

**Public Review Draft**

**REGULATORY IMPACT REVIEW/INITIAL REGULATORY FLEXIBILITY ANALYSIS**

For proposed

**AMENDMENT 71**

to the Fishery Management Plan for  
Bering Sea/Aleutian Islands Groundfish

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

prepared cooperatively by staff of the:

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### 1.0 INTRODUCTION

Executive Order (E.O.) 12866 requires that a Regulatory Impact Review (RIR) be conducted for all Federal regulatory actions. The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

This analysis addresses the requirements of both E.O. 12866 and the Regulatory Flexibility Act (RFA) to provide adequate information to determine whether an action is "significant" under E.O. 12866 or will result in "significant" adverse impacts on small entities under the RFA. The RFA requires analysis of impacts on small businesses, non-profit organizations, or governmental jurisdictions which may result from regulations being proposed. The requirements of the RFA are outlined in Section 5.4.

E. O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." A "significant regulatory action" is one that is likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

E.O. 12866 and the RFA in particular require a description of the purpose and need for the proposed action as well as a description of alternative actions which may address the problem. The purpose and need, as well as the problem statement guiding the action, are included in **Section 1** of this document. The description of the alternatives and options under consideration is also included in this section. **Section 2** contains a brief overview of the CDQ Program, including a description of the eligible communities and the structural and financial organization of the CDQ groups. **Section 3** describes the CDQ allocation process and the State and Federal roles in that process. **Section 4** describes the regulatory, policy, and legal issues associated with the alternatives and contains an analysis of the social and economic impacts of the proposed alternatives. Finally, **Section 5** addresses the requirements of the Magnuson-Stevens Fisheries Management and Conservation Act (MSA), the Regulatory Flexibility Act, and other applicable federal laws.

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### 1.1 Purpose and Need for the Action

The proposed action would implement several policy changes regarding the general administration of the CDQ Program, the role of NMFS and the State of Alaska in program oversight, and the CDQ allocation process. The CDQ Program was created by the North Pacific Fishery Management Council (Council) in 1992 as part of the inshore/offshore allocations of pollock in the Bering Sea and Aleutian Islands (BSAI) and the halibut and sablefish allocations which were created as part of the Individual Fishing Quota (IFQ) Program. The Council established the CDQ Program to provide western Alaska fishing communities an opportunity to participate in the BSAI fisheries that had been foreclosed to them because of the high capital investment needed to enter the fishery. The purpose of the CDQ Program was to help western Alaska communities to diversify their local economies and to provide new opportunities for stable, long-term employment. The original Council guidance for implementing the CDQ Program focused on using the CDQ allocations to develop a self-sustaining fisheries economy.

Since 1992, the CDQ Program has expanded several times and now includes allocations of pollock, halibut, sablefish, crab, all of the remaining groundfish species (cod, Atka mackerel, flatfish, and rockfish), and the prohibited species (salmon, halibut, and crab). The Sustainable Fisheries Act of 1996, which amended the MSA, institutionalized the program as part of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (FMP). While originally set at 7.5%, Congress increased the pollock CDQ allocation in 1998 to 10% under the American Fisheries Act. The percentage of other catch limits allocated to the CDQ Program (“CDQ reserves”) is determined by the MSA for crab (7.5%), the BSAI FMP for all other groundfish and prohibited species (7.5%, except 20% for sablefish), and 50 CFR 679 for halibut (20% to 100%). In 2000, approximately 180,000 metric tons of groundfish, 3 million pounds of halibut, and 3 million pounds of crab were allocated to the CDQ Program. The six CDQ groups had total revenues in 2000 of approximately \$57 million, primarily from pollock royalties. Since 1992, the CDQ groups have accumulated assets worth approximately \$129 million, including ownership of small local processing plants, catcher vessels, and catcher/processors that participate in the groundfish, crab, salmon, and halibut fisheries.

The CDQ Program has surpassed the expectations of many people in accomplishing its goals, and the CDQ groups have gained valuable experience in managing their fisheries and related investments. The groups have used their CDQ allocations to develop local fisheries, invest in a wide range of fishing businesses outside the communities, and provide residents with education, training, and job opportunities in the fishing industry. The CDQ groups have also increased their influence in Alaska fisheries policy issues through their participation in the Council process and other regional forums. For at least some of the CDQ groups, this maturity has brought the desire for increased autonomy and reduced government oversight. Particular areas of concern include the need to: clearly define and limit government oversight; improve the objectivity and consistency of the CDQ allocation process; and consider allowing expenditures of CDQ revenues on non-fisheries related projects. Given the rapid growth and evolving nature of the program since its inception in 1992, the Council determined that an analysis of some of these general policy issues surrounding the program is warranted. A review of these issues will help ensure that the CDQ Program is appropriately structured and

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administered to adapt to changes in the fisheries and will continue to benefit eligible western Alaska communities to the fullest extent possible.

The following section details the original Council intent during the development of the CDQ Program, as well as several events that have occurred since implementation which have spurred the need to consider policy and administrative changes to the current program. This brief history helps provide the context for the policy changes being considered in this amendment.

### **1.2 Background**

#### **1.2.1 Council Action in 1992**

The CDQ Program is jointly managed by NMFS and the State of Alaska, based on a program design developed by the Council and implemented by NMFS in 1992. Currently, 65 communities are eligible to participate in the CDQ Program, representing about 27,000 people in western Alaska. These communities are located within 50 nautical miles of the Bering Sea coast or on an island in the Bering Sea and are predominantly populated by Alaska Natives. The eligible communities have formed six non-profit corporations (CDQ groups) to manage and administer the CDQ allocations, investments, and economic development projects. The eligibility criteria and organizational structure of the CDQ groups are detailed in Section 2.

As stated in the BSAI FMP (Section 5.4.7.4), the purpose of the CDQ Program is as follows:

**PURPOSE AND SCOPE.** The Western Alaska Community Development Quota Program is established to provide fishermen who reside in western Alaska communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands groundfish fisheries, to expand their participation in salmon, herring, and other nearshore fisheries, and to help alleviate the growing social economic crisis within these communities...

Through the creation and implementation of community development plans, western Alaska communities will be able to diversify their local economies, provide community residents with new opportunities to obtain stable, long-term employment, and participate in the Bering Sea/Aleutian Islands fisheries which have been foreclosed to them because of the high capital investment needed to enter the fishery.

The FMP language above, which outlines the intent of the program, was based on a 1992 document entitled "Western Alaska Community Development Quota Program Criteria and Procedures." This document, developed by the State of Alaska, was adopted by the Council with several revisions and provided the basis for the initial Federal regulations governing the program. The corresponding NMFS regulations (50 CFR 679.1(e)) stating the goal of the program are as follows:

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.

The Federal regulations implement the Council's intent for the program, specifically the concept that the revenue generated by the CDQ allocations is to be spent on fisheries-related investments and projects to

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benefit eligible CDQ communities. The Council's original intent, based upon transcripts from its 1992 action to approve the CDQ Program and the criteria and procedures document referenced previously, was to encourage eligible communities to develop self-sufficient economies based on fishing opportunities. The Council discussions clearly stated that the economic opportunities provided were to be in the fishing industry, and the Federal regulations that followed were based upon this direction.

The program was originally structured as a joint program of the Secretary of Commerce and the Governor of the State of Alaska, and was stated as such in the language amending the BSAI FMP (Section 5.4.7.4). Through the Council's action, NMFS was directed to hold the designated percent of the annual TAC of groundfish for each management area in the BSAI for the community quota, to be released to eligible communities who submit a fisheries development plan approved by the Governor of Alaska. The Governor forwards any recommendations on the plan to the Secretary, following consultation with the Council. Upon receipt of such recommendations, the Secretary releases portions of the CDQ reserve to the eligible groups. The FMP amendment also expresses the intent that the Governor of Alaska would initially determine which communities were eligible for the program.

The documentation establishing the criteria and procedures for the CDQ Program in 1992 outlined the State's role in the allocation process and made it clear that the daily management of the program was the responsibility of the State. Transcripts from the Council's action confirm that the Council and Federal role was to include general oversight responsibilities, but that the managing entity of the CDQ Program would primarily be the State. The program was designed as such because although it is ultimately a Council and Secretarial program, the Council thought the State and the communities themselves would be better suited to evaluating community needs and effectively managing the program.

As a result, the State is primarily responsible for the day-to-day administration and oversight of the economic development aspects of the program and for reviewing Community Development Plans (CDPs) and recommending CDQ allocations. The State works with the CDQ groups to develop CDPs that describe how the CDQ allocations will be used to benefit the eligible communities and to modify this plan as new projects develop. The specific criteria used to evaluate the CDPs and to make CDQ allocation recommendations are implemented in State regulations. Neither the Council nor NMFS provides the State with detailed instructions about how to evaluate the CDPs or how to balance the various evaluation criteria.

The Federal role in the program has been relatively limited with respect to the CDQ allocations and administration of the economic development aspects of the program. NMFS is primarily responsible for the fisheries management aspects of the groundfish and halibut CDQ fisheries and for broad oversight of the program. The role of NMFS in the allocation of quota to the eligible communities has been limited to reviewing the record provided by the State for its recommendations and determining whether the State considered relevant factors and articulated a satisfactory explanation for its action. NMFS approves the State's recommendations if it finds that the State followed the process requirements described in the regulations and provided a reasonable explanation for its allocation recommendations.

The current administration and oversight of the CDQ program are therefore based on the above interpretation of the Council's intent, and regulations have been implemented consistent with that interpretation. The majority of the policy issues under consideration in this amendment are related to clarifying and/or modifying that intent, specifically the role of NMFS and the State and the restriction on fisheries-related investments. The remainder of this section focuses on several actions that have occurred subsequent to the Council's original motion in 1992 that have contributed to the decision to consider fine-tuning the program as it evolves.

### 1.2.2 National Research Council Report

Congress recognized the need to evaluate the CDQ Program in its 1996 amendments to the MSA. It requested that the National Research Council (NRC) prepare a comprehensive report on the performance and effectiveness of the CDQ Program. The 1999 NRC report<sup>1</sup>, while concluding that the CDQ Program “appears on track to accomplishing the goals set out in the authorizing legislation,” makes several recommendations to improve the program, many of which are at issue in this analysis. The NRC recommendations included, but were not limited to, the following:

- simplification of the evaluation criteria for the CDQ allocation process
- consideration of a separate foundation quota (based on equity issues) and performance quota (based on good management)
- clarification of the purpose of State oversight
- removal of the requirement that all revenues from CDQ projects be spent only on fisheries-related projects
- the creation of long-term or permanent allocations to the CDQ Program, and
- improvement in communication between the CDQ groups and the community residents

These recommendations represent the most common policy issues also identified by the CDQ groups, the Council, and Congress, and thus contributed to the Council’s decision to evaluate the CDQ Program and to identify alternatives to address these and other related issues.

The NRC report also notes that the main goal of the CDQ program is community development, and that by definition is a long-term goal. A stable and dependable program duration is needed by the CDQ groups and managers in order to develop sound business plans and reduce pressures to seek only short-term, financial results. However, simply because the program is considered long-term and carries with it the original intent of the Council does not mean that it must remain continually unchanged in the face of evolving conditions or circumstances that affect the growth and development of the CDQ groups and their member communities. The NRC notes (p. 3):

“...calling for the program to be long-term does not mean it must go on indefinitely nor that it must never change. Periodic reviews should be conducted, and changes made to adapt rules and procedures as necessary. There can be a balance between certainty and flexibility if the program is assured to exist for some reasonable time...and if major changes in requirements are announced in advance with adequate time to phase in new approaches.”

### 1.2.3 H. R. 553

The Western Alaska CDQ Program Implementation Improvement Act of 2001 (H.R. 553) proposed by Congressman Don Young in February 2001 would amend Section 305(i) of the MSA, which is the section that addresses the CDQ Program. The amendments would make some significant policy and fisheries management changes to the CDQ Program developed by the State of Alaska and the Council in 1992.

H.R. 553 would require that the MSA be amended to specifically state that the Secretary of Commerce is

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<sup>1</sup>“The Community Development Quota Program in Alaska”, 1999.

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responsible for approving allocations of quota among the CDQ groups. Staff interpretation of the impact of this provision has evolved through development of this analysis. Staff initially believed that H.R. 553 would significantly increase the responsibility of the Secretary for making CDQ allocations and for oversight of the CDQ Program. However, after consultation with NOAA GC, staff now understands that the MSA, as currently drafted, requires that the Secretary of Commerce be ultimately responsible for making CDQ allocations among the CDQ groups and that this responsibility cannot be deferred to the State. Therefore, the provisions of H.R. 553 that address the Secretary's responsibilities for CDQ allocations do not change the Secretary's role as much as staff previously believed.

The amendments proposed in H.R. 553 would require that the CDPs be submitted by the CDQ groups to the Secretary of Commerce and that the Secretary review and approve the plans. However, H.R. 553 would allow the State to participate in the review of the CDPs and in making CDQ allocation recommendations. Therefore, the CDQ allocation process under H.R. 553 could continue to include the State in an important advisory role. H.R. 553 also would allow the CDQ groups to determine the evaluation criteria that would be used to allocate CDQ among the groups. If the CDQ groups could not agree on the evaluation criteria, NMFS would be required to develop and implement evaluation criteria in NMFS regulations. This provision would prevent continuation of the current process of allowing the State to develop the evaluation criteria and publishing the criteria only in State regulations. H.R. 553 also includes a requirement to conduct the allocations every three years, as opposed to the current one or two-year allocation process, which is not fixed in regulation.

The amendments would limit government oversight to CDQ projects funded only by CDQ royalties, which would resolve the longstanding debate about whether government oversight extends to the businesses owned by the CDQ groups. The legislation also appears to allow CDQ groups to invest in non-fisheries related projects, as the purpose of the program would be changed to the following: "(A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries; and (B) to assist eligible communities to achieve sustainable long-term diversified local economic development." While similar to the current FMP language describing the purpose of the CDQ Program above, it does not explicitly state that the intent is to develop a self-sustaining *fisheries* economy as is currently understood as the Council's intent.

Finally, H.R. 553 would make changes in the accounting for catch against CDQ allocations. It would specify that CDQ allocations are "directed fishing allowances," which would mean that only catch that occurred in a directed fishery for a particular species would accrue against the CDQ group's allocation. Any incidental catch or bycatch of the species would not accrue against the CDQ allocations and would accrue against the non-CDQ allocations. This provision is similar to how pollock CDQ allocations currently are managed under the AFA. However, the implementation of this provision for all species allocated to the CDQ Program would complicate the management of the CDQ fisheries. In all CDQ hauls and sets, some of the catch would accrue against the CDQ allocations and some against the non-CDQ allocations. It would be difficult to determine the correct accounting rules to apply and difficult to enforce proper accounting.

The changes proposed in H.R. 553 still require some interpretation regarding how the CDQ Program would be managed on a daily basis. Certainly, however, the bill requires NMFS to take a more active role in the CDQ Program administration and allocation process. These amendments would likely increase the responsibility of both NMFS and the Council to establish specific evaluation criteria for CDQ allocations and to become more actively involved in the review and evaluation of the economic development projects and performance of the CDQ groups. However, the need for NMFS to become more involved in the CDQ allocation process and oversight of the CDQ Program has become evident through the most recent allocation

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process and resulting lawsuit. These issues must be addressed by the Council and NMFS through this analysis regardless of the outcome of H.R. 553.

A Congressional hearing was held on H.R. 553 on July 19, 2001, and the bill remains within the Subcommittee on Fisheries Conservation, Wildlife and Oceans. Each of the provisions of H.R. 553, as they relate to policy and the administration of the CDQ Program, will be discussed in more detail under the specific elements outlined in this analysis. Please note that the policy changes proposed in H.R. 553 have been included in this analysis as alternatives for consideration by the Council.

### 1.2.4 Legal Challenges to the CDQ Allocation Process

APICDA sued NMFS over the 2001-2002 CDQ allocations in Federal District Court. On January 30, 2002, Judge H. Russell Holland issued an order upholding NMFS' approval of the 2001-2002 CDQ pollock allocation for the APICDA (*APICDA v United States Dep't. of Commerce*).<sup>2</sup> APICDA claimed that the NMFS' approval of the CDQ allocations recommended by the State of Alaska violated the Magnuson-Stevens Act, the Administrative Procedure Act and the equal protection and due process requirements of the United States Constitution, asserting the following seven claims: (1) that the State and NMFS provided insufficient prior public notice of the State's proposed CDP allocations; (2) that the Magnuson-Stevens Act requires the State's criteria for evaluating CDP proposals to be approved by NMFS and published in the Federal Register; (3) that APICDA was denied due process because it was not provided adequate notice that its CDQ pollock allocation was to be less than it was in the previous allocation period; (4) that NMFS unlawfully delegated its authority to approve CDP allocations to the State; (5) that NMFS' approval of the State's recommendations were arbitrary and capricious; (6) that APICDA is entitled to a declaratory relief setting APICDA's pollock allocation at the percentage that had been set for the previous allocation period; and (7) that APICDA had been denied equal protection under the law. Although APICDA had asserted its arguments in a "Motion for Summary Judgment," Judge Holland ruled that APICDA's claims were in fact and law an appeal from NMFS' administrative decision to approve the State's CDP pollock allocations for 2001-2002.

At the outset, Judge Holland ruled that the Court had no jurisdiction to review the NMFS regulations implementing the CDQ program. Regulations setting forth the procedures applying to the CDQ applicants, the State's role in evaluating proposed CDPs and recommending quotas to NMFS, and NMFS role in approving the recommendations were all published in the Federal Register on November 23, 1992. These regulations were subject to judicial review only during the first 30 days after promulgation. 16 U.S.C. § 1855(f)(1). Since APICDA filed its action in February 2001, Judge Holland ruled that "[t]o the extent that APICDA seeks to maintain a cause of action that challenges the way the regulations divide the roles within the CDQ program between the State and NMFS, APICDA's cause of action is beyond the statute of limitations period." Judge Holland then proceeded to rule against APICDA on each of its claims for relief.

Additional discussion of the application of Judge Holland's opinion to the issues and alternatives under consideration by the Council is addressed in Section 4.1 analyzing alternatives for the process through which CDQ allocations will be made in the future.

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<sup>2</sup>This summary of the APICDA lawsuit and Judge Holland's opinion is taken from a memorandum dated February 5, 2002 from Jonathan Pollard, NOAA General Counsel Attorney-Advisor, to Lisa Lindemen, NOAA General Counsel for Alaska.

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### 1.2.5 Council CDQ Policy Committee

As a result of several of these occurrences and the overall evolution of the program, the Council recognized the need to evaluate the CDQ Program and to identify issues of concern and alternatives to address those issues. To assist them in this process, the Council appointed a CDQ Policy Committee (committee) in December 2000, to address issues related to CDQ oversight responsibilities of the government, as well as provide policy recommendations to the Council on changes that may be needed to regulations governing the distinct Federal and State roles, the CDQ allocation process, and the program administration. In addition to a chairman, the committee is comprised of representatives of each of the six CDQ groups, one Council member, and a representative each from the State of Alaska and NMFS.

The committee met in both April and May 2001 and identified nine priority issues, as well as alternatives and options related to those issues, for consideration by the Council. While the committee made specific recommendations on each of the identified issues, the comprehensive list of issues was used as a broad framework by which the Council determined the scope of this analysis. The committee's report and preferences for changes to the CDQ Program are included in Appendix A to this document. Where the committee did not reach consensus, the vote of the committee is also expressed.

The CDQ Policy Committee was initially created on the basis that it would be disbanded upon completion of its task to identify and address the priority policy issues and provide recommended changes to the Council. Upon receiving the committee report, however, the Council decided to keep the committee intact for a minimum of one year, in order to address on-going and upcoming CDQ policy issues on an as-needed basis.

Based on the recommendations of the committee, in June 2001 the Council requested that staff prepare an analysis of the following issues:

- the respective roles of the State and NMFS in allocations and oversight;
- whether CDQ allocations should be made on a fixed schedule;
- whether quotas should continue to be allocated solely on a competitive basis;
- the evaluation criteria used for CDQ allocations;
- the need for an appeals process;
- whether government oversight extends to businesses owned by a CDQ group; and
- whether to allow investments in projects that are not fisheries-related.

As previously described, many of the issues identified for analysis are related to government oversight responsibilities and stem from issues raised in H.R. 553; thus, this analysis is considered relatively comprehensive in scope with regard to future modifications to the administrative aspects of the current CDQ Program. The specific alternatives and options under consideration in this analysis are listed in Section 1.4.

### 1.3 Problem Statement

The Council adopted the following problem statement at the December 2001 Council meeting:

#### **Problem Statement for BSAI FMP Amendment 71**

The Western Alaska Community Development Quota program was developed by the Council for the purpose of developing sustainable fishery-based economies in western Alaska communities by providing opportunities to participate in the BSAI fisheries in order to promote their overall economic well-being.

The program was founded on the following elements:

1. Community-based planning and goal setting. Community Development Plans (CDPs) are developed by community representatives on the CDQ groups' boards to meet their social and economic goals.
2. Allocations to the CDQ groups would be based on a balance between performance and need. Performance is measured through the goals, objectives, and milestones of the CDPs with an emphasis on delivering benefits to the communities and residents of western Alaska.
3. Accountability. The oversight role of the State of Alaska and NMFS is intended to ensure accountability of the CDQ groups in implementing their CDPs and meeting the goals of the program.

Although the primary objective of the CDQ Program is to help the participating communities to establish a viable presence in this capital-intensive industry, over time there has been a growing need to take into account the changing nature of the CDQ groups, the conditions in which they operate, and the communities they serve to benefit. The problem, given the growth and maturation of the CDQ Program over the last eight years, is that some of the administrative and policy aspects of the program may not be currently structured to adapt to changes, or may need to be clarified in Federal regulations, so that they will best suit the long-term goal of the program. This review by the Council and possible Council action is intended to address these concerns and issues.

The alternatives under consideration in this amendment are consistent with the above problem statement, which outlines the overall need for considering administrative and policy changes to the current CDQ Program. Under the current regulatory structure, CDQ groups are subject to substantial government oversight, a complex allocation process, and must only invest their CDQ assets in fisheries-related projects, with some limited exceptions. The proposed changes to the current program are detailed in the following section and span a broad range of alternatives to address a myriad of administrative issues.

The proposed action is a BSAI Fishery Management Plan amendment (Amendment 71) that would require changing language in Section 5.4.7.4 of the Community Development Quota Program. That amendment would allow Federal regulations (50 CFR 679.30) to be changed or added to the effect necessary that they meet the intent of the Council's actions to modify the current structure. The amendment could potentially change the oversight roles and responsibilities of NMFS and the State of Alaska, modify the allocation process, and allow CDQ groups to invest in non-fisheries related projects. Staff assumes that this action would be limited to amending the BSAI FMP and Federal regulations, and subsequent changes to State regulations (6 AAC 93) governing the CDQ Program would be made as appropriate. Therefore, with proper justification, the Council may make its preferred changes with approval of the Secretary of Commerce.

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**1.4 Description of the Alternatives**

There are eight specific policy issues under consideration in this amendment that would change the administration of the current CDQ Program. Originally, an appeals process was included as a separate issue, but the alternatives regarding the appeals process were incorporated into the discussion provided under Issue 1 per the Council’s request at the December meeting. The no action alternative, or status quo, is included under every issue, as well as a suite of alternatives to the status quo. Each issue represents a distinct decision-making point, but several inter-related issues are noted as appropriate in the analysis.

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

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

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

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

**Alternative 3:** Rulemaking: CDQ allocations among the CDQ groups would be established in NMFS regulations through proposed and final rulemaking following the same process used by to allocate other federally managed fishery resources. The Council would develop CDQ allocation recommendations, and NMFS would implement the Council’s recommended allocations in NMFS regulations. NMFS would not make independent decisions about the CDQ allocations, but it would review the Council’s allocation recommendations for compliance with the MSA and other applicable laws. The State of Alaska could remain involved in the CDQ allocation process by making recommendations to the Council rather than to NMFS.

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

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

**Alternative 2:** Establish a fixed allocation cycle in regulation:

Option 1: 2-year allocation cycle

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

Option 3: 5-year allocation cycle

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Option 4: 10-year allocation cycle

Suboption 1: Allow the State to recommend reallocation of CDQ mid-cycle under extraordinary circumstances. The Council and NMFS would have to approve the State's recommended reallocation. (Earlier drafts referred to this suboption as an "escape clause.")

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

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

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

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

The appropriate role of government depends on the type of CDQ allocations being made. The following alternatives are appropriate if we continue to make periodic, competitive allocations among CDQ groups.

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

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

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

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

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

**Alternative 1:** No Action. CDQ and prohibited species quota (PSQ) are specified by species, area, and gear type (sablefish and halibut). Each CDQ group is eligible to receive a percentage allocation of each CDQ or PSQ reserve as recommended by the State of Alaska and approved by the Secretary of Commerce. The State decides how to balance demographic or socioeconomic factors with performance criteria.

**Alternative 2:** Establish a separate foundation quota

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

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

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

Option 1: Foundation quota: 50% of the CDQ reserve is divided equally among the CDQ groups. The remaining 50% of the quota is allocated competitively among the CDQ groups.

Option 2: Foundation quota: 1% is allocated to the CDQ group for each community represented by the group. The remaining quota is allocated competitively among the CDQ groups.

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

Suboption 1: Foundation quota applies only to a portion of the pollock allocation as described in Options 1 - 3. The remaining pollock quota and the quota for all other species would be allocated competitively among the CDQ groups.

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

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

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

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

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

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

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

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

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

**Alternative 1:** No Action. NMFS regulations governing the extent of government oversight of the business activities of the CDQ groups and affiliated businesses would not be revised.<sup>3</sup> An October 4, 2000, legal opinion by NOAA GC concludes that NMFS's regulations on the extent of oversight of the subsidiaries and affiliated businesses are unclear and need to be revised.

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

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

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

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

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

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

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

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

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<sup>3</sup>For purposes of this analysis, an "affiliated business" is any entity that is owned in whole or in part by a CDQ group. A "subsidiary" is an entity controlled by the CDQ group, and is also known as a "consolidated affiliate" because the entity controlled by a CDQ group generally is consolidated with the CDQ group for financial reporting purposes. Affiliated businesses owned by the CDQ group, but not controlled by the group are known as "unconsolidated affiliates."

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

**Alternative 1:** No Action. NMFS regulations implement what NMFS understood as the Council’s intent, that the revenue generated by the CDQ allocations is to be spent on “fisheries-related” investments and projects to benefit the communities that are eligible for the CDQ Program. From NMFS regulations at 50 CFR 679.1(e):

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

**Alternative 2:** Continue to require that the CDQ groups invest only in “fisheries-related” projects, but clarify NMFS regulations as follows:

- Add specific prohibition against CDQ groups investing in non-fisheries related projects; and
- Clarify that this prohibition does not apply to certain categories of expenditures or investments, such as investment accounts or scholarships. Focus regulations on economic development projects.

**Alternative 3:** Revise NMFS regulations to allow investments in non-fisheries related projects. The following options represent the annual maximum amount of investment in non-fisheries related projects. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ISSUE 8: Other CDQ Administrative Issues**

**Alternative 1:** No Action

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

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

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

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

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

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

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

## **2.0 DESCRIPTION OF THE CDQ GROUPS**

The majority of this section was provided by KPMG, LLP, a contracting firm employed by the Council to assist in the compilation of data and analysis of the organizational and legal structure of the CDQ groups and their related financial information. Each section provided by KPMG is noted as such.

### **2.1 CDQ Communities and Groups**

A comprehensive list of the 65 CDQ communities and their corresponding CDQ group is provided in Table B.1 in Appendix B. The six existing CDQ groups are: Aleutian Pribilof Island Community Development Association (APICDA), Bristol Bay Economic Development Corporation (BBEDC), Central Bering Sea Fisherman's Association (CBSFA), Coastal Villages Region Fund (CVRF), Norton Sound Economic Development Corporation (NSEDC), and Yukon Delta Fisheries Development Association (YDFDA).

### **2.2 Organizational Description of CDQ Groups (provided by KPMG)**

All of the CDQ groups are organized as non-profit corporations that serve as the managing organizations for implementation of the Community Development Plans. Seventy-five percent of the board of directors are required to be members of the local communities eligible for CDQ participation. Other members of the board of directors may be representatives of industry, members of non-eligible communities, or other individuals. Typically there is an executive director assigned for day-to-day management of the organization. The CDQ groups also hire staff members to carry out the directives of the executive director and conduct the business activities for the CDQ groups. Other committees may be formed from the board membership for specific activities such as business or educational development. The groups also have service contracts for management assistance with industry consultants and other professionals.

There are several different business types the groups have created to correspond to the type of activity they are engaged in. These businesses report both financially and/or operationally to the CDQ non-profit corporation level (see the attached organizational charts, Figures 2.1 - 2.6). The types are as follows:

#### For-profit corporations:

A majority of the CDQ groups have formed subsidiary 100% owned for-profit corporations for their investments in fishing activities. These corporations typically have the same management as the non-profit parent. The companies reporting to these subsidiaries are either partially or 100% owned. Depending on the amount of ownership percentage in the companies, the CDQ groups may or may not have a controlling interest. Any earnings from these businesses are subject to tax at the for-profit corporation level.

#### Non-profit organizations:

Several of the CDQ groups have formed separate non-profit corporations for educational, research, or investment purposes. Having a separate organization allows the CDQ groups to keep the funding and expenses separate for financial and tax reporting purposes. If the CDQ group has tax-exempt status under section 501(c)(4) of the IRS code, for community development purposes, forming a separate non-profit corporation allows them to carry on 501(c)(3) charitable and educational activities. Depending on whether or not the CDQ group has a controlling interest in the organization they may not report the financial statements on a consolidated basis.

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Limited Liability Companies:

Many of the CDQ groups participate in Limited Liability Companies (LLCs) that carry out for-profit fishing activities. These companies roll-up to either the for-profit subsidiaries or directly to the CDQ non-profit corporations. They typically are managed by the non-CDQ partners in the business.

**2.3 Financial Overview** (provided by KPMG)

In order to prepare this overview, we read the 1999 and 2000 consolidated financial statements for the six CDQ groups. We have combined the financial statements to summarize the results for 2000 and 1999, which are attached in Table 2.1 (combined statements of activity) and Table 2.2 (combined statements of financial position). This combination is not intended to be a presentation in accordance with generally accepted accounting principles and is only for financial analysis. From the combined statements we have prepared the following descriptions of the summarized financial information.

**2.3.1 Combined Statements of Activity**

Since CDQ groups are non-profit organizations, their financial reporting does not refer to “income statements” such as a for-profit business would. The equivalent financial statement for the CDQ groups is called a “statement of activity”. Revenues and expenses are listed and the difference between the two is referred to as “increase (decrease) in net assets”. There is no reference to “net profits”, or “net income” as used on a for-profit income statement. The increase in net assets for the CDQ groups in the year 2000 was \$25,026,308, or 44% of revenue. In 1999, the increase in net assets was \$30,116,694, or 55% of revenue.

**Revenues**

Seventy-one percent (71%) of CDQ revenues in 2000 were from royalties received for the right to harvest the CDQ allocations granted to the groups. These royalty (or “harvest”) agreements pay royalties on a fixed rate per the weight of the fish harvested, or a percentage of the sales price received for the fish. The second largest source of revenue, 16% of the total, was for the CDQ groups harvesting, processing, or selling their own allocations. The majority of the remaining amount of revenue was from the CDQ groups’ equity earnings in businesses they have entered with fishing vessels, processors, other fishing-related businesses, and investments.

	<b>2000</b>		<b>1999</b>	
Royalties	\$40,990M	71%	\$35,596M	65%
Programs	\$9,143M	16%	\$7,971M	15%
Businesses	\$6,123M	10%	\$4,657M	9%
Other	\$1,027M	3%	\$5,838M	11%
 TOTAL REVENUE	 \$57,283M		 \$54,062M	

Year 2000 total revenues increased 6% over 1999. The amount of revenue coming from the major sources did not change significantly with royalties contributing 65%, programs contributing 15%, and partnerships contributing 9% of total revenue in 1999. In 1999 the revenues from investments made up most of the “Other” category.

**Expenses**

Generally, expenses are categorized in two major categories on the financial statements, program and finance and administration expense. However, there was not enough similarity in what types of expenses are included in these two categories across the CDQ groups to be able to provide a relevant description based on the

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presentation in the financial statements. For the purposes of this analysis, we restated the expenses within the program and administrative expense categories using supplemental detail provided in the financial statements.

Using captions stated in the financial statement, we restated program expense to be the equivalent of what is normally known as “operating” expense or “cost of goods sold”. This includes activities related to carrying out the specific CDQ programs that are directly related to fishing activities, and not listed programs such as oversight, administrative, or programs that benefit the community through non-fishing activities. Items that are classified as administration expense include CDQ staff and board expenses, office expense, interest expense, community grants, community outreach (visiting communities to discuss programs, funding drug and alcohol programs in the communities, etc.), educational and training expense, and management and consulting fees. This restatement is for the purposes of the analysis only. The term “program” expense is used subjectively and does not indicate any expenses were incorrectly classified in any financial statements.

The major expense categories as listed on financial statements:

	<b>2000</b>		<b>1999</b>	
Program	17,960,254	54%	14,528,695	58%
Administrative	11,309,863	35%	10,392,711	42%
Impairment	3,511,412	11%	-	
<b>TOTAL EXPENSE</b>	<b>32,781,529</b>		<b>24,921,406</b>	

Expense restated (for year 2000 only):

	<b>2000</b>	
Program	15,771,399	48%
Administrative	13,498,718	41%
Impairment	3,511,412	11%
<b>TOTAL EXPENSE</b>	<b>32,781,529</b>	

Program Expense

Program expenses cannot be categorized into any consistent categories due to the differences in reporting and activities between the various organizations. Program expenses are listed to correspond with the CDQ projects listed in the CDP other than administrative projects. The percentage of program expense compared to total expense (excluding impairment) ranged from 26% to 67% for all the CDQ groups.

Administrative Expense

Within the administrative expense category the largest items of expenditure are for the following:

Salaries for CDQ staff	22%
Training, education, scholarships	14%
Mgmt./Consulting Fees	13%
Interest paid on debt	10%
Office	8%
Board	6%
Travel	5%
Depreciation and Amortization	4%
Community Outreach, Grants, Donations	3%
Other	15%

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Administrative expense as a percentage of total expense (excluding impairment) ranges from 32% to 74% between the six groups. Currently the State requires an amendment to the CDP if administrative expense exceeds 20% of what is budgeted. Since administrative expense averages 41% of total expense, a 20% amendment threshold would be the equivalent of 8% of total expenses.

### Impairment Expense

When a CDQ group invests in a business the original cost is shown as an asset on the statement of financial position. The investment is accounted for using the “cost” or “equity” method depending on if the CDQ group has significant influence over the investment. It is assumed that that investment will generate future revenue. If it becomes apparent through the annual earnings of the business, or other factors such as industry condition, that it will not generate sufficient future revenue, the investment may be “impaired”. The term “impairment” means the investment will not be recovered through future cash flows. When an investment is impaired, the investment is written down to fair value and the CDQ group will record an expense for the write-down.

### **2.3.2 Combined Statements of Financial Position**

The Statement of Financial Position for the CDQ groups is equivalent to the Balance Sheet for a for-profit business. Total assets and liabilities are shown with the difference being called “net assets”. Net assets are equivalent to the term “equity” used in for-profit businesses.

### Total Assets

The total net asset value of the combined CDQ groups as of the year 2000 is \$128,819,816. See table 2 for a summary of the total assets and liabilities for the groups.

From 1999 to 2000 net assets increased by \$25,026,308, or 24%. The majority of the asset increase was invested in Limited Liability Corporations (LLC) and partnerships, which increased by \$23,041,910, and in property, plant, and equipment, which increased by \$8,836,911. A portion of the increase in LLC and property, plant and equipment increase was funded by a debt increase of \$14,249,972.

Assets classified as “current” are assets that can or will be liquidated and used for operations within one year. “Long-Term” assets are intended to be held for more than one year. Increases in either current or long-term assets on the statement of financial position are funded from increases in net assets as shown on the statement of activity. Long-term assets are held in four major categories:

Marketable Securities: These are investments in mutual funds, stocks, government bonds, and corporate debt. The term “marketable” means they can be sold on the open market. Marketable securities can be termed as either current or long-term assets depending on how long the CDQ group intends to hold them.

LLC and Partnerships: Generally, if an ownership percentage in a LLC or partnership is 50% or less, but greater than 20%, the ownership in the company will be shown as an asset on the statement of financial position accounted for using the equity method (also see discussion of “significant influence” in the terms defined for this analysis). The investment is shown as the cost to invest in the company plus the proportionate share of any future earnings, or losses of the company, and adjusted for distributions or additional investments.

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If the CDQ group owns less than 20% of a company they generally use the cost method of accounting and show an asset based on the original cost to invest in the business. Under the cost method the CDQ group has no significant influence over the business. Any distributions of earnings would be shown as revenue to the group, but the value of the investment would not change.

### IFQ Permits and Fishing Rights:

The Individual Fishing Quota (IFQ) program allocates rights to fish halibut and sablefish. Some of the CDQ groups have purchased these and other fishing rights for use by the CDQ group. These permits and rights are listed at the cost to obtain the permit.

### Property, Plant, and Equipment

This category has any fishing equipment, fishing vessel, or processing plant investment, plus any other fixed assets such as office buildings and equipment.

## **Liabilities**

Total liabilities increased by \$14,249,972 from 1999 to 2000. The majority of this increase was in current liabilities (liabilities that are due in less than one year) with an increase of \$11,274,794. Long-term liabilities (due greater than one year) increased by \$2,975,178. Debt is 17% of net assets (debt to equity ratio) in 2000, and 7% of net assets in 1999. This percentage of debt as a total of net assets ranges from 3% to 67% within the CDQ groups.

The CDQ groups also guarantee debt for some of their business partners and affiliates. This debt guarantee is not always reflected on the face of the Statement of Financial Position. However, if such a guarantee exists and it is significant, it should be disclosed in the notes to the annual financial statements.

## **Restricted Net Assets**

If the CDQ group has assets that are legally or contractually restricted for a certain purpose those assets will be shown as “restricted net assets” on the financial statements. Examples might include assets restricted by court order or funds given to the group for a specific purpose by an external organization.

## **Designated Net Assets**

If the board of a CDQ group wishes to set aside funds for a specific purpose, such as funding for vessel purchases, future projects, or to establish an educational endowment fund, those assets would be called “designated” on the financial statements. Designated assets are usually shown as a sub-category in the “Unrestricted” asset category. Restricted assets result from restrictions placed by parties external to the organization on a legal or contractual basis. Designated assets are those allocated for a certain purpose by the Board of Directors for the CDQ group. The Board of Directors can vote at any time to change the assets back to “undesignated” if they so desired. The Board of Directors does not have such control over restricted funds.

## **Return on Investments**

A rate of return can be calculated from the detail included in the financial statements for LLCs and partnerships. Return on Equity (“ROE”) was calculated using earnings for the current year and dividing by the average equity (owner’s investment) in the business. For subsidiaries and partially owned companies this information is included in supporting schedules to the financial statements.

For this analysis the combined equity in income of partnerships and LLCs was divided by the average investments, to calculate an ROE of 17%. However, we noted this percentage was significantly affected by one large investment of one of the CDQ groups. If the investment is removed, the ROE decreased to 6%.

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**Table 2.1: Combined Statements of Activities for the CDQ Groups**

**COMBINED STATEMENTS OF ACTIVITIES**  
**For all CDQ Groups**  
**Years Ending 2000 and 1999**

	<u>Combined 2000</u>	<u>Combined 1999</u>	<u>Percentage Change from 1999</u>
Changes in unrestricted net assets:			
Revenues			
Royalties	40,989,873	35,596,382	15%
Program Revenue	5,387,138	7,068,815	(24%)
Sales of Seafood	3,755,768	902,359	316%
Gain (Loss) on Investments	(1,288,296)	4,159,558	(131%)
Equity in Income of Partnerships	6,122,907	4,657,402	31%
Interest Income	2,025,749	1,171,747	73%
Gain (Loss) on Project	(259,391)	0	--
Other	548,884	506,091	8%
<b>Total Unrestricted Revenues and Gains</b>	<u>57,282,632</u>	<u>54,062,354</u>	6%
Expenses:			
Program	14,169,888	11,991,047	18%
Finance and Administration	11,309,863	10,392,711	9%
Impairment loss or other write-offs	3,511,412	0	--
Fishing and fishing processing	3,790,366	2,537,648	49%
<b>Total Expenses</b>	<u>32,781,529</u>	<u>24,921,406</u>	32%
Changes in temporarily restricted net assets:			
Program Revenue	333,467	975,746	(66%)
Minority Interest in Net Assets	191,738	0	--
Increase (Decrease) in Net Assets	<u>25,026,308</u>	<u>30,116,694</u>	(17%)
Net Assets at beginning of year	103,784,508	73,667,814	41%
<b>Net assets at end of year</b>	<u>128,810,816</u>	<u>103,784,508</u>	24%

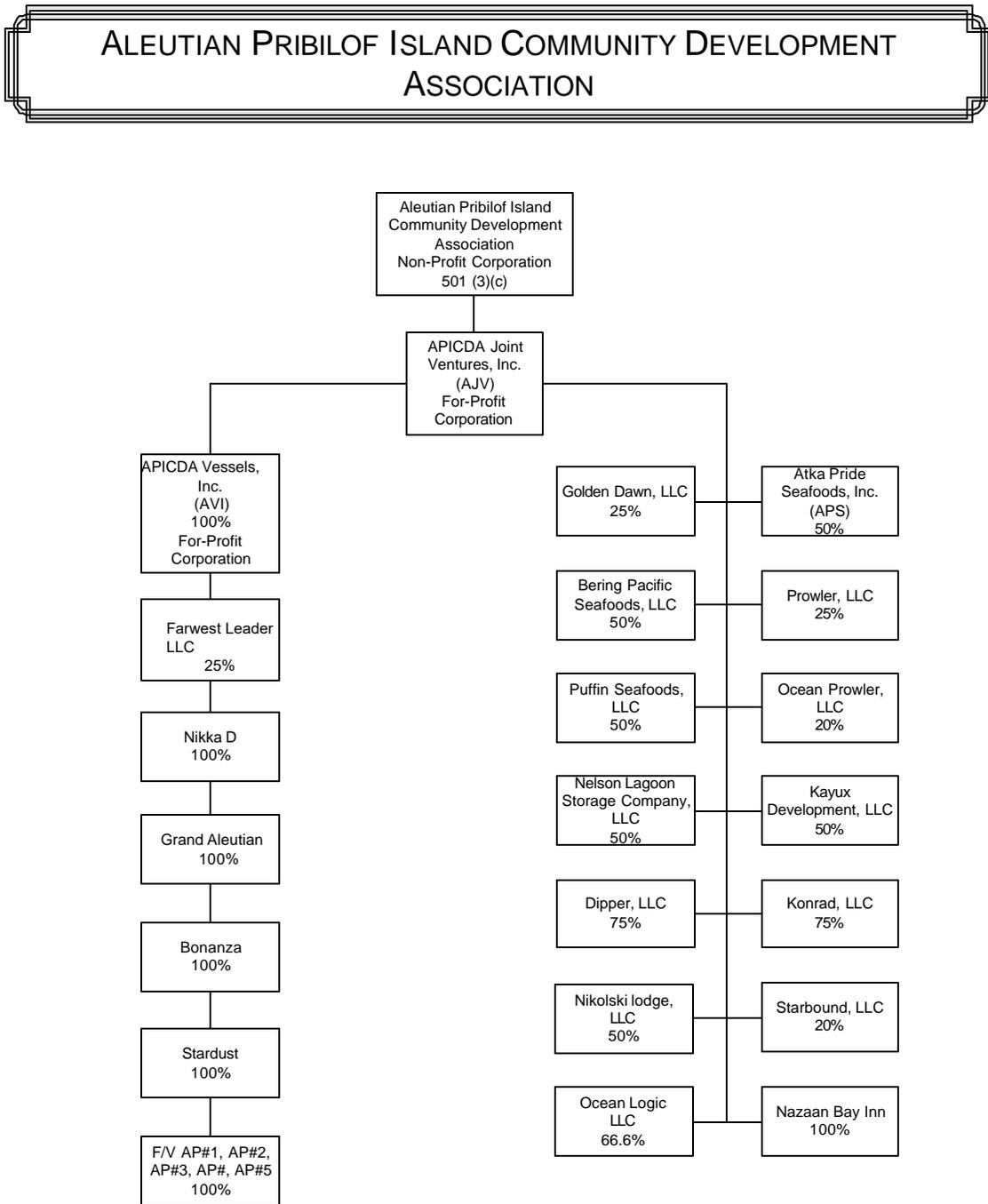
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**Table 2.2: Combined Statements of Financial Position for the CDQ Groups**

<b>COMBINED STATEMENTS OF FINANCIAL POSITION</b>			
<b>For all CDQ Groups</b>			
<b>Years Ending 2000 and 1999</b>			
	<u>Combined 2000</u>	<u>Combined 1999</u>	<u>Percentage Change from 1999</u>
<b>Current Assets</b>			
Cash	15,718,665	22,736,786	(31%)
Restricted Cash and cash equivalents	1,121,103	1,366,259	(18%)
Investments	16,324,175	14,400,797	13%
Restricted Investments	1,309,213	975,746	34%
Accounts Receivable	7,091,728	3,745,432	89%
Interest Receivable	365,872	36,076	914%
Note Receivable, net	955,080	1,311,082	(27%)
Advances from affiliated companies	1,609,500	531,430	203%
Inventories	2,343,152	1,413,214	66%
Prepaid	<u>309,981</u>	<u>267,595</u>	16%
<b>Total Current Assets</b>	<u>47,148,469</u>	<u>46,784,417</u>	1%
<b>Long-Term Assets</b>			
Prepaid Rent	662,163	698,403	(5%)
Investments:			
Marketable Securities	27,251,509	21,140,449	29%
Partnerships, LLCs etc	48,535,786	25,493,876	90%
Assets held in trust	1,300,000		
Other	515,992	308,854	67%
Construction in Progress	266,319	78,469	239%
IFQ Permits and Fishing Rights	6,688,027	4,627,275	45%
Property, Plant, and Equipment	16,773,682	7,936,771	111%
<b>TOTAL ASSETS</b>	<u>152,758,789</u>	<u>111,072,690</u>	38%
<b>Current Liabilities</b>			
A/P & Accrued Expenses	2,540,954	1,705,169	49%
Other current Liabilities	6,722,050	345,705	1844%
Payables and N/P to affiliates	1,601,876	-	
Notes Payable	2,725,156	264,368	931%
Judgment Payable	<u>1,200,000</u>	<u>1,200,000</u>	%
<b>Total Current Liabilities</b>	14,790,036	3,515,242	321%
Notes Payable and Other Long Term Debt	6,748,118	3,772,940	79%
<b>Total liabilities</b>	<u>21,538,154</u>	<u>7,288,182</u>	196%
Unrestricted Net Assets	127,501,603	102,808,762	24%
Restricted Net Assets	1,309,213	975,746	34%
<b>Total net assets</b>	<u>128,810,816</u>	<u>103,784,508</u>	24%
Other commitments and contingencies	2,409,819	-	
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<u>152,758,789</u>	<u>111,072,690</u>	38%

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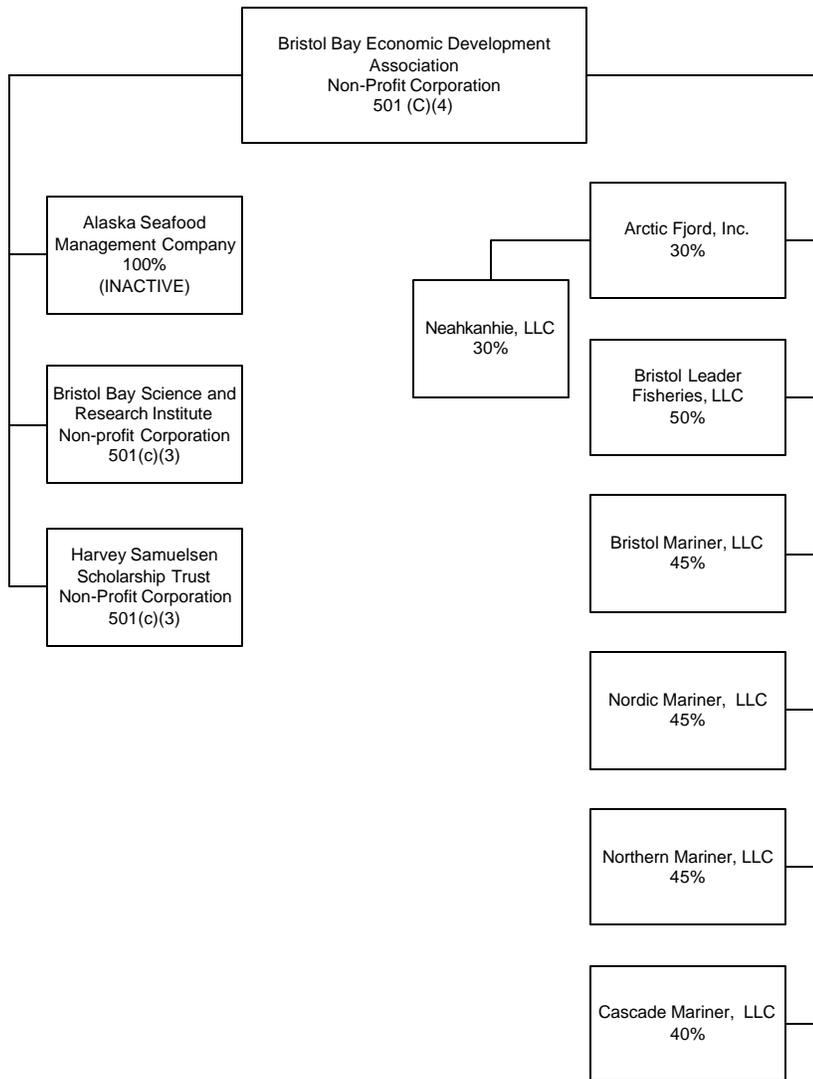
Figure 2.1: APICDA's organizational structure



Changes made in 2001 may not be included

Figure 2.2: BBEDC's organizational structure

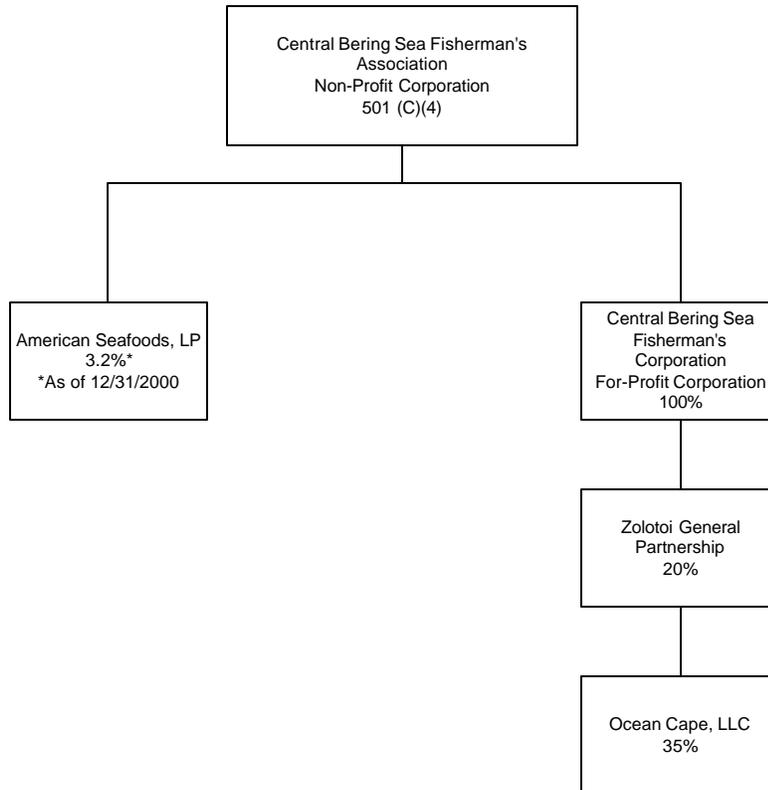
# BRISTOL BAY ECONOMIC DEVELOPMENT CORPORATION



Changes made in 2001 may not be included

Figure 2.3: CBSFA's organizational structure

# CENTRAL BERING SEA FISHERMAN'S ASSOCIATION



Changes made in 2001 may not be included

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Figure 2.4: CVRF's organizational structure

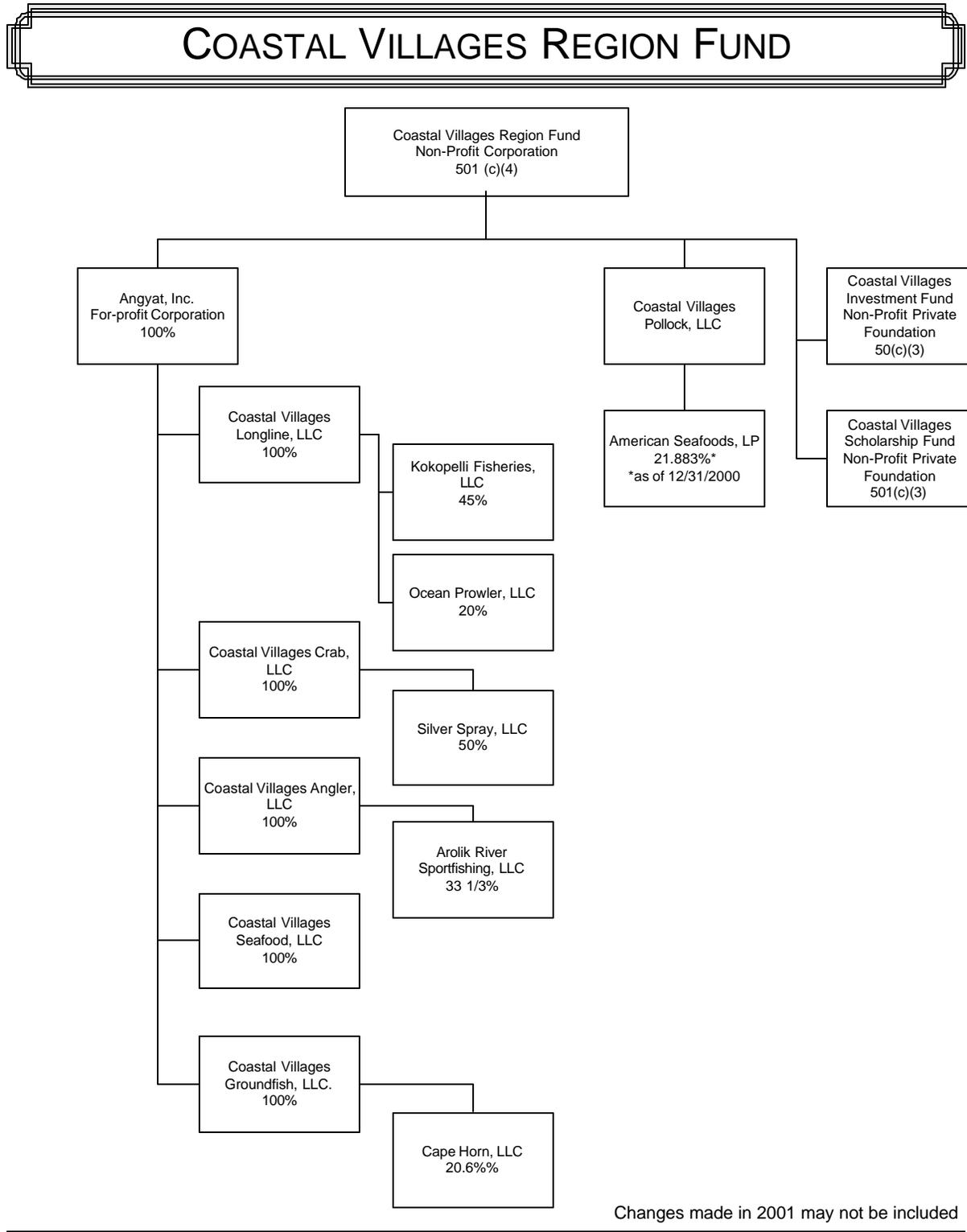


Figure 2.5: Norton Sound Economic Development Corporation

# NORTON SOUND ECONOMIC DEVELOPMENT CORPORATION

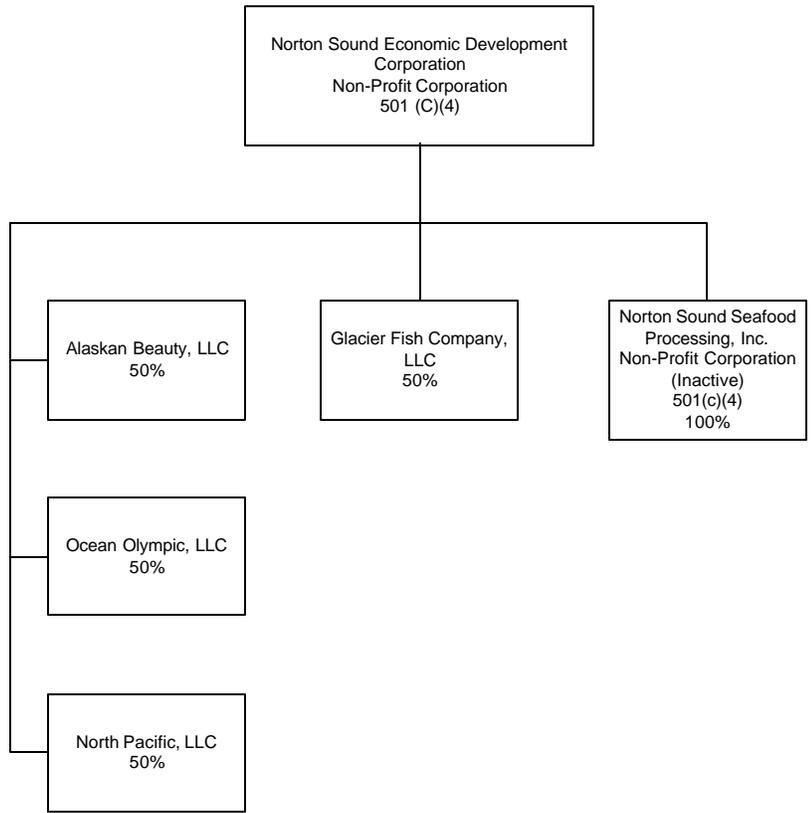
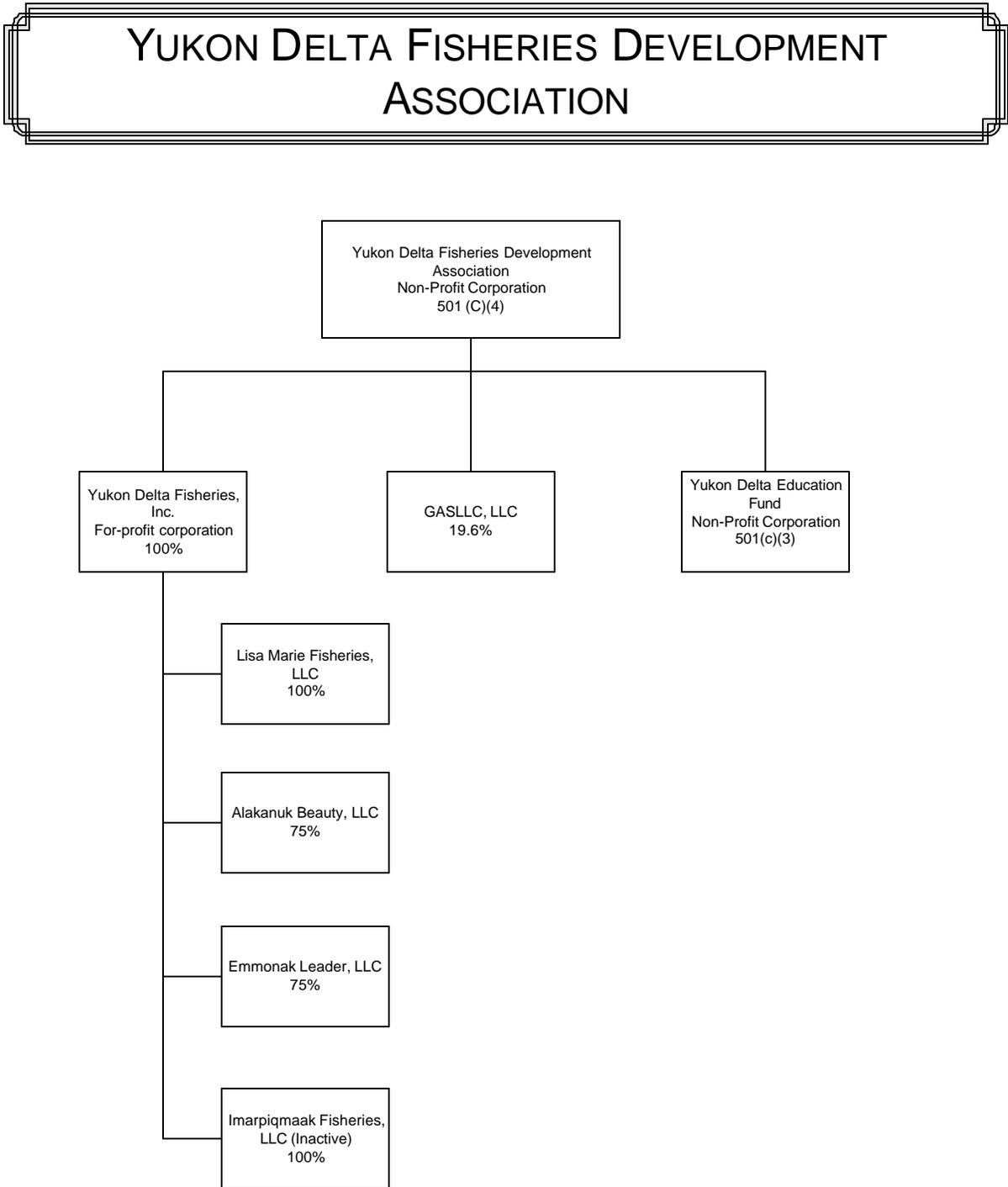


Figure 2.6: YDFDA's organizational structure



### **3.0 THE CDQ ALLOCATION PROCESS**

#### **3.1 Council's 1992 Criteria and Procedures**

As discussed previously in Section 1.2.1, the administrative process the Council envisioned for the CDQ program in 1992 was outlined in a document entitled, "Western Alaska Community Development Quota Program Criteria and Procedures." This document provided the basis for the Federal and State regulations developed subsequent to the Council's final action to implement the program. This section provides a summary of that document, describing the guidance relevant to the role of the State and NMFS in the administration of the CDQ Program and the requirements of the CDQ groups in the allocation process.

