

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *Chris*
Acting Executive Director

ESTIMATED TIME 1 HOUR

DATE: November 26, 2000

SUBJECT: CDQ Oversight

ACTION REQUIRED

- (a) Discuss the 2001-2002 MS-CDQ allocations.
- (b) Discuss H.R. 5565.
- (c) Discuss draft analysis of the State of Alaska's proposed revisions to the CDQ administrative regulations.
- (d) Discuss committee structure.

BACKGROUND

2001-2002 allocations

The Council concurred with the State's 2001-2002 allocation recommendations at its October 2000 meeting. NMFS received the State's recommendations on October 16, 2000. On October 31, 2000, NMFS received a letter from the Aleutian Pribilof Island Community Development Association (APICDA), requesting that it disapprove all of the State's recommended allocations due to concerns about the State's allocation process and questions about NMFS's role in the process (Item C-7(a)). On November 14, 2000, NMFS requested additional written information from the State about the reasons for their allocation recommendations. NMFS will update the Council on the status of the 2001-2002 allocations and issues raised in APICDA's letter.

H.R. 5565

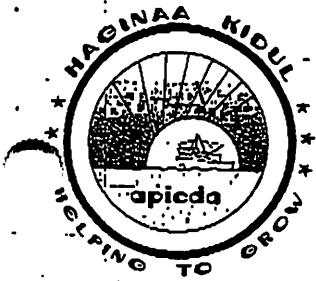
On October 26, 2000, Congressman Don Young introduced H.R. 5565 to amend Section 305(i) of the MSA (the Alaska and Western Pacific Community Development Quota Programs) (Item C-7(b)). NMFS staff will provide information about the changes that these amendments would make to the CDQ Program.

Proposed administrative regulation changes

No additional work has been done on analysis of the State's proposed administrative regulation changes since the October Council meeting due to staff work on the above issues. However, resolution of the issues raised in review of the 2001-2002 CDQ allocations will help further define the oversight responsibilities of the State and NMFS. This information is needed to proceed with the draft analysis and initial review will be rescheduled next year. The list of alternatives is attached under (Item C-7(c)).

Committees

The Council had expressed interest in reviewing the membership of the CDQ Implementation Committee (Item C-7(d)) and possibly forming an additional policy committee, pending the revised analysis. This can also be scheduled for next year, or considered in light of the status of the issues described above.



Aleutian Pribilof Island Community Development Association

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October 31, 2000

Mr. Jim Balsiger, Alaska Regional Director
 National Marine Fisheries Service
 P.O. Box 21668
 Juneau, Alaska 99802

Re: Challenge of State of Alaska 2001/02 CDQ Allocation Recommendations

Dear Mr. Balsiger:

On October 16, 2000, we notified you of our intention to challenge the CDQ allocation recommendations made by the state of Alaska to the Secretary of Commerce for the upcoming 2001 and 2002 calendar years. Attached is a memorandum discussing why we believe the state's recommendations should be disapproved by the Secretary.

We realize this is the first time a challenge to the state's recommendations has been made. We are unclear regarding the process NMFS will use in addressing our objections. Therefore, we have a number of process questions, the answers to which will guide how we proceed:

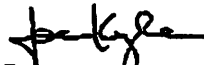
- What process will the Secretary use to evaluate our challenge to the state's recommendations? Does NMFS have internal procedures that it follows, or will it follow federal or state of Alaska administrative procedure laws?
- Will the state of Alaska be entitled to respond to our memorandum? If so, what time line will be involved? Will we be entitled to offer a rebuttal to the state's response, if any?
- If this issue is not resolved prior to commencement of the 2001 fishing season, what allocations will be in effect for each of the CDQ organizations? Will the current allocations be used, or will the allocations which we are challenging be used?

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- What process will the Secretary use to evaluate respective Community Development Plans submitted by each of the CDQ groups and the corresponding findings by the state?
- Will the process used by the Secretary be independent of the state, or will the state be offered consultative opportunities to express their opinions? If so, will the CDQ groups be similarly offered opportunities to express their opinions, and will they be entitled to attend meetings between the Secretary and the state?

We look forward to your response.

Sincerely,



6 Larry Cotter
CEO

cc: APICDA Board of Directors
Ms. Gail Schubert, Esq.
Ms. Sally Bibb
State CDQ Team
North Pacific Fishery Management Council
CDQ Organizations
Trident Seafoods Corporation
STARBOUND Partnership

**Memorandum of Objection
to
State of Alaska's Recommended CDQ Allocations
for
Calendar Years 2001 and 2002**

1. Issue

The Aleutian Pribilof Island Community Development Association (APICDA) respectfully requests that the U.S. Secretary of Commerce disapprove the calendar year 2001 and 2002 CDQ allocations recommended for approval by the state of Alaska pursuant to its letter to the Secretary dated October 16, 2000. Under federal law, the Secretary, acting through the NMFS, has the authority and responsibility to make the final approval of CDQ allocations proposed by the state of Alaska.

2. Introduction

The North Pacific Fishery Management Council (NPFMC or Council) developed the Community Development Quota (CDQ) program. The initial CDQ program was approved by the NPFMC in 1991, and was restricted to the pollock fishery. The Secretary of Commerce approved the CDQ program on May 28, 1992, and promulgated regulations implementing the program. In subsequent years, halibut, sablefish, and all other groundfish species and crab in the Bering Sea and Aleutian Islands (BSAI) were included in a multi-species CDQ program. In the reauthorization of the Magnuson Fishery Management and Conservation Act of 1996, Congress formalized the CDQ program and made it a permanent program. The NMFS approved the final rule implementing the multi-species CDQ program in June 1998. Both the state and federal governments have adopted regulations governing the CDQ program.

There are six CDQ organizations: APICDA, the Bristol Bay Economic Development Association (BBEDC), the Central Bering Sea Fishermen's Association (CBSFA), the Coastal Villages Resource Fund (CVRF), the Norton Sound Economic Development Association (NSEDCA), and the Yukon Delta Fishery Development Association (YDFDA). The six organizations represent communities and villages in widely differing geographic locations.

The goals and purpose of the CDQ program are clearly established by the regulations promulgated by the Secretary. They 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. See 50 CFR § 679.1(e).

Development of the CDQ program by the NPFMC was a difficult and contentious task. Several key issues needed to be resolved by the Council before it could approve a final plan. Chief among these were the purpose and intent of the CDQ program, the amount of quota

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that would be allocated to the program, how the quota could be used by the prospective CDQ organizations, how the initial allocations to and between the prospective CDQ organizations would be made, how subsequent allocations and/or reallocations of quota to and between the prospective CDQ organizations would be made, and governmental oversight issues. The Council deliberated at length on these issues, with considerable input from the public. The record of the Council members' discussions and their intent regarding these issues is an important factor in determining whether or not the state's implementation of the program conforms to what the Council and the Secretary envisioned.

Although no written transcripts of the Council deliberations are available (the tapes may be available, but have not been transcribed), the author of this memorandum was a Council member at the time. In addition to his personal recollections, the author has communicated with other then-Council members (Mr. Rick Lauber, Mr. Clem Tillion, and Mr. Bob Alverson). All are in agreement that the CDQ allocations and reallocations were "to be based primarily upon the program developed by a CDQ organization, called a Community Development Plan (CDP) and the ongoing performance of a CDQ organization." Other factors were to be included, "but the primary focus would be on the program and the performance of each CDQ organization." In early meetings with the CDQ groups, state officials advised participants that their performance in particular would affect CDQ allocations made to them in the future.

The current CDQ allocation process consists of the following:

- The state of Alaska solicits community development plans (CDPs) and accompanying applications from all CDQ organizations. The CDPs include CDQ allocation requests from each of the six CDQ organizations. The state defines the period of time that the allocation will be effective.
- The state of Alaska receives the CDPs and accompanying applications and determines whether or not the applications are complete. If the state determines an application(s) is not complete, it provides the CDQ organization(s) the opportunity to correct the insufficiency.
- The state of Alaska conducts a public hearing during which each of the CDQ organizations makes a presentation and the public is provided the opportunity to comment.
- The state of Alaska conducts a "private meeting" with each CDQ organization in which the organization's CDP is discussed.
- The state of Alaska develops its CDQ allocation recommendations.

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- The state of Alaska presents its recommendations to the Council, and the Council offers its comments.
- The state of Alaska presents its recommendations to the Secretary of Commerce. Included in the state's presentation are the CDPs for each organization, the state's CDQ allocation recommendations, and the state's "findings" in support of its CDQ allocation recommendations.
- The Secretary approves or disapproves of the state's recommendations.

The October 16, 2000, recommendations forwarded to the Secretary by the state of Alaska, included the following pollock CDQ allocation modifications: reduction of the pollock CDQ allocation to APICDA by two percent (from 16% to 14%); reduction of the pollock CDQ allocation to CBSFA by one percent (from 5% to 4%); increase of the pollock CDQ allocation to NSEDC by one percent (from 22% to 23%); and, increase of the pollock CDQ allocation to CVRF by two percent (from 22% to 24%). A few other allocation modifications are also recommended, to which APICDA has no objection (notably reducing the Bristol Bay red king crab CDQ allocation by two percent for five groups and reallocating that ten percent to CBSFA, which previously had no Bristol Bay red king crab CDQ allocation).

For reasons set forth below, APICDA requests the Secretary to disapprove the entire calendar year 2001 and 2002 CDQ allocations as recommended by the state of Alaska.

3. Authority of the Secretary

The Secretary, acting through the NMFS, is charged with reviewing the record to determine whether the community eligibility criteria and the evaluation criteria set forth in the regulations have been met. See 50 CFR § 679.30(d). This regulation details the authority of the Secretary. In pertinent part, the regulation states:

" . . . Upon receipt by NMFS of the proposed CDPs and the State's recommendations for approval, NMFS will review the CDPs and approve those that it determines meet all applicable requirements. NMFS shall approve or disapprove the State's recommendations within 45 days of their receipt. In the event of approval of the CDP, NMFS will notify the State in writing that the proposed CDP is approved by NMFS and is consistent with all requirements for CDPs. If NMFS finds that a proposed CDP does not comply with the requirements of this part, NMFS must so advise the State in writing, including the reasons thereof. The state may submit a revised

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proposed CDP along with revised recommendations for approval to NMFS."

A strict reading of the regulation might result in a conclusion that the role of the Secretary is simply limited to determining whether or not each CDP "meet[s] all applicable requirements" of what a CDP itself must contain, while ignoring the broader policies and goals of the CDQ program. Such a conclusion would be too narrow and inappropriate, and would result in the conclusion that federal oversight is merely a pro forma rubber-stamping step in the CDQ allocation process.¹ The regulation must therefore be read in the context of all other regulations pertaining to the CDQ program, and legislative and administrative intent as expressed by the Congress and the NPFMC.

Since the CDQ program is a federal program, the Secretary is the person responsible for giving final approval to CDPs and the recommended CDQ allocations inherent therein. The Secretary plays a major role in ensuring that the program's goals and objectives are realized. The NMFS is the lead agency for the Secretary for the CDQ program. A narrow interpretation of the Secretary's role in the CDQ authorization process would transfer de facto authority for the cornerstone element of the CDQ program — the determination of CDQ allocations — solely and exclusively to the state of Alaska. The Secretary's role would be merely that of technical oversight to ensure compliance with CDP technical requirements, resulting in a partial delegation of his or her authority and responsibility for management of fisheries under the U.S government's jurisdiction, since the CDQ program is an important component of the Secretary's fisheries management plan.

The state of Alaska has published regulations that govern its role in the CDQ program. See 6 AAC.93.010 *et. seq.* The state has adopted a reconsideration process for CDQ groups that are dissatisfied with the state's allocation decisions. See Section 6 AAC 93.090. The language in this section details the rights of CDQ groups to appeal to the state for reconsideration of state actions. The regulation sets forth two distinct areas pursuant to which a CDQ applicant may seek reconsideration by the state of its actions: the approval or disapproval of proposed substantial amendments to a CDP under 6 AAC 93.055 (Amendments to an Approved CDP), or a decision under 6 AAC 93.060 (Suspension of Termination of a CDP; Decrease in Allocation). It is clear that 6 AAC 93.955 has no relevance to allocation recommendations made by the state with regard to CDQ quotas.

The applicability of Section 6 AAC 93.060, however, is less clear. The language of the regulation is ambiguous, and may or may not apply to new CDP cycle CDQ allocation recommendations made by the state. This section appears to apply to decisional

¹ It would also limit the Secretary's obligation to address the allocations of federal fishery resources — in effect, empowering the state of Alaska to allocate federal fishery resources to its citizens. This would be contrary to the practice of the NPFMC when, contemporaneously with the development of the CDQ program, it also developed a crab FMP for the state of Alaska to administer. The crab FMP specifically withheld allocation and limited entry authority from the state, reserving those powers for the NMFS.

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recommendations made by the Governor during the term of an approved CDP cycle (i.e., after the Secretary has approved the CDPs and before the next allocation cycle has commenced). It authorizes the Governor to "recommend to the NMFS in writing that a CDP be partially suspended, or terminated or that allocations under CDP be decreased . . ." The circumstances under which the Governor may make such a recommendation as set forth in the regulation are limited to those in which it is alleged that the particular CDQ group has failed to comply with its CDP, appears unlikely to meet the milestones or objectives set forth in its CDP, or has failed to comply with the federal and state regulations governing the program. In such instances, the state must notify the CDQ group in writing of the allegation, and the CDQ group has the right to provide a written response.

If it is determined that 6 AAC 93.060 applies to recommended CDQ allocations for a new CDP allocation cycle, it is clear that the state did not comply with this regulation, because it failed to provide any written notification to APICDA of a deficiency, problem, or failure on APICDA's part to comply with the regulations.

However, we believe that a more reasonable interpretation is that 6 AAC 93.060 applies only to mid-cycle CDP issues, and not to situations where a CDQ group is adversely impacted by state action with respect to a new CDP cycle. If this interpretation is correct, then there is no administrative method within the state system by which CDQ groups may contest the state's allocation recommendations to the Secretary. Correspondingly, if 50 CFR 679.30 (d) is narrowly interpreted and the Secretary's role is determined to be merely administrative, then there is no appeals process at the federal level by which CDQ groups can object to the state's allocation process and recommendations. This would create an untenable situation in which administrative due process would be denied to the CDQ groups.

The state's regulations² clearly recognize its role, which is to "make recommendations regarding CDQ allocations and changes to allocations." If the state's role is limited to making recommendations, it is clear that some entity must make the final decision on the recommendation. That final decision-maker must therefore be the Secretary, who approves the recommendations as a part of his or her duties with respect to federal fisheries management oversight. Since it appears that the state's regulations do not provide an

² See the following:

6 AAC 93.015(c)(3): "make recommendations regarding CDQ allocations and changes to allocations." (emphasis added).

6 AAC 93.040(c)(1): ". . . and will be recommended to the National Marine Fisheries Service (NMFS) for approval for an allocation . . ." (emphasis added).

6 AAC 93.040(c)(2): ". . . and will be recommended to the National Marine Fisheries Service (NMFS) for approval with a reduced allocation . . ." (emphasis added).

6 AAC 93.045: ". . . the governor will (1) forward the proposed CDPs to the NMFS with written findings, rationale, and recommendations for approval of proposed CDPs and CDQ allocations . . ." (emphasis added).

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appeals mechanism for adverse state actions in a new CDP cycle, CDQ groups are denied their due process rights to challenge the state's actions in a new CDP cycle. Moreover, if the Secretary's role is limited to merely pro forma approval of the state's recommendations, then the CDQ groups have no administrative mechanism by which they can challenge an adverse state allocation decision. Their only alternative would be to initiate costly and possibly prolonged litigation to resolve the dispute, which would serve to divert CDQ funds from their stated purposes.

4. North Pacific Fishery Management Council Action

The Council proposed the CDQ program to help develop commercial fisheries in communities in the Bering Sea and Aleutian Islands by allowing the communities exclusive access to up to one-half of the pollock apportioned to nonspecific reserves at the beginning of the fishing year.³ The Council's stated intent was to increase the economic and social stability of these coastal Alaska communities by making resource availability more predictable, and therefore foster a stable, self-sustaining economy in communities that most need development. *Id.* The CDQ program was perceived by the Council as a means to allow these communities to attain their social and economic goals, and to help them diversify local economies by providing residents with stable, long-term employment and opportunities in the BS/AI fisheries.

As part of the CDQ allocation process, the state presents its recommendations to the Council for review. Despite the fact that the Council played a critical role in the development of the CDQ program, it is unclear what role the Council now plays, and whether it may offer its own recommendations to the Secretary. We are informed that state officials presented the state's recommendations to the Council at its October 2000 meeting. By voice vote, the Council unanimously recommended approval of the state's recommendations. There was no testimony from any of the CDQ organizations regarding the proposed allocation.

As a part of the process of consulting with the Council, the state is required to incorporate any comments from the Council into its written findings, discussed more fully below. It appears from the state's findings that the Council did not have any comments with regard to the proposed calendar year 2001 and 2001 CDQ allocations, since no comments are incorporated into the findings. As stated, it is unclear what, if any, continuing role the Council is intended to play in the CDQ allocation process, since the regulations are silent as to what happens if the Council disagrees with the state's recommendations. Presumably, if this happens, the Council's comments would be forwarded to the Secretary with the state's findings, and would be considered by the Secretary in his or her final approval of the CDPs and proposed allocations.

³ See Draft Supplementary Analysis of the Proposed Amendment 18 Inshore/Offshore Allocation of Pollock in the Bering Sea/Aleutian Islands, prepared by the Staffs of the Council and the NMFS, September 3, 1992.

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5. The State's Decision-Making Process

Outside of the private deliberations of the state CDQ Team, little is known about the review and evaluation process used to develop the state of Alaska's recommendations. A quasi-public process is employed to some extent, including a public meeting as required by the implementing regulations. However, the evaluation process is conducted behind closed doors. Furthermore, as discussed below, the state's recommendations as to CDQ allocations appear at times to be arbitrary, and not based upon a consistent application of a developed standard.

The state is required to consult with the CDQ organizations during their evaluation process.⁴ The consultation occurs during a one and one-half hour "private meeting" between the state and the CDQ group. This process works well enough when the state is not contemplating any substantive changes in a CDQ group's allocation. However, when major reallocation decisions are being contemplated, this is an insufficient amount of time for the reasonable exchange of information necessary for the state to ascertain the impacts of any reductions or increases it may consider. The two percent pollock CDQ allocation reduction recommended for APICDA is a major reallocation and will severely impact projects APICDA already has in place, not to mention those that are contemplated. Significantly more investigation and dialogue than the 1.5 hour qualitative discussion currently afforded by the state is necessary in order to obtain and assimilate the impacts that the proposed reduction would have relative to ongoing or proposed projects, movement toward self-sufficiency, and the overall financial stability of APICDA.

Each CDQ organization goes through an exhaustive process to develop its Community Development Plan. Although the process may vary by group, each CDP is developed in tandem with the group's board of directors, the communities and their residents represented by the CDQ organization, industry partners, subsidiary corporations, and other entities. Most CDPs are heavily reliant upon the royalties that flow from the CDQ allocations. Relatively small modifications in the anticipated allocation can dramatically affect the viability of a project or group of projects, and the social and economic health of CDQ communities.

In the case of APICDA, the state provided no warning or indication whatsoever — either before or during the consultative process — that a recommended reduction in APICDA's pollock CDQ was being contemplated or was imminent. As a result, the state had no information other than its own private and internal deliberations and assessments to evaluate the impacts of its action upon APICDA, APICDA's member communities and residents, projects, APICDA's harvesting and joint venture partners, and/or APICDA's CDP program. It is very doubtful that the state CDQ Team had sufficient knowledge to determine the impacts of a reduction upon APICDA and its CDP given its cursory discussion with APICDA.

⁴ 6 AAC 93.040 (f)

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It is unclear what length of time was taken by the state team to make its allocation decisions. Was it one hour, three hours, four days? Were the decisions made in advance of the private meetings? If so, the "consultation" was unnecessary since the decisions were already made. If not, the "consultations" were simply inadequate since they were so short in duration and scheduled too close to each other. Further, since the state CDQ Team failed to advise APICDA of its intention to recommend a reduction in APICDA's pollock CDQ allocation, the state also failed to provide an opportunity for APICDA to address the possible consequences of a reallocation and ensure that the state CDQ Team clearly understood the social and economic consequences of the action they were recommending. This violated APICDA's due process rights to present its case to the CDQ Team and have input in a deliberative process which resulted in a recommendation of a multimillion-dollar reduction in its resource availability. Given the significant and adverse consequences of the proposed reduction upon APICDA's CDP, and the lack of understanding by the state of those consequences, the allocation process used by the state CDQ Team was inherently flawed.

