08 cycle meant that the discredited March 14, 2005 numbers could be replaced with allocation recommendations which took into account the constructive criticisms the State received from the NPFMC and NMFS.

The State, however, agrees with the recommendation of the Blue Ribbon Panel that a longer allocation cycle should be used in the future. The State has issued new suggested regulations which would accomplish many of the Blue Ribbon Panel's recommendations, such as more disclosure of who each CDQ group is operated. The State is working with NMFS to develop an approach to the program consistent with the Blue Ribbon Panel and believes that most of the needed changes can be made via new State regulations.


Conclusion

The Governor, under the regulatory scheme for the CDQ Program, can accept or reject the allocation recommendations made by the CDQ Team. The recommendations made by the CDQ Team, as set forth in Commissioner Blatchford's March 14, 2005 letter, were not well received by NPFMC, NMFS or the Blue Ribbon Panel. They were allocation recommendations which produced questions about the process used to arrive at them and their basis in the applicable regulations.

The allocation recommendations submitted with this letter are based on a scoring process and a scorecard. The scores were adjusted by the Governor, and that adjustment process is described in the commentary document. The process used in the scoring is described in detail in a commentary document. The result is that the process and the scores are based on an evaluation of each CDQ group's filed CDP and the score that CDP received based on the criteria set forth in the regulations.

We respectfully repeat the position of the State of Alaska, which is that the CDQ program is to be administered by the State and allocations should not be done by Federal statute. We look forward to a strong, positive Federal – State relationship for this vital and successful initiative.

Sincerely,



William C. Noll
Commissioner

Enclosure

2006 - 08 Quota Allocations

	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA	Total
Pollock							
BS	15%	19%	8%	22%	20%	16%	100%
AI	15%	19%	8%	22%	20%	16%	100%
Bogoslof	15%	19%	8%	22%	20%	16%	100%
Pacific Cod	15%	19%	8%	22%	20%	16%	100%
Sablefish							
BS FG	15%	19%	8%	22%	20%	16%	100%
AI FG	15%	19%	8%	22%	20%	16%	100%
BS	15%	19%	8%	22%	20%	16%	100%
AI	15%	19%	8%	22%	20%	16%	100%
Atka Mackerel							
WAI	15%	19%	8%	22%	20%	16%	100%
CAI	15%	19%	8%	22%	20%	16%	100%
EAI	15%	19%	8%	22%	20%	16%	100%
Yellowfin Sole	15%	19%	8%	22%	20%	16%	100%
Rock Sole	15%	19%	8%	22%	20%	16%	100%
Greenland Turbot	15%	19%	8%	22%	20%	16%	100%
BS	15%	19%	8%	22%	20%	16%	100%
AI	15%	19%	8%	22%	20%	16%	100%
Arrowtooth	15%	19%	8%	22%	20%	16%	100%
Flathead Sole	15%	19%	8%	22%	20%	16%	100%
Other Flatfish	15%	19%	8%	22%	20%	16%	100%
Alaska Plaice	15%	19%	8%	22%	20%	16%	100%
POP							
BS	15%	19%	8%	22%	20%	16%	100%
WAI	15%	19%	8%	22%	20%	16%	100%
CAI	15%	19%	8%	22%	20%	16%	100%
EAI	15%	19%	8%	22%	20%	16%	100%
Northern Rockfish BSAI	15%	19%	8%	22%	20%	16%	100%
Shortraker Rockfish BSAI	15%	19%	8%	22%	20%	16%	100%
Rougheye Rockfish BSAI	15%	19%	8%	22%	20%	16%	100%
Other Rockfish	15%	19%	8%	22%	20%	16%	100%
BS	15%	19%	8%	22%	20%	16%	100%
AI	15%	19%	8%	22%	20%	16%	100%
PSC							
Zone 1 Red King Crab	15%	19%	8%	22%	20%	16%	100%
Zone 1 Bairdi Tanner Crab	15%	19%	8%	22%	20%	16%	100%
Zone 2 Bairdi Tanner Crab	15%	19%	8%	22%	20%	16%	100%
Opilio Tanner Crab	15%	19%	8%	22%	20%	16%	100%
Pacific Halibut	15%	19%	8%	22%	20%	16%	100%
Chinook Salmon	15%	19%	8%	22%	20%	16%	100%
Non-Chinook Salmon	15%	19%	8%	22%	20%	16%	100%
Hallbut							
4B	100%	0%	0%	0%	0%	0%	100%
4C	20%	0%	80%	0%	0%	0%	100%
4D	0%	26%	0%	24%	30%	20%	100%
4E	0%	30%	0%	50%	20%	0%	100%
Crab							
Bristol Bay Red King	17%	18%	11%	18%	18%	18%	100%
Norton Sound Red King	0%	0%	0%	0%	50%	50%	100%
Pribilof Island Red and Blue	0%	0%	100%	0%	0%	0%	100%
St. Matthew Blue	50%	12%	0%	12%	14%	12%	100%
Bering Sea C. opilio	8%	20%	20%	17%	18%	17%	100%
EAI Golden (Brown) King	15%	20%	10%	20%	20%	15%	100%
Adak (Petrel Bank) Red King	100%	0%	0%	0%	0%	0%	100%
Bering Sea C. bairdi	10%	19%	19%	17%	18%	17%	100%