##### Purpose and Scope

The purpose and scope of the CDQ Program, as stated in the procedures document and reflected in the BSAI FMP, is to provide fishermen who reside in western Alaska communities a fair and reasonable opportunity to participate in the BSAI fisheries and to promote the economic well-being of local coastal communities in relation to Bering Sea fishery resources. The implementation of the community fishery development plans was intended to enable western Alaska communities to diversify their local economies, provide community residents with new opportunities to obtain stable, long-term employment, and participate in the BSAI fisheries which had previously been foreclosed to them because of the large amount of capital investment needed to enter the fishery.

##### Eligibility Procedures

To be eligible, a community must have met criteria specified by the State and have developed a fisheries management plan approved by the Governor of the State of Alaska. An eligible community was defined as any community which is located on or proximate to the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or a community located on an island within the Bering Sea, that the Secretary of the Interior has certified under the Alaska Natives Claims Settlement Act (ANCSA). To be eligible for a CDQ allocation, the community must submit a CDP that consists of a community eligibility statement, community development plan, business plan, statement of the applicant's qualifications, and a description of the managing organization. All of this comprises a comprehensive Community Development Plan (CDP), and as specified, is to be submitted to the State for recommendation on final eligible communities to the Secretary.

The community eligibility statement requires the applicant (which could represent one or more communities) to provide a statement to the State showing the community or group of communities meet six specific qualifying criteria. The community must be located within 50 miles of the Bering Sea coast and could not be located in the Gulf of Alaska. The community must also have been certified under ANCSA as a Native village (Section 11(b)(2) or (3) of Public Law No. 92-203). (Note however, that while the community must be certified under ANCSA, the benefits of the program are intended for all residents of the community, and are not restricted only to Native residents.) The residents of the community must conduct more than half of their current commercial or subsistence fishing effort in the waters of the Bering Sea and Aleutian Islands. In addition, the community must not have previously developed harvesting or processing capability sufficient to support substantial participation by community residents in the commercial groundfish fisheries in the BSAI, unless the community can show that CDQ benefits would be the only way to realize a return on previous investments. The community also must not have other alternatives to develop a viable economy

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other than commercial fishing, and must have developed a community development plan approved by the Governor after consultation with the Council. These are the eligibility criteria approved by the Council, reflected in the 1992 procedures, and stated explicitly in the BSAI FMP.

It was clear through the Council's approval of the procedures document and the language in the FMP that the Council intended that the State take primary responsibility for qualifying eligible communities and reviewing and making recommendations on the Community Development Plans. The procedures expressed the intent that the Council would be consulted on the recommendations, and the Secretary of Commerce would hold the final approval authority and release portions of the CDQ to the eligible applicants as appropriate. The State, however, was deemed the entity responsible for applying the criteria and procedures, and for ensuring that each applicant met the steps outlined in the allocation process.

### Evaluation and Recommendation Procedures

The State outlined a schedule for application and review of proposed CDPs in regulation, based on the Council procedures that prescribed that role to the State. Under Federal regulation, the State is required to provide to the Council and NMFS copies of the plans which are recommended for approval and an explanation of the State's allocation recommendations. The Council also has access to all of the applications and supporting documentation, as well as the State's written allocation recommendations. However, the procedures expressed a clear intent that the State be responsible for evaluating applications, and upon consideration of any Council and/or public comments, forward all approved applications to the Secretary with the State's recommendations. Upon receipt of the State's recommendations and the proposed CDPs, NMFS is required to review and approve those that it determines meet all applicable requirements.

Upon meeting the eligibility criteria, the 1992 procedures stated that a CDQ group's application should be evaluated on the basis of the following categories: the merits of the community development plan, the business plan, and the level of cooperation among eligible communities. Of specific interest to eligible applicants is the evaluation criteria for the CDP. The criteria listed in the guidance document were eventually translated into a list of twenty criteria in State regulations (6 AAC 93.040) used to evaluate the proposed CDPs. Several of the criteria specifically express the intent to tie the CDQ allocations to fisheries-related investments and projects, and these stem directly from the 1992 guidance document. As reflected in the guidance document, the primary basis for determining the merit of a CDP was to include: the goals and objectives of the project and the identification of realistic and measurable milestones for determining progress; the degree to which the project will develop a self-sustaining local fisheries economy; the level of local employment the project will generate; the degree to which the project will generate capital or equity for local fishing infrastructure or investment in fishing or processing operations; and the degree to which profits will be used to assist in the development of a self-sustaining local fisheries economy.

The State encompassed these criteria and several others related to the number of communities and residents that will benefit from the CDQ allocations and the likelihood that the group will meet their identified milestones in their final regulations implementing the CDQ Program. The State also outlined a process for recommending allocations based on whether or not there is sufficient quota to meet the requests in the CDPs. Should sufficient quota exist to satisfy the requests made in all the CDPs, the Governor will, at his discretion, recommend all of the CDPs that meet the requirements to NMFS for approval. This scenario has never materialized, however, as there has not been sufficient quota to fulfill the requests of all the CDQ groups since the program began in 1992. In this case, the State is responsible for apportioning the quota among the applicants based on: 1) the economic feasibility and likelihood of success of each individual project at a

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reduced quota; and 2) the relative benefits to be derived by participating communities affected by an allocation of fishery resource less than that requested. The State regulations note that in apportioning the quota under this scenario, the State will consider the information specified and required in the CDPs and seek to maximize the benefits of the CDQ Program to the greatest number of participating communities. The State regulations related to this process are consistent with the Council's 1992 approved criteria and procedures.

In sum, the Council's 1992 criteria and procedures and the transcripts of the relevant Council meetings identify two critical issues related to the recent concerns with the CDQ allocation process. The first is whether the Council intended for CDQ program revenues to be restricted to fisheries-related projects and investments. The original intent stated in the 1992 procedures and the BSAI FMP clearly encourages eligible communities to develop self-sufficient economies based on fishing opportunities, and the Federal and State regulations that followed were based upon this direction. Thus, the evaluation criteria guiding the allocation process was developed heavily toward this end, and would need revision should the Council determine that the CDQ groups could invest in non-fisheries related projects. The current evaluation criteria are not well-suited to evaluating an economic development project that is not fisheries-related.

Secondly, the procedures explicitly design the program as a joint program of the Secretary of Commerce and the Governor of the State of Alaska. Through the Council's action, NMFS was directed to hold the designated percent of the annual TAC of groundfish for each management area in the BSAI for the community quota, to be released to eligible communities who submit a fisheries development plan approved by the Governor of Alaska. Under the guidelines, NMFS was directed to allocate CDQ to the overall program, and the State was responsible for determining the appropriate allocations and the daily management of the program. This process necessarily requires the State to know the details of the CDPs and be able to provide rationale for the allocation decisions. NMFS, however, in its role of reviewing the State's recommendations and the proposed CDPs, was charged primarily with ensuring that the State follows both State and Federal regulations in completing the allocation process. While consistent with the 1992 action and the regulations developed subsequent to that action, it has since been questioned whether NMFS needs to take a more active role in the allocation process than was previously determined.

The remainder of this section describes in detail the distinct roles of NMFS and the State in the allocation process, in order to provide insight as to what each agency provides and whether this conforms to the 1992 procedures and intent of the Council's action. While the Federal and State regulations appear to be consistent with the Council's original intent, it is important to determine whether, given the evolving nature of the CDQ Program, the current government roles in and requirements of the allocation process are still appropriate. Understanding what services each government entity provides may help the Council determine whether the current allocation process and the level of government oversight in that process best meet the purpose of the program today.

### **3.2 NMFS' Role in the Allocation Process**

NMFS's role in the CDQ Program allocations is defined by the MSA, BSAI groundfish FMP, the crab FMP, and regulations at 50 CFR 679 implementing the CDQ Program. The MSA requires that the Council and NMFS establish the CDQ Program and allocate a portion of the quotas from Bering Sea fisheries to the program. In addition, the MSA provides the criteria for communities to be eligible for the CDQ Program. However, the MSA does not specifically instruct the Secretary to allocate CDQ to eligible communities or to CDQ groups, nor does it contain requirements about how allocations of quota to the eligible communities should be made.

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The BSAI groundfish FMP, developed by the Council in 1992, states that the CDQ Program is a joint program of the Secretary and the Governor of the State. It also requires that portions of the quota allocated to the CDQ Program are to be released by NMFS to “eligible Alaska communities who submit a plan, approved by the Governor of Alaska, for its wise and appropriate use.” The crab FMP provides for an allocation of crab to the CDQ Program and states that the “program will be patterned after the pollock CDQ program.” The CDQ Program was designed by the State and the Council to benefit western Alaska residents. The State was considered best suited to evaluate the needs of its residents and communities and to make the difficult decisions about how to allocate the CDQ reserve among competing users.

Under the CDQ regulations at 50 CFR 679.30, the State must:

1. Announce a CDQ application period as required by §679.30(a).
2. Hold a public hearing as required by §679.30(b) to obtain comments on the proposed CDPs from all interested persons. The State must provide reasonable public notification of the hearing date and location. At the time of public notification of the hearing, the State must make available for public review all State materials pertinent to the hearing.
3. Consult with the Council before the State submits its recommendations about the proposed CDPs to NMFS, as required by §679.30(c). The State must make available, upon request by the Council, any proposed CDPs that are not part of the State’s recommendations.
4. Transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS, along with the findings and the rationale for the recommendations, by October 15 of the year prior to the first year of the proposed CDP, as required by §679.30(d). In these findings, the State is required to determine that each proposed CDP meets all applicable requirements of 50 CFR 679.

50 CFR 679.30(d) provides the following requirements for NMFS:

*NMFS will review the proposed 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 proposed CDP along with revised recommendations for approval to NMFS.*

Therefore, based on these regulations, once NMFS receives the State’s recommendations, NMFS must make determinations as to whether (1) the proposed CDPs are consistent with the purpose and scope of the CDQ Program as described at §679.1(e); (2) the communities represented by the CDPs meet the eligibility criteria in §679.2; (3) the CDPs contain all of the information required in §679.30(a) and the applicable definitions in §679.2; (4) the State has followed the application procedures, public hearing requirement, and the Council consultation requirement in §679.30(a) through (c); and (5) the State provided NMFS with the findings and rationale for its CDP and allocation recommendations required in §679.30(d).

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As intended by the FMPs, these regulations place the primary responsibility of CDQ allocations and day-to-day administration of the CDQ Program with the State of Alaska. Additionally, should NMFS determine that a regulatory requirement has not been met by the State or that the State's rationale is not reasonable or does not support the State's recommendations, NMFS is not provided the regulatory authority to implement its own allocations. The allocation recommendations must be returned to the State for further development or revision.

Following is a general schedule of events that have occurred in past CDQ allocation cycles. Milestone dates presented in the schedule represent the date the event occurred in the most recent CDQ allocation cycle in 2000 and 2001. "Year 0" means the year in which fishing on the new allocations starts. "Year-1" (year minus one) means the year prior to the year that fishing on the new allocations start. For example, for the 2001 and 2002 CDQ allocations, the allocation process started in the spring of 2000 (year-1) and concluded on January 17, 2001 (year 0). Groundfish and crab CDQ fishing under the new allocations started in late January and early February 2001.

- |  |   |
|--|---|
| May (Year - 1)                                       | Beginning of State's CDP application process. 50 CFR 679.30(a) requires the CDQ groups to apply for CDQ allocations by submitting a proposed CDP to the State during the State's CDQ application period. The State provides the CDQ groups with a CDP application packet containing requirements for information that must be submitted to the State in the proposed CDP and a deadline. The deadline for submission of the CDPs to the State is not included in NMFS regulations. For the 2001-2002 CDQ allocation cycle, the State's application process started on May 22, 2000. |
| August 1 (Year -1)                                   | End of State's CDP application process. No specific date is required in NMFS regulations. In the last allocation cycle, proposed CDPs were due to the State on August 1, 2000.  |
| September 20 (Year-1)                                | The State holds a public hearing to collect information from the public prior to making its allocation recommendations. The public hearing is required by 50 CFR 679.30(b), but no date is specified in regulation. In the most recent allocation cycle, the State's public hearing was on September 20, 2000.  |
| Between Public Hearing and Oct. Council mtg (Year-1) | State makes final decision on allocation recommendations.<br>In the most recent allocation cycle, the State sent a letter to Council announcing recommendations on September 29, 2000.  |
| October 1 (Year-1)                                   | State consults with Council at its October meeting. Presentation at this Council meeting is the first time the State is required by NMFS regulations to make its CDQ allocation recommendations public.<br><br>Council submits its recommendations to NMFS through action taken at the October meeting.   |
| October 15 (Year-1)                                  | State submits allocation recommendations to NMFS (required by 50 CFR 679.30(d)). The October 15 deadline is specified in NMFS regulations.  |

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- December 1 (Year-1) End of NMFS's 45-day review period. However, in 2001, NMFS did not finish review of the State's CDQ allocation recommendations until January 17, 2001, due to increased review associated with challenges by two CDQ groups of the State's recommendations.
- December (Year -1) or January 1 (Year 0) NMFS publishes notice of allocation decision through decision memorandum or Federal Register notice, if time allows (FR notice is not required).
- Jan-Mar (Year 0) NMFS publishes final groundfish specifications, which approves or revises the Council's recommendations for the annual amounts of groundfish and prohibited species that are allocated to the CDQ Program. This final rule, together with the percentage allocations of CDQ and PSQ to each CDQ group, is necessary to establish annual groundfish and prohibited species CDQ accounts for each group.
- January 1 (Year 0) Groundfish CDQ fisheries can start. Usually, the pollock CDQ fisheries occur first, sometime in late January together with the AFA pollock fisheries. Crab CDQ fisheries also can occur early in the year.
- by March 15 (Year 0) NMFS establishes quota accounts for halibut CDQ. The halibut CDQ fishing season opens on March 15 (unless season start date changes in the future), although CDQ fishermen usually do not starting halibut fishing until May or June.

### 3.3 State of Alaska's Role in the Allocation Process

#### State's role in the oversight of the CDQ Program

*The Council requested that the State of Alaska provide a general summary of the role the State plays in the oversight of the CDQ Program. This information is intended to provide insight regarding the mechanism the State uses to ensure that the CDQ Program objectives are being met and to identify the services the State provides to the CDQ groups. The remainder of this section was provided by the Department of Community and Economic Development (10/23/01):*

The U.S. Secretary of Commerce approved the CDQ program regulations in 1992. Under those regulations, the day-to-day oversight of the CDQ program was delegated to the State of Alaska, which was charged with full review of CDQ proposals and making allocation recommendations to the Secretary. NMFS is tasked with implementing Federal regulations and providing final allocation recommendations to the Secretary, who retains overall authority over the allocation process. The Federal and State governments have each added staff to respond to monitoring needs. Approximately five Federal and three State positions are dedicated to CDQ program administration.

The State is responsible for the ongoing monitoring of each CDQ group's performance, ensuring compliance with CDQ plans and regulations, providing professional assistance, reviewing quarterly and annual reports, and participating in the allocation process. In addition to requiring these reports, the State also conducts regular meetings with each group, requires annual audit and compliance reports, and retains the right to conduct an internal or management audit of any CDQ group. With this unique combination of Federal and State agency oversight, a thorough regulatory environment has been developed.

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With each substantial amendment to a CDP, each group must comply with both Federal and State regulations listed under 50 C.F.R. 679.30(g)(5) and 6 AAC 93.055(b) and (c). The CDQ group must describe how the amendment is consistent with the program standards in 6 AAC 93.017, the group's investment policies submitted under 6 AAC 93.025(a)(11), and the requirements of 50 C.F.R. 679, and how they will affect the CDQ group's ability to meet the milestones and objectives in its CDP. If the State feels that the substantial amendment to the group's CDP does not meet the State regulation requirements, then additional information is requested from the CDQ group. If the amendment meets State regulatory requirements the amendment is approved. However, if State regulatory requirements are not met, the State may deny the amendment. Through this process State oversight ensures that CDQ program standards and objectives are met.

As part of the CDQ program allocation process, the State CDQ Team, comprised of the governor's designees, establishes a schedule for the receipt of applications, initial application evaluation, public hearings, and final application review. Each group must decide which activities are best suited for its region and constituents and submit a CDP application.

The CDP must include the allocation requested for each species, a description of the goals and objectives of the CDP, the length of time necessary to achieve these goals, the number of individuals expected to be employed through the program, and a description of vocational and educational training programs the CDP will generate. The CDP details the fishery-related infrastructure in the applicant's region and describes how the CDQ group plans to enhance existing harvesting and processing capabilities.

After taking the CDP applications and public testimony into consideration, and applying the criteria set out in State regulation, the State develops the recommended allocations. The State then consults with the NPFMC before the recommendations are submitted to NMFS, who conducts a separate review to ensure that the State complied with applicable Federal procedural requirements in making its allocation recommendations. NMFS then provides their recommendations to the Secretary of Commerce for final approval and implementation.

As discussed, the principal role for government in the CDQ program is "governance," to ensure:

1. community involvement in decision-making;
2. investment criteria are followed;
3. no fraud in transactions;
4. proper due diligence, i.e. sufficient info to make informed investment decisions; and
5. groups meet milestones in the CDP.

Also, government can offer business assistance and advice, and evaluate all available information, including performance, community benefits, and future plans in making allocation decisions.

### State requirements in the CDPs

*The State was also asked to summarize the information that the CDQ groups are required to submit to the State under State regulations in order to be eligible to receive a CDQ allocation. The purpose of this request is to help identify information requirements of the CDQ groups and the purpose of those requirements, whether for compliance with a Federal regulation or an additional requirement by the State to fulfill a particular need. The following was provided by DCED:*

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An application period is established by the State scheduling a deadline for the receipt of proposed CDP's from qualified applicants and by scheduling a projected time frame for initial evaluation, holding a public hearing to discuss all CDP's received, and final review.

To apply for an allocation under 50 C.F.R. 679, a qualified applicant must submit to the CDQ team, on or before the published deadline, a completed proposed CDP that contains the information required under 50 C.F.R. 679.30(a) and 6 AAC 93.025. A CDP must include community development information including a description of all CDP projects, a schedule for completion of each CDP project, the number of individuals employed through each CDP project, a list of each participating eligible community, and demonstration of support for the qualified applicant approved by the governing body of each community. The CDP must include a description of the management structure and key personnel of the managing organization, a description of how the managing organization is qualified to manage CDQ allocations, documentation of the legal relationship between the qualified applicant and the managing organization, and the name of each member of the board of directors. The CDP must include a description of all business relationships between the qualified applicant and all individuals who have a financial interest in a CDQ project, a description of all profit sharing relationships, funding and financing plans, a general budget for implementing the CDP, audited financial statements, and a visual representation of the entire organizational structure. The CDP must include the percentage of each CDQ and PSQ reserve that is being requested and a comprehensive fish plan listing the harvesting vessels and processors of the CDQ.

In order for the CDQ Team to monitor a CDP as required under 50 C.F.R. 679.30, a CDQ group shall submit to the CDQ team a quarterly report for each calendar quarter in which that group's CDP is in effect on or before April 30, July 30, October 30, and January 30, per 6 AAC 93.050. Each quarterly report must include how the CDQ group has met the milestones and objectives of its CDP, a year-to-date CDQ harvesting and processing report, comprehensive financial statements, year-to-date employment and training data, minutes from any CDQ group board or directors meetings held during the quarter, and any other information the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program.

A CDQ group must submit to the CDQ team an independent audit, which constitutes a CDQ group's annual report, by May 31 of the year following the calendar year covered by the audit, per 6 AAC 93.050(d). The audit must include a report that indicates whether the CDQ group is meeting the milestones and objectives of the CDP, consolidated financial statements, a note to financial statements in which the auditor details how financial results were determined, a supplemental schedule detailing the CDQ group's general and administrative expenses, a budget reconciliation between all CDQ projects, administrative budgets and actual expenditures, a management report or letter, and any other information the state determines is necessary to carry out the state's role in the administration of the CDQ program. The above requirements are intended to ensure effective state oversight of the CDQ program.

### Description of the State's CDQ allocation process

*The State was also asked to provide a general description of the current allocation process. The following was provided by DCED relevant to specific information requested for Council analysis:*

- What role does the State play in development of the CDPs e.g. does the State help the CDQ groups identify potential CDQ projects or do the CDQ groups development the CDP on their own?

The State provides each CDQ applicant with a CDP Application Packet that contains the detailed requirements for submitting a CDP. The application packet includes the evaluation criteria and the format

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for the presentation of the CDP. The packet is broken down into two parts. Part one contains information relative to the qualifications for submitting an application. Part two contains information relevant to the day to day operations of the CDQ group, the State, and NMFS. There are several categories and sub-categories within the application including an introduction, community information, benefits to the region, CDQ organization, CDQ planning, budgets, and a fish plan for each fishery being prosecuted. CDQ applicants must submit the proposed CDP to the State generally by August 1.

The State does not involve itself with the development of any of the specific contents or projects in a proposed CDP. The CDQ groups are responsible for the content of the CDP. However, an applicant will be asked to revise or amend a portion of a proposed CDP if the contents are determined to be incomplete.

- How does the State use the evaluation criteria in State regulations to evaluate the CDPs?

Each CDQ Team member is asked to review CDP applications and bring into the State's allocation meeting their comments on the strengths and weaknesses of the proposed CDP's. The Team members in consultation with the CDQ staff use the approximately 20-evaluation criterion in State regulations to make the determination on the allocation of quota relative to each CDQ application.

- How does the State use the information obtained in the public hearings in the CDQ allocation process?

Under current regulations, the State makes its allocation decisions after holding a public hearing and meeting privately with each group (we hold private meetings because of the proprietary nature of certain information). As issues are raised in the public hearing, the CDQ Team has questioned the facts with the public member and then sought clarification from the respective CDQ group in either the public or private forum. Generally, this is adequate to address an issue. If an issue is substantial in nature, the CDQ Team could have the CDQ group make changes to the CDP.

These recommendations are then presented to the Council for "consultation," and any group unhappy with its allocation can testify before the Council in public session at that time. Generally, the Council then approves the recommendations, which are then forwarded to NMFS and the Secretary of Commerce for consideration and adoption.

- Does the State employ any type of quantitative analysis or scorecards to compare or rank the CDP's or individual CDQ projects?

Although the State is in the process of developing a scorecard, there has been no official scorecard system or any written quantitative analysis for public dissemination that is provided in terms of a numerical weighting system.

It is important that we make the allocation process as transparent as possible. There are currently 20 criteria in the State regulations that are used in making allocation decisions. In order to make the process more transparent so groups better understand the state's rationale for its allocation decisions the State has begun developing a scorecard model that could be implemented during the next allocation hearing cycle.

The scorecard process currently being compiled is as follows. Current criteria should be reviewed and, if possible, reduced in number. When the State team reviews allocation requests, each team member will score

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each group on all criteria. After reviewing these scorecards, the decision-makers can make allocation decisions with more concrete analysis in hand, and the cause of any changes in allocations will be apparent from review of these scorecards. Aggregate scores from the cards will then be tabulated and become public documents available for each group to compare the team members' assessment of its performance and plans with every other group. The scorecards will also enable CDQ board members to better understand the strengths and weaknesses of their respective organizations as viewed by the State.

The State applies quantitative and demographic analysis and, in essence, ranks the groups on these attributes, as well as the other factors for consideration in State regulation. The State makes allocation recommendations based on CDPs that will maximize the utilization of the CDQ and provide specific and measurable benefits to the greatest amount of residents in the CDQ region.

#### 4.0 IMPACTS OF THE ALTERNATIVES

This section provides information on the policy, regulatory, economic, and socioeconomic impacts of the alternatives including the nature of the impacts, quantifying the economic impacts when possible, and discussion of the tradeoffs between benefits and costs. The groups that may be affected by the action are described in Section 2.0. That section provides information on the eligible communities, the organizational structure of the CDQ groups, and information on the CDQ allocated to each group since the implementation of the program. The nature of the action and the alternatives and options under consideration lead to a more qualitative analysis of the impacts and a general policy discussion in several instances. However, quantitative analysis is included when it is appropriate to evaluate the impacts of an alternative and the data is available.

As described in Section 1, the RIR is designed to provide information to determine whether the proposed regulation is likely to be “economically significant” under E.O. 12866. A "significant regulatory action" is one that is likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

##### **Background**

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

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

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

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Alternative 3: Rulemaking: CDQ allocations among the CDQ groups would be established in NMFS regulations through proposed and final rulemaking following the same process used to allocate other federally managed fishery resources. The Council would develop CDQ allocation recommendations, and NMFS would implement the Council's recommended allocations in NMFS regulations. NMFS would not make independent decisions about the CDQ allocations, but it would review the Council's allocation recommendations for compliance with the MSA and other applicable laws. The State of Alaska could remain involved in the CDQ allocation process by making recommendations to the Council rather than to NMFS.

At the June 2001 Council meeting, NMFS recommended that the Council consider alternative roles for NMFS, the State, and the Council in the CDQ allocation process to address concerns that have developed about the allocation process and the appropriate role for the various government agencies involved in this process.<sup>4</sup> Some level of concern about the CDQ allocation process probably has existed since implementation of the program in 1992. However, current discussions can be primarily traced back to a disagreement that developed in late 1998 between the State and Norton Sound Economic Development Corporation (NSEDC) about whether government oversight extended to the CDQ groups' subsidiaries. This disagreement remains unresolved and is the subject of Issue 6 in this analysis.

Some of the groups have stated that it is difficult to understand the basis for the State's CDQ allocation recommendations. They have requested that the process be improved so that they can better understand the evaluation criteria that will be used, the priority of these criteria, and how performance against the criteria will be measured. Several groups have asked to be allowed to respond to or rebut the State's CDQ allocation recommendations before they are finalized or to appeal these recommendations to NMFS. At least two of the groups are seeking a larger role for NMFS in the CDQ allocation process.

H.R. 5565, which was introduced in late 2000 and reintroduced as H.R. 553 in 2001, illustrates Congressman Don Young's concern about the CDQ allocation process, the level of government oversight, and other aspects of the program (see Section 1.2.3). In late 2001, APICDA and the Central Bering Sea Fishermen's Association (CBSFA) wrote letters to NMFS challenging the State's 2001-2002 CDQ allocation recommendations. When NMFS approved the State's recommendations, APICDA sued NMFS in Federal District Court (see Section 1.2.4).

*The following summary of Judge Holland's opinion in the APICDA lawsuit is taken from a memorandum dated February 5, 2002, from Jonathan Pollard, NOAA General Counsel Attorney-Advisor, to Lisa Lindemen, NOAA General Counsel for Alaska.*

On January 30, 2002, Judge H. Russell Holland issued an order upholding NMFS' approval of the 2001-2002 CDQ pollock allocation for the APICDA. As described in Section 1.2.4, Judge Holland's opinion on the APICDA lawsuit addressed the roles of the State and NMFS and the procedure NMFS followed in reviewing and ultimately approving the State's CDQ allocation recommendations. Judge Holland noted that the administrative record demonstrated that NMFS and the State took their CDP development, review and approval responsibilities seriously. Judge Holland wrote that --

[o]nce it became clear to NMFS that the State's initial recommendation did not provide sufficient explanation [for the State's recommendations], NMFS called upon the State to

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<sup>4</sup>Section 1.2 provides additional information about these issues.

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provide what was lacking, and the State did so. APICDA asserts that NMFS merely made “passing reference” to the arguments that APICDA raised and that NMFS’ approval constitutes a rubber-stamping of the State’s recommendations. That is patently not the case. NMFS initially rejected the State’s recommendations because of a lack of supporting rationale. NMFS also states that it had considered the arguments presented in APICDA’s correspondence of October 31, 2001, when it decided to reject the State’s initial recommendations. The rejection forced the State to provide additional analysis, which it did, including at times specific reference to APICDA’s concerns. Upon reviewing the resubmitted recommendations, NMFS considered APICDA’s concerns. In fact, NMFS devoted entire sections of its analysis to the arguments that APICDA raised throughout the process, addressing those alternatives with specific facts found and rationale provided by the State. Although the federal regulations expounding upon NMFS’ role in the CDQ allocation process are admittedly sparse, NMFS performed its functions fully and properly with careful consideration of APICDA’s arguments. The Secretary’s approval of the State’s recommendations was neither arbitrary nor capricious.

APICDA v U.S. DOC, at pages 24-25.

Judge Holland held that NMFS’ decision to approve the State’s recommendation was reasonable because NMFS “accepted and considered” APICDA’s objections to the State’s recommendations during NMFS’ review, and because NMFS and the State responded to those objections on the record. Although federal regulations do not require NMFS and the State to respond APICDA’s objections, Judge Holland found that in practice NMFS and the State had used a procedure that demonstrated careful consideration of APICDA’s arguments. Given the importance Judge Holland attached to this consideration, there is a significant likelihood that the decision might have been in favor of APICDA without this clear demonstration that APICDA’s objections were considered on the record and rejected.

*[End of excerpt from Pollard memo]*

Judge Holland’s opinion confirms what NMFS learned from the most recent CDQ allocation process. If CDQ allocations among the groups are going to continue to be made by NMFS through an administrative process, NMFS regulations must be improved to describe how NMFS will receive and consider comments or challenges to the State’s CDQ allocation recommendations, and to include a process through which the CDQ groups can appeal NMFS’s initial administrative determination on CDQ allocations. In addition, sufficient time to adequately complete all of the steps of the administrative process must be provided to the State, NMFS, and the CDQ groups. Alternative 2 describes how NMFS believes the administrative process should be improved, if the Council recommends continuing the current process for making CDQ allocations.

### Council request for analysis of an additional alternative

At the December 2001 Council meeting, and prior to the resolution of the APICDA lawsuit, the Council requested the addition of the following alternative to the analysis:

*Alternative 2a: NMFS would continue to make CDQ allocations through an administrative process that continues to require the State to submit CDQ allocation recommendations. Regulatory amendments would be implemented to describe the administrative process that would be used to make CDQ allocations, including evaluation criteria. **No appeals process would be included.** The State would conduct a comment period and hearing as described in Issue 6,*

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*Alternative 2 - which states:*

*Develop a comment period for the State's allocation recommendations such that the State is required to:*

- 1. Issue initial CDQ allocation recommendations and an explanation of changes from the previous allocations;*
- 2. Accept comments from the public and the CDQ groups;*
- 3. Issue final allocation recommendations and a written response to comments, including the reason for any changes from the State's initial allocation recommendations;*
- 4. Consult with the Council on the final allocation recommendations; and*
- 5. Submit final recommendations to NMFS.*

NMFS has incorporated into Alternative 2 the elements of this proposed alternative that would require the State to include a comment period on its initial CDQ allocation recommendations before it submits its CDQ allocation recommendations to NMFS. However, NMFS did not include a separate alternative that would specifically *exclude* the ability of the CDQ groups to appeal NMFS's initial administrative determinations on CDQ allocations. NOAA General Counsel advises that any CDQ allocation determination pursuant to the MSA (as it is now drafted) is the ultimate responsibility of the Secretary of Commerce. As such, any person or group aggrieved by an agency initial administrative decision has an absolute right of an internal agency appeal as a matter of the constitutional right of procedural due process. Denial of such a right is not a legal option.

### Removal of an alternative presented in the first draft

In the November 15, 2001, draft analysis, NMFS presented an alternative that would allocate the CDQ reserves directly to the State for purposes of the CDQ Program, instead of allocating CDQ to the individual CDQ groups. At the time that draft analysis was prepared, NOAA GC advised NMFS of potential legal problems with this alternative. Based on additional consultation with NOAA GC, NMFS has now determined that this alternative is not consistent with the MSA because the Secretary of Commerce cannot delegate to the State the final authority or responsibility to make allocations among the CDQ groups or communities. Although certain elements of the CDQ allocation process can be deferred to the State, as is done under the existing regulations, the Secretary is ultimately responsible to ensure that the CDQ allocations are consistent with the MSA and other applicable federal law. A MSA amendment would be needed to allow NMFS to allocate CDQ reserves to the State of Alaska for purposes of the CDQ Program and to specify that the State shall make allocations to CDQ groups pursuant to State law. Therefore, NMFS removed this alternative from the analysis. Under Issue 1, the Council may recommend that the CDQ allocations be made through an administrative process, as described in Alternatives 2, or through rulemaking, as described in Alternative 3.

### The CDQ Policy Committee Recommendations

Consideration of Issue 1 was recommended by NMFS at the June 2001 Council meeting. The CDQ Policy Committee did not develop this issue or discuss the alternatives at its April and May 2001 meetings. Therefore, no specific recommendations were made by the committee with respect to Issue 1.

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### **Alternative 1 - No Action**

Under Alternative 1, NMFS's regulations governing the CDQ allocation process would not be amended to provide the opportunity for comment on the State's allocation recommendations or an appeal of NMFS's administrative determination about CDQ allocations. Existing regulations described in Section 3 and Appendix D would continue to guide the CDQ allocation process. The major problem with the existing regulations is that they do not provide guidance for how to address comments, challenges, or appeals to the State's CDQ allocation recommendations or to NMFS's initial administrative determination about these allocation recommendations. Based on experience during the recent CDQ allocation cycle and the outcome of the APICDA lawsuit, NMFS believes that the regulations need to provide this guidance. Under the existing CDQ allocation process, CDQ groups may comment to NMFS about the State's CDQ allocation recommendations. Two groups submitted letters of comment during NMFS's review of the State's 2001-2002 allocation recommendations. However, the lack of any reference to a comment period or an appeals process in NMFS regulations implies that these elements of the administrative process do not exist. In addition, the current 45 day review period allowed NMFS under the regulations does not provide sufficient time to conduct an appeals process that would provide the opportunity for a CDQ group to appeal, the opportunity for other groups to get involved in the appeal, and for NMFS to resolve the issues raised in the appeal before the existing allocations expire.

### **Proposed Procedure for the 2003-2005 CDQ Allocation Cycle**

Current CDQ allocations expire on December 31, 2002. Preparation for the next CDQ allocation cycle has already begun, with the State announcing the next CDQ application period through a letter to the CDQ groups on January 22, 2002. The allocation process will end in late 2002 with NMFS's decision on the State's CDQ allocation recommendations. With this schedule, it is clear that regulations revising the CDQ allocation process based on the Council's preferred alternative in this analysis will not be implemented in time to guide the current CDQ allocation process. Therefore, the next CDQ allocations will be made based on current regulations. However, the State and NMFS are suggesting some improvements to the process that are consistent with current regulations, but will respond to some of the problems identified with the current process. These improvements include some elements of the improved administrative process described in Alternative 2.

The State is proposing a three year allocation cycle, covering 2003, 2004, and 2005. Some of the changes proposed by the State and supported by NMFS include the State issuing its initial CDQ allocation recommendations about one month before the October 2002 Council meeting and providing a 10-day comment period during which the CDQ groups can comment on the State's initial allocation recommendations. The State will respond to these comments in writing and provide both the comments and responses to the Council at the October 2002 Council meeting. Once NMFS receives the State's CDQ allocation recommendations (by October 15, 2002), NMFS will accept comments from the CDQ groups for 15 days. NMFS will consider all comments received in the 15-day period, all information submitted by the State, and any information submitted by the Council. This schedule is necessary for NMFS to complete its review of the State's CDQ allocation recommendations within the required 45-day period and before the CDQ fisheries start in January 2003.

Following is a summary of the schedule proposed for the 2003-2005 CDQ allocation process which includes references to the elements of the schedule that are required under current regulations. The remaining elements are at the discretion of the State and NMFS. Elements of the process that were not specifically included in the last CDQ allocation cycle are highlighted in bold.

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January 22, 2002	The State announced the CDQ application process and schedule in a letter to the CDQ groups. This letter was sent out about 10 weeks before the application period begins on April 1, 2002.
April 1, 2002	State's CDQ application period begins.
July 1, 2002	Proposed CDPs (applications) due to the State.
August 27, 2002	State holds a public hearing in Anchorage (required by NMFS regulations).
Sept. 3-6, 2002	State issues its initial CDQ allocation recommendations.
Sept. 17-20, 2002	<b><i>State holds a 10-day comment period on its initial recommendations.</i></b>
Sept. 27, 2002	<b><i>State provides Council with response to comments and any revisions to initial CDQ allocation recommendations.</i></b>
October 2, 2002	State consults with Council during October Council meeting (required by NMFS regulations).
October 15, 2002	State submits CDQ allocation recommendations to NMFS (required by NMFS regulations).  <b><i>Through a letter to the CDQ groups, NMFS will announce the State's CDQ allocation recommendations and provide a 15-day comment period on these recommendations.</i></b>
October 30, 2002	<b><i>End of NMFS's 15-day comment period on State's recommendations.</i></b>
November 30, 2002	Deadline for NMFS's review of State's allocation recommendations (45 days from 10/15/02 - required by NMFS regulations).
Dec. 31, 2002	Last day to make allocation decisions before existing CDPs and allocations expire
Jan. 1, 2003	CDQ fishing under the new allocations can start. The earliest date the CDQ groups have wanted to start fishing in past years has been January 20 for the pollock CDQ fisheries. Some crab CDQ fisheries also can start relatively early in the year.

An important element proposed in Alternative 2 that is not included in the current regulations and cannot be provided without a regulatory amendment is a formal administrative appeals process. However, NMFS will review all comments submitted to the State about its initial CDQ allocation recommendations, to the Council at the time of the State consultation on its recommendations, and to NMFS during NMFS's review period. NMFS will address issues raised by the CDQ groups in its final agency action in a manner similar to how these issues were addressed for the 2001-2002 CDQ allocation cycle. Although this process is not defined in regulation and the current time schedule does not allow as much time as NMFS believes is desirable, the process was upheld by Judge Holland in his opinion on the APICDA lawsuit. Therefore, NMFS believes that

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the current regulations and the improvements proposed above will provide a CDQ allocation process that complies with all applicable federal laws. However, NMFS does not support continuing the existing process in the future. Either NMFS's administrative regulations must be revised as proposed under Alternative 2 or the Council should recommend making CDQ allocations through rulemaking as described in Alternative 3.

**Alternative 2 - Improve NMFS's administrative process for making CDQ allocations**

Under Alternative 2, NMFS CDQ regulations would be amended to describe the administrative process NMFS would use to make CDQ allocation decisions and to describe the role that the State and Council would have in this process. NMFS believes revisions to the current CDQ allocation process must be implemented if the Council recommends that NMFS remain responsible for making the final decision about CDQ allocations. These revisions would strengthen the CDQ regulations by more clearly describing how CDQ allocations would be made and by providing an opportunity for CDQ groups to administratively appeal NMFS's decisions.

Under Alternative 2, NMFS would amend its CDQ regulations to add the following elements:

1. The State of Alaska would be required to provide the CDQ groups with the opportunity to comment on its initial CDQ allocation recommendations before the State consulted with the Council or submitted its recommendations to NMFS.
2. The State would be required to provide a copy of the written comments it received and its written response to these comments to the Council and NMFS in its CDQ allocation recommendations. The State also would be required to provide a written explanation if it revised its CDQ allocation recommendations in response to these comments.
3. NMFS would review the State's CDQ allocation recommendations. If the State's recommendations complied with NMFS regulations and all applicable federal law, NMFS would issue an initial administrative determination notifying the CDQ groups and the public of its intent to approve the State's recommendations.
4. A NMFS administrative appeals process would be described in regulations.

More detail on the CDQ allocation process proposed under Alternative 2 is provided below after the discussion of the proposed schedule of events.

**Proposed Schedule of Events under Alternative 2**

Following is an example of the schedule of events that might occur under Alternative 2.

Note: "Year 0" means the year in which new CDQ allocations are needed. "Year-1" (year minus one) means the year prior to the year that fishing on the new allocations will start. "Year-2" means two years prior to the year that fishing on the new allocations will start. For example, for the 2003-2005 CDQ allocations, the allocation process started in January 2002 (Year-1) and the new CDQ allocations will be needed in January 2003 (Year 0).

October 1      The State's CDP application process would begin. The CDQ groups would have three

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(Year-2)	months to prepare their proposed CDPs.
January 1 (Year-1)	Proposed CDPs (applications) would be due to the State. The State would have six weeks to develop its initial CDQ allocation recommendations.
February 1	State's public hearing.
February 15	The State would announce its initial CDQ allocations recommendations and a 30-day comment period. This comment period by the State would provide notice of the State's CDQ allocation recommendations and an opportunity for the CDQ groups to comment or challenge the State's allocation recommendations.
March 15	End of the State's comment period on its initial CDQ allocation recommendations.
Mar 15- early April	The State prepares its response to comments.
April Mtg	The State consults with the Council. The State provides the Council with (1) its initial CDQ allocation recommendations, (2) a copy of all comments received during its comment period, (3) a written response to the comments, and (4) any revisions made to its CDQ allocation recommendations.
May 1	The State submits its CDQ allocation recommendations, comments, and response to comments to NMFS.  NMFS may allow an additional comment period during its review of the State's CDQ allocation recommendations.
July 1	NMFS completes review of the State's allocation recommendations and releases an initial administrative determination. NMFS administrative appeals process starts with the announcement of the initial administration determination for CDQ allocations.  NMFS anticipates that up to 6 months could be needed to resolve appeals of the initial administration determination on CDQ allocations.
August 1	Deadline for CDQ groups to appeal NMFS's decision. If no appeals are received within 30 days, then the initial administrative determination of July 1 would become final agency action and establish CDQ and PSQ allocations for the next year.
December 1	Last date that NMFS appeals officer can issue a decision if new CDQ allocations are to be effective for the next year. This decision is final in 30 days unless the Regional Administrator overturns the appeals officer's decision or continues the appeal.
January 1 (Year 0)	CDQ fisheries can start.

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### Description of the CDQ Allocation Process under Alternative 2

The schedule under Alternative 2 is controlled by the need to provide NMFS six months for an administrative appeals process. This requires the administrative appeals process to start on July 1 so that NMFS would have sufficient time to resolve the appeals before December 31, when the CDQ allocations expire. If the administrative appeals process has to start on July 1, NMFS also must have its initial administrative determination on the State's CDQ allocation recommendations complete by July 1. The State is required to consult with the Council before it submits its CDQ allocation recommendations to NMFS. This consultation must occur at a Council meeting prior to July 1. The June Council meeting usually occurs in the first week of June, approximately three weeks before the July 1 deadline. However, the timing of the June Council meeting relative to the July 1 deadline does not provide sufficient time for the State to consult with the Council, submit its CDQ allocation recommendations to NMFS, and for NMFS to review the State's recommendations and issue an initial administrative determination. Therefore, consultation with the Council must occur at the April Council meeting. This would allow the State to submit its CDQ allocation recommendations to NMFS by May 1 and provide NMFS 60 days to review the State's recommendations before it had to issue an initial administrative determination on July 1.

If the State is required to consult with the Council at its April meeting, then the State's CDP application process would have to start on October 1 of the previous year so that the CDQ groups had time to complete their CDPs and the State had time to complete its process for developing CDQ allocation recommendations. The entire CDQ allocation process, from the time the State application process starts on October 1 (Year-2) to the time the CDQ fisheries start (Year 0) would take approximately 15 months.

The State's comment period would provide an opportunity for the CDQ groups to identify potential problems with the State's process for developing CDQ allocation recommendations, facts the State relied upon, or the State's rationale. The State would have the opportunity to address these issues before it submitted its recommendations and record to NMFS. Early identification of these issues may reduce the number of issues that have to be addressed by NMFS through the administrative appeals process. Comments submitted to the State, and the State's response to them, would be considered by the Council during its consultation with the State. They also would be provided to NMFS as part of the CDQ allocation recommendations the State submits to NMFS after the Council consultation.

NMFS regulations would continue to require that the CDQ allocations be based on the State's recommendations and that these recommendations comply with NMFS regulations, the MSA, and all other applicable federal law. NMFS would review the record submitted by the State, including any comments submitted by the CDQ groups during the State's comment period. If NMFS identified deficiencies in the State's recommendations, it would notify the State of the deficiencies and the State would be required to address these issues by submitting additional information or further explanation of its recommendations. Under the proposed schedule, NMFS would have 60 days (between May 1 and July 1) to review the State's recommendations and, if necessary, obtain additional information from the State. NMFS would not establish CDQ allocations independent of the State's recommendations.

NMFS would be required to issue its initial administrative determination approving the State's CDQ allocation recommendations by July 1. NMFS's administrative appeals process also would start on July 1. The CDQ groups would have 30 days to file an appeal with NMFS's Office of Administrative Appeals (OAA). The CDQ groups could appeal NMFS's determination on the basis that the State's recommendations did not comply with NMFS regulations or were not consistent with the MSA or other applicable federal law.

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If no appeals were received, then NMFS's initial administrative determination would be the final agency action on CDQ allocations and these allocations would be effective January 1 of the following year.

Any appeals submitted would be considered by NMFS's OAA. All CDQ groups would have an opportunity to participate in any CDQ appeal because resolution of one group's allocation would necessarily affect all of the other groups. The OAA would have to impose relatively short deadlines for the submission of information and responses because of the need to have the appeals resolved before the existing allocations expired. The appeals officer would review NMFS's record supporting its initial administrative determination and the information available to NMFS at the time it made its decision. New factual information would not be considered in the appeals process. Therefore, if the CDQ groups believe that new or additional information should be considered by the State in making its allocation recommendations, these issues should be raised during the State's comment period so that this information can be considered by the State and available to NMFS at the time it reviews the State's allocation recommendations.

It is possible that, through the appeals process, NMFS would find a deficiency in the process the State followed that would require the State to conduct some or all of its allocation process over. For example, if the State failed to conduct the public hearing required in NMFS regulations, NMFS would have to require the State go back to the point in its allocation process where a public hearing was required, conduct the public hearing, and start its allocation process anew from that point. If this finding occurred late in the year, it is possible that the existing CDQ allocations would expire and that no new allocations would be in effect to replace them. In this case, the CDQ groups would not be able to start their CDQ fisheries in January.

Because of the risk that NMFS may not be able to complete its administrative process in the time period described above, NMFS considered recommending that existing CDQ allocations remain in effect until they are replaced by new CDQ allocations approved by NMFS. This proposal would ensure that the CDQ groups would not be prevented from harvesting CDQ allocations if NMFS could not resolve appeals and approve the State's allocation recommendations when the existing allocations expire. However, NMFS believes that this proposal could provide incentive for more lengthy and complicated appeals by groups who may benefit from delaying implementation of the new CDQ allocations. Therefore, NMFS is not suggesting that the Council consider revisions to the current regulations that require the CDQ allocations to expire at the end of each CDQ allocation cycle. However, some contingency plan must be established in case appeals are not resolved before new allocations are needed.

NMFS proposes that interim CDQ allocations would be implemented through NMFS regulations if appeals cannot be resolved by December 31 of the year that the existing allocations expire. For each CDQ group and each species category, the interim CDQ allocations would be the lower of the allocation the group received in the previous allocation cycle or the State's recommended CDQ allocation for the new allocation cycle. This proposal would reduce the amount of the CDQ reserve that could be harvested until the appeal was resolved and could reduce the total value of the CDQ harvests if the appeal was not resolved quickly. However, the proposal provides a solution that would allow most of the CDQ fisheries to continue in the next allocation cycle, but would not allocate the percentages under appeal.

### Comparison of Schedule Proposed for 2003-2005 Cycle with Alternative 2

Table 4.1 shows a comparison between the schedule proposed for the 2003-2005 allocation cycle and the schedule proposed under Alternative 2. The CDQ allocation process proposed by the State for the 2003-2005 allocations will start approximately six months before the Council consultation in October 2002, and nine

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months before the CDQ allocations expire on December 31, 2002. The State provides the CDQ groups with approximately three months to prepare their CDPs. The State then has six weeks to hold a public hearing and make its CDQ allocation recommendations. The schedule proposed under Alternative 2 provides the same amount of time for the CDQ groups to prepare their proposed CDPs (three months). However, the time available for the State to develop its initial CDQ allocation recommendations is reduced from two months to six weeks. These deadlines are not established in NMFS regulations, so they could be reduced or revised if the State decided that the steps in the process could be accomplished in less time.

Table 4.1: Comparison of the Schedule of Events under Alternatives 1 and 2

	Year - 2			Year - 1											Y0	
	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	I
<b>PROPOSED FOR 2003-2005 CYCLE</b> (occurring in 2002)																
CDP application process (3 months - 4/1/02 to 7/1/02)																
Proposed CDPs due to State (7/1/02)										X						
Public hearing (8/27/02)											X					
State's initial recommendations (9/6/02)												X				
State's comment period (9/6 - 20/02)												X				
Council consultation (10/2/02)													X			
State Recommendations to NMFS (10/15/02)													X			
NMFS comment period (10/15 - 30/02)													X			
End of NMFS 45-day review period													X			
Current allocations expire (12/31/02)														X		
CDQ Fisheries under new allocations can start															X	
<b>ALTERNATIVE 2</b>																
CDP application process (3 months, starting Oct. 1 of Year -2)																
Proposed CDPs due to State (Jan. 1)				X												
Public hearing ( Feb. 1)					X											
State's initial recommendations (Feb 15)					X											
State's comment period (Feb 15 - Mar. 15)					X	X										
Council consultation (April meeting)							X									
State Recommendations to NMFS (May 1)								X								
NMFS issues initial administrative determination (July 1)										X						
NMFS Administrative Appeals (July 1 - Dec 31)																
Current allocations expire (Dec. 31)																X
CDQ fisheries under new allocations can start (Jan 1)																X

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### Impacts of Alternative 2:

The primary benefit of Alternative 2 is an improved administrative process. During the most recent CDQ allocation process, in late 2000, NMFS unexpectedly received letters challenging the State's CDQ allocation recommendations and requesting that NMFS disapprove these recommendations. NMFS regulations did not provide notice to the CDQ groups that they could submit comments to NMFS during its review of the State's CDQ allocation recommendations, nor did the regulations provide guidance to NMFS about how to address such comments or appeals. Therefore, NMFS had to develop an appeals process to address the issues raised in these letters of challenge. Although this process was upheld in the APICDA lawsuit, NMFS anticipates that similar issues will arise in the future and regulations need to be revised to provide guidance to the State, CDQ groups, and NMFS about how to handle comments and appeals to the State's CDQ allocation recommendations and NMFS's administrative determinations about these recommendations. Improved administrative regulations will benefit all parties involved in the CDQ allocation process. All of the CDQ groups will be operating with a similar understanding of how to provide input into the CDQ allocation process. The State and NMFS will have a better understanding and the time to develop adequate administrative records and decision documents. NMFS also will strengthen its ability to defend its CDQ allocation decisions in court.

The primary costs of Alternative 2 are (1) the allocation process will take more time to accommodate the administrative appeals process, (2) the appeals process may increase administrative costs for the CDQ groups, (3) the expanded administrative process will require the State and NMFS to devote more time to the CDQ allocation process.

The allocation process will require more time: As described above, Alternative 2 would increase the time required for the CDQ allocation process from nine months to 15 months, to provide a six months administrative appeals process. Under Alternative 2, the State would have to start the CDP application process on October 1, 15 months prior to when the new CDQ allocations must be effective.

Starting the CDQ allocation process earlier means that the State would have less up-to-date information to rely upon in developing its recommendations. A number of the evaluation criteria the State considers in making its CDQ allocations recommendations are related to past performance of the CDQ group in implementing its CDPs. The State considers such things as how well the CDQ groups have used the CDQ allocations to provide benefits to the communities through fisheries-related investments and employment, training, and education opportunities; financial performance of the for-profit investments; and performance of the board of directors. Evaluating these factors requires information about past performance. Under the current process, the State is evaluating this information between July 1 and late September of the year prior to the new allocations. The most up-to-date information available to the State at the time it makes its CDQ allocation recommendations (in September) is from the previous years' audited financial statements, which are submitted to the State by May 31 of each year (for the previous year). In addition, the State reviews the unaudited first and second quarter reports from the CDQ groups, which are current through June 30.

Under Alternative 2, the State would be reviewing proposed CDPs and performance data from January 1 through February 15 of the year prior to the year in which the new allocations are needed. The audited financial statements from the previous year would not be available at that time. Therefore, the State would have to rely on the audited financial statements from two years previous and unaudited quarterly reports for the first, second, and third quarters of the previous year. Once the State has made its CDQ allocation

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recommendations, revisions of these recommendations for updated data cannot be made without requiring the State and NMFS to begin consideration of the CDQ allocations all over.

The time lag in data considered for allocations is not unique to the CDQ allocations. Most of the fishery allocations made through rulemaking take several years from the time the analysis is completed by the Council to the time that the allocations are implemented by NMFS. The analysis supporting the allocation decision must be based on the information that was considered by the decision-makers at the time that they made their allocation recommendations. The process of reviewing and approving allocations - whether it is through rulemaking or through an administrative process - takes time. NMFS believes that the longer schedule under Alternative 2 is a necessary trade-off for improving the administrative process used to make CDQ allocations.

Costs to the CDQ groups: If one or more CDQ groups appeal NMFS's initial administrative determination, all CDQ groups will have to get involved in the appeals process in some manner. The groups that appeal will have considered the administrative costs involved in an appeal and decided that those costs are justified in order to resolve issues they believe are important. However, even the CDQ groups that do not appeal are likely to incur administrative costs associated with the appeal. At the very least they would have to support staff, legal counsel, or consultants to remain informed and involved in the appeals process. They also may determine that it is necessary to get directly involved in the appeals process to protect their interests in the CDQ allocations.

### Costs to the State and NMFS

#### Current costs:

Both the State of Alaska and NMFS incur costs associated with management and oversight of the CDQ Program. The State of Alaska has an annual budget of \$250,000 for the administration and oversight of the CDQ Program in the Department of Community and Economic Development. This budget covers salary, administrative expenses and travel the three positions devoted exclusively to the CDQ Program and CDQ-related travel costs for the three deputy commissioners on the CDQ Team. This budget does not cover any salary or administrative costs for the deputy commissioners, any costs associated with Department of Fish and Game's management of the crab CDQ fisheries, or the costs of any other State employees that may become involved in CDQ Program issues (e.g. Governor's Office, Department of Law). Since 2000, the State has collected \$250,000 annually from the CDQ groups through a State CDQ fee authorized by the Alaska Legislature. Fifty percent of the annual program costs are divided equally among the six CDQ groups and the other 50 percent is based on the value of each groups' allocations, as determined by the State of Alaska.