During the past several years, APICDA has on numerous occasions questioned the adequacy of the 1.5 hour consultation time period and requested that the state provide a longer period of time to ensure that all issues and questions will be substantively addressed. Additionally, APICDA has requested that the state hold annual meetings with each of the CDQ organizations to discuss issues with each organization, to provide the state's perspective of each CDQ organization's progress toward their goals and objectives, and to provide a report card that gives each CDQ organization a clear indication whether or not they are living up to the state's expectations. Despite APICDA's requests, there is no report card and consultations are still limited to a 1.5-hour period of time. Therefore, the state's allocation process is inherently subjective. It gives the appearance of being overlaid with "in-state" political considerations. Such an appearance promotes economic instability within the CDQ groups, rather than the economic stability the program is intended to achieve.

The state's allocation process also appears to be arbitrary and capricious. For example, one of the factors that the state is required to consider in making its allocation recommendations is the applicant's past performance and that of its industry partners. In the case of CBSFA, the state drastically reduced its CDQ allocation from ten percent to seven percent during the first reallocation cycle, and from seven percent to five percent in the next cycle, apparently based upon performance issues. However, when met by substantially similar performance problems exhibited by another CDQ organization, the state failed to act for several years. This blatant inconsistency was difficult to understand, since the state in its initial consultations with the CDQ organizations clearly stated that those CDQ organizations that "did well" would be rewarded, while those that did not, would have their allocations reduced.

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It is unclear to the CDQ organizations whether the state is following the evaluation criteria set forth in the regulations,⁵ or whether it follows an unwritten standard based upon political considerations. This adds to a sense of uncertainty and instability experienced by CDQ organizations.

6. The State's CDQ Allocation Recommendations

As stated in 50 CFR 679.1 (e), the "goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy." This implies the development of stable local economies at a community level.

CDQ allocations are tools — they are social and economic building blocks. They are used to generate royalties, which, in turn, are supposed to be used to finance construction of infrastructure that can support business development at a local level; to invest in local businesses that can foster employment, improvement in social conditions, hope, and self-determination; to invest in outside businesses to generate additional revenue for corporate stability and diversification, and for reinvestment in local infrastructure or businesses; and to provide training, education, and employment opportunities so that local residents can acquire the skills and knowledge to meaningfully participate in a fisheries-related economy. A reduction in a CDQ allocation can have a profound impact upon the ability of a CDQ group to maintain its program and provide the intended and necessary benefits to its members.

In the past, the state has reduced allocations to a number of CDQ groups. Each time, however, with APICDA being the sole exception, the state has provided the respective groups with ample warning and expressions of concern for the manner in which the respective group was using its allocation. The record is replete with meetings, correspondence, and even public notification to the NPFMC that an allocation reduction recommendation by the state was being contemplated unless the particular CDQ group made changes in the manner in which it was using the royalties generated by its allocation.

APICDA has now had allocation reductions recommended twice (eighteen percent to sixteen percent in 1995, and now sixteen percent to fourteen percent). On neither occasion did the state provide APICDA with any indication that there were problems or concerns with APICDA's program that needed correction. The only thing APICDA has been told that is wrong with its program (in private meetings with state officials) is that it does not represent a sufficient population base. We can not change the state's apparent reliance on population as a catalyst for CDQ allocation reductions. However, we can state that we recently infused significant CDQ-generated resources into one of our communities, False Pass, which was faced with a closure of its school because there weren't enough children enrolled. As a result of our infrastructure development and investments, False Pass is a growing

⁵ See criteria set forth in 6 AAC 93.040.

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community, and we believe we fulfilled one of the cornerstones of the CDQ program—economic growth and development of eligible communities. Rather than being rewarded for our efforts, we are having the economic wherewithal to fulfill what we believe was the original intent of the CDQ program stripped from us.

We do not dispute the ability of the state to recommend a reduction in a group's CDQ allocation, or the authority of the Secretary to approve such a reduction. The decision to make a reduction, however, must be based upon solid criteria, evenly dispensed, with the ramifications of the proposed allocation reduction fully understood and described. Without allocations based upon a fair application of solid, known criteria, the overall purpose of state oversight becomes clouded. Is state oversight intended to provide an "equitable" division of the CDQ allocation to the eligible communities, or is it meant to provide a check on mismanagement (e.g., poor investments, misallocation of royalty payments)? The absence of a meaningful and complete dialog between the state and the CDQ organizations results in an allocation recommendation that, at best, could only have been based upon subjective reasoning. This process is clearly contrary to the stated goals and objectives of the CDQ program.

Although this memorandum is submitted on behalf of APICDA, it is impossible not to identify the potential adverse economic impact upon CBSFA. While we do not have access to CBSFA's financials, it is reasonable to conclude that an immediate twenty percent reduction in their pollock CDQ allocation will have a devastating impact upon the organization's ability to function. In fact, the state's recommendation (if approved by the Secretary) very likely ensures that CBSFA's program during the next two years will be a complete and total failure. How does that fit within the goals and objectives of the CDQ program?

The state has developed twenty different criteria it uses to evaluate CDP applications and make CDQ allocation recommendations. They run the entire gamut from past performance to the esoteric and all encompassing "comments provided by other agencies, organizations, and the public."⁶ With its revised and simplified criteria,⁷ the state can literally base any recommendation that it wishes upon the wide-ranging criteria. Even under the best of circumstances, multicriterion decision-making is difficult. However, given the state's proven inconsistency in applying its own criteria, it is impossible to determine what exactly

⁶ 6 AAC 93.040

⁷ See letter to the NPFMC from the Commissioner of the Community and Regional Affairs Department, State of Alaska, dated September 23, 1997. In this letter, the state identified seven criteria it intended to use in evaluating CDPs: 1) the number and population of eligible communities represented in each group; 2) the level of income, unemployment and other indicators of social and economic well being that demonstrate the need for the allocation; 3) the merits of the proposed investment, employment, education and training programs; 4) the qualifications of the management organization to effectively manage the quota; 5) the contractual relationships between the applicant and the harvesting and processing partners; 6) the degree of success as measured by performance of the management organization; and 7) the ability of the Board of Directors to effectively maximize the benefits of the program to the region.

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serves as the basis for the state's allocation decisions. This makes long-range planning a virtual impossibility given that CDQ allocations can be taken away at any time and for any reason.

It is clear that the state is required to provide NMFS with its findings when making its CDQ allocation recommendations. With respect to the latest CDQ allocation recommendations, the state did so in a letter to Mr. Jim Balsiger, dated October 16, 2000. However, the state's findings are vague and inconclusive. Lexicons are widely used (terms such as "an ability" or "a strong ability" or "appear") without definition or support. It is virtually impossible for any reader to ascertain the true essence of the state's findings.

The following are illustrative:

- APICDA was found to have "an ability" to negotiate with partners. In contrast, another group was found to have "a strong ability" to negotiate with partners. What makes the other group's ability "strong" and APICDA's (and other CDQ groups) negotiation abilities just "an ability?" To the best of our knowledge, APICDA has negotiated some of the highest — if not the highest — pollock CDQ royalties during the past allocation cycle.
- APICDA's Board of Directors is found to "appear to have oversight and involvement" in maximizing the benefits of the CDQ program. Another group's board record on oversight and involvement is not discussed, but the board "appears to be HIGHLY effective" in managing an efficient operation. In addition, another group's board "has oversight and involvement" in maximizing the benefits... What determines whether a board "appears" to have oversight, is "highly effective" or not, and "has oversight?" What is the state basing this on and what does it mean?
- APICDA has "an acceptable" compliance record, which is the same rating given to all but one other CDQ group, including one which was forced to reorganize according to a state plan. In contrast, one group's compliance record is "excellent." What is the basis for this? What is the one group with the "excellent" compliance rating doing that warrants such a rating?
- The state says that one group's use of the CDP "exceeds requirements of state oversight." What does this mean? Is that one of the unspoken criteria the state used? Are there other criteria the state used which are not listed in the regulations or in other publications by the state?

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The state of Alaska's "findings" as transmitted to Mr. Balsiger are vague, unclear, and unsubstantiated. The state must be required to demonstrate in writing that it a) completed a thorough analysis of each of the CDPs; b) clearly identified the criteria used in making an evaluation and the respective weight given each criteria; c) clearly identified the factors the state took into account in determining how each CDP measures-up relative to the criteria, including the actual reasons associated with the evaluation conclusions; and d) clearly identified the ramifications of the allocation recommendations upon each CDQ organization's current and proposed CDP, with particular focus on impacts that could affect the ability of each organization to ultimately reach self-sufficiency.

We believe that, as a part of the Secretary's due diligence in reviewing the CDPs and the resultant allocations, he or she must require the state to provide meaningful, clear and substantiated findings to assist in the review process.

7. Population

In conversations with state representatives following release of the state's CDQ allocation recommendations, the primary reason given by state officials in support of the proposed reduction in APICDA's pollock allocation is the size of APICDA's population relative to the population of other CDQ organizations. As mentioned above, at least four of the Council members involved in crafting and approving the original CDQ program believed that the primary focus of allocations would be on the program and the performance of each CDQ organization — not its population base. If population is used as a major criterion, the CDQ program becomes an entitlement program — a program in which allocations (royalties) are distributed based upon the number of people represented by a CDQ organization. Entitlement programs have a long and controversial history, primarily because they fail to include the "self-improvement" or "competitive" motivation that accompanies programs based upon performance.

A focus on population as a predominant criterion also ignores the proximity relationship between communities and the federal fishery resources, hence the realistic ability of a community to truly achieve self-sufficiency based upon fishery resources that are immediately proximate to the community. The vast majority of CDQ communities are located far from grounds where commercially viable populations of groundfish and crab exist; hence, their ability to develop local economies directly based upon the CDQ resources is problematic and unrealistic.

The population issue was previously addressed by the state of Alaska in 1995 when it recommended a reduction in APICDA's pollock allocation from eighteen percent to sixteen percent. At that time, the state of Alaska, in testimony before the Council, explained that APICDA had done an exemplary job of managing its quotas and its CDP. The state representative went on to say that APICDA's population was small in comparison to the

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other CDQ organizations and an adjustment to take that into account was warranted. The state therefore already addressed the population issue in 1995. If the state is allowed to address it again, will the adjustments ever stop? If so, when? How? And why? What are the criteria for making such a decision, and is it a decision that is unalterable?

If population is to be a predominant criterion, should all populations be treated the same? Should populations located forty miles up-river from the Bering Sea and hundreds of miles from productive CDQ federal fishing grounds be treated the same as populations located immediately adjacent to CDQ fishing grounds? Should populations of CDQ organizations that have very substantial amounts of cash and asset value be treated the same as populations of CDQ organizations that have little money and few assets?

What factors are or should be taken into account when reviewing population? Is it simply the total population for each CDQ region, or are demographic considerations applied? Are working age populations treated the same as non-working age populations? Is a community which is stable and already has a working economy (based upon non-CDQ fisheries) treated the same as a community that has no economy?

These are important issues that must be articulated and vetted before population is given the level of significance it has assumed in the state's list of criteria.

Despite their admitted limited populations, in the APICDA communities, it is possible to develop stable local economies based upon the harvest and production of the BSAI groundfish, crab and halibut fisheries. With few exceptions, notably St. Paul, it is not possible for the other CDQ organizations to harvest sufficient quantities of CDQ species to develop, much less support, local economies. The fact that it is possible to do so in the APICDA communities places a special financial burden upon APICDA that does not apply elsewhere (excepting St. Paul): this is the incumbent responsibility to expend significant amounts of capital on docks, harbors and other infrastructure so that the foundation for local economies exists — and then to invest in local businesses to spur economic growth.

APICDA has out performed all CDQ organizations — perhaps combined — in terms of local, in-community development of critically needed infrastructure and businesses. Nearly every APICDA community has experienced port, harbor and support structure investments. Nearly every APICDA community has seen some level of business development. These projects require years to fund and implement before they can be self-sustaining. Moreover, the increased productivity of the community because of infrastructure investments may not show up on APICDA's records examined by the state. For the state, NPFMC and the NMFS to adequately assess the impact of APICDA's infrastructure expenditures, a much more detailed analysis would need to be undertaken. In addition, while the infrastructure developments in the BSAI certainly help the APICDA communities, they also benefit the non-CDQ commercial fishing industry members, which forego the groundfish and crab quota now used for the CDQ program. Docks, warehouses, dredged harbors, and crew

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bunkhouses now exist in remote areas, and are utilized by the commercial fishing fleet of the BSAI, where none existed prior to the formation of APICDA. We believe that recommendations for allocation reductions simply because of population will make APICDA's program moribund and the infrastructure and other investments it has already made will stagnate and degrade over time.

If the state is allowed to use population as a predominant allocation criterion, APICDA will never see a recommendation from the state for an increase in its allocation. APICDA will always receive the same allocation or be continually reduced. Under this scenario, performance will never be a factor in APICDA's allocation. This is contrary to the original and continuing intent of the CDQ program: to develop "ongoing, regionally based, fisheries-related" economies. The state of Alaska's criteria, at least as it applies to APICDA, does not reward success, initiative, or effort. That clearly was not the intent of the Council, the Secretary, or the Congress when this program was originally designed and approved.

8. Impact of Reduced Allocation Recommendation

As stated, the state of Alaska's recommendation to the Secretary reduces APICDA's pollock CDQ allocation from the current level of sixteen percent to fourteen percent. This would amount to a 12.5% decrease in the amount of pollock CDQ allocated to APICDA. The actual fiscal impact of the state's recommendation is significantly greater. Table 1 (confidential and proprietary) compares the estimated actual CDQ royalty income APICDA expects to receive in the year 2000 with APICDA's projected CDQ royalty income for the year 2001 given the state's allocation reduction. (The figures for the year 2000 will be very close to those shown on the table.)

If the Secretary approves the state of Alaska's recommendation, APICDA projects a reduction in CDQ royalty revenues of nearly \$1.7 million in 2001. This represents a reduction in royalty revenues of twenty-eight percent. The true impact is much greater because the twenty-eight percent reduction will eliminate all of APICDA's discretionary funds; those funds represent the seed money to improve current investments, continue "pipeline" projects, and initiate projects previously approved by the state. The year 2001 projections assume the same TACs and GHs for all species, excepting Pacific cod (which is expected to decline, perhaps to 150,000 mt). APICDA's pollock CDQ royalty revenues stem from three sources:

- Base Fee: A fixed amount per mt, which will be the same in 2001;
- Market Share Fee: Market share fees are based upon the value of the products produced — markets are currently below the threshold necessary to trigger a "market share fee" for APICDA and are not expected to increase to that level in 2001; and

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- **Roe:** One-third the gross value of the roe produced during the "A" Season is applied to the royalty. Roe values in 2000 were at an historical high, substantially beyond anything ever experienced before. It is unrealistic to expect similar market conditions in 2001 (our projection assumes the average value over the past several years).

A reduction of this magnitude will have very significant impacts on APICDA's ability to maintain its program. As mentioned above, all of APICDA's discretionary income will be lost. The amount remaining may be insufficient to cover fixed, controllable and non-controllable costs. Major cost cutting efforts will have to be implemented and APICDA's program will have to be substantially curtailed. Ongoing projects may have to be shelved; future projects, including development of seafood processing companies in communities experiencing or facing disaster declarations will no longer be possible. In short, APICDA's ability to achieve the goals and purpose of the CDQ program — "ongoing, regionally based, fisheries-related" economies — will be substantially harmed.

Additionally, not shown in the losses above, is the impact upon APICDA's investment in the *F/T Starbound*. The recommended reduction in APICDA's pollock allocation will reduce the amount of pollock available for APICDA's pollock CDQ harvesting and processing investment, the *F/T Starbound*. This will increase overhead to that operation and decrease its profitability. The combined financial impacts will be doubly felt by APICDA.

Each CDQ organization needs to invest in the fishing industry — indeed, one can argue that we are required to invest in the fishing industry — to diversify and to generate profits that will assist the organization in achieving self-sufficiency. A CDQ organization's attractiveness as an investor in an ongoing, mature and profitable company is tied directly to CDQ allocations and the prospects of CDQ allocations in the future. The more destabilized a CDQ organization appears to the private sector (in terms of future allocations), the less attractive they are as a partner. The same is true, even more so, with financial institutions and their willingness to provide loans to CDQ organizations. Financial institutions want security. They want to feel assured that their loans will be repaid. They want to see stability. CDQ allocations are their primary yardstick for loan and risk evaluations.

The state of Alaska's allocation recommendations have generated tremendous instability and, if approved by the Secretary, will substantially reduce the prospective value of APICDA to its current and future investors and partners. It is not unlike the downgrading of a corporation's bond rating: in this case, APICDA will go from "AAA" to "B." Once something like this happens, it is very difficult to reestablish one's rating. Given the state's apparent focus on population as the predominant allocation criteria, APICDA appears to have no where to go but down.

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Three current fishery-related crises add to the uncertainty already facing APICDA and its communities because of the state's recommendation: the collapse of the opilio Tanner crab fishery; the ongoing impact of Steller sea lion population issues; and the Governor of Alaska's proposal to terminate the Area M salmon fishery.

The communities of St. George (an APICDA eligible CDQ community) and St. Paul (the eligible CDQ community for CBSFA) have both been declared federal disaster areas. The very survival of these communities is currently at stake. The Congress has already directed millions of dollars in disaster assistance to these communities. The federal funds must be leveraged with a twenty-five percent match, and can only be used for investments to diversify each community's economic reliance upon opilio crab. The state's proposed reduction in pollock CDQ allocation to APICDA totally eliminates the source of discretionary funds that might be used in St. George to access federal disaster funds and diversify its economy. In the case of St. Paul, CBSFA President Phillip Lestenkof said in a letter dated October 27, 2000 to Congressman Young and Senator Stevens, "An allocation at the 2001 level [as recommended by the state of Alaska] is below the minimum necessary for survival. CBSFA will not be able to carry out its current CDP which includes building a small boat harbor and diversifying St. Paul's fisheries economy."

The potential adverse impacts of the current Steller sea lion situation will be felt by all harvesting and processing entities and all communities in the Bering Sea/Aleutian Islands and Gulf of Alaska that rely upon groundfish as their economic base. Most of the APICDA communities fall within this range. As briefly stated above, in False Pass, a major CDQ investment was initiated in 2000 with the formation of Bering Pacific Seafoods, L.L.C. (BPS). Critical to the success of BPS, is access to Pacific cod and salmon. With the uncertainty of ongoing or expanded closures for groundfish harvesting inside critical habitat, access to cod stocks by BPS fishermen is threatened, as is APICDA's attempt to help develop and stabilize that local economy.

The Governor of Alaska has announced his intention to terminate the spring Area M salmon fishery. If the Governor is successful, there will be little — if any — salmon available for harvest and production prior to July. There is no debate that this will generate an economic and social disaster for False Pass, Nelson Lagoon (another CDQ eligible community participating in APICDA), and other regional communities.

To what extent, if any, were these issues and proposed actions taken into account by the state of Alaska when developing their recommendation for an allocation reduction for APICDA and CBSFA?

9. Eligible Communities

The state has failed to make a proper determination of whether or not each of the communities participating in the CDQ program continues to be eligible communities. There

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are four criteria used to determine whether or not a community is eligible to participate in the CDQ program.⁸ The third criteria is as follows:

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

It is difficult to believe that more than fifty percent of the current commercial or subsistence fishing efforts in several eligible communities actually occurs in the waters of the BSAI. Additionally, the use of the word "current" in the regulations means that this criteria must continually be addressed to verify that each of the communities is conducting more than half of its commercial or subsistence fishing effort in the waters of the BSAI. Moreover, the state maintains that 65 communities are eligible to participate in the CDQ program. A number of those communities, however, are not located adjacent to the BSAI. Although the state certified that all of the communities currently participating in the CDQ program are eligible communities, and they are listed in the federal regulations, does this mean that once a community is certified and listed in the regulations, it automatically remains eligible? Did the NMFS expend any time to verify the process used by the state in making its certification? We believe that the state has failed to undertake the necessary steps to reasonably ascertain and certify that all of the purportedly eligible CDQ communities are, in fact, in compliance with this section of the regulations.

APICDA requests that the Secretary suspend approval of the state's recommended allocations until this issue is resolved. This is particularly pertinent given the state's undue and heavy reliance upon CDQ organization population as the primary factor in determining the allocation percentages recommended for each organization.