NOTICE OF 2006 – 2008 CDQ ALLOCATION CYCLE

On August 15, 2004, the State of Alaska (State) published a public notice announcing the opening of an application period for the 2006-2008 Community Development Plan (CDP) Applications for groundfish, halibut, and crab quota, and bycatch and prohibited species for the Community Development Quota (CDQ) program.

In December of 2005 the State published a public notice changing the allocation cycle to 2007 through 2011.

Per 6 AAC 93.020(c), the State CDQ Team determines that it is necessary to change the allocation cycle from 2007-2011 to 2006-2008.

Questions concerning this notice can be answered by writing or calling: Greg Cashen, Department of Commerce, Community and Economic Development, PO Box 110807, Juneau, AK 99811-0807, (907) 465-5536.

Individuals with disabilities who require special accommodations, auxiliary aids or services, or alternative communication formats in order to comment, may contact Greg Cashen at the above address and phone number or TDD (907) 465-5437.

**Western Alaska Community Development Quota Program
Statutory Requirements for the CDQ Cost Recovery Fee Program**

Section 304(d) of the Magnuson Stevens requires that the Secretary of Commerce establish a fee collection program for the recovery of the actual costs directed related to management and enforcement of the CDQ Program. The statutory language is reproduced below:

304(d) ESTABLISHMENT OF FEES.--

(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any--

(i) individual fishing quota program; and

(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C) (i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

305(i) ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT PROGRAMS--

** * **

(3) The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.

[Revision to Appendix 3 in the Eligible Communities RIR to show proposed text to be added to the FMP in bold.]

Amendment 87 to Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area

Amend Section 3.7.4 of the BSAI groundfish FMP by adding the text in bold and deleting the text in strikethrough below:

3.7.4 Community Development Quota Multispecies Fishery

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

The NMFS Regional Administrator shall hold the designated percent of the annual total allowable catch of groundfish for each management subarea in the BSAI for the western Alaska community quota as noted below. These amounts shall be released to eligible Alaska communities who submit a plan, approved by the Governor of Alaska, for their wise and appropriate use.

~~The CDQ program is 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 specified criteria and have developed a fisheries development plan approved by the Governor of Alaska. The Governor shall develop such recommendations in consultation with the Council. The Governor shall forward any such recommendations to the Secretary, following consultation with the Council. Upon receipt of such recommendations, the Secretary may designate a community as an eligible fishing community and, under the plan, may release appropriate portions of the reserve.~~

Not more than 33 percent of the total western Alaska community quota for any single species category may be designated for a single CDQ applicant, except that if portions of the total quota are not designated by the end of the second quarter, applicants may apply for any portion of the remaining quota for the remainder of that year only.