NMFS Sustainable Fisheries Division has four staff who work on various aspects of the CDQ Program. The CDQ Program Coordinator is responsible for general oversight of CDQ Program-related activities associated with management of the CDQ fisheries, the CDQ allocations, and administration of the economic development aspects of the CDQ Program. The CDQ fisheries regulation specialist is responsible for the day-to-day management of the CDQ fisheries (50%), analysis and implementation of fisheries regulations (25%), and CDQ administration related to maintenance of the CDPs and review of proposed amendments (25%). A computer programmer devotes approximately 80% of her time to development and maintenance of the computer programs and databases that support management of the CDQ fisheries and monitoring the group's quotas. NMFS's at-sea scales coordinator spends approximately 60% of his time on CDQ Program-related scales issues (inspections, recordkeeping, coordination with industry, rulemaking, contracting, etc.). These

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duties associated with these four positions can be divided generally into (1) CDQ fisheries management, and (2) CDQ administration and oversight. NMFS estimates that the fisheries management tasks costs approximately \$300,000 per year and the CDQ administration tasks costs approximately \$150,000 per year. These costs include salary, benefits, travel, and overhead associated with the four CDQ Program staff in the Sustainable Fisheries Division.

NMFS also has program management costs in the Restricted Access Management Division for the halibut CDQ fisheries, NMFS Enforcement for enforcement of fishing regulations in both the halibut and groundfish CDQ fisheries, and NOAA General Counsel. In 2001, six attorneys in NOAA General Counsel contributed work on CDQ issues related to enforcement actions; review of analysis and rulemaking documents; legal advice on the CDQ allocations and development of the CDQ policy analysis; and the APICDA lawsuit.

### Changes in Agency Costs Under Alternative 2

The primary change in NMFS costs associated with Alternative 2 would be the additional work necessary for the Office of Administrative Appeals to conduct an appeals process related to the CDQ allocations. At this time, NMFS does not anticipate that additional OAA staff would be hired for the CDQ appeals. However, given the short time frame of these appeals and the importance of resolving them before the allocations expire, these appeals will have to be given priority over all other pending appeals. The OAA currently handles appeals of administrative determinations by the Restricted Access Management Division for the Individual Fishing Quota Program, the License Limitation Program, and moratorium programs. Resolution of appeals for these other programs may be delayed during the CDQ appeals process.

The actual costs to NMFS of the appeals process, in staff time or delay of other appeals, would depend on how frequently the CDQ allocations are conducted, which the Council will consider under Issue 2. The more frequently the allocations are made, the higher the cost of the appeals process are likely to be. Another factor in the costs of the appeals process is how frequently a CDQ group appeals, how many groups appeal during an allocation cycle, and how complicated the appeals are. If NMFS receives no appeals during an allocation process, then no additional costs will be incurred by the Office of Administrative Appeals. The more groups that participate in an appeal or the more complicated the issues, the longer the appeals process will take and the more it will cost for NMFS to administer. However, the additional cost of an appeals process may be balanced by reduced costs associated with defending NMFS in court if the appeals process results in less Federal court litigation.

Alternative 2 would require NMFS to devote additional staff resources to support its responsibilities in the CDQ allocation process. However, Alternative 2 represents what NMFS believes are its existing responsibilities, so increased staff resources cannot be attributed solely to the Council selecting Alternative 2. Increased demands on NMFS staff for oversight of the CDQ allocation process and administration of the economic development aspects of the program started occurring over a year ago with the 2001-2002 allocation cycle and they are expected to continue in the future as the program grows and the CDQ groups diverge in their views about the appropriate level of government oversight and increasingly request NMFS to get involved in disputes between the groups and the State.

One additional staff person is needed to fulfill the expanding responsibilities for CDQ administration and a larger role in oversight of the economic development aspects of the program. If additional staff are not hired, existing staff will have to be redirected to fulfill NMFS's legal responsibilities for oversight of CDQ allocations and the administration of the CDQ Program. The most likely outcome of this change in priorities will be that

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the Alaska Regional Office will no longer be able to devote staff specifically to analysis and rulemaking related to CDQ fisheries management issues unless these issues become a high enough priority to justify assigning non-CDQ Program staff to the project. At existing staff levels NMFS also anticipates that there will be some delay in implementing the Council's preferred alternatives under this analysis because NMFS staff available to work on rulemaking will be required to participate in the 2003-2005 CDQ allocation process starting in the last summer of 2002 through January 2003.

**Alternative 3 - CDQ allocations would be made by the Council and NMFS through rulemaking**

Under Alternative 3, allocations of CDQ and PSQ reserves to individual CDQ groups would be published in NMFS regulations and the Council would make periodic allocations through proposed and final rulemaking. The Council would develop the CDQ allocation recommendations through its standard process for fishery allocations. The State could provide initial recommendations to the Council, but the Council would be responsible for CDQ allocations through its recommendations to NMFS for a regulatory amendment. NMFS would review the Council's allocation recommendations and analysis for compliance with MSA national standards and other applicable federal law in the same way it reviews all regulatory amendment proposals by the Council. Under the Administrative Procedure Act, the CDQ groups and any other member of the public would have 30 days from the date the final rule is published to challenge the CDQ allocations in court. After the end of the 30 days, the regulatory amendments to implement the Council's recommended CDQ allocations would be final regulations in place until they expire or were amended. Under Alternative 3, a NMFS administrative appeals process would not be necessary.

If the Council made CDQ allocation decisions through periodic rulemaking, NMFS regulations may or may not contain instructions for how this process would occur, depending on whether the CDQ allocations were made as stand-alone allocations or through the groundfish specifications process. For example, regulations governing the groundfish specifications process at 50 CFR 679.20(a)(3) contain a list of factors that the Council must consider in setting annual total allowable catch limits. A similar set of guidelines to the Council could be developed for CDQ allocations based on the evaluation criteria selected under Issue 5. If the CDQ allocations were made as stand-alone regulatory amendments, NMFS CDQ regulations would include a table of allocations to each CDQ group that were developed by the Council and approved by NMFS, but would not have to contain regulations about how the Council developed the allocations.

The following is an example of the schedule of events for CDQ allocations that might occur under Alternative 3.

Schedule of Events for Alternative 3

The following represents a fairly optimistic schedule for Council decisions on the CDQ allocations and NMFS implementation of the allocations through proposed and final rulemaking.

October Mtg (Year -2) The State or the CDQ groups would submit proposed CDPs and allocation recommendations (the State) or allocation requests (the CDQ groups) to the Council.

Between the October and February meetings, Council staff would prepare an analysis (EA/RIR/RIR) of a range of alternative CDQ allocations.

February (Year-1) Council reviews initial draft analysis of alternative CDQ allocations.

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March 1 (Year -1)	Council sends draft analysis on CDQ allocations, with alternatives, out for public review.
April Mtg (Year-1)	Council takes final action on CDQ allocation recommendations, providing explanation of reasons for recommended CDQ allocations that comply with MSA national standards and other applicable federal law.
July 1 (Year-1)	NMFS publishes a proposed rule for the Council's CDQ allocations, with a 30 day comment period.
August 1 (Year-1)	End of comment period on Council's CDQ allocations.
December 1 (Year-1)	Last date to publish a final rule implementing the Council's CDQ allocations if these allocations are to be effective by January 1.
January 1 (Year 0)	Effective date of final rule amending NMFS regulations to implement the Council's CDQ allocations. MSA deadline for challenging the rule in court (30 days from the date the final rule is published in the <i>Federal Register</i> ).
January 1 (Year 0)	CDQ fisheries can start.

The Council would be directly involved in recommending allocations of the CDQ reserves among the eligible communities or CDQ groups. The percentage allocation of each CDQ and PSQ reserve to each CDQ group would be included in NMFS regulations, would be implemented through proposed and final rulemaking, and could be revised through periodic regulatory amendments developed by the Council and approved by NMFS. Alternative 3 would require the Council to undertake analysis of the performance of the CDQ groups and to evaluate this performance against the goals and objectives of the program and any evaluation factors established in regulation. The Council could request that the State of Alaska continue to provide recommendations for CDQ allocations and the supporting analysis. NMFS would review the Council's CDQ allocation recommendations and, if they complied with the MSA and other applicable law, they would be implemented through rulemaking. In this respect, NMFS would be responsible for the final decision on CDQ allocations through the decision to approve a rule.

One advantage of the Council taking the responsibility for this role in the CDQ Program is that the Council was established to perform this type of function - allocating fishery resources among competing users. One disadvantage of this alternative is that some Council members may have to recuse themselves from the CDQ allocation decisions because of their financial interest in the CDQ Program through employment or business relationships with the CDQ groups.

The role of the State in the CDQ allocation process would be advisory to the Council. The State could perform many of its current functions of reviewing and evaluating CDPs and making CDQ allocation recommendations. The major difference with Alternative 3 would be that the State would be providing its recommendations to the Council as part of the Council's allocation process rather than submitting its recommendations to NMFS for NMFS review and approval. The State also could submit comments and recommendations to NMFS through the public comment period on the proposed rule to implement the Council's CDQ allocations. The State's role in administration and oversight of the CDQ Program would be

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established through the Council's selection of preferred alternatives for the relevant Issues 2 through 9.

Table 4.2 compares the proposed schedule of events under Alternatives 2 and 3.

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Table 4.2 Comparison of the Schedule of Events under Alternatives and 2 and 3

	Year - 2					Year - 1										Y0
	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J
<b>ALTERNATIVE 2 - Administrative Process</b>																
CDP application process (3 months, starting Oct. 1 of Year -2)																
Proposed CDPs due to State (Jan. 1)				X												
Public hearing ( Feb. 1)					X											
State's initial recommendations (Feb 15)					X											
State's comment period (Feb 15 - Mar. 15)					X	X										
Council consultation (April meeting)							X									
State Recommendations to NMFS (May 1)								X								
NMFS issues initial administrative determination (July 1)										X						
NMFS Administrative Appeals (July 1 - Dec 31)																
Current allocations expire (Dec. 31)															X	
CDQ fisheries under new allocations can start (Jan 1)																X
<b>ALTERNATIVE 3 - Rulemaking</b>																
Submit proposed CDPs and allocation requests to Council (Oct. Y-2)	X															
Council reviews initial draft analysis (Feb, Year-1)					X											
Council sends draft analysis out for review (March 1)						X										
Council takes final action on allocations (April mtg)							X									
NMFS publishes proposed rule (July 1)										X						
End of comment period on proposed rule (August 1)											X					
Last day to publish final rule (December 1)															X	
Effective data of final rule, last day to sue NMFS (Jan 1)																X

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**4.2 Issue 2: Periodic or Long-Term CDQ Allocations**

Issue 2 provides the following alternatives and options for the length of time between allocations of CDQ among the CDQ groups:

Alternative 1: No Action. Continue to make periodic, competitive allocations among CDQ groups. The length of time between CDQ allocations would not be specified in NMFS regulations. The State of Alaska would announce the length of each allocation cycle prior to the start of the allocation cycle.

Alternative 2: Establish a fixed allocation cycle in regulation:

- Option 1: 2-year allocation cycle
- Option 2: 3-year allocation cycle (*as proposed by H.R. 553*)
- Option 3: 5-year allocation cycle
- Option 4: 10-year allocation cycle

Suboptions related to suspension and termination of CDQ allocations in mid-cycle that could apply under any option of Alternative 2.

Suboption 1: Allow the State to recommend reallocation of CDQ mid-cycle under extraordinary circumstances. The Council and NMFS would have to approve the State's recommended reallocation. (*Earlier drafts referred to this suboption as an "escape clause."*)

Suboption 2: Allow the State to recommend reallocation of CDQ mid-cycle following a three-step intervention process:

- Level 1 - advisory (State advises groups of serious concerns)
- Level 2 - State mandates the group to make changes
- Level 3 - consider CDQ reallocation

(*Earlier drafts referred to this suboption as an "escape clause."*)

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

(*The term "de-allocation" was used at the April Council meeting to describe this suboption.*)

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

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### Selecting the Preferred Alternative for Issue 2 (Relationship with Issue 1)

If the Council selected Alternative 1 as its preferred alternative under Issue 2, no changes would be needed to the BSAI FMP or NMFS regulations. Any option or suboption under Alternative 2 could be implemented by NMFS through a regulatory amendment, after completion of proposed and final rulemaking. However, Alternative 3 is a policy alternative that, if selected by the Council as the preferred alternative, would require further analysis before it could be implemented by NMFS. The impacts of each of the alternatives is presented in the following analysis.

The appropriate choice of alternatives under Issue 2 depends somewhat on the Council's preferred alternative for Issue 1. Issue 1 provides two alternatives for how CDQ allocations would be made in the future. Under Alternative 2, the State and NMFS would continue to make CDQ allocations through an administrative process. Under Alternative 3, the State, Council, and NMFS would make CDQ allocations through rulemaking.

Issue 2, **Alternative 1** would probably be appropriate only if CDQ allocations continue to be made by the State and NMFS through an administrative process. The State could continue to specify the length of time for the CDQ allocation cycle at the beginning of each cycle. However, if the Council selects Issue 1, Alternative 3, whereby CDQ allocations are made through rulemaking, then it would not be possible to have the State determine the length of the CDQ allocation cycle. Rulemaking would mean that the CDQ allocations for each CDQ group would be specified in NMFS regulations. These regulations would either have an expiration date (or "sunset date") or they would be implemented with no expiration date. In either case, new allocations would be made through a regulatory amendment at the time specified in the regulations or whenever the Council decided to initiate a new regulatory amendment. Therefore, if the Council selected Issue 1, Alternative 3 as its preferred alternative, it would not make sense to select Alternative 1 as a preferred alternative under Issue 2.

Issue 2, **Alternative 2** provides four options for specifying the length of time between CDQ allocations in NMFS regulations. This alternative could be selected as the preferred alternative for Issue 2 under either CDQ allocation process described in Issue 1. If CDQ allocations continue to be made through an administrative process, the length of the allocation cycle could be specified in NMFS regulations. If CDQ allocations are made through rulemaking, the selection of the appropriate length of the allocation cycle would be implemented as either a sunset date on the allocations in regulation or an indication of when the Council would consider revising the allocations through another regulatory amendment. As discussed later in the analysis of Alternative 2, a 10-yr allocation cycle is very similar in impacts to long-term fixed allocations (Alternative 3). It may be more appropriate to implement 10-year allocations through rulemaking rather than through the existing administrative process because rulemaking would provide for additional analysis of the impacts of long-term allocations and allow for more public input through the proposed and final rulemaking process.

Issue 2, **Alternative 3** would implement long-term allocations to the CDQ groups or communities. Under this alternative, we would no longer have "allocation cycles." Rather, once the CDQ allocations were established, they would not have an expiration date. If the Council wants to consider long-term fixed allocations, that it probably should develop these allocations through rulemaking as described in Issue 1, Alternative 3. Long-term fixed allocations should be implemented through rulemaking rather than through the existing administrative process, for reasons discussed in more detail in the following section analyzing Alternative 3.

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Table 4.3 summarizes the above recommendations about how the choice of preferred alternative under Issue 1 would affect the choice of preferred alternatives for Issue 2.

Table 4.3: Relationship between alternatives proposed under Issue 1 and Issue 2

	How does this affect the selection of the preferred alternative for Issue 2?		
Preferred Alternative Selected Under Issue 1 (Allocation Process) ↓	<u>Alternative 1</u> no action don't specify length of allocation cycle	<u>Alternative 2</u> 2-yr, 3-yr, 5-yr, or 10-yr allocation cycle	<u>Alternative 3</u> long-term fixed allocations
<u>Alternative 1</u> no action	NMFS recommends that the Council should not select Alternative 1 (no action) as the preferred alternative for Issue 1.		
<u>Alternative 2</u> improved administrative process	Ok	Ok, but may want to consider doing 10-yr allocations through rulemaking	Not recommended, should be done through rulemaking
<u>Alternative 3</u> allocations through rulemaking	Not applicable to implementing allocations through regs.	Ok, could be considered "sunset date" on regulations	Ok

**Alternative 1 - No action**

Alternative 1 would continue the process of making periodic, competitive allocations among the eligible CDQ groups. The CDQ allocation cycle is not fixed in the current Federal or State regulations related to the CDQ Program. The Federal regulations state that when a Community Development Plan expires, further CDQ allocations are not implied or guaranteed, and a qualified applicant must re-apply for further allocations on a competitive basis with other qualified applicants (50 CFR 679.30(a)). The NMFS regulations also specify that a qualified applicant may apply for CDQ and PSQ allocations by submitting a proposed CDP to the State during the CDQ application period selected by the State. While the NMFS regulations outline the requirements of the CDP, they do not address the allocation cycle or application period. The implication is that these issues must be addressed in State regulations.

State regulations describe the process conducted each time an application period is announced by the State (6 AAC 93.020). Under these regulations, the State is required to establish the application period by scheduling a deadline for receipt of proposed CDPs from qualified applicants and a projected timeline for review. The State is also required at that time to publish a notice that announces the CDQ application period, the allocation cycle, and the deadline for submitting a proposed CDP. The deadline of the proposed CDP cannot be less than 14 days after publication of this notice, and if the State subsequently decides to change the allocation cycle, the State must notify all applicants and eligible communities and publish notice of the change. The length of the allocation cycle is therefore not set in regulation, but may vary from year to year depending on the inclination of the State. In addition, should the State determine that the allocation cycle needs to be changed after the initial publication, the only requirement is that the State notify the applicants and publish the change.

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Since the implementation of the CDQ Program in 1992, the State has established allocation cycles on a one, two, or three-year basis, as shown in Table 4.1. The initial pollock CDQ allocation was for two years, 1992 (December) and 1993, with subsequent allocations made for the two-year cycles of 1994 through 1995 and 1996 through 1998. The halibut and sablefish CDQ allocations were made as part of the halibut and sablefish Individual Fishing Quota program, with the first allocation cycle occurring for three years from 1995 through 1997. The multispecies CDQ allocations, adding all remaining groundfish, prohibited species, and crab were implemented in 1998. The halibut and sablefish allocations expired at the end of 1997, so could be added in with the multispecies groundfish and crab allocation cycle in 1998 (for 1998 through 2000). However, pollock allocations had been made through the end of 1998 in the 1996 through 1998 allocation cycle, so they were not included in the first multispecies groundfish allocation cycle. In addition, the State recommended not including several species groups expected to be caught as incidental catch in the pollock fisheries in the three year multispecies groundfish allocation cycle. These species were arrowtooth flounder, squid, “other species” (sharks, skates, sculpin, and octopus), chinook salmon prohibited species, and non-chinook salmon prohibited species. These incidental catch species were allocated for one year in 1998 and then allocated together with pollock in one-year allocation cycles in 1999 and 2000. All CDQ species were allocated together for a two-year allocation cycle for the first time for 2001 and 2002.

Figure 4.1: Allocation cycles for Community Development Quota, 1992 to 2002

<b>Years</b>	<b># of Years</b>	<b>Species</b>
1992-1993	2	Pollock
1994-1995	2	Pollock
1996-1998	2	Pollock
1995-1997	3	Halibut and Sablefish
1998-2000	3	Halibut, Sablefish, Crab, Multispecies Groundfish and Prohibited Species (Except pollock, arrowtooth flounder, squid, “other species,” chinook salmon prohibited species, and non-chinook salmon prohibited species).
1998	1	Arrowtooth flounder, squid, “other species,” chinook salmon prohibited species, and non-chinook salmon prohibited species
1999	1	Pollock, arrowtooth flounder, squid, “other species,” chinook salmon prohibited species, and non-chinook salmon prohibited species
2000	1	Pollock, arrowtooth flounder, “other species,” chinook salmon prohibited species, and non-chinook salmon prohibited species
2001-2002	2	All CDQ species, including all groundfish, prohibited species, halibut, and crab (first time all species were in one CDP).

CDP = Community Development Plan

Development of a CDP is necessary to apply for the CDQ allocations within a given cycle. Thus, an understanding of this process is necessary to evaluate the impacts of the no action alternative versus other alternatives which lengthen the CDQ allocation cycle. Under the no action alternative, the allocation cycle would continue on a periodic basis, and at a minimum cover one year. Thus, the no action alternative could

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potentially result in the CDQ groups developing and submitting CDPs to the State on an annual basis. The CDQ allocation process is detailed in Section 3.0, as it is currently administered by the State. Under Federal regulations (50 CFR 679.30(a)), a complete proposed CDP must contain the following information:

1. **Community development information**, including project description, project schedule, employment, community eligibility, community support;
2. **Managing organization information**, including information on structure and personnel, management qualifications, legal relationships, board of directors;
3. **Business information**, including business relationships, profit sharing, funding, general budget for implementing the CDP, financial statement for the qualified applicant, organizational chart;
4. **Request for CDQ and PSQ allocations**;
5. **Fishing plan** for groundfish and halibut CDQ fisheries, including information on the eligible vessels and processors, sources of data or methods for estimating CDQ and PSQ catch; and
6. **CDQ planning**, including a plan and schedule for transition from reliance on CDQ allocations to self-sufficiency in fisheries.

The State has also developed regulations in accordance with the above Federal regulations governing the requirements of a proposed CDP. State regulations (6 AAC 93.025) require the following elements for inclusion in a CDP:

1. a statement that the applicant is qualified as defined in Federal regulations;
2. a statement as to whether the applicant is also the managing organization;
3. a statement that each community is eligible under Federal regulations;
4. a list of participating communities and supporting information;
5. a letter of support for each board member;
6. evidence that for each species allocation the applicant has not obligated further allocations to a third party;
7. evidence that the board of directors is constructed of 75% resident fishermen;
8. for a managing organization that will participate in the fishery but is not the applicant, a statement of support from the governing body of each community that the organization represents;
9. information regarding the particular benefits that an allocation under the CDP would generate for the region;
10. the applicant's existing and foreseeable business relationships;
11. a copy of investment policies that the applicant will follow;
12. a detailed description of each CDQ project
13. a milestone table that sets out specific and measurable objectives for each CDQ project; budgets;
14. a description of how the applicant plans to report financial and audit information to the State; and
15. any additional information the State finds necessary to determine whether to recommend approval of the proposed CDP.

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Developing and completing a CDP in accordance with the requirements above is a fairly demanding and involved task for the CDQ groups. Identifying, writing, and submitting the required information is estimated by NMFS under the Paperwork Reduction Act to take an average of 500 hours of each groups' time. Anecdotal evidence from the CDQ groups suggests that the development of a CDP can take up to twice as much time as is estimated by NMFS, depending on the group, the number of communities involved, and the complexity of the CDP. Some of the tasks necessary to develop a CDP include: attending and reviewing input from community meetings, developing a budget and related financial information, negotiating harvest agreements with harvesting partners, and writing and printing the CDP. Several of these tasks would be necessary for the group to harvest quota regardless of the requirement to submit a CDP, such as negotiating harvest agreements. However, the length of the allocation cycle and the requirement to submit a CDP for each cycle directly influences the frequency with which these tasks are performed. In addition, the CDQ groups accrue costs associated with the allocation process itself, such as attending the public hearing and private meetings with the State, attending the Council meeting, and revising the CDP based on State and/or Council recommendations. Thus, applying for CDQ allocations is a fairly rigorous and costly process.

Finally, the CDQ groups do not officially know the length of the allocation cycle until the notice has been published for the application period. The State is required to publish that notice within a "reasonable time" before an application period is to begin and not less than 14 days before the deadline for submission of the CDP. Given that the time and financial commitment necessary to completing a CDP is not insignificant, the length of the allocation cycle and the ability to plan in advance for developing a CDP in accordance with that cycle is an important consideration. Alternative 1 would continue to require the development of a CDP on a periodic basis (at most, annually) without establishing the allocation cycle in regulation.

### **Alternative 2 - Establish a 2, 3, 5, or 10-year allocation cycle in regulation**

Alternative 2 would fix the allocation cycle in State or Federal regulations, and under the proposed options, establish the cycle at two, three, five, or ten years. There are several benefits to this alternative as compared to the status quo. The primary benefit is that a fixed allocation cycle allows the CDQ groups the opportunity to plan ahead for the development of their CDPs and appropriate funds and distribute projects among the communities in the region more effectively. Establishing a foreseeable allocation cycle and enabling the groups to plan ahead for the time and cost involved in the development of the CDPs would allow the groups more stability in their development and potentially increase the efficiency of their operations.

The difference between the proposed options establishing the length of the allocation cycle poses a more difficult policy question. The CDQ Policy Committee originally identified this issue and there was general consensus among the CDQ groups that a change is desired to the current one or two-year cycle, based on the relative expense and burden associated with the development of a CDP. Most of the CDQ groups noted that implementing a CDP within a two-year period is fairly difficult, as a shorter cycle tends to force the group to act more conservatively, at times at the expense of a good investment for the communities in the region. If the length of the allocation cycle inhibits groups from investing in worthy, more long-term projects because of the limited time available to show the benefits of that investment in the CDP, the communities may not be realizing the full potential of the CDQ allocations.

**Option 1** would establish a two-year allocation cycle in regulation. Given the above concerns, two years may not be long enough to provide the groups with the stability and long-term investment cycle necessary to maximize the benefits of the CDQ allocations. In addition, if the Council selects Alternative 2 as the preferred alternative for Issue 1 (improved administrative process), a two-year allocation cycle would result in the CDQ groups, the State, and NMFS being engaged in some aspect of the allocation cycle every year.

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Under the schedule described in Section 4.1.3, new allocations would start in January of the year and the CDQ groups would have to start preparing new CDPs in the fall of that same year to prepare for the next allocation cycle.

**Option 2** would establish a three-year allocation cycle in regulation. This mirrors the proposal in H.R. 553, which would amend the Magnuson-Stevens Act with respect to implementation of the CDQ Program. Among other things, H.R. 553 would require that a CDP, if approved, would be effective for 36 months (except for CDPs that the Secretary approved before the 2001 fishing year—these shall expire on December 31, 2003). The purpose of the provision is to establish an allocation cycle that is adequate to allow the communities within the CDQ groups relative stability and reasonable expectations for the CDP, without establishing a permanent, or long-term, allocation.

While a longer allocation cycle would allow the groups more stability and investment options, there are some concerns with fixing the allocations for a period of three years or longer. The State has recommended establishing a two-year cycle, based on the contention that a shorter cycle is appropriate to keep the groups accountable for their actions and the milestones identified in the CDPs. If the allocations are only effective for two years, the groups have an inherent incentive to meet the milestones and performance standards identified in the CDP, in order to improve or maintain their allocations in the next cycle. A shorter allocation cycle gives the State and NMFS the ability to reward or sanction a group's performance in a more timely manner. A longer allocation cycle may lower a group's incentive to hold rigorously to the milestones in the CDP or make improvements in performance as recommended by the State or NMFS.

A second concern with extending the allocation cycle is that it will inhibit the State's and NMFS' ability to make adjustments to the CDQ allocations in a timely manner if unforeseen events change a group's ability to harvest their entire allocation. There are concerns that biological or other circumstances external to the program may necessitate a change in the allocations, and a longer allocation cycle does not allow for these adjustments. One example is an unanticipated closure in a fishery that is relevant to a particular group's ability to harvest their allocation of a species. For example, the crab CDQ is allocated based on projected royalty returns, but specific species are allocated to the CDQ groups based primarily on the communities' proximity to the fishery. In 1999, CBSFA received a large allocation of opilio and less quota for other crab species. When the opilio fishery crashed soon afterward, CBSFA suffered a serious loss of income not shared by other groups. This unanticipated loss was corrected during the next allocation cycle by reallocating other species to CBSFA.

The ability to react to such situations is weakened under a long-term allocation cycle. Changing the allocations mid-cycle would be extremely difficult and could substantially disrupt the CDQ groups' operations and projects. The annual allocations to the CDQ groups necessarily add up to 100% of the CDQ reserve. As a result, if one group's CDQ is increased mid-season, another group's CDQ must decrease to compensate for that change. While the current CDQ regulations provide for transfers of CDQ allocations among groups within an allocation cycle, use of the transfer provision would only occur if the CDQ group giving up the quota is willing to do so.

**Option 3** extends the allocation to 5 years and intensifies the benefits and costs associated with a longer allocation cycle. For instance, establishing a 5-year allocation cycle would greatly reduce the administrative and financial burden on the CDQ groups. However, because the only practical mechanism to adjust the CDQ allocations is the allocation process, it would also lessen the control of the State and NMFS to hold the CDQ groups to their milestones and the performance standards on an annual basis. In addition, should

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circumstances arise external to the program that affect a group's ability to harvest their allocation, a longer allocation cycle may negatively impact these groups due to the inherent difficulty in making changes mid-cycle.

**Option 4** would extend the allocation cycle to ten years. For all practical purposes, this option represents a long-term allocation, and thus would have impacts similar to those discussed under Alternative 3. The main concern expressed with extending the allocation cycle to ten years is that it would reduce the incentive inherent in a shorter cycle for the groups to meet the milestones and performance standards identified in the CDPs. While the State and NMFS would retain the ability to adjust the allocations during the next cycle (or at any time if a group was seriously misusing their allocations through fraud, dishonesty, etc.), a longer cycle removes the government influence from the process for a relatively substantial period of time. Relatedly, a longer cycle also makes it more difficult for the State and NMFS to make adjustments to the CDQ allocations in a timely manner if unforeseen events change a group's ability to harvest their entire allocation.

The potential negative impact expressed above may be a positive impact for some of the CDQ groups. Some of the groups contend that it would benefit the groups and the program to eliminate the periodic, competitive allocation process and to replace it with long-term allocations. They contend that it is very difficult for the State and NMFS to evaluate the groups effectively and fairly, as some of the criteria used in the allocation process are inherently conflicting, and the groups may legitimately focus on different aspects of the program (providing employment to communities versus maximum financial return). By limiting the allocation cycle, they also limit the ability of the government to insert its public policy agenda within the context of the CDQ allocation process. In addition, a longer allocation cycle would provide the groups with the certainty and stability necessary to invest in long-term projects and allow them to plan for future investments more effectively. Reducing the frequency of the allocation process would likely increase the groups' relative stability once the allocations have been made.

However, it is important to note that, just as occurs in the periodic allocation process, some groups will be satisfied with their allocations and some will not. Yet because the allocations would be in place for ten years under Option 4, as opposed to the current one, two, or three-year allocations, those groups that are dissatisfied with their allocations will perceive even greater negative impacts than they would under the status quo. Groups that show progress toward meeting their milestones, or recover from a project which was not initially successful, may be increasingly frustrated by the inability to change their allocations for several years. This may work to the disadvantage of some groups in the future, and may also result in an increased number of appeals.

In addition, the economic value of the CDQ species is a major consideration in allocations. At this time, allocations of pollock, Pacific cod, and crab contribute the most to CDQ royalties and, therefore, are among the most important allocations to the CDQ groups. The value of these allocations could change significantly over a ten year period as quotas available for harvest change due to biological, environmental, or legal circumstances or market conditions change for the CDQ species. If the value of a particular CDQ species changes significantly, the Council could expect requests for reconsideration of the allocations. In fact, the potential for changes in the value of the CDQ species is one of the reasons cited by the State of Alaska under Suboption 1 for an "escape clause" to allow for a mid-cycle reallocation process (discussed in more detail below). The longer the CDQ allocation cycle, the more likely that the fisheries and the value of the CDQ species will change and a reallocation process will be proposed. A "reallocation" requires almost the same process as an initial "allocation," except that it involves taking quota that has already been allocated to a group rather than allowing allocations to expire and starting a new allocation cycle. Thus, a reallocation

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process may be more difficult and controversial, in that it would require taking quota from groups that have based their business decisions on the privilege to harvest that quota for the duration of the allocation cycle.

Finally, a ten-year cycle would substantially reduce the administrative costs of the CDQ groups, as they would not be required to develop a CDP as frequently. These costs vary by CDQ group and the complexity of the projects and financial investments undertaken in a given cycle, but recall that the groups have estimated it requires upwards of 1,000 hours to develop a CDP. While several of the tasks included in this estimate would be necessary to harvest quota regardless of the requirement to submit a CDP, the length of the allocation cycle and the requirement to submit a CDP for each cycle directly influences the frequency in which these tasks are performed. Combined with the costs accrued by participating in the allocation process itself, applying for CDQ allocations is a fairly rigorous and costly process. Requiring this process once every ten years may substantially reduce the administrative costs to the groups and other participants in the CDQ allocation process. These issues are discussed more thoroughly under Alternative 3.

In sum, a ten-year cycle is very similar to the long-term allocations proposed under Alternative 3. The primary difference is that a ten-year cycle would have an anticipated endpoint, but would not eliminate the allocation process altogether. Upon termination of the ten years, a new cycle would commence, subject to all of the CDP evaluation requirements stated in regulation. Under Alternative 3, the allocation cycle is effectively eliminated, and either the allocations to each group or the method to determine those allocations would be fixed in regulation. Thus, there would not be a predetermined point at which the State and NMFS would re-evaluate the allocations, and any changes to the allocations would require a regulatory amendment.

Rulemaking may be a more appropriate way to establish CDQ allocations for periods as long as ten years. The Council could select as preferred alternatives Issue 1, Alternative 3 and Issue 2, Alternative 3 and proceed with a more thorough analysis of issues unique to long term allocations. These issues are described in more detail below under Alternative 3.

### **Alternative 2 - suboptions related to suspension or termination of CDQ allocations**

Alternative 2 includes the following three suboptions related to suspension and termination of CDQ allocations in mid-cycle that could apply under any option of Alternative 2.

Suboption 1: Allow the State to recommend reallocation of CDQ mid-cycle under extraordinary circumstances. The Council and NMFS would have to approve the State's recommended reallocation. (*Earlier drafts referred to this suboption as an "escape clause."*)

Suboption 2: Allow the State to recommend reallocation of CDQ mid-cycle following a three-step intervention process:

- Level 1 - advisory (State advises groups of serious concerns)
- Level 2 - State mandates the group to make changes
- Level 3 - consider CDQ reallocation

(*Earlier drafts referred to this suboption as an "escape clause."*)

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

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“Suspension” means that a CDQ group would be prohibited from harvesting an allocation that had been approved by NMFS, but that these allocations would not be re-allocated to another CDQ group. The term “de-allocation” that was used at the April 2002 Council meeting with regard to Suboption 3 refers to suspension of CDQ allocations. “Termination” means that an allocation made to a CDQ group would be taken from that CDQ group and allocated to another group. The term “escape clause” used by the CDQ Policy Committee and in earlier drafts of this analysis in Suboptions 1 and 2 referred to termination of CDQ allocations.

If all affected CDQ groups agree to the State’s recommended reallocations of CDQ, these reallocations could be accomplished voluntarily under existing regulations governing the transfer of CDQ and PSQ allocations (50 CFR 679.30(e)(1) and (e)(3)). The CDQ groups and the State would submit transfer amendment documents requesting a transfer of CDQ allocation from one group to another.

If the affected CDQ groups do not agree with the State’s recommended reallocations, then the reallocations would have to be considered through an administrative or regulatory process. The process used to suspend or terminate CDQ allocations would depend, in part, on the preferred alternative that the Council selects for Issue 1 (process for making CDQ allocations). If the Council selects Issue 1, Alternative 2, an improved administrative process, the reallocation of CDQ mid-cycle would follow an administrative process established in Federal regulations. If the Council selects Issue 1, Alternative 3 under which the Council makes CDQ allocations through rulemaking, then reallocation of CDQ mid-cycle would have to be done through a regulatory amendment. The following discussion of the suboptions assumes continuation of an administrative process for making CDQ allocations.

Current CDQ regulations provide for both suspension and termination of CDQ allocations with the following requirements (50 CFR 679.30(h)):

*(h) Suspension or termination of a CDP.*

*An annual progress report, required under paragraph (g)(1) of this section, will be used by the State to review each CDP to determine whether the CDP, CDQ, and PSQ allocations thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:*

*(1) If the State determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.*

*(2) If the State recommends to NMFS that an allocation be decreased, the State's recommendation for decrease will be deemed approved if NMFS does not notify the State in writing within 30 days of receipt of the State's recommendation.*

*(3) If the State determines that a CDP has not successfully met its goals and objectives or appears unlikely to become successful, the State may submit a recommendation to NMFS that the CDP be partially suspended, suspended, or terminated. The State must set out, in writing, the reasons for recommending suspension or termination of the CDP.*

*(4) After review of the State's recommendation and reasons thereof, NMFS will notify the Governor, in writing, of approval or disapproval of the recommendation within 30 days of its receipt. In the*

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*case of suspension or termination, NMFS will publish notification in the Federal Register, with reasons thereof.*

**Revisions needed to current regulations:** Some aspects of the current regulations need to be revised regardless of the Council's recommendations on the suboptions. Specifically, the regulations must be revised to reflect that suspension or termination of CDQ allocations would be an administrative determination by NMFS and that the CDQ groups involved would be allowed an opportunity to appeal NMFS's initial administrative determination on any changes in CDQ allocations. The requirements for this administrative process would be similar to the requirements for reviewing and approving CDQ allocations described in Issue 1, Alternative 2. The primary revision that is needed in the current regulations relates to paragraph (h)(2) which states that a decision to reduce a CDQ allocation could be considered approved if NMFS does not respond to the State's recommendations. This provision does not require NMFS to review the State's recommendations, issue a written administrative determination, or allow for appeals from the affected CDQ groups. In addition, the 30 day period for review of the State's suspension or termination recommendations may not provide sufficient time for NMFS's administrative determination process and appeals. NMFS also recommends removing the requirement to publish a notice in the Federal Register about suspension or termination of a CDQ allocation. NMFS is not required to publish a notice in the Federal Register about an administrative determination. Such notice currently is not required for the initial CDQ allocations, and obtaining approval to publish a notice in the Federal Register is a time-consuming process because it requires review through NMFS, NOAA, and the Department of Commerce.

**Suboption 1** would allow the State to recommend reallocation of CDQ mid-cycle under extraordinary circumstances. This suboption was recommended by the CDQ Policy Committee at its May 2001 meeting based on a suggestion by the chairman and additional information provided by the State of Alaska. Examples of extraordinary circumstances that the State thought might justify reallocation of CDQ mid-cycle, include (1) changes in the communities eligible for the CDQ Program, (2) complete failure of a CDQ group to meet the goals and milestones in its CDP, and (3) significant changes in biological or economic conditions in the CDQ fisheries. The CDQ Policy Committee recommended that the Council and NMFS be required to approve the State's recommended reallocation. The suboption was described as an "escape clause," which means that it would allow for the termination of a CDQ allocation for one CDQ group and reallocation of that quota to another CDQ group.

Under Suboption 1, the State would provide a written recommendation for termination of a CDQ allocation to a particular CDQ group and the reallocation of that CDQ to one or more other CDQ groups. The State's recommendations would be required to include a written rationale that explains the circumstances that lead the State to recommend termination and reallocation of CDQ. The rationale would be required to present facts about both the extraordinary circumstances and, if related to the complete failure of a CDQ group, must include a detailed description of the financial or managerial problems that have occurred and explain why these problems are so serious as to warrant reallocation of CDQ before the current allocation cycle ends. The State's recommendations must be consistent with any relevant NMFS regulations, including any specific requirements for suspension and termination of CDQ allocations. In addition, the State's recommendations must be consistent with the purpose of the CDQ Program. These are the same requirements that apply to the State's recommendations on initial CDQ allocations.

Suboption 1 includes the words "extraordinary circumstances," but does not define specific circumstances that the State would be limited to using as a reason for termination of CDQ allocations. This would allow the State to define any circumstances as extraordinary as long as it provided an adequate justification.

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Therefore, the addition of the term “extraordinary circumstances” to the regulations without further definition or limitation probably would not change the application of the regulations very much. Under both current regulations and suboption 1, the State would be unlikely to recommend termination and reallocation unless something significant or “extraordinary” had occurred.

One of the main differences between Suboption 1 and the current regulations is the requirement that the Council “approve” the State’s recommendations for termination and reallocation of CDQ. Current CDQ regulations require Council consultation for initial CDQ allocations, but they do not require either consultation or approval for suspension or termination of CDQ allocations. If the regulations were revised to require Council approval, this would mean that the Council would be required to consider the State’s recommendations for termination and reallocation at a Council meeting, take public testimony, and vote to either approve or disapprove the State’s recommendations. The suboption is not clear about what would happen if the Council did not “approve” the State’s recommendations. Analysts assume it intends that without Council approval, the State would not be allowed to submit their recommendations to NMFS. Council consultation, on the other hand, would allow the Council to raise questions or express concerns about the State’s recommendations, but would not prevent the State from submitting its recommendations to NMFS for review without the Council’s explicit approval of those recommendations.

**Suboption 2** would allow the State to recommend reallocation of CDQ mid-cycle following a three-step intervention process:

- Level 1 - advisory (State advises group by letter of its concern)
- Level 2 - State mandates the group to make changes
- Level 3 - State may recommend reallocation of CDQ

The term “escape clause” also was used to describe the termination and reallocation of a CDQ allocation under Suboption 2. The reasons for allowing the State to recommend termination and reallocation of CDQ under extraordinary circumstances, are the same as those described under Suboption 1. Suboption 2 differs from Suboption 1 in that it would require the State to take two specific steps before it recommended termination and reallocation of a CDQ allocation. First, the State would be required to advise the CDQ group in writing of any performance problems that the State thought might warrant termination of the groups CDQ allocation. In response to the advisory letter, the CDQ group could respond in writing to provide additional information that the State may not have been aware of or the CDQ group could take action to address the State’s concerns. Analysts assume that the CDQ group would be provided a reasonable amount of time to respond to the State’s advisory letter. The second level of intervention would require the State to send another letter to the CDQ group that provided a list of things that the CDQ group would be required to do. Again, the CDQ groups would be provided a reasonable amount of time to respond to the State’s requirements. If, after both letters, the CDQ group did not correct the problem identified by the State, the State could recommend termination and reallocation of the CDQ.

The State’s recommendations for termination and reallocation of CDQ under Suboption 2 would follow the same process described above for Suboption 1. Most of the comments in the preceding section apply to Suboption 2. The State would be required to provide a written rationale for its recommendations to terminate and reallocate CDQ that complied with NMFS regulations and was consistent with the purpose of the CDQ Program. A decision by NMFS to terminate a CDQ allocation under Suboption 2 would be an administrative determination subject to appeal by the CDQ group.

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One difference is that Suboption 2 did not specify whether the State would be required to consult with the Council or obtain Council approval for its recommendations prior to submitting them to NMFS. Absent any specific requirements in the suboption, current regulations would remain the same on this element and no consideration of the State's recommendations by the Council would be required.

The three step intervention process described in Suboption 2 appears to be applicable mainly to performance problems by a CDQ group and is probably not applicable to all events that the State would consider "extraordinary circumstances." For example, it may not make sense to send advisory letters and letters specifying certain performance requirements to the CDQ group if the extraordinary circumstance involves a significant change in the biological or economic conditions in a fishery, because they CDQ group cannot control these events.

A short allocation cycle (e.g. 2 years or 3 years) may not provide sufficient time for a performance problem to develop, for the two steps required before the State may recommend reallocation, and for the administrative process that must occur for NMFS to approve a termination and reallocation. Suboption 2, with its two required intervention steps, likely would require a longer administrative process than current regulations, Suboption 1, or Suboption 3.

**Suboption 3** would allow the State to recommend suspension of CDQ allocations mid-cycle under extraordinary circumstances. Suspension would mean that the CDQ group would not be allowed to harvest its CDQ allocation, but that the allocation would not be taken away permanently from the group and allocated to another group. The CDQ allocations could be reinstated to the CDQ group under certain conditions specified in the State's recommendations for suspension. The term "de-allocation" was used at the April Council meeting to describe this suboption. The Council and NMFS would have to approve the State's recommendation for suspension of a CDQ allocation.

In focusing only on suspension of CDQ allocations, it is unclear whether Suboption 3 would require removing the option the State currently has to recommend termination and reallocation of CDQ mid-cycle.

Under Suboption 3, comments above about the required administrative process also would apply. The State would be required to provide a written rationale for its recommendations to terminate and reallocate CDQ that complied with NMFS regulations and was consistent with the purpose of the CDQ Program. A decision by NMFS to terminate a CDQ allocation under Suboption 3 would be an administrative determination subject to appeal by the CDQ group.

Current CDQ regulations already allow the State to recommend suspension of CDQ allocations and do not require the reallocation of this quota. However, analysts believe that, if the State recommended suspension of CDQ allocations without reallocation to another CDQ group, the State would be required to address how this recommendation was consistent with the MSA. Specifically, National Standard 1 requires the Council and NMFS to prevent overfishing while providing for optimum yield from a fishery. Deliberately not allowing the harvest of some amount of the total allowable catch could be interpreted as inconsistent with providing for optimum yield from the CDQ fisheries.

### Comments applicable to all three suboptions

The administrative process in all three of the suboptions, and in the current regulations, will take time. First, if the extraordinary circumstance is a performance problem by a CDQ group, there must be time for the

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problem to develop to the point that the State feels it cannot be remedied without suspension or termination of an allocation. It seems likely that this period of time would be at least six months. Then, the State must develop its written recommendations, obtain Council approval, and submit the recommendations to NMFS. Under suboptions 1 and 3, this is likely to take at least two or three months, depending on the timing of the next Council meeting. Finally, NMFS would need time to review the State's recommendations, issue an initial administrative determination, and allow the affected CDQ groups the opportunity to appeal. Although this process does not have to be as lengthy as the initial allocation process, it could take up to a year to complete the process. If the CDQ allocation cycle is short (2-years, 3-years), then it appears unlikely that suspension and termination of CDQ allocations would occur very often. However, if the CDQ allocation is longer (5-years or 10-years), it is much more likely that financial or managerial performance problems or external circumstances would change enough to warrant the State recommending changes in CDQ allocations.

### **Alternative 3 - Long-term allocations**

Under Alternative 3, the periodic competitive CDQ allocation process would be replaced with long-term fixed allocations. Alternative 3 is a policy alternative presented in this analysis to provide contrast with Alternatives 1 and 2, which would continue the periodic, competitive allocation process. This alternative provides the Council with the option of pursuing a completely different approach to making CDQ allocations. However, if the Council selects Alternative 3 as a preferred alternative, NMFS could not proceed directly to implementation based on this analysis. Further analysis of Alternative 3 would be required to address issues including (1) selecting specific alternative fixed allocations to analyze, (2) the social and economic impacts of each alternative allocation, (3) the impacts of making long term allocations to eligible CDQ communities or to CDQ groups, and (4) the aspects of government oversight that would be necessary under long term fixed allocations.

There has been some confusion regarding the issue of allocating to eligible CDQ communities versus CDQ groups. The Magnuson-Stevens Act specifies that the Council 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*. The MSA further indicates the eligibility criteria for CDQ communities, but does not mention the CDQ groups. The CDQ groups were created under Federal regulations, defined as "a qualified applicant with an approved CDP," as an effective way to organize individual communities on a regional basis in order to receive the benefits from the quota. A "qualified applicant" is defined as a local fishermen's or economic development organization that represents an eligible community or communities, is incorporated under State or Federal law, and has a board of directors composed of at least 75% resident fishermen of the community or group of communities (50 CFR 679.2). In practice, a CDQ group board of directors is composed of at least one representative from each CDQ community or tribal government; the community governing body joins a CDQ group by providing a representative on the board.

Thus, while the MSA mandates the creation of the CDQ Program, it does not clarify how the CDQ Program should be established and structured. The Federal government, under the authority granted in the MSA, established the program and determined that allocations of CDQ were to be made to the CDQ groups (50 CFR 679.30(a)). The individual communities remain the core of the CDQ Program, but the groups are the designated applicants that represent an eligible community or group of communities. Long term allocations could be made either to the existing CDQ groups or to the individual eligible communities. The impacts of either of these alternatives would need to be analyzed in any further analysis of Alternative 3, if it is selected as a preferred alternative by the Council. However, the following discussion of the potential impacts of Alternative 3 assumes that the long-term allocations would be made to the CDQ *groups*, as is currently the

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practice under the periodic allocation cycle.

There are two interpretations regarding how this alternative could be implemented in regulation. One interpretation is that the *allocations* to individual groups would be established in regulation and thus a regulatory amendment would be necessary to change the allocations in the future (consistent with Issue 1, Alternative 3). Another interpretation is that the *method* for determining the allocation to each group would be established in regulation (and not the allocations to each group), thus the action would not require a regulatory amendment should a new CDQ group become eligible in the future (consistent with Issue 1, Alternative 2). A regulatory amendment would only be necessary should the Council want to modify the method.

### ***Primary Impacts of Alternative 3***

The CDQ Program was purposefully designed so as not to permanently allocate quota to the groups. It was created with the inclusion of substantial government oversight to ensure that the allocations of a public resource were being used to achieve certain desirable social and economic goals (DCED 2000). The State has raised a concern that fixed and permanent allocations to each group, as proposed under Alternative 3, would more closely resemble an entitlement program, which was not the original intent of the Council's action. In addition to the advantages and disadvantages discussed under Alternative 2, a more permanent, long-term allocation to each CDQ group under Alternative 3 has several policy implications.

The primary effect of Alternative 3 is that it would significantly lessen the control of the State and NMFS to hold the CDQ groups to their milestones and the performance standards identified in their CDPs. The CDQ Program was specifically designed so that allocations of CDQ and PSQ represent harvest privileges that expire upon expiration of the CDP. Thus, when a CDP expires, further CDQ allocations are not implied or guaranteed. Federal regulations state that a qualified applicant must re-apply for further allocations on a competitive basis with other qualified applicants (50 CFR 679.30(a)). This was in part to account for anticipated adjustments to the allocations over time, as additional communities qualify and the circumstances of the groups' operations change. It was also intended as a way to minimize potential mismanagement of the CDQ allocations and induce better performance. A permanent allocation under Alternative 3 would negate the need for the allocation process, and thus substantially reduce the government's ability to enforce the standards and goals set out for the CDQ Program.

Likewise, it is important to note that while some groups will likely be satisfied with their allocations and thus benefit from the overall stability of receiving a long-term, stable allocation, others will likely not be satisfied. In that case, the benefit of a long-term allocation can become a disadvantage, as some groups will perceive even greater negative impacts than they would under the status quo. CDQ groups that are dissatisfied with their allocations and do not have a periodic mechanism by which to show that they deserve a higher allocation may feel stymied in spite of efforts to improve their performance. This may work as a further disincentive to show progress toward meeting the milestones identified in the CDPs. This alternative may also result in an increased number of appeals, since each group will have more at stake in a ten-year allocation cycle than in a shorter cycle.

The argument in favor of a long-term allocation to each CDQ group is premised on the difficulty associated with fairly evaluating the CDQ groups in the allocation process, and the assertion that it would benefit the groups to eliminate this periodic, competitive process. It is currently very difficult to evaluate the different groups fairly and objectively, and there exists a strong contention that it is not possible to balance all of the varying characteristics of the CDQ groups to the satisfaction of each group. A typical example is the

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evaluation of a group's project that is focused on providing employment opportunities in locally-based fisheries versus that of a group that is focused on maximizing their financial return. These two objectives may be conflicting at times, and yet both are criteria for final evaluation of the CDPs in the current State regulations. These competing objectives may make it difficult to make comparisons across the groups to measure relative success and ultimately to allocate quota competitively based on these evaluations.

While the NRC did not recommend eliminating the allocation process altogether, it did note the possibility that the competitive framework established by the State to allocate quota at each allocation cycle could work to preclude cooperation among the groups (NRC 1999, p. 71). Alternative 3 would eliminate the need for the allocation process and thus eliminate the primary competitive aspect of the CDQ Program, which may result in a more cooperative and effective working environment among the groups. A second benefit relates to cost savings. Without an allocation process, both the CDQ groups and the agencies would reduce or eliminate costs associated with developing the CDPs and the requirements of the allocation process, respectively. Staff assumes that the groups' activities would continue to be subject to annual audits in order to ensure that they are meeting the goals and intent of the program but that developing and maintaining the CDPs would be left to the discretion of the CDQ groups.

A related benefit of long-term allocations is that it would provide the groups with the stability and certainty to plan for future projects more effectively. The ability to count on a relatively stable allocation in the future (subject to annual changes in the total allowable catch and CDQ reserves), would allow the groups to undertake longer-term projects without being in the position of risking their allocations in the short-term. This may ultimately benefit the groups as they are able to expand their investment opportunities.

The level of stability gained by this alternative, however, depends on the interpretation of the issue discussed at the beginning of this section. There are two ways this alternative could be implemented in regulation: 1) establish the *allocations* to individual groups in regulation, or 2) establish the *method* for determining the allocation to each group in regulation. If the actual allocations to each group are published in Federal regulations, staff assumes that this would either preclude new groups from forming, or that a regulatory amendment would have to be approved to re-establish the allocations upon the inclusion of any newly eligible CDQ group. If only the *method* is published in Federal regulations, this may negate the main purpose of the long-term allocations to promote stability and long-term planning among the groups. Meaning, if newly-formed CDQ groups become eligible, it would be cause for adjusting the overall allocations to each group (necessarily decreasing the allocations to the existing groups). Thus, depending on the alternative chosen to allocate the quota, and unless this alternative "locks in" the existing CDQ groups in regulation and prevents the formation of new groups, there may be an incentive for individual communities to form their own CDQ groups and "splinter" from their existing groups. These issues would be analyzed in detail in a subsequent regulatory amendment should the Council prefer Alternative 3.

Finally, if a long-term allocation approach is preferable, it may be appropriate to also consider Federal regulations that would significantly reduce or eliminate the oversight and program administration responsibilities of the government. Government oversight is currently justified on the basis that it is the government's responsibility to ensure that the benefits of the CDQ Program are being realized by residents of the eligible communities. Alternative 3 would virtually eliminate the CDQ allocation process and thus substantially change the role of government oversight.

Another possible option is to combine a standard program review with this alternative. Requiring a program review sometime within the allocation cycle could help ensure that the CDQ groups and the program itself

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continue to meet the goals and intent outlined by the Council. In this sense, the review could entail the same elements of the CDP review process and provide a mechanism for modifying the allocations. While not necessarily the outcome, a program review could conclude that a reallocation is necessary, and a regulatory amendment to that effect could follow. Regardless of the mechanism applied, it is clear that selection of this alternative would drastically reduce the oversight role of government and would necessitate evaluating the level of government oversight that would be appropriate. The oversight responsibilities of the government are addressed in Issue 3.

### CDQ Policy Committee Recommendation on Issue 2

The committee recommended Alternative 2, Option 2, to establish a fixed allocation cycle of three years, with an escape clause to be developed so that in extraordinary circumstances the State could recommend and implement a mid-cycle change to an allocation, upon approval of the Council (Suboption 1).

The motion passed with two objections (Moller, APICDA and Asicksik, NSEDC). NSEDC objected with the concern that the groups would not be involved in the decision to implement a mid-cycle allocation change. APICDA favored a permanent allocation (Alternative 3) to each individual group.

### **4.3 Issue 3: Role of Government in Oversight**

The purpose of Issue 3 is to determine whether to add to the BSAI FMP a more specific statement of the role of government in administration and oversight of the economic development aspects of the program. If this information were added to the BSAI FMP, it would provide a statement of the Council's intent with regard to the role of government as well as guidelines for NMFS and the State about appropriate regulations, policies, and day-to-day communications with the CDQ groups. NMFS recommended that this issue be included in the analysis to directly address concerns expressed by several CDQ groups that the State's oversight of the administration and economic development aspects of the CDQ Program is, at times, beyond the scope of its responsibility and authority (see Appendix A: CDQ Policy Committee minutes, page 5).

Issue 3 does not specifically address the government's role in the CDQ allocation process, which is addressed under Issue 1 (CDQ allocation process) and Issue 5 (evaluation criteria), nor does it address the government's role in management of the CDQ fisheries, which is not addressed in this analysis. Two alternatives are considered:

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

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

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

1. Ensure community involvement in decision-making;
2. Detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest;
3. Ensure that internal investment criteria and policies are established and followed;

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4. Ensure that significant investments are the result of reasonable business decision, i.e., made after due diligence and with sufficient information to make an informed investment decision; and
5. Ensure that training, employment, and education benefits are being provided to the communities and residents.
6. Ensure that the CDQ Program is providing benefits to each CDQ community and meeting the goals and purpose of the program.

The appropriate role of government depends on the type of CDQ allocations being made. The alternatives addressed in Issue 3 are appropriate if NMFS continues to make periodic, competitive allocations among CDQ groups. If the program is modified, however, so that a long-term allocation is made to the CDQ groups, these alternatives may no longer be appropriate. In that case, it may be necessary to re-evaluate the role of government altogether and possibly reduce the oversight responsibilities of NMFS and the State. This issue is discussed in more detail under Issue 2, which pertains to the decision of periodic versus long-term allocation cycles.

Note also that this issue focuses on the interests being served by general government involvement in the CDQ Program; it does not differentiate between Federal and State responsibilities within that role. By clearly identifying the reasons for government oversight, it will be easier to determine the appropriate government role and the division of responsibility between NMFS and the State. Defining the respective roles of NMFS, the State, and the Council in the CDQ allocation process is addressed under Issue 1. A specific aspect of government oversight, namely whether government oversight should extend to the activities of the businesses that the CDQ groups own, is addressed under Issue 6.

### **Alternative 1 - No action**

The no action alternative (**Alternative 1**) would continue the CDQ Program under the existing language in the BSAI FMP and Federal regulation. However, deciding not to add specific text to the FMP about the role of government in administration and oversight wouldn't necessarily leave things exactly as they are, because the Council's preferred alternatives under the other issues considered in this analysis will change some aspects of the CDQ Program and may increase or decrease the government's role and responsibilities for various aspects of the CDQ Program.