APICDA wishes to make clear that it is not seeking to reclassify any of the current eligible CDQ communities as ineligible, and would not support any such redetermination if one were forthcoming. If that were the case, APICDA would support modifications to the regulations to ensure all currently eligible communities retain their eligibility. APICDA is raising this issue to ensure that the state fully complies with of all the rules and regulations of the CDQ program. It is inappropriate for the state to ignore some regulations, give partial weight to other regulations, and develop allocation recommendations which appear arbitrary and which cannot be reasonably understood and justified given past state actions.

⁸ See 50 CFR 679.2 DEFINITIONS

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10. Conclusions

In conclusion, APICDA believes that the state has not followed its own criteria and regulations in the calendar year 2001 and 2002 allocation process. It appears that the state has not fairly implemented its multicriterion process in that it has unfairly weighted one criterion (population) and made inconsistent allocation decisions based upon the success of CDQ organizations in managing and investing their CDQ allocations. It is virtually impossible to determine from the state's findings what rationale justifies its allocation recommendations.

How does the NMFS and the state reconcile the application of the different regulations developed by each, and what is the Council's role in the reallocation process? If a concern is raised regarding the integrity of the process used by the state in making its CDQ allocation recommendation, which federal entity investigates the concerns to ensure that the intent of the CDQ program is met? Is it the intent of the NPFMC to give the state carte blanche insofar as it concerns implementation of this important federal program? What measures can the CDQ organizations rely on to ensure that subjective factors such as political considerations and other impermissible factors are not used by the state in making CDQ allocation recommendations, and what review process is available to the organizations to challenge state action in a new CDQ allocation cycle?

It is also unclear what weighting system, if any, the state has given the various criteria it uses, and whether it uses a scoring system in its CDP evaluations, which in and of itself may be problematic if it ignores important social and economic community factors. Moreover, it is unclear whether the state impartially applied the same criteria test to all of the CDQ organizations. Are some of the criteria given more weight as they apply to a particular CDQ organization and if so, why?

Reductions in CDQ allocations are appropriate when a CDQ organization is failing, or has failed, to properly and successfully implement its program. Reductions may be appropriate for other reasons, but only as a result of a quantitative and objective process that is well reasoned, fair, noticed in advance, and fully takes into account the realistic results of the reduction upon the affected CDQ organization and its program. A reduction must not result in substantial harm to a CDQ organization unless it has been clearly established that the CDQ organization is failing, or has failed, to properly and successfully implement its program. The state of Alaska, and the Secretary, have an inherent due diligence obligation to fully explore and comprehend the results of their contemplated actions.

The allocation process used by the state stands in stark contrast to the objective and quantitative processes it has developed to evaluate projects the CDQ groups wish to undertake. Pro formas, projected profit and loss statements, and budgets are required, appropriately so. A great deal of analytical work must be conducted to convince the state that a project is worthy of the commitment of CDQ revenues. In short, the state requires the

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CDQ groups to follow a very rigorous and commendable "due diligence" analysis before its support for a project is tendered to the NMFS. With only a few notable exceptions, this process has served the program and the NMFS well.

The use of population as a major or predominant factor in determining allocations at this point in time is simply inappropriate. In 1995, the state adjusted APICDA's allocation to take into account population. Further adjustments only serve to create the specter of an entitlement program. In fact, one CDQ group applied for thirty-two percent of the 2001 and 2002 pollock allocation just because it has thirty-two percent of the CDQ population. What does that have to do with the overall goals and objectives of the CDQ program, the significant differences between regions, the amount of cash reserves and asset values of the different CDQ groups, or the practical capability of one region to actually develop stable local economies based upon the "CDQ" fishery resources immediately adjacent?

The allocation recommendations by the state clearly demonstrate a lack of appreciation for the community, regional, statewide, and nationwide impacts of its recommendations. It appears from a review of the findings and of past state allocation recommendations that CDQ allocation decisions by the state are made in a "black box."

The CDQ allocation process has profound social and economic ramifications. A reduction in allocation has well known and long term side effects and ramifications within the CDQ organization(s) receiving the reduction, within the CDQ organization(s) receiving the corresponding increase, between all of the CDQ organizations (whether or not they individually lost or benefited from the reallocation), within the communities and residents represented by the CDQ organizations, their partners and other corporate relationships. It destabilizes the CDQ organization; reduces its ability to obtain long term financing; and reduces the attractiveness of the CDQ group as a viable business partner, thereby adversely affecting the probability that the CDQ group can enter into viable business relationships and accomplish self-sufficiency.

It is left to the Secretary to determine whether the state's calendar year 2001 and 2002 recommended allocations should be approved, and we believe that the decision cannot be made based upon the findings submitted by the state. Those findings are incomplete, confusing, and contradictory. Certain criteria appear to be arbitrarily weighted and applied insofar as the various CDQ organizations are concerned. For these reasons, we respectfully request that the Secretary reject the recommendations made by the state, and initiate a process by which this allocation cycle, and future allocation cycles, can be conducted in a fair, impartial and consistent manner that will permit the CDQ organizations to adopt long-range plans designed to fulfill the goals of the CDQ program - stable "ongoing, regionally based, fisheries-related" economies.

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SUSPEND THE RULES AND PASS THE BILL, H.R. 5565, WITH AN AMENDMENT

(The amendment consists of an amendment which strikes all after the enacting clause and inserts a new text)

106TH CONGRESS
2D SESSION

H. R. 5565

To amend the Magnuson-Stevens Fishery Conservation and Management Act to improve implementation of the western Alaska community development quota program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 26, 2000

Mr. YOUNG of Alaska introduced the following bill: which was referred to the Committee on Resources

A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to improve implementation of the western Alaska community development quota program, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled.*



November 2, 2000 (4:42 PM)
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1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Western Alaska Com-
3 munity Development Quota Program Implementation Im-
4 provement Act of 2000".

5 SEC. 2. IMPROVEMENT OF WESTERN ALASKA COMMUNITY
6 DEVELOPMENT QUOTA PROGRAM

7 Section 305 of the Magnuson-Stevens Fishery Con-
8 servation and Management Act (16 U.S.C. 1855) is
9 amended—

10 (1) by amending the subsection heading for
11 subsection (i) to read as follows:

12 "(i) WESTERN PACIFIC COMMUNITY DEVELOPMENT
13 PROGRAM.—";

14 (2) by striking paragraph (1) of subsection (i);

15 (3) by redesignating paragraph (2) of sub-
16 section (i) as paragraph (1);

17 (4) by inserting before paragraph (3) of sub-
18 section (i) the following:

19 "(k) GENERAL PROVISIONS RELATING TO COMMU-
20 NITY DEVELOPMENT QUOTA PROGRAMS.—";

21 (5) in subsection (k) (as designated by para-
22 graph (4) of this section) by redesignating para-
23 graphs (3) and (4) as paragraphs (1) and (2) of
24 subsection (k), respectively; and

25 (6) by inserting after subsection (i) the fol-
26 lowing:



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1 “(j) WESTERN ALASKA COMMUNITY DEVELOPMENT
2 PROGRAM.—

3 “(1) ESTABLISHMENT.—The North Pacific
4 Council and the Secretary shall establish a western
5 Alaska community development quota program—

6 “(A) to afford eligible communities a fair
7 and equitable opportunity to participate in Ber-
8 ing Sea fisheries; and

9 “(B) to assist eligible communities to
10 achieve sustainable long-term diversified local
11 economic development.

12 “(2) ALLOCATION OF PERCENTAGES OF BERING
13 SEA DIRECTED FISHERIES.—(A) The Secretary shall
14 allocate to the program, as a directed fishing allow-
15 ance, a percentage of the total allowable catch or
16 guideline harvest level, as applicable, of each Bering
17 Sea directed fishery.

18 “(B) The Secretary shall allocate under this
19 paragraph 10 percent of the total allowable catch of
20 the Bering Sea directed pollock fishery.

21 “(C) The Secretary shall allocate under this
22 paragraph—

23 “(i) 7.5 percent of the total allowable catch
24 of each other Bering Sea directed groundfish
25 fishery; and

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1 “(ii) 7.5 percent of the guideline harvest
2 level of each Bering Sea directed crab fishery.

3 “(D) Prior to October 1, 2001, the North Pa-
4 cific Council may not submit, and the Secretary may
5 not approve, any plan, amendment, or regulation
6 that increases the percentage set forth in subpara-
7 graph (C).”.

8 “(3) ELIGIBILITY TO PARTICIPATE.—To be eli-
9 gible to participate in the western Alaska community
10 development quota program, a community must—

11 “(A) be located—

12 “(i) within 50 nautical miles from the
13 baseline from which the breadth of the ter-
14 ritorial sea is measured along the Bering
15 Sea coast from the Bering Strait to the
16 westernmost of the Aleutian Islands; or

17 “(ii) on an island within the Bering
18 Sea;

19 “(B) not be located on the Gulf of Alaska
20 coast of the north Pacific Ocean;

21 “(C) be certified by the Secretary of the
22 Interior pursuant to the Alaska Native Claims
23 Settlement Act (43 U.S.C. 1610 et seq.) to be
24 a Native village;



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1 “(D) consist of residents who conduct
 2 more than one-half of their current commercial
 3 or subsistence fishing effort in the waters of the
 4 Bering Sea or waters surrounding the Aleutian
 5 Islands;

6 “(E) not have previously developed har-
 7 vesting or processing capability sufficient to
 8 support substantial participation in the ground-
 9 fish fisheries of the Bering Sea, unless the com-
 10 munity demonstrates that its participation in
 11 the western Alaska community development
 12 program is the only way for the community to
 13 realize a return from previous investments in
 14 harvesting or processing capability; and

15 “(F) be a member of a CDQ group.

16 “(4) AUTHORITY TO HARVEST.—(A) The Sec-
 17 retary may authorize a CDQ group to harvest a
 18 share of the percentage of the total allowable catch
 19 or guideline harvest level of a Bering Sea directed
 20 fishery allocated under paragraph (2) if the CDQ
 21 group submits a community development plan to the
 22 Secretary in accordance with this paragraph.

23 “(B) A community development plan shall—

24 “(i) request a share of the percentage of
 25 the total allowable catch or guideline harvest



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1 level of the fishery that the CDQ group that
2 submits the plan desires to harvest annually
3 during the effective period of the plan; and

4 “(ii) describe all CDQ projects that the
5 CDQ group that submits the plan intends to
6 participate in during the 36-month duration of
7 the plan.

8 “(C)(i) The Secretary shall timely approve or
9 disapprove each community development plan sub-
10 mitted under this paragraph that contains the infor-
11 mation described in subparagraph (B). If approved,
12 a community development plan shall be effective for
13 36 months, except as provided in clause (ii).

14 “(ii) The community development plans that
15 the Secretary approved before the 2001 fishing year
16 shall expire on December 31, 2003.

17 “(D) In approving a community development
18 plan, the Secretary shall specify the share of the
19 total allowable catch or guideline harvest level that
20 the CDQ group is authorized to harvest annually
21 under the plan, in accordance with paragraph (5).

22 “(5) SPECIFICATION OF HARVEST SHARES.—
23 (A) If the total of the harvest shares requested pur-
24 suant to paragraph (4)(B)(i) for a fishery is greater
25 than the percentage of the total allowable catch or



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1 guideline harvest level for the fishery allocated under
2 paragraph (2) to the western Alaska community de-
3 velopment quota program. the Secretary shall au-
4 thorize each CDQ group requesting a harvest share
5 to harvest annually such share of the percentage of
6 the total allowable catch or guideline harvest level of
7 the fishery allocated under paragraph (2) as the
8 Secretary determines is appropriate.

9 “(B) If the Secretary authorizes a CDQ group
10 to harvest a share of a fishery that is less than the
11 harvest share requested in the community develop-
12 ment plan submitted by the CDQ group, the Sec-
13 retary shall give the CDQ group an opportunity to
14 amend the plan to reflect the reduction in harvest
15 share authorized by the Secretary.

16 “(C)(i) Within 24 months after the date of en-
17 actment of the Western Alaska Community Develop-
18 ment Program Implementation Improvement Act of
19 2000, each CDQ group may submit criteria to the
20 Secretary for the Secretary to consider in deter-
21 mining harvest shares under subparagraph (A).

22 “(ii) If, pursuant to clause (i), each CDQ group
23 submits the same criteria to the Secretary, the Sec-
24 retary shall consider only those criteria in deter-
25 mining harvest shares under subparagraph (A).



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1 "(iii) If, pursuant to clause (i), all CDQ groups do not submit the same criteria to the Secretary, the Secretary shall, by not later than 30 months after the date of enactment of the Western Alaska Community Development Program Implementation Improvement Act of 2000, promulgate regulations that establish criteria that the Secretary shall consider in determining harvest shares under subparagraph (A).
 2
 3
 4
 5
 6
 7
 8 determining harvest shares under subparagraph (A).
 9 "(6) PARTICIPATION BY STATE OF ALASKA.—
 10 (A) The Secretary may allow the State of Alaska to participate in the implementation of the western Alaska community development quota program.
 11
 12
 13 "(B) If the State of Alaska participates, the Secretary may require CDQ groups to submit a copy of their community development plans to the Governor of Alaska.
 14
 15
 16
 17 "(C) If the State of Alaska is participating in the implementation of the western Alaska community development quota program and the total of the harvest shares requested pursuant to paragraph (1)(B)(i) for a fishery is greater than the percentage of the total allowable catch or guideline harvest level for the fishery allocated under paragraph (2) to the western Alaska community development quota pro-

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1 gram, the Secretary may direct the Governor of
2 Alaska—

3 “(i) to consult with the CDQ groups;

4 “(ii) to consult with the North Pacific
5 Fishery Management Council regarding the
6 plans; and

7 “(iii) to timely submit the Governor’s rec-
8 ommendations regarding the approval of the
9 plans by the Secretary.

10 “(D) The Governor shall indicate, in writing, to
11 the Secretary and to each CDQ group the rationale,
12 and the factual basis for the rationale, for any rec-
13 ommendation regarding the Secretary’s approval of
14 a CDQ group’s community development plan.

15 “(7) REPORTS.—(A) On March 1 of each cal-
16 endar year each CDQ group shall submit a report
17 regarding its approved community development
18 plans then in effect to the Secretary, and to the
19 Governor of Alaska if the State of Alaska is partici-
20 pating under paragraph (6).

21 “(B) Each report shall describe the following:

22 “(i) The CDQ group’s implementation dur-
23 ing the previous calendar year of the CDQ
24 projects described in the group’s community de-
25 velopment plans, and any modifications to a



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1 project that the group may have made since the
2 last report.

3 “(ii) In summary form, the financial per-
4 formance during the previous calendar year of
5 each subsidiary, joint venture, partnership, or
6 other entity in which the CDQ group owns an
7 equity interest, and all other non-CDQ project-
8 related activities in which the group engaged.

9 “(iii) The CDQ group’s budget for the cur-
10 rent calendar year.

11 “(C) Financial and strategic business informa-
12 tion contained in reports submitted under this para-
13 graph shall be considered confidential. The Sec-
14 retary, and the Governor of Alaska if the State of
15 Alaska is participating in the Secretary’s implemen-
16 tation of the western Alaska community development
17 quota program—

18 “(i) shall not make such information avail-
19 able to the public; and

20 “(ii) may not use such information for any
21 purpose other than evaluating the financial sta-
22 tus and performance of the CDQ group that
23 submitted the information.

24 “(S) DEFINITIONS.—For the purposes of this
25 subsection:



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1 “(A) The term ‘CDQ group’ means a non-
 2 profit or for-profit corporation or other entity
 3 whose membership is exclusively composed of
 4 one or more communities that satisfy the cri-
 5 teria described in paragraph (3)(A) through
 6 (E).

7 “(B) The term ‘community development
 8 plan’ means a plan that describes—

9 “(i) how a CDQ group intends to har-
 10 vest its requested share of the percentage
 11 of the total allowable catch or guideline
 12 harvest level of a directed Bering Sea fish-
 13 ery that the Secretary has allocated to the
 14 western Alaska community development
 15 quota program; and

16 “(ii) how the group intends to use the
 17 harvest opportunity and the revenue de-
 18 rived therefrom to assist communities that
 19 are members of the group to achieve sus-
 20 tainable long term local economic develop-
 21 ment.

22 “(C)(i) Subject to clause (ii), the term
 23 ‘CDQ project’ means a program or activity that
 24 is administered or initiated by a CDQ group
 25 and that is funded by revenue the CDQ group



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1 derives or accrues during the duration of a
 2 community development plan approved by the
 3 Secretary from harvesting the fishery covered
 4 by the plan.

5 “(ii) Such term does not include a program
 6 or activity administered or initiated by a sub-
 7 sidiary, joint venture, partnership, or other en-
 8 tity in which a CDQ group owns an equity in-
 9 terest, if the program or activity is funded by
 10 the assets of the subsidiary, joint venture, part-
 11 nership, or other entity, rather than by the as-
 12 sets of the CDQ group.

13 “(9) REGULATIONS.—The Secretary may pro-
 14 mulgate such regulations as are reasonable and nec-
 15 essary to enable the Secretary to implement this
 16 subsection.”



November 2, 2000 (4:42 PM)
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Nov. 09 2000 04:53PM P13

FAX NO. :

FROM :

Excerpted from RIR for Proposed Regulatory Amendments to Revise the Administrative Regulations for the Western Alaska Community Development Quota Program, dated September 13, 2000

2.1 Summary of Alternatives

Alternative 1: Status quo. Do not revise the CDQ Program administrative regulations.

Alternative 2: Implement revisions to the CDQ Program administrative regulations based on the State of Alaska's proposal.

These revisions would reduce requirements for expenditures that require review and prior approval by the State of Alaska and NMFS, and would clarify that oversight of the CDQ Program by the State of Alaska and NMFS *includes* the activities of businesses that the CDQ groups own.

Alternative 3: Implement some of the revisions to the CDQ Program administrative regulations proposed by the State of Alaska, but clarify that oversight of the CDQ Program by the State of Alaska and NMFS *does not extend to* the activities of businesses that the CDQ groups own.

Community Development Quota (CDQ) Committee

November 28, 2000

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Tony Knowles, Governor

Alaska Department of Community and Economic Development

Office of the Commissioner

P.O. Box 110800, Juneau, AK 99811-0800
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RECEIVED
November 9, 2000
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NPFMC

Mr. David Benton, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Ste 306
Anchorage, AK 99501-2252

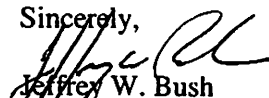
Dear Mr. Benton:

This letter is a follow-up to the discussion at the October meeting of the North Pacific Fishery Management Council (Council) regarding the possible formation of a committee to discuss management issues relating to the Community Development Quota (CDQ) program. During the October meeting, I told the Council, on behalf of the State of Alaska, that I would be sending a letter to formally recommend this course of action.

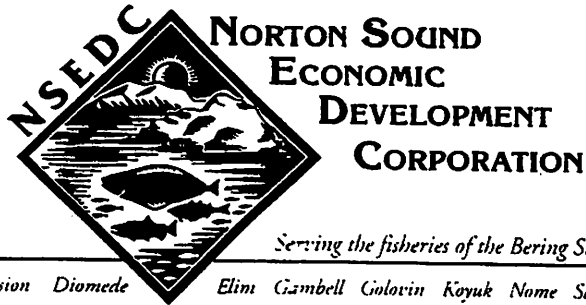
As you know, the National Marine Fisheries Service (NMFS), in consultation with the CDQ groups and the state, has drafted regulations to streamline the current oversight roles of the state and NMFS in group amendments to their Community Development Plans. These draft regulations were presented to the Council for initial review at the October meeting. Also, Representative Don Young has recently introduced a bill that, if enacted in its current form, would significantly change the oversight responsibilities of the state and NMFS. As I said at the October meeting, the time is ripe for an in-depth discussion on federal and state program regulations and the appropriate level of state and federal program oversight, and I firmly believe that this discussion should be conducted under the supervision of the Council. Therefore, I would like to request that you, in your capacity as Council chair, appoint a committee for the specific purpose of discussing the administrative framework involved in the CDQ program. I would recommend that this action be taken at the soonest opportunity.

Thank you for considering this request. Please let me know if there is more information I can provide.

Sincerely,


Jeffrey W. Bush
Deputy Commissioner

CC: Representative Don Young
NPFMC Members
NMFS
State CDQ Team
CDQ Groups



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N.P.F.M.C.