3.7.4.1 Eligible Western Alaska Communities

In August 2005, Congress confirmed the eligibility of 65 communities to participate in the CDQ Program (Public Law 109-59). In addition, section 305(i)(1)(B) of the Magnuson-Stevens Act contains eligibility criteria for the CDQ Program. Any community that meets the Magnuson-Stevens Act eligibility criteria may apply to the Secretary following the procedure described in Federal regulations at 50 CFR part 679. To be eligible to participate in the CDQ Program, a community shall:

- 1. 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;**
- 2. not be located on the Gulf of Alaska coast of the north Pacific Ocean;**

3. be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) to be a Native village;
4. consist of residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea or waters surrounding the Aleutian Islands; and
5. not have previously developed harvesting or processing capability sufficient to support substantial participation in the groundfish fisheries in the Bering Sea, unless the community can show that the benefits from an approved Community Development Plan would be the only way for the community to realize a return from previous investments.

All communities eligible for the CDQ Program are listed in Federal regulations at 50 CFR part 679.

~~The Governor of Alaska is authorized to recommend to the Secretary that a community within western Alaska which meets all of the following criteria be eligible for the CDQ program:~~

- ~~1. be located on or proximate to the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands or a community located on an island within the Bering Sea, which the Secretary of the Interior has certified pursuant to section 11(b)(2) or (3) of Pub. L. No. 92-203 as Native villages are defined in section 3(c) of Pub. L. No. 92-203;~~
- ~~2. be unlikely to be able to attract and develop economic activity other than commercial fishing that would provide a substantial source of employment;~~
- ~~3. its residents have traditionally engaged in and depended upon fishing in the waters of the Bering Sea coast;~~
- ~~4. has not previously developed harvesting or processing capability sufficient to support substantial participation in the commercial groundfish fisheries of the BSAI because of a lack of sufficient funds for investing in harvesting or processing equipment; and~~
- ~~5. has developed a community development plan approved by the Governor, after consultation with the Council.~~

~~Also, Akutan is included in the list of eligible CDQ communities.~~

3.7.4.2 Fixed Gear Sablefish Allocation

The NMFS Regional Administrator shall hold 20 percent of the annual fixed-gear total allowable catch of sablefish for each management subarea in the BSAI for the western Alaska sablefish community quota. The portions of fixed-gear sablefish TACs for each management area not designated to CDQ fisheries will be allocated as quota share and IFQs and shall be used pursuant to the program outlined in Section 3.7.1.

3.7.4.3 Pollock Allocation

Ten percent of the pollock TAC in the BSAI management area shall be allocated as a directed fishing allowance to the CDQ program. This quota shall be released to communities on the Bering Sea coast which submit a plan, approved by the Governor of Alaska, for the wise and appropriate use of the quota.

3.7.4.4 Multispecies Groundfish and Prohibited Species Allocations

In addition to the CDQ allocations authorized in Section 3.7.4.2 and Section 3.7.4.3, 7.5 percent of the TAC for all BSAI groundfish species or species groups, except squid, will be issued as a CDQ allocation from the groundfish reserve. A pro-rata share of PSC species also will be issued. PSC will be allocated before the trawl/non-trawl splits. The program is patterned after the pollock CDQ program.



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Office of the Commissioner

Frank H. Murkowski, Governor
William C. Noll, Commissioner

April 6, 2006

Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Re: CDQ Allocation History

Dear Chair Madsen:

I have provided a table below identifying the allocation history for Council members as requested.

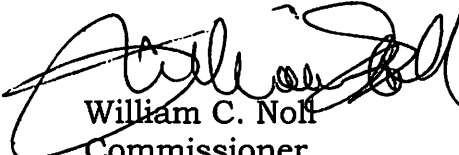
	Long Term Average	March 14, 2005	2006 Rollover	December 2005	May 2006
APICDA	16%	11%	14%	15%	15%
BBEDC	21%	22%	21%	20%	19%
CBSFA	6%	6%	5%	10%	8%
CVRF	25%	24%	24%	20%	22%
NSEDC	22%	22%	22%	20%	20%
YDFDA	11%	15%	14%	15%	16%

Explanation.

1. "Long-Term Average" is the average allocation from the CDQ program's beginning to date.
2. "March 14, 2005" is the so-called Blatchford recommendations.
3. "2006 Rollover" are the current allocations.
4. "December 2005" are the allocations promulgated, as requested by the Delegation.
5. "May 2006" are the allocations resulting from in-depth review by the CDQ Team.

Please let me know if I can answer any additional questions you may have.

Sincerely,



William C. Noll
Commissioner

cc: Council Members
CDQ Team