As discussed previously in Section 2.0, the FMP explicitly states that the CDQ Program is a joint program of the Secretary of Commerce and the State of Alaska. The FMP language does not expand the role of the Federal government beyond that described in the Magnuson-Stevens Act. The MSA requires that the Council and NMFS establish the CDQ Program and allocate a portion of the quotas from the Bering Sea fisheries to the program. The MSA does not, however, instruct the Secretary to allocate CDQ to eligible communities or to CDQ groups, nor does it contain requirements about how allocations of quota to the eligible communities should be made. Consistent with the MSA, the FMP states that NMFS shall hold the designated percent of the annual total allowable catch of groundfish for each management area in the BSAI for the western Alaska community quota. The FMP explicitly identifies the State of Alaska as responsible for recommending communities to receive a portion of the reserve, after the Governor approves a fisheries development plan for eligible communities. The Secretary of Commerce has final approval authority over the Governor's recommendations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **4. *Ensure that significant investments are the result of reasonable business decision, i.e., made after due diligence and with sufficient information to make an informed investment decision***

*Please see number three.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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### NMFS Recommendations on Alternative 2:

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

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

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

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

The MSA currently does not include a statement of the goals and purpose of the CDQ Program, other than to provide benefits to the eligible communities. However, NMFS regulations do include the following statement of the goals and purpose of the CDQ Program at 50 CFR 679.1(e):

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

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

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

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

### KPMG Comments on Role of Government in Oversight

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

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

*{KPMG provided the following information.}*

### **Fraud Detection Through Financial Audits**

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

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

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Examples of the risk factors considered are:

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

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

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

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

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

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

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### **Types of Fraud**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **KPMG Fraud Survey**

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

Some of the top steps in fraud prevention are:

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

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

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

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

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

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

### **Fraud and Government Oversight**

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

#### Annual financial audits

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

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

### Understanding of CDQ group structure

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

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

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

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

*(End of KPMG comments)*

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

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

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**4.4 Issue 4: CDQ Allocation Process - Type of Quotas**

**Alternative 1:** No Action. CDQ and prohibited species quota are specified by species, area, and gear type (halibut and sablefish). Each CDQ group is eligible to receive a percentage allocation of each CDQ or PSQ reserve as recommended by the State of Alaska and approved by the Secretary. The State decides how to balance demographic or socioeconomic factors with performance criteria.

**Alternative 2:** Establish a separate foundation quota

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

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

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

Option 1: Foundation quota: 50% of the CDQ reserve is divided equally among the CDQ groups. The remaining 50% of the quota is allocated competitively among the CDQ groups.

Option 2: Foundation quota: 1% is allocated to the CDQ group for each community represented by the group. The remaining quota is allocated competitively among the CDQ groups.

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

Suboption 1: Foundation quota applies only to a portion of the pollock allocation as described in Options 1 - 3. The remaining pollock quota and the quota for all other species would be allocated competitively among the CDQ groups.

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

**Alternative 1 - No action**

Alternative 1 would continue the current, competitive process to allocate the CDQ reserve to the CDQ groups. As stated previously, 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 BSAI FMP for all other groundfish and prohibited species (7.5%, except for 20% for fixed gear sablefish), and Federal regulations for halibut (20 - 100%). Under current regulations, the State recommends the percentage of each CDQ reserve that should be allocated to each of the six CDQ groups, with no group receiving more than 33% of the overall CDQ allocation. The State makes the allocation decisions after reviewing the groups' CDP applications, holding a public hearing to resolve questions, and meeting privately with each group. The recommendations are presented to the Council at the December meeting, and any group can formally testify

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on the initial allocation recommendations at that time. Upon approval by the Council, the recommendations are forwarded to NMFS and the Secretary of Commerce.

A detailed description of the allocation process is provided in Section 3.0, including a description of how the State evaluates a CDP using the existing criteria provided in State regulations. Generally, the six CDQ groups are in a cooperative relationship with each other when participating in the Council process, which affects the overall quota available to the CDQ reserve and the management of the fishing effort. However, the allocation process itself is very competitive among the groups. In allocating the quotas, the State faces a complicated multi-criterion decision-making problem. Because the allocations are a zero-sum process, any increase in one group's allocation from one cycle to the next is necessarily going to come at the expense of another group's allocation. The NRC report notes that the competitive framework established to reallocate quota at each new allocation cycle could work to preclude cooperation among the groups (NRC 1999). Although the groups have attempted to form a coordinating body to serve as a communications forum and liaison to Federal and State governments, differing priorities and the direct competition for allocations does not lend itself well to coordinated efforts.

The competitive allocations, although difficult due to the number of criteria provided and the varying needs and projects of the CDQ groups, have been a way for the State to both provide a fair and equitable division of the quota among communities and to help prevent mismanagement and induce better performance by the CDQ groups. While this dual goal may not be explicitly identified in regulation, the NRC report notes that State oversight seems to be driven by a mix of these two goals. The NRC notes that the actual allocation of quota seems to be based primarily on population and income levels—the CDQ region with the most people or the highest poverty level or both tend to get a larger quota. At the same time, the NRC reports that the allocation process is used to sanction or reward the groups' performance.

Table 4.4: CDQ pollock allocations (% of total pollock CDQ reserve), 1992-2002

<b>CDQ Group</b>	<b>1992 - 93</b>	<b>1994 - 95</b>	<b>1996 - 98</b>	<b>1999</b>	<b>2000</b>	<b>2001 - 02</b>
<b>APICDA</b>	18	18	16	16	16	14
<b>BBEDC</b>	20	20	20	21	21	21
<b>CBSFA</b>	10	8	4	5	5	4
<b>CVRF</b>	27	27	25	22	22	24
<b>NSEDC</b>	20	20	22	22	22	23
<b>YDFDA</b>	5	7	13	14	14	14

The pollock allocations resulting from the current competitive process are provided in Table 4.4. Pollock royalties have remained the largest source of revenue for the CDQ groups, accounting for over 80% of annual program revenues and about \$33 million in pollock CDQ royalties in 2000 (DCED 2001). The State reports that in 2000, the average price per metric ton for CDQ pollock was \$292.34, the highest price since the inception of the CDQ Program. Applying this price to the 2001 pollock CDQ reserve (140,000 mt), one percent of the overall CDQ reserve represents 1,400 mt or an estimated \$409,000 in pollock royalties. Thus, the pollock allocations are typically the most important and controversial allocation undertaken by the State. The multispecies allocations determined under the current allocation process for the 2001 - 2002 allocation cycle are provided in Table 4.5, as provided by NMFS, Sustainable Fisheries Division. This table essentially represents the no action scenario under Alternative 1, meaning each of the quotas was determined on a competitive basis using the current evaluation criteria. In addition to the allocations of target species, prohibited species quota for each group is determined using a formula based primarily on historical catch

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rates for target species. This is then applied to the percentage of each CDQ reserve allocated to each group. Issue 4 considers changing the method for determining the CDQ allocations, which would have a direct effect on the PSQ allocations. The method for determining the PSQ allocations, however, is not affected. Therefore, for comparison purposes, only the CDQ species allocations are provided in the following tables.

While all of the species allocations are crucial to the operations of each group, the target species of primary importance are pollock, Pacific cod, Bristol Bay King Crab, and halibut. For this reason, the discussion relevant to this issue and the comparison between Alternative 1 and 2 will focus on these species.

In preparation for the 2001 - 02 multispecies allocation process, the State used the 1990 census data (2000 was 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 in the workforce, and whether the community had adequate water and sewer facilities. In the findings provided to NMFS on the allocations, the State notes that it accounted for these more objective factors in the decision-making process, as well as the performance of each group. The performance of each group was weighed with respect to both the group's financial return and its accomplishment of social objectives such as employment levels, educational opportunities, and management positions within each organization (DCED 2000).

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Table 4.5: 2001 Multispecies CDQ Program Allocations for each CDQ Group (No Action alternative)

Groundfish CDQ Species or Species Groups	2001 TAC	2001 CDQ Reserve	CDQ Group Allocations (%)							CDQ Group Amounts (mt)					
			APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA	
<b>BS FG Sablefish</b>	<b>780</b>	<b>156</b>	<b>15%</b>	<b>22%</b>	<b>18%</b>	<b>0%</b>	<b>20%</b>	<b>25%</b>	<b>23</b>	<b>34</b>	<b>28</b>	<b>0</b>	<b>31</b>	<b>39</b>	
AI FG Sablefish	1,875	375	15%	20%	0%	30%	20%	15%	56	75	0	113	75	56	
<b>BS Sablefish</b>	<b>780</b>	<b>59</b>	<b>17%</b>	<b>20%</b>	<b>10%</b>	<b>17%</b>	<b>18%</b>	<b>18%</b>	<b>10</b>	<b>12</b>	<b>6</b>	<b>10</b>	<b>11</b>	<b>11</b>	
AI Sablefish	625	47	24%	23%	9%	10%	10%	24%	11	11	4	5	5	11	
<b>BS Pollock - total</b>	<b>1,400,000</b>	<b>140,000</b>	<b>14%</b>	<b>21%</b>	<b>4%</b>	<b>24%</b>	<b>23%</b>	<b>14%</b>	<b>19,600</b>	<b>29,400</b>	<b>5,600</b>	<b>33,600</b>	<b>32,200</b>	<b>19,600</b>	
A/B season (40%)		56,000	14%	21%	4%	24%	23%	14%	7,840	11,760	2,240	13,440	12,880	7,840	
<b>C/D season (60%)</b>		<b>84,000</b>	<b>14%</b>	<b>21%</b>	<b>4%</b>	<b>24%</b>	<b>23%</b>	<b>14%</b>	<b>11,760</b>	<b>17,640</b>	<b>3,360</b>	<b>20,160</b>	<b>19,320</b>	<b>11,760</b>	
AI Pollock	2,000	200	14%	21%	4%	24%	23%	14%	28	42	8	48	46	28	
<b>Boguslov Pollock</b>	<b>1,000</b>	<b>100</b>	<b>14%</b>	<b>21%</b>	<b>4%</b>	<b>24%</b>	<b>23%</b>	<b>14%</b>	<b>14</b>	<b>21</b>	<b>4</b>	<b>24</b>	<b>23</b>	<b>14</b>	
Pacific Cod	188,000	14,100	16%	20%	10%	17%	18%	19%	2,256	2,820	1,410	2,397	2,538	2,679	
<b>WAI Atka Mackerel</b>	<b>27,900</b>	<b>2,093</b>	<b>30%</b>	<b>15%</b>	<b>8%</b>	<b>15%</b>	<b>14%</b>	<b>18%</b>	<b>628</b>	<b>314</b>	<b>167</b>	<b>314</b>	<b>293</b>	<b>377</b>	
CAI Atka Mackerel	33,600	2,520	30%	15%	8%	15%	14%	18%	756	378	202	378	353	454	
<b>EAI/BS Atka Mackerel</b>	<b>7,800</b>	<b>585</b>	<b>30%</b>	<b>15%</b>	<b>8%</b>	<b>15%</b>	<b>14%</b>	<b>18%</b>	<b>176</b>	<b>88</b>	<b>47</b>	<b>88</b>	<b>82</b>	<b>105</b>	
Yellowfin Sole	113,000	8,475	28%	24%	8%	6%	7%	27%	2,373	2,034	678	509	593	2,288	
<b>Rock Sole</b>	<b>75,000</b>	<b>5,625</b>	<b>24%</b>	<b>23%</b>	<b>8%</b>	<b>11%</b>	<b>11%</b>	<b>23%</b>	<b>1,350</b>	<b>1,294</b>	<b>450</b>	<b>619</b>	<b>619</b>	<b>1,294</b>	
BS Greenland Turbot	5,628	422	20%	22%	7%	15%	15%	21%	84	93	30	63	63	89	
<b>AI Greenland Turbot</b>	<b>2,772</b>	<b>208</b>	<b>16%</b>	<b>20%</b>	<b>5%</b>	<b>21%</b>	<b>20%</b>	<b>18%</b>	<b>33</b>	<b>42</b>	<b>10</b>	<b>44</b>	<b>42</b>	<b>37</b>	
Arrowtooth Flounder	22,011	1,651	24%	22%	9%	11%	10%	24%	396	363	149	182	165	396	
<b>Flathead Sole</b>	<b>40,000</b>	<b>3,000</b>	<b>20%</b>	<b>20%</b>	<b>10%</b>	<b>15%</b>	<b>15%</b>	<b>20%</b>	<b>600</b>	<b>600</b>	<b>300</b>	<b>450</b>	<b>450</b>	<b>600</b>	
Other Flatfish	28,000	2,100	25%	23%	9%	10%	10%	23%	525	483	189	210	210	483	
<b>BS Pacific Ocean Perch</b>	<b>1,730</b>	<b>130</b>	<b>18%</b>	<b>21%</b>	<b>7%</b>	<b>18%</b>	<b>18%</b>	<b>18%</b>	<b>23</b>	<b>27</b>	<b>9</b>	<b>23</b>	<b>23</b>	<b>23</b>	
WAI Pacific Ocean Perch	4,740	356	30%	15%	8%	15%	14%	18%	107	53	28	53	50	64	
<b>CAI Pacific Ocean Perch</b>	<b>2,560</b>	<b>192</b>	<b>30%</b>	<b>15%</b>	<b>8%</b>	<b>15%</b>	<b>14%</b>	<b>18%</b>	<b>58</b>	<b>29</b>	<b>15</b>	<b>29</b>	<b>27</b>	<b>35</b>	
EAI Pacific Ocean Perch	2,900	218	30%	15%	8%	15%	14%	18%	65	33	17	33	31	39	
<b>BS Other Red Rockfish</b>	<b>135</b>	<b>10</b>	<b>23%</b>	<b>18%</b>	<b>8%</b>	<b>16%</b>	<b>16%</b>	<b>19%</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>	
AI Sharpchin/Northern	6,745	506	30%	15%	8%	15%	14%	18%	152	76	40	76	71	91	
<b>AI Shortraker/Rougheye</b>	<b>912</b>	<b>68</b>	<b>22%</b>	<b>18%</b>	<b>7%</b>	<b>18%</b>	<b>17%</b>	<b>18%</b>	<b>15</b>	<b>12</b>	<b>5</b>	<b>12</b>	<b>12</b>	<b>12</b>	
BS Other Rockfish	361	27	25%	21%	7%	12%	13%	22%	7	6	2	3	4	6	
<b>AI Other Rockfish</b>	<b>676</b>	<b>51</b>	<b>23%</b>	<b>17%</b>	<b>7%</b>	<b>18%</b>	<b>17%</b>	<b>18%</b>	<b>12</b>	<b>9</b>	<b>4</b>	<b>9</b>	<b>9</b>	<b>9</b>	
Other Species	26,500	1,988	18%	20%	10%	16%	16%	20%	358	398	199	318	318	398	
	1,998,030	185,262													
<b>Halibut CDQ</b>			<b>CDQ Group Allocations (%)</b>							<b>CDQ Group Amounts (lbs)</b>					
Halibut 4B	4,910,000	982,000	100%	0%	0%	0%	0%	0%	982,000	0	0	0	0	0	
<b>Halibut 4C</b>	<b>2,030,000</b>	<b>1,015,000</b>	<b>10%</b>	<b>0%</b>	<b>90%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>101,500</b>	<b>0</b>	<b>913,500</b>	<b>0</b>	<b>0</b>	<b>0</b>	
Halibut 4D	2,030,000	609,000	0%	26%	0%	24%	30%	20%	0	158,340	0	146,160	182,700	121,800	
<b>Halibut 4E</b>	<b>390,000</b>	<b>390,000</b>	<b>0%</b>	<b>30%</b>	<b>0%</b>	<b>70%</b>	<b>0%</b>	<b>0%</b>	<b>0</b>	<b>117,000</b>	<b>0</b>	<b>273,000</b>	<b>0</b>	<b>0</b>	
<b>Crab CDQ</b>															
Bristol Bay Red King Crab	7,150,000	536,000	18%	18%	10%	18%	18%	18%	96,480	96,480	53,600	96,480	96,480	96,480	
<b>Norton Sound Red King Crab</b>		<b>23,260</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>50%</b>	<b>50%</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>11,630</b>	<b>11,630</b>	
Pribilof Red & Blue King Crab			0%	0%	100%	0%	0%	0%	0	0	0	0	0	0	
<b>St. Matthew Blue King Crab</b>			<b>50%</b>	<b>12%</b>	<b>0%</b>	<b>12%</b>	<b>14%</b>	<b>12%</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
Bering Sea C. Opilio Crab	30,820,000	2,310,000	10%	19%	19%	17%	18%	17%	231,000	438,900	438,900	392,700	415,800	392,700	
<b>Bering Sea C. Bairdi Crab</b>			<b>10%</b>	<b>19%</b>	<b>19%</b>	<b>17%</b>	<b>18%</b>	<b>17%</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	

Note: The opilio TAC is for the 2002 fishery, as it occurs in January.

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As stated previously, the pollock allocations are typically the most important to the CDQ groups. The State noted several specific factors related to equity that influenced the 2001 - 02 pollock allocations, such as population, the number of residents below the poverty level, and the per capita income of the region. Although population and income were considered, changes in the allocations were also based on whether the groups had shown progress in meeting the goals of the CDQ program and their own milestones in bringing benefits to the residents of their regions. In weighing the performance of each group, the State considered both the financial return on a group's investments and the success in developing community-based processing or harvesting operations, including training and employment opportunities. Thus, in reviewing the State's rationale for those decisions, it appears that a group could not have received an increase in its allocation based solely on the population and poverty level within the region. The group must also have shown significant progress in its performance and ability to provide residents with benefits from the CDQ projects and investments.

In addition, changes continue to be made to the State allocation recommendations due to the continuing growth and experience of the CDQ groups. For instance, some groups may have received a larger pollock allocation in the beginning of the program in part because of that region's proximity to the fishery and past experience. However, as other groups gain experience in the fisheries and demonstrate the ability to capitalize on their experience, the allocations may change slightly to reflect the maturation of the groups across the program (DCED, 2000).

Although the primary concerns regarding the State's allocation recommendations have typically been with the pollock allocations, the State recommended changes to other allocations in the 2001- 02 cycle which also appear to balance equity and performance factors. For instance, the crab allocations are at least partially based on the poor condition of specific crab fisheries. The severe decrease in abundance of opilio crab and the resulting low GHL provided justification for the State to increase the Bristol Bay Red King crab allocation to a group dependent on crab processing revenues.

In addition, both the crab and halibut allocations are based partially on the proximity of the groups to those fisheries. Federal regulations dictate that the halibut CDQ is allocated to communities within, or in close proximity to, the regulatory area, thus encouraging the development of local fisheries. For instance, there are only two communities located in Area 4C, St. Paul and St. George, thus CBSFA and APICDA receive all of the halibut CDQ for that area. Likewise, APICDA receives the entire Area 4B halibut allocation, as its communities make up the whole of the western Aleutians. The State noted that efforts to utilize halibut for the direct benefit of local residents through small boat fisheries was encouraged through adjustments to the halibut allocations. Similarly, while partially allocated based on the projected royalty returns, the crab species are allocated based on the groups' location and proximity to the fishery.

Under Alternative 1, the State would continue to make these complicated, multi-criterion decisions, and attempt to balance factors such as poverty level, population, and proximity to the fisheries with more subjective performance criteria such as the groups' financial returns, effectiveness in meeting the milestones identified in the CDPs, success in developing local fisheries, and ability to provide training, educational, and employment opportunities. The CDQ groups have expressed confusion in the past over how the evaluation criteria are applied by the State, specifically to what extent more objective factors such as population and income are weighted. This confusion appears to result at least partially from using the criteria for the two purposes mentioned previously: to maintain equity among the groups and to encourage good performance.

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Relatedly, the NRC reports (1999) that while most CDQ groups feel confident that the program will persist over time, they fear that their particular allocation of a share of the total CDQ quota is highly uncertain. The report continues:

“This uncertainty arises from a sense that the criteria used by the State of Alaska to allocate individual shares of the total quota are unclear. There is a concern that if a group is perceived by the State as receiving “too much” income, their share of the total allocation may be reduced and given to another group with greater needs. Conversely, if a group is not performing well it may lose its share of the total allocation in the future” (p.74)

Concern over the allocation process and the continued difficulty in evaluating the decision-making process of the State at least partially resulted in the alternatives proposed under this issue. Thus, regardless of whether performance and equity are appropriate goals for the allocation process, these goals may not be adequately expressed in regulation or tied to the evaluation criteria sufficiently to mitigate the concerns of the CDQ groups. Under Alternative 1, the confusion among the CDQ groups related to the purpose of the allocation process and the application of the evaluation criteria will likely continue. However, this concern could also potentially be resolved under Issue 5, which pertains directly to the allocation process and proposes simplifying the evaluation criteria, without necessarily establishing a foundation quota. Depending on the decision under Issue 5, the criteria could be simplified to the extent that the CDQ groups understand how that criteria is applied to receive their allocations. By contrast, Issue 4 specifically addresses the dual goals of the allocation process and whether the allocations need to be separated into two types of quota to better conform to each goal.

### **Alternative 2 - Establish a foundation quota**

Alternative 2 proposes several options to create a foundation quota consistent with the purpose of maintaining equity in the allocation process. Under this alternative, some portion of the CDQ allocations would be categorized as foundation quota. The remaining quota would be allocated on a competitive basis, similar to the existing process described under Alternative 1. This portion of the quota would be allocated competitively using the evaluation criteria determined under Issue 5 and would only include criteria that are not used to determine the foundation quota, unless otherwise indicated by the Council. Thus, the foundation quota would be defined separately as below:

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

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

The concept of establishing a distinct foundation quota was identified by the NRC as a possible way to clarify some of the confusion created by using the evaluation criteria for both allocating quota equitably and encouraging good management. The NRC recommended establishing a foundation quota, based on objective measures such as population, income, employment, and proximity to the fishery, to address issues of equity among the eligible CDQ communities. The NRC also suggested that a foundation quota should be more than half of the entire allocation of the species, and that the remaining quota continue to be allocated competitively, based on clearly defined performance measures such as accomplishments of the CDP goals,

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compliance with fishing regulations, quality of the CDPs, etc.

The options under consideration in Alternative 2 deviate slightly from the NRC's definition of performance quota, but maintain the intent of the foundation quota, which is to allocate some portion of the quota equitably to each group on the basis of demographic factor(s). Under the proposed options, however, the competitive (non-foundation) allocations are not based solely on performance factors, but would take into account all of the factors (demographic or performance-based) listed in the evaluation criteria but that were not considered in the foundation portion of the quota. This would mitigate the concern that some critical demographic factors (such as proximity to the fishery, economic conditions of the communities, etc.) would be left out of the process completely. Because the competitive allocation process and evaluation criteria will be determined under Issue 5, this section focuses on describing the different options proposed to determine a foundation quota and the impacts of establishing such a quota.

Under Alternative 2, each CDQ group would be guaranteed a certain amount of foundation quota based on the demographic factors proposed in Options 1-4 and would continue a competitive allocation process for the remainder of the quota, based on the evaluation criteria listed in regulation as determined under Issue 5. The CDQ program was designed to be competitive to provide incentive to the groups to better their performance over the course of the program. However, because issues of equity cannot be dismissed, these two purposes have been combined in the allocation process to date. The intent of Alternative 2 is to emphasize the two goals of the allocation process, in order to more effectively allocate the quota for both of these purposes. Establishing a separate foundation quota and allocating the remainder of the quota competitively would maintain the dual goal currently at issue and would make it easier for the CDQ groups to understand how each quota is determined.

For purposes of analysis, the competitive allocations under the current process are the most appropriate simulation of the competitive portion of the quotas that would be established under Alternative 2. All of the options under Alternative 2 are calculated using the 2001 CDQ reserves, and the "competitive" portion of the allocation is based on the percentage allocations established for the 2001 - 2002 allocation cycle. For instance, CVRF was allocated 24% of the pollock quota for this allocation cycle. Thus, to determine the competitive portion of the pollock quota allocated to CVRF under each of the options 1 - 4, 24% is multiplied by the amount of total pollock quota that remains after the foundation quota has been determined. Recall also that while the current allocations (Table 4.5) are determined on a competitive basis, demographic factors such as population and income were also taken into account. It is assumed that if a foundation quota is established, the competitive portion of the quota would be based on the evaluation criteria determined under Issue 5, and that evaluation criteria would likely continue to include some demographic factors. The effect on the allocation process resulting from this alternative is described in more detail below.

Establishing a foundation quota applicable to all species allocations would necessitate modifying the current evaluation criteria to ensure that they are consistent with a competitive quota. It is expected that the portion of the quota that is allocated competitively would be based on a mix of performance-based factors and include demographic factors that are not included in the foundation quota. For instance, if the foundation quota is based on population of the communities, we would expect that the evaluation criteria used to determine the remainder of the quota would not include population, but would take into account all of the other evaluation criteria as determined under Issue 5, i.e., proximity to the resource, employment, income, past performance, etc. Thus, if the Council chooses a foundation quota based on one demographic factor, the other demographic factors will not be eliminated completely from the process, but would be accounted for in the allocation of the competitive portion of the quota. This would not meet the exact intent of the NRC's definition of

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performance-based quota, but because the options under consideration focus on a single demographic factor, it is necessary to ensure that other critical factors (proximity to the resource, employment, and income) are not eliminated from consideration in the allocation process altogether.

If the Council chooses to establish a foundation quota applicable to pollock only, then the remainder of the pollock quota and the quota for all other species would be allocated based on the evaluation criteria listed in Federal regulation. For instance, the Council could chose to establish a foundation quota applicable to 50% of the pollock allocation and based on population (Option 4). However, because half of the pollock quota would be apportioned based on population using the foundation method, “population” would not be applied as a criterion to competitively allocate the remainder of the pollock quota. In this example, the allocation process would ensue as follows, unless defined otherwise by the Council:

<u>Quota</u>	<u>Basis for allocation</u>
50% of pollock quota (foundation)	population of eligible communities
50% of the pollock quota (competitive)	the evaluation criteria in regulation excluding population
all of the other species’ quotas (competitive)	all of the evaluation criteria in regulation

Currently, the State evaluation criteria include both demographic and performance-based factors for consideration in the decision-making process. Therefore, under any option selected under Alternative 2, the current regulations would need to be revised to: 1) describe the method for determining the foundation quota, and 2) list the evaluation criteria used for determining the competitive portion of the quota.

Finally, the options under consideration in Alternative 2 propose to apply a foundation quota either 1) to all species allocations, or 2) only to the pollock allocations. However, the Council could choose to apply a foundation quota under the methods described in Options 1-3 to all or any of a combination of the species allocations and remain within the bounds of this analysis. Tables 4.6, 4.9, and 4.11 show the impacts of the foundation quota on the allocations of all species under Options 1-3, respectively, compared to the status quo (Table 4.5). Thus, the options do not constrain the Council to applying a foundation quota only in the two ways proposed. For example, even though it is not a specific option, the Council could apply the foundation quota to all species except halibut, since the impact of that action is within the bounds of the analysis of Alternatives 1 and 2.

Option 1: 50% of the CDQ reserve is divided equally

Options 1 - 4 under Alternative 2 describe four different ways of determining foundation quota, all with the intent of allocating a portion of the CDQ reserve equitably among the CDQ groups. Option 1 would divide 50% of the CDQ reserve for each species equally among the CDQ groups, with the remaining 50% allocated competitively. This option does not take population or any other demographic factor into consideration, it simply divides half of the quota equally among all eligible CDQ groups.

The impact of Option 1 on the 2001-02 allocations is shown in Table 4.6. Option 1 effectively guarantees that each eligible CDQ group will receive an equal portion of 50% of each species allocation, or 8.3% of each quota. It is difficult to make a definitive statement as

<b>Amount of foundation quota allocated under Option 1</b>
50% of CDQ reserve is foundation quota
8.3% of CDQ reserve guaranteed to each CDQ group

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to which groups would benefit from Option 1 compared to the status quo, as the overall effect of the option depends on the groups' allocations under the competitive process. If the evaluation criteria under the status quo would continue to weigh both equity and performance factors, some of the groups may not fare any differently under Option 1. However, because half of each species quota is divided equally among the six groups under Option 1, any group that would have received more than 16.7% (1/6) of a given species quota under the current allocation process would fare worse under Option 1. Any group that would have received less than 16.7% of a given species allocation in the current process would benefit from this option. Under Option 1, the overall allocation to each group is equally dependent on the foundation quota and how well the CDQ group meets the evaluation criteria.

It is important to note that because the competitive portion of the allocations can change with every allocation cycle, the percentage allocations under the status quo (Table 4.5) do not represent a fixed scenario by which all other options may be compared. For instance, should a group perform very effectively in meeting their milestones and be fairly competitive in the allocation process, the implementation of the foundation quota under Alternative 2, Option 1 may be a disadvantage to that group, which would have received a higher overall allocation had the entire quota been allocated competitively. However, should a group be awarded a lower allocation during a given competitive allocation cycle, the implementation of a foundation quota under Option 1 would benefit the group, as the foundation quota would at least partially offset the loss of the competitive portion of the quota.

As stated previously, the following discussion focuses on the impact to the allocations of the primary target species: pollock, cod, Bristol Bay Red King crab, and halibut. Table 4.6 shows that implementing Option 1 would decrease the overall allocations to those groups that received more than 1/6 of the total CDQ reserve for a given species in the 2001-2002 allocations, and increase the allocations to those groups that received less than 1/6. For instance, compared to the 2001-2002 allocations referenced in the no action alternative, the pollock allocations to APICDA, CBSFA, and YDFDA would increase by 1%, 6%, and 1%, respectively, and the pollock allocations to BBEDC, CVRF and NSEDC would decrease by 2%, 4%, and 3%, respectively, under Option 1. In the Pacific cod fishery, the allocations to APICDA and CVRF would stay about the same, as each group was receiving about 16% of the total cod CDQ reserve under the status quo. The cod allocations to CBSFA would increase by about 3%, and the allocations to BBEDC, NSEDC, and YDFDA would decrease by about 2%, 1%, and 1%, respectively.

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Table 4.6: Projected multispecies CDQ Program Allocations for each CDQ Group under Option 1, based on the 2001 CDQ Reserves

Groundfish CDQ Species or Species Groups	2001 TAC	2001 CDQ Reserve	CDQ Group Allocations (%)						CDQ Group Amounts (mt)					
			APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA
<b>BS FG Sablefish</b>	<b>780</b>	<b>156</b>	<b>15.8%</b>	<b>19.3%</b>	<b>17.3%</b>	<b>8.3%</b>	<b>18.3%</b>	<b>20.8%</b>	<b>25</b>	<b>30</b>	<b>27</b>	<b>13</b>	<b>29</b>	<b>33</b>
AI FG Sablefish	1,875	375	15.8%	18.3%	8.3%	23.3%	18.3%	15.8%	59	69	31	88	69	59
<b>BS Trawl Sablefish</b>	<b>780</b>	<b>59</b>	<b>16.8%</b>	<b>18.3%</b>	<b>13.3%</b>	<b>16.8%</b>	<b>17.3%</b>	<b>17.3%</b>	<b>10</b>	<b>11</b>	<b>8</b>	<b>10</b>	<b>10</b>	<b>10</b>
AI Trawl Sablefish	625	47	20.3%	19.8%	12.8%	13.3%	13.3%	20.3%	10	9	6	6	6	10
<b>BS Pollock - total</b>	<b>1,400,000</b>	<b>140,000</b>	<b>15.3%</b>	<b>18.8%</b>	<b>10.3%</b>	<b>20.3%</b>	<b>19.8%</b>	<b>15.3%</b>	<b>21,467</b>	<b>26,367</b>	<b>14,467</b>	<b>28,467</b>	<b>27,767</b>	<b>21,467</b>
A/B season (40%)		56,000	15.3%	18.8%	10.3%	20.3%	19.8%	15.3%	8,587	10,547	5,787	11,387	11,107	8,587
C/D season (60%)		<b>84,000</b>	<b>15.3%</b>	<b>18.8%</b>	<b>10.3%</b>	<b>20.3%</b>	<b>19.8%</b>	<b>15.3%</b>	<b>12,880</b>	<b>15,820</b>	<b>8,680</b>	<b>17,080</b>	<b>16,660</b>	<b>12,880</b>
AI Pollock	2,000	200	15.3%	18.8%	10.3%	20.3%	19.8%	15.3%	31	38	21	41	40	31
<b>Bogoslof Pollock</b>	<b>1,000</b>	<b>100</b>	<b>15.3%</b>	<b>18.8%</b>	<b>10.3%</b>	<b>20.3%</b>	<b>19.8%</b>	<b>15.3%</b>	<b>15</b>	<b>19</b>	<b>10</b>	<b>20</b>	<b>20</b>	<b>15</b>
Pacific Cod	188,000	14,100	16.3%	18.3%	13.3%	16.8%	17.3%	17.8%	2,303	2,585	1,880	2,374	2,444	2,515
<b>WAI Atka Mackerel</b>	<b>27,900</b>	<b>2,093</b>	<b>23.3%</b>	<b>15.8%</b>	<b>12.3%</b>	<b>15.8%</b>	<b>15.3%</b>	<b>17.3%</b>	<b>488</b>	<b>331</b>	<b>258</b>	<b>331</b>	<b>321</b>	<b>363</b>
CAI Atka Mackerel	33,600	2,520	23.3%	15.8%	12.3%	15.8%	15.3%	17.3%	588	399	311	399	386	437
<b>EAI/BS Atka Mackerel</b>	<b>7,800</b>	<b>585</b>	<b>23.3%</b>	<b>15.8%</b>	<b>12.3%</b>	<b>15.8%</b>	<b>15.3%</b>	<b>17.3%</b>	<b>137</b>	<b>93</b>	<b>72</b>	<b>93</b>	<b>90</b>	<b>101</b>
Yellowfin Sole	113,000	8,475	22.3%	20.3%	12.3%	11.3%	11.8%	21.8%	1,893	1,723	1,045	961	1,003	1,850
<b>Rock Sole</b>	<b>75,000</b>	<b>5,625</b>	<b>20.3%</b>	<b>19.8%</b>	<b>12.3%</b>	<b>13.8%</b>	<b>13.8%</b>	<b>19.8%</b>	<b>1,144</b>	<b>1,116</b>	<b>694</b>	<b>778</b>	<b>778</b>	<b>1,116</b>
BS Greenland Turbot	5,628	422	18.3%	19.3%	11.8%	15.8%	15.8%	18.8%	77	82	50	67	67	79
<b>AI Greenland Turbot</b>	<b>2,772</b>	<b>208</b>	<b>16.3%</b>	<b>18.3%</b>	<b>10.8%</b>	<b>18.8%</b>	<b>18.3%</b>	<b>17.3%</b>	<b>34</b>	<b>38</b>	<b>23</b>	<b>39</b>	<b>38</b>	<b>36</b>
Arrowtooth Flounder	22,011	1,651	20.3%	19.3%	12.8%	13.8%	13.3%	20.3%	336	319	212	228	220	336
<b>Flathead Sole</b>	<b>40,000</b>	<b>3,000</b>	<b>18.3%</b>	<b>18.3%</b>	<b>13.3%</b>	<b>15.8%</b>	<b>15.8%</b>	<b>18.3%</b>	<b>550</b>	<b>550</b>	<b>400</b>	<b>475</b>	<b>475</b>	<b>550</b>
Other Flatfish	28,000	2,100	20.8%	19.8%	12.8%	13.3%	13.3%	19.8%	438	417	270	280	280	417
<b>BS Pacific Ocean Perch</b>	<b>1,730</b>	<b>130</b>	<b>17.3%</b>	<b>18.8%</b>	<b>11.8%</b>	<b>17.3%</b>	<b>17.3%</b>	<b>17.3%</b>	<b>23</b>	<b>24</b>	<b>15</b>	<b>23</b>	<b>23</b>	<b>23</b>
WAI Pacific Ocean Perch	4,740	356	23.3%	15.8%	12.3%	15.8%	15.3%	17.3%	83	56	44	56	55	62
<b>CAI Pacific Ocean Perch</b>	<b>2,560</b>	<b>192</b>	<b>23.3%</b>	<b>15.8%</b>	<b>12.3%</b>	<b>15.8%</b>	<b>15.3%</b>	<b>17.3%</b>	<b>45</b>	<b>30</b>	<b>24</b>	<b>30</b>	<b>29</b>	<b>33</b>
EAI Pacific Ocean Perch	2,900	218	23.3%	15.8%	12.3%	15.8%	15.3%	17.3%	51	35	27	35	33	38
<b>BS Other Red Rockfish</b>	<b>135</b>	<b>10</b>	<b>19.8%</b>	<b>17.3%</b>	<b>12.3%</b>	<b>16.3%</b>	<b>16.3%</b>	<b>17.8%</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>
AI Sharpchin/Northern	6,745	506	23.3%	15.8%	12.3%	15.8%	15.3%	17.3%	118	80	62	80	78	88
<b>AI Shortraker/Rougheye</b>	<b>912</b>	<b>68</b>	<b>19.3%</b>	<b>17.3%</b>	<b>11.8%</b>	<b>17.3%</b>	<b>16.8%</b>	<b>17.3%</b>	<b>13</b>	<b>12</b>	<b>8</b>	<b>12</b>	<b>11</b>	<b>12</b>
BS Other Rockfish	361	27	20.8%	18.8%	11.8%	14.3%	14.8%	19.3%	6	5	3	4	4	5
<b>AI Other Rockfish</b>	<b>676</b>	<b>51</b>	<b>19.8%</b>	<b>16.8%</b>	<b>11.8%</b>	<b>17.3%</b>	<b>16.8%</b>	<b>17.3%</b>	<b>10</b>	<b>9</b>	<b>6</b>	<b>9</b>	<b>9</b>	<b>9</b>
Other Species	26,500	1,988	17.3%	18.3%	13.3%	16.3%	16.3%	18.3%	345	364	265	325	325	364
	1,998,030	185,262												
<b>Halibut CDQ</b>			<b>CDQ Group Allocations (%)</b>						<b>CDQ Group Amounts (mt)</b>					
Halibut 4B	4,910,000	982,000	58.3%	8.3%	8.3%	8.3%	8.3%	8.3%	572,833	81,833	81,833	81,833	81,833	81,833
<b>Halibut 4C</b>	<b>2,030,000</b>	<b>1,015,000</b>	<b>13.3%</b>	<b>8.3%</b>	<b>53.3%</b>	<b>8.3%</b>	<b>8.3%</b>	<b>8.3%</b>	<b>135,333</b>	<b>84,583</b>	<b>541,333</b>	<b>84,583</b>	<b>84,583</b>	<b>84,583</b>
Halibut 4D	2,030,000	609,000	8.3%	21.3%	8.3%	20.3%	23.3%	18.3%	50,750	129,920	50,750	123,830	142,100	111,650
<b>Halibut 4E</b>	<b>390,000</b>	<b>390,000</b>	<b>8.3%</b>	<b>23.3%</b>	<b>8.3%</b>	<b>43.3%</b>	<b>8.3%</b>	<b>8.3%</b>	<b>32,500</b>	<b>91,000</b>	<b>32,500</b>	<b>169,000</b>	<b>32,500</b>	<b>32,500</b>
<b>Crab CDQ</b>														
Bristol Bay Red King Crab	7,150,000	536,000	17.3%	17.3%	13.3%	17.3%	17.3%	17.3%	92,907	92,907	71,467	92,907	92,907	92,907
<b>Norton Sound Red King Crab</b>		<b>23,260</b>	<b>8.3%</b>	<b>8.3%</b>	<b>8.3%</b>	<b>8.3%</b>	<b>33.3%</b>	<b>33.3%</b>	<b>1,938</b>	<b>1,938</b>	<b>1,938</b>	<b>1,938</b>	<b>7,753</b>	<b>7,753</b>
Pribilof Red & Blue King Crab									0	0	0	0	0	0
<b>St. Matthew Blue King Crab</b>									<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Bering Sea C. Opilio Crab	30,820,000	2,310,000	13.3%	17.8%	17.8%	16.8%	17.3%	16.8%	308,000	411,950	411,950	388,850	400,400	388,850
<b>Bering Sea C. Bairdi Crab</b>									<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Note: The opilio TAC is for the 2002 fishery, as it occurs in January.

Note: The percentage allocation to each group will not always correspond exactly to the metric tons for each group due to rounding.

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While changes to the groundfish allocations under Option 1 may elicit equity concerns, all of the CDQ groups are capable of harvesting and willing to harvest more groundfish with their current CDQ partners than they were allocated in 2001- 2002. This is evidenced by the fact that each group requested a higher pollock allocation than they received during this allocation cycle. Most of the groundfish CDQ is harvested by catcher/processors or large catcher vessels that have leased the quota from the CDQ groups and deliver to groundfish shoreside processing plants located in relatively large ports.

By contrast, changes to the halibut and crab allocations may spur more practical and policy concerns. The halibut CDQ fisheries in particular are inherently different from the other CDQ fisheries, as the majority of the catch is taken by smaller vessels. In 1997, for instance, at least 75% of the CDQ catch was landed by small boats and skiffs under 32 feet LOA at about ten small shoreside processors or at buying stations in western Alaska villages. The development of these small boat fisheries has been encouraged by government managers and conforms to the goals of the CDQ Program. Because the halibut allocations are currently determined at least partially by proximity to the fishery, any reallocation strategy should take into consideration whether these smaller vessels can harvest halibut farther offshore in a safe and effective manner or whether the structure of the fishery would need to change.

As a result of the desire to promote local halibut fisheries, the CDQ regulations allocating the halibut CDQ reserve are also designed to accommodate smaller vessels. Federal regulations currently require halibut CDQ to be allocated to eligible communities physically located in, or proximate to (within 10 nm), the IPHC regulatory areas (50 CFR 679.31(b)). For instance, the Area 4C CDQ is allocated only to CBSFA and APICDA, as these are the only two groups that have communities (St. Paul and St. George, respectively) located in or proximate to Area 4C. Option 1 would effectively reallocate the halibut CDQ so that each CDQ group would receive at least a portion of the halibut quota in each IPHC regulatory area. This reallocation would conflict with the intent to develop and promote local, small boat halibut fisheries and require a modification to the current NMFS regulations that effectively regulate which CDQ groups may receive halibut quota in Area 4. The impact of Option 1 on the halibut fisheries in particular seems contrary to the original intent of the CDQ Program and current efforts to utilize halibut for the direct benefit of local residents through small boat fisheries.

Only a few of the crab fisheries are currently open and have CDQ reserves for 2001. Bristol Bay red king crab was allocated equally across five of the six CDQ groups during the 2001- 02 cycle. Option 1 would result in a slight decrease to those allocations (-1%) given the competitive percentage allocations. The remaining group would receive a 3% increase in their Bristol Bay red king crab allocation, at the expense of the other groups' allocations. A similar situation exists in the opilio fishery. The Norton Sound red king crab quota, which has historically been allocated equally between two of the CDQ groups located in close proximity to the fishery (NSEDC and YDFDA), would be reallocated among all six groups under Option 1. The result is about a 17% decrease to both the NSEDC and YDFDA allocations, and an 8% allocation to each of the other four CDQ groups. While Option 1 appears to have a substantial impact only on the allocations of Norton Sound red king crab, it is assumed that because of the low GHs and limited fisheries for each of the crab species, any decrease in the crab allocations will likely have a substantial negative impact on groups that rely on crab harvesting and processing.

The financial impact of Option 1 provides further perspective on the potential gains and losses attributed to each CDQ group as a result of Option 1. Recall that these changes are in comparison to the 2001 - 2002 multispecies allocations, which represent the status quo. The current allocations are based on a combination

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of demographic and performance-based factors and may change during each new allocation cycle, thus they do not represent a static point in time but rather the current condition of the CDQ fisheries.

Table 4.7 shows the estimated impact of Option 1 on the royalties paid to the CDQ groups for pollock, Pacific cod, opilio, and Bristol Bay red king crab. The royalties from these species comprised about 98% of the total CDQ royalties in 2000. Halibut is not included as it made up <1% of the total 2000 royalties. **Note that these are not the actual changes in royalties that the groups would realize under Option 1. For confidentiality reasons, the calculations are based on the average price paid to the CDQ groups for each species in 2000 and the 2001 species allocations.** The prices paid to each CDQ group vary each year, as do the overall CDQ reserves and allocations to each group. Note also that total royalties are not reported, only the estimated change in royalties that would occur under Option 1.

Table 4.7 shows that using the allocation method in Option 1 and the current CDQ reserves, the allocations would shift to benefit APICDA, CBSFA, and YDFDA, the smaller of the CDQ groups that would now receive an equal share of half of the CDQ reserve. The average royalties to these groups derived from these four species allocations would increase by about \$422,000, \$2.60 million, and \$356,000, respectively. These increases would be at the expense of the larger groups, BBEDC, CVRF, and NSEDC, which have received higher allocations in the past. The royalties to these groups would decrease by an estimated \$916,000, \$1.65 million, and \$1.29 million, respectively. Note that these are not actual royalty amounts that would be paid under the allocations proposed in Option 1, they are only estimates based on the average price paid to all six CDQ groups.

Table 4.7: Impact of Option 1 on the primary CDQ allocations (%) and royalties<sup>1</sup> compared to the 2001 - 02 allocations (status quo)<sup>2</sup>

CDQ Groups	Pollock			Pacific Cod			Opilio			Bristol Bay King Crab			Total change in royalties (\$)
	Status quo <sup>2</sup>	Option 1	Change in royalties (\$)	Status quo	Option 1	Change in royalties (\$)	Status quo	Option 1	Change in royalties (\$)	Status quo	Option 1	Change in royalties (\$)	
APICDA	14%	15%	409,276	16%	16%	0	10%	13%	31,999	18%	17%	-19,173	422,102
BBEDC	21%	19%	-818,552	20%	18%	-67,342	19%	18%	-10,666	18%	17%	-19,173	-915,733
CBSFA	4%	10%	2,455,656	10%	13%	101,012	19%	18%	-10,666	10%	13%	57,519	2,603,521
CVRF	24%	20%	-1,637,104	17%	17%	0	17%	17%	0	18%	17%	-19,173	-1,656,277
NSEDC	23%	20%	-1,227,828	18%	17%	-33,671	18%	17%	-10,666	18%	17%	-19,173	-1,291,338
YDFDA	14%	15%	409,276	19%	18%	-33,671	17%	17%	0	18%	17%	-19,173	356,432

<sup>1</sup>The royalties from these four species allocations comprised 98% of the total royalties in 2000: pollock (82%); Pacific cod (8%); Opilio (5%); BBRKC (3%). Year 2000 average prices paid to the CDQ groups are used to calculate royalty amounts.

<sup>2</sup>Status quo is represented by the 2001-02 CDQ allocations. These percentages are also used to determine the "competitive" portion of the quota under Option 1.

**Primary impacts of Option 1**

The changes to the allocations and the royalties derived from those allocations are the most readily perceived impacts of the options proposed under Alternative 2. Equally important to consider, however, may be whether the process for determining the foundation quota under the options meets the goal of allocating a portion of the quota equitably among the eligible CDQ groups and continues to meet the other goals of the CDQ program. Allocating a portion of the CDQ reserve to each eligible CDQ group as proposed under Option 1 does not take into account population, income, or any of the other factors the NRC suggested would be appropriate for developing a foundation quota. Demographic characteristics are appropriate factors for determining a foundation quota mainly because the allocation is based on the number of individual residents who will benefit and/or the relative need of each community. Guaranteeing each group 8.3% of each species allocation does not conform to this goal, as each group would be treated with equal weight regardless of the

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number of member communities and residents. For instance, CBSFA, with one member community and a population of 532, would receive an equal portion of the foundation quota under Option 1 as CVRF, with 20 member communities and a total population of 7,855. Because Option 1 proposes a foundation quota of 50% of the overall CDQ reserve, the impact on the overall allocations is substantial. If the ultimate goal of the CDQ Program is to benefit residents of western Alaska communities, Option 1 appears to incorrectly place the emphasis of the allocation process on the CDQ groups themselves and not on the residents that will benefit from the allocations.

A second impact of Option 1 is that it may provide incentive for individual communities to sever their relationships with the existing CDQ groups and seek eligibility status as a separate group. Option 1 would guarantee each eligible group, regardless of performance, effective management, etc., a portion of the overall quota for each species. This may spur individual communities to separate from their current CDQ groups or cause new communities to strike out on their own. This would not only harm the stability of the current groups but could result in several new CDQ groups that likely have less experience and fewer resources available than if they were part of a collective, thus adding inefficiencies to the program that the State and NMFS have attempted to minimize.

During the implementation of the CDQ Program, the eligible communities formed themselves into the six existing CDQ groups, based primarily on geographic location. There are several advantages to having one non-profit entity represent several communities which share nearby marine resources, one of which is the reduction in administrative and overhead costs per community. There currently is only one single community CDQ group, and the State has noted that this situation necessarily results in disproportionately high administrative costs for this group. The State has remained concerned with reducing the administrative costs of the CDQ groups as appropriate, since these are funds that could be used in the communities themselves. Other advantages of having multiple communities in a group include increased cooperation and the transfer of information and resources, as each community is tied to the others through the umbrella of the CDQ group. Multiple communities also represent a stronger voice for the CDQ group in various public policy forums.

A third possible inconsistency between the foundation quota established under Option 1 and the other goals of the CDQ Program is that concerning the development of small boat fisheries. Several of the evaluation criteria in State regulations address the policy goal to develop sustainable, local, fisheries-based economies (6 AAC 93.040):

- the degree, if any, to which each CDQ project is expected to develop a self-sustaining local fisheries economy, and the proposed schedule for transition from reliance on an allocation to economic self-sufficiency
- the degree, if any, to which each CDQ project is expected to generate (A) capital or equity in the local fisheries economy or infrastructure; or (B) investment in commercial fishing or fish processing operations
- the applicant's CDQ projects for employment, education, and training that provide career track opportunities

As mentioned previously, the halibut fisheries in particular have provided an opportunity for some groups to undertake projects and investments for the direct benefit of local residents through small boat fisheries. To support this end, Federal regulations require that only communities in, or in close proximity to, a management area may receive a halibut allocation for that area. By allocating every CDQ group a portion of the halibut quota in every management area, Option 1 may necessitate the use of larger vessels to fully prosecute the

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CDQ halibut fishery. Another potential result is that the transfer of halibut quota among the groups may increase as groups attempt to secure quota that is in close proximity to their member communities. Recall, however, that while this regulatory avenue exists, a transfer of this kind involves two willing participants and may be made difficult by those who are already using larger vessels to harvest their halibut quota.

Option 2: 1% for each community

**Option 2** would allocate 1% of each species quota to the CDQ group for each community represented by the CDQ group, with the remaining quota allocated competitively. This option for a foundation quota does not take other demographic factors such as population or income into account, it is based only on the number of communities that constitute the CDQ group.

The population and number of communities in each CDQ group is shown in Table 4.8. The population of all communities is based on the 2000 census, thus, the population of Akutan (APICDA) is included at 713, although it has been noted that in APICDA’s 2001-2002 CDP, the population is listed at 85 (excludes processing plant workers). Note that the number of communities in each group is not fixed, as communities may leave a group or merge with another group in the future. It is assumed that the method for determining the foundation quota would be set in regulation, thus the amount of foundation quota apportioned to each CDQ group under Option 2 would change in accordance with the number of communities in each group. It is also assumed that should the number of communities in a CDQ group change, the foundation quota would not be adjusted to account for that change until the next allocation cycle.

Table 4.8: Population of and number of communities in each CDQ group

CDQ Group	Population <sup>1</sup>		# of communities
	% of total	# persons	
APICDA	4	1,143	6
BBEDC	22	5,932	17
CBSFA	2	532	1
CVRF	29	7,855	20
NSEDC	31	8,488	15
YDFDA	12	3,123	6
<b>Total</b>	<b>100</b>	<b>27,073</b>	<b>65</b>

<sup>1</sup>Based on the 2000 census.

The impact of Option 2 on the 2001- 02 allocations is shown in Table 4.9. Given that there are 65 total communities, Option 2 effectively guarantees that 65% of the CDQ reserve will be foundation quota and the remaining 35% will be allocated competitively. Option 2 provides for the greatest percentage of foundation quota of all the options under Alternative 2.

Similar to Option 1, the overall effect of Option 2 depends on the groups’ allocations under the competitive process. However, the competitive portion of the allocation would carry less weight under Option 2 than Option 1, as the majority of the quota would be foundation-based. Thus, the overall allocation to each group would be more dependent on the foundation quota (65%) than how well the CDQ group meets the evaluation criteria (35%).

<b>Amount of foundation quota allocated under Option 2</b>			
65% of the CDQ reserve would be foundation quota			
The CDQ groups would be guaranteed the following portion of the CDQ reserve:			
APICDA	6%	CVRF	20%
BBEDC	17%	NSEDC	15%
CBSFA	1%	YDFDA	6%

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Table 4.9: Projected multispecies CDQ Program Allocations for each CDQ Group under Option 2, based on the 2001 CDQ Reserves

Groundfish CDQ Species or Species Groups	2001 TAC	2001 CDQ Reserve	CDQ Group Allocations (%)						CDQ Group Amounts (mt)					
			APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA
<b>BS FG Sablefish</b>	<b>780</b>	<b>156</b>	<b>11.3%</b>	<b>24.7%</b>	<b>7.3%</b>	<b>20.0%</b>	<b>22.0%</b>	<b>14.8%</b>	<b>18</b>	<b>39</b>	<b>11</b>	<b>31</b>	<b>34</b>	<b>23</b>
AI FG Sablefish	1,875	375	11.3%	24.0%	1.0%	30.5%	22.0%	11.3%	42	90	4	114	83	42
<b>BS Trawl Sablefish</b>	<b>780</b>	<b>59</b>	<b>12.0%</b>	<b>24.0%</b>	<b>4.5%</b>	<b>26.0%</b>	<b>21.3%</b>	<b>12.3%</b>	<b>7</b>	<b>14</b>	<b>3</b>	<b>15</b>	<b>13</b>	<b>7</b>
AI Trawl Sablefish	625	47	14.4%	25.1%	4.2%	23.5%	18.5%	14.4%	7	12	2	11	9	7
<b>BS Pollock - total</b>	<b>1,400,000</b>	<b>140,000</b>	<b>10.9%</b>	<b>24.4%</b>	<b>2.4%</b>	<b>28.4%</b>	<b>23.1%</b>	<b>10.9%</b>	<b>15,260</b>	<b>34,090</b>	<b>3,360</b>	<b>39,760</b>	<b>32,270</b>	<b>15,260</b>
A/B season (40%)		56,000	10.9%	24.4%	2.4%	28.4%	23.1%	10.9%	6,104	13,636	1,344	15,904	12,908	6,104
C/D season (60%)		<b>84,000</b>	<b>10.9%</b>	<b>24.4%</b>	<b>2.4%</b>	<b>28.4%</b>	<b>23.1%</b>	<b>10.9%</b>	<b>9,156</b>	<b>20,454</b>	<b>2,016</b>	<b>23,856</b>	<b>19,362</b>	<b>9,156</b>
AI Pollock	2,000	200	10.9%	24.4%	2.4%	28.4%	23.1%	10.9%	22	49	5	57	46	22
<b>Bogoslof Pollock</b>	<b>1,000</b>	<b>100</b>	<b>10.9%</b>	<b>24.4%</b>	<b>2.4%</b>	<b>28.4%</b>	<b>23.1%</b>	<b>10.9%</b>	<b>11</b>	<b>24</b>	<b>2</b>	<b>28</b>	<b>23</b>	<b>11</b>
Pacific Cod	188,000	14,100	11.6%	24.0%	4.5%	26.0%	21.3%	12.7%	1,636	3,384	635	3,659	3,003	1,784
<b>WAI Atka Mackerel</b>	<b>27,900</b>	<b>2,093</b>	<b>16.5%</b>	<b>22.3%</b>	<b>3.8%</b>	<b>25.3%</b>	<b>19.9%</b>	<b>12.3%</b>	<b>345</b>	<b>466</b>	<b>80</b>	<b>528</b>	<b>417</b>	<b>257</b>
CAI Atka Mackerel	33,600	2,520	16.5%	22.3%	3.8%	25.3%	19.9%	12.3%	416	561	96	636	501	310
<b>EAI/BS Atka Mackerel</b>	<b>7,800</b>	<b>585</b>	<b>16.5%</b>	<b>22.3%</b>	<b>3.8%</b>	<b>25.3%</b>	<b>19.9%</b>	<b>12.3%</b>	<b>97</b>	<b>130</b>	<b>22</b>	<b>148</b>	<b>116</b>	<b>72</b>
Yellowfin Sole	113,000	8,475	15.8%	25.4%	3.8%	22.1%	17.5%	15.5%	1,339	2,153	322	1,873	1,479	1,309
<b>Rock Sole</b>	<b>75,000</b>	<b>5,625</b>	<b>14.4%</b>	<b>25.1%</b>	<b>3.8%</b>	<b>23.9%</b>	<b>18.9%</b>	<b>14.1%</b>	<b>810</b>	<b>1,409</b>	<b>214</b>	<b>1,342</b>	<b>1,060</b>	<b>790</b>
BS Greenland Turbot	5,628	422	13.0%	24.7%	3.5%	25.3%	20.3%	13.4%	55	104	15	107	85	56
<b>AI Greenland Turbot</b>	<b>2,772</b>	<b>208</b>	<b>11.6%</b>	<b>24.0%</b>	<b>2.8%</b>	<b>27.4%</b>	<b>22.0%</b>	<b>12.3%</b>	<b>24</b>	<b>50</b>	<b>6</b>	<b>57</b>	<b>46</b>	<b>26</b>
Arrowtooth Flounder	22,011	1,651	14.4%	24.7%	4.2%	23.9%	18.5%	14.4%	238	408	69	394	305	238
<b>Flathead Sole</b>	<b>40,000</b>	<b>3,000</b>	<b>13.0%</b>	<b>24.0%</b>	<b>4.5%</b>	<b>25.3%</b>	<b>20.3%</b>	<b>13.0%</b>	<b>390</b>	<b>720</b>	<b>135</b>	<b>758</b>	<b>608</b>	<b>390</b>
Other Flatfish	28,000	2,100	14.8%	25.1%	4.2%	23.5%	18.5%	14.1%	310	526	87	494	389	295
<b>BS Pacific Ocean Perch</b>	<b>1,730</b>	<b>130</b>	<b>12.3%</b>	<b>24.4%</b>	<b>3.5%</b>	<b>26.3%</b>	<b>21.3%</b>	<b>12.3%</b>	<b>16</b>	<b>32</b>	<b>4</b>	<b>34</b>	<b>28</b>	<b>16</b>
WAI Pacific Ocean Perch	4,740	356	16.5%	22.3%	3.8%	25.3%	19.9%	12.3%	59	79	14	90	71	44
<b>CAI Pacific Ocean Perch</b>	<b>2,560</b>	<b>192</b>	<b>16.5%</b>	<b>22.3%</b>	<b>3.8%</b>	<b>25.3%</b>	<b>19.9%</b>	<b>12.3%</b>	<b>32</b>	<b>43</b>	<b>7</b>	<b>48</b>	<b>38</b>	<b>24</b>
EAI Pacific Ocean Perch	2,900	218	16.5%	22.3%	3.8%	25.3%	19.9%	12.3%	36	49	8	55	43	27
<b>BS Other Red Rockfish</b>	<b>135</b>	<b>10</b>	<b>14.1%</b>	<b>23.3%</b>	<b>3.8%</b>	<b>25.6%</b>	<b>20.6%</b>	<b>12.7%</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>1</b>
AI Sharpchin/Northern	6,745	506	16.5%	22.3%	3.8%	25.3%	19.9%	12.3%	83	113	19	128	101	62
<b>AI Shortraker/Rougheye</b>	<b>912</b>	<b>68</b>	<b>13.7%</b>	<b>23.3%</b>	<b>3.5%</b>	<b>26.3%</b>	<b>21.0%</b>	<b>12.3%</b>	<b>9</b>	<b>16</b>	<b>2</b>	<b>18</b>	<b>14</b>	<b>8</b>
BS Other Rockfish	361	27	14.8%	24.4%	3.5%	24.2%	19.6%	13.7%	4	7	1	7	5	4
<b>AI Other Rockfish</b>	<b>676</b>	<b>51</b>	<b>14.1%</b>	<b>23.0%</b>	<b>3.5%</b>	<b>26.3%</b>	<b>21.0%</b>	<b>12.3%</b>	<b>7</b>	<b>12</b>	<b>2</b>	<b>13</b>	<b>11</b>	<b>6</b>
Other Species	26,500	1,988	12.3%	24.0%	4.5%	25.6%	20.6%	13.0%	245	477	89	509	410	258
	1,998,030	185,262												
<b>Halibut CDQ</b>			<b>CDQ Group Allocations (%)</b>						<b>CDQ Group Amounts (lbs)</b>					
Halibut 4B	4,910,000	982,000	41.0%	17.0%	1.0%	20.0%	15.0%	6.0%	402,620	166,940	9,820	196,400	147,300	58,920
<b>Halibut 4C</b>	<b>2,030,000</b>	<b>1,015,000</b>	<b>9.5%</b>	<b>17.0%</b>	<b>32.5%</b>	<b>20.0%</b>	<b>15.0%</b>	<b>6.0%</b>	<b>96,425</b>	<b>172,550</b>	<b>329,875</b>	<b>203,000</b>	<b>152,250</b>	<b>60,900</b>
Halibut 4D	2,030,000	609,000	6.0%	26.1%	1.0%	28.4%	25.5%	13.0%	36,540	158,949	6,090	172,956	155,295	79,170
<b>Halibut 4E</b>	<b>390,000</b>	<b>390,000</b>	<b>6.0%</b>	<b>27.5%</b>	<b>1.0%</b>	<b>44.5%</b>	<b>15.0%</b>	<b>6.0%</b>	<b>23,400</b>	<b>107,250</b>	<b>3,900</b>	<b>173,550</b>	<b>58,500</b>	<b>23,400</b>
<b>Crab CDQ</b>														
Bristol Bay Red King Crab	7,150,000	536,000	12.3%	23.3%	4.5%	26.3%	21.3%	12.3%	65,928	124,888	24,120	140,968	114,168	65,928
<b>Norton Sound Red King Crab</b>		<b>23,260</b>	<b>6.0%</b>	<b>17.0%</b>	<b>1.0%</b>	<b>20.0%</b>	<b>32.5%</b>	<b>23.5%</b>	<b>1,396</b>	<b>3,954</b>	<b>233</b>	<b>4,652</b>	<b>7,560</b>	<b>5,466</b>
Pribilof Red & Blue King Crab									0	0	0	0	0	0
<b>St. Matthew Blue King Crab</b>									<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Bering Sea C. Opilio Crab	30,820,000	2,310,000	9.5%	23.7%	7.7%	26.0%	21.3%	12.0%	219,450	546,315	176,715	599,445	492,030	276,045
<b>Bering Sea C. Bairdi Crab</b>									<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Note: The percentage allocation to each group will not always correspond exactly to the metric tons for each group due to rounding.