Brevig Mission Diomedea Elini Gambell Golovin Koyuk Nome Saint Michael Savoonga Shaktoolik Stebbins Teller Wainiklalet Wales White Mountain

November 20, 2000

Mr. James Balsiger
Alaska Regional Director
National Marine Fisheries Service
Box 21668
Juneau, Alaska 99802

Re: Your letter of November 14, 2000 regarding NMFS' need for additional information regarding the State's CDQ allocation recommendations.

Dear Regional Director Balsiger:

Thank you for sending Norton Sound Economic Development Corporation (NSEDC) a copy of your November 14, 2000 letter to Jeffrey Bush, Deputy Commissioner of the Alaska Department Of Community and Economic Development, in which you request the State Of Alaska to provide additional information to the National Marine Fisheries Service (NMFS) regarding the State's recommendations for allocations to the six CDQ groups for 2001 and 2002.

There is a factual error in your letter that NSEDC has noted and would like to bring to your attention. The letter indicates that the state is "recommending changes to some of the CDQ allocations." However, in fact the State is not recommending changes to the CDQ allocations. Community Development Plans (CDPs), and the CDQ allocations they contain, are for a limited duration and, at present, there are no allocations for the years 2001 and 2002 from which the State's recommendations would represent a change.

We are concerned that there may be a perception that the allocations which existed in the year 2000 somehow would be construed to represent a status quo alternative for the year 2001, or that they would have a bearing per se on the allocations that would be recommended for the subsequent years.

This would not be correct: the CDPs for the year 2000 expire at the end of that year, and the allocations contained therein also expire. We are aware that the state's recommendations have been challenged and that you have been asked to exercise your independent judgment regarding the allocation recommendations, and we believe that you should thoroughly address the issues raised in that challenge. However, that review cannot be undertaken and completed prior to the beginning of 2001. In the interim the State's recommendations represent the only allocation recommendations for the years 2001 and 2002 that are the product of a review of the CDPs that the CDQ groups have submitted for those years. Therefore, pending your development of the administrative record as referenced in your letter, we recommend that you implement the state's allocation recommendations.

Thank you for your attention to the matters raised herein. Please do not hesitate to contact me if I may be of additional assistance.

Sincerely,



Eugene Asicksik
CEO & President

cc: CDQ Groups
Alaska Commissioner of Community and Economic Development
North Pacific Fishery Management Council

Update on Community Development Quota Program Issues

2001-2002 CDQ Allocations

- At its October 2000 meeting, the Council concurred with the State of Alaska's (State's) 2001-2002 Community Development Quota (CDQ) allocation recommendations for six CDQ groups.
- The State submitted its recommendations and findings to NMFS on October 16, 2000.
- NMFS received requests from the Aleutian Pribilof Island Community Development Association (APICDA) on October 31, 2000, and the Central Bering Sea Fishermen's Association (CBSFA) on November 20, 2000, to disapprove the State's allocation recommendations.
- Some of the reasons APICDA and CBSFA asked NMFS to disapprove the State's allocation recommendations include:
 - The State did not adequately explain the reasons for its allocation recommendations in its October 16, 2000, submission to NMFS. The State's findings are vague, unclear, and unsubstantiated. The State's allocation process is arbitrary and is not based on a consistent application of a developed standard.
 - The State used population as a major factor in making the CDQ allocations. This is not an evaluation factor that the Council intended the State to use or that NMFS regulations allow the State to use. In general, some of the evaluation factors in State regulations are not consistent with Council intent or NMFS regulations.
 - Allocations should be based primarily on the economic development projects described in the Community Development Plan (CDP) and on the ongoing performance of the CDQ group.
 - Neither the State or NMFS have a CDQ allocation process that allows the CDQ groups to appeal, rebut, or respond to the State's allocation recommendations. This deficiency in NMFS regulations denies due process to the CDQ groups.
 - CBSFA believes that the State used outdated information about per capita income and did not adequately consider the economic impacts of a reduced CDQ allocation together with the impacts of the opilio crab fishery disaster on St. Paul.

→ APICDA believes that some of the communities NMFS has determined eligible for the CDQ Program actually do not meet the criteria of having residents who “conduct more than half of their current commercial or subsistence fishing effort in the waters of the Bering Sea and Aleutian Islands.” Specific communities are not identified. However, APICDA contends that NMFS cannot approve the CDPs and allocations until it resolves this question.

Examples of some of the other issues and questions raised in APIDCA’s and CBSFA’s letters include:

- The Secretary of Commerce is directly responsible for making final decisions on the CDQ allocations and must provide due process to the CDQ groups. A narrow interpretation of NMFS’s responsibility in reviewing and approving the State’s CDQ allocation recommendations would transfer de facto authority for CDQ allocations solely and exclusively to the State.
- The State’s allocation process does not provide enough time for a reasonable exchange of information with the CDQ groups so that the State can understand the impacts of changes in the CDQ allocations.
- The State is inappropriately giving high weight to investments that do not promote a regionally based fisheries economy at the expense of investments in infrastructure within the region.
- The State should develop a more objective and quantitative method for evaluating the CDPs, using a “scorecard” approach similar to the process used by some of the native corporations to evaluate corporate management, or used by the government in evaluating bids for public contracts.
- The pollock CDQ allocation recommendations for APICDA and CBSFA will prevent these CDQ groups from achieving their goals.
- Regulations do not specify what happens if the Council does not concur with the State’s allocation recommendations.
- NMFS reviewed the State’s allocation recommendations and, on November 14, 2000, requested additional information from the State about the reasons for the allocation recommendations. The format of the State’s initial findings followed the same format used and approved by NMFS in past years. However, NMFS believed that a more detailed explanation of the State’s rationale was necessary.

- On November 20, 2000, NMFS received a letter from NSEDC stating that NMFS was incorrectly requesting the State to provide a rationale for “changing” the CDQ allocations, thereby characterizing the 2000 CDQ allocations as the “status quo.”
(NMFS regulations state that allocations of CDQ are harvest privileges that expire upon the expiration of the CDP. When a CDP expires, further CDQ allocations are not implied or guaranteed.)
- The State provided additional information in a letter dated November 29, 2000, and received by NMFS on November 30, 2000. The State explained the use of population and other demographic information in making its allocation recommendations. However, the majority of the information provided described how the State used information about the performance of the CDQ groups as a basis for its CDQ allocation recommendations. It generally described the positive performance factors that led the State to recommend some percentage allocations than in 2000 for some CDQ groups. It described in much more detail the negative performance concerns that led the State to recommend lower pollock CDQ percentage allocations than in 2000 for APICDA and CBSFA.
- On November 27, 2000, NMFS received a request that APICDA be provided an opportunity to respond to the State’s additional information.
- On November 30, 2000, NMFS received a letter from APICDA describing errors it believes exist in the information the State submitted to NMFS on November 29, 2000. APICDA requested “a due process hearing” from NMFS.
- On December 4, 2000, NMFS received a letter from CBSFA describing errors it believes exist in the State’s November 29, 2000 submission to NMFS. CBSFA requested additional time to prepare a full response to the State’s submission.
- **NMFS has reviewed the information submitted by the State and the letters received from the CDQ groups. However, NMFS has not, at this time, finalized a decision of whether to approve or disapprove the State’s CDQ allocation recommendations for 2001-2002.**

Other Issues

- Further progress on the State’s proposed revisions to the CDQ administrative regulations (discussed at the October Council meeting) should wait until the issues related to the State’s and NMFS’s responsibility in the CDQ allocation process are more clearly understood.
- H.R. 5565, introduced in late October 2000, by Congressman Don Young would amend the Magnuson-Stevens Act to significantly change the CDQ Program, including the State’s and NMFS’s responsibilities in the CDQ allocation process. See attached

Proposed Amendments to the Magnuson-Stevens Act for the CDQ Program - (H.R. 5565)

H.R. 5565 would amend Section 305(i) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) which addresses the Alaska and Western Pacific Community Development Quota (CDQ) Programs. The amendments would make some significant changes from the CDQ Program developed by the State of Alaska (State) and the North Pacific Fishery Management Council (Council) in 1992. H.R. 5565 would increase the autonomy of the CDQ groups by allowing them to determine evaluation criteria for allocations, by expanding allowable investments beyond fisheries-related projects, and by limiting government oversight to projects funded only by CDQ royalties. The amendments also would place the primary responsibility for reviewing the Community Development Plans (CDP) and making CDQ allocations with the Secretary of Commerce, rather than with the State of Alaska. While the State would be allowed to continue to participate in CDQ Program administration, its authority would be reduced by the explicit assignment of allocation responsibilities to the Secretary of Commerce. Finally, H.R. 5565 would make changes to the species allocated to the CDQ Program and the accounting of incidental catch and bycatch in the CDQ fisheries.

Allocations to the CDQ Program

Through the CDQ Program, a portion of the Bering Sea and Aleutian Islands area (BSAI) catch limits for crab, halibut, groundfish, and prohibited species are allocated to eligible western Alaska communities. The percentage of each catch limit allocated to the CDQ Program is determined by the American Fisheries Act (AFA) for pollock (10%), the Magnuson-Stevens Act for crab (7.5%), the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea and Aleutian Islands area (FMP) for all other groundfish and prohibited species (7.5%, except 20% for fixed gear sablefish), and 50 CFR 679 for halibut (20% to 100%). These allocations to the CDQ Program are called "CDQ reserves."

H.R. 5565 (in new §305(j)(2), page 3) would add the allocations of 10% of the pollock total allowable catch (TAC) and 7.5% of all of the other groundfish TACs for which a directed fishery occurs as CDQ reserves. The current Magnuson-Stevens Act moratorium against increasing allocations to the CDQ Program until after October 1, 2001 would be retained under H.R. 5565. These amendments would put into the Magnuson-Stevens Act the current CDQ allocations with one exception. Specifying "7.5% of each other Bering Sea directed groundfish fishery" probably would prevent NMFS from continuing to allocate 20% of the fixed gear sablefish TACs to the CDQ Program, as currently required in the BSAI FMP.

Role of NMFS and the State in CDQ Program Oversight

The legislation (§305(j)(4), (5), and (6), pages 5-8) would make NMFS, on behalf of the Secretary of Commerce, responsible for determining "harvest shares," or the percentage allocation of the CDQ reserve for each species or species group to each CDQ group. Currently this responsibility is deferred to the State of Alaska through the BSAI FMP and NMFS regulations, as recommended by the Council when the CDQ Program was implemented in 1992. The legislation also would require that the criteria for evaluating the CDPs and making CDQ allocations be implemented through NMFS regulations and NMFS would be responsible for evaluating the CDPs and allocations against this criteria.

How this legislation would change the role of the State in day-to-day management of the CDQ Program is not clear. Our initial interpretation is that H.R. 5565 would still allow NMFS to defer to the State of Alaska much of the day-to-day management of the CDQ Program and would allow the State of Alaska to make CDQ allocation recommendations to the Council and Secretary. However, the fact that the bill contains significant new language outlining the Secretary's responsibilities and specifically stating that the Secretary "may allow the State of Alaska to participate" implies that NMFS would be required to take a more active role in the CDQ Program administration and allocations. These amendments likely would increase the responsibility of both the Council and NMFS for establishing specific evaluation criteria and weighting factors for CDQ allocations, and for becoming actively involved in the review and evaluation of the economic development proposals and past performance of the CDQ groups. The requirement to conduct the allocations every three years would mean that some part of the allocation review process likely would be ongoing at all times.

Role of the CDQ Groups in CDQ Allocations

In the proposed CDPs, each CDQ group requests a percentage allocation of each CDQ reserve. In the past, the sum of the requests by all CDQ groups has added up to more than 100%. If this continues to occur in the future, H.R. 5565 (§305(j)(5)(A), page 6) would direct the Secretary to authorize the appropriate percentage share for each CDQ group. The legislation does not specifically address what should be done if the CDQ groups agree on the percentage allocations to each group and submit requests that equal the amount of CDQ available to be allocated. However, public testimony at the October Council meeting indicated that the intent of the legislation was that the Secretary would accept the CDQ groups' requests if all of the groups could agree percentage allocations that added up to 100%. This interpretation is not clear from reading the current text of H.R. 5565.

If the CDQ groups cannot agree on the percentage allocations, H.R. 5565 (§305(j)(5)(C), page 7), states that the CDQ groups could recommend the evaluation criteria that would be required to be used by the Secretary to make CDQ allocations. If all the CDQ groups agree on the evaluation criteria, the Secretary must use only the criteria developed by the groups to make

CDQ allocations. The agreed upon criteria would be required to be submitted by the CDQ groups to the Secretary within 24 months after enactment of H.R. 5565.

If the CDQ groups cannot agree on evaluation criteria, the Secretary must implement regulations establishing the evaluation criteria that the Secretary will use in making CDQ allocations. These regulations must be implemented within 30 months of enactment of H.R. 5565. NMFS assumes that development of this evaluation criteria would be done through the regulatory amendment process based on Council recommendations.

Community Eligibility Criteria

Currently, the Magnuson-Stevens Act requires that communities eligible for the CDQ Program meet criteria related to location, status under the Alaska Native Claims Settlement Act (ANSCA), and fishing and processing activity. H.R. 5565 would amend the community eligibility criteria to add the requirement that, in order to be eligible for the CDQ Program, each community would be required to “be a member of a CDQ group” (§305(j)(3)(F), page 5). Currently, the only way that a community can be a member of a CDQ group is if they have been determined to be eligible for the CDQ Program. Although the intent of this amendment is not clear, it could mean that only communities that currently are members of a CDQ group could be eligible for the CDQ Program in the future. If this were true, Adak would be an example of a community that could be eligible for the CDQ Program in the future under existing eligibility criteria (pending ANSCA status). However, even if they were able to meet all of the current eligibility criteria, they wouldn’t be a member of a CDQ group at the time their eligibility was considered, so could not become part of the CDQ Program.

Remove the Requirement for Fishery Related Investments

H.R. 5565 would expand the type of investments that could be made under the CDQ Program, which currently are limited by regulation to “fisheries related” (see §305(j)(1)(B), page 3 and §305(j)(8)(B), page 11).

NMFS regulations, which are based on Council recommendations, state that:

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.

H.R. 5565 would specify that the purpose of the CDQ Program is “to assist eligible communities to achieve sustainable long-term diversified local economic development.” This amendment is consistent with National Research Council’s recommendation to remove or reduce the restriction that CDQ revenues be invested only in fisheries-related activities. However, to implement this provision, specific guidelines would have to be developed to assist staff in determining whether a proposed project met the new objectives of the CDQ Program and to guide the agencies in comparing CDPs for allocation recommendations.

Government Oversight Authority

H.R. 5565 would implement definitions of a "Community Development Plan," and a "CDQ project" that would require that all CDQ projects be described in the CDP and that the CDP be the basis for CDQ allocations (§305(j)(8), pg 11). This relationship between the CDP and CDQ projects is consistent with regulations currently governing the CDQ Program. However, the new definition of a CDQ project would be more limited than the current definition, applying only to investments made by the CDQ groups with revenues received as royalties from CDQ allocations. This amendment could remove the authority for the government to review, approve, or base allocations on any expenditure of revenue from sources other than royalties. The question of whether the current definition of a CDQ project extends to the investments of businesses owned by the CDQ group is in dispute. However, current regulations do require government oversight over all investments made by the CDQ group itself, regardless of the source of income used for the investment. Based on the 1999 financial statements, approximately 73% of the CDQ groups' \$54 million in annual revenue was from CDQ royalties. The remaining 27% of revenues was from income from partnerships, interest income, sale of property, leases, loan repayment, and other income.

CDQ Allocations and CDQ Fisheries Management Issues

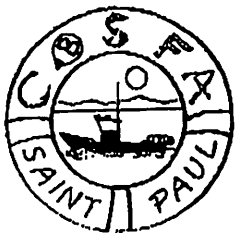
H.R. 5565 (in 305(j)(2)(A), page 3) would require that allocations to the CDQ Program be made only for species that have "directed fisheries" in the Bering Sea and Aleutian Islands area. CDQ allocations would no longer be made for species or species groups that do not have directed fisheries. This likely would remove from the CDQ Program allocations of several rockfish species categories and the "other species" category (skates, sharks, octopus, and sculpins). Any catch in CDQ fisheries of species not allocated to the CDQ Program would accrue against a single quota together with catch from the non-CDQ fisheries. Implementation of this provision would be similar to how squid catch in the CDQ fisheries will be handled under Amendment 66 to the BSAI FMP.

Although this amendment would prevent the CDQ fisheries from being limited by the catch of "bycatch species," it also would increase the possibility that CDQ fisheries would be limited if any of these species approaches its overfishing level. Under the current CDQ Program, the CDQ and non-CDQ fisheries are managed separately. If catch of a species starts to approach overfishing due to catch in the non-CDQ fisheries, NMFS probably would allow the CDQ fisheries to continue as long as they had CDQ for that species available for harvest. Only as a last resort would the CDQ fisheries be limited due to overfishing caused by catch in the non-CDQ fisheries. However, under H.R. 5565, if a species were no longer allocated to the CDQ Program, catch in the CDQ and non-CDQ fisheries would be managed together. If total catch approached the overfishing limit, NMFS would be required to take action to limit both the CDQ and non-CDQ fisheries to ensure that the overfishing limit is not exceeded.

H.R. 5565 also would establish the CDQ allocations as "directed fishing allowances," which means that only the catch of a CDQ species in a directed CDQ fishery for that species would accrue against the quota. Any incidental catch in other CDQ fisheries would accrue against the non-CDQ TAC. For example, 7.5% of the cod TAC would be allocated to the CDQ Program. Only cod caught in directed CDQ fisheries for cod would accrue against this allocation. Any cod caught incidentally in other CDQ fisheries would accrue against the non-CDQ cod TAC. Therefore, the total catch of cod in the CDQ fisheries would be allowed to exceed 7.5% of the cod TAC by the amount of the incidental catch in the CDQ fisheries. The catch accounting requirements of H.R. 5565 would treat all groundfish CDQ allocations similar to how pollock catch in the CDQ fisheries currently is accounted for under the AFA.

These two provisions of H.R. 5565 would affect quota monitoring in all CDQ and non-CDQ groundfish fisheries in the BSAI. They would require significant changes to NMFS's current CDQ catch accounting regulations and computer programs that monitor the CDQ fisheries. One of the more complicated aspects of the regulation changes would require defining directed fishing in a manner that would provide timely information about whether catch of a species accrued against a CDQ allocation or a non-CDQ TAC.

W170

**CENTRAL BERING SEA FISHERMEN'S ASSOCIATION**

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

COPY

November 20, 2000

Jim Balsiger, Alaska Regional Director
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802

Re: CBSFA petition to not approve the State of Alaska 2001-2002 CDQ Allocation Recommendations

Dear Mr. Balsiger:

The Central Bering Sea Fishermen's Association (CBSFA) is the Community Development Quota Program (CDQ) management organization for St. Paul Island, Alaska. The CBSFA office is based on St. Paul Island. On behalf of the Board of Directors and Membership of the Central Bering Sea Fishermen's Association, the management of the CBSFA asks that you carefully review and reconsider the criteria, findings, and assumptions recently used by the State of Alaska's CDQ Team in its recommendations for the 2001-2002 Community Development Quota allocations

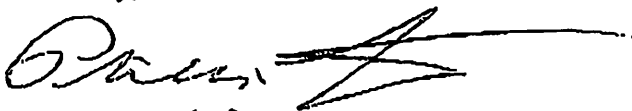
The Community Development Quota Program is a federal fishery program. Recently, a declaration was made by the Secretary of Commerce that a federal commercial fishery failure has been confirmed in our region. The CBSFA new Community Development Plan (CDP) includes two of the most innovative projects in the region designed to alleviate the negative impacts of the fishery failure. In spite of this, the State has recommended a net decrease in the CBSFA CDQ allocations. This action will put both our Community Development Plan and new economic diversification projects at risk.

CBSFA contends the state allocation recommendations were made pursuant to a questionable state allocation process that used invalid criteria, several inaccurate assumptions and outdated data. If the state allocation recommendations are allowed to proceed, it will only accelerate the downward spiral of the economic and social crisis in our region.

The Membership and the Board of Directors of CBSFA directed the management of CBSFA to submit a petition to the National Marine Fisheries Service and the Secretary of Commerce requesting that you disapprove the State of Alaska allocation recommendations for the years 2001 and 2002. The petition is attached to this letter.

Please feel free to contact us at any time. Thank you for your attention.