Note: The opilio TAC is for the 2002 fishery, as it occurs in January.

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Option 2 benefits the three CDQ groups with the highest number of member communities: BBEDC (17), CVRF (20), and NSEDC (15), and disadvantages the three groups with fewer communities: APICDA (6), CBSFA (1), and YDFDA (6). The groundfish allocations of BBEDC, CVRF, and NSEDC would either stay the same or increase under Option 2 as compared to the status quo. In the pollock fishery in particular, using the 2001 TAC and assuming that the competitive portions of the overall allocation would mirror the competitive allocations from the 2001 - 02 allocation cycle, a total of about 7% of the quota would be reallocated from the three smaller groups to the three larger ones. Specifically, the allocations to APICDA, CBSFA, and YDFDA would decrease by 3%, 2%, and 3%, respectively, and the allocations to BBEDC and CVRF would increase by 3% and 4%, respectively. NSEDC's allocation would stay the same.

The general trend of the three largest groups increasing their quotas holds true for all of the groundfish fisheries and the Bristol Bay red king crab and opilio fishery. The halibut fishery is the exception, as the halibut quotas for Area 4 are allocated primarily by proximity to the fishery. Thus, under Option 2, the groups that had historically been allocated the majority of the halibut quotas in each area would realize a considerable decrease in their allocations, to be reallocated amongst the remaining groups. For instance, in the 2001- 02 allocation process, APICDA was awarded 100% of the Area 4B CDQ halibut quota; under Option 2 this allocation would decrease to 41%. As discussed under Option 1, Option 2 would require modifications to the Federal regulations which currently require that halibut CDQ be allocated only to CDQ groups in, or proximate to, the IPHC regulatory area.

Table 4.10 estimates the impact of Option 2 on the average royalty amounts paid to the CDQ groups for pollock, Pacific cod, opilio, and Bristol Bay red king crab, which made up about 98% of the total CDQ royalties in 2000. Recall that the calculations were based on the *average* year 2000 prices paid to the CDQ groups and the 2001 CDQ reserves, thus, these are not absolute values. The prices paid to each CDQ group will vary over time, as will the overall CDQ reserves and allocations to each group. Note also that total royalties are not reported, only the amount the royalties are projected to change under Option 2.

Table 4.10: Impact of Option 2 on the primary CDQ allocations (%) and royalties<sup>1</sup> compared to the 2001 - 02 allocations (status quo)<sup>2</sup>

CDQ Groups	Pollock			Pacific Cod			Opilio			Bristol Bay King Crab			Total change in royalties (\$)
	Status quo <sup>2</sup>	Option 2	Change in royalties (\$)	Status quo	Option 2	Change in royalties (\$)	Status quo	Option 2	Change in royalties (\$)	Status quo	Option 2	Change in royalties (\$)	
APICDA	14%	11%	-1,227,828	16%	12%	-134,683	10%	10%	0	18%	12%	-115,038	-1,477,549
BBEDC	21%	24%	1,227,828	20%	24%	134,683	19%	24%	53,332	18%	23%	95,865	1,511,708
CBSFA	4%	2%	-818,552	10%	5%	-168,354	19%	8%	-117,330	10%	5%	-95,865	-1,200,101
CVRF	24%	28%	1,637,104	17%	26%	303,037	17%	26%	95,998	18%	26%	153,384	2,189,523
NSEDC	23%	23%	0	18%	21%	101,012	18%	21%	31,999	18%	21%	57,519	190,531
YDFDA	14%	11%	-1,227,828	19%	13%	-202,025	17%	12%	-53,332	18%	12%	-115,038	-1,598,223

<sup>1</sup>The royalties from these four species allocations comprised 98% of the total royalties in 2000: pollock (82%); Pacific cod (8%); Opilio (5%); BBRKC (3%). Year 2000 average prices paid to the CDQ groups are used to calculate royalty amounts.

<sup>2</sup>Status quo is represented by the 2001-02 CDQ allocations. These percentages are also used to determine the "competitive" portion of the quota under Option 2.

Table 4.10 shows that under the foundation quota method proposed in Option 2, the allocations would shift to benefit BBEDC, CVRF, and NSEDC, the larger of the six CDQ groups. The average royalties to these groups derived from these four species allocations would increase by about \$1.5 million, \$2.2 million, and \$190,500, respectively. These increases would be at the expense of the smaller groups, APICDA, CBSFA, and YDFDA, the royalties of which would decrease by an estimated \$1.5 million, \$1.2 million, and \$1.6 million, respectively. While these values do not encompass the total royalties derived from all of the species allocated to the CDQ groups, they represent the great majority of the royalties received.

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### *Primary Impacts of Option 2*

The overall impact of establishing a foundation quota based on the number of communities in a CDQ group is that the CDQ groups with a larger number of communities will receive more quota than the smaller groups, regardless of their economic need or the number of residents that may benefit. This approach may be equitable on one level, in that the membership of each community would net the CDQ group an amount of quota, the royalties from which could flow back into that community. Considering that each community within a CDQ group has individual needs and unique project opportunities, it is important to ensure that the benefits of the program are realized in each community, regardless of population.

While neither the BSAI FMP nor the Federal regulations specify that each community must receive equal benefits from the CDQ Program, the State regulations that guide the process for evaluating the CDPs include consideration of the number of communities that will benefit from the allocations. These regulations (6 AAC 93.017) explicitly state that to carry out the State's role under Federal regulations, the CDQ team shall apply certain program standards, including determining whether:

- a CDP provides specific and measurable benefits to each community participating in the CDP; and
- as part of a CDP, a CDQ project provides benefits to individual residents of a participating community, to a single participating community, or to all participating communities.

The regulations provide for the number of communities in each CDQ group to play a role in the equitable distribution of quota. Given that 65% of the overall quota would be established as foundation quota under Option 2, this method may spur concerns that some CDQ groups would receive a significantly more quota than they have received in the past. For instance, CVRF, which has 20 member communities, would only have to maintain its CDQ eligibility status and current number of communities in order to secure a minimum of 20% of each multispecies CDQ allocation. That allocation would increase with the inclusion of the quota that is determined competitively. Under the State's current allocation system, which considers both demographic and performance-based measures, CVRF did not receive more than 20% of any species allocation in the 2001 - 02 allocation cycle, with few exceptions (pollock being one). While the method under Option 2 may be appropriate for establishing a foundation quota, it is important to note the disparity between the resulting allocations and the State's recommendations in the past, if only to realize that there may be other crucial factors which warrant consideration during the process. Allocating 65% of the reserve as foundation quota will result in extreme changes to the groups' allocations, which may undermine some groups' stability and possibly success as a viable operation. It may also provide incentive for the smaller groups, specifically CBSFA with one member community, to merge with a larger group.

A second consideration related to the foundation quota proposed under Option 2 is related to population. The communities in the CDQ groups vary widely in population, although all can be considered small villages, predominantly populated by Alaska Natives. Under Option 2, population would remain a consideration in the competitive portion of the quota (should the Council determine as such under the evaluation criteria in Issue 5), so population as a factor would not be removed from the allocation process altogether. However, basing 65% of the overall allocations on the number of communities in each group does result in a level of inequity when considering the number of residents that may benefit from the allocation. For instance, while APICDA would receive six times more foundation quota than CBSFA under Option 2, the communities represented by APICDA only have about twice the number of residents. Similarly, while APICDA and YDFDA would each receive 6% of the foundation quota, YDFDA communities comprise about 12% of the total population of the CDQ communities and APICDA makes up only 4%. The number of communities in each group does not correspond to the percentage of the overall population the group represents.

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Finally, similar to Option 1, Option 2 also provides incentive for individual communities to sever their relationships with the existing CDQ groups and seek eligibility status as a separate group. Option 2 would guarantee 1% of the quota for each eligible community in a group, regardless of performance, effective management, etc. This may cause a splintering effect as individual communities are rewarded with guaranteed quota if they separate from their current CDQ groups. The negative effects of higher administrative costs and the potential instability imparted on current groups are discussed under Option 1.

In sum, the method for determining the foundation quota under Option 2 appears to better meet the goal of allocating quota equitably than Option 1. While Option 1 would distribute the quota equally among all of the CDQ groups, one cannot neglect the variability in the overall makeup of the CDQ groups in seeking an equitable solution. Option 2 accounts for the number of communities in each group, and thus apportions the quota based on how many communities will benefit under each group. This is more consistent with the overall concept of foundation quota and better conforms to the intent of the CDQ Program as established in the BSAI FMP and Federal and State regulations. Option 2, however, does not take into account any of the other demographic factors that the NRC recognized as important to include in the foundation quota, such as population. While the Council is not constrained to form a foundation quota based exactly on all of the demographic factors suggested by the NRC, the absence of some of these factors may be more notable under Option 2, in that 65% of the total allocations will be foundation quota. In addition, Option 2 does not mitigate the potential for splintering. Because the great majority (65%) of the overall reserve would be allocated as foundation quota, Option 2 would potentially result in extreme changes to the groups' allocations and likely undermine the stability of the smaller groups' operations.

### Option 3: 1% for every 1,000 residents

**Option 3** would allocate 1% of each species quota for every 1,000 residents that belong to a CDQ group, with the remaining quota allocated competitively. The population information is based on the 2000 U.S. census data (refer to Table 4.8). It is assumed that the amount of foundation quota apportioned to each CDQ group would change in accordance with the population of the communities in each group, thus only the method for determining the foundation quota would be set in regulation. It is also assumed that the foundation quotas would be adjusted for changes in population at the beginning of each new allocation cycle.

Given that the total population of all of the CDQ communities is 27,073, Option 3 effectively guarantees that 27% of the CDQ reserve will be foundation quota and the remaining 73% will be allocated competitively. Option 3 provides for the smallest percentage of foundation quota of all the options under Alternative 2.

Similar to the previous options, the overall effect of Option 3 depends on the groups' allocations under the competitive process. However, the competitive portion of the allocation would carry much more weight under Option 3 than Options 1 or 2, as the great majority of the quota would be allocated competitively based on the evaluation criteria in Federal regulation. Thus, the overall allocation to each group would be more dependent on how the CDP meets the evaluation criteria (73%) than the foundation quota (27%).

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Table 4.11: Projected multispecies CDQ Program Allocations for each CDQ Group under Option 3, based on the 2001 CDQ Reserves

Groundfish CDQ Species or Species Groups	2001 TAC	2001 CDQ Reserve	CDQ Group Allocations (%)						CDQ Group Amounts (mt)					
			APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA
<b>BS FG Sablefish</b>	<b>780</b>	<b>156</b>	<b>12.0%</b>	<b>22.0%</b>	<b>13.7%</b>	<b>7.9%</b>	<b>23.1%</b>	<b>21.3%</b>	<b>19</b>	<b>34</b>	<b>21</b>	<b>12</b>	<b>36</b>	<b>33</b>
AI FG Sablefish	1,875	375	12.0%	20.5%	0.5%	29.8%	23.1%	14.0%	45	77	2	112	87	53
<b>BS Trawl Sablefish</b>	<b>780</b>	<b>59</b>	<b>13.5%</b>	<b>20.5%</b>	<b>7.8%</b>	<b>20.3%</b>	<b>21.6%</b>	<b>16.2%</b>	<b>8</b>	<b>12</b>	<b>5</b>	<b>12</b>	<b>13</b>	<b>10</b>
AI Trawl Sablefish	625	47	18.6%	22.7%	7.1%	15.2%	15.8%	20.6%	9	11	3	7	7	10
<b>BS Pollock - total</b>	<b>1,400,000</b>	<b>140,000</b>	<b>11.3%</b>	<b>21.2%</b>	<b>3.4%</b>	<b>25.4%</b>	<b>25.3%</b>	<b>13.3%</b>	<b>15,842</b>	<b>29,713</b>	<b>4,828</b>	<b>35,578</b>	<b>35,396</b>	<b>18,642</b>
A/B season (40%)		56,000	11.3%	21.2%	3.4%	25.4%	25.3%	13.3%	6,337	11,885	1,931	14,231	14,159	7,457
<b>C/D season (60%)</b>		<b>84,000</b>	<b>11.3%</b>	<b>21.2%</b>	<b>3.4%</b>	<b>25.4%</b>	<b>25.3%</b>	<b>13.3%</b>	<b>9,505</b>	<b>17,828</b>	<b>2,897</b>	<b>21,347</b>	<b>21,238</b>	<b>11,185</b>
AI Pollock	2,000	200	11.3%	21.2%	3.4%	25.4%	25.3%	13.3%	23	42	7	51	51	27
<b>Bogoslof Pollock</b>	<b>1,000</b>	<b>100</b>	<b>11.3%</b>	<b>21.2%</b>	<b>3.4%</b>	<b>25.4%</b>	<b>25.3%</b>	<b>13.3%</b>	<b>11</b>	<b>21</b>	<b>3</b>	<b>25</b>	<b>25</b>	<b>13</b>
<b>Pacific Cod</b>	<b>188,000</b>	<b>14,100</b>	<b>12.8%</b>	<b>20.5%</b>	<b>7.8%</b>	<b>20.3%</b>	<b>21.6%</b>	<b>17.0%</b>	<b>1,801</b>	<b>2,890</b>	<b>1,104</b>	<b>2,863</b>	<b>3,050</b>	<b>2,392</b>
<b>WAI Atka Mackerel</b>	<b>27,900</b>	<b>2,093</b>	<b>23.0%</b>	<b>16.8%</b>	<b>6.4%</b>	<b>18.8%</b>	<b>18.7%</b>	<b>16.2%</b>	<b>481</b>	<b>353</b>	<b>133</b>	<b>394</b>	<b>392</b>	<b>340</b>
CAI Atka Mackerel	33,600	2,520	23.0%	16.8%	6.4%	18.8%	18.7%	16.2%	579	425	160	475	472	409
<b>EAI/BS Atka Mackerel</b>	<b>7,800</b>	<b>585</b>	<b>23.0%</b>	<b>16.8%</b>	<b>6.4%</b>	<b>18.8%</b>	<b>18.7%</b>	<b>16.2%</b>	<b>134</b>	<b>99</b>	<b>37</b>	<b>110</b>	<b>109</b>	<b>95</b>
Yellowfin Sole	113,000	8,475	21.5%	23.4%	6.4%	12.3%	13.6%	22.8%	1,825	1,984	540	1,041	1,153	1,932
<b>Rock Sole</b>	<b>75,000</b>	<b>5,625</b>	<b>18.6%</b>	<b>22.7%</b>	<b>6.4%</b>	<b>15.9%</b>	<b>16.5%</b>	<b>19.9%</b>	<b>1,047</b>	<b>1,276</b>	<b>358</b>	<b>896</b>	<b>930</b>	<b>1,118</b>
BS Greenland Turbot	5,628	422	15.7%	22.0%	5.6%	18.8%	19.4%	18.4%	66	93	24	80	82	78
<b>AI Greenland Turbot</b>	<b>2,772</b>	<b>208</b>	<b>12.8%</b>	<b>20.5%</b>	<b>4.2%</b>	<b>23.2%</b>	<b>23.1%</b>	<b>16.2%</b>	<b>27</b>	<b>43</b>	<b>9</b>	<b>48</b>	<b>48</b>	<b>34</b>
Arrowtooth Flounder	22,011	1,651	18.6%	22.0%	7.1%	15.9%	15.8%	20.6%	307	362	117	263	261	340
<b>Flathead Sole</b>	<b>40,000</b>	<b>3,000</b>	<b>15.7%</b>	<b>20.5%</b>	<b>7.8%</b>	<b>18.8%</b>	<b>19.4%</b>	<b>17.7%</b>	<b>471</b>	<b>615</b>	<b>235</b>	<b>565</b>	<b>583</b>	<b>531</b>
Other Flatfish	28,000	2,100	19.3%	22.7%	7.1%	15.2%	15.8%	19.9%	406	476	149	319	332	418
<b>BS Pacific Ocean Perch</b>	<b>1,730</b>	<b>130</b>	<b>14.2%</b>	<b>21.2%</b>	<b>5.6%</b>	<b>21.0%</b>	<b>21.6%</b>	<b>16.2%</b>	<b>19</b>	<b>28</b>	<b>7</b>	<b>27</b>	<b>28</b>	<b>21</b>
WAI Pacific Ocean Perch	4,740	356	23.0%	16.8%	6.4%	18.8%	18.7%	16.2%	82	60	23	67	67	58
<b>CAI Pacific Ocean Perch</b>	<b>2,560</b>	<b>192</b>	<b>23.0%</b>	<b>16.8%</b>	<b>6.4%</b>	<b>18.8%</b>	<b>18.7%</b>	<b>16.2%</b>	<b>44</b>	<b>32</b>	<b>12</b>	<b>36</b>	<b>36</b>	<b>31</b>
EAI Pacific Ocean Perch	2,900	218	23.0%	16.8%	6.4%	18.8%	18.7%	16.2%	50	37	14	41	41	35
<b>BS Other Red Rockfish</b>	<b>135</b>	<b>10</b>	<b>17.9%</b>	<b>19.0%</b>	<b>6.4%</b>	<b>19.6%</b>	<b>20.2%</b>	<b>17.0%</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>
AI Sharpchin/Northern	6,745	506	23.0%	16.8%	6.4%	18.8%	18.7%	16.2%	116	85	32	95	95	82
<b>AI Shortraker/Rougheye</b>	<b>912</b>	<b>68</b>	<b>17.2%</b>	<b>19.0%</b>	<b>5.6%</b>	<b>21.0%</b>	<b>20.9%</b>	<b>16.2%</b>	<b>12</b>	<b>13</b>	<b>4</b>	<b>14</b>	<b>14</b>	<b>11</b>
BS Other Rockfish	361	27	19.3%	21.2%	5.6%	16.7%	18.0%	19.2%	5	6	2	4	5	5
<b>AI Other Rockfish</b>	<b>676</b>	<b>51</b>	<b>17.9%</b>	<b>18.3%</b>	<b>5.6%</b>	<b>21.0%</b>	<b>20.9%</b>	<b>16.2%</b>	<b>9</b>	<b>9</b>	<b>3</b>	<b>11</b>	<b>11</b>	<b>8</b>
Other Species	26,500	1,988	14.2%	20.5%	7.8%	19.6%	20.2%	17.7%	283	407	156	389	401	352
	1,998,030	185,262												
<b>Halibut CDQ</b>			<b>CDQ Group Allocations (%)</b>						<b>CDQ Group Amounts (lbs)</b>					
Halibut 4B	4,910,000	982,000	74.1%	5.9%	0.5%	7.9%	8.5%	3.1%	727,367	57,938	5,205	77,578	83,470	30,442
<b>Halibut 4C</b>	<b>2,030,000</b>	<b>1,015,000</b>	<b>8.4%</b>	<b>5.9%</b>	<b>66.2%</b>	<b>7.9%</b>	<b>8.5%</b>	<b>3.1%</b>	<b>85,230</b>	<b>59,885</b>	<b>671,960</b>	<b>80,185</b>	<b>86,275</b>	<b>31,465</b>
Halibut 4D	2,030,000	609,000	1.1%	24.9%	0.5%	25.4%	30.4%	17.7%	6,699	151,472	3,228	154,764	185,081	107,756
<b>Halibut 4E</b>	<b>390,000</b>	<b>390,000</b>	<b>1.1%</b>	<b>27.8%</b>	<b>0.5%</b>	<b>59.0%</b>	<b>8.5%</b>	<b>3.1%</b>	<b>4,290</b>	<b>108,385</b>	<b>2,067</b>	<b>230,018</b>	<b>33,150</b>	<b>12,090</b>
<b>Crab CDQ</b>														
Bristol Bay Red King Crab	7,150,000	536,000	14.2%	19.0%	7.8%	21.0%	21.6%	16.2%	76,297	102,025	41,953	112,745	115,961	87,017
<b>Norton Sound Red King Crab</b>		<b>23,260</b>	<b>1.1%</b>	<b>5.9%</b>	<b>0.5%</b>	<b>7.9%</b>	<b>45.0%</b>	<b>39.6%</b>	<b>256</b>	<b>1,372</b>	<b>123</b>	<b>1,838</b>	<b>10,464</b>	<b>9,207</b>
Pribilof Red & Blue King Crab									0	0	0	0	0	0
<b>St. Matthew Blue King Crab</b>									<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Bering Sea C. Opilio Crab	30,820,000	2,310,000	8.4%	19.8%	14.4%	20.3%	21.6%	15.5%	193,971	456,555	332,508	469,043	499,759	358,163
<b>Bering Sea C. Bairdi Crab</b>									<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Note: The percentage allocation to each group will not always correspond exactly to the metric tons for each group due to rounding.														
Note: The opilio TAC is for the 2002 fishery, as it occurs in January.														

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The impact of Option 3 on the 2001- 02 allocations is shown in Table 4.11. Compared to the status quo, Option 3 benefits the three largest CDQ groups: BBEDC (pop. 5,932), CVRF (pop. 7,855), and NSEDC (pop. 8,488), and disadvantages the smaller of the groups: APICDA (pop. 1,143), CBSFA (pop. 532), and YDFDA (pop. 3,123). The groundfish allocations of CVRF and NSEDC increase in almost every fishery under Option 3, and the allocations to BBEDC stay about the same or increase modestly. In the pollock fishery in particular, using the 2001 TAC and assuming that the competitive portions of the overall allocation would mirror the allocations in the 2001 - 02 allocation cycle, about 4% of the quota would be reallocated from the three smaller groups to the three larger ones.

The general trend described above holds true for all of the groundfish fisheries and the Bristol Bay red king crab and opilio fisheries. The halibut fishery is the exception, since the halibut quotas for Area 4 are allocated primarily by proximity to the fishery. Of all of the options, Option 3 has the least impact compared to the 2001 - 02 multispecies allocations (status quo). This is primarily because the foundation quota makes up a much smaller portion of the overall quota (27%) compared to Options 1 (50%) and 2 (65%). In addition, basing the foundation portion of the quota on population appears to be more consistent with the way the State has been balancing demographic and performance-based factors in the past. The NRC noted that the actual allocation of quota seems to be driven by both population and income levels, as well as performance factors.

Table 4.12 shows the impact of Option 3 on the average royalty amounts paid to the CDQ groups for pollock, Pacific cod, opilio, and Bristol Bay red king crab. The calculations are based on the *average* prices paid to the CDQ groups in 2000 and the 2001 CDQ reserve and allocations. For confidentiality reasons, actual royalties are not reported. The prices paid to each CDQ group vary over time, as do the overall CDQ reserves and allocations to each group.

Table 4.12: Impact of Option 3 on the primary CDQ allocations (%) and royalties<sup>1</sup> compared to the 2001 - 02 allocations (status quo)<sup>2</sup>

CDQ Groups	Pollock			Pacific Cod			Opilio			Bristol Bay King Crab			Total change in royalties (\$)
	Status quo <sup>2</sup>	Option 3	Change in royalties (\$)	Status quo	Option 3	Change in royalties (\$)	Status quo	Option 3	Change in royalties (\$)	Status quo	Option 3	Change in royalties (\$)	
APICDA	14%	11%	-1,227,828	16%	13%	-101,012	10%	8%	-21,333	18%	14%	-76,692	-1,426,865
BBEDC	21%	21%	0	20%	20%	0	19%	20%	10,666	18%	19%	19,173	29,839
CBSFA	4%	3%	-409,276	10%	8%	-67,342	19%	14%	-53,332	10%	8%	-38,346	-568,296
CVRF	24%	25%	409,276	17%	20%	101,012	17%	20%	31,999	18%	21%	57,519	599,807
NSEDC	23%	25%	818,552	18%	22%	134,683	18%	22%	42,666	18%	22%	76,692	1,072,593
YDFDA	14%	13%	-409,276	19%	17%	-67,342	17%	16%	-10,666	18%	16%	-38,346	-525,630

<sup>1</sup>The royalties from these four species allocations comprised 98% of the total royalties in 2000: pollock (82%); Pacific cod (8%); Opilio (5%); BBRKC (3%). Year 2000 average prices paid to the CDQ groups are used to calculate royalty amounts.

<sup>2</sup>Status quo is represented by the 2001-02 CDQ allocations. These percentages are also used to determine the "competitive" portion of the quota under Option 3.

Table 4.12 shows that under the foundation quota method proposed in Option 3, the allocations would shift to benefit BBEDC, CVRF, and NSEDC, the groups with the largest populations. The average royalties to these groups derived from these four species allocations would increase by an estimated \$30,000, \$600,000, and \$1.07 million respectively, compared to the status quo. These increases would be at the expense of the smaller groups, APICDA, CBSFA, and YDFDA, the royalties of which would decrease by an estimated \$1.4 million, \$570,000, and \$526,000, respectively. Of all of the options under consideration in Alternative 2, Option 3 results in the most modest change to the primary species allocations and therefore has the least impact on the royalties derived from the allocations.

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### *Primary Impacts of Option 3*

The overall impact of establishing a foundation quota based solely on population is that the groups with the more populated communities will receive more foundation quota than the smaller groups, regardless of their economic need or the number of communities in the region that will benefit. In effect, a CDQ group with one or two larger communities will receive more CDQ than a group comprised of many smaller communities. For instance, CVRF (pop. 7,855) and NSEDC (pop. 8,488) would each receive about 8% of the foundation quota based on the method described under Option 3. However, CVRF has 20 member communities and NSEDC has 15 member communities. One community, Nome, makes up about 40% of NSEDC's total population. Thus, it will likely be more costly for CVRF to meet the goal of benefitting all communities in its region than it will NSEDC, simply because the benefits of the CDQ projects need to be distributed among more individual communities with differing needs.

It is not a safe generalization, however, to assume that even if a CDQ group has more member communities, it will be more difficult or costly to implement projects that will benefit all of the communities in the region. Many communities that are in close proximity to one another may share similar needs and traditional fisheries, thus there exists the potential to benefit more than one community with a single project. On the other hand, communities that are more isolated from one another, such as those in NSEDC, may have a more difficult time developing cooperative projects that will benefit more than one community.

This example illustrates an important summary point: it is very difficult to allocate CDQ by the number of communities, population, or any other single demographic factor without generalizing these equity issues to some extent. This may be one reason that the NRC suggested using several factors to formulate a foundation quota and at least partially why the current allocation process is somewhat subjective and why it would not be possible to eliminate all the subjectivity in its current form. In evaluating the CDPs using the current process, the CDQ Team is able to take into account the differing characteristics of all of the groups, including location, population, income, number of communities, and the feasibility of individual projects in specific areas. This avoids a blanket approach to the allocation process, sometimes at the expense of simplicity and transparency in the decision-making process. While it is more difficult to allocate quota using subjective evaluation criteria, it allows the CDQ Team to account for the uniqueness of all of the groups and their member communities.

Finally, while the potential exists for fewer communities than under Options 1 or 2, Option 3 also provides an incentive for the larger communities to splinter from their current CDQ groups and form their own group. Currently, there are only 3 communities, Dillingham (BBEDC, pop. 2,466), Hooper Bay (CVRF, pop. 1,014), and Nome (NSEDC, pop. 3,505), with populations of at least 1,000, that would receive guaranteed benefits in the form of CDQ quota from establishing their own group under Option 3. These three communities would receive about 2.5%, 1% and 3.5% of the foundation quota under Option 3, respectively. The negative effects of higher administrative costs and the potential instability this would generate in the current program are discussed under Option 1.

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Suboption 1: Foundation quota applies only to the pollock allocation

**Suboption 1** would establish a foundation quota based on the methods described in Options 1 - 3, applied only to a portion of the pollock allocation. The remainder of the pollock quota would be allocated competitively, as would the allocations of all other species. Recall that Options 1 - 3 would allocate the foundation quota as follows:

- Option 1 - 50% of the CDQ reserve is divided equally among the CDQ groups.
- Option 2 - 1% of the CDQ reserve is allocated for each community represented by the CDQ group.
- Option 3 - 1% of the CDQ reserve is allocated for every 1,000 people represented by the CDQ group.

The general impacts of Suboption 1 are discussed under Options 1 - 3. Table 4.13 summarizes the impact of Suboption 1 on the overall pollock allocations and average royalties derived from those allocations, using the 2001 pollock reserve and 2001 - 02 allocations to determine the competitive portion of the overall allocations. Note again that the *average* price paid to all the CDQ groups for pollock is used to derive the change in royalties as a result of this suboption; no actual royalty amounts are reported.

Suboption 1 would allow species allocations other than pollock to be determined competitively, using the evaluation criteria that will be determined under Issue 5. While Suboption 1 would have less of an impact than Options 1 - 3 alone, it has a substantial impact on the potential revenues of the CDQ groups. Pollock royalties make up the great majority of the overall royalties the CDQ groups receive, thus the pollock allocation has been the most important and controversial allocation decision in the past. Pollock royalties exceeded \$33 million in 2000, representing 82% of total royalties to all CDQ groups. While each group depends on the different species allocations to varying degrees, pollock royalties represented greater than 70% of the total royalties paid to each group in 2000. The pollock allocation is considered the “base” of the CDQ allocations, and thus may be the most appropriate to be allocated as foundation quota.

Table 4.13: Impact of Suboption 1 on the pollock CDQ allocations (%) and royalties<sup>1</sup> compared to the 2001 - 02 allocations (status quo)<sup>2</sup>

CDQ Groups	Status quo <sup>2</sup>	Option 1		Option 2		Option 3	
	%	%	Change in royalties (\$)	%	Change in royalties (\$)	%	Change in royalties (\$)
APICDA	14%	15%	409,276	11%	-1,227,828	11%	-1,227,828
BBEDC	21%	19%	-818,552	24%	1,227,828	21%	0
CBSFA	4%	10%	2,455,656	2%	-818,552	3%	-409,276
CVRF	24%	20%	-1,637,104	28%	1,637,104	25%	409,276
NSEDC	23%	20%	-1,227,828	23%	0	25%	818,552
YDFDA	14%	15%	409,276	11%	-1,227,828	13%	-409,276

<sup>1</sup>The pollock allocations are expressed in percentage of the total 2001 pollock CDQ reserve (140,000 mt) allocated to each CDQ group under the options. The percentages resulting from the calculation of each option are rounded for the purpose of this table. Year 2000 average prices paid to the CDQ groups are used to calculate royalties.

<sup>2</sup>Status quo is represented by the 2001-02 CDQ allocations. These percentages are also used to determine the "competitive" portion of the quotas under Options 1 - 3, Suboption 1.

**Primary Impacts of Suboption 1**

The main consideration under Suboption 1 is that it would mitigate concerns with certain species that are currently allocated to individual groups based primarily on proximity to the resource or other factors specific to the individual fishery. The prime example is the halibut allocations. The halibut allocations are unique in that between 20 - 100% of the total halibut allocation in Areas 4B, 4C, 4D, and 4E is allocated to the CDQ Program. In addition, the allocations within those regulatory areas are restricted to communities in, or in close proximity to, those areas. The result is that relatively few communities are eligible to harvest the halibut CDQ in the BSAI. The intent of allocating the entire CDQ allocation to only a few communities is to provide harvesting opportunities for local fishermen and encourage the development of small boat fisheries. Options 1 - 3 would conflict with this policy decision by distributing a portion of the halibut reserve equally among all six CDQ groups, regardless of their geographic location or efforts to develop local fisheries.

The DCED reports that fisheries development at the community level in western Alaska generally involves either a salmon or halibut processing operation, and there are many obstacles to financial success from these investments. Geographic barriers make it difficult to develop the necessary infrastructure such as docks and harbors, and the distance from these communities to the primary markets also makes distribution more costly than from the larger ports. However, DCED notes that the current fisheries-related requirements of the CDQ Program will continue to spur efforts to promote and develop local fisheries as a cornerstone of the CDQ Program. For instance, the Council approved a proposal for the Area 4D/4E CDQ halibut fishery in February 2002 which will make it easier for small vessels to effectively harvest the halibut CDQ and provide an opportunity for groups to develop small, locally-based halibut fisheries. In light of these policy goals, it may be more appropriate to continue to allocate the majority of the fisheries on a competitive basis, in order to account for geographic and other unique characteristics of the fisheries that may help to encourage the development of community-based fisheries. At a minimum, it does not seem appropriate to allocate a portion of the halibut CDQ as foundation quota without taking into account these other policy considerations.

By contrast, all six CDQ groups have joined with an industry partner to harvest Bering Sea pollock, and for the most part, the partnerships have remained fairly stable (DCED 2001). In addition, all six CDQ groups have acquired ownership interests in pollock catcher vessels. The pollock quota is harvested by larger vessels that deliver to the major ports, and while it is the main source of revenue and provides many employment and training opportunities, it is not generally as suitable for community-level fisheries development. Combined with the fact that the pollock quota provides the major revenue basis for the CDQ Program, Suboption 1 may better meet the purpose of establishing foundation quota than Options 1 - 3 alone.

Option 4: Foundation quota applies only to 50% of the pollock allocation

**Option 4** would allocate 50% of the pollock quota to CDQ groups based on the population of the communities represented by the group, with the remaining pollock quota and all other species quotas allocated competitively. The population information (based on the 2000 U.S. census data) is shown in Table 4.8 and recreated in the box at right. Thus, under Option 4, half of the CDQ pollock reserve would be allocated to the CDQ groups according to the apportionments provided here.

It is assumed that the amount of foundation quota apportioned to each CDQ group would change in accordance with the population of the communities in each group, thus only the *method* for

<b>Percentage of the total population of the CDQ communities represented by each CDQ group:</b>	
APICDA	4%
BBEDC	22%
CBSFA	2%
CVRF	29%
NSEDC	31%
YDFDA	12%

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determining the foundation quota would be set in regulation. It is also assumed that the foundation quotas would be adjusted for changes in population at the beginning of each new allocation cycle.

The impact of Option 4 on the 2001- 2002 allocations is shown in Table 4.14. Compared to the status quo, Option 4 benefits the three largest CDQ groups: BBEDC , CVRF, and NSEDC, and disadvantages the smaller of the groups: APICDA, CBSFA, and YDFDA. Overall, the pollock allocations to each individual group change by 0.5 - 5%, with the allocation to BBEDC changing the least (+0.5%) and the allocation to APICDA changing the most (-5%). Using the 2001 TAC and assuming that the competitive portions of the pollock allocations would mirror the allocations from the 2001 - 02 allocation cycle, about 7% of the pollock quota would be reallocated from the three smaller groups to the three larger ones.

Table 4.14: Impact of Option 4 on the pollock CDQ allocations<sup>1</sup> (%) and royalties compared to the 2001-02 allocations (status quo)<sup>2</sup>

CDQ Groups	Status quo		Option 4		
	%	mt	%	mt	Change in royalties (\$)
<b>APICDA</b>	14	19,600	9	12,600	-2,046,380
<b>BBEDC</b>	21	29,400	21.5	30,100	204,638
<b>CBSFA</b>	4	5,600	3	4,200	-409,276
<b>CVRF</b>	24	33,600	26.5	37,100	1,023,190
<b>NSEDC</b>	23	32,200	27	37,800	1,637,104
<b>YDFDA</b>	14	19,600	13	18,200	-409,276

<sup>1</sup>The pollock allocations are expressed in percentage of the total 2001 pollock CDQ reserve (140,000 mt). Year 2000 average prices paid to the CDQ groups are used to calculate royalties.

<sup>2</sup>Status quo is represented by the 2001-02 CDQ allocations. These percentages are also used to determine the "competitive" portion of the pollock allocations (50%) under Option 4.

Table 4.14 also reflects the change in the royalty amounts derived from the pollock allocations under Option 4, which ranges from a loss of about \$2.0 million to a gain of \$1.6 million. Note again that the *average* price paid to all the CDQ groups for pollock is used to derive the change in royalties as a result of this option; no actual royalty amounts are reported.

**Primary Impacts of Option 4**

Option 4 would have a lesser impact than Options 1-3, simply because it limits the application of the foundation quota to the pollock allocations. As stated previously, however, adjustments to the pollock allocations as a result of this option would still have a substantial impact on the potential revenues of the CDQ groups, as pollock royalties make up the great majority of the overall royalties the CDQ groups receive.

As discussed under Option 3, which also bases the foundation quota on population, the overall impact is that the groups with the more populated communities will receive more foundation quota than the smaller groups, regardless of their economic need or the number of communities in the region that will benefit. In effect, a CDQ group with one or two larger communities will receive more CDQ than a group comprised of many smaller communities. The discussion of the equity aspects of this concept is provided under Option 3.

While population may be a more objective measure available that reflects the needs and entitlement of the communities in the region, focusing only on population does neglect the use of several other demographic

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factors in the determination of the foundation quota. This reiterates the summary point under Options 1-3, that it is very difficult to allocate CDQ by any single, objective, demographic factor without losing the ability to take into account the differing characteristics of all of the groups, including location, population, income, number of communities, and proximity to the fishery. This may be important to note under Option 4, since half of the total pollock quota would be allocated based on the foundation method.

The primary advantage under Option 4 is similar to that discussed under Suboption 1: limiting the foundation quota to the pollock allocations mitigates concerns with species such as halibut and crab that are currently allocated to individual groups based primarily on proximity to the resource, processing facility availability, expected income, and other factors specific to the individual fishery. These allocations are intended to provide harvesting opportunities for local fishermen and encourage the development of small boat fisheries. Option 4 maintains the intent of this policy decision by limiting the foundation quota to the pollock fishery, which is typically prosecuted with larger vessels that the CDQ groups have contracted with through an industry partner.

Finally, the greatest potential negative impact of Option 4 is that of splintering the existing groups. The concept of a foundation quota, whether it is limited to one species or applied to all species allocations, provides an incentive for communities to ‘splinter’ from their existing CDQ groups. Option 4 would provide a strong, direct incentive for the largest communities, specifically Dillingham (pop. 2,466), Hooper Bay (pop. 1,014), and Nome (pop. 3,505), to start their own individual groups and receive guaranteed benefits in the form of CDQ quota. For example, these three communities represent approximately 9%, 4%, and 13% of the total population of all of the CDQ communities, respectively. Thus, should they apply for and receive eligibility status as distinct, single-community CDQ groups, foundation pollock quota would be distributed to these communities based on the population percentages above. At a minimum, based on the 2001 CDQ pollock reserve, these communities would receive 4.5%, 2%, and 6.5% of the total pollock quota allocated to the CDQ groups, respectively, based on foundation allocations alone. Thus, 13% of the total pollock quota could potentially be allocated to these three communities should the incentive under Option 4 entice these communities to sever from their existing groups and seek eligibility as three single-community groups.

### Summary

The purpose of the foundation quota is to allocate a portion of the quota equitably, among all western Alaska communities participating in the CDQ Program. Alternative 2 would guarantee each CDQ group a portion of the reserve based solely on objective factors such as: eligibility as a CDQ group (Option 1); number of communities (Option 2); or population (Options 3 and 4). This would allow each CDQ group a base on which to build their operations and still allow a portion of the quota to be allocated competitively. This is in contrast to the current allocation process, which balances demographic and performance-based criteria and is applied subjectively in part to determine the allocations to each group. Establishing a distinct foundation quota would address the issue of equity in the allocation process and still allow some portion of the quota to be allocated competitively, based on the evaluation criteria established in Federal regulation. Currently, these criteria consider both demographic and performance-based factors.

Option 1 would divide 50% of the CDQ reserve equally among the CDQ groups, essentially guaranteeing each group 8.3% of the CDQ reserve. This option would benefit the three smallest groups who historically have received lower allocations of the primary species. Allocating a portion of the CDQ reserve to each eligible CDQ group does not take into account population, income, or any of the other factors the NRC suggested would be appropriate for developing a foundation quota. Given that the overall goal of the CDQ Program is to provide fisheries-related opportunities to benefit western Alaska communities, Option 1 appears

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to incorrectly place the emphasis of the allocation process on the CDQ groups themselves, and not on the communities that are intended to benefit from the allocations.

Option 2 would allocate 1% of the CDQ reserve for each community in a CDQ group, resulting in 65% of the reserve as foundation quota. This option would serve to advantage the groups with the most member communities, regardless of whether the populations of the groups are comparable. Option 3 would allocate 1% of the CDQ reserve for every 1,000 people in the combined communities of the CDQ group, which would make 27% of the reserve foundation quota. This option would benefit the CDQ groups with larger populations, regardless of the number of communities that the CDQ group must benefit through CDQ projects.

The original 1992 guidance from the Council established that quota should be apportioned based on the relative benefits to be derived by coastal communities from participating in the CDQ Program, and it was noted that priority should be given to maximizing the benefits of the CDQ Program to the greatest number of communities. Considering this goal, should a foundation quota be preferred, the methods proposed under Options 2 and 3 may be more appropriate than that of Option 1. Option 3, however, would create a much smaller foundation quota, about 27% of the total CDQ reserve, as opposed to 65% under Option 2. This is the primary reason the impact of Option 3 is modest compared to that of Option 2. Regardless of the justification for establishing a foundation quota, changes of this magnitude are very likely to disrupt the current operations of the CDQ groups and cause at least some of the groups with lower allocations to re-evaluate and reduce their current projects and investments.

Foundation quota, as defined and proposed under the options, prevents the consideration of geographic location or any other unique characteristic of the fishery when awarding the allocations. The benefit of distributing a foundation quota equally among the groups will be achieved at the expense of the ability to account for the differing characteristics of the groups and the fisheries, including location, population, income, number of communities, and the feasibility of individual projects in specific areas. While these factors may be accounted for in the competitive portion of the quota if they are listed as evaluation criteria, a substantial portion of the quota (foundation quota) will not consider any of the unique aspects of the groups or the fisheries in which they participate.

At the same time, establishing a foundation quota prevents any policy goals from being promoted through that part of the allocation process. The CDQ groups may view this as a positive effect, as the groups will have an increased understanding of the method for determining the quota and no mechanism will exist for the government to further its policy goals through the foundation portion of the allocation process. On the other hand, even traditional and well-supported policy goals would be eliminated from this portion of the allocation process, for instance, the goal of developing community-based, small boat fisheries.

Another consideration under Options 1 - 4 is the additional incentive provided for an individual community to sever from their current CDQ group and seek eligibility status as a separate group. Although any option for a foundation quota will provide this incentive, Options 3 and 4 provide a stronger incentive for a few larger communities to splinter from their current groups, while Options 1 and 2 provide motivation for all CDQ communities. This “splintering effect” would not only harm the stability of the current groups but could result in several new CDQ groups that likely have less experience and fewer resources available than if they were part of a collective, thus increasing administrative costs and adding inefficiencies to the program that the State and NMFS have attempted to minimize.

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Finally, limiting the foundation quota to the pollock allocations under Option 4 or Suboption 1 reduces the impact of Alternative 2 only slightly, as pollock has historically made up the great majority of the CDQ groups' royalties. A foundation quota may be more appropriately applied to the pollock quota than the quotas for other species, such as halibut and crab, which have in the past been allocated based on group attributes such as proximity to the resource, in-region processing facilities, expected income, etc. In addition, the pollock fishery is not generally as suitable for community-level fisheries development; thus, applying a foundation quota only to pollock mitigates some of the concerns with the foundation quota regarding the potential loss of local, small-boat fisheries.

**Establishing a foundation quota under any of the options under Alternative 2 would necessitate modifying the current Federal regulations that describe the allocation process.** The method for establishing the foundation quota would need to be identified and described in regulation, and the evaluation criteria would need to be revisited to potentially eliminate the factor used to determine the foundation quota. For instance, if the Council selects a *foundation* quota for all species allocations based on population, the evaluation criteria used to determine the portion of the quota that is allocated *competitively* should not include population as a factor. Thus, the decision regarding the evaluation criteria under Issue 5 will depend on the Council's preferred alternative under this issue.

### **CDQ Policy Committee Recommendation on Issue 4**

The CDQ Policy Committee recommended Alternative 1 (status quo). One member (Lestenkof, CBSFA) strongly supported establishing a foundation quota but only for the pollock allocations. Other members, while not supporting a foundation quota overall, asserted that if the Council did prefer a foundation quota, it should apply to crab, pollock, halibut, and cod.

### **4.5 Issue 5: CDQ Allocation Process - The Evaluation Criteria**

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

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

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

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

1. Number of participating communities, population, and economic condition.
2. A Community Development Plan that contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional or community economic development.
3. Past performance of the CDQ group in complying with program requirements and in carrying out its current plan for investments, service programs, infrastructure, and regional or community economic development.

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4. Past performance of CDQ group governance, including: board training and participation; financial management; and community outreach.
5. A reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group.
6. Training, employment, and education benefits are being provided to residents of the eligible communities.
7. In areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.
8. Proximity to the resource.
9. The extent to which the CDP will develop a sustainable fisheries-based economy.
10. For species identified as “incidental catch species” or “prohibited species,” CDQ allocations may be related to the recommended target species allocations.

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

### Selecting the Preferred Alternative for Issue 5

The appropriate choice of a preferred alternative for Issue 5 depends, in part, on the preferred alternative that the Council selects for Issue 1 (process for making CDQ allocations). If the Council selects Issue 1, Alternative 2 as a preferred alternative, NMFS would be making CDQ allocations through an administrative determination. If the State continues to make CDQ allocation recommendations that NMFS reviews under the administrative process described in Issue 1, Alternative 2, then NMFS recommends that the evaluation criteria be published in NMFS regulations. These criteria would be the only basis for making CDQ allocations and neither the State nor NMFS could base CDQ allocations on factors not listed as evaluation criteria in NMFS regulations. The Council should select the specific list of evaluation criteria that it recommends be used to make CDQ allocations, choosing the list of proposed criteria in Alternative 2 or modifying that list by adding or removing criteria. In making its selection among these evaluation criteria, the Council also should review the explanation of each criterion provided later in this section. This explanation provides the analysts’ understanding of how each criterion would be applied by the State. If the Council makes no comments or revisions to these explanations, NMFS will assume that they represent Council intent if the Council selects Alternative 2 as its preferred alternative.

If the Council selects Issue 1, Alternative 3 as a preferred alternative, CDQ allocations would be made by the Council and NMFS through proposed and final rulemaking. Under this alternative, the Council could recommend publishing the criteria it would use to make CDQ allocations in NMFS regulations or it could develop the appropriate criteria through its analysis and decision-making process. In other words, for Issue 5, the Council could select Alternative 2 (a list of proposed evaluation criteria) or it could develop CDQ evaluation criteria through its analysis and decision-making process. At the time the Council recommended a regulatory amendment for CDQ allocations, it would provide NMFS with an administrative record explaining how it made its CDQ allocation recommendations, including the evaluation criteria it used. NMFS would evaluate this administrative record to determine whether the Council’s proposed regulatory amendment complied with the MSA and other applicable law.

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**Alternative 1: No action**

Under the current allocation process, each CDQ group must represent at least one community eligible for the CDQ Program. The CDQ group, as the applicant for CDQ allocations, prepares a proposed Community Development Plan (CDP) that describes what the CDQ group has done with past CDQ allocations and what it proposes to do with the CDQ allocations it is requesting. The State reviews all of the CDPs and, based on procedures and evaluation criteria described in State regulations at 6 AAC 93, recommends to the Council and NMFS whether the CDPs are complete and the CDQ allocations that should be made to each CDQ group. These evaluation criteria currently are not published in NMFS regulations.<sup>5</sup>

Figure 4.2 shows the twenty evaluation criteria or factors that are considered by the State when reviewing proposed CDPs. Because the proposed CDPs are the basis for CDQ allocations, these criteria also are the criteria used to make CDQ allocation recommendations. Figures 4.3 and 4.4 show other State regulations that relate to the determinations that must be made by the State in making CDQ allocation recommendations and factors considered if the sum of the requested CDQ allocations equal or exceed the amount of CDQ available to allocate. Each of these sections of State regulations contain requirements that could be used by the State as a basis for developing CDQ allocation recommendations.

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<sup>5</sup>Appendix D contains the full text of the State's CDQ regulations.

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**6 AAC 93.040 Final Evaluation of Proposed CDPs (complete CDP applications)**

*(b) The CDQ team shall consider the following factors when reviewing a complete proposed CDP:*

- (1) the number of participating eligible communities and (A) the population of each community; and (B) the economic conditions in each community;*
- (2) the size of the allocation requested by the applicant and the proper allocation necessary to achieve the milestones and objectives as stated in the proposed CDP;*
- (3) the degree, if any, to which each CDQ project is expected to develop a self-sustaining local fisheries economy, and the proposed schedule for transition from reliance on an allocation to economic self-sufficiency;*
- (4) the degree, if any, to which each CDQ project is expected to generate (A) capital or equity in the local fisheries economy or infrastructure; or (B) investment in commercial fishing or fish processing operations;*
- (5) the applicant's contractual relationship, if any, with joint venture partners and the managing organization;*
- (6) the applicant's and the applicant's harvesting and processing partners', if any, involvement and diversity in all facets of harvesting and processing;*
- (7) the coordination or cooperation with other applicants or CDQ groups on CDQ projects;*
- (8) the experience of the applicant's industry partners, if any;*
- (9) the applicant's CDQ projects for employment, education, and training that provide career track opportunities;*
- (10) the benefits, if any, to the state's economy or to the economy of communities that are not eligible to participate in the CDQ program that are in addition to the benefits generated by the proposed CDP for participating communities;*
- (11) a demonstration, through the information submitted under 6 AAC 93.025(a)(11), that the applicant has a formal, effective administrative process that sets out sound business principles and examples of due diligence that the applicant will exercise;*
- (12) the development, if any, of innovative products and processing techniques as well as innovation in harvesting gear for conservation and maximum utilization of the fishery resource;*
- (13) the applicant's ability to maintain control over each of its allocations;*
- (14) the capital or equity generated by the applicant's CDQ projects for fisheries-related business investment;*
- (15) the past performance of the applicant and the applicant's industry partners, as appropriate;*
- (16) the applicant's transition plan, including the objectives set out in the milestone table submitted under 6 AAC 93.025 (a)(13);*
- (17) for each CDQ project, the inclusion in the proposed CDP of realistic measurable milestones for determining progress;*
- (18) the degree of participating community input in developing the proposed CDP;*
- (19) the likely effectiveness of the outreach project described in 6 AAC 93.025(4)(C); and*
- (20) comments provided by other agencies, organizations, and the public.*

Figure 4.2: State of Alaska CDQ Evaluation Criteria at 6AAC93.040

**6 AAC 93.017 CDQ Program Standards.**

*To carry out the state's role under 50 C.F.R. 679 and this chapter, the CDQ team shall apply the standards listed in (1) - (9) of this section, as applicable. The CDQ team shall determine whether*

*(1) a CDP provides specific and measurable benefits to each community participating in the CDP;*

*(2) as part of a CDP, a CDQ project provides benefits to individual residents of a participating community, to a single participating community, or to all participating communities;*

*(3) a proposed CDP has the support of all participating communities;*

*(4) each CDQ project listed in a CDP has the support of the applicant's or CDQ group's board of directors, reflected by official action of the board;*

*(5) before initiating a proposed CDQ project, a CDQ group exercised a level of due diligence that reflects the value of the investment, the risk involved, and the type of project;*

*(6) a reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group;*

*(7) the CDQ group has minimized legal and financial risk;*

*(8) the CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 C.F.R. 679.1(e); and*

*(9) in areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.*

Figure 4.3: State of Alaska CDQ Program Standards at 6 AAC 93.017

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**Excerpt from 6 AAC 93.040 Final Evaluation of Proposed CDPs**

*(d) If there is a sufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion, recommend all of those CDPs to the NMFS for approval.*

*(e) If there is an insufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion and after consultation by the CDQ team under (f) of this section,*

*(1) apportion the available quota among the applicants whose CDPs will be recommended for approval and will recommend the apportionment to the NMFS for approval; or*

*(2) select those complete proposed CDPs that the governor believes best satisfy the objectives, requirements, and criteria of the CDQ program and will recommend those CDPs to the NMFS for approval; a recommendation under this paragraph may also include a recommendation for an apportionment under (1) of this subsection.*

*(f) Before the CDQ team recommends an apportionment of the quota under (e) of this section, it shall consult with the applicants that might be affected by the proposed apportionment. The CDQ team may request an applicant to submit a revised CDP to assist the CDQ team in determining the*

*(1) economic feasibility and likelihood of success of the proposed CDP with an allocation of fishery resource less than that requested; and*

*(2) particular benefits that may be derived by participating communities affected by an allocation of fishery resource less than that requested.*

*(g) In apportioning the quota of fishery resource under (e) of this section, the governor will consider the information specified in this chapter and 50 C.F.R. 679 and seek to maximize the benefits of the CDQ program to the greatest number of participating communities.*

Figure 4.4: State of Alaska CDQ Regulations from 6 AAC 93.040

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Under Alternative 1, if CDQ allocations continue to be made through an administrative process, the State would publish the evaluation criteria in its regulations. NMFS's current regulations do not reference evaluation criteria or require the State to consider specific factors in making its CDQ allocation recommendations. NMFS regulations require only that the State provide a rationale for its recommendations. Therefore, the State could continue to use some or all of the evaluation criteria currently in its regulations, or it could revise these criteria in the future. If the evaluation criteria are not published in NMFS regulations, each time that NMFS receives CDQ allocation recommendations from the State, it must review the evaluation criteria used by the State and determine whether those criteria are consistent with the goals and purpose of the CDQ Program, the MSA, and other applicable federal law. However, if the evaluation criteria were published in NMFS regulations, these consistency determinations would be made at the time the final rule was implemented. NMFS would not need to review the evaluation criteria used by the State during each allocation cycle for consistency with federal laws and regulations. Rather, it would review the recommendations and rationale to verify that the State considered all of the evaluation factors required to be considered in NMFS regulations. In other words, publishing the evaluation criteria in NMFS regulations would reduce the number of determinations that would have to be made by NMFS during its review of the State's allocation recommendations.

### **Alternative 2: Revise the criteria for making CDQ allocations and implement the criteria in NMFS regulations**

Under Alternative 2, the evaluation criteria would be published in NMFS regulations. The State of Alaska would be required to address each CDQ group's performance for each of these criteria in its CDQ allocation recommendations.