Sincerely,



Phillip Lestenkof
President

Attachment: Petition

cc: CBSFA Board of Directors
CDQ Groups
Sally Bibb
State CDQ Team
North Pacific Fishery Management Council

**PETITION OF THE CENTRAL BERING SEA FISHERMEN'S ASSOCIATION
FOR DISAPPROVAL OF THE STATE OF ALASKA'S
RECOMMENDED CDQ ALLOCATIONS FOR 2001-2002**

The Community Development Quota (CDQ) program is a federal program, the oversight of which has been delegated to the State of Alaska by the federal government. The Central Bering Sea Fishermen's Association (CBSFA) is the Community Development Quota Program (CDQ) management organization for St. Paul Island, Alaska. In spite of the fact that a federal commercial fishery failure has been declared by the Secretary of Commerce throughout the area which CBSFA serves, and in disregard of the fact that CBSFA has responded by developing two of the most innovative projects in the Western Alaska region in response to this crisis, the State has recommended a net decrease in CBSFA's CDQ allocations. If adopted, the State's recommendations will put both CBSFA's Community Development Plan (CDP) and new economic diversification projects at risk.

CBSFA believes the State's recommendation was made pursuant to a deficient state regulatory scheme, and used several inaccurate assumptions and outdated data. If adopted, the State's recommendation will accelerate an already rapidly growing economic and social crisis on St. Paul Island.

CBSFA will begin by pointing out specific instances where the State has used outdated information or inaccurate assumptions in evaluating CBSFA's CDP. As pointed out later, the vague and subjective nature of the State's evaluation makes it difficult in many cases to discern the findings and reasoning behind the State's conclusion. Despite this fact, several errors are manifest and they are catalogued at sections I and II below. Next, CBSFA will discuss the root cause of the State's flawed evaluation: an imprecise and subjective rating system that promotes error on the part of the State, and frustrates any attempt by the federal government to meaningfully review the State's recommendations.

I. THE STATE USED INACCURATE ASSUMPTIONS AND OUTDATED INFORMATION IN RECOMMENDING A CUT IN CBSFA'S POLLOCK ALLOCATION.

A. THE STATE DID NOT SUFFICIENTLY TAKE INTO ACCOUNT THE BERING SEA OPILIO CRAB FISHERY FAILURE, AND CBSFA'S CDP RESPONSE TO THAT FAILURE.

St. Paul Island has been severely and uniquely impacted by the Bering Sea opilio crab fisheries crisis. The Secretary of Commerce has already declared a commercial fishery failure and specifically referenced St. Paul Island in his declaration (See Attachment A).

The City of St. Paul has already seen an 80% reduction in tax revenues, and CBSFA itself has seen a decline of more than 40% of its revenues because of this failure. CBSFA has reacted by (a) reorganizing programs to offset revenue losses

and (b) developing a 2001-2002 CDP that accelerates the community's efforts to diversify its economy. Yet CBSFA can find no reference to this crisis in the State's written or verbal testimony concerning its CDQ allocation recommendations. As a result, CBSFA's attempts to sustain its current projects and accelerate diversification of the economy are now at risk.

The Multi-Species Development (MSD) Project

Under a unique agreement with American Seafoods, CBSFA has developed substantial first step measures to diversify the local economy in response to the Bering Sea opilio crab crisis. The State CDQ allocation recommendations put that project at risk.

The American Fisheries Act (AFA) rationalized the Bering Sea pollock fisheries – and in so doing, it also created excess processing capacity. CBSFA has entered into an agreement with American Seafoods to deploy one of its catcher processors to St. Paul harbor to operate as a shore-based, multi-species processing platform.

This project will not only benefit St. Paul, but the entire region. It should spur the development of a local and regionally based fisheries-related economy by more fully utilizing existing fisheries resources. This in turn will create increased opportunities for local fishermen and other Bering Sea fishermen.

In its CDP CBSFA requested an increase in both its pollock and pacific cod quotas. Both of these requests were carefully calculated to support the MSD project. However, the State CDQ allocation recommendation actually cuts CBSFA's pollock quota and leaves CBSFA's pacific cod quota at current levels – the lowest of any CDQ group.¹ These actions clearly put this innovative, regionally significant project at risk.

For the MSD project to reach a minimum level of sustainability, CBSFA needs additional CDQ pollock and pacific cod quota. To deny these requests – and in fact, to cut the pollock quota – flies in the face of the current economic crisis and cripples CBSFA's attempts to respond with an innovative and realistic plan to solve St. Paul Islands current economic crisis.

The Small Boat Harbor Project - St. Paul Island

For years, the community of St. Paul has worked to develop a Small Boat Harbor. The planning is in the final and most important stage for the harbor development strategy.

¹ CBSFA's allocations for 18 species other than pollock are also recommended for cuts. While these species are not significant sources of revenue some of them are caught as bycatch during CBSFA's targeted cod and pollock fisheries. Accordingly, the cuts in the allocations for these species mean that CBSFA's pollock and cod fisheries are exposed to the risk of early shut-down because of the increased threat of exceeding the allowable bycatch of these species during the cod and pollock fisheries.

For the last two years, under an agreement with the State of Alaska CDQ Team, CBSFA has set aside approximately \$1.65 million for the local share match of this federally-authorized and funded project.²

The project has begun – and the first local share match payment will be due in August 2001. But the Bering Sea Opilio Crab crisis, combined with the additional loss of revenues that the State CDQ allocation recommendations represents, puts this regionally significant project at risk. CBSFA now anticipates a local share “budget gap” of \$3.60 million for this project. Given the State’s reduced CDQ allocation recommendations, this project is now at risk (see Attachment B for detailed budget analysis).

B. THE STATE HAS USED OUTDATED INFORMATION IN SUPPORT OF ITS EVALUATIONS.

1. PER CAPITA INCOME.

In public testimony and written documents supporting its recommendations, the State has consistently stated that “St. Paul Island has the highest per capita income in the region.” CBSFA believes that this is highly inaccurate for several reasons:

- The State references 1990 census data to support its remarks concerning per capita income. This data – now more than ten years old – was collected at a time when there were several large infrastructure projects under way, including the final stages of construction of the St. Paul Harbor and the new community power plant. Those temporary spikes in income have long since vanished.
- In relying upon this older data, the State appears to be ignoring the current rapid downward spiral that the local economy is experiencing because of the Bering Sea Opilio Crab crisis.

The City of St. Paul has already laid off all temporary employees, cut the work week by 10% (an additional cut of 10% is being considered as this is being written), and scaled back basic benefits for remaining employees.

The loss of jobs and decline in real household incomes has already resulted in 22 residents leaving St. Paul Island, or choosing not to return to the island after temporary absences.

² By the end of this calendar year, CBSFA will have set aside approximately \$1.65 million. CBSFA committed to additional set asides of \$650,000 per year for the next two years towards the construction of the Small Boat Harbor.

Because of the decline in real household incomes, the social and economic infrastructure of the community is under increasing stress. Because of the net out-migration of residents that has already started, the City is aware of at least 4 houses that have been left unoccupied/unattended. In the absence of the significant projects proposed in the CBSFA CDP, CBSFA expects this trend to continue.

2. EMPLOYMENT RATES.

The State has also claimed that "St. Paul has one of the higher employment rates in the region." CBSFA believes that this is incorrect, and further, that it also ignores the downward trend in employment created by the Bering Sea Opilio Crab crisis. Here is the current data:³

<i>Total current labor pool</i>	268 Individuals
<i>Unemployed</i>	<u>122 Individuals</u>
<i>Total Employed</i>	146 Individuals
<i>Total Underemployed</i>	<u>52 Individuals</u>
<i>Actual Full Employment</i>	94 Individuals
<i>Actual "Full Employment" Rate</i>	35%
<i>Actual Unemployed/Underemployed rate</i>	65%

C. CBSFA HAS BEEN DISPROPORTIONATELY PENALIZED BY THE STATE'S USE OF IMPROPER EVALUATION CRITERIA.

CBSFA will show below, at page 11, that the State has used evaluation criteria that are not consistent with the federal purpose of the CDQ program. Specifically, CBSFA will demonstrate that the State's heavy reliance on population and on out-of-region investments is not consistent with the purpose of the CDQ program. Since CBSFA has a smaller population base than most of the other CDQ groups within the region, and since CBSFA has chosen to invest in infrastructure within the region and local fisheries development projects, it has been heavily and unfairly penalized by the State's use of irrelevant criteria.

CBSFA contends that the projects included in CBSFA's CDP are some of the *most important locally and regionally based fisheries-related development*

³ The City of St. Paul Island

projects put forward by any group for the 2001-2002 CDQ allocations cycle.⁴
Here is why:

1. THE MULTI-SPECIES DEVELOPMENT PROJECT.

St. Paul Island is strategically located within the Western Alaska region. It is in close proximity to more than half the nation's commercial fisheries – yet its historic circumstance as an island devoted solely to the fur seal harvest, combined with the lack of infrastructure and multi-species processing capacity has precluded it from fully participating in those fisheries.

Now, at the very time that the infrastructure projects are nearing completion and CBSFA has put together an innovative MSD agreement to accelerate this development (and offset the crab crisis), the State CDQ allocation recommendations will effectively put all of this progress at risk

The MSD project is important to the community, the region and the State and Federal governments. The MSD project will replace lost jobs and lost revenue⁵ for the community and the region, and it will also bring increasing volumes of (federally managed) fish in-shore for processing, resulting in (a) better utilization of the resources and (b) increased revenues for both the State and Federal governments. However, because of the faulty criteria used by the State, CBSFA gets little credit for this program, while other CDQ groups get great credit because of their larger population base or because of their out-of-region investments.

2. CBSFA'S PROJECT IMPACTS ON OTHER COMMUNITIES IN THE WESTERN ALASKA REGION.

CBSFA believes that many of CBSFA's CDP projects also create a significant net benefit for other communities within the Western Alaska region, and the fishing industry in general.

This is not an empty claim. Here is why:

- During the 1999 and 2000 halibut fishery, CDQ and IFQ halibut from St. George were delivered to and processed at the St. Paul harbor.
- The local fleet on St. Paul Island has begun to hire crewmembers and baiters from St. George Island during our seasonal CDQ Halibut fishery. *CBSFA expects this trend to grow as the MSD project comes on line.*

⁴ In addition to the MSD and small boat harbor project, which are discussed at length, CBSFA's boat and gear loan program; its IFQ loan program; its floating dock maintenance and mooring projects; and its vessel repair facility, are all directly related to creating a regionally based fisheries-related economy.

⁵ See argument I(A), above, for a discussion of the nature and extent of St. Paul's economic crisis.

- CBSFA and the community of St. Paul have taken a lead role in the crab rationalization process on behalf of the entire region. CBSFA has placed skilled individuals on NPFMC-level committees, and had a significant impact on policy discussions, in spite of CBSFA's own crab-related budget crisis. This work is vitally important to CDQ communities throughout the region – yet no other CDQ group is actively involved in this issue.
- When the MSD project comes on line, it will establish an onshore multispecies processing capability within the Western Alaska region. This will create employment opportunities within the region, both in the processing plant and on vessels that will be delivering product to this plant.
- When the MSD project comes on line, it will provide an additional market for vessels fishing within the region.

CBSFA cannot find reference to any of these projects or issues in the State analysis. CBSFA believes that this lack of understanding or analysis in the State CDQ allocation recommendations (a) puts these regionally significant projects at risk, (b) fails to recognize the vital role CBSFA plays in the development of the region's economy, and (c) is not in line with the intent of the Federal laws that created the CDQ program.

D. THE STATE HAS MISCALCULATED THE IMPACT OF CBSFA'S NEW BRISTOL BAY KING CRAB ALLOCATION.

In conversations with CBSFA, the State has said that it thought that the new CDQ Bristol Bay King Crab allocation awarded to CBSFA would offset the CDQ pollock quota cut. This appears to be a miscalculation on the State's part. In fact, the net decline in revenues will be approximately \$500,000 for CBSFA for the two years that the reduced pollock quota will be in effect, if approved by the federal government (see Attachment C for detailed analysis).

There will be even more loss of revenue if 2001 and/or 2002 Pollock TAC's are increased or if Bristol Bay King Crab GHIL's are reduced.

Combined with the Bering Sea Opilio Crab revenue losses, this results in a net annual revenue loss of more than \$1 million per year for CBSFA – a nearly 50% revenue decline in just two years. CBSFA does not know if any other CDQ group is facing this level of crisis, nor can it understand the State's response to this resource-based disaster.

II. THE STATE'S RECOMMENDED POLLOCK ALLOCATION FOR CBSFA WILL MAKE IT IMPOSSIBLE FOR CBSFA TO CARRY OUT ITS CDP.

When the CDQ program began in 1992, CBSFA was awarded 10% of the CDQ pollock allocation. Over the years, CBSFA's allocation has been cut and cut again, so that it currently rests at 5% — one half of what it was to begin with. Most recently, the State is recommending that the CBSFA allocation be reduced to 4%, which amounts to a 20% reduction in CBSFA's already inadequate allocation.

As will be shown below, CBSFA's CDP is already in jeopardy under an allocation of 5%. To reduce CBSFA's allocation to 4% constitutes a 20% reduction in CBSFA's pollock income. Since CBSFA is already barely scraping by at 5% of the pollock allocation, this reduction will be devastating. On the other hand, the Norton Sound Economic Development Council (NSEDC), the CDQ group which is recommended to receive the 1% of the pollock revenues that is taken away from CBSFA, is already at 22% of the pollock allocation. The 1% of the pollock that the State recommends awarding to NSEDC therefore amounts to an increase in pollock revenue for NSEDC that is 4.5% of its current pollock income.

In short, CBSFA will suffer a 20% reduction in pollock income in order to produce a 4.5% increase in pollock income for NSEDC. The devastating effect of such a drastic loss to CBSFA is considerably greater than any marginal benefit that NSEDC will receive from an increase that is small in proportion to its existing pollock income.

As pointed out above, much of CBSFA's income has been devoted to building infrastructure within the region: the St. Paul small boat harbor, the boat and gear loans for local fishermen, the maintenance and mooring of the floating dock in St. Paul harbor, the Individual Fishing Quota loan program, the vessel repair facility, and the dock lease for the multi species processing vessel. These programs all build local infrastructure, and they all will directly contribute to the building of a regionally based fisheries-related economy, but none of them will generate significant profits in the short run.

Since CBSFA is operating on such a stringent budget, maintaining these important projects takes a significant amount of its income. There is very little money left to invest in income producing ventures. CBSFA did invest in American Seafoods, but its investment was much smaller than it would have liked, because it did not have the cash to do more. At the 4% allocation that is recommended by the State, CBSFA can make further investments only by borrowing. Given the volatile nature of the seafood industry, leveraged investments are inherently far more risky than non-leveraged investments. Yet CBSFA is being forced into such a high risk investment strategy by the State's continued cuts in its allocations.

CBSFA would also like to invest more money in local infrastructure. An expanded boat and gear loan program could enable the local fishermen to acquire bigger boats and expand into species other than halibut. There is no money to expand the loan program so that this could happen. There is also no money to expand the IFQ loan programs, the student loans or scholarships, or the set aside for the St. Paul harbor improvements.

What is particularly onerous is the double bind situation that the State's flawed criteria have created for CBSFA. CBSFA's current desperate situation is a product of the fact that CBSFA has chosen to invest in local infrastructure. The State's criteria do not properly recognize such investment. Another factor that has hurt CBSFA is the fact that its local population base is smaller than other local areas within the region. As pointed out later, at page 11, population is an irrelevant criteria, yet it appears to have been very important in the State's thinking. As a result CBSFA's allocation has been repeatedly cut.

Other CDQ groups that did not invest in infrastructure chose to invest in out-of-region ventures, many of which proved to be profitable. The State gave great credit to these groups, and awarded them more quota. When this happened, CBSFA saw the handwriting on the wall, and tried to make profitable out-of-region investments, such as its recent investment in American Seafoods. But because CBSFA was already operating at a bare survival level, and because it had to continue to support its local infrastructure projects, it did not have enough cash to make a significant investment.

Since CBSFA's out-of-region investments now pale in comparison to those of other CDQ groups, it incurs the further displeasure of the State.⁶ Accordingly, the State now recommends further cuts in CBSFA's pollock allocation. This makes it even less possible for CBSFA to invest in the future. This in turn makes future pollock cuts more likely. Coupled with this is the fact that St. Paul Island's current economic crisis is producing an out-migration. Although the rational response would be to put more money into St. Paul, to create infrastructure and prevent further economic collapse, the State's population criteria insures that the loss of people will result in further cuts to CBSFA's allocation. In short, the State's improper use of evaluation criteria has forced CBSFA into a "death spiral" in which its allocation will continue to shrink for reasons that are beyond its control.

III. THE STATE HAS FAILED TO ARTICULATE REVIEWABLE CRITERIA FOR JUDGING CDQ PERFORMANCE.

A. INTRODUCTION.

The CDQ program is a program that was originated by the North Pacific Fisheries Management Council, a body created and existing under federal law, 16 U.S.C § 1852. This program is a federal fisheries program. The State of Alaska participates in the CDQ program only to the extent that the federal government has chosen to delegate a function to it. State regulations can exist only because they discharge the functions that the federal government has delegated to the State. To the extent that the State regulations or the State's actions in overseeing

⁶ The State's recommendations make no mention of CBSFA's investment in American Seafoods, but in its presentation to the North Pacific Fisheries Management Council, the State went out of its way to mention Coastal Villages Resource Fund's (CVRF) "excellent" investment in American Seafoods. CVRF is currently recommended for a 2% increase in the pollock allocation, and the American Seafoods investment is one of the reasons for this. Yet CVRF's investment was no more "excellent" than CBSFA's, only bigger, because CVRF had more money to invest.

the CDQ program are inconsistent with the federal legislation or the federal regulations, they must fail.

The practice that has evolved is that the State makes recommendations as to changes in the amount of the federal fisheries resources that are to be awarded to each of the CDQ groups. Both the federal regulations (see 50 CFR § 679.30(d)) and the State regulations (see 6AAC 93.015(c)(3) and 6AAC 93.040(c)(1)) refer to the State's activity in proposing a change in allocations as a "recommendation". The federal regulations state that the "recommendation" of the State will be subject to "review" at the federal level, and both the State and the federal regulations state that these recommendations must be approved by the Secretary, acting through the National Marine Fisheries Service (NMFS).

Since the federal government has retained the authority to review and approve the recommendations of the State, the State government has an obligation to make its recommendations in such a way that the federal government can meaningfully exercise its retained authority to review and approve the State's recommendation.

Unfortunately, the State government has elected to present its recommendations in a format which is so vague and so lacking in ascertainable standards that the federal government cannot perform its duties of review and approval. For this reason, the State's recommended CDQ allocations for 2001-2002 should not be approved by the NMFS, and the State should be instructed to resubmit its recommendations in a format that makes a meaningful review by the Secretary possible.

B. THE STATE'S RECOMMENDATIONS ARE SUPPORTED BY FINDINGS THAT ARE VAGUE, LACK OBJECTIVE STANDARDS, AND MAKE IT IMPOSSIBLE FOR THE FEDERAL GOVERNMENT TO PERFORM ITS REVIEW FUNCTION.

In its Memorandum of Objections to the State of Alaska's Recommended CDQ Allocations for Calendar Years 2001 and 2002 (the Memorandum) another CDQ group, the Aleutian and Pribilof Islands Community Development Association (APICDA) documented at great length the vague nature of the findings made by the State in support of its recommendation.⁷ CBSFA does not intend to repeat the showing made by APICDA on this point. Instead, CBSFA is content to incorporate this portion of the APICDA Memorandum by reference and to supplement it with a few examples from CBSFA's experience.

CBSFA is described as having a "fair ability" to negotiate with its partners. But what does this mean when compared with "an ability" or "a strong ability", which

⁷ For example, APICDA points out that the State has chosen to use words such as "an ability" or "a strong ability" in comparing the performance of different groups; has chosen to use so many criteria and such wide ranging criteria that the federal government has nothing to review; and has improperly injected population as a major justification for changing allocations. See the Memorandum pp. 9-15.

are the words that were used for other groups? CBSFA does not know the details of what each of the other groups negotiated for cod and pollock royalties, because the State refuses to release this information, but it does know that it successfully negotiated an increase in royalties for these species when confronted with the crash in opilio stocks that recently occurred in the Bering Sea. More recently CBSFA has negotiated another increase in these royalties.⁸ Before the opilio crash, CBSFA believes that its performance in negotiating with opilio processing partners compares favorably with that of most of the other CDQ groups. Four of the other CDQ groups partnered with the same processor. This processor told everybody that it was charging the same processing fee to every group that partnered with it, and it offered to process for CBSFA for this fee. CBSFA partnered with a different processor, and it did so because it was able to negotiate a lower processing fee with this processor than was being offered by any other processor. On balance, therefore, CBSFA suspects that its negotiating ability compares favorably with that of the other groups.