The following would be added to NMFS regulations:

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

1. Number of participating communities, population, and economic condition.
2. A Community Development Plan that contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional or community economic development.
3. Past performance of the CDQ group in complying with program requirements and in carrying out its current plan for investments, service programs, infrastructure, and regional or community economic development.
4. Past performance of CDQ group governance, including: board training and participation; financial management; and community outreach.
5. A reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group.
6. Training, employment, and education benefits are being provided to residents of the eligible communities.

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7. In areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.
8. Proximity to the resource.
9. The extent to which the CDP will develop a sustainable fisheries-based economy.
10. For species identified as “incidental catch species” or “prohibited species,” CDQ allocations may be related to the recommended target species allocations.

Option 1: The State would develop a scorecard evaluation process for the above criteria in consultation with the CDQ groups. The State would provide a rationale for each of the scores on each of the listed criteria. The criteria will not be subject to a numerical weighting scheme and are not necessarily given equal weight by State.

### Development of the Evaluation Criteria Proposed in Alternative 2

The ten evaluation criteria proposed in Alternative 2 were developed by the CDQ Policy Committee and revised by the Council at its June 2001 and December 2001 meetings.

The CDQ Policy Committee recommended the following wording for Alternative 2:

The criteria for making CDQ allocations should include but are not limited to the following:

1. Number of participating communities, population, and economic condition.
2. A CDP that contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional (or community) economic development.
3. Past performance of the CDQ group in complying with program requirements and in carrying out its current plan for investments, service programs, infrastructure, and regional (or community) economic development.
4. Past performance of CDQ group governance, including: board training and participation; financial management; and community outreach.
5. A reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group.
6. The CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 CFR 679.1(e).
7. In areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

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The State will develop a scorecard evaluation process for the above criteria, in consultation with the CDQ groups. (The State would provide a rationale for each of the scores on each of the listed criteria. The criteria will not be subject to a numerical weighting scheme and are not necessarily given equal weight by the State.)

*The purpose of the CDQ program is to benefit eligible Western Alaska communities. The primary purpose is not to use the CDQ program as a tool to achieve other government policies. If other government policies are involved and relate to allocations, milestones, or performance measurement, they must be explicitly identified, after consultation with the CDQ groups, and agreed to by the Council.*

Summary of committee discussion: The committee generally agreed that the current allocation process is not adequate. The State questioned whether the real issue is not the content of the criteria but whether it needs to be a lesser number of criteria combined with a more transparent process. The committee started its discussion with four evaluation criteria proposed by CVRF. CVRF stated that their proposed criteria was largely based on the criteria that was generally agreed to by the rest of the groups in previous attempts to gain consensus on the evaluation criteria. These initial four criteria are the first four elements of the committee's proposal above. The committee added several evaluation criteria that currently are in State regulations ( #6, #8, and #9 from the State's CDQ Program Standards at 6AAC93.017 (see Figure 4.5.2). These criteria are included as the last three criteria in the committee's proposal above.

The State suggested adding a "scorecard" to whatever criteria is recommended, so that each group could see exactly which factor lowered or raised their overall score. The State cautioned about numerically weighting the scores, as the weighting becomes increasingly important as you narrow the number of criteria. The State noted that some subjectivity would remain in the process, as each criteria would not be numerically weighted, and the State would have to consider which criteria were more important. However, the State did note that fewer criteria and the scorecard method would improve the transparency of the process. The committee clarified that this would still allow the State and NMFS to approve different allocations of individual species to different groups. This would continue to place the burden on the groups to explain their harvest strategies in the CDPs, and allow the groups to maximize their abilities and allocations.

The motion passed with two objections (Moller, APICDA and Asicksik, NSEDC). APICDA objected on the basis that the State would still be weighting the criteria subjectively, which doesn't adequately resolve the issue of transparency. APICDA also did not support narrowing the criteria at this point. Mr. Alstrom (YDFDA) noted a concern with allocations based on past performance of regional or community economic development, but did not object to the overall motion. Mr. Lestenkof (CBSFA) generally objects to using population and number of communities as evaluation criteria, but also did not object to the overall motion.

On the second day of the committee meeting, Mr. Bundy moved additional language clarifying the intent and purpose of the CDQ program and explicitly requiring the State to make the groups aware, and get Council approval, of any government policies that may affect the allocation process. The motion was amended to add this language, with one objection (Samuelson, BBEDC). BBEDC objected because the purpose and intent of the program is already stated in the FMP and NMFS regulations, and it contends that it is not necessary to imply that the program is used to implement other State policies. BBEDC did not object to the overall motion.

Council consideration: The Council considered the CDQ Policy Committee's recommendations at its June 2001 meeting. As a result of suggestions made by APICDA during public testimony, the Council recommended adding the following two evaluation criteria:

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- proximity to the resource, and
- the extent to which the CDP will develop a sustainable fisheries-based economy.

At the December 2001 Council meeting, NMFS made some recommendations about the evaluation criteria proposed in Alternative 2. The following recommendations were accepted by the Council:

1. Revise the wording of the introductory sentence to remove “should include but are not limited to” so that the sentence reads as follows:

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

This revision would clarify that if these evaluation criteria are published in NMFS regulations, only these criteria may be used as a basis for the CDQ allocations, all of the criteria must be considered, and no additional criteria may be used.

2. Remove the proposed criteria that states: *The CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 CFR 679.1(e).*

All of the activities conducted through the CDQ Program must be consistent with the goals and purpose of the CDQ Program, whether the goals and purpose are stated in the MSA, the BSAI FMP, or NMFS regulations. However, NMFS was concerned that a specific reference to a section of NMFS regulations that could be removed or revised was not appropriate as an evaluation criteria. The current goals and purpose of the CDQ Program in 50 CFR 679.1(e) currently are focused on development of a regionally-based, fisheries-related economy. This focus is expressed in several of the proposed evaluation criteria in Alternative 2, namely “the extent to which the CDP will develop a sustainable fisheries-based economy,” which was added by the Council after the CDQ policy committee recommendations were developed.

3. Add a criterion that specifically addresses the role of employment, education, and training. Based on a suggestion by the State, the Council added the following criterion:

*Training, employment, and education benefits are being provided to residents of the eligible communities.*

4. NMFS recommended the inclusion of a criterion that recognized that some CDQ allocations are based on the State’s determination of how much incidental catch or prohibited species catch is needed to support its recommended groundfish target species allocations for each group. The Council added the following criterion:

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

5. NMFS recommended considering the scorecard as an option for Alternative 2 rather than a required element of the alternative. The Council agreed to this recommendation.

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### Comparison of Proposed Evaluation Criteria in Alternative 2 with Current Evaluation Criteria

Table 4.15 compares the CDQ allocation evaluation criteria in current State regulations with the proposed evaluation criteria in Alternative 2. The first column of Table 4.15 lists the current twenty evaluation criteria in the order in which they occur in 6 AAC 93.040 (see Figure 4.2). The second column of Table 4.15 indicates whether there is a related evaluation criteria in Alternative 2 and, if so, identifies the related criteria by number and a short title. Following are the ten evaluation criteria in Alternative 2 that are referenced in Table 4.15 (for some of them a short, descriptive title was added to simplify the table):

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

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Table 4.15: Comparison of Evaluation Criteria Under Issue 5, Alternative 1 and Alternative 2

<b>Issue 5, Alternative 1: Current Evaluation Criteria in State Regulations (20 criteria)</b>	<b>Related Element of Issue 5, Alternative 2 Proposed Evaluation Criteria (9 criteria)</b>
(1) the number of participating eligible communities and (A) the population of each community; and (B) the economic conditions in each community;	#1 - Number of participating communities, population, and economic condition.
(2) the size of the allocation requested by the applicant and the proper allocation necessary to achieve the milestones and objectives as stated in the proposed CDP;	Not directly addressed in Alternative 2. May be related to #2 (overall plan) and #10 (incidental catch and bycatch considerations).
(3) the degree, if any, to which each CDQ project is expected to develop a self-sustaining local fisheries economy, and the proposed schedule for transition from reliance on an allocation to economic self-sufficiency;	#9 (developing a sustainable fisheries -based economy). Could be related to #8 (proximity to the resource). Reference to transition from reliance on a CDQ allocation to economic self-sufficiency is not included in Alternative 2
(4) the degree, if any, to which each CDQ project is expected to generate (A) capital or equity in the local fisheries economy or infrastructure; or (B) investment in commercial fishing or fish processing operations;	Related to #9 (developing a sustainable fisheries -based economy).
(5) the applicant's contractual relationship, if any, with joint venture partners and the managing organization;	Not directly included in Alternative 2. May be indirectly related to #5 (profitable investments) and #9 (developing a sustainable fisheries-based economy).
(6) the applicant's and the applicant's harvesting and processing partners', if any, involvement and diversity in all facets of harvesting and processing;	Not directly addressed in Alternative 2. May be indirectly related to #5 (profitable investments) and #9 (developing sustainable fisheries-based economy).
(7) the coordination or cooperation with other applicants or CDQ groups on CDQ projects;	Not directly addressed in Alternative 2.
(8) the experience of the applicant's industry partners, if any;	Not directly addressed in Alternative 2. May be indirectly related to #5 (profitable investments) and #9 (developing a sustainable fisheries-based economy).
(9) the applicant's CDQ projects for employment, education, and training that provide career track opportunities;	#6 - Training, employment, and education benefits.
(10) the benefits, if any, to the state's economy or to the economy of communities that are not eligible to participate in the CDQ program that are in addition to the benefits generated by the proposed CDP for participating communities;	Not specifically addressed in Alternative 2.

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<b>Issue 5, Alternative 1: Current Evaluation Criteria in State Regulations (20 criteria)</b>	<b>Related Element of Issue 5, Alternative 2 Proposed Evaluation Criteria (9 criteria)</b>
(11) a demonstration, through the information submitted under 6 AAC 93.025(a)(11), that the applicant has a formal, effective administrative process that sets out sound business principles and examples of due diligence that the applicant will exercise;	Related to #2 (overall plan) and #4 (past performance in management and administration).
(12) the development, if any, of innovative products and processing techniques as well as innovation in harvesting gear for conservation and maximum utilization of the fishery resource;	May be related to #7 (fishery impacts), but appears to have a more specific focus on “innovation” in the current State regulations.
(13) the applicant's ability to maintain control over each of its allocations;	Not addressed by Alternative 2, but this is handled through NOAA and NMFS enforcement of CDQ fishery regulations.
(14) the capital or equity generated by the applicant's CDQ projects for fisheries-related business investment;	Not specifically addressed in Alternative 2. May be indirectly related to #5 (profitable investments) and #9 (sustainable fisheries-based economy).
(15) the past performance of the applicant and the applicant's industry partners, as appropriate;	<p>Past performance of the applicant (CDQ group) is directly related to #3 (past performance in carrying out CDP) and #4 (past performance in management and administration).</p> <p>The past performance of the applicant’s industry partners isn’t directly addressed under Alternative 2, but it may be indirectly related to #5 (profitable investments) if the CDQ group is investing in the industry partner.</p>
(16) the applicant's transition plan, including the objectives set out in the milestone table submitted under 6 AAC 93.025 (a)(13);	No mention of a “transition plan” in Alternative 2, but milestones would be evaluated under #2 (overall plan).
(17) for each CDQ project, the inclusion in the proposed CDP of realistic measurable milestones for determining progress;	# 2 (overall plan)
(18) the degree of participating community input in developing the proposed CDP;	#4 (past performance in management and administration)
(19) the likely effectiveness of the outreach project described in 6 AAC 93.025(4)(C); and	#4 (past performance in management and administration)
(20) comments provided by other agencies, organizations, and the public.	Not addressed in Alternative 2.

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The ten evaluation criteria proposed in Alternative 2 are more general than the twenty evaluation criteria currently in State regulations, but they represent approximately the same scope of issues as currently are considered in making CDQ allocations. Under Alternative 2, CDQ allocations would continue to be based on characteristics of the communities, on projects proposed in the CDPs, and on the past performance of the CDQ group. The focus of the CDQ Program would continue to be primarily on providing resources to develop sustainable, fisheries-based economies in the eligible communities.

Based on the comparison shown in Table 4.15, it appears that most of the current twenty evaluation criteria are either directly or indirectly related to the ten proposed evaluation criteria in Alternative 2. For example, as shown in Table 4.15, Alternative 2 has one evaluation criterion (#9) that refers to developing a sustainable fisheries based economy. This criterion could encompass up to seven of the current twenty evaluation criteria, including<sup>6</sup> (3) the degree, if any, to which each CDQ project is expected to develop a self-sustaining local fisheries economy..., (4) the degree, if any, to which each CDQ project is expected to generate (A) capital or equity in the local fisheries economy or infrastructure; or (B) investment in commercial fishing or fish processing operations; (5) the applicant's contractual relationship, if any, with joint venture partners and the managing organization; (6) the applicant's and the applicant's harvesting and processing partners', if any, involvement and diversity in all facets of harvesting and processing; (8) the experience of the applicant's industry partners; (9) the applicant's CDQ projects for employment, education, and training that provide career track opportunities; and (14) the capital or equity generated by the applicant's CDQ projects for fisheries-related business investment.

Current evaluation criteria not included in Alternative 2: Four of the current twenty evaluation criteria do not appear to be included in the proposed evaluation criteria in Alternative 2, including (the numbers in parenthesis refer to the number of the criterion in 6 AAC 93.040(b) and in the left column of Table 4.15):

- (7) the coordination or cooperation with other applicants or CDQ groups on CDQ projects;
- (10) the benefits, if any, to the state's economy or to the economy of communities that are not eligible to participate in the CDQ program that are in addition to the benefits generated by the proposed CDP for participating communities;
- (13) the applicant's ability to maintain control over each of its allocations;
- (20) comments provided by other agencies, organizations, and the public.

Effect of removing criteria: If NMFS is responsible for making the final decision about CDQ allocations through an administrative process (Issue 1, Alternative 2), then only the evaluation criteria included in NMFS regulations could be used by the State or NMFS in making CDQ allocations. Therefore, removing the above criteria from the list of evaluation criteria means that these criteria could not be considered in future CDQ allocations. For example, a CDQ group would not get credit in the allocation process if it cooperated with other CDQ groups on CDQ projects or if its CDQ projects benefitted communities or residents that were not among the communities eligible for the CDQ Program.

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<sup>6</sup>Numbers in parenthesis indicate the number of the current evaluation criteria in 6 AAC 93.040(b), see Table 4.15.

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Ability to manage allocations: Removal of the current evaluation criteria related to “the applicant's ability to maintain control over each of its allocations” would not remove the CDQ groups’ responsibility to manage their allocations. NMFS regulations govern management of groundfish, prohibited species, and halibut CDQ allocations and State regulations govern management of the crab CDQ allocations. Therefore, violation of CDQ fisheries regulations, including exceeding annual quotas, would be handled through either the Federal or State fisheries enforcement process. However, removing this criteria does mean that the CDQ groups would not be penalized through the allocation process for overages of annual CDQ allocations or rewarded if it managed its CDQ allocations better than other groups. In this case, it probably is appropriate to remove this evaluation criteria because, if a CDQ group is penalized for exceeding an annual CDQ allocation by NMFS or the State, it would be inappropriate for the CDQ group also to be penalized through the CDQ allocation process. To date, all six of the CDQ groups have generally demonstrated the ability to maintain control over their CDQ allocations, both in terms of the fisheries the CDQ groups manage directly and their industry partners’ ability to stay within established quotas. Very few enforcement actions have been taken by NMFS for quota overages.

Considering public comment: Removal of current evaluation criteria 20 (comments from other agencies, organizations, and the public) may send a partially incorrect message related to the consideration of public comment on CDQ allocations. NMFS regulations at 50 CFR 679.30(b) require the State to hold a public hearing as part of the CDQ allocation process. The purpose of the public hearing is to “obtain comments on the proposed CDPs from all interested persons.” Therefore, even though this evaluation criteria may be removed from the list of factors considered in making CDQ allocations, comments made at the public hearing or during any other required public comment period would be considered in the CDQ allocation process.

### Impacts of Alternative 2

The CDQ allocation process involves allocation of a variety of groundfish species or species groups (27 allocation categories), prohibited species associated with the groundfish fisheries (seven categories), halibut (four categories by area), and crab (six categories). Some of these species or species groups are considered “target” species and others are either “incidental catch species” (sometimes called bycatch species) or “prohibited species.” Under Alternative 2, NMFS regulations would be amended to require the State to consider each of the ten evaluation criteria. In its CDQ allocation recommendations, the State would explain how it applied the evaluation criteria to information about the CDQ group to determine its recommendations. It would consider information submitted by the CDQ group in its CDP or in quarterly or annual reports, and information obtained by the State about population or economic conditions from either the CDP or from independent sources. NMFS would review the State’s allocation recommendations to determine if the State (1) followed the process required in NMFS regulations to develop its recommendations, (2) considered all of the evaluation factors in NMFS regulations, and (3) provided an explanation that demonstrated a rational connection between the application of the evaluation criteria to the relevant information and the State’s allocation recommendations.

The State would not be required to weight each evaluation criteria equally or use the same rationale for allocating each of the different species or species groups. For example, the State may focus more on proximity to the resource in making allocation recommendations for species that can be harvested by local residents, such as halibut or crab. On the other hand, the State may focus more on overall plans and past performance when making allocation recommendations for species like pollock that are not generally harvested in local fisheries and contribute the majority of the royalty income that supports the groups’ overall plan to provide benefits to residents. For some CDQ species, the only relevant evaluation criteria may be #10

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because the State's may consider it an incidental catch or prohibited species whose allocation amount is related to the recommended allocations of some other target species.

Below, analysts provide a general summary of how they interpret the proposed evaluation criteria and request that the Council provide additional guidance if alternative interpretations should be made. Although each criterion is discussed individually, the State must balance all criteria in making its CDQ allocation recommendations.

### **1. Number of participating communities, population, and economic condition.**

The State would consider the number of communities represented by each group, the total population of the communities, and other socio-economic information that describes the CDQ communities or regions. All other factors being equal, CDQ allocations may be higher for groups that represent a larger number of communities or a larger population. CDQ allocations also may be related to social or economic conditions in the CDQ communities, with higher allocations being recommended for communities or regions with greater need, as measured by some specific socio-economic statistics or general economic conditions. Alternative 2 does not make any recommendations for the specific measures of economic conditions that must be used by the State or NMFS.

In its allocation recommendations, the State should provide information about the number of communities represented by each CDQ group, the population of these communities, and any other socio-economic data considered by the State. The State could use the population data provided by the CDQ group in the CDP, but it also should verify these population figures using independent sources and explain any differences between the population submitted by the CDQ group and the population figures used by the State to make its CDQ allocation recommendations. The State also should explain how it considered any other socio-economic data about the CDQ communities or region, and provide that data to NMFS.

### **2. A Community Development Plan that contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional or community economic development.**

The proposed CDP submitted to the State by each CDQ group during the State's allocation process is an application for CDQ allocations. It provides information about the CDQ group, the communities represented by the CDQ group, on-going CDQ projects started in previous allocations cycles, and proposals for future CDQ projects. One of the primary purposes of the CDP is to explain how the CDQ group has provided benefits from the CDQ Program to the eligible communities it represents, and how it intends to provide those benefits in the future. The State would evaluate the proposed CDP submitted by each CDQ group. The State's CDQ allocation recommendations would be based, in part, on how well the State thinks each CDQ group has done in developing a plan for using CDQ allocations to provide benefits to the eligible communities and how each group's plan compares to the plans submitted by the other groups. Again, NMFS regulations would not tell the State how to judge the CDPs or how to compare the CDPs, they would only require that the State consider the overall CDP and explain how this consideration contributed to the State's CDQ allocation recommendations.

### **3. Past performance of the CDQ group in complying with program requirements and in carrying out its current plan for investments, service programs, infrastructure, and regional or community economic development.**

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The State would review the proposed CDPs and other information about the CDQ groups' performance and determine how well the CDQ group has accomplished what it proposed to do in past CDPs. The State also will compare the past performance of all the CDQ groups. CDQ allocations may be based on how well a CDQ group accomplished past goals, how well its investments performed, or the level of benefits that the group provided to eligible communities. The State also would consider how well the CDQ group had utilized past allocations of CDQ species. Higher CDQ allocations could be recommended for CDQ groups that performed well and lower CDQ allocations could be recommended for groups that performed poorly, as determined by the State. NMFS regulations would not provide the State guidance on what aspects of past performance to consider, how to weight various aspects of past performance, or how to compare the groups' past performance. The regulations would, however, require that the State consider past performance and explain how past performance factored into the State's allocation recommendations.

#### **4. Past performance of CDQ group governance, including: board training and participation; financial management; and community outreach.**

This criterion is related to the previous criterion on past performance, but focuses specifically on the performance of the group's board of directors. The MSA requires that the communities eligible for the CDQ Program receive benefits from the CDQ allocations. NMFS and the Council developed the CDQ groups as the organizations responsible for managing the CDQ allocations and providing benefits to the CDQ communities. The CDQ groups are required to have a board of directors made up of at least 75 percent resident fishermen of the community or group of communities.

Under this proposed evaluation criteria, the State would evaluate the role that the board of directors play in making decisions for the CDQ group, including the quality of the research prepared for proposed investments, whether the board considered this research, and whether investments were consistent with its investment criteria. The State also would evaluate whether the level of administrative expenses was appropriate for the activities described in the CDP and consistent with the goal of using CDQ assets to provide benefits to the communities. Another consideration would be whether the board was receiving appropriate training to help them understand the program requirements and their responsibilities as board members. Finally, the State would evaluate how well the CDQ group communicates with residents of the communities they represent - both in providing the communities with information about the CDQ group and in soliciting input from the communities in development of the CDP and providing program benefits.

The elements of this evaluation criteria are consistent with the oversight responsibilities in Issue 3, Alternative 2 related to (1) ensuring community involvement in decision-making, (2) detecting and preventing the misuse of assets, (3) ensuring that internal investment criteria and policies are established and followed, and (4) ensuring that significant investments are the result of reasonable business decision, i.e., made after due diligence and with sufficient information to make an informed investment decision.

#### **5. A reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group.**

This evaluation criterion refers to how the State would evaluate proposed investments described in the CDP. The research prepared for a proposed for-profit investment should demonstrate a reasonable likelihood that the investment will earn a financial return. In other words, the CDQ groups would be required to invest in projects that they expected to earn a positive return over the life of the investment. The CDQ groups should not be investing in economic development projects that they expect to regularly subsidize in future

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years. The evaluation criteria does not mean that the highest CDQ allocations would be given to the groups that proposed investments with the highest potential return. The State would consider that investments in the CDQ communities could earn lower financial returns than investments outside the region, and that the CDQ allocations are based on the balance of all evaluation criteria. The State could support a local investment with low expectations of financial returns if the investment offered other benefits to the eligible communities, such as employment, training, income to local residents, or support of another local CDQ project. The State likely would have higher expectations of financial returns from investments outside of the region if the primary objective of these investments was to provide income to the CDQ group. However, the consideration of financial return would always be balanced with consideration of employment, training, and education opportunities offered to local residents and other potential benefits to the CDQ group of the proposed investment.

The State would evaluate the financial performance of an investment already made by the CDQ group under criterion # 3 which relates to performance in carrying out the group's plan for investments, service programs, infrastructure, and regional or community economic development.

### **6. Training, employment, and education benefits are being provided to residents of the eligible communities.**

The evaluation criterion, together with the previous criterion related to profitable investments, provides information about the two most important means through which the Council expects the CDQ groups to provide benefits to the communities. First, the CDQ group should be making investments that provide income to the CDQ groups, either in the communities or in projects that earn returns to the CDQ groups. Second, the CDQ Program should provide training, employment, and education benefits to the residents of the eligible communities.

Under this evaluation criterion, the State would consider both the past performance and future plans of the CDQ group in providing training, employment, and education benefits to the residents of the communities they represent. Consideration of these factors also could be included under evaluation criterion #2 dealing with the overall quality of the CDP (proposed projects) and criterion #3 dealing with past performance. However, including this as a separate evaluation criterion emphasizes its importance and provides the State with the rationale needed to collect information from the CDQ groups about their training, employment, and education programs.

### **7. In areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.**

This evaluation criterion emphasizes that the CDQ allocations would not be based only how the CDQ group uses the royalties from the allocations. The State also would consider how the CDQ group proposes to harvest its allocations and may recommend higher CDQ allocations for a group that proposes to harvest its CDQ in a "conservation-based fishery," as defined by the State. For example, higher allocations may be recommended for a CDQ group that proposes to harvest its quota with lower bycatch rates, higher retention and utilization, and gear types that the State believes minimize the impact to habitat. The State also may recommend a lower CDQ allocation for a group that proposes to harvest its CDQ allocations in a less conservation-based fishery. NMFS regulations would not define standards for what constituted a

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conservation-based fishery. This criterion would authorize the State to make this determination, even if the proposed CDQ fishery complies with all of NMFS's general fishery regulations governing gear types, bycatch rate standards, and fishing areas and seasons. However, the State would be responsible for explaining its recommendations and rationale to NMFS.

### **8. Proximity to the resource.**

The State could recommend that CDQ allocations for a particular CDQ species be made to the CDQ groups representing communities physically located near the commercial fisheries for this species. The rationale for this criterion is that those communities located near a particular fishery resource should be given the opportunity to develop that resource. This evaluation criterion is consistent with criterion #9 that emphasizes development of a sustainable, fisheries-based economy and criterion #6 that emphasizes training, employment, and education benefits. One of the most important ways to promote local economic development through the CDQ Program is to provide the means for residents to directly earn income from participation in fisheries - whether it is through harvesting the fish themselves, working in a processing plant that processes this fish, or in a business that supports the local fisheries.

### **9. The extent to which the CDP will develop a sustainable fisheries-based economy.**

This criterion would continue the focus of the CDQ Program on fisheries-related economic development. The State would consider the CDQ groups' plans for investments, service programs, and infrastructure (criterion #2), but would give preference to the CDQ groups who proposed plans based on development of a sustainable fisheries-based economy. Other things being equal, this criterion would authorize the State to give preference to groups that proposed to allow local residents to harvest the CDQ species, to harvest CDQ with boats owned by the group, to process the CDQ species in local processing plants, to employ local residents in fisheries-related jobs, to invest in fisheries projects in their communities, and to provide training and education to prepare residents for fisheries-related employment.

The State would have to determine how to balance this evaluation criterion related to fisheries development with the Council's recommendation on Issue 7 (non-fisheries projects). However, the specific reference to fisheries-related development in two of the ten proposed evaluation criteria demonstrates that the priority for CDQ allocations would continue to be groups that proposed fisheries-related projects over general economic development projects, as long as the proposed fisheries projects met other evaluation criteria.

If the Council selected Issue 7, Alternative 4 (no restrictions on CDQ investments), then the Council may want to reconsider the inclusion of this evaluation criterion. It may be inconsistent for the Council to recommend that CDQ allocations continue to be based fisheries-related development plans, but then to remove all restrictions on how the CDQ groups spend their money. The inconsistency could occur if CDQ groups are penalized through the allocation process for taking advantage of the relaxed investment restrictions.

### **10. For species identified as "incidental catch species" or "prohibited species," CDQ allocations may be related to the recommended target species allocations.**

NMFS recommended the addition of this criterion so that the State could provide an explanation for allocation recommendations for non-target species. The evaluation criteria proposed in Alternative 2 focuses mainly on the process for allocating the groundfish target species, halibut, and crab. However, the State also

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recommends allocations for incidental catch species and prohibited species associated with the groundfish and halibut CDQ fisheries. These allocations often are based on the State's determination of how much incidental catch or prohibited species catch is needed to support its recommended groundfish target species allocations for each group. This evaluation criteria would not require that these species be allocated on the basis of incidental catch or bycatch needs, but it would provide an opportunity for that justification, if necessary. In addition, the evaluation criteria would not require the State or NMFS to allocate an amount of incidental catch or prohibited species catch that would *guarantee* that a CDQ group would catch its target species allocations, it would only specify that the allocations would be *related to* incidental catch or bycatch needs. It is not possible for the State or NMFS to guarantee an amount of incidental catch or prohibited species that will support full harvest of groundfish target species. In some cases, the 7.5 percent CDQ or PSQ reserve does not provide enough incidental catch or prohibited species bycatch to fully support all target species allocations to all CDQ groups and in other cases individual fishing performance influences whether allocations of incidental catch or prohibited species are sufficient to harvest all target species.

### If the CDQ groups' requests don't exceed the amount available for allocation:

Current NMFS and State regulations require that, in its proposed CDP, each CDQ group request a specific percentage allocation of each CDQ species (including groundfish, halibut, prohibited species, and crab). In the past, the sum of each CDQ group's request for allocation of a particular species has added up to more than 100% - or more than is available to allocate among the groups. It is possible, however, that in the future, the sum of the CDQ groups' requests could add up to 100 percent.

Current State regulations at 6 AAC 93.040(d) include the following: "If there is a sufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion, recommend all of those CDPs to the NMFS for approval." This regulation would allow the State to recommend CDQ allocations as requested by the CDQ groups rather than undertake a competitive process to allocate CDQ among the groups.

If Alternative 2 is selected as the preferred alternative, the options described above in State regulations would not be available to the State. Even if all the groups agreed on the CDQ allocations and submitted requests that added up to 100 percent of the available quota, the State would have to go through the competitive allocation process and apply the evaluation criteria. Analysts request input from the Council about whether this conclusion is consistent with Council intent.

### Option 1: The Scorecard

Option 1 proposes that the State would develop a scorecard for proposed evaluation criteria that would provide additional information about how the State would apply the evaluation criteria. In addition, Option 1 specifies that (1) the State would provide a rationale for each of the scores assigned for each of the criteria, (2) that the criteria would not be subject to a numerical weighting scheme, and (3) that the criteria would not necessarily be given equal weight by State.

The scorecard would provide information about the CDQ allocation process both in advance of the process and during the process. By publishing the format and content of the scorecard that would be used, the State would provide the CDQ groups with information about how it intended to evaluate the proposed CDPs and the groups' past performance. By using the scorecard in the allocation process, the State would provide

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additional information to the groups and NMFS about how the State developed its CDQ allocation recommendations. Both elements of additional information would promote increased “transparency” in the CDQ allocation process - something that the CDQ groups have requested and the State has agreed is necessary (see minutes of CDQ Policy Committee meeting, May 2001).

After the June 2001 meeting, analysts requested that the State describe a scoring process (“scorecard”) that could be used to evaluate the CDPs and make CDQ allocation recommendations, and to explain how the process would work. On October 24, 2001, the State submitted the following proposal for a scorecard based on the 20 evaluation criteria currently in State regulations. Although this proposal is not completely consistent with the evaluation criteria proposed under Alternative 2, it provides information about how the State would approach development of a scorecard for the allocation process. (The scorecard developed by the State is based on current evaluation criteria shown in Figure 4.2).

*State’s Proposed Scorecard:* The state has developed a draft scorecard as requested by the CDQ groups to provide a more transparent allocation process. Hypothetically, each CDQ group’s CDP will be scored in the six categories listed below. An aggregate score will be given for each CDQ group’s CDP for each category, but the weighting of the six categories will remain confidential and within the discretion of the state team making the allocation recommendations.

*Assumptions of the Scorecard proposal:*

1. *The term CDQ applicant is synonymous with a CDQ group.*
2. *Past performance of a CDQ applicant will be taken into consideration when evaluating overall plans in proposed CDP’s.*
3. *Independent annual audits of prior CDP cycle will be taken into consideration when assessing milestones and goals and objectives of a CDQ applicant.*
4. *Each CDQ applicant will be interviewed in a public and private setting concerning the proposed CDP.*
5. *Other sources analyzed during the allocation process will include quarterly reports and all correspondence between the state and the CDQ applicant during the previous and current CDP application cycle.*
6. *The scores for each category will be considered separately and not be combined into a numerical value.*
7. *Scores range from a lowest value of one to a highest value of ten.*

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Table 4.16: State’s Proposal for a Scorecard to Develop CDQ Allocation Recommendations based on the Evaluation Criteria Currently in State Regulations

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

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Table 4.16 (continued): State’s Proposal for a Scorecard to Develop CDQ Allocation Recommendations based on the Evaluation Criteria Currently in State Regulations

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

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The CDQ allocation process assigns to the State an important responsibility to fairly allocate valuable resources among the eligible communities. The State must consider the goals and objectives of the program; the amount of quota available; the social and economic conditions in the communities, regions, and State; plans for the use of CDQ allocations in the future; and how each CDQ group has used its quota in the past. The State also must decide if one CDQ group has a greater need than other groups, or if one CDQ group will use the allocations more efficiently to provide more benefits overall or more benefits to a greater number of people. These are not completely objective decisions and no formula can be developed in advance that will factor in all of the elements that the State must consider. The only alternatives that exist to make CDQ allocations predictable and to remove entirely any subjectivity associated with the process is to make specific, long-term allocations to the eligible communities (Issue 2, Alternative 3 - Section 4.2) or to establish foundation quotas based on population or the number of communities in the group (Issue 4, Alternative 2 - Section 4.4). However, the goal of making the CDQ allocation process “transparent” requires reducing the subjectivity associated with the process as much as possible and explaining how subjective decisions are made. The scorecard was proposed as part of Alternative 2 to further this goal.

If the State develops further the concept of a scorecard or uses a scorecard in its CDQ allocation recommendations, the “categories” listed on the scorecard should correspond directly to the ten evaluation criteria. Having categories on the scorecard that are related to the evaluation criteria, but not exactly the same, implies that factors in addition to or different from the evaluation criteria would be considered by the State in making CDQ allocation recommendations. For example, the first category should be “number of participating communities, population, and economic conditions.” The sources of information should list how the State would determine the number of participating communities, population, and economic conditions. The second category should be related to how the State will evaluate criterion #2, the overall CDP to determine whether it “contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional (or community) economic development.” In the same manner, the remaining evaluation criteria proposed in Alternative 2 should be incorporated into the scorecard proposal.

Option 1 states the following:

*The State would provide a rationale for each of the scores on each of the list of criteria.*

*The criteria will not be subject to a numerical weighting scheme and are not necessarily given equal weight by State.*

In its description of the assumptions behind the proposed scorecard, the State writes

*An aggregate score will be given for each CDQ group’s CDP for each category, but the weighting of the six categories will remain confidential and within the discretion of the state team making the allocation recommendations.*

*The scores for each category will be considered separately and not be combined into a numerical value.*

Based on these statements, the State would be assigning a score to each CDQ group for each category on the scorecard and providing a written explanation of why that particular score was assigned. This element of the process would allow each CDQ group to know how its performance compared to other CDQ groups in that

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category. However, the State would not add up the scores from the individual categories to develop an overall score and each category may not be considered equally important. These statements imply that the State may consider some categories (evaluation criteria) more important than others, but that they would not reveal this relative importance through the scoring process.

NMFS is concerned that a scoring process that includes some elements that are not fully explained in the State's written rationale for CDQ allocation recommendations would undermine the goal of improving the transparency of the CDQ allocation process and would be very difficult for NMFS to support through the administrative appeals process. The State's rationale must provide a full explanation of how it developed its CDQ allocation recommendations and, if a numerical scoring process was used, this process must be explained in its entirety. CDQ allocations cannot be made on the basis of information that cannot be revealed to the affected CDQ group or to NMFS. Some accommodations must be made to protect confidential financial information about an individual CDQ group, but if this confidential financial information is used as a basis for the CDQ allocations, it must be provided to NMFS and to the subject CDQ group.

A scorecard, or numerical explanation of how the State would apply the evaluation criteria to facts about the CDQ groups does not have to be part of the regulations governing the CDQ allocation process. It is sufficient to include the evaluation criteria in regulation, allow the State to decide how to apply the evaluation criteria, and require the State to provide a written explanation of its rationale. If the State uses a scoring process, the State would have to explain in its rationale how the scoring process was used and how its results related to the CDQ allocation recommendations. This process does not have to be described in NMFS regulations in order for the State to use a scorecard to develop its CDQ allocation recommendations. The State could include a scorecard process in State regulations, however, NMFS should review any proposed State regulations and determine whether the proposed process is consistent with Federal regulations governing the CDQ allocation process.

At this point, the scorecard concept is not sufficiently developed to be ready to implement through NMFS regulations. The Council could indicate its support for the State developing a more quantitative approach to its CDQ allocation recommendations. However, additional detail about the requirements for the scorecard would have to be developed before it could be implemented through NMFS regulations.

**Alternative 3 - Implement Process Proposed in H.R. 553**

H.R. 553 proposes to amend the MSA to add the following requirements for how the evaluation criteria used to make CDQ allocations is developed:

*(5) SPECIFICATION OF HARVEST SHARES.-*

\* \* \* \* \*

*(C)(i) Within 24 months after the date of enactment of the Western Alaska Community Development Program Implementation Improvement Act of 2001, each CDQ group may submit criteria to the Secretary for the Secretary to consider in determining harvest shares under subparagraph (A).*

*(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 harvest shares under subparagraph (A).*

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*(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 2001, promulgate regulations that establish criteria that the Secretary shall consider in determining harvest shares under subparagraph (A).*

Combined with some other provisions of the bill, H.R. 553 would amend the MSA to require the following:

1. The Secretary of Commerce would be responsible for making periodic CDQ allocations among the CDQ groups.
2. The CDQ groups would request a percentage allocation of each CDQ reserve in CDPs submitted to NMFS.
3. If the sum of the groups' requests added up to 100 percent of a CDQ reserve, that requested percentage would be allocated to each group and NMFS would not have to continue with a competitive allocation process.
4. The evaluation criteria used by NMFS in making CDQ allocations would be required to be published in NMFS regulations.
5. If all of the CDQ groups agree on the same evaluation criteria, these criteria would be required to be published in NMFS regulations, and only these criteria could be used by the State and NMFS to make CDQ allocations.
6. If the CDQ groups cannot agree on the evaluation criteria, the Council and NMFS would be required to implement evaluation criteria in NMFS regulations through proposed and final rulemaking.
7. Evaluation criteria implemented in NMFS regulations would have to be consistent with any other MSA amendments implemented through H.R. 553.

The process described in H.R. 553 is consistent with alternatives described in Issue 1, Alternative 2 (NMFS makes CDQ allocations through an administrative process) and Issue 5, Alternative 2. H.R. 553 does not propose any specific evaluation criteria, but rather proposes a process for developing the criteria and the requirement that the criteria be published in NMFS regulations. Issue 5, Alternative 2 would develop the evaluation criteria for CDQ allocations through proposed and final rulemaking and the criteria would be published in NMFS regulations. Only the criteria published in NMFS regulations could be used as a basis for making CDQ allocations among the CDQ groups.

H.R. 553 has one provision that is not proposed as part of Issue 5, Alternative 2. If the CDQ groups request percentage allocations that add up to 100 percent for a particular CDQ species category, then NMFS would allocate the requested percentage to each group. The State and NMFS would not apply the evaluation criteria in regulations to determine the percentage allocations to each CDQ group.

H.R. 553 proposes that the CDQ groups first be allowed the opportunity to develop the evaluation criteria and, if all the groups agree on the same criteria, these criteria would have to be published in NMFS regulations and used by NMFS in making CDQ allocations. The State reports that it has been working with the CDQ groups in 1999 and 2000 trying to develop a list of evaluation criteria that all groups could agree

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on. To date, the CDQ groups have not been able to reach agreement on the evaluation criteria, primarily because of the different effect that the priority or weight of criteria such as population, fisheries related economic development projects, and proximity to the fishery resources would have on allocations to the different groups. For example, groups with lower population do not support the use of population as a primary evaluation criteria.

The question of whether the CDQ groups could agree on evaluation criteria was discussed at the CDQ Policy Committee meeting. The chairman asked if members of the CDQ groups would be able to agree on evaluation criteria. The committee generally agreed that the likelihood of complete consensus is low, which would put the responsibility for developing the criteria back with the Council and NMFS. However, if H.R. 553 is implemented as currently drafted, NMFS would be required to provide an opportunity for the CDQ groups to develop agreed upon evaluation criteria.

The amendments in H.R. 553 would require that any evaluation criteria developed by the Council and NMFS and implemented in NMFS regulations be consistent with the MSA, including any additional provisions implemented through H.R. 553. Some of the evaluation criteria currently proposed in Issue 5, Alternative 2 may not be consistent with other aspects of H.R. 553.

H.R. 553 would implement a statement that the goals of the CDQ Program would be to:

- (A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries; and
- (B) to assist eligible communities to achieve sustainable long-term diversified local economic development.

This provision of H.R. 553 probably would require NMFS to revise the goals and purpose of the CDQ Program to broaden the focus of the program from fisheries-related economic development to long-term diversified local economic development. If this revision in the goals and purpose of the program occurred, the following proposed evaluation criteria proposed in Alternative 2 probably would no longer be consistent with the MSA and NMFS regulations:

#8: Proximity to the resource.

#9: The extent to which the CDP will develop a sustainable fisheries-based economy.

The remaining eight evaluation criteria proposed under Alternative 2 do not appear to be inconsistent with the intent of H.R. 553. However, this determination would have to be made at the time NMFS was considering a final rule.

#### 4.6 Issue 6: Extent of Government Oversight (Definition of a CDQ Project)

Issue 6 addresses whether government oversight by either the State or NMFS applies to the activities and expenditures of the CDQ groups themselves or to businesses owned by the CDQ groups. The main issues are (1) what investments or business activities by the CDQ groups and their subsidiaries must be reviewed and approved by the State and NMFS before the investment can be made, and (2) what information about these companies must be provided in the CDP or submitted to the State and NMFS in quarterly and annual reports.

The State believes that it must have oversight authority over the business decisions of the CDQ group and its subsidiaries in order to meet its responsibility to ensure that the CDQ Program provides economic development in the eligible communities and benefits to the residents of these communities. Some of the CDQ groups believe that this level of oversight is not authorized by current regulations, is inappropriate, and is ill-advised. Other CDQ groups have not expressed as strong an objection to the level of oversight the State believes is necessary.

Four alternatives are considered:

**Alternative 1:** No Action. NMFS regulations governing the extent of government oversight of the business activities of the CDQ groups and affiliated businesses would not be revised.<sup>7</sup> An October 4, 2000, legal opinion by NOAA GC concludes that NMFS's regulations on the extent of oversight of the subsidiaries and affiliated businesses are unclear and need to be revised.

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

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

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

The requirement for review and prior approval of significant investments or debt would apply to the CDQ group and to businesses over which a CDQ group exercised effective management control (subsidiaries). The regulations would include a rebuttable presumption regarding oversight of CDQ businesses, such that if a CDQ group owns **50% or more of a subsidiary company**, the burden is on the CDQ group to prove that they do not exercise *effective management control* over that entity (as defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment (not as a CDQ-owned business) and thus subject to lower oversight and reporting requirements.

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<sup>7</sup>For purposes of this analysis, an "affiliated business" is any entity that is owned in whole or in part by a CDQ group. A "subsidiary" is an entity controlled by the CDQ group, and is also known as a "consolidated affiliate" because the entity controlled by a CDQ group generally is consolidated with the CDQ group for financial reporting purposes. Affiliated businesses owned by the CDQ group, but not controlled by the group are known as "unconsolidated affiliates."

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Option 2: Subsidiaries that a CDQ group owns *more than 50 percent of* would be required to submit financial information to the State and NMFS and to obtain prior approval for significant investments. (Similar to current AFA requirements, see KPMG recommendations)

Option 3: Subsidiaries that a CDQ groups owns *51 percent or more of* would be required to submit financial information to the State and NMFS and to obtain approval for significant investments. (Requested addition by Council at April 2002 meeting)

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

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

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

H.R. 553 would require NMFS to define a CDQ project as follows:

(i) “CDQ project” means a program or activity that is administered or initiated by a CDQ group and that is funded by revenue the CDQ group derives or accrues during the duration of a community development plan approved by the Secretary from harvesting the fishery covered by the plan.

(ii) such term does not include a program or activity administered or initiated by a subsidiary, joint venture, partnership, or other entity in which a CDQ group owns an equity interest, if the program or activity is funded by the assets of the subsidiary, joint venture, partnership, or other entity, rather than by the assets of the CDQ group.

**Alternative 1: No Action**

Government oversight in the CDQ Program has two primary elements (1) requirements to provide information to the government about the activities of the CDQ groups, their affiliated businesses, and vessels and processors participating in the CDQ fisheries, and (2) requirements that certain activities by the CDQ group and their subsidiaries be approved by the State and NMFS before they are undertaken.

Information submitted to the State and NMFS is used to determine if the CDQ groups are using assets derived from the CDQ allocations to benefit the eligible communities consistent with the goals and purpose of the CDQ Program, and to evaluate the CDQ groups’ past performance and proposed plans as a basis for future CDQ allocations. Current information requirements are described in Appendix C and D (State and Federal CDQ regulations), but generally include the following:

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- the proposed CDP (§679.30(a)),
- revisions to the CDP through substantial or technical amendments (§679.30(g)(4) and (5)),
- quarterly reports,
- annual reports, including audited financial statements (§679.30(g)(1)),
- annual budget report (§679.30(g)(2)),
- annual budget reconciliation report (§679.30(g)(3)).

All of the above information requirements are contained in NMFS regulations except the quarterly reports, which are required only in State regulations. The CDQ groups are required by NMFS to submit the proposed CDP and substantial and technical amendments to the the State first for review and approval. The State then submits the proposed plan or amendments to NMFS for review and approval. The CDQ groups are required to submit the annual budget report to NMFS, although they always have submitted this report through the State to NMFS. NMFS requires that the annual progress report at 50 CFR 679.30(g)(1) be submitted by the State to NMFS. The State regulations contain requirements for information that must be submitted to the State in order for the State to prepare the annual progress report it submits to NMFS.

It is through the initial approval of the proposed CDP and through substantial amendment requirements that the State and NMFS exercise the oversight authority to review and approve investments before they are made. 50 CFR 679.30(g)(4) states that a “CDP is a working business plan that must be kept up to date.” Substantial amendments to the CDP require a written request by the CDQ group to the State and NMFS for approval of the amendment. The State must forward the proposed amendment to NMFS with a recommendation as to whether it should be approved or disapproved. NMFS must notify the State in writing of the approval or disapproval of the amendment.

NMFS regulations require a substantial amendment to the CDP for the following reasons (see 50 CFR 679.30(g)(4)(iv)):

(iv) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to:

(A) Any change in the list of communities comprising the CDQ group or replacement of the managing organization.

(B) A change in the CDP applicant's harvesting or processing partner.

(C) Funding a CDP project in excess of \$100,000 that is not part of an approved general budget.

(D) More than a 20-percent increase in the annual budget of an approved CDP project.

(E) More than a 20-percent increase in actual expenditures over the approved annual budget for administrative operations.

(F) A change in the contractual agreement(s) between the CDQ group and its harvesting or processing partner or a change in a CDP project, if such change is deemed by the State or NMFS to be a material change.

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(G) Any transfer of a CDQ allocation, PSQ allocation, PSQ, or a transfer of more than 10 percent of a CDQ.

(H) The addition of a vessel to a CDP if the CDQ group submits a proposed alternative method of determining CDQ and PSQ catch under paragraph (a)(5)(ii) of this section for NMFS review.

State regulations at 6AAC93.055 also define substantial amendments to the CDP and include several important requirements and circumstances in addition to those listed in NMFS's regulations. New investments or changes to existing investments proposed through substantial amendments must be consistent with the State's CDQ Program Standards (see Figure 4.3). It is through these program standards that the State requires that the activity proposed in the substantial amendment benefit at least one CDQ community. In addition, these program standards require that an appropriate level of due diligence has been performed, that the research demonstrates that a proposed for-profit investment is likely to earn a financial return, and that the proposed investment be approved by official action of the board of directors. Finally, the proposed investment must be consistent with the goals and purpose of the CDQ Program ("fisheries-related") and with the State's definition of "conservation-based fisheries." In addition to the program standards, the State also requires that the activity proposed in the substantial amendment is consistent with the CDQ group's investment policies, and doesn't prevent the group from meeting the milestones and objectives that the group developed in its CDP.

NMFS regulations provide two statements that indicate that the list of specific circumstances that require a substantial amendment in §679.30(g)(4)(iv) are not the only changes to a CDP that may require prior review and approval. First, the introductory sentence to the paragraph states that "substantial amendments are defined as changes in a CDP, *including, but not limited to...*" (emphasis added). Second, in §679.30(g)(4)(iv)(F) refers to "a change in a CDQ project, if such change is deemed by the State or NMFS to be a material change." Therefore, NMFS regulations allow the State to implement more extensive regulations governing amendments to the CDP. However, in recommending disapproval of a particular substantial amendment, the State should provide NMFS with an explanation of why the State determined that the proposed amendment was a material change to the CDP that the State could not support based on criteria in its regulations.

The primary question addressed by Issue 6 is whether the substantial amendment requirements apply only to investments, expenditures, debt, and other activities by the CDQ group itself or also apply to the activities of the affiliated businesses. Debate over this question has revolved around the definition of a CDQ project and the use of this term in NMFS regulations. The current administrative regulations for the CDQ Program are based on the link between the definition of a "CDQ project" in 50 CFR 679.2 and the CDQ administrative regulations in 50 CFR 679.30. A "CDQ project" is defined as follows:

*CDQ project means 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, but not limited to, infrastructure development, CDQ investments, employment and training programs, and CDP administration.*

50 CFR 679.30 requires that the CDP include a detailed description of *each CDQ project* including information about short-and long-term benefits, project schedule, milestones, and employment. The income and expenditures for each CDQ project are required to be included in the general budget for the CDP. After

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the CDP has been approved, investment in new CDQ projects and some changes to the status of existing CDQ projects must be reviewed and approved by the State and NMFS through amendments to the CDP.

It is on the basis of the definition of a CDQ project, and the use of the term in 50 CFR 679.30, that the State of Alaska believes that the activities of businesses owned by the CDQ group are subject to the administrative requirements of the CDQ Program. Businesses owned by the CDQ group are “CDQ investments,” and the activities of these businesses affect the CDQ group’s ability to provide benefits to the residents it represents. These investments, together with future royalties from CDQ allocations and earnings from other investments, are the means through which the CDQ group accomplishes the goals of the its CDP and of the CDQ Program as a whole.

NMFS requested a legal opinion from NOAA General Counsel (GC) about the definition of a “CDQ project” relative to oversight of CDQ subsidiaries, specifically Glacier Fish Company. NSEDC owns 50 percent of Glacier Fish Company. In an opinion issued on October 4, 2000, NOAA GC advised NMFS that:

“... no clear interpretation emerges from a review and legal analysis of the regulatory language or the history of the development of the CDQ regulations. ....Therefore, both NSEDC’s and the State’s interpretations find support and contradiction in the regulatory language; both interpretations have the potential to enhance as well as frustrate the currently stated goals and objectives of the CDQ program. NSEDC’s interpretation creates the potential for investment in activities that, while economically sound, may not be commercial fisheries business activities, or for investment in commercial fisheries business activities that may not be regionally-based in contradiction of the stated purpose of the CDQ program... Conversely, the State’s interpretation, appears to extent the reach of the State’s monitoring responsibilities beyond what the current regulatory program supports and may have the potential to competitively burden a CDQ group’s ability to invest in established regionally-based, fisheries-related businesses, potentially undermining the CDQ program goals of self-sufficiency and economic viability for CDQ groups. It is therefore recommended that the Council, the State, CDQ groups, NMFS, and the public consider this issue and determine how best to resolve these competing interests.”

Selecting Alternative 1 as the preferred alternative would mean that NMFS regulations would not be revised to clarify the extent of government oversight of the CDQ groups and the businesses they have invested in. There are a number of negative aspects to this alternative. NOAA GC has advised NMFS to revise its regulations to clarify the extent of government oversight. Selection of Alternative 1 would be inconsistent with this advice. Failure to clarify NMFS regulations would continue the uncertainty associated with the State’s oversight authority. This uncertainty negatively affects the CDQ groups, their partners, and their prospective partners. Therefore, NMFS regulations need to be resolved to clarify the extent of government oversight.

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

The primary purpose of Alternative 2 is clarify NMFS’s regulations that the State and NMFS are authorized to require prior review and approval of activities by both the CDQ group and its subsidiaries and to collect information about the CDQ group and its affiliated businesses. Alternative 2 includes four options for determining the extent of government oversight of the CDQ groups’ subsidiaries.

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Option 1 was developed by the CDQ Policy Committee and the State of Alaska. Under this option, subsidiaries that a CDQ group owns 50 percent or more or, or has effective management control of, would be required to submit financial information to the State and NMFS and to obtain prior approval for significant investments. The regulations would include a rebuttable presumption regarding oversight of CDQ businesses, such that if a CDQ group owns 50% or more of a subsidiary company, the burden is on the CDQ group to prove that they do not exercise *effective management control* over that entity (as defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment (not as a CDQ-owned business) and thus subject to lower oversight and reporting requirements.

Under Option 2, subsidiaries that a CDQ group owns more than 50 percent of would be required to submit financial information to the State and NMFS and to obtain prior approval for significant investments. This option provides a definition of management control that is similar to that currently in effect for the American Fisheries Act, based on ownership of more than 50 percent of an affiliated business.

Under Option 3, subsidiaries that the CDQ groups owns 51 percent or more of would be required to submit financial information to the State and NMFS and to obtain approval for significant investments. Addition of this option was requested by the Council at its April 2002 meeting. The difference between Option 2 and Option 3 lies in the possibility that a CDQ group could hold a majority ownership share of a business by owning more than 50 percent of the business, but less than 51 percent.

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

### State of Alaska Proposal

Alternative 2 is based on the State of Alaska's position on the level of oversight that is necessary for the State and NMFS to fulfill their responsibilities to monitor the performance of the CDQ groups and to ensure that the benefits of the CDQ Program are being provided to the eligible CDQ communities. The State believes that it must have the authority to review and approve significant investments and debt by the CDQ group and its subsidiaries in order to fulfill its responsibility to monitor the CDQ groups and to ensure that benefits from the CDQ Program are being provided to the eligible communities. The State has supported Option 1 in the CDQ Policy Committee meetings and in discussions of the initial draft analysis. However, the State has not yet had the opportunity to evaluate Options 2 through 4 or to comment on them to the Council.

Under Alternative 2, any activities by the subsidiaries affected by the particular option would be subject to the same level of oversight as the activities of the CDQ group itself. This oversight would include requirements that the subsidiary be fully described in the CDP, that a budget for the subsidiary be provided in the CDP, that periodic information about the subsidiary be submitted to the State in quarterly and annual reports and that prior approval be obtained from the State for any initial investment and for significant additional investment in the subsidiary.

The State is continuing to develop the details of its proposal, which is called "the Bright New World," which would define what the State considers a significant investment and debt by the CDQ group or its subsidiaries.

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Under Alternative 2, the State requested revision of the substantial amendment requirements to define significant new investments or debt to include:

- new investments or debt greater than \$250,000 on a single project;
- new investment or debt of any amount associated with a vessel that has the capability to process fish onboard or with a fish processing plant onshore, regardless of the amount of the investment or debt;
- new investment or debt of any amount associated with the purchase of a fishing vessel equal to or greater than 125 feet length overall.

### Defining Effective Management Control

NMFS requested that KPMG provide information and recommendations about defining effective management control. This information is relevant mainly to Option 1 which would require a definition of effective management control to be implemented for businesses in which the CDQ group owned exactly 50 percent of. Management control would be assumed for business in which the CDQ group owned more than 50 percent of the equity. Following is the information provided by KPMG

The State assumes in their proposal (*Option 1*) that businesses partially owned by the CDQ groups can be considered to have effective management control if they own 50% or more of a business. For the purposes of financial reporting, a 50% interest is not automatically considered to be a “controlling interest”, nor is a business considered to have “effective management control” with 50% ownership. The reason for this is that having a 50% interest does not give a majority voting interest in the company. If the other owners also have 50% of ownership, it would mean they would also have to be considered to have effective management control. There cannot be more than one owner considered to have effective management control of a company.

To have effective management control, or controlling interest in a company, the ownership usually needs to be at a minimum 51% (*Option 3, also may apply to intent of Option 2*). Looking at ownership percentages to determine control assumes that the voting rights in the company are the same as the ownership percentage. The voting rights typically apply to appointing the Board of Directors and/or managing committee for a company. However it cannot be assumed from an ownership percentage that these voting rights exist. There is no easily identifiable way of knowing whether or not a controlling interest exists unless the organizing documents for the company are examined. These would be documents such as the articles of incorporation, or bylaws for a Corporation. For a limited liability company, the articles of organization and the operating agreement would have to be examined. These documents will state how the company is to be managed and who controls management.

If the determination of “controlling interest” were to be added to the regulations it should be stated as companies that are owned 51% or more could be assumed to have a controlling interest. In the rare case that 51% ownership did not carry a controlling interest then it could be required that the CDQ group present the organizing documents for the business and explain why they did not have effective management control.

Financial reporting can be an alternate way of determining effective management control. In the presentation of the CDQ group’s financial statements, companies with effective management control would have to be reported as a consolidated subsidiary of the CDQ group. If a full accounting year has passed since acquisition of the company, the financial statements could be examined to see what determination had been used by the

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CDQ group to prepare the financial statements. However if the determination of effective management control has to be made before a full year has passed, financial statements will not be available. In these cases the companies organizing documents would have to be reviewed to determine what voting rights existed for the CDQ group and whether or not it would be considered a controlling interest or not.

In our review of the businesses listed in the CDPs for the CDQ groups, we identified 12 companies that were 50% owned by the CDQ groups (see Table 4.17). In examining the financial statements we did not find any of these companies that were reported on a consolidated basis. This would indicate that a controlling interest in the business does not exist. If the regulations were changed as proposed, with 50% being considered a controlling interest, it appears none of the 50% owned companies of the CDQ groups would meet that definition.

*(Related to Option 2)*

It should also be noted that a definition of control exists in 50 CFR 679.2, which provides definitions for terms used in the MSA. Under the definition of “AFA crab facility”, and “AFA inshore or mothership entity”, “control” is described as:

1. ownership of more than 50 percent of the entity;
2. the right to direct the business of the entity;
3. the right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity; or
4. the right to direct the operation or manning of the [crab processing facility] or [mothership and/or inshore processor].

The MSA definition also goes on to say that, “the term ‘control’ does not include the right to simply participate in the above actions.” We believe that even though this definition was written for purposes relating to administration of the AFA it could also be used if it is decided that oversight should extend to businesses that the CDQ groups have “control” or “controlling interest” in.

*[End of KPMG input on effective management control]*

### Classifying the Affiliated Businesses

Figures 2.1 through 2.6 show the organizational structure of the CDQ groups, including the businesses owned by the CDQ group and the percent ownership of each business. These flow charts were prepared by KPMG based on information in the CDPs through mid-2001. Although some changes may have occurred since then (new investments, changes in ownership percentages), the information provided in these figures accurately represent the range of the type of businesses and the level of equity ownership that currently exist in the CDQ Program. For purposes of analyzing the impacts of Alternative 2, the business owned by the CDQ groups are classified into three categories.

1. More than 50 percent equity ownership: Table 4.17 lists the businesses in which the CDQ group holds more than 50 percent equity ownership. The CDQ group is the majority owner of the business and is assumed to have effective management control. This table shows some of the subsidiaries that would be affected by Option 1 (50% or more) and all of the subsidiaries that would be affected by Option 2 (more than 50%) and Option 3 (51% or more). Option 4 would affect all subsidiaries on

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Table 4.17 that are 100% owned by the CDQ group, including the 4 management subsidiaries at the top of Table 4.17).

2. Exactly 50 percent equity ownership: Table 4.18 lists the businesses in which the CDQ group holds exactly 50 percent equity ownership. These businesses could be affected by Option 1 if the CDQ group had effective management control of them. The CDQ group may or may not have effective management control of these businesses. However, as noted above, KPMG examined the financial statements for the CDQ group and determined that none of these businesses were consolidated with the CDQ group's statements. This would indicate that the CDQ group does not have effective management control of these businesses. Requirements for prior approval of significant investments would not apply to these businesses under Option 2, Option 3, or Option 4.
  
3. Less than 50 percent equity ownership: Table 4.19 lists the businesses in which the CDQ group holds less than 50 percent equity ownership. The CDQ group is the minority owner and is assumed to not have effective management control. These businesses would not require prior approval of significant investment decisions under any options of Alternative 2. However, the State and NMFS could require that information be submitted about how these affiliates or investments are contributing to the CDQ groups' assets or ability to provide benefits to the eligible communities.

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

CDQ Group	Investment	Description	CDQ % ownership
APICDA	APICDA Joint Ventures, Inc.	For-profit management corporation	100%
CVRF	Angyat, Inc.	For-profit management corporation	100%
NSEDC	Norton Sound Investment Co.	LLC	100%
YDFDA	Yukon Delta Fisheries, Inc.	For-profit corporation	100%
APICDA	Bonanza (AVI)	Longline catcher vessel (38.8')	100%
APICDA	F/V AP#1, AP#2, AP#3, AP#4, AP#5 (AVI)	Longline catcher vessels (36')	100%
APICDA	Grand Aleutian (AVI)	Sportfish Charter Vessel (32')	100%
APICDA	Nikka D (AVI)	Longline catcher vessel (28')	100%
APICDA	Stardust (AVI)	Longline catcher vessel (56')	100%
APICDA	Nazaan Bay Inn	Hotel and services	100%
APICDA	Dipper, LLC	Processing barge (110')	75%
APICDA	Konrad 1, LLC	Trawl catcher vessel (58')	75%
APICDA	Ocean Logic, LLC	Software development and sales	66.6%
CVRF	Kuskokwim Bay facility	Processor	100%
NSEDC	N. Sound Seafood Products	Seafood buyer, processor and retailer	100%
YDFDA	Lisa Marie	Multiple gear catcher vessel( 79')	100%
YDFDA	American Beauty (Alakanuk Beauty LLC)	Trawl catcher vessel (105')	75%
YDFDA	Ocean Leader (Emmonak Leader LLC)	Trawl catcher vessel (103')	75%

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

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

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

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

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Impacts of Alternative 2

Table 4.20 summarizes how oversight requirements for information submission and prior review and approval of significant investments and debt would apply to the CDQ groups and affiliated businesses under Options 1 through 4.

Table 4.20: Proposed oversight requirements under Alternative 2.

What Entity Would the Requirement Apply to?	Would the Requirement Apply?	
	Information Requirements	Prior Approval of Significant Investments or Debt
CDQ group	YES	YES
<u>Option 1</u> : Subsidiaries over which the CDQ group has effective management control, >50% equity ownership (Table 4.17)	YES	YES
<u>Option 2</u> : Subsidiaries that the CDQ group owns more than 50% of (Table 4.17)	YES	YES
<u>Option 3</u> : Subsidiaries that the CDQ group owns more than 51% of (Table 4.17)	YES	YES
<u>Option 4</u> : Subsidiaries 100 percent owned by a CDQ group, or subsidiaries created to manage CDQ assets and investments (Some subsidiaries on Table 4.17)	YES	YES
Unconsolidated affiliates, ownership of less than 50% under any option (Table 4.19)	YES	NO

Requirements to submit information to the State in either the CDP or annual reports would apply to all CDQ groups and affiliated businesses. Under Alternative 2, the State would be authorized to collect information from the CDQ group about the group itself and any of its affiliated businesses, regardless of ownership percentage. Information collected could include descriptions about the entity in the CDP, budgets for the entity in the CDP, annual updates to the budget, annual audited financial statements, information about the employment of CDQ community residents, royalty agreements, management contracts, and any other information that the State determined was necessary to monitor the performance of the entity and to assess how the entity was contributing to providing benefits to the eligible CDQ communities.

Requirements for prior approval of significant investments and debt would apply to the CDQ group and its subsidiaries, according to the requirements for Options 1 through 4. Option 1 would allow a CDQ group to

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demonstrate that it did not have management control over a business that it owned more than 50 percent of. Requirements for prior review and approval of significant investments and debt under Option 1 would not apply to businesses that the CDQ group does not have effective management control of, which are listed in Table 4.19. Preliminary research suggests that the CDQ groups also do not have management control over any of the 50 percent-owned businesses listed in Table 4.18. However, exact determination of management control would have to be made based on the regulations implemented as a result of Alternative 2. Options 2 and 3 would extend government oversight based solely on the percentage ownership by the CDQ group. Option 4 would extend oversight to all subsidiaries 100 percent owned by the CDQ group, but only extend oversight to certain subsidiaries that the CDQ group owned less than 100 percent of, if these subsidiaries were formed primarily for the purpose of investing CDQ assets or managing other for-profit CDQ investments.

Alternative 2 would require prior review and approval of significant investments and debt for specific subsidiaries, depending on the option selected. These requirements could be made as revisions to NMFS's regulations for substantial amendments. Alternatively, NMFS could examine the option of authorizing the State to develop substantial amendment requirements in its regulations and not including these specific requirements in NMFS regulations. The State currently is proposing that significant investments or debt would include:

- new investments or debt greater than \$250,000 on a single project;
- new investment or debt of any amount associated with a vessel that has the capability to process fish onboard or with a fish processing plant onshore, regardless of the amount of the investment or debt;
- new investment or debt of any amount associated with the purchase of a fishing vessel equal to or greater than 125 feet length overall.

These requirements would mean that the CDQ groups and their subsidiaries would be required to obtain prior approval from the State and NMFS before they made new investments or incurred debt that met any of the current substantial amendment criteria, with the three additions or revisions described above. The current list of CDQ group subsidiaries in Table 4.17 includes several for-profit corporations that manage other equity investments, a number of relatively small fishing vessels, two larger trawl catcher vessels, several local fish processing businesses, a fishing lodge, and a software development business. If the CDQ group invests any additional money in these subsidiaries (specified by Options 1-4) or incurs additional debt, these activities would be subject to the oversight requirements described above. In addition, if any of these subsidiaries made investments or incurred debt that triggered the substantial amendment requirements, they also would be subject to requirements for government review and prior approval of these activities.

*The State provided the following description of the issues it considers when reviewing substantial amendments.*

The State requires CDQ groups to provide a comprehensive summary complete with all details and a description of how the proposed amendment meets the goals and objectives of the CDP. Individual characteristics of an amendment vary considerably. However, for illustration purposes, if the proposal involves a purchase of an equity interest in a vessel, the amendment must include:

- Business plan (A comprehensive discussion of the proposal)
- A description of due diligence conducted
- Form of payment (debt service plan if necessary)

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- Revised budgets
- Five-year pro forma analysis indicating earning potential without CDQ quota
- Five-year income statements
- Project sheet form with description of measurable milestones, scope of operations and budget impacts
- Where the asset will be held within the CDQ organization
- Ownership structure and management control
- Valuation of fishing rights
- Vessel survey
- A copy of all agreements, contracts and intents letters
- Employment and training benefits to CDQ region
- Board minutes or resolution approving the transaction
- Articles of incorporation
- Description of working capital

The State also requires as part of the amendment package, a written response to the individual requirements in 6 AAC 93.017 and 50 C.F.R. 679.30(g)(4)(iv). The State CDQ staff conducts analysis to ensure that compliance has been achieved with these requirements and that the amendment satisfies the individual CDQ group's internal investment guidelines. Some examples of reasons that the State would not approve a substantial amendment would be if the investment involved the obligation of CDQ quota beyond a CDP cycle, or in general terms, the amendment failed to meet CDQ program standards or the CDQ group's investment guidelines.

The State does not provide financial advice to CDQ groups or become involved in an intricate manner in the financial analysis conducted. Each CDQ group hires certified professionals or has qualified individuals on staff to help prepare comprehensive business plans and provide investment policy analysis. As a practical matter, the state has developed interactive relationships with CDQ financial advisors and relies on their expertise for the providing of specific financial breakdown.

Each group also has financial advisory boards or executive committees to assist them in evaluating potential business decisions. Because the state has access to information on markets and other overall factors involved in the seafood industry, it does for compliance purposes, regularly question the groups on the assumptions or the variables incorporated into financial models. However, the state does not attempt to substitute its financial analysis in place of what a CDQ group has provided. If there appears to be a misuse of data or assumptions, the state requests that the analysis be resubmitted. This is happening with less frequency, since the beginning of the program.

*NMFS requested KPMG comments and analysis about several aspects of Alternative 2. Following is its input.*

*NMFS requested information about the definitions of important terms:*

### **Definition of Investment and Debt**

If one of the objectives of government oversight is to protect CDQ assets, more description may be necessary in the CDQ regulations to explain what financial activities are subject to disclosure and approval. An example of this would be guarantees of debt for CDQ-owned businesses. If a CDQ group guarantees the debt of a company, it would only be apparent in reading the notes to the financial statements. It would not be part of an annual budget for a CDQ project, or disclosed in the financial statements. However a debt guarantee could lead to the future expenditure of funds if the company is not able to repay its debt. At the time the debt

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repayment were due it would be too late for the government to approve or disapprove the expenditure since the debt guarantee had already pledged those funds.

Depending on the scope of oversight decided on for regulations, it may be necessary to define “investment” or “funding” to clarify exactly what transactions would fall under this description. The usual definition of an investment is the acquisition of an asset that will generate future revenue. The description of types of investments could include:

- purchase of a share of a company or partnership
- purchase of an entire company or partnership
- starting up a company
- making a loan to a company, partnership, or individual
- giving a grant to a community
- pledging assets of the CDQ group as collateral for a loan (e.g., loan guarantee)

If all of these types of activities are intended for oversight then it should be clarified in the regulations.

### **Investments in Marketable Securities**

Investments in marketable securities are typically not thought of as having the same level of risk as investing in a business does. If a CDQ group has cash in excess of its operating needs that it wishes to save for future investments, it may choose to invest that cash in a liquid (easily converted back to cash) investment such as a money market. It should be clarified if this is the sort of “investment” the Council feels it would like to see government oversight of or not. A different example would be if the CDQ group gave their excess cash to an investment firm to invest in stocks. Again, it may need to be clarified if the Council would desire this type of an investment to have government oversight.

### **Impact on Business Partners**

Some CDQ groups have claimed that having governmental oversight would make the CDQ groups less desirable as business partners. Especially if the CDQ group had a controlling interest, which under the State’s proposal would require approval for expenditures greater than \$250,000. Potential partners would be subject to the uncertainty of whether or not approval could be obtained for specific projects within the business.

A way to reduce the uncertainty for potential business partners is to specifically state what criteria will be used to decide investment approval. At a minimum the government should judge whether or not it meets program objectives, and evaluate if an adequate amount of due diligence has been done. These criteria and any additional criteria used should be part of the regulations. Without stated minimum requirements for approval, approvals could appear inconsistent and arbitrary.

Another way to reduce uncertainty is to explain the rationale for requiring approval for certain types of investments such as processing facilities, or vessels greater than 125 feet in length. If the purposes for government oversight proposed in Issue 3 are adopted, there should be a strong linkage between any requests for information, or requirements for approvals, and the stated goals of oversight.

Even though government oversight could bring an element of risk to a business venture, any business venture carries many elements of risk and uncertainty. Risks can be market conditions, total allowable catch, environmental regulations, etc. All fisheries businesses are subject to the risks of dealing with fishing

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regulations that could include restricted fisheries, restricted means of catching the fish, or restrictions in the processing of the fish. The risk from having CDQ oversight is not that different than the types of risk any fisheries related business could face due to governmental regulations. Regardless of the specific rules regarding what is subjected to oversight or not, all businesses the CDQ groups invest in are part of the CDQ program and need to in some way fulfill the requirements of bringing social and economic benefits to the CDQ communities. The necessity of submitting large expenditures for approval would have to be considered against the benefits most CDQ groups bring with them as well capitalized organizations able to guarantee debt, and with eight years of CDQ allocation history. There is not a guarantee of future allocations, but the likelihood of the program continuing for the foreseeable future is much greater than it being discontinued. These are strong reasons for a business to partner with a CDQ group and may offset any downside for potential oversight of business activities.

From a legal standpoint, most of the operating agreements we reviewed include some sort of clause that recognizes the existence of the CDQ program, and states that the business will not engage in any activity that is not compliant with CDQ regulations. Some agreements also state that the term of the agreement ends when the CDQ group stops receiving a CDQ allocation. We would not be able to say whether or not any or all of the existing agreements would not require changes if alternative 2 were adopted that specifically recognized the authority granted to government oversight of business investments.

### **Day-to-day Management vs. Large Investment Decisions**

Majority owners of businesses may choose to delegate day-to-day management of a company to the minority owner. However they are still considered to have management control since they would still have the ability to remove or change the management team if they did not agree with the management team performance. So it may not be a valid argument that the delegation of management would not allow you to have control over what investments are made for the company. In addition, in most operating agreements major decisions are not left up to the management team but are subject to approval by a majority vote of the owners. Major decisions can include capital expenditures, changes in the nature of the business of the company, cash distributions, and cash contributions to the company.

*NMFS requested information about what types of reports or information would need to be provided to the government to effectively extend oversight.*

The specific goals for oversight should guide the need for additional reporting of affiliated businesses. If the purposes of oversight are adopted as proposed in Issue 3, reporting should focus on increased financial disclosure for the affiliated businesses, plus verifying how the businesses support the CDP milestones.

### **Financial Disclosure**

The audited financial statements for the CDQ groups will give the following information regarding companies the CDQ groups have ownership in:

## **Consolidated Statements of Financial Position**

### **Consolidated Subsidiaries**

For companies that the CDQ group has a controlling interest in, the assets and liabilities will be included in the asset and liability line items for the CDQ group. The notes to the financial statements will have a consolidating schedule attached that will show the consolidated companies broken out separately. From this it is possible to see the financial performance for each subsidiary. For an example see the “Consolidating Statement of Activities and Changes in Net Assets” for the Yukon Delta Fisheries Development Association Consolidated Financial Report for the year 2000.

### **Investment in an Unconsolidated Affiliated Company**

If an affiliated company is not controlled by the CDQ group, the company will show as an “investment” in the long-term asset section of the statement. This type of company is referred to as an “unconsolidated affiliate”. The investments in these companies may be listed separately, or investment amounts may be combined as one total. The notes to the financial statements will show summarized revenue, expense, and net income information for the each unconsolidated affiliate. For an example see note 6, “Investment in Glacier Fish Company, LLC”, attached to the Norton Sound Economic Development Corporation Consolidated Financial Report for the year 2000.

### **Notes Receivable from an Unconsolidated Affiliate**

Any notes representing loans made to an unconsolidated affiliate will be listed under either short or long-term assets. The terms of the note should be in the “Notes to Financial Statements”. The amount of the note should be compared to the equity ownership to understand how much of the company is financed by the CDQ group.

### **Advances (Receivable) from an Unconsolidated Affiliate**

If the CDQ group has advanced money to an unconsolidated affiliate, it will be shown as an advance under current assets. Similar to note receivable, advances issued to an unconsolidated affiliate is another form of financing that increases the amount of financial exposure to the CDQ group.

### **Notes Payable to an Unconsolidated Affiliate**

If the unconsolidated affiliate has loaned any money to the CDQ group it would be shown in either short or long-term liabilities. When a CDQ group acquires ownership in a company it may be financed either by bank debt, or by debt issued by the company itself.

## **Consolidated Statements of Activities**

### **Consolidated Subsidiaries**

For companies that the CDQ group has a controlling interest in, the revenues and expenses will be included in the revenue and expense line items for the CDQ group. The notes to the financial statements will have a consolidating schedule for the statement that will show the consolidated companies broken out separately.

### **Net Gain (Loss) on Investments**

The net gains or losses from the unconsolidated affiliates owned by the CDQ group are shown under the revenue section of the “Changes in Unrestricted Net Assets” report. This represents the CDQ groups’ ownership percentage of net earnings for the business. If it is a loss, this is shown as a credit amount (reduction) to revenue.

### **Impairment**

Generally the amount shown as an asset for ownership in an affiliated business is the cost of the original investment plus the ownership share of the accumulated earnings. However if a business is not generating current earnings, and does not have good prospects for future earnings, the value of that asset must be reduced. The value of the company is considered to be “impaired”. When the value of the asset is reduced, or eliminated, the amount of that reduction is shown as an expense. CDQ group management should be performing analytical tests to ensure that the investments in the business they own are not impaired and are fairly presented on the financial statements.

It should be noted that many of the affiliated businesses of the CDQ groups do not have audited financial statements. As part of the financial audit of the CDQ groups, certain analytical procedures are performed to give a level of assurance that the affiliated company financials are reasonable. If it was desired to lower the risk further, regulations could incorporate requirements for audited statements for companies with over \$5,000,000 in assets, or reviewed financial statements at a lower level of assets. The tax returns for the affiliated businesses could also be requested for additional financial information.

It should be considered whether or not a more robust report should be given in the CDP, and in the annual report, regarding the business relationships and financing information regarding CDQ-owned businesses. Much of this information can be pulled out of the financial statements, but it is not obvious to someone who is not familiar with reading these statements. There are several groups who have debt guarantees, or outstanding debts to a business in which they have an equity share, that exceeds the value of the equity share in that business. If the business failed they would have to write off more than what current exists as an asset, and would have to take a write off on the income (activities) statement. We know that financial statements may not ensure all liabilities are fully disclosed, so that a layman would understand the nature and extent of the exposure.

### **Milestone Compliance**

The activities of the businesses accounted for through equity-ownership, (e.g., the companies that are not controlled by the CDQ groups) are not easily found in the financial statements for the CDQ groups. Additional financial reporting requirements for these businesses would increase the understanding of their financial performance, but this will not show how the businesses are furthering the goals of the CDP. The best way to do so is to have the CDQ groups include in the CDP which milestones; training, employment, infrastructure, etc., the business helps to achieve and how they help them achieve the milestones.

*NMFS requested KPMG analysis of the affect of Alternative 2 on the CDQ groups and their subsidiaries from a financial and managerial standpoint.*

The first impact would be in the financial reporting requirements for the CDQ groups and their subsidiaries.

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Currently the financial statements for the CDQ groups are presented on a consolidated basis. With additional oversight, the CDQ groups may be required to include a consolidating summary of the subsidiary activity. Not all subsidiaries have their stand alone financial statements audited, but are audited in relation to the consolidated entity. There could be additional expense involved due to auditors incurring additional time on the consolidating schedule. Additionally not all companies prepare an annual budget, so there could be an additional expense associated with creating and reporting an annual budget. At a minimum, the extended oversight would provide an additional layer of administrative effort and expense for the CDQ groups and their subsidiaries.

In addition to the reporting requirements, if the groups are required to submit expenditures over \$250,000 for approval, it creates an additional layer of government regulation for those businesses. The financial or managerial impact of that regulation is difficult to assess because it is not known how the regulations would be applied or enforced. But any sort of regulation does increase the level of uncertainty that a business operates under. Uncertainty is viewed as a form of risk for a business. In any business venture, the greater the risk involved, the higher the rate of return the investors will require as compared to other investment choices with less risk.

It is possible that the oversight involved can reduce the amount of risk for those subsidiaries if it forces them to go through the same due diligence process as is required for initial investments for the CDQ groups. The risk is reduced if the subsidiary would not have otherwise gone through that process.

The amount of uncertainty and risk can be reduced to the extent that the regulations are clearly defined and understood as to what types of expenditures are allowed. If the subsidiary can decide on an investment, and know that it meets the requirements of the CDQ regulations then oversight becomes basically a process to verify compliance, not to direct the decisions of the business.

Additional reporting would be needed to verify whether or not those subsidiaries of the CDQ groups had made expenditures, or incurred debt, in any single transaction greater than \$250,000. The income statement, cash flow statement, or balance sheet would most likely only show expenditures in the aggregate, it does not normally provide detail as to individual expenditures. A detailed breakdown of all expenditures, whether classified as expense or capital, would be needed.

Whenever a certain dollar limit is imposed on transactions, there is incentive to break up transactions related to the same activity into smaller amounts to avoid oversight. In order to discourage this practice or ensure that oversight was being applied properly it will be necessary to understand all the expenditures of a subsidiary to know whether or not they are related. The regulations would also need to be written specifically enough to convey that this is not an allowable practice and to ensure reporting would detect any occurrences.

*[End KPMG input on Alternative 2]*

Alternative 2 authorizes a high level of oversight by the State and NMFS for the activities of the CDQ groups and their subsidiaries. This alternative relies on two elements of oversight - submission of information and review and prior approval of significant investments by the CDQ group and its subsidiaries. Alternative 2 would require additional reporting requirements about the activities of the subsidiaries so that the State and NMFS could monitor whether substantial amendments were being submitted when they were required. The benefit of the level of oversight proposed in Alternative 2 is that it provides the State and NMFS the opportunity to review significant investments for consistency with regulations before those investments are

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made. The State and NMFS have a greater ability to fulfill oversight responsibilities through day-to-day management rather than through after-the-fact enforcement actions or allocation adjustments.

Alternative 2 would not impose new requirements for review and prior approval for activities of the CDQ groups themselves (the non-profit corporations). The groups already are required to submit substantial amendments for any of the activities by the group that meet either the State's or NMFS's amendment requirements. In addition, raising the threshold that triggers substantial amendments from \$100,000 to \$250,000 would reduce some substantial amendment requirements on the CDQ groups.

Alternative 2 would impose requirements on the CDQ groups for the activities of their subsidiaries, as defined by Options 1 through 4. Whether these are "new" requirements or are clarifying existing requirements is the subject of several years of debate. These subsidiaries appear to fall into two categories: the non-profit corporations that are organized to manage other for-profit businesses and the individual businesses organized for a specific purpose such as commercial fishing or seafood processing. It appears that the CDQ groups with wholly owned subsidiaries that invest in and manage the groups' for-profit investments already submit information in the CDP and in substantial amendments for investments made through these subsidiaries. However, to date, it does not appear that any substantial amendments have been submitted for any activities by a CDQ group subsidiary that is an individual business. This may be because none of these subsidiaries have made an investment that triggered the substantial amendment requirements. Many of them are small vessels and small businesses that are unlikely to make new investments over \$100,000 without requiring additional investment or debt guarantees from the CDQ group. The lack of substantial amendments to date for these subsidiaries also may be because the regulations do not provide clear guidance or because the State does not have adequate information about the day-to-day activities of the subsidiaries to know when substantial amendments should have been submitted.

KPMG suggested a number of possible revisions or additions to reporting requirements that would be necessary for the government to monitor and enforce compliance with the requirements for review and prior approval of activities of the CDQ subsidiaries. If the Council selects any option under Alternative 2, NMFS will conduct a more thorough review of the reporting requirements necessary to implement this alternative when it develops rulemaking. It will be important to implement adequate reporting requirements so that the State and NMFS can monitor the activities of the subsidiaries and apply the requirements for review and prior approval consistently for all CDQ groups.

The level of oversight proposed in Options 1 through 3 could discourage potential business partners from allowing the CDQ groups to invest to the level of gaining management control of the company. The potential partners may not want to operate with the uncertainty associated with government involvement in significant investments and debt. This uncertainty is caused by the fact that the State and NMFS could disapprove a potential investment by the subsidiary if it did not comply with the applicable requirements. In addition, the business decision making process could be delayed if the CDQ group is required by the State to conduct additional research or provide additional justification for the proposed investment. In March, 2002, the At-Sea Processors Association, which represents seven companies and 19 catcher/processor vessels, approved the following statement related to government oversight of the CDQ Program: "The APA's position on CDQ oversight is that such oversight should not extend to the business decisions of APA member companies or their subsidiaries in which CDQ groups have an equity interest." (T. McCabe, e-mail communication, May 9, 2002).

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Whether Options 1 through 3 would prevent a CDQ group from being able to purchase a majority share (between 50 percent and 99 percent) of an existing fishing business is unclear. There probably are other reasons besides government oversight for why most of the CDQ groups have not yet purchased majority ownership of large fishing and processing companies. One reason may be the amount of money required for the investment. Another reason may be related to the expertise and motivation of the managing partners. One CDQ group addressed this issue in its investment policies stating that the CDQ group would consider investments greater than 50 percent ownership in rare cases if the project is relatively small and the CDQ group could manage it on its own. The CDQ group preferred 50 percent ownership interests “as this level provides a high level of control at the same time as it provides significant incentive on the partner to maximize the value of the investment.” As KPMG noted, these fishing businesses already are subject to considerable government oversight and risk as a result of government regulations. Access to the CDQ allocations is attractive to prospective business partners and may offset concern about government oversight.

Option 4 would limit the requirement to obtain prior approval for significant investments to the subsidiaries wholly owned by the CDQ group, or to subsidiaries created by the CDQ group specifically to manage other CDQ assets or to invest the CDQ group’s revenues. This option would not require prior approval of significant investments by fishing businesses (vessels, processors, etc.) in which the CDQ group is a partner with other individuals. This exclusion would allow the State and NMFS to approve the initial investment in an existing fishing business, but would not allow the government to require review and prior approval of the on-going activities of this business. Option 4 would apply regardless of the level of ownership in the business by the CDQ group, as long as it was less than 100 percent. Therefore, the option should almost eliminate concerns that an existing fishing business would not want a CDQ group to purchase a majority ownership of less than 100 percent due to risk or fear of government oversight and control of significant investments. Option 4 would authorize the State and NMFS to continue to require prior approval of significant investments by the CDQ group itself (the non-profit corporation), by any subsidiaries that are completely owned and controlled by the CDQ group, and by any management subsidiaries. These subsidiaries are, in a sense, the CDQ group and act on its behalf to manage assets, invest funds, and provide benefits to the communities.

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

Under Alternative 3, the State and NMFS would be authorized to require review and prior approval of the activities of the CDQ groups only and not for any of the groups’ subsidiaries or other affiliated businesses. In other words, the State and NMFS would continue to be involved with the initial decision to invest in or establish a new CDQ subsidiary. However, once that decision was made, the State and NMFS would not be authorized to require review and prior approval of any investments, expenditures, or debt incurred by the subsidiary. If the CDQ group invested more money in the subsidiary or incurred new debt on behalf of the subsidiary, then the requirements for review and approval would apply.

The CDQ groups operate through their subsidiaries to provide benefits to the CDQ communities. They use the subsidiaries to employ community residents, to provide local economic activity, to provide management advice and expertise, and to provide revenue that the CDQ group uses to fund other CDQ projects. Therefore, Alternative 3 also would continue to authorize the State and NMFS to collect information about the activities of the affiliated businesses in order to fulfill the government’s oversight responsibilities as recommended by the Council in Issue 3. Specific requirements would include information about the affiliated businesses in the CDP and periodic reports, including annual financial statements for the subsidiaries. The State also would

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be authorized to request information after the fact about significant investments or debt incurred by the affiliated businesses.

Table 4.21 summarizes the oversight requirements that would be implemented under Alternative 3. The difference between Alternative 2 and Alternative 3 is that Alternative 3 would not require prior review and approval of some of the activities of the subsidiaries over which the CDQ group has effective management control - the “NO” that is highlighted in Table 4.21.

Alternative 3 would continue to require that new investments or debt by the CDQ group undergo review and prior approval by the State and NMFS. Nearly all of the review of existing CDPs and substantial amendments have involved activities by the CDQ groups themselves or their wholly owned, for-profit subsidiaries that manage other for-profit investments. This alternative would clarify that the government has no authority to require review and prior approval of investments or debt by the subsidiaries. This clarification would reduce the oversight role of the State and NMFS. To the degree that CDQ subsidiaries in the future would make significant investments or incur significant debt, those business decisions would not be subject to review and prior approval by the State and NMFS. This provision would reduce future reporting and compliance requirements by the CDQ groups and subsidiaries. It also would reduce any reluctance of future business partners to become involved in the CDQ Program due to requirements for review and prior approval of their significant investments.

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Table 4.21: Proposed oversight requirements under Alternative 3

What Entity Would the Requirement Apply to?	Would the Requirement Apply under Alternative 3?	
	Information Requirements	Prior Approval of Significant Investments or Debt
CDQ group	YES	YES
Subsidiaries over which the CDQ group has effective management control, =50% or >50% equity ownership (Table 4.17)	YES	<b><u>NO</u></b>
Unconsolidated affiliates over which the CDQ group does not have management control, either =50% or <50% equity ownership (Tables 4.18 & 4.19)	YES	NO

Enforcement of many of the administrative regulations governing the CDQ Program are now accomplished through a combination of requirements for review and prior approval of business decisions and the periodic, competitive CDQ allocation process. Prior review and approval provides higher level of assurance that the investment complies with regulations related to (1) goals and purpose of the program, (2) that the communities via the board were involved in the decision, (3) that the CDQ group or subsidiaries did adequate research prior to making the investment. The CDQ allocation process requires the State to assess whether the CDQ groups had been complying with program requirements and to factor this assessment into its allocation recommendations. Therefore, if the State or NMFS believed that a proposed CDQ activity by a group or a subsidiary was inconsistent with any aspect of the administrative regulations (e.g. fisheries-related projects, inadequate due diligence, lack of board support, not consistent with investment policies, etc.), then they would have two options for addressing this concern. First, the State or NMFS could disapprove a proposed CDP or an amendment to the CDP until the deficiency was resolved. Second, if the problem could not be resolved through communication with the group and review and prior approval of the proposed activity, the State could consider the issue in the CDQ allocation process under the appropriate evaluation criteria.

Alternative 2 provides both of these enforcement opportunities for the activities of the CDQ group itself and the activities of its subsidiaries. Alternative 3 would provide both enforcement opportunities for the activities of the CDQ group (initial investments), but not for the activities of the subsidiaries (as long as they didn't require additional investment or debt from the CDQ group itself). Under Alternative 3, the activities of the CDQ group subsidiaries would be subject to evaluation by the State and NMFS only through the CDQ allocation process.

The State is concerned that Alternative 3 would allow the CDQ group, a non-profit corporation, to establish a wholly owned, for-profit subsidiary that would be approved by the State and NMFS to generally invest in profitable, fisheries-related businesses. Table 4.17 shows examples of these types of non-profit corporations that invest in and manage other businesses with APICDA, CVRF, NSEDC, and YDFDA. Without the ability to review and approve individual investment decisions by these subsidiaries, the State would not be able to

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ensure that the CDQ group was investing through the subsidiary in a manner consistent with the approved purpose of the subsidiary. The CDQ group could transfer money to the subsidiary and then spend or invest it without State or NMFS review or approval. However, as mentioned above, even if the State does not have the ability to review and approve the activities of a CDQ group subsidiary it would continue to have the authority to (1) review and approve new investments by the CDQ group to establish subsidiaries, (2) review and approve additional investments or additional debt by the CDQ group in the subsidiary, and (3) evaluate the performance of the CDQ groups through their subsidiaries in the allocation process.

Additional safeguards could be implemented to reduce the State's concern. The length of the CDQ allocation cycle selected by the Council under Issue 2 is an important choice relative to the ability of the government to enforce CDQ administrative requirements under Alternative 3. If the CDQ allocation cycle is long - say five years or ten years - then it will become increasingly difficult for the State or NMFS to enforce many of the CDQ Program administrative regulations through the CDQ allocations alone. However, a three year allocation cycle would provide a sufficient planning horizon for the CDQ groups, enough time to finish one allocation cycle before another one starts, but short enough time to keep the CDQ groups focused on the upcoming evaluation in the next allocation cycle.

The State could be authorized to review and approve any amount of new or additional investment or debt by a CDQ group in a subsidiary. In addition, investments in subsidiaries could be required to be made only for specific purposes, such as purchase of a specific vessel or a specific processing plant. If a CDQ group invested in a subsidiary and then used that subsidiary for purposes contrary to the CDQ Program requirements or in a manner that did not provide benefits to the residents of the CDQ community, the State could consider these actions in its CDQ allocation recommendations. These circumstances would clearly be a legitimate reason to recommend a reduction in future CDQ allocations or to be much more conservative in approval of investment in future CDQ subsidiaries by this group. In addition, activities by a CDQ group in a for-profit subsidiary that were inconsistent with the CDQ Program objectives could affect the group's non-profit tax status with the IRS.

There are several problems with relying on the CDQ allocation process for enforcement of technical regulations or relatively minor issues. The CDQ allocations occur only periodically, so the consequence of a violation is not immediately incurred by the CDQ group. In addition, the CDQ allocations are a bit of a "blunt instrument" in that the State would have to recommend a reduction in a percentage allocation that would be commensurate with the perceived seriousness of the problem. Some activities by the CDQ group through the subsidiaries may be violations of the administrative regulations, but may not reach the significance of warranting a reduction in CDQ allocations - because the allocations are valuable and they probably would be in effect for several years.

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

H.R. 553 addresses both aspects of government oversight: (1) prior review and approval of proposed investments or expenditures, and (2) information requirements.

#### Prior review and approval of investments

Regarding the government's authority to require prior approval of proposed investments or expenditures, H.R. 553 would amend the MSA to define a CDQ project as follows:

- (i) "CDQ project" means a program or activity that is administered or initiated by a CDQ group and that is funded by revenue the CDQ group derives or accrues during the duration of a community development plan approved by the Secretary from harvesting the fishery covered by the plan.
- (ii) such term does not include a program or activity administered or initiated by a subsidiary, joint venture, partnership, or other entity in which a CDQ group owns an equity interest, if the program or activity is funded by the assets of the subsidiary, joint venture, partnership, or other entity, rather than by the assets of the CDQ group.

#### Information requirements

H.R. 553 would require the CDQ groups to submit a CDP to the Secretary of Commerce as an application for CDQ allocations. The CDP would be required to "describe all CDQ projects that the CDQ group that submits the plan intends to participate in during the 36-month duration of the plan." The Secretary would be required to approve all CDPs that contained the information required in H.R. 553, that is, request for an allocation and description of future CDQ projects. H.R. 553 would authorize NMFS to require that the CDQ groups submit a copy of their CDP to the State of Alaska, if the State was participating in oversight of the CDQ Program.

The amendments also would require the CDQ groups to submit an annual report to the Secretary by March 1 of each year. The report would describe how the CDQ group had implemented the CDQ projects described in the CDP, and any modifications to a project that the group had made since the last annual report. In addition, the annual report would contain a summary of the financial performance of "each subsidiary, joint venture, partnership, or other entity in which the CDQ group owns an equity interest, and all other non-CDQ project-related activities in which the group engaged. H.R. 553 also includes a confidentiality requirement for the "financial and strategic and business information" submitted in the annual report.

#### Impacts of Alternative 4

Table 4.22 summarizes how analysts interpret the impact of H.R. 553, or Alternative 4, on the information requirements and prior review and approval aspects of government oversight.

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Table 4.22: Proposed oversight requirements under Alternative 4

What Entity Would the Requirement Apply to?	Would the Requirement Apply under Alternative 4?	
	Information Requirements	Prior Approval of Significant Investments
CDQ group, money earned from royalties	YES	?
CDQ group, money earned from other sources	Limited	NO
Subsidiary over which the CDQ group has management control (either >50% or =50% equity ownership)	Limited	NO
Businesses over which the CDQ group does not have management control (either =50% of <50% equity ownership)	Limited	NO

The CDQ group would be required to provide information about projects funded with royalty revenues in both the CDP and the annual report. Section 2.3.1 of this analysis provides information about the CDQ groups' revenues in 2000, which is summarized below:

<u>Source of Revenue</u>	<u>Amount</u>	<u>Percent</u>
Royalties	\$40,990,000	71%
Programs	\$ 9,143,000	16%
Businesses	\$ 6,123,000	10%
<u>Other</u>	<u>\$ 1,027,000</u>	<u>3%</u>
Total	\$57,283,000	100%

It appears that H.R. 553 would require the groups to provide information about activities funded by non-royalty revenues and activities of the businesses owned by the CDQ group only in the annual report, however this conclusion is not entirely clear, as discussed below. Consistency with H.R. 553 likely would require the State to discontinue requiring quarterly reports from the CDQ groups, and NMFS likely would have to remove requirements for much of the information currently required in the CDP, amendments to the CDP, and possibly the annual budget report and the annual budget reconciliation report. Whether H.R. 553 would authorize the submission of annual audited financial statements for the CDQ group is unclear. Audited financial statements are not specifically mentioned in H.R. 553 list of things that must be submitted in the annual report it describes. However, H.R. 553 also would authorize the Secretary of Commerce to implement regulations that “are reasonable and necessary to enable the Secretary to implement this subsection.” The balancing act of implementing these regulations would be to determine whether the collection of certain information, such as the annual financial statements, was both “necessary and reasonable” and consistent with the MSA amendments.

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Although H.R. 553 does not specifically prohibit the government from requiring prior review and approval of proposed investments by the CDQ group or by its subsidiaries, the intent of the legislation with respect to subsidiaries, is clear. The definition of the term “CDQ project” in current regulations is the basis for the State’s interpretation that NMFS regulations currently authorize the State and NMFS to require prior review and approval of significant investments by the CDQ groups’ subsidiaries. Current regulations at 50 CFR 679.2 define the term “CDQ project” more broadly than H.R. 553 does (“any program that is funded by a CDQ group’s assets ... including, but not limited to, infrastructure development, CDQ investments, employment and training programs, and CDP administration”). Therefore, a new, more restrictive definition of the term “CDQ project” in H.R. 553 would require NMFS to revise its definition in 50 CFR 679.2, and to revise any use of the term elsewhere in 50 CFR 679 to be consistent with the intent of the MSA amendments. This would prevent NMFS or the State from requiring prior review and approval of any activities by businesses owned in whole, or in part, by a CDQ group, or any activities of the CDQ group funded by non-royalty income.

Whether H.R. 553 intends to prohibit the State and NMFS from requiring review and prior approval of proposed investments by the CDQ group with royalty revenues also is unclear. It appears from the wording of the information requirements that the only requirement for the CDP is that the groups “describe” the CDQ projects that they intend to participate in. H.R. 553 also would require that NMFS approve the CDPs that contain this information - a description of the CDQ projects. This statement may mean that the State and NMFS cannot disapprove a CDP on the basis of a project proposed in the plan and that the only condition for approval of a CDP is whether it provides a description of the proposed projects.

Analysts also are not clear about H.R. 553’s intent with respect to the link between the information required to be submitted in the CDP, the requirement that the Secretary approve all CDPs that contain this information, and the requirement to develop evaluation criteria for CDQ allocations. The fact that H.R. 553 describes a process for developing evaluation criteria means that H.R. 553 anticipates that the Secretary would apply these criteria to the information submitted in the CDP. Therefore, approval of the CDPs and the CDQ allocations appears to require more of the CDQ groups than to just provide descriptive information. However, whether this means that approval of the CDPs under H.R. 553 constitutes “prior review and approval” in the same sense as it does under current regulations is uncertain. The intent of H.R. 553 may be that NMFS would be required to judge the CDQ group’s performance only on the basis of the annual reports and to prohibit NMFS from requiring prior approval of any investment or expenditure by the group through the CDP or amendments to the CDP.

If H.R. 553 was implemented, NMFS would have to examine the consistency of its government oversight role with new MSA amendments. For example, Issue 3, Alternative 2 in this analysis proposes a list of the following seven government oversight responsibilities:

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

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

Currently, many of these oversight responsibilities are accomplished by requiring prior review and approval of investments and expenditures by the CDQ groups. For example, in reviewing substantial amendments to the CDP, the State reviews the documents submitted by the CDQ group to determine whether the proposed investment is consistent with the goals and purpose of the program (fisheries related), meets the investment criteria developed by the CDQ group, and whether the board of directors, acting on behalf of the communities, participated in the investment decision. If the State and NMFS was not reviewing an investment before it was made, these determinations would have to be made based on information submitted in the annual report or in the next proposed CDP. If the State or NMFS determined that the CDQ group was operating inconsistently with any of the objectives established through the list of government oversight responsibilities, the government would be limited to considering the situation during the CDQ allocation process.

### Other Input on Alternative 4

*At NMFS's request, KPMG provided the following comments on Alternative 4:*

**Definition of CDQ Group Asset:** In section (8)(C)(i) of H.R. 553 it defines a CDQ project as those programs or activities that are funded by CDQ revenue earned by harvesting the CDQ allocation. In the following section (8)(C)(ii) it goes on to say that activities not funded by CDQ assets are excluded from the definition of a CDQ project. The use of “revenue” vs. “assets” could lead to different interpretations of what programs or activities are considered a CDQ project. A program administered by a subsidiary may not receive any CDQ revenue, but if CDQ assets are used to guarantee debt for the subsidiary, the assets of the CDQ group are used in funding the program. A guarantee of debt means that the loan to the subsidiary is guaranteed by the assets of the CDQ group in addition to the assets of the subsidiary. If the CDQ group had to pay off the loan, that money would most likely have to come from the groups CDQ revenue. If this alternative were adopted, regulations would need to be written to define “revenue” and “asset” that could be understood and applied to the financial structures of the CDQ group. The accounting structure that would be required for the groups is discussed under the comments section regarding impacts on the CDQ groups and their subsidiaries.

**CDQ Group Accounting under Alternative 4:** H.R. 553 states that unless a “CDQ Project” is funded by “the revenue the CDQ group derives or accrues during the duration of a community development plan” it is not considered a CDQ project. We assume that this was written to exclude affiliated businesses where the CDQ Group had made the investment in a prior CDP period, and the business investment did not require any further investment by the CDQ group. The business would cover all its cash flow needs through its own sources. If for unforeseen reasons the affiliated business were to require funds from the CDQ group, this would trigger a substantial amendment to the CDP and be subject to government oversight.

If the CDQ groups wish to exclude business investments from being classified as a “CDQ Project”, it would require that they account for all the revenue earned in a CDP period earned through harvesting the CDQ allocation. The current financial statement format for the CDQ groups does not allow for this sort of tracking since it does not identify the source of funds for business investments. The amount of money invested in business ventures is currently shown on the Consolidated Statements of Cash Flows and should also be disclosed in the Notes to Consolidated Financial Statements. However all the different types of revenue are aggregated together so the funding could come from any source. Business investments could be funded by

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sales of other investments, income from other business investments, issuance of debt, or the sale of fixed investments as compared to being funded by CDQ royalties or other harvesting income.

The CDQ groups would have to establish separate funds for the current and previous CDP periods, and show what those revenues were used for. This would require the CDQ groups to establish a fund accounting system to track revenues and expenses related to specific CDP periods. Fund accounting would establish self-balancing set of asset, liability, and fund balance accounts for each CDP period. It would add additional complexities for consolidated financial reporting both quarterly and annually. Fund accounting would require more time and effort than the current accounting requirements for the CDQ groups. Correspondingly, understanding the fund accounting for governmental oversight purposes would require additional time spent on analysis.

*(End of KPMG input on Alternative 4)*

*The State provided the following input on Alternative 4:*

Regarding the extent of the government's oversight responsibilities and the definition of a CDQ project, oversight necessarily must extend to subsidiaries and subsidiary activities (programs or divisions of group), at least those that are under the effective management control of the CDQ groups. Otherwise, groups could avoid oversight by simply passing royalty funds through wholly owned subsidiaries. This is the approach taken in the "Bright New World" regulations developed by the state last year in consultation with, and with the general support of, the CDQ groups. Regarding oversight over revenues other than royalties, with groups increasingly owning significant percentages of their fishing partner companies, separating royalty from other partner distributions is increasingly difficult. Assuming a reasonable argument can be developed that a distinction should exist between royalties and revenues with respect to meeting the goals of the program, then perhaps the state and NMFS should not be overseeing non-royalty investments. But (a) the state does not believe a reasonable distinction exists to justify different treatment of revenues vs. royalties, and (b) auditing the revenues to distinguish between royalties and revenues would be difficult.

### Potential Benefits of Alternative 4

H.R. 553 has a number of potential benefits for the CDQ groups, their current partners, and their prospective partners. First, the amendments would significantly reduce the level of day-to-day oversight of the CDQ groups by both the State and NMFS, which would reduce administrative costs. The CDQ group would not be required to submit as much information to the government in the CDPs, amendments to the CDPs, quarterly reports, or annual reports. The CDQ group would not have to spend as much time on the phone with government staff, and they wouldn't have to attend as many meetings with the government. Depending on role of government in oversight of the CDQ Program and the evaluation criteria for allocations under H.R. 553, many of the State's regulations about things such as due diligence, community outreach, and board of director's training could be removed. The groups may continue all of these functions, but they would not be accountable to consult with or report to the government about them.

Second, NMFS and the State would have to remove requirements that the CDQ group (1) obtain approval from the government before any subsidiary over which the group has management control makes a significant investment, or (2) notify the government after the subsidiary has made any other investments (those not considered "significant"). This would remove the government from being involved in the business decisions of the CDQ groups' subsidiaries. The CDQ group and its business partners would be able to make decisions

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based only on the criteria that they wished to consider on the time schedule that they determined was appropriate. The government would not be determining whether the CDQ group had done adequate analysis of the proposed investment or whether the group or subsidiary was investing consistent with its investment criteria. The chance that the State would interject some political or policy aspect to the investment decisions would be greatly reduced. These changes would simplify decision-making for the CDQ group and its subsidiaries. In addition, the prohibition on government involvement in the decision-making of CDQ group subsidiaries may increase the number of businesses willing to partner with the CDQ groups in the future, thereby expanding the groups' investment opportunities. Clearly, if offered a choice, a potential CDQ partner would choose less government oversight of its activities rather than more government oversight.

Some groups may view the government's assistance in reviewing proposed investments, contracts, and potential business partners as beneficial. This government assistance could continue to be available to the CDQ groups on a voluntary basis under H.R. 553. For example, a CDQ group could request the government review of the research prepared for a proposed investment or could seek input on a potential business partner. Depending on the role that "past financial performance" plays in the evaluation criteria for CDQ allocations under H.R. 553, some groups may continue to seek government input prior to making significant investments. Information about how the government views the proposed investment may provide some reassurance that the investment will not be viewed negatively later during the CDQ allocation process.

### **Recommendations of the CDQ Policy Committee on Issue 6**

The CDQ Policy Committee considered Issue 7 at its May 24 and 25, 2001, meeting and the majority of committee members voted to recommend Alternative 2. Following is a record of the committee discussion on this issue taken from the committee report.

Eugene Asicksik, representing NSEDC, moved that the committee recommend Alternative 4, which would implement the provisions of H.R. 553 that oversight extend only to activities of the CDQ group, not to the businesses owned by the CDQ group. The motion was seconded by John Bundy, representing Glacier Fish Company. Robin Samuelson, representing BBEDC, stated that he could not support Alternative 4 and offered a substitute motion recommending Alternative 2, which mirrors the "Bright New World" proposal developed by the State and the CDQ groups, as a substitute. Samuelson stated that BBEDC could not support Alternative 4 because of the inherent ability for a group to set up several "shell" corporations as subsidiaries, in order to avoid government oversight. This would not support the intent of the Council. Samuelson contended that Alternative 2 represents the concept that the groups themselves worked to develop, and it would provide the groups with maximum flexibility while keeping investments made with CDQ money within the purview of government oversight.

Jeff Bush, representing the State of Alaska, also supported Alternative 2 and recommended an amendment. Currently, if a group owns 50% or more of a subsidiary company, there is a nonrebuttable presumption that the subsidiary is subject to oversight of the program. The State noted that there has always been a concern with that percentage. The reason for the 50% ownership clause is that greater than 50% ownership would technically allow that entity (the CDQ group) to control the corporation, even if the CDQ group is not effectively or practically controlling the corporation.

The State offered an amendment to include a rebuttable presumption, so that if a CDQ group owns 50% or more of a subsidiary company, the burden is on the CDQ group to prove that they do not exercise effective management control over that entity (as defined by control of the daily operations and management of the

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company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment and thus subject to lower oversight and reporting requirements. This amendment was accepted as friendly.

The committee discussed the rationale behind requiring oversight over a subsidiary company that the group does not have effective control over. The State's position is that the CDQ groups engage in two types of activities for the benefit of their communities, one is as direct participants of those activities. Another form is an investment activity, whereby a group may invest in a fishing operation that they do not effectively control but will receive a return on their investment as a means to raise capital. In the latter case, the State can't expect a CDQ group to control a company in which they are a minority owner, and this rebuttable presumption clause would mitigate that problem. The Bright New World proposal makes a distinction between these two types of activities and cleans up the regulations that define the differences. As part of that proposal the regulations would address the difference between core projects (which require a substantial amendment for a change to a CDP) and non-core project (which require a technical amendment for a change to a CDP) In the context of this alternative, if a subsidiary is majority-owned and effectively controlled by the CDQ group, then a substantial amendment is needed for a change to the CDP to undertake a new activity or investment that is not covered in the CDP. If not, that level of review and the relevant procedure may not be necessary.

Based on some of the discussion regarding effective management control, Bundy offered substitute language to add to Alternative 2 that would delete reference to 50% ownership of the subsidiary company and base the extent of government oversight solely on whether the CDQ group asserted effective management control over the company. The effect is that it doesn't matter what the percentage control is, it only depends on whether the group has control over the operations of the subsidiaries. Motion failed for lack of a second.

Motion is to recommend Alternative 2, with the additional language provided by the State regarding the rebuttable presumption. The motion carried 5-4. The objecting votes were from Asicksik (NSED), Bundy (Glacier Fish), Lestenkof (CBSFA), and Moller (APICDA). Baker was absent. NSED strongly supported Alternative 4, with very limited government oversight. APICDA noted that they have lost faith in the allocation process as administered by the State and could not support an alternative which solidified their oversight role. CBSFA objected on the grounds that the committee should spend more time developing the criteria to ensure good decision-making.

BBEDC expressed frustration with the direction of the committee with respect to this issue, primarily because part of being responsible to the community residents is encompassed in the need for State oversight. The State also voiced concerns about objections to the regulatory changes included in the Bright New World proposal, as the CDQ groups were primary contributors to that proposal.

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

**Alternative 1:** No Action. NMFS regulations implement what NMFS understood as the Council’s intent, that the revenue generated by the CDQ allocations is to be spent on “fisheries-related” investments and projects to benefit the communities that are eligible for the CDQ Program. From NMFS regulations at 50 CFR 679.1(e):

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

**Alternative 2:** Continue to require that the CDQ groups invest only in “fisheries-related” projects, but clarify NMFS regulations as follows:

- Add specific prohibition against CDQ groups investing in non-fisheries related projects; and
- Clarify that this prohibition does not apply to certain categories of expenditures or investments, such as investment accounts or scholarships. Focus regulations on economic development projects.

**Alternative 3:** Revise NMFS regulations to allow investments in non-fisheries related projects. The following options represent the annual maximum amount of investment in non-fisheries related projects. Each CDQ group may decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**Alternative 1 - No action**

Alternative 1 would maintain the current Federal regulations which implement the Council's original intent to restrict spending of the revenue generated by the CDQ allocations to fisheries-related investments and projects to benefit the communities that are eligible for the CDQ Program. NMFS regulations currently state (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.*

In the BSAI FMP, the Council expressed that the purpose of the CDQ Program is to provide a fair and reasonable opportunity to participate in the BSAI groundfish fisheries, expand participation in the salmon, herring, and other nearshore fisheries, and to help western Alaska communities diversify their local economies. However, in creating the program, the Council also expressed its intent that the CDQ allocations be used to develop a "self-sustaining fisheries economy." This intent was related throughout the Council's discussions of community eligibility during the development of the program and was emphasized in the criteria and procedures document adopted by the Council at that time (NPFMC 1992).

The 1992 guidance document specified the criteria for evaluating the CDPs, which were eventually translated into a list of twenty criteria in State regulation (6 AAC 93.040). Several of the criteria expressly tie the CDQ allocations to fisheries-related investments and projects, and this stems directly from the Council's intent. As reflected in the guidance document, the primary basis for determining the merit of a CDP was to include: the goals and objectives of the project and the identification of realistic and measurable milestones for determining progress; the degree to which the project will develop a self-sustaining local fisheries economy; the level of local employment the project will generate; the degree to which the project will generate capital or equity for local fishing infrastructure or investment in fishing or processing operations; and the degree to which profits will be used to assist in the development of a self-sustaining local fisheries economy.

Thus, both the Council's 1992 criteria and procedures and the transcripts of the relevant Council meetings identify that the Council intended for CDQ program revenues to be restricted to fisheries-related projects and investments, and the Federal and State regulations that followed were based upon this direction. Therefore, while there may be general disagreement regarding whether the CDQ Program should restrict the CDQ groups to fisheries-related projects, the current NMFS regulations conform to the Council's original intent. Assuming this policy decision is maintained, there is a related issue regarding what type of investment is allowable under the status quo.

The CDQ Team has generally asserted that for-profit CDQ investments must have a "tangible link" with the commercial fishing industry, and the resulting evaluation criteria developed for the allocation process is focused on developing the fishing industry in the region. While the current Federal and State regulations do not include specific investment guidelines or a list of allowable investments, the CDQ Team has related that a tangible link includes, but is not limited to:<sup>8</sup>

- A direct investment into the commercial fishing industry (example: harvesting vessel, tender vessel, gear, etc.)

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<sup>8</sup>As stated in correspondence between the Dept. of Community and Regional Affairs (now encompassed in DCED) and a CDQ group, 1997.

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- Investment in businesses which deal with a physical input or output of the fishing industry (example: input - gear, equipment, fishing supplies; output - fish buyer)
- Investment in businesses which provide a service which directly facilitates the fishing industry (example: engine repair, net repair, gear storage facility, seafood distributor, etc.)

While the CDQ groups are technically restricted to investments in projects that are fisheries-related, some decisions about allowable projects have been made by policy or practicality. The financial summaries of the CDQ groups provided in Section 2.0 demonstrate that the great majority of the CDQ groups' projects are fisheries-related, consistent with the program's intent. It is difficult to determine from the financial statements the exact percentage of total expenditures attributed to non-fisheries related activities, but it appears to be relatively small and limited to non-profit investments. For example, CDQ groups provide college scholarships without restricting the program of study to "fisheries-related." Investments in substance abuse programs are not restricted to people working in fisheries-related businesses. The CDQ groups' investment accounts include stocks, bonds, and other financial instruments which are also not fisheries-related. Several groups have also created reserve accounts, as a type of savings account for the entire organization that can be used for future investments, scholarships, or vocational training. At least one group has established a charitable foundation under their umbrella CDQ corporation. While these types of activities have not been discouraged by State or Federal managers, they are not clearly identified in regulation as categorically exempt from the requirement that CDQ projects be fisheries-related.

Currently, the allocation process is the mechanism by which the CDQ groups' investments are kept within the bounds of the program's intent, including some exceptions for expenditures on not-for-profit, community-based activities that are not fisheries-related. Specific CDQ projects which have been rejected by the State or viewed with a high degree of skepticism include: a car rental service, auto parts store, tour lodge, and hairdresser training. While each of these investments can be linked to supporting the fishing industry on some level, none of them were viewed as essential components of a viable commercial fisheries economy (DCRA 1997). One common concern of the CDQ groups has been the uncertainty surrounding allowable investments and the lack of guidance in Federal regulation. A potential negative impact of Alternative 1 is that the CDQ groups would likely continue to develop their CDPs without a clear understanding of the types of projects authorized under the CDQ Program.

Another potential negative impact of Alternative 1 stems from the diverse nature of the CDQ communities and CDQ groups and the effect the fisheries-related restriction has on their community development strategies. The NRC report (1999) notes that while the CDQ Program has two objectives—community development and fishery development—"community development" is defined as "fishery development." The NRC questions the merit of this approach, and found that while there are advantages to a fisheries program that encourages continued investment in, and improvement of, fishery resources and fishing capacity, the strict requirement to make all investments fisheries-related may be detrimental to the program overall. The NRC cites examples in communities in which viable fisheries-related investments have been fully exploited or communities with limited fisheries-related investments that would not likely provide a reasonable return. In addition, some of the communities are several miles (up to 50 nm) from the Bering Sea, thus a significant amount of the subsistence and economic activity in those communities will be land-based. It may be more difficult to find fisheries-related investments that have a reasonable chance of success in these inland communities, especially considering the low salmon returns of recent years. At some point, for lack of viable opportunities, the fisheries-related restriction may force a CDQ group to undertake an investment that is not a good business decision and/or would not promote economic diversity and sustainability at the community level.

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The NRC developed an argument for expanding the definition of community development to more than fisheries-related investments, based on the concerns discussed above. It noted that many investment needs such as general infrastructure, health clinics, recreation centers, schools, improved roads, water and sewerage systems, and fire protection would potentially better serve some of these villages to meet the goal of community development than projects that are strictly fisheries-related.

In sum, some groups may have member communities with limited fishery-related opportunities and/or non-fisheries related investment needs that would greatly contribute to community development. Alternative 1 may cause a CDQ group to shape their CDP around questionable business decisions in order to make fishery-related investments at the community level. This may ultimately affect the group's performance and provide reason for the State to reduce their share of the total allocation in the future. Thus, to the extent that there are viable fishery-related investments in the member communities that promise reasonable returns on investments, the NRC recommends that these should be pursued. However, given the different resource situations, economic circumstances, and goals among the groups, the NRC suggests relaxing the fisheries-related requirement in order to promote community development in the most effective and practical way possible.