Unfortunately, because of the vague way that the State's findings are worded, the Secretary cannot determine whether the State has acted correctly in assessing CBSFA's ability to negotiate with its partners. It is simply impossible for the secretary to review these imprecise findings and determine whether they are supported or contradicted by the evidence.

IV. THE SECRETARY SHOULD REQUIRE THE STATE TO DEVELOP OBJECTIVE STANDARDS.

A. OBJECTIVE STANDARDS COULD BE EASILY DEVELOPED BY THE STATE.

Instead of using vague and imprecise comparisons, such as "an ability," a "fair ability," or a "strong ability," the State should formulate a "scorecard" or "report card" on which to evaluate the various CDQ groups. There are many examples of scorecards or report cards that the State could draw upon to create objective standards for evaluating CDQ groups.

One such set of examples is found in private industry. Private corporations, including some of the ANCSA corporations in Alaska, have developed corporate "scorecards" for use in evaluating corporate management. Specific corporate goals are listed, and management is given a grade at the end of the year which is based upon its performance in reaching the corporate goals.

Because of the different circumstances between a profit corporate operation and a non-profit CDQ program, these corporate score cards are not directly applicable to evaluating CDQ groups. One important difference is that a corporate scorecard

⁸ For the year 2000, CBSFA negotiated increased cod and pollock royalties. An additional increase in the pollock royalty and an additional increase in the cod royalty with a different partner have been negotiated for 2001 and 2002. CBSFA also negotiated increased crab catcher vessel royalties for 2001.

does not involve comparisons. In a for profit corporation, either management is meeting its goals, or it is not.

In the CDQ world, by contrast, allocation decisions are based on comparisons between the various CDQ groups. Even if a CDQ group is not meeting its goals, it should not be cut if the other CDQ groups are experiencing a comparable failure in achieving their goals. Conversely, even if a CDQ group performs well, it should not receive an increase in allocation if the other CDQ groups are also performing well. Still further, there should be a significant difference in performance between groups in order to justify an increase or a decrease.

Accordingly, in developing an objective rating system for evaluating the CDQ groups, the grading must allow for direct comparisons of the performance of one group to another. Only by comparing the groups to each other can a recommendation for changes in allocations be justified. Only when such a comparison reveals a significant difference in performance between groups can a recommendation for changes in allocation be justified.

Government agencies have been forced to develop procedures for rating competing applications in the field of public contracts. State agencies routinely rate competing applications for consulting contracts or for the provision of architectural or other services to the State. These rating systems employ a series of categories. The categories are weighted to reflect their relative importance. The competing applications are given scores, frequently numerical scores, for each of the categories.

If the State can develop such systems for rating contract applications, it can certainly do so for rating CDQ group performance. Such a system should be based on categories that are related to the purpose of the federal legislation that established the CDQ program. The CDQ groups should be given numerical scores which can be compared with one another, and the State should be required to provide a specific justification supporting the numerical score that is awarded to each group in each category.

In establishing the categories, the State should be directed to adhere to the federal purpose behind the CDQ program: "to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy." 50 CFR 679.1(e).

This means that categories which appear to have been very important to the State, such as population, should be deleted, or given very low weight. That is because the population that resides within any particular local area of the Western Alaska

region has little if any relationship to the purpose of promoting an ongoing regionally based fisheries-related economy.⁹

Categories which evaluate the investments of the CDQ groups, should be weighted to reflect the federal purpose of promoting a regionally based fisheries-related economy. So, for example, an investment in a fisheries-related business which does not result in a regionally based fisheries-related economy should not be given much weight, even though it might be profitable for the CDQ group which made the investment. Thus, investment in a profitable freezer-longliner that is operated out of Seattle should not be given much weight, because it does not result in a regionally based fisheries-related economy.

On the other hand, investment in regional infrastructure, such as harbors, or boats for fishermen who reside within the region, should be given great weight, because it is directly productive of a regionally based fisheries-related economy.¹⁰ And this should be so whether or not the investment produces an immediate profit. Infrastructure investments, although they are rarely profitable in the short run, are essential before a regionally based fisheries-related economy can be developed.

In this regard, it is important to note that, to the limited extent that its vague and subjective rating system can be characterized, the State appears to give great weight to investments that do not promote a regionally based fisheries economy, at the expense of investments in infrastructure within the region.

B. OBJECTIVE STANDARDS WOULD FACILITATE REVIEW OF THE STATE RECOMMENDATIONS BY THE SECRETARY.

If the State were to create an evaluation system along the lines outlined above, the federal government would be able to exercise a meaningful review of the State recommendations. First, the Secretary could review the categories used by the State and the weights given to each category to determine whether they were consistent with the federal purpose behind the CDQ program.

Second, the Secretary could review the numeric scores given to each group in each category, and the State's justification for each, to determine whether the State's ratings were supported by the evidence.

⁹ The CDQ program exists to create a fisheries based economy within the Western Alaska region. Each CDQ group represents a local area that is only a fraction of the region. The fact that one local area within the region may have more or less population than another area within the region is irrelevant to whether a group's CDP will promote a fisheries-related economy within the region.

¹⁰ CDSFA's projects, as is pointed out elsewhere, are uniquely productive of a regionally based fisheries-related economy. The small boat harbor project; the floating dock mooring and maintenance project; the boat and gear loans for local fishermen; the IFQ loans for local residents; the vessel repair facility; and the lease for a multispecies processing platform to be located within the region, are all directly related to promoting a regionally based fisheries-related economy.

Third, the Secretary would have a scorecard for each group that could be compared with the scorecards for the other groups to determine whether the group in question performed significantly better or significantly worse than the other groups. An increase or decrease in allocation could only be justified if this were to be the case.

C. OBJECTIVE STANDARDS WOULD IMPROVE ACCEPTANCE OF STATE OVERSIGHT BY THE CDQ GROUPS.

The State's use of vague and subjective evaluation procedures has created a situation in which its recommendations do not have the respect of the CDQ groups. Because the system is vague and subjective, the State recommendations may or may not be supported by solid evidence. In addition, it frequently appears that the State gives great weight to factors such as population or out-of-region investments which are not related to the purpose of the CDQ program.

In addition, since every CDQ group knows that its fate rests on a subjective system, it also knows that it must please the State of Alaska to be successful. Thus, groups spend considerable time and energy currying favor with the State, even when they privately believe that the State is making demands that are outside of its legitimate authority, or is using improper criteria in evaluating their performance.

If there were definite criteria and scorecards, the CDQ groups would have a clearer idea of what was expected of them, and would know what they needed to do to achieve good scores. Instead of currying favor, the groups could concentrate on taking actions that were rewarded with high scores. And so long as the categories and the weighting of the categories are properly related to the purpose of the CDQ program, all of the CDQ groups will have a powerful incentive to behave in a way that promotes the purpose for which the CDQ program was established.

V. CONCLUSION.

For all of the reasons set forth above, CBSFA respectfully requests the NMFS and the Secretary of Commerce to disapprove the CDQ allocation recommendations that have recently been transmitted by the State. However, mere rejection of these recommendations will not solve the basic problem, which is the State's failure to employ a detailed, objective rating system that is supportive of the federal purpose behind the CDQ program. As a result, the Secretary of Commerce cannot meaningfully review the State's recommendations, and the CDQ groups are without firm guidelines as to how to conduct their business.

Accordingly, the NMFS and Secretary of Commerce, in addition to rejecting the State's recommendations, should direct the State to develop and submit to the Secretary for approval, a detailed and objective rating system, which utilizes criteria and weights those

criteria in a way that promotes the federal intent behind the CDQ program. In the interim, the CDQ allocations should remain at their current levels.

DATED this 20th day of November, 2000.

CENTRAL BERING SEA
FISHERMEN'S ASSOCIATION

By: 

Phillip Lestenkof, President

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Tony Knowles, Governor

Alaska Department of Community and Economic Development

Office of the Commissioner

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November 29, 2000

James Balsiger, Administrator
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

Dear Mr. Balsiger:

This letter is written in response to your request for additional information regarding the State of Alaska's (state's) allocation recommendations for the Western Alaska Community Development Quota (CDQ) program for 2001 and 2002. Specifically, you requested "a more detailed explanation of the state's rationale ... to provide an administrative record of the reasons for the CDQ allocations." The following will attempt to provide more detail concerning the rationale for the state's recommendations and address some of the allegations contained in the objections to the recommended allocations filed by the Aleutian Pribilof Island Development Association (APICDA) and Central Bering Sea Fishermen's Association (CBSFA). In order to do so, we will necessarily be required to disclose arguably proprietary information normally held confidential at the request of the CDQ groups. We believe that the filing of the objections by APICDA and CBSFA constitutes a waiver of this confidentiality with respect to these two groups, to the extent necessary for the state to defend its recommended allocations. Nonetheless, we have attempted to limit disclosures of arguably confidential information in the body of this letter, instead placing such information in endnotes that will be distributed only to you and the group cited in each note.

We will not address, at this time, issues raised by either APICDA or CBSFA concerning the procedure utilized by the state in making its allocation recommendations. The procedure used, and the criteria upon which the decisions are made, are set in regulations and have been followed consistently since the beginning of the program. To the extent there may be concerns with that procedure, we are addressing these concerns through the normal regulatory amendment process, including the current "Bright New World" proposal.

"Promoting a healthy economy and strong communities"

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The CDQ program is unique in that it constitutes a grant of a public resource to achieve a government-sanctioned goal of fostering economic development in western Alaska.¹ As such, the CDQ program was not designed as a direct allocation of quota to businesses, but rather was created with the inclusion of state oversight to ensure that the public resources were being used to achieve certain desirable social and economic goals. The state has always viewed the mission of the CDQ program as being one of providing maximum opportunities for the economic wellbeing of residents of western Alaska. According to 1999 population estimates compiled by the Alaska Department of Labor, there are approximately 27,000 residents in the 65 eligible CDQ communities. Multiple benefits such as employment and training opportunities also accrue to non-CDQ communities near the boundaries of the program. The importance of this overall mission is now heightened with the onset of the western Alaska salmon disaster this last season, and indications that salmon runs may remain poor for the foreseeable future.

The six CDQ groups represent distinct regions within western Alaska with distinguishing characteristics, including differences in demographics, economic opportunities, community dynamics, and overall population density. In preparation for the allocation process, the state obtained 1990 census data (2000 data is not yet available) to determine community information on the number of households, median income levels, percentage of residents under the poverty guidelines, percentage of adults not working, and whether the community had adequate water and sewer facilities. The state admittedly relied on this data during the decision-making process for the 2001-2002 multi-species allocations. However, the state also focused on the performance of each group, both with respect to the group's financial return and its accomplishment of social objectives such as employment levels, educational opportunities, and management positions within each organization.

The state recommended a pollock allocation for Coastal Villages Region Fund (CVRF) of 24%, 2% more than the current 2000 allocation. CVRF represents 20 communities and approximately 30% of the total population of the CDQ region. It has the highest number of residents below the poverty level and the lowest per capita income of any region in the program. Based upon management and performance problems in the past, pollock allocations to this group were reduced from 27% to 22% between 1992 and 1995. In response to these earlier problems, the state required CVRF to conduct and implement an independent management review. Implementation of corrective measures has been quite successful, including the hiring of a new executive director who, in our opinion, has demonstrated a high degree of competence and creativity.

It is the opinion of the state team that not only has CVRF reversed its earlier problems, but that it has shown excellent progress in meeting the goals of the CDQ program and bringing benefits to the residents of its region, justifying an increase in its allocation to

¹ APICDA alleges, without supporting legal authority, that the allocation process somehow denies it due process rights. The state does not believe any such rights exist with respect to these allocation grants. Ironically, when the state was considering the adoption of 6 AAC 93.090, relating to the process for a group to challenge a decision of the state team, APICDA strongly opposed the creation of an administrative appeal process regarding the state's allocation recommendations.

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bring it closer to its earlier year percentage. For instance, in 2000 CVRF made a significant investment in American Seafoods. The state team is impressed not only with the rate of return that CVRF is already enjoying on this investment, but also with the manner in which CVRF investigated this investment opportunity and worked with both private consultants and state officials to guarantee, to the maximum extent possible, that the investment would be successful.

In addition, the state team was quite impressed with CVRF's recent successful development of salmon and halibut processing opportunities in several communities, with plans to expand to still more member communities. These local processing developments, along with the group's excellent training and employment programs for local residents, are generating many direct benefits to the region's residents. Although we recognize that population numbers alone may not necessarily justify allocation decisions, there is no question that in making allocation recommendations, the state must make an effort to maximize the benefits realized by residents of the entire CDQ region. In the case of CVRF, it was felt that an increase was justified because the group's CDP was designed to benefit a great many local residents, who have generally demonstrated a strong and continuing interest in capitalizing on the employment and training opportunities offered by the group. CVRF demonstrated not only a real need for more quota, but also the willingness and ability to capitalize on this increase for the benefit of the region's residents.

The state has recommended a pollock allocation of 23% for Norton Sound Economic Development Corp (NSEDC); this compares with a current 2000 allocation of 22%. NSEDC represents 15 communities and is the largest CDQ group in terms of population, representing approximately 33% of the region's residents.² Like CVRF, NSEDC has also implemented several new programs beneficial to the region's residents. NSEDC has recently made a significant financial commitment to development of the Nome Port, including plans to build an on-shore fish processing plant at the port that will also include retail sales of NSEDC seafood products. NSEDC has completed and is successfully operating an on-shore salmon processing plant in Unalakleet, which has generated a new market for not only local fishermen, but also for fishermen outside the immediate CDQ region (Kotzebue). NSEDC has successfully developed a small boat halibut operation in Savoonga on St. Lawrence Island, including a small buying and processing station, and plans to develop similar operations in other communities within its region. And NSEDC continues to demonstrate excellent returns on its 50% investment in Glacier Fish Co., which also benefits local residents in giving training and employment opportunities. For all of these reasons, the state team felt that a very modest 1% increase in the pollock allocation to NSEDC was appropriate.

The state has recommended a pollock allocation for APICDA of 14%, which is 2% less than its current 2000 allocation. According to state figures, the entire population of the APICDA communities in 1999 was 557, approximately 2% of the total for the entire CDQ region. Because the APICDA communities are small, the local labor force and the

² On a per capita basis, APICDA's recommended pollock allocation is approximately 12 times as great as NSEDC's.

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demand for employment opportunities through the CDQ program are quite limited³. APICDA's residents have not widely embraced employment opportunities in the pollock industry, apparently preferring to have small vessels and harvest the quota themselves. In 1999 APICDA reported 130 jobs created through the CDQ program, primarily in a single community, ranking it fifth among the six groups in this important program criterion.

APICDA, in its challenge to the state's recommendations, admits that a group's performance should be a critical factor in allocation decisions.⁴ The state concurs; the state team has several concerns with APICDA's past performance that entered into the team's allocation deliberations. APICDA's liquid assets and financial reserves, in proportion to the overall assets of the organization, is the lowest among the six CDQ groups. In 1999, APICDA failed to meet its milestone to "establish a cash flow projection eighteen months into the future" and to "manage funds to maximize liquidity while emphasizing security." In December 1998, the APICDA board of directors established the Longterm Reserve Account (LRA), which is supposed to contain an amount approximately equal to one year of APICDA's earnings. In 1999 APICDA failed to meet this commitment, and it is also unlikely that it will be met by year-end 2000. Furthermore, APICDA may have to use some of this money to meet operational needs.^A

APICDA failed to meet many of its self-imposed performance milestones set forth in its last Community Development Plan (CDP). For instance, APICDA has invested significant sums in a lodge project in Nikolski, which was supposed to be fully operational in August 2000.^B The opening date has now been postponed to 2001, and because of complications with water permitting could be delayed even longer. APICDA's OceanLogic project has lost a significant amount of money in each of the last three years.^C

Because of construction delays and cost overruns, APICDA failed to meet its milestone to operate the Bering Pacific Seafoods, L.L.C., (BPS) plant in False Pass profitably and purchase and process several millions pounds of Pacific cod and salmon at the plant in 2000.^D These goals will not be met and, in fact, it is likely that BPS will fail to make a profit for this year and perhaps beyond. Likewise the Dipper L.L.C., an associated

³ For instance, APICDA predicts that once completed, there will be six full-time employees at its Nikolski lodge (a significant financial investment ostensibly designed specifically to create employment opportunities in a village with less than 50 residents). The Bering Pacific Seafoods and Dipper LLC project, with a total investment of more than \$5 million to date, generated 15 seasonal jobs in 2000. Neither the Konrad I nor the OceanLogic projects create any direct jobs for APICDA's residents.

⁴ APICDA alleges, in a discussion that is particularly offensive and with no supporting evidence, that the state's recommendations are politically motivated. It is also alleged that the use of population as an allocation criteria is flawed as resembling an entitlement program. If it were true that political considerations entered into the state's deliberations, it would seem more likely that APICDA, who has long supported the state team and has taken a leadership role in pursuing the Bright New World regulations, would be the big winner and NSEDC, who has repeatedly challenged the state's oversight role, would be the loser. In fact, the state team consciously chose to keep all political considerations out of its deliberations. These allegations are particularly interesting coming from APICDA, who is attempting to use this appeal to further its political agenda in Washington D.C. that includes, in part, an effort to actually make this an entitlement program and have Congress set permanent, fixed allocations for the groups.

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project with BPS, will also likely lose money in 2000, failing to meet the milestone to "operate profitably in each year...."

The state recognizes that as the CDQ program grows, each group's cost for program administration will necessarily increase. However, the state team has consistently indicated to the groups that every effort must be made to keep administrative costs to a minimum, in order to maximize benefits for the region's residents and communities. It is worth noting that in 1999, APICDA was second among the six groups in overall administration expenses^E and had the highest level of consultant fees.^F

In its objection to the state's recommended allocations, APICDA attempts to make the case that a 14% allocation will "substantially harm" APICDA's ability to do business.⁵ However, even under its own very conservative projections set forth in its objection, the amount APICDA projects in 2001 royalties under the state's recommendations compares very favorably to APICDA's historical royalty returns, and in fact exceeds its returns for each of the first seven years of the CDQ program, 1992-1998. Furthermore, the majority of APICDA's projected 28 percent reduction in royalty earnings as compared to 2000 is the result of speculation on market factors that are neither unique to APICDA nor relevant to these allocation decisions. If these pessimistic market projections do not come to pass and APICDA receives roughly the same value for its royalties as in 2000, it will receive more than \$1 million above its projections.⁶ These calculations also ignore the fact that APICDA, like all of the CDQ groups, is also growing in terms of overall assets, which means that any royalty reductions can be offset by increasing returns on asset investments.

The reasons for APICDA's relatively high pollock allocations in past years are not entirely clear from the record. It is the understanding of the state team that when the program was originally created, the APICDA region received a larger allocation in part because of that region's vicinity to the fisheries resource and its ability to capitalize on its significant experience in fisheries as compared to other CDQ groups. The significance of this distinction, however, has declined as other CDQ groups have matured and gained fisheries experience over the life of the program. The state team recognizes the benefits APICDA has brought to the region and congratulates the group on its successes, including the development of a local halibut fishery and processing plant in Atka and the recent opening of a plant in False Pass. However, the team also believes that in light of the magnitude of the benefits to the region's residents demonstrated and proposed by

⁵ APICDA alleges that this proposed allocation would preclude APICDA from providing St. George with matching funds for that community's federal disaster funds. This is a totally new argument, never put forth before now as a justification for a higher allocation. If APICDA wanted the state to consider this justification for its allocation request, it was incumbent upon APICDA to raise this issue in its original CDP application.

⁶ Little credence should be placed on APICDA's royalty projections for 2001. In 1999, APICDA projected royalties for 2000 very close to the amount they now project for 2001 under the state's recommendations. Actually, APICDA's 2000 projections were more than 33 percent too low. We can only hope that APICDA's current projections are as far off as they were last year.

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CVRF and NSEDC, in comparison to those shown and proposed by APICDA, a modest change in the pollock allocations for 2001-2002 is appropriate.

The state is recommending a CDQ 2001-2002 pollock allocation for CBSFA of 4%, which compares to the current 5% level. CBSFA represents only 673 residents, approximately 3% of the CDQ region's population, and has the highest per capita income (\$39,922) in the region. For whatever reason, even in the face of a federal economic disaster CBSFA has shown little progress in developing employment opportunities for residents (other than providing recent opportunities for local halibut fishermen). No Saint Paul residents were employed in any pollock related fisheries in 1999. CBSFA also did not have any industry-related internship positions. One position was reported in the crab fisheries and one in the multi-species program.

Although CBSFA has done several good things, including the successful development of a local halibut fishery in St. Paul that justifies the state's recommendation to continue the group's 4C halibut allocation at 90%, the state team continues to be concerned that CBSFA has not demonstrated the overall success shown by other groups in the program. We remain optimistic, however, that implementation of the recommendations of a recently completed independent management review will help,⁷ and we are pleased to see continued slow, but steady, progress toward completion of a small boat harbor on the island.⁸

Despite CBSFA's undeniably good intentions, its CDP represents little more than a wish list for the future that remains unconvincing in light of the group's past performance record. Although CBSFA makes much of its proposal to have American Seafoods bring one of its processing vessels to St. Paul to operate as a shore-based processor next year, to date this effort has not materialized beyond the discussion stage. CBSFA failed to meet its expressed milestone to secure a facility, including equipment, by May 2000, within which local fisherman could work on trailerable fishing boats. The group continues to struggle to show any positive returns from its investments in either the Ocean Cape or the Zolotoi.⁹ The gear and loan program, touted in its objection letter, has serious problems, including an allowance for loan losses (based presumably on projections of delinquencies) of almost one-third of the outstanding loan portfolio balance. Furthermore, despite representations to the contrary, CBSFA has not shown any progress towards establishing an IFQ program or purchasing IFQ shares.¹⁰

There are several other developments that raise serious concerns regarding this group's performance. On May 31, 2000, judgment was entered against CBSFA by the Anchorage

⁷ However, we have been informed that although CBSFA shared the draft management review report with the state nearly three months ago, the executive director has yet to formally present the report to the CBSFA Board of Directors. We hope that this will soon change and the group begin implementation of the recommendations contained in that report.

⁸ CBSFA's contribution to this latter project, we note, has come about because in 1998 the state, in response to CBSFA's failure at that time to set aside any reserves for the project, mandated that CBSFA set aside 80% of its pollock revenues to be applied as matching funds for the construction of the small boat harbor. In 2000, the state approved a change in this policy and is now requiring CBSFA to set aside \$650,000 annually.

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Superior Court in the case of Anderson v CBSFA, 3AN-98-10450 CI, in the amount of \$1.1 million in compensatory and punitive damages for, among other things, retaliatory constructive discharge of a former employee and defamation committed by CBSFA board members. This case is currently on appeal to the Alaska Supreme Court, and interest on the judgment continues to accrue. While the eventual outcome of this litigation remains in doubt, the expenses incurred by the group in defending its position are significant and non-recoverable.¹ Also irrespective of the eventual court decision, the state believes that it is a travesty for program benefits to be spent on avoidable litigation, and that this lawsuit is symptomatic of generally poor management decisions.¹

CBSFA is the only single-site CDQ group. This situation necessarily results in disproportionately high administration costs for this group.^K The state remains concerned with this situation and has requested CBSFA to seek ways to reduce its administrative overhead. In May 2000, the state asked CBSFA to undertake a cost/benefit analysis of merging with another CDQ group. To date, despite several follow-up inquiries from the state, CBSFA has refused to investigate this option and has not formally complied with this request.

CBSFA, in its "petition" or objection to the state's recommendations, questions why the state did not recognize its investment in American Seafoods in the same positive light that we did for CVRF. CVRF was the primary architect in terms of providing the opportunity for the American Seafoods sale to happen. CVRF bought 20% ownership, nearly ten times the amount of equity purchased by CBSFA. CVRF was able to self-finance a significant portion of the cost, and exercised what the state viewed as good judgment by leveraging funds and taking some investment risk in order to purchase more of the company. CVRF has also successfully executed a warrant for additional equity.

On the other hand CBSFA, which began negotiations with American Seafoods after CVRF, took nearly three months to submit the proper due diligence analysis to the state, costing the organization a significant amount of money in the process. To date, CBSFA has not been able to execute its warrant to increase its ownership interest.

CBSFA also questions the state's characterization of its ability to negotiate with its partners as "fair". During its negotiations with American Seafoods, CBSFA was able to access American Seafoods' financial statements and use the information to successfully leverage a significantly higher pollock royalty rate. However, prior to this, in 1998 and 1999, CBSFA had negotiated a royalty rate that paid the lowest amount per metric ton of any CDQ group.^L It was only the fortuitous nature of the American Seafoods negotiations, in which CBSFA learned of the royalty rate paid by American Seafoods to CVRF, that resulted in the higher royalty now enjoyed. In short, with respect to both the purchase of its interest in American Seafoods and the successful renegotiation of its royalty rates, CBSFA owes its success primarily to the efforts of CVRF and the desire and willingness of American Seafoods to extend an equity offer to another CDQ group.

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Although the primary challenges to the state's recommendations are addressed to the pollock allocation, the state is recommending other allocations that are significantly different than in 2000. The state is recommending an increase in the Bristol Bay Red King Crab allocation for CBSFA from 0% to 10%, with a 2% reduction from each of the other five groups, to partially offset the losses sustained by CBSFA due to the severe downturn in the opilio fishery.⁹ This allocation will also offset, to some extent, the reduction in pollock royalties for CBSFA.¹⁰ With St. Paul's reliance on crab processing for municipal revenues and CBSFA's poor employment record regarding pollock, the state team felt that an increase in the group's crab allocation and a decrease in the pollock allocation were appropriate. Like with APICDA, the allocation adjustments proposed with respect to CBSFA will still leave the group with anticipated royalties greater than the group received in any year prior to 2000.^M

The state has also recommended several less controversial allocations that would be different than in 2000. The state is recommending the 4D halibut quota for Bristol Bay Economic Development Corp (BBEDC) be set at 26%, up from the current 23%, in recognition of BBEDC's efforts and plans to develop a resident small boat halibut fishery for their region. We are also recommending the 4D halibut quota for NSEDC be set at 30%, up from 26%, to encourage that group's continued development of the small boat fisheries on St. Lawrence Island and to support the proposed Nome plant.

We are recommending that the 4D halibut quota for Yukon Delta Fisheries Development Corp (YDFDA) be set at 20%, down from 27%, to cover the above referenced adjustments. Although YDFDA has historically prosecuted its halibut fishery successfully with larger vessels, the team feels that efforts to utilize halibut for the direct benefit of local residents through small boat fisheries, as evidenced by the efforts of BBEDC and NSEDC, should be encouraged, and therefore the team favored this adjustment.

We are also recommending an allocation of 30%, up from 20% currently, of Atka mackerel to APICDA, with an across the board 2% reduction from each of the other groups. APICDA is the only group actively trying to create a viable, profitable Atka mackerel fishery, and the state team recognizes these efforts and encourages their continuation.


⁹ It is ironic that CBSFA argues "the state did not take into account the Bering Sea Opilio Crab Fishery failure" in making its recommendations. In fact, in my presentation to the NPFMC, I specifically cited this fishery failure as justification for this allocation.

¹⁰ Contrary to representations made in CBSFA's objections, the state never implied this change would fully replace a one percent adjustment in pollock. In fact, when testifying before the NPFMC, my precise statements were that this increase in BB crab would "partially offset" and "somewhat offset" the pollock allocation change.

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I hope this adequately addresses your questions. If I can provide further information, please do not hesitate to contact me at 465-2500.

Sincerely,

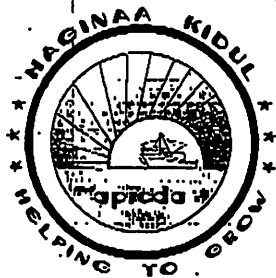


Jeffrey W. Bush
Deputy Commissioner

CC: CDQ groups (w/o endnotes)
NPFMC members (w/o endnotes)
Governor Knowles
Commissioner Frank Rue, ADF&G

2001 -- 2002 CDO Multi-Species Quota Allocation Recommendations
By Species and Group

		APICDA Allocations	BBEDC Allocations	CBSFA Allocations	CVRF Allocations	NSEDC Allocations	YDFDA Allocations	TOTAL
Halibut	4B	100%	0%	0%	0%	0%	0%	100%
	4C	10%	0%	90%	0%	0%	0%	100%
	4D	0%	26%	0%	24%	30%	20%	100%
	4E	0%	30%	0%	70%	0%	0%	100%
Crab	Bristol Bay Red King	18%	18%	10%	18%	18%	18%	100%
	Norton Sound Red King	0%	0%	0%	0%	50%	50%	100%
	Pribilof Red & Blue King	0%	0%	100%	0%	0%	0%	100%
	St. Matthew Blue King	50%	12%	0%	12%	14%	12%	100%
	Bering Sea C. Opilio Tanner	10%	19%	19%	17%	18%	17%	100%
	Bering Sea C. Bairdi Tanner	10%	19%	19%	17%	18%	17%	100%
Sablefish & Turbot	Sablefish, Hook & Line - AI	15%	20%	0%	30%	20%	15%	100%
	Turbot - AI	16%	20%	5%	21%	20%	18%	100%
	Sablefish, Hook & Line - BS	15%	22%	18%	0%	20%	25%	100%
	Turbot - BS	20%	22%	7%	15%	15%	21%	100%
Pacific Cod	16%	20%	10%	17%	18%	19%	100%	
Pollock	Bering Sea/AI/Bogoslof	14%	21%	4%	24%	23%	14%	100%
Atka mackerel:	Eastern	30%	15%	8%	15%	14%	18%	100%
	Central	30%	15%	8%	15%	14%	18%	100%
	Western	30%	15%	8%	15%	14%	18%	100%
Yellowfin sole	28%	24%	8%	6%	7%	27%	100%	
Flatfish:	Other Flats	25%	23%	9%	10%	10%	23%	100%
	Rocksole	24%	23%	8%	11%	11%	23%	100%
	Flathead	20%	20%	10%	15%	15%	20%	100%
	Other Species	18%	20%	10%	16%	16%	20%	100%
Other Rockfish	O. Rockfish - BS	25%	21%	7%	12%	13%	22%	100%
	O. Rockfish - AI	23%	17%	7%	18%	17%	18%	100%
	Arrowtooth	24%	22%	9%	11%	10%	24%	100%
Pacific Ocean Perch Complex	True POP - BS	18%	21%	7%	18%	18%	18%	100%
	Other POP - BS	23%	18%	8%	16%	16%	19%	100%
True POP - AI:	Eastern	30%	15%	8%	15%	14%	18%	100%
	Central	30%	15%	8%	15%	14%	18%	100%
	Western	30%	15%	8%	15%	14%	18%	100%
	Sharp/Northern - AI	30%	15%	8%	15%	14%	18%	100%
Short/Rougheye - AI	22%	18%	7%	18%	17%	18%	100%	
Sablefish, Trawl - AI	24%	23%	9%	10%	10%	24%	100%	
Sablefish, Trawl - BS	17%	20%	10%	17%	18%	18%	100%	
Prohibited Species Quota	Halibut (mt)	22%	22%	9%	12%	12%	23%	100%
	Chinook salmon (#)	15%	21%	4%	23%	23%	14%	100%
	Other salmon (#)	15%	21%	5%	23%	22%	14%	100%
	Opilio (#)	24%	22%	9%	11%	10%	24%	100%
	C. Bairdi - Zone 1 (#)	26%	24%	8%	8%	8%	26%	100%
	C. Bairdi - Zone 2 (#)	23%	22%	9%	12%	11%	23%	100%
	Red King Crab (#)	29%	23%	8%	7%	7%	26%	100%



Aleutian Pribilof Island Community Development Association

□ 234 Gold St. • Juneau, Alaska 99801 • (907) 586-0161 • 1-888-9APICDA • Fax (907) 586-0165

□ Unalaska Office: P.O. Box 208 • Unalaska, Alaska 99685 • (907) 581-5960 • Fax (907) 581-5963

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November 30, 2000

N.P.F.M.C

SENT VIA FAX AND MAIL

Mr. Jim Balsiger, Alaska Regional Director
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802

Re: Challenge of State of Alaska 2001/02 CDQ Allocation Recommendations

Dear Mr. Balsiger:

This morning we received a copy of a letter sent to you by Mr. Jeff Bush, Deputy Director of the Alaska Dept. of Community and Regional Development. That letter purports to provide additional information regarding the state of Alaska's recommendations for the 2001 and 2002 CDQ allocations. We view the information contained in the letter as a supplement to the state of Alaska's October 16, 2000, "findings," and believe that we have the due process right to respond, correct and supplement the record. Only in this manner can the Secretary have the most complete and accurate information upon which to base his decision.

In this regard, it shall be observed we are unable to find any provisions of the existing law or regulation which inform APICDA or anyone else of the process which is to be followed to make or contest CDQ allocations under these circumstances. There can be no doubt that an affected party such as APICDA, which has substantial property rights and interests which can be adversely affected by the CDQ determination process, is entitled to notice and hearing rights, including the right to present evidence and to contest erroneous or misleading evidence. We request the earliest possible clarification of the process which is to be followed and request a due process hearing where APICDA can fully and fairly address these issues on the record, where a complete record is prepared from which a proper determination can be made and from which APICDA, if adversely affected, can pursue its further legal rights.

Without waiving the right to a hearing stated above, alternately, since the CDQ regulations at 50 CFR 679.30(c) require the Secretary to approve or disapprove the state's recommendations within 45 days of its receipt, or by November 30, we hereby request that the additional information provided by the state be expunged from the record. If NMFS insists on issuing its approval or disapproval of the state's decision on November 30, 2000, it simply cannot consider the later filed information. The information provided

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by the state constitutes a supplemental record to its "findings" submitted on October 16, 2000. It is untimely and consideration will further violate the due process rights of the CDQ groups to reasonably respond to some of the state's incorrect assertions and conclusions.

If the NMFS is not going to act by November 30, 2000, we request that APICDA be provided adequate time to digest the new information provided by the state, and to submit its response in order to provide the Secretary with a more complete and accurate record on which to base his decision. Our initial Memorandum of Objection was filed with your office on October 31, 2000; your letter to the state was dated approximately two weeks later (November 14, 2000); and the state of Alaska's response was received approximately two weeks later (November 30, 2000). Therefore, we suggest that it is reasonable to provide APICDA the same opportunity to comment on the state's additional "findings" by close of business on December 15, 2000.

At this point, at the very least we will note that the additional information contained in the state's supplemental letter of November 30, 2000, is replete with inaccuracies, incomplete and unfair comparisons, erroneous conclusions, mistaken assumptions, outright omissions, and baseless speculation. In addition, the letter is replete with subjective assertions, personal attacks and overt biases. We believe that the information contained in the letter does not provide any substantive analysis which the Secretary can use to determine whether the state's "recommendations for CDQ allocations are ... consistent with the evaluation criteria set forth in [the federal] regulations." 50 CFR 679.30(c)(2). In part, the state failed to set forth on a point by point basis the factors it is required by the federal regulations to use in making its recommendations. See 50 CFR 679.30 (b), (d). Moreover, no "group by group" comparison is provided which would allow anyone to rationally determine whether the state's evaluations are subjective or objective.

An example of the inaccurate information provided by the state is their assertion, on page 4 of the text, that "APICDA failed to meet [its] commitment" to APICDA's Longterm Reserve Account (LRA). In its letter, the state said that the LRA is "supposed to contain an amount approximately equal to one year of APICDA's earnings."

The formation of the Longterm Reserve Account was approved by the APICDA Board of Directors in December, 1998. The Board of Directors intended that APICDA would embark on a five year funding program which would culminate in a LRA of \$ 5 million by the end of calendar year 2003. A substantial plan amendment to establish the LRA was submitted to the state on March 26, 1999, and subsequently approved by the Secretary. Page one of the Federal Findings accompanying the plan amendment stated:

"The APICDA board has elected to form a Longterm Reserve Account.
The LRA will initially be funded with the current assets of the Education

Mr. Jim Balsiger
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Endowment Fund plus an additional \$500,000 in 1999. Commencing in the year 2000, ten percent (10%) of the royalty and interest income received by APICDA will automatically be deposited into the LRA. The purpose of the LRA is to establish a savings account to provide a buffer in the event of unforeseen and adverse economic situations. Our goal is to fund the LRA until it has one year of normal APICDA earnings (approximately \$5 million). The board will not touch the assets of the LRA unless conditions require."

The following contributions to the LRA have been made:

- June 18, 1999: \$785,124 was deposited into the LRA, maintained at Salomon Smith Barney, account # 581-13604-10 023. These were the funds from the former Education Endowment Fund;
- July 16, 1999: \$12,607.65 was added to the account, after adjusting the initial Education Endowment Fund set aside;
- August 25, 1999: \$1,348.57 was added to the account as an additional adjustment for interest earned on the former Education Endowment Fund; and
- January 4, 2000: \$566,927 was added to the account, representing ten percent of the royalties received in 1999.

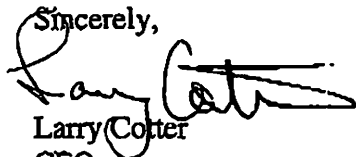
At the present time, including interest and earnings to date, the LRA has \$1,418,783. We project that \$603,717.22 will be deposited into the LRA effective December 31, 2000 to reflect year 2000 royalties and contributions, bringing the LRA to a total of \$2,022,500. Stated differently, after two years of the five year plan, APICDA will have in excess of \$2 million in the account, over forty percent of the way toward its stated five year goal.

The fact that the state of Alaska uses the LRA as an example of APICDA's failure to meet its milestones is but one example of the inaccuracies and erroneous conclusions used by the state in developing its recommendations. Furthermore, the November 30, 2000, letter from Mr. Bush is the first official notification from the state APICDA has received that indicates the state believes APICDA has "failed to meet its [LRA] milestone." The state did not raise this or any other milestone issues with APICDA following our 1999 audit, nor did the state CDQ team raise this or any other milestone issue in the one and one-half hour meeting it had with APICDA to discuss APICDA's performance and the 2001/02 allocations. This is indicative once again of the significant problems with the process used by the state to determine its CDQ recommendations.

Mr. Jim Balsiger
November 30, 2000
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The state also claims it is "ironic" (on page 2 of the text in the footnote) that APICDA is appealing the state's allocation recommendations since APICDA previously voiced concern with an appeal process. It is true that APICDA voiced concern with an appeal process. However Mr. Bush has taken APICDA's comments out of context. Those comments were written on April 12, 1999, as part and parcel of the ongoing discussions with the state of Alaska in APICDA's January 30, 1998 letter to the state (copy attached). In that letter, APICDA addressed its wide ranging concerns with the CDQ allocation process. It is noteworthy that none of those recommendations have been implemented to date. Had anything similar to the recommendations advanced by APICDA been implemented, the need for an administrative appeals process would indeed have been mitigated.

Sincerely,



Larry Cotter
CEO

cc: APICDA Board of Directors
Ms. Gail Schubert, Esq.
Mr. Peter Partnow, Esq.
CDQ Groups
Governor Knowles
North Pacific Fishery Management Council
APICDA CDQ Partners

Alaska Department of Community and Economic Development

Office of the Commissioner

P.O. Box 110800, Juneau, AK 99811-0800

Telephone: (907) 465-2500 • Fax: (907) 465-5442 • TDD: (907) 465-5437

Email: questions@dced.state.ak.us • Website: www.dced.state.ak.us/

November 1, 2000

Honorable Don Young
Chairman
House Resources Committee
U.S. House of Representatives
Washington, D.C. 20515

COPY

Dear Mr. Chairman:

Thank you for the opportunity to comment on your proposed federal legislation, H.R. 5565, regarding the CDQ program. Because oversight and administration of the western Alaska community development quota ("CDQ") program is within the state Department of Community and Economic Development, Governor Knowles asked me to respond to your letter dated September 28, 2000. I have attached an initial staff analysis of H.R.5565 that raises several concerns. Of greatest concern is that the bill would remove the requirement that CDQ group investments be fisheries related, a fundamental requirement of the program repeatedly emphasized by the North Pacific Fisheries Management Council (NPFMC) since the program's inception. Also, the bill raises fisheries management concerns for the National Marine Fisheries Service (NMFS) and threatens the accountability of the CDQ groups to their communities and the overall goals of the program.

As you know, the quota given to the six CDQ groups constitutes a grant of a public resource to achieve a government-sanctioned goal of fostering economic development in western Alaska. As such, the CDQ program was not designed as a direct allocation of quota to businesses, but rather was set up with state oversight to ensure that the public resources were being used to achieve certain social and economic goals. The net effect of your legislation would be to limit this accountability and shift the emphasis away from a community-centered program to a more profit-making regime that will not necessarily inure to the communities' overall benefit. As you know, the 1999 report from the National Research Council on the program stated, "The committee warns that for a program like this, care must be taken not to use strictly financial evaluations of success."

Based upon some of the comments in your letter, I believe the underlying premises upon which this legislation was based may not be entirely correct. You indicate that constraints placed upon the CDQ groups under the current program may cost them business investment opportunities. However, the state is unaware of any CDQ business investment opportunities that have been lost as a result of federal or state regulatory constraints. In fact, the NPFMC has asked the state and CDQ group representatives on several occasions for any known examples of cases where a potential investment has been lost due to the current regulatory framework, and none have been identified. Thus, any claim that the current program has placed constraints on CDQ group business decisions is purely speculative.

Nonetheless, the state is aware of the need for quick review of all Community Development Plan (CDP) amendments, and we have taken several actions to minimize even the potential for lost business opportunities in the future. Beginning with the consolidation of all CDQ staff in a central location in my department in 1999, the state has placed a high priority on the expeditious processing of CDP amendments. Our success in these efforts is clear: for example, when Coastal Villages Region Fund sought state approval of its multi-million dollar investment in American Seafoods Company, the state CDQ Team was able to review and approve the amendment in just three working days.

In the aggregate, the asset value of the CDQ program continues to show a steady increase of approximately 10% in annual value. Generally speaking, each CDQ group has also demonstrated increases in employment, training and education programs to regional residents. By mid-year 2000, the cumulative assets of the six CDQ groups were in excess of \$135 million. The total amount of royalties generated since the beginning of the program is more than \$200 million.

The state recognizes that there must be change in the state's oversight role as the CDQ program evolves. As the program has grown, state CDQ regulations have been revised on several occasions. The last revision took place in August of 1999. Partly in response to a few groups' concerns, the state has been working with the CDQ groups for the past several months in a cooperative fashion to recommend program changes to further streamline and simplify the CDP amendment process. After review and approval of the state's conceptual changes by NPFMC, NMFS has drafted proposed regulatory changes to provide the groups more discretionary authority in their business transactions. These proposed changes have been presented to the NPFMC and are now under consideration by that body.

The mission of the CDQ program is to ensure that economically disenfranchised communities in western Alaska are empowered through their participation in the Bering

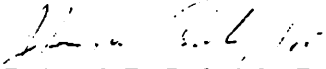
Sea groundfishing industry. The role of state and federal oversight is to assure that these benefits flow to CDQ communities. The state has felt compelled to conduct allocation hearings on frequent intervals to ensure that the mission of the program is being properly served. It should be noted that, for the most part, allocation percentages have remained intact over the years for nearly every CDQ group, with only minor adjustments based upon each group's success or failure in meeting its self-imposed performance milestones.

You have asked where the state finds its authority to oversee investments made by CDQ groups from profits derived from prior-approved CDQ projects. This question has been frequently raised by Norton Sound Economic Development Corp and was the subject of a recent legal opinion from NOAA General Counsel. The state believes that the current federal CDQ program regulations (50 C.F.R. 679.2), which grant oversight responsibility over "any program that is funded by a CDQ group's assets for the economic or social development of a community or group of communities that are participating in a CDQ group, including ... CDQ investments," provides the authority to review all CDQ investments and to require concurrence by the state before a CDP can be amended. This interpretation makes sense, because it is critically important that the oversight agencies ensure that the program goals continue to be met, including the goal that the benefits derived from the program flow to the region's residents, and that the groups remain accountable to their communities. When the state approves a significant investment by a CDQ group, we do so because the investment promises to return future benefits to the region, which always go beyond the immediate financial returns promised on the investment. The need for accountability to the program and to the region's residents does not end with the initial investment. Thus, whether the CDQ group acts through its CDQ royalties or through its investment returns, and whether it acts directly or through one or more of its subsidiaries (many of whom are wholly owned and virtually indistinguishable from their parent group), the group must still remain accountable.

The NPFMC has repeatedly expressed support for the current CDQ program. I firmly believe that the council is the appropriate forum to address, in the first instance, issues regarding the operation and management of the CDQ program. I will be sending NPFMC Chair David Benton a letter asking him to appoint a committee to review all issues concerning the appropriate level of state and federal oversight of this program and the associated federal regulations. I urge you to join with me in asking the council to review and analyze this issue before pursuing changes through congressional action. Although the council process may not necessarily result in something acceptable to all, it surely will allow all interested parties to voice their positions and will result in a product that will be best for the program and the people it serves.

Thank you for your consideration of my views. I have asked my staff and staff of the Department of Fish & Game to assist you in any way they can. Please feel free to contact me or Deputy Commissioner Jeff Bush at (907) 465-2500 if you or your staff have any further questions.

Sincerely,



Deborah B. Sedwick, Commissioner

cc: Governor Tony Knowles

Senator Ted Stevens

Jeff Bush, Deputy Commissioner
Dept. of Community & Economic Development

Kevin Duffy, Deputy Commissioner
Dept. of Fish & Game

Lamar Cotten
Dept. of Community & Economic Development

State CDQ Team

All CDQ Groups

James W. Balsiger, Administrator, Alaska Region
NOAA, USDC
Members, NPFMC

Magnuson-Stevens Act as amended in 1996	Rep. Young - H.R. 5565	Comments
<p>(C) (I) Prior to October 1, 2001, the North Pacific Council may not submit to the Secretary any fishery management plan, plan amendment, or regulation that allocates to the western Alaska community development quota program a percentage of the total allowable catch of any Bering Sea fishery for which, prior to October 1, 1995, the Council had not approved a percentage of the total allowable catch for allocation to such community development quota program.</p> <p>(D) The expiration of any plan, amendment, or regulation that meets the requirement of clause (ii) prior to October 1, 2001, shall not be construed to prohibit the Council from submitting a revision or extension of such plan, amendment, or regulation to the Secretary if such revision or extension complies with the other requirements of this paragraph.</p>	<p>(3) ALLOCATION OF PERCENTAGES OF BERING SEA DIRECTED FISHERIES - The Secretary shall allocate the following percentages of the total allowable catches and guideline harvest levels of Bering Sea directed fisheries as directed fishing allowances to the western Alaska community development quota program.</p> <p>(A) No less than 10 percent of the total allowable catch of the Bering Sea directed pollock fishery.</p> <p>(B) No less than 7.5 percent of the total allowable catch of the all other Bering Sea directed groundfish fisheries.</p> <p>(C) No less than 7.5 percent of the guideline harvest level of each Bering Sea directed crab fishery</p>	<p>(3) According to initial analysis by NMFS, this provision could result in the removal from CDQ allocations of the following species, Other Species, AI Sharpchin/Northern Rockfish, AI Shorthead/Rougheye Rockfish, BS & AI Other Rockfish, BS Pacific Ocean Perch and BS Other Red Rockfish.</p> <p>(A)(B)(C) Provides minimum thresholds for CDQ harvest levels.</p>
<p>(ii) With respect to a fishery management plan, plan amendment, or regulation for a Bering Sea fishery that -</p> <p>(I) Allocates to the western Alaska community development program a percentage of the total allowable catch of such fishery; and</p> <p>(II) Was approved by the North Pacific Council prior to October 1, 1995; the Secretary shall, except as provided in clause (iii) and after approval of such plan, amendment, or regulation under section 304, allocate to the program the percentage of the total allowable catch described in such plan, amendment for regulation. Prior to October 1, 2001, the percentage submitted by the Council and approved by the Secretary for any such plan, amendment, or regulation shall be no greater than the percentage approved by the Council for such fishery prior to October, 1, 1995.</p> <p>(III) The Secretary shall phase in the percentage for community development quotas approved in 1995 by the North Pacific Council for the Bering Sea crab fisheries as follows:</p> <p>(I) 3.5 percent of the total allowable catch of each fishery for 1998 shall be allocated to the western Alaska community development quota program;</p> <p>(II) 5 percent of the total allowable catch of each fishery for 1999 shall be allocated to the western Alaska community development quota program, and</p> <p>(III) 7.5 percent of the total allowable catch of each fishery for</p>	<p>(4) AUTHORITY TO HARVEST -</p> <p>(A) The Secretary may authorize a CDQ group to harvest a share of the percentage of the total allowable catch or guideline harvest level of the a Bering Sea directed fishery allocated under paragraph (2) if the CDQ group submits a community development plan to the Secretary in accordance with this paragraph.</p> <p>(B) A community Development plan shall -</p> <p>(i) request a share of the percentage of the total allowable catch or guideline harvest level of the fishery that the CDQ group that submits the plan desires to harvest annually during the effective period of the plan; and</p> <p>(ii) Describe all CDQ projects that the CDQ group that submits the plan intends to participate in during the 36-month duration of the plan.</p> <p>(C)(i) The Secretary shall timely approve or disapprove each community development submitted under this paragraph that contains the information described in subparagraph (B). If approved, a community development plan shall be effective for 36 months, except as provided in clause (ii).</p> <p>(ii)The community development plans that the Secretary approved before the 2001 fishing year shall expire on December 31, 2003.</p>	<p>(C)(i) Establishes a three-year allocation cycle.</p> <p>(ii) Extends the current allocation cycle to be a three-year period ending 2003.</p>

Magnuson-Stevens Act as amended in 1996	Rep. Young - H.R. 5565	Comments
<p>Section 305(I)(1) Establishment – The North Pacific and the Secretary shall establish a western Alaska community development quota program under which a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program</p> <p>(B) to be eligible to participate in the western Alaska community development quota program under subparagraph (A) a community shall</p> <p>(i) 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;</p> <p>(ii) not be located on the Gulf of Alaska coast of the north Pacific Ocean;</p> <p>(iii) meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register</p> <p>(iv) be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act to be a Native village;</p> <p>(v) 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;</p> <p>(vi) 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</p>	<p>(1) The North Pacific Council and the Secretary shall establish a western Alaska community development quota program</p> <p>(A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea Fisheries;</p> <p>(B) to assist eligible communities to achieve sustainable long-term diversified local economic development;</p> <p>(2) ELIGIBILITY TO PARTICIPATE - To be eligible to participate in the western Alaska community development quota program, a community must</p> <p>(A) 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 westernmost of the Aleutian Islands; or on an island within the Bering Sea</p> <p>(B) not be located on the Gulf of Alaska coast of the North Pacific Ocean;</p> <p>(C) be certified by the Secretary of the Interior pursuant to section 11 of the Alaska Native Claims Settlement Act (48 U.S.C. 1610) to be a Native village</p> <p>(D) consist of residents who conduct more than one-half of their current commercial and subsistence fishing effort in the waters of the Bering Sea or water surrounding the Aleutian Islands;</p> <p>(E) Not have previously developed harvesting or processing capability sufficient to support substantial participation in the groundfish fisheries of the Bering Sea, unless the community demonstrates that its participation in the western Alaska community development program is the only way for the community to realize a return from previous investments in harvesting or processing capability; and</p> <p>(F) Be a member of a CDQ group</p>	<p>(A) The CDQ program has expanded to over \$135 million in aggregate assets since the beginning of the program. The state is unaware of any examples where a CDQ group has not had a fair opportunity to participate in or to pursue a Bering Sea fisheries investment opportunity.</p> <p>(B) Would change the longstanding policy of the North Pacific Fishery Management Council that economic development activities through the CDQ program, resulting from Bering Sea groundfish allocations, be only "fisheries related." This language would fundamentally change the mission of the CDQ program.</p> <p>The Draft discussion bill removes Magnuson-Stevens language authorizing the involvement of the state of Alaska; specifically, section (iii): "meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register"</p> <p>(E) Removes the provision "The community of Unalaska is excluded under this provision."</p> <p>(F) This could be interpreted as prohibiting the addition of new communities to the CDQ program.</p>

Magnuson-Stevens Act as amended in 1996

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<p>2000 and thereafter shall be located to the western Alaska community development quota program, unless the North Pacific Council submits and the Secretary approves a percentage that is no greater than 7.5 percent of the total allowable catch of each fishery for 2001 or the North Pacific Council submits and the Secretary approves any other percentage on or after October 1, 2001.</p>	<p>(C) In approving a community development plan, the Secretary shall specify the share of the total allowable catch or the guideline harvest that the CDQ group is authorized to harvest annually under the plan, in accordance with paragraph (5).</p> <p>SPECIFICATION OF HARVEST SHARES -</p> <p>(A) if the total of the harvest shares requested pursuant to paragraph (4)(B)(i) for a fishery is greater than the percentage of the total allowable catch or guideline harvest level for the fishery allocated under paragraph (2) to the western Alaska community development quota program, the Secretary shall authorize each CDQ group requesting a harvest share to harvest annually the share of the percentage of the total allowable catch or guideline harvest level of the fishery that the Secretary determines is appropriate.</p> <p>(B) If the Secretary authorizes a CDQ group to harvest a share of a fishery that is less than the harvest share requested by in the community development plan submitted by the CDQ group, the Secretary shall give the CDQ group an opportunity to amend the plan to reflect the reduction in harvest share authorized by the Secretary.</p> <p>(C)(i) Within 24 months after the date of enactment of the Western Alaska Community Development Program Implementation Improvement Act of 2000, each CDQ group may submit criteria to the Secretary for the Secretary to consider in determining harvest shares under subparagraph (A).</p> <p>(ii) If, pursuant to clause (i), each CDQ group submits the same criteria to the Secretary, the Secretary shall consider only those criteria in determining shares under subparagraph (A).</p> <p>(iii) If, pursuant to clause (i), all CDQ groups do not submit the same criteria to the Secretary, the Secretary shall, by not later than 30 months after the date of enactment of the Western Alaska Community Development Program Implementation Improvement Act of 2000, promulgate regulations that establish criteria that the Secretary shall consider in determining harvest shares in subparagraph (A).</p>	<p>(B) Appears to provide CDQ groups an opportunity to bypass the state and appeal directly to the Secretary.</p> <p>(C)(i)(ii)(iii) A CDQ group has two years after the enactment of this legislation to submit Allocation criteria to the Secretary. This would appear to remove the NPFMC and the state from being involved in determining appropriate criteria for the allocation process.</p>
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Magnuson-Stevens Act as amended in 1996

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	<p>(4) PARTICIPATION BY STATE OF ALASKA – (A) The Secretary may allow the State of Alaska to participate in the implementation of the western Alaska community development quota program</p> <p>(B) If the State of Alaska participates, the Secretary may require CDQ groups to submit a copy of their community development plans to the Governor of Alaska.</p> <p>(C) If the State of Alaska is participating in the implementation of the western Alaska community development quota program and the total of the harvest requested pursuant to paragraph (4)(B)(I) for a fishery is greater than the percentage of the total allowable catch or guideline harvest level for the fishery allocated under paragraph (2) to the western Alaska community development quota program, the Secretary may direct the Governor of Alaska –</p> <p>(i) to consult with the CDQ groups;</p> <p>(ii) to consult with the North Pacific Fishery Management Council regarding the plans;</p> <p>(iii) To timely submit the Governor’s recommendations regarding the approval of the plans by the Secretary.</p> <p>(D) The Governor shall base any recommendations under subparagraph (C)(iii) on the criteria listed in paragraph (5)(B) and shall indicate in writing, to the Secretary and to each CDQ group the rationale, and the actual basis for the rationale, for any recommendation regarding the Secretary’s approval of a CDQ group’s community development plan.</p> <p>(5) REPORTS –</p> <p>(A) On March 1 of each calendar year each CDQ groups shall submit a report regarding its approved community development plans then in effect to the Secretary, and to the Governor of Alaska if the State of Alaska is participating under paragraph (6).</p> <p>(B) Each report shall describe the following:</p> <p>(i) The CDQ group’s implementation during the previous calendar year of the CDQ projects described in the group’s community development plans, and any modifications to a project that the group may have made since the last report.</p>	<p>(4) This language may remove or curtail the state's ability to be involved in the oversight of CDQ groups.</p> <p>(B) State regulations require the CDQ Team to submit Community Development Plans to the Governor of Alaska under 6 AAC 93.40</p> <p>(C) Generally consistent with existing program.</p> <p>(i) The state is already required to consult CDQ groups during the allocation process.</p> <p>(ii) State regulations already require the CDQ Team to consult the North Pacific Fishery Management Council regarding proposed CDP’s.</p> <p>(iii) The Governor is required to submit CDP application recommendations to the NMFS by Oct. 15.</p> <p>(5)(A) Appears to dilute existing requirements for CDQ groups to submit detailed annual reports including comprehensive management reports, consolidated financial statements and an agreed upon procedures report, which indicates whether a group is meeting the milestones and objectives of its CDP.</p> <p>(B) Appears to dilute existing regulations that require financial statements for each CDQ subsidiary, including balance sheets, income statements, cash flow statements, year-to-date summaries on education, training and employment figures and minutes from all board or directors meetings.</p>
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	<p>(ii) In summary form, the financial performance during the previous calendar year of each subsidiary, joint venture, partnership, or other entity in which the CDQ groups owns an equity interest, and all other non-CDQ project related activities in which the group engaged.</p> <p>(iii) The CDQ group's budget for the current calendar year.</p> <p>(C) Financial and strategic business information contained in reports under this paragraph shall be considered confidential. The Secretary, and the Governor of Alaska if the State of Alaska is participating in the Secretary's implementation of the western Alaska community development quota program –</p> <p>(i) Shall not make such information available to the public; and</p> <p>(ii) May not use such information for any purpose other than evaluating the financial status and performance of the CDQ group that submitted the information</p>	<p>(ii) (iii) Dilutes current state regulations which require a general budget for each CDP project that identifies all allocation revenue and project revenue and project expenditures for the entire period of the proposed CDP.</p> <p>C) Two CDQ groups already provide consolidated financial statements to residents of their communities. Historically, nearly all-financial information from CDQ groups with the exception of aggregate numbers has been considered confidential. It has become standard practice for groups to include confidentiality provisions with the submission of proprietary financial information. While recognizing the importance of keeping proprietary information protected, CDQ member communities also have a right to know the activities of their CDQ group. This language could be used to undermine a group's accountability to its communities and residents. In addition, the National Research Council published a report on the CDQ program that repeatedly mentioned the need for more outreach between the CDQ groups and the member communities.</p>
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Magnuson-Stevens Act as amended in 1996

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<p>(D) This paragraph shall not be construed to require the North Pacific Council to resubmit, or the Secretary to reapprove, any fishery management plan or plan amendment approved by the North Pacific Council prior to October 1, 1995, that includes a community development quota program, or any regulations to implement such plan or amendment</p> <p>(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 fishery in which the allocation to such program has been made.</p>	<p>(6) DEFINITIONS – For the purpose of this subsection:</p> <p>(A) The term “CDQ group” means a non-profit or for-profit corporation or other entity whose membership is exclusively composed of one or more communities that satisfy the criteria described in paragraph (8)(A) through (E).</p> <p>(B) The term “community development plan” means a plan that describes –</p> <p>(i) How a CDQ group intends to harvest its requested share of the percentage of the total allowable catch or guideline harvest level of a directed Bering Sea fishery that the Secretary has allocated to the western Alaska community development quota program; and</p> <p>(ii) How the groups intends to use the harvest opportunity to and the revenue derived therefrom to assist communities that are members of the group to achieve sustainable long term economic development.</p> <p>(C) (I) Subject to clause (ii), the term “CDQ project” means a program or activity that is administered or initiated by a CDQ group and that is funded by revenue the CDQ group derives or accrues during the duration of a community development plan approved by the Secretary from harvesting the fishery covered by the plan.</p> <p>(iii) Such term does not include a program or activity administered or initiated by a subsidiary, joint venture, partnership, or other entity in which a CDQ group owns an equity interest, in the program or activity is funded by the assets of the subsidiary, joint venture, partnership, or other entity, rather than by the assets of the CDQ group.</p> <p>(7) The Secretary may promulgate such regulations as are reasonable and necessary to enable the Secretary to implement this subsection.</p>	<p>(A) Expands the current definition of CDQ group beyond the federal definition of “a qualified applicant with an approved CDP.”</p> <p>(B) This section expands a Community Development Plan beyond the federal definition of “a business plan for the economic and social development of a specific western Alaska community or group of communities under CDQ program under 679.30.”</p> <p>(ii) Creates a new term, “sustainable long term economic development,” which removes the longstanding policy of the North Pacific Fishery Council to require CDQ groups to pursue only “fisheries related investments.” This would fundamentally change the overall mission of the CDQ program.</p> <p>(C) Changes the current definition of a CDQ project and removes basic government oversight over business activities of all CDQ investments. The state believes that all CDQ-related investments should fall under oversight authority in order to maximize benefits to member communities.</p>
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