Alternative 1 would maintain the current regulations which implement the Council's original intent that CDQ projects and investments be fisheries-related. This would effectively continue to restrict the CDQ groups to investments in fisheries-related projects, with some exceptions related to scholarships and other investments. These exemptions would not be specified in regulation and there would be no identified limit on the amount of money a CDQ group could spend on these activities. If a CDQ group proposed a project in its CDP that did not appear to fall into the generally accepted category of non-fisheries related activities, it would be notified of this by the CDQ Team, likely in interactions during the allocation process.

### **Alternative 2 - Clarify regulations**

Alternative 2 would continue to require that the CDQ groups invest only in "fisheries-related" projects, but clarify NMFS regulations as follows:

- Add specific prohibition against CDQ groups investing in non-fisheries related projects; and
- Clarify that this prohibition does not apply to certain categories of expenditures or investments, such as investment accounts or scholarships.

The State currently makes complicated, multi-criterion decisions in allocating quota to CDQ groups. A perpetual concern of the CDQ groups is that the allocation criteria and the application of that criteria are not identified in Federal regulation. Related to that issue is which types of projects should be considered fisheries-related projects. Granted there exists some disagreement about whether the current language in the BSAI FMP and existing Federal regulations prohibits non-fisheries related investments, or whether the goal of "diversified local economic development" connotes a broader purpose. However, assuming that the Council's intent was interpreted correctly in Federal regulations to mean that the CDQ allocations should be used to develop a "self-sustaining fisheries economy," this issue will not be debated here. The discussion under Alternative 1 explains the origin of the Council's intent and provides evidence that the current Federal and State regulations prohibiting non-fisheries related investments are consistent with that intent. Thus, the issue under Alternative 2 is whether that intent needs to be further clarified in Federal regulations.

Alternative 2 would result in a definitive prohibition on non-fisheries related projects in Federal regulation, with the clarification that certain categories of expenditures are exempt from this restriction. The exemptions

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would relate to the current activities of the CDQ groups described under Alternative 1 that are non-fisheries related but generally accepted by Federal and State managers. To clarify, the regulations that would implement the intent of this proposed alternative might read as follows:

*50 CFR 679.XX Allowable investments and expenditures. The following is a list of allowable expenditures and investments that may be made by a CDQ group and any applicable annual limits. Non-fisheries related economic development projects and investments that do not conform to a category under (1)(i-v) are prohibited.*

*(1) Expenditures or investments that may be made with no annual limit.*

- (i) Administrative expenses of the CDQ group.*
- (ii) Investments of cash in financial instruments such as stocks, bonds, certificates of deposit.*
- (iii) Investments in fisheries-related economic development projects.*
- (iv) Education, scholarships, and training.*
- (v) Charitable contributions.*

The list of allowable investments above encapsulates the types of investments that the CDQ groups are currently undertaking, whether they are fisheries or non-fisheries related. These investments have been generally accepted by the CDQ Team and determined to be within the bounds of the program's intent. There is not currently an annual limit on any of these types of expenditures, as the allocation process has been an effective mechanism by which government managers have overseen the groups' investment activities. Defining these activities in Federal regulation does not necessitate imposing an annual limit on any of the listed categories. However, because the allocation process remains the primary oversight mechanism, any policy decision to limit investments in one or more of these categories should be explicitly addressed in the evaluation criteria.

The list of allowable investments in (1) captures the intent of Alternative 2 and defines in regulation the types of investments that would be allowed with no annual limit. One category of significance is that of education, scholarships, and training. Education and training have been identified as a key part of the CDQ program and a primary element in ensuring the program's success (NRC 1999). The CDQ communities depend on members of the community acquiring skills and knowledge to attain stable employment as part of the overall goal of community development. While most education and training can be tied to support of the fishing industry on some level, the CDQ Team recognizes that many students are interested in careers that are not fisheries-related. Thus, it has not been required that students receiving scholarships from the CDQ group enroll in fisheries-related studies.

There has been some confusion, however, related to allowable training opportunities. While most training to-date has been fisheries-related, some training has been not been approved by the CDQ Team because it was not deemed an essential part of a viable fisheries-related economy. The State notes that each group provides training for residents based not only on the needs of individuals but on the needs of the community. Given that educational scholarships are not restricted to fisheries-related studies, limiting training opportunities to those that are fisheries-related seems an inconsistent and unnecessary restriction. Thus, it seems appropriate to allow all types of training and educational investments without requiring a distinction between those that are fisheries-related and those that are not. However, the purpose of Alternative 2 is to clarify in regulation the types of allowable investments. Thus, should the Council prefer to limit training to fisheries-related fields, this should be made explicit and stated in the implementing regulations.

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### ***Primary Impacts of Alternative 2***

The primary benefit of Alternative 2 is that it would enable the CDQ groups to have a clear understanding of the allowable investments under the program and provide a reference in Federal regulation to develop and support the investments proposed in the CDPs. Alternative 2 would eliminate some of the subjectivity in the allocation process by making explicit each type of allowable investment in Federal regulation. This could potentially save CDQ managers and the CDQ groups considerable time and effort in debating the fisheries-related merit of a project, while regulating a certain level of non-fisheries related investments that are generally acceptable and already being undertaken by the CDQ groups. This alternative is not intended to either further restrict the CDQ groups' investment opportunities or to broaden the type of allowable investments.

Another benefit of Alternative 2 is that it provides a basis in regulation to ensure that the program is consistent with the Council's intent. Currently, the allocation process is the mechanism by which the CDQ groups' investments are kept within the bounds of the program's intent, including some exceptions for expenditures on not-for-profit, community-based activities that are not fisheries-related. Explicitly limiting the majority of the CDQ investments to fisheries-related activities allows the CDQ Team to ensure that the benefits of the program are being used to build a "self-sustaining fisheries economy," as expressed by the Council in 1992.

The primary negative impact of Alternative 2 mirrors that of the status quo. Although the program would benefit from clarifying allowable investments in NMFS regulations, the economic development projects of the CDQ groups would continue to be restricted to those that are fisheries-related. This may be considered a negative impact in the context of the NRC recommendations, considering the potential for some communities to no longer have viable fisheries-related opportunities at some point in the future. Given this possibility, the combination of the competitive allocation process and the restriction to fisheries-related projects can create a perverse policy argument. The CDQ groups are evaluated on their financial performance and the merits of the proposed investments, as well as their ability to maximize the benefits to the communities in the region. Thus, there is great incentive for the CDQ groups to manage effectively and make good business decisions, as well as provide benefits to as many communities in the region as possible. Because some communities may not have viable fisheries-related opportunities, some groups may choose to engage in fisheries-related projects that are less than ideal in order to benefit their member communities equitably and satisfy the fisheries-related requirement. Other groups may focus their investments in one part of the region because of the limited availability of viable investment opportunities. The result is that groups may ultimately be penalized in the allocation process for either poor financial performance or not equitably distributing investments among the member communities. If the two goals become conflicting at some point in the future, it will provide a difficult operating environment for the CDQ groups.

Alternative 2 would establish acceptable CDQ investments in Federal regulation and explicitly prohibit investments in economic development projects that are not fisheries-related. This alternative would continue to restrict the CDQ groups primarily to investments in fisheries-related projects, with some exceptions related to not-for-profit projects such as scholarships and other investments. These exemptions would be defined in regulation without an identified limit on the amount of money a CDQ group could spend on these activities.

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**Alternative 3 - Allow investments in non-fisheries related projects**

Alternative 3 would modify the current Federal regulations to allow CDQ groups to invest in non-fisheries related projects up to a limited amount. The following options represent the annual maximum amount of investment that would be allowed in non-fisheries related projects. Each CDQ group would decide the appropriate mix of investments up to the maximum and any group may choose to invest less than the maximum.

- Option 1: Allow each CDQ group to invest up to 5% of its pollock royalties in non-fisheries related projects.
- Option 2: Allow each CDQ group to invest up to 20% of its pollock royalties or a maximum of \$500,000 in non-fisheries related projects.
- Option 3: Allow each CDQ group to invest up to 50% of total revenues in non-fisheries related projects.
- Option 4: Allow each CDQ group to invest up to \$1,000,000 in non-fisheries related projects.

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

- Suboption 1: Require that any non-fisheries related investment be made in economic development projects in the region of Alaska represented by the CDQ group and be self-sustaining.
- Suboption 2: Require that any non-fisheries related projects be:
  - (A) for education, vocational training, scholarships, or other human resource programs for residents of the CDQ communities; or
  - (B) community development projects associated with infrastructure development in the communities or region of Alaska represented by the CDQ group.

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

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

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

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

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

### **Background**

The NRC report, H.R. 553, and the Council's CDQ Policy Committee all contributed to the interest in this alternative to the current implementation of the CDQ Program. The NRC recommendations and the proposed legislation in H.R. 553 are described first in this section, followed by a general discussion of the impacts of the proposed options and suboptions. Finally, the CDQ Policy Committee's recommendations on this issue are provided at the end of this section.

The NRC recommended that over time there should be more flexibility in the rules governing the allocation of benefits in the CDQ Program. The NRC noted that perhaps the program should require most benefits to be reinvested in fishing and fisheries-related activities but allow some portion to go to other community development activities. This is in response to the idea that there may come a time when the restriction on investment opportunities will force the CDQ boards to make investments that may not promote economic diversity and sustainability at the village level or will force them to undertake less than ideal investments. The NRC believes that adding flexibility will better suit the long-term goal of the program, which is development of economic opportunities for communities in western Alaska.

Note that while the NRC recommends expanding the range of projects available to the CDQ groups, there is also the consideration of whether the groups should be restricted to investments in economic or community development projects located in the region of Alaska represented by the CDQ group. It is uncertain whether the NRC recommendation depends on this factor, but it appears that it may. The NRC focused its rationale to broaden the type of allowable investments on the "many [non-fisheries related] investment needs in these villages that would contribute materially to community development"(NRC p. 76). The NRC cites examples such as the development of general infrastructure, health clinics, recreation centers, schools, improved roads, water and sewerage systems, and fire protection. The NRC did not specifically address the issue of allowing CDQ groups to invest in projects that would not be related to community development and are not within the CDQ communities.

Alternative 3 also appears to encompass one of the central ideas of the legislation proposed recently by Representative Young. H.R. 553 specifies that the purpose of the CDQ Program is: "(A) to afford eligible communities a fair and equitable opportunity to participate in the Bering Sea fisheries; and (B) to assist eligible communities to achieve sustainable long-term diversified local economic development." This statement of purpose is very similar to the current wording of the BSAI FMP with respect to the CDQ Program. However, as discussed previously, when creating the CDQ Program the Council also expressed its intent that the CDQ allocations be used to develop a "self-sustaining fisheries economy"(emphasis added). As a result of this expression of intent by the Council, the current regulations require the CDQ groups to invest only in fisheries-related projects. The intent of the statement of purpose in H.R. 553 is not entirely clear with respect to the issue of expanding allowable CDQ investments and may warrant clarification.

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At this point, H.R. 553 can be interpreted in two different ways. On one hand, the statement of purpose contained in H.R. 553 can be interpreted as restricting CDQ groups to fisheries-related investments. As noted above, H.R. 553's statement of purpose is very similar to the current language contained in the BSAI FMP. Council discussions during the development of the program clarified that the Council's intent was for the allocations to be used to develop fisheries-related economies in the CDQ region. Federal regulations implementing the CDQ Program contain this requirement and it continues to guide the structure and implementation of the program today. Because H.R. 553 uses very similar language to that contained in the BSAI FMP and does not expressly state that this language should be interpreted in a manner different than the interpretation used by the Council and contained in current regulations, H.R. 553 could be interpreted as continuing the current restriction regarding fisheries-related investments.

However, a different interpretation also exists at this time. H.R. 553 could also be interpreted as expanding the allowable investments by the CDQ groups to non-fisheries related projects that would promote diversified local economic development. The portion of the language in H.R. 553, "to assist eligible communities to achieve sustainable long-term diversified local economic development" (H.R. 553, p. 3, §305(j)(1)(B)), contains no reference to "fisheries-related" investments. In fact, the term "diversified" implies a broader range of investments that achieve the goal of local economic development rather than solely fisheries-related investments. Supporting this interpretation is the fact that Congress was aware of the current restriction to fisheries-related investments when H.R. 553 was drafted, yet H.R. 553 contains no specific language regarding fisheries-related limitations on CDQ group investments. It is expected that further development of H.R. 553 will clarify the intent of the statement of purpose.

A related question to this overall issue that surfaced in public testimony is whether revenues generated originally from fisheries-related investments may be considered "fisheries-related" in perpetuity and thus acceptable under the current program to use in any way the CDQ groups wish. Stated another way, since all CDQ revenues are ultimately derived from the royalties generated by the CDQ allocations, which are clearly fisheries-related, is it then acceptable to spend those "second generation" revenues on non-fisheries related projects and still meet the original intent of the CDQ Program.

This question, which is related to the potential for allowing non-fisheries related investments addressed under Issue 7, focuses on the *source* of the CDQ revenues and whether tying the origin of the revenue to an activity or investment that is fisheries-related is sufficient to meet the fisheries-related requirement of the program, even if you do not *spend* the revenue on further fisheries-related investments. The significant difference between this concept and that proposed under Issue 7 is that the options under Issue 7 are solely focused on monitoring the use of CDQ funds and limiting the amount of revenue used on non-fisheries related projects, while the concept discussed in public testimony is related to the *source* of those funds. The implication is that if the source were fishing-related, there would be no restrictions on what the CDQ groups could spend their money on and no further government monitoring of its use.

There is currently a wide range of alternatives proposed for allowing some level of non-fisheries related investment under Issue 7, Alternatives 3 and 4. The Council did not ask for a specific alternative to be included to represent the concept of monitoring the *source* of the funds, but the potential result of the interpretation above is that because all of the revenues of the CDQ groups were originally generated from the CDQ allocations (directly fishing-related), the CDQ groups would not have any restrictions regarding their investments. This effectively has the same result as Alternative 4 under Issue 7 and the impacts of such an alternative are discussed starting on page 187. However, if the Council would like to pursue this specific concept further, additional staff direction would be necessary.

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### *Primary impacts of Options 1 - 4*

Options 1 - 4 do not limit the type of non-fisheries related projects allowed. The overall effect is that the CDQ group would be allowed to invest in any type of project for the benefit of the communities it represents, regardless of the nature and location of the project, up to the annual limit specified in Options 1- 4. It is assumed that the determination of the annual limit for a given year would be based on the CDQ groups' royalties or revenues from the previous year. Under Options 1-4 alone, the range of potential projects could include such investments as: a water and sewer project in a CDQ community; a golf course located outside of the region; a hunting lodge in the region; a reindeer farm in a CDQ community; an investment in a non-profit organization; or an unencumbered grant made directly to a CDQ community. Regardless of the type of non-fisheries related projects undertaken by the CDQ groups, the groups would be required to stay within the determined annual limit on non-fisheries related projects, and they would need to continue to show that their member communities are benefitting from the group's overall activities.

Information about the impact of Alternative 3 on individual CDQ groups is not provided due to the fact that the royalty and revenue data for each group may be considered confidential. The discussion in this section therefore presents the impact of Alternative 3 either collectively for all six CDQ groups or as a range.

#### Option 1

Option 1 would allow the CDQ groups to invest up to 5% of their pollock royalties in non-fisheries related projects. Based on the 2000 CDQ pollock royalties of almost \$33 million, **Option 1 would allow about \$1.65 million in CDQ pollock royalties to be used toward non-fisheries related projects.** Overall, this represents about 4% of the total CDQ royalties derived from all species allocations in 2000 and about 2.75% of total revenues.

Due to the variation in pollock allocations and prices among the groups, some groups would be able to spend more on non-fisheries related projects than others. For instance, using the 2000 pollock allocations, the amount each group would be allowed to spend on non-fisheries related projects under this option ranges from about \$85,000 to \$403,000, a difference of approximately \$318,000. In addition, each CDQ group has a different number of member communities in which to distribute benefits. The amount each group would be able to spend on non-fisheries related projects per community (if distributed equally among member communities) ranges from about \$20,000 to \$85,000. Thus, the impact of this option will vary among the CDQ groups depending on the structure of and annual royalties received by each group. The impact of this option will also depend on annual changes in the pollock TAC and each group's pollock allocation.

#### Option 2

Option 2 would allow the CDQ groups to invest up to 20% of their pollock royalties or a maximum of \$500,000 in non-fisheries related projects. Using 2000 as an example, 20% of the total CDQ pollock royalties is \$6.6 million. **However, because each of the six CDQ groups would be limited to a maximum of \$500,000, the amount spent on non-fisheries projects by the existing six CDQ groups would be capped at \$3 million.** This represents about 7% of the total CDQ royalties derived from all species allocations in 2000 or about 5% of total revenues. While the current number of CDQ groups results in a \$3 million cap on non-fisheries related investments, there exists the possibility that additional groups will become eligible in the future. Option 2 would allow an additional maximum of \$500,000 to be spent on non-fisheries related projects for each new CDQ group.

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Given the current pollock TAC and 2000 prices, the limiting factor for the majority of the CDQ groups would be the \$500,000 cap, as opposed to the limit of 20% of pollock royalties. Using the 2000 pollock allocations, the amount each group would be allowed to spend on non-fisheries related projects under this option ranges from about \$342,000 to \$500,000, a difference of approximately \$158,000. Thus, compared to Option 1, Option 2 lowers the difference in the total amount each group may spend on non-fisheries related projects. Based on the current structure of the CDQ groups, the amount each group would be able to spend on non-fisheries related projects per community ranges from \$25,000 to more than \$300,000.

### Option 3

Option 3 would allow the CDQ groups to invest up to 50% of total revenues in non-fisheries related projects. Annual combined revenues for the CDQ groups in 2000 was reported at almost \$60 million. **Using 2000 as an example, the CDQ groups would collectively be allowed to invest up to \$30 million in non-fisheries related projects.** This is considerably less restrictive; Option 3 would allow approximately \$28 million and \$27 million more to be invested in non-fisheries related projects than is proposed under Options 1 and 2, respectively.

The amount that each CDQ group would be allowed to invest in non-fisheries related projects would vary substantially. For instance, using the 2000 pollock allocations, the amount each group would be allowed to spend on non-fisheries related projects under this option ranges from about \$650,000 to \$7.7 million, a difference of approximately \$7.05 million. In addition, the amount each group would be able to spend on non-fisheries related projects per community ranges from about \$310,000 to \$669,000. Thus, the greatest *difference* in the amount each group would be allowed to spend on non-fisheries related projects per community under this option is about \$359,000. Again, the impact of this option will vary annually depending on the financial performance of each CDQ group. It will also depend on annual changes in the pollock TAC and each group's pollock allocation.

### Option 4

Option 4 would allow the CDQ groups to invest up to \$1 million in non-fisheries related projects. **Thus, the amount spent on non-fisheries projects by the existing six CDQ groups would be capped at \$6 million.** This represents almost 15% of the total CDQ royalties derived from all species allocations in 2000 or about 10% of total revenues. While the current number of CDQ groups results in a \$6 million cap on non-fisheries related investments, there exists the possibility that additional groups will become eligible in the future. Option 4 would allow an additional maximum of \$1,000,000 to be spent on non-fisheries related projects for each new CDQ group.

Unlike the previous options, Option 4 would allow each group to spend the same amount on non-fisheries related projects annually, regardless of their total royalties or revenues for the year. Using 2000 as an example, a cap of \$1 million represents about 6.5 - 76.9% of an individual group's total revenues. Based on the current structure of the CDQ groups, the amount each group would be able to spend on non-fisheries related projects per community ranges from \$50,000 to \$1,000,000.

### Comparison of Options 1 - 4

The difference between Options 1-4 is the annual limit on the CDQ groups to invest in non-fisheries related projects. Table 4.23 summarizes the estimates of annual expenditures that could be made on non-fisheries related projects collectively by the six existing CDQ groups under the options: Option 1 - \$1.65 million; Option 2 - \$3 million; Option 3 - \$30 million; and Option 4 - \$6 million. This is based on the 2000 pollock royalties and revenues of the CDQ groups. In addition, the greatest estimated difference in the amount *each*

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group would be allowed to spend on non-fisheries related projects varies under the options: Option 1 - \$318,000; Option 2 - \$158,000; Option 3 - \$7.05 million; Option 4 - \$0. For Options 1-3, the annual limit for each CDQ group would vary depending on the royalties or revenues received in the previous year. For instance, royalties received in 2001 would be used to determine the limit on non-fisheries related projects in year 2002. Option 4 would be a fixed amount of \$1,000,000 annually.

Table 4.23: Maximum allowable investment (collectively for all six CDQ groups) in non-fisheries related projects<sup>1</sup> under Alternative 3, Options 1-4

OPTION	Option 1:	Option 2:	Option 3:	Option 4:
	5% of annual pollock royalties	20% of annual pollock royalties or max of \$500,000	50% of annual revenues	\$1 million annually
<b>Estimated maximum</b>	\$1.65 million	\$3 million	\$30 million	\$6 million
<b>Estimated range of expenditures per group</b>	\$85,000 - \$403,000	\$342,000 - \$500,000	\$650,000 - \$7.7 million	\$1 million per group

Note: Estimates are based on the 2000 CDQ pollock royalties and revenues.

<sup>1</sup>This does not include currently allowable non-fisheries related investments such as scholarships, training, financial instruments, and charitable contributions.

Alternative 3 would result in allowing a *portion* of the CDQ groups' total investments to be in non-fisheries related projects. The annual limit would be explicit in Federal regulation, with the clarification that certain categories of non-fisheries related expenditures are exempt from this limit. The exemptions would relate to the current activities of the CDQ groups described under Alternative 1 that are non-fisheries related but generally accepted by Federal and State managers. These include investments in scholarships, vocational training, charitable contributions, and financial instruments such as stocks and bonds. To clarify, the regulations that would implement the intent of Alternative 3 might read as follows:

*50 CFR 679.XX Allowable investments and expenditures. The following is a list of allowable expenditures and investments that may be made by a CDQ group and any applicable annual limits.*

- (1) Expenditures or investments that may be made with **no annual limit**.
  - (i) *Administrative expenses of the CDQ group.*
  - (ii) *Investments of cash in financial instruments such as stocks, bonds, certificates of deposit.*
  - (iii) *Investments in fisheries-related economic development projects.*
  - (iv) *Education, scholarships, and training.*
  - (v) *Charitable contributions.*
  
- (2) Expenditures and investments that in total **are limited** annually to xx of each CDQ group's annual xx.
  - (i) *Investments in non-fisheries related projects.*
  
- (3) Reporting requirements.

*The annual financial statements of the CDQ group must contain expenditures summarized by the categories listed in (1) and (2) to demonstrate compliance with this paragraph.*

**Option:** *Require that the non-fisheries related projects under (2)(i) are self-sustaining economic development projects located in the region of Alaska that the CDQ group represents, **or***

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*Require that the non-fisheries related projects under (2)(i) are: A) for education, vocational training, scholarships, or other human resource programs for residents of the CDQ communities; or B) community development projects associated with infrastructure development in the communities or region of Alaska represented by the CDQ group.*

**The list of allowable investments that are not limited annually under (1) reflects the type of investments that the CDQ groups are currently undertaking, whether they are fisheries or non-fisheries related.**

The majority of the CDQ groups' investments to date have been in fisheries-related economic development projects, with a relatively small amount spent on administrative expenses, scholarships, training, and charitable donations. It is assumed that the category of charitable donations encompasses a fairly broad scope; it could represent a donation to a non-profit organization that is not fisheries-related, support of a local event, or a donation to fund travel costs for a local dance team. In addition, the CDQ groups typically invest a portion of their revenues in financial instruments such as stocks and bonds. These investments have been deemed generally acceptable by the CDQ Team and within the bounds of the program's intent. Therefore, the list of allowable investments with no annual limit captures part of the intent of Alternative 2, to clarify in Federal regulation the types of investments that are currently allowed in the CDQ Program.

There is not currently an annual limit on any of the expenditures listed in (1), as the allocation process has provided a mechanism by which government managers can oversee the groups' investment activities. One example is the CDQ groups' administrative expenses. While administration is necessarily related to the CDQ groups' fishing activities, the CDQ Team has encouraged the groups to minimize administrative expenses in order to pass more of the CDQ benefits on to the communities. In the past, if it appeared that a group was accruing excessive administrative expenses, the CDQ Team requested that the group seek ways to reduce its administrative overhead. Thus, while there is not a limit on administrative expenses established in regulation, inquiries and requests by the CDQ Team during the allocation process are fairly effective in meeting the policy goals. However, should the Council determine that some of the current types of investments need to be limited, this should be addressed explicitly in regulation at this time.

**Non-fisheries related projects fall under the allowable investments in (2) that would be limited annually.** This captures the intent of Alternative 3, Options 1-4, and does not limit the type of non-fisheries related projects to economic development projects in the region represented by the CDQ group. This would essentially provide the CDQ groups complete control over a portion of their investments, and lessen the role of the State to ensuring that the CDQ groups stay within their annual limit in this regard. Should the Council add further restrictions on the type of non-fisheries related projects in which the CDQ groups may invest, (Suboptions 1 and 2), this would also be made explicit in Federal regulations.

The benefits of allowing some portion of the CDQ investments to be in non-fisheries related projects have also been discussed under Alternatives 1 and 2. The primary benefits to the CDQ groups include: 1) a clear understanding of allowable investments defined and clarified in Federal regulation; 2) the ability to tie the list of allowable projects to the criteria used to evaluate the CDPs; 3) the flexibility to meet other important investment needs in the CDQ communities that are not fisheries-related but would promote community development; 4) the ability to invest more equitably in local projects among the eligible CDQ communities, considering that there may be limited opportunities for fisheries-related projects in some communities, and 5) mitigating the risk that a group will be punished in the allocation process for poor financial performance due to a lack of viable fisheries-related investments in the region.

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The CDQ groups have voiced concern regarding their future success in the CDQ Program without the flexibility to invest in non-fisheries related economic development projects. While several groups have expressed support for the original intent of the program to enable communities to participate in the fishing industry and create self-sustaining fisheries economies, the majority of the groups agree that the nature of the investments and the sophistication of the CDQ groups have changed since the program's inception. In addition, some groups with communities that are further inland, such as CVRF and YDFDA, may have very limited fisheries-related projects in those communities. Some groups have also expressed concern that some communities have investments needs that are not fisheries-related but are just as crucial to the overall health and development of the community. These are typically infrastructure projects or investments in viable businesses within the community that would contribute to employment and economic stability. Given that the overall goal of the CDQ program is community development, there may be sufficient justification to expand the types of allowable investments to non-fisheries related projects.

While the CDQ groups may benefit from eliminating the restriction on fisheries-related projects, there exists the potential under Options 1-4 for the CDQ communities to receive fewer benefits than they are currently realizing, at least in the short-term, as the CDQ groups expand their investments to projects outside the region. The benefits of Alternative 3 are based on the concept that allowing the CDQ groups to expand their investment opportunities beyond fisheries-related projects would provide for additional benefits to the eligible communities. Thus, ensuring this outcome is a fairly important consideration. The allocation process as it is currently structured provides a mechanism by which government managers could ensure that the benefits of the non-fisheries related projects would be realized by the eligible communities. It would likely require more effort by the CDQ groups in the development of their CDPs, as the community benefits derived from non-fisheries related projects may not be as evident as economic development projects within the region. If a CDQ group did not show how the projects were benefitting the communities within its region, that may be reflected in a lower allocation. Note that the ability to ensure that the groups are meeting the milestones identified in their CDPs and continuing to benefit their member communities through non-fisheries related projects is dependent on a periodic allocation cycle. A long-term, or permanent, allocation cycle would eliminate this oversight mechanism and substantially decrease government control over the program.

A related potential negative effect mirrors the concern expressed during the development of the CDQ Program. The program was developed to provide fishermen who reside in western Alaska communities an opportunity to participate in the BSAI fisheries, with the intent that increased participation in the fishing industry would help diversify local economies and provide long-term employment to eligible communities. The CDQ Program was created by allocating a distinct portion of the groundfish BSAI TACs, and eventually the crab and halibut TACs, to the CDQ groups. The result is that the commercial TACs were adjusted downward to account for the CDQ reserves. As an annual allocation of a public resource, the program was created with substantial government oversight. The Council, State, and commercial fishing industry's perception of the program at the time hinged on the concept that the benefits of the program would be realized within the communities of interest for developing fisheries economies. The program has since been established as part of the Magnuson-Stevens Act and, while the original concept is a necessary consideration for the Council, given the potential benefits, modifications may be warranted to allow some level of non-fisheries related investments.

Finally, allowing non-fisheries related investments by the CDQ groups may increase the political pressure on the groups to fund a variety of general infrastructure and development projects that have generally been the responsibility of the government. The CDQ Program was not intended as a substitute for governmental responsibilities such as healthcare, school systems, etc., and the mandate to spend CDQ money on fisheries-

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related projects has provided a definitive line for the CDQ groups to employ when they receive proposals from their member communities. Allowing a portion of CDQ royalties to be spent on non-fisheries related projects would further blur the distinction between the CDQ program and a government program that provides for the general welfare of the community, and the CDQ groups would likely feel additional pressure to provide some of these basic services. In addition, it may provide justification for the State legislature to reduce spending on community infrastructure projects within the region. Establishing a limit on any non-fisheries related investments would help to mitigate this potential concern.

Should the Council prefer to allow investments in non-fisheries related projects, the task under Alternative 3 is to determine an adequate allowable limit which would have a meaningful impact on the CDQ groups. Allowing a small portion of the pollock royalties to be spent on non-fisheries related projects may provide the flexibility the groups need to respond to other development needs within their member communities but still retain the original intent of the program to focus the benefits of the CDQ allocations primarily on developing a sustainable fishing industry in western Alaska. Recall that **Options 1 and 2** would allow approximately 4% and 7% of the total CDQ royalties derived from all species allocations in 2000 to be spent on non-fisheries related projects, respectively. The lower limits proposed in Options 1 and 2 would allow the groups to make significant initial investments in non-fisheries related projects, while still combating any perception that the program is a substitute for municipal assistance or other general economic development efforts in the region.

**Option 3** would allow half of the CDQ groups' revenues to be invested in non-fisheries related projects. Recall that without either suboption, Option 3 would essentially allow the CDQ groups to invest in any projects outside of western Alaska up to the proposed limit. Option 3 represents a substantially greater potential investment in non-fisheries related projects than any of the other options. Using 2000 as an example, about half of the total CDQ revenues equaled about \$30 million, about the same amount as received in total pollock royalties.

Some groups contend that the limits proposed in Options 1 and 2 are too low. CVRF addressed this issue in its testimony at the June 2001 Council meeting and proposed allowing each CDQ group to spend up to \$1 million per year on non-fisheries related projects. This is represented by **Option 4**, which would essentially establish a collective limit of \$6 million on all six CDQ groups. Recall that this would allow approximately 15% of the total CDQ royalties derived from all species allocations in 2000 to be spent on non-fisheries related projects. This option was proposed based on the assertion that some groups with many member communities will be severely constrained on an individual community level by a lower allowable limit. The example provided by CVRF was that of a Nunivak Island reindeer business which would require \$500,000 or more to create a viable business. CVRF, with 20 member communities, contends that the \$500,000 limit (Option 2) is simply too low to have a meaningful effect on more than a few communities in the region. The CDQ groups with more member communities will necessarily be more constrained by the limit on non-fisheries related investments than the groups with fewer communities.

Should the Council prefer to allow some non-fisheries related projects under Alternative 3, it may want to consider whether it is also appropriate to revise the goal and purpose statement for the CDQ Program. As currently expressed in Federal regulation, the overall goal of the program is to create self-sufficient fisheries-based economies. If this remains the primary goal of the program with a new allowance for limited investments in non-fisheries related projects, the goal and purpose statement may still be interpreted as consistent with that action. However, allowing half of total revenues to be spent on non-fisheries related projects outside of western Alaska (Option 3) would mark a deliberate shift away from the original intent of

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the program. While this shift may be appropriate at this point in the program's history, the Council may want to revisit and clarify the overall goals of the CDQ Program for consistency. This will be discussed in more detail under Suboptions A and B.

### *Suboptions related to limits on non-fisheries related investments*

#### Suboption 1

Suboptions 1 and 2 apply only to the non-fisheries related projects limited under Options 1-4. For instance, under Option 1, each group could invest up to 5% of their pollock royalties in non-fisheries related projects annually. If one of the suboptions is selected, it would further restrict the location and type of non-fisheries related projects allowed within that 5% annual limit. It does not affect the fisheries-related projects undertaken by the CDQ groups or the non-fisheries related investments that are currently acceptable without an annual limit, such as scholarships or charitable donations.

Suboption 1 would require that any non-fisheries related investments be made in economic development projects in the region of Alaska represented by the CDQ group and be self-sustaining. Options 1-4 limit the amount of annual investment in non-fisheries related projects but do not restrict the nature or location of the projects. Suboption 1, as applied to Options 1-4, would ensure that the investments were made in economic development projects within the region. This has been interpreted to mean that the CDQ group could invest in economic development projects within the entire CDQ region, not just the group's member communities. Thus, "in-region" would extend to the borders of the 65 communities that currently participate in the CDQ Program. Note that the current CDQ regulations do not require that fisheries-related projects undertaken by the CDQ groups be in the CDQ region or the groups' member communities.

To qualify as a "self-sustaining economic development project" under Suboption 1, staff assumes that the proposed investment must show a reasonable likelihood of a positive financial return. This means that only economic development projects with an expectation of profit over time would be allowed. Any non-fisheries related investments would be expected to generate an income stream or appreciate over time and be self-sustaining; the group would not expect to have to subsidize the project in the long-term. While the intent of this suboption is that the investment would be consistent with the group's internal investment policies, it would be difficult to reference the groups' investment criteria in the regulations implementing this suboption unless the current regulations provided more guidance on what the criteria should be. Currently, each group develops their own individual investment criteria and Federal regulations do not address this criteria. It is assumed, therefore, that the regulations would reflect the intent that the non-fisheries related investments meet the groups' investment criteria, but the CDQ Team would make the determination of whether an investment met the requirements of the regulations.

Economic development projects may also be expected to create jobs in the community, thus, this suboption allows for projects in communities that may provide valuable employment opportunities but may not provide a substantial financial return. In addition, this suboption would allow for investments in general infrastructure or community development projects, as suggested by the NRC, as long as the project was expected to generate a positive return in the future. For instance, a group may choose to build a firehall for a CDQ community using CDQ funds up to the limit allowed on non-fisheries related projects. This would be allowed under Suboption 1 if the group expected to lease the firehall to the community and receive a positive return or use some other such mechanism for generating revenue from the investment. By contrast, this suboption would preclude a group from building a road in a community in which no financial return was expected.

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This suboption would also preclude a group from supporting a community grants program. Under Suboption 1, a CDQ group could fund a specific request by a community to conduct an economic development project in that community, but it could not grant unencumbered money to the community and allow the community to decide how to spend that money after it had received the grant from the CDQ group. This is discussed in more detail later in this section.

### Suboption 2

Suboption 2 would require that any non-fisheries related investments be: (A) for education, vocational training, scholarships, or other human resource programs for residents of the CDQ communities; or (B) community development projects associated with infrastructure development in the communities or region of Alaska represented by the CDQ group. This suboption appears to narrow the range of allowable non-fisheries related projects more so than Suboption 1, because it would require that any non-fisheries related investment must be in education or training-based projects or associated with general infrastructure development. Staff assumes that infrastructure development refers to types of permanent installations such as buildings, roads, docks, water and sewer projects, or recreational facilities. Staff also assumes that infrastructure development does not refer to investments made in businesses with the expectation of generating revenues, unless it is directly associated with an investment in a facility or other permanent installation.

Further, some groups have expressed the desire to promote local development in a broad fashion, and at least two groups proposed to use royalties to establish businesses that are at best tangentially related to commercial fishing (NRC 1999b). As reported by the NRC, these programs have not been viewed favorably by the State, who have required businesses to have a tangible link to commercial fishing. Some examples of general business development conducted by the CDQ groups have been salmon and herring marketing development, creation of an Alaska seafood investment fund, and establishment of vessel haul-out and storage businesses. Some other businesses, such as a car rental business, have not been accepted by the CDQ Team for lack of a direct link to the commercial fishing industry. Suboption 2 would limit the groups' non-fishing related investments to infrastructure projects and continue to require a tangible link to commercial fishing for all other projects. Like Suboption 1, Suboption 2 would also preclude a group from administering unencumbered community grants.

Based on this interpretation, Suboption 2 appears to prevent a group from investing in a business or profit-bearing opportunity within a community if it is not an infrastructure project. This may create concern for some of the groups who have good potential investment opportunities in non-fishing related for-profit businesses that could create revenues for the CDQ group (the CVRF reindeer farm, for example) but are not associated with infrastructure development. Thus, Suboption 2 may not mitigate the primary negative impact associated with the status quo. If some communities within the CDQ groups no longer have viable fishing-related opportunities in the future, the groups may need the flexibility to support businesses or projects that would further community economic development without being constrained by the current fishing-related restriction. Issue 7 was spurred in part by this concern, that in order to enable the groups to maximize benefits and provide viable employment and business opportunities to the communities in the region, they must be able to support some non-fisheries related endeavors within the CDQ communities. This notion is consistent with the NRC recommendation to allow some CDQ funds to be available for other activities that will enhance community infrastructure or land-based economic activity. Suboption 2 appears to prevent the CDQ groups from this type of investment unless it is directly associated with an infrastructure project.

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A related concern associated with this suboption is that this will enable the CDQ groups to undertake non-fisheries related projects that are typically the responsibility of the government. While these may be part of the material need for community development, there may be a concern that this will increase the reliance on the CDQ groups for public services that the government generally provides. While the NRC recommended that the restriction be removed for at least some portion of the CDQ revenues to allow for the CDQ groups to undertake general infrastructure projects that would contribute to overall community development, it also acknowledged that some of the subsistence and commercial economic activity of these communities is land-based, and that the CDQ groups should also be permitted to support these types of activities. Thus, a restriction on non-fisheries related projects that would limit the groups to only supporting general infrastructure projects and education or training programs may not be consistent with the NRC recommendation for expanding the program.

Finally, Suboption 2 also appears to limit the amount of funding that can be invested in training, education, scholarships, and human resource programs, which are categories of investment that are not currently subject to a specific annual limit. Alternative 2 and Alternative 3 (without this suboption), propose to make these categories of allowable investments explicit in Federal regulations with no annual limit (see p. 184), meaning the CDQ groups could choose how much to invest in education, training, and human resource programs annually, subject to review by the CDQ Team. Staff assumes that applying Suboption 2 to Alternative 3 would change this intent, since it would identify these types of investments as “non-fisheries related” and expressly apply the annual limit determined under Options 1-4.

Education and training programs continue to represent a key element of the CDQ Program, and most education, vocational training, scholarships, and some human resource programs are generally allowed under the rules governing the current program, regardless of whether they are directly fisheries related. However, in the past, the CDQ Team has rejected some investments based on the fisheries related restriction. Alternative 2 and Alternative 3 (without the suboption) would eliminate the need to make individual determinations of whether specific investments in training, scholarships, etc., are acceptable, by allowing all investments that fit this category.

In contrast, part (A) of Suboption 2 proposes to restrict any non-fisheries related investments (up to the annual limit) undertaken by the CDQ groups to education or training programs, thus, it is assumed that the CDQ Team would need to make the determination of whether a specific education investment was fisheries-related or non-fisheries related. If the investment was deemed fisheries-related, it would not count against the annual limit on non-fisheries related projects. If the investment was deemed non-fisheries related, it would count against the annual limit. Thus, applying Suboption 2 to Alternative 3 would potentially limit the amount of investment in education and training undertaken by the CDQ groups since any non-fisheries related education and training investments would be applied toward each group’s annual limit on their total non-fisheries related investments. In addition, it would require the CDQ Team to evaluate each proposed education and training investment to determine whether it is fisheries-related and thus whether it is subject to the annual limit on non-fisheries related investments.

### Community Grants

Another issue of importance relative to the options and suboptions is that of community grants. More than one CDQ group has expressed interest in developing a program by which the groups could approve unencumbered grants to their member communities. CVRF proposed in its June 2001 testimony to the Council that CDQ groups should be able to institute community grant programs of up to \$200,000 per group per year. CVRF noted that it has received many requests from its communities for this type of support, and

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it maintains that the CDQ Program should allow for this minimal level of non-fisheries investment in western Alaska communities. **This type of investment would be allowed under Options 1-4 and be applied toward the limit on non-fisheries related investments.** Based on current pollock royalties, any of Options 1-4 would allow CVRF to make the \$200,000 grants it has proposed.

**If either suboption is applied, however, a community grants program would not be allowed**, as the suboptions specifically require that the investment be in economic development projects, or in the case of Suboption 2, education and training. Under the suboptions, a CDQ group could fund a specific request by a community to conduct an economic development project in that community, but it could not grant unencumbered money to the community and allow the community to subsequently decide how to spend that money. While neither suboption would wholly satisfy some of the groups' needs as discussed above, Suboption 1 would mitigate the concern that the program would become a substitute for governmental responsibilities and other publicly funded projects. Suboption 2, however, would allow the CDQ groups to fund general infrastructure projects such as are typically attributed to government responsibilities.

It is important to note that regardless of the Council's decision on this issue, CDQ groups that administer grants to communities would have to be able to guarantee the grants were used for the same non-profit purpose that the CDQ groups are held to by the IRS in order to maintain their non-profit status (KPMG 2002). KPMG reports that many non-profits are in the position to administer grants, and they typically develop verification procedures to ensure that the grants are used for a specific purpose. Thus, if a CDQ group chose to distribute grants to individual communities and did not track what the funds were used for, they could possibly endanger their non-profit status. Under any of the options, the community receiving the grant would need to state what the money would be used for *before* the CDQ group awarded the grant, and this purpose would need to be consistent with the overall purpose of the CDQ group as reported to the IRS (to promote community and economic development). The CDQ group would then need to verify that the funds were in fact used for their stated purpose. In sum, although the alternatives considered may not explicitly address the use of CDQ funds for this purpose, CDQ groups are not able to award wholly "unencumbered" grants without potentially jeopardizing their non-profit status.

### *Suboptions related to the goals and purpose of the CDQ Program*

Should the Council prefer to broaden the CDQ Program to allow some level of investment in non-fisheries related projects under Alternative 3, there are two suboptions proposed to amend the current goal and purpose of the CDQ Program in Federal regulation so that it is consistent with the alternative. This statement will be added to the BSAI FMP and also promulgated in NMFS regulations.

The purpose statement provides general guidance for the CDQ Program, and as such is expected to be a broad statement expressing the overall intent of the program. **However, the specific restrictions in Federal regulation governing fisheries and non-fisheries related investments will be based on the Council's selection of a specific option and/or suboption under Alternative 3 for limitations on non-fisheries related investments.** In the past, lacking explicit regulations defining allowable investments and limits on those investments, NMFS has used the purpose of the program to express the Council's original intent to limit the program to fisheries-related activities. Upon selection of a preferred alternative under this issue, however, the statement of the goal and purpose of the program will no longer be used as the sole source of guidance on fisheries-related investments.

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The current goal and purpose (as stated in 50 CFR 679.1(e)) reads:

*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.*

Suboption A would amend the goal and purpose statement to read as follows (additions are underlined):

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

Suboption A broadens the current purpose of the program to provide for some level of non-fisheries related investments in the CDQ region. A purpose statement is considered general guidance, and this statement appears to be consistent with the intent of Options 1 - 4. The proposed statement under Suboption A is very specific as to the purpose of the program, however, explicitly stating that strengthening the non-fisheries related economy in the CDQ region is a secondary purpose. This statement is more specific than the current statement in regulation or that proposed under Suboption B.

Note also that this statement differs from the current goal and purpose statement in that it specifies that the goal and purpose of the program is to allocate CDQ to *qualified applicants* (i.e., the CDQ groups) as opposed to the eligible CDQ communities. This difference does not change the operation of the program, however, as Federal regulations currently state that CDQ allocations are to be made to the CDQ groups (50 CFR 679.30(a)), which are referred to in regulation as “qualified applicants” defined under 50 CFR 679.2. The CDQ groups were created under Federal regulations as an effective way to organize individual communities on a regional basis in order to receive the benefits from the quota. A “qualified applicant” is defined as a local fishermen’s or economic development organization that represents an eligible community or communities, is incorporated under State or Federal law, and has a board of directors composed of at least 75% resident fishermen of the community or group of communities (50 CFR 679.2). Under this definition, qualified applicants (CDQ groups) are required to represent an eligible community or group of eligible communities. Thus, staff assumes that regardless of whether the goal and purpose statement expresses an intent to allocate CDQ to qualified applicants (CDQ groups) or eligible communities, both are consistent with the current Federal regulations governing the allocation process. The individual communities remain the core of the CDQ Program, but the groups are the designated applicants that represent an eligible community or group of communities.

Suboption B would amend the current goal and purpose statement to read as follows (additions to existing regulations are underlined and deletions are stricken):

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

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Suboption B broadens the current purpose of the program to provide for strengthening a diversified economy in the CDQ region, as opposed to expressly providing for a fisheries-related economy. This is a very broad statement, and also appears to be consistent with the intent of Options 1-4. Therefore, the Council could select either of the statements proposed in Suboptions A or B for inclusion in the BSAI FMP and remain consistent with any option selected under Alternative 3, Options 1-4.

### *Implementation Issues - Evaluation Criteria*

Should the Council prefer Alternative 3, the criteria that the State and NMFS use to evaluate the merit of the CDPs would need to be modified to account for the change in allowable investments. Consistent with the goals and purpose stated in Federal regulations, the current evaluation criteria focus on developing fisheries-related economies and are not appropriate for evaluating non-fisheries related projects. Thus, selection of Alternative 3 may necessitate revising the evaluation criteria so that it could be aptly applied to both fisheries and non-fisheries related investments, particularly if the option selected allows the CDQ group to spend the majority of its income on non-fisheries related projects. This provokes the question of whether non-fisheries related and fisheries-related projects should be weighted equally in the evaluation process. Similarly, Suboptions 1 and 2 raise the question of whether projects undertaken within the region should be evaluated on the same basis as those conducted outside of the region.

The issue of weighting in the allocation process may be of great importance to the CDQ groups. One concern is that groups who continue to develop the infrastructure necessary to develop a sustainable fisheries economy will be evaluated on the same basis as those whose primary efforts are investing in non-fisheries related businesses outside of western Alaska. CBSFA, for instance, is in the process of completing a small boat harbor. Their concern is that the merits of their proposed project would be weighed equally with those groups who are using CDQ royalties for non-fisheries related projects, creating more competition for the primary allocations. It is already difficult to adequately assess the impact of improved education, job training, and fisheries infrastructure projects on a community's health and productivity. The current evaluation criteria appear to stress observable impacts which occur in the financial and narrative reports submitted by the CDQ groups. The NRC report notes that if success is defined only in traditional market terms, some of the communities' definitions of success may not be fully recognized. If the revised evaluation criteria maintains the emphasis on traditional financial gains, it is very likely that non-fisheries related projects outside of the community will present better financial investments and therefore be assessed higher in a group's CDP, while projects that are less financially profitable but directly connected to fisheries development within the communities would be perceived as having less merit. Thus, those groups that are struggling to continue improving their participation in the fisheries and creating a fisheries-based economy may be at a relative disadvantage in the allocation process. Weighing these two goals—good financial performance and creating employment, training, and other opportunities within the communities—has been difficult under the current program and is not unique to the issue of allowing fisheries-related investments. However, the Council should consider that allowing non-fisheries related investments may intensify this conflict.

If one contends that all CDQ projects will ultimately benefit the CDQ communities, regardless of the nature and location of the project, and that the means of achieving the goals of the CDQ program should be broadened beyond "fisheries development," there may not be sufficient justification to weigh the two types of projects differently. However, if the CDQ Program retains its focus on fisheries development and is simply modified to allow for other types of community development projects, there is an argument for weighing fisheries-related projects more heavily in the allocation process. The NRC recommended that over time the program should be broadened, "perhaps still requiring most benefits to be reinvested in fishing and fisheries-

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related activities, but allowing some portion to go to other community development activities” (NRC, p. 2). In this sense, the Council may determine that fisheries-related projects may still take priority over non-fisheries related projects. If so, such a priority should be explicit in the evaluation criteria used in the allocation process.

### **Alternative 4 - No restrictions on CDQ investments** *(May represent intent of H.R. 553)*

Alternative 4 would change the current Federal regulations so that there are no restrictions on what the CDQ groups may spend money on or what type of projects they may invest in. This appears to represent the intent of proposed House Bill 553. A suboption related to the goals and purpose of the CDQ Program is also proposed under Alternative 4.

Alternative 4 would essentially give each CDQ group complete freedom in determining its investment mix. CDQ investments would not be required to be economic or fisheries development projects in the region of Alaska represented by the CDQ group. Alternative 4 means that the CDQ groups could spend all of their income, whether it is royalties generated from leasing quota or other investment income, on non-fisheries related projects. In 2000, the CDQ groups reported total revenues of almost \$60 million, approximately 68% of which were royalty payments.

As discussed under Alternative 3, one interpretation of the intent of H.R.553 is that it would expand the allowable investments by the CDQ groups to non-fisheries related projects that would promote diversified local economic development (H.R. 553, p. 3, §305(j)(1)(B)). H.R. 553 contains no reference to “fisheries-related” investments and may imply that a broader range of investments is allowed. If one assumes this interpretation, Alternative 4 represents the intent of H.R. 553. No restrictions would be made on the type of allowable investment by the CDQ group and no limits would be placed on the amount of that investment. The government would need to ensure that the allocations were being used to achieve sustainable, long-term, diversified local economic development, but the type of investment necessary to achieve that goal would be at the discretion of the CDQ groups.

The general impacts associated with allowing non-fisheries related investments have been discussed under Alternative 3; the difference is that Alternative 4 proposes no limit on allowable investments. There are several reasons for allowing some portion of the CDQ groups’ income to be spent on non-fisheries related projects. The CDQ groups have evolved to the point where allowing some non-fisheries related projects may be a necessary means to achieving overall community development. Some of the CDQ groups contend they need this flexibility in order to meet the goal of creating self-sustaining economies as fewer viable fisheries-related investments become available. There is an argument that as good fisheries-related business opportunities become increasingly limited in some communities, the CDQ groups will be punished in the allocation process for poor financial performance or not providing tangible benefits to all member communities. In addition, some groups contend that there are communities that would be better served by investments that promote general economic development, such as water and sewer projects, roads, and other community needs, and that a portion of the CDQ groups’ income should be allowed to fulfill these needs.

Eliminating the fisheries-related requirement would indicate a distinct transition from the program’s stated purpose: “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)). However, if the overall purpose of the CDQ Program is broadened to promote general community and economic development in western Alaska through the CDQ

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allocations, allowing non-fisheries related investments would be consistent with this goal and allow the CDQ groups to meet this goal more effectively.

Alternative 4 does not limit the amount of non-fisheries related investments, nor does it require that the investment be in economic development projects in the CDQ region. As stated previously, certainly a viable non-fisheries related project outside of the region may potentially provide greater benefits to the CDQ communities than a less successful fisheries-related project inside the region. However, requiring that non-fisheries related investments be economic development projects within the region appears to be more consistent with the original intent of the program and the mandate that the allocations be used to strengthen and diversify local economies within the region. Note however that while the original intent is that the allocations be used to strengthen local economies within the region, there is no current requirement that the CDQ group's fisheries-related projects be in the region of Alaska represented by the CDQ group.

While communities could potentially benefit from any type of profitable investment by the CDQ group, the absence of a direct link between the CDQ projects and the communities will decrease the level of government control and may make it more difficult to assess the impact of the CDQ allocations on the communities the program was developed to serve, necessitating increased scrutiny of the CDPs. As discussed under Alternative 3, the evaluation criteria would need to be revised to accommodate evaluation of non-fisheries related projects. It would continue to be the responsibility of each CDQ group to show how the investments of the group are benefitting the member communities, regardless of the type and location of the project.

Relatedly, the Council may want to consider what level of government oversight would be appropriate under Alternative 4. In the past, the government has reviewed and evaluated the projects in the CDPs based on past performance, the likelihood of success, and whether the CDQ group exercised due diligence in making an investment decision. One of the primary roles of the government has been to advise the CDQ groups and help assess the risks they may be taking in a particular fisheries investment. There have already been some concerns regarding the time and staff necessary for the government to adequately assess whether a CDQ group has exercised due diligence in making an investment decision. The proposed action to allow unlimited non-fisheries related investments may appear to warrant considerable government oversight, in order to prevent mismanagement of a public resource and ensure that the benefits of the allocations continue to be realized in western Alaska communities. However, allowing non-fisheries related investments may make it even more difficult for government managers in this oversight capacity, as the State and NMFS may not have the expertise necessary to adequately evaluate a broad range of non-fisheries related projects. Assuming the State and NMFS do not have the appropriate staff and funding necessary to properly evaluate the merit of all non-fisheries related investments, the Council may wish to consider a reduced government role under Alternative 4.

### *Suboption related to goal and purpose of the CDQ Program*

Should the Council prefer to broaden the CDQ Program to allow unlimited investment in non-fisheries related projects under Alternative 4, there is one suboption proposed to amend the current goal and purpose statement in Federal regulation so that it is consistent with this alternative. **This statement mirrors the purpose of the program as proposed in H.R. 553** and would be added to the BSAI FMP and also promulgated in NMFS regulations:

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

This suboption broadens the current purpose of the program to provide for achieving a diversified local economy in the CDQ region, as opposed to expressly providing for a fisheries-related economy. This is a very broad statement, and appears to be consistent with the intent of Alternative 4.

### Summary

Relaxing the fisheries-related requirement would indicate a shift away from the original intent of the program, which was to strengthen the fisheries economies in the CDQ communities by providing opportunities to participate in the capital-intensive commercial fisheries of the BSAI. While the proposed action under Alternatives 3 and 4 may differ from the purpose of the program as identified by the Council in 1992, the program and the CDQ groups have evolved to the point where allowing some non-fisheries related projects may be a more practical means to achieving the overall goal of community development. The NRC recommended that while the program may continue to focus on fisheries-based development, it should be expanded to provide for investments in community infrastructure and other (non-fisheries) economic development projects. The NRC concluded and recommended the following (1999b, p. 76):

*Finally, the economic and cultural development of these communities may at times be advanced through non-fishery employment or investments. Hence, we found no strong reason to require the communities to use funds generated from their CDQs to invest only in fisheries....*

*...We recommend that the restriction that CDQ revenues be invested only in fishery-related activities should be removed, at least for some portion of the revenues. Many of the communities will find that fishery investments are still the ones they wish to undertake. However, since community development is broader than fishery development, funds should also be available for other activities that will enhance community infrastructure or land-based economic activity. This broadening of the allowed investments would also remove uncertainty about whether particular investments are indeed "fishery related" and thus allowable under current rules.*

Alternative 3 would substantially increase the CDQ groups' control over the types of allowable investments and would not require the groups to invest in economic development projects within the region. The difference between the options under Alternative 3 is in the level of control that the CDQ groups will have over their investment opportunities on an annual basis. Alternative 4 would allow the CDQ groups total control over their investments. While there is the possibility that this added flexibility would increase the benefits to the CDQ communities, there is also the suggestion that, at least in the short-term, communities will receive fewer tangible benefits. The impact of these options is dependent on the individual business decisions of each CDQ group.

The ability to maintain sufficient government oversight of the groups' actions to ensure that any non-fisheries related investments benefit the CDQ communities is dependent on the preferred alternatives selected by the Council for Issues 1 through 7. Specifically, decisions on the appropriate role of government oversight under

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Issues 1 and 3, as well as on periodic or long-term allocations under Issue 2, will directly influence the potential impacts of this issue.

If the Council determines that some level of non-fisheries related investment should be allowed under Alternative 3, the second issue is whether to require that non-fisheries related projects be in self-sustaining economic development projects in the region represented by the CDQ group (Suboption 1); or education, vocational training, scholarships, human resource programs or infrastructure development in the region represented by the CDQ group (Suboption 2). Certainly, a viable non-fisheries related project outside of the region may ultimately provide greater benefits to the CDQ communities than a less successful project inside the region. In that context, the location of a project is less important to meeting the overall goal of community development than ensuring that the revenue generated by the project can be directly tied to benefits realized in the communities. However, requiring that non-fisheries related investments be self-sustaining economic development projects within the region may be more consistent with the original intent of the program and the mandate that the allocations be used to strengthen and diversify local economies within the region. While some may contend that this requirement is unnecessary, it maintains a level of government control that has been relatively significant in the development of the program to date.

Suboption 2, however, would prevent the CDQ groups from investing in a business or profit-bearing opportunity within a community if it is not an infrastructure project. This may create concern for some of the groups who have potential investment opportunities in non-fishing related businesses that could create revenues for the CDQ group but are not associated with infrastructure projects. The need to broaden the allowable investments by CDQ groups to non-fisheries related businesses and projects was spurred in part by the limited number of viable fisheries-related opportunities in some of the eligible communities and the desire to support local business opportunities that appear to be profitable investments. In addition, both suboptions would preclude a group from administering unencumbered community grants to individual communities.

Finally, if the Council prefers to allow some level of non-fisheries related investments under Alternative 3 or 4, the evaluation criteria used to determine the allocations may need to be revised to account for investments in non-fisheries related projects. If the CDQ groups are allowed to spend a majority of their revenues on non-fisheries related projects, the Council may need to determine and clarify in regulation:

- evaluation criteria that would apply to fisheries and non-fisheries related projects
- whether to equally weight fisheries and non-fisheries related projects in the allocation process
- whether to equally weight projects conducted inside and outside the region of Alaska the CDQ group represents

Similarly, the Council may choose to amend the current goal and purpose statement of the CDQ Program depending on the preferred alternative. While it is important to keep the goal and purpose statement consistent the alternative selected relating to non-fisheries investments, the statement of the goal and purpose will not be the sole source of guidance on fisheries-related investments. The restrictions governing fisheries and non-fisheries related investments will be based on the Council's selection of the specific option or sub-options selected under this issue.

If the Council prefers Alternative 4, in which the groups could invest all of their revenues in either non-fisheries or fisheries-related projects, the Council may wish to consider a reduced government role. One of the primary roles of the government has been to advise the CDQ groups and help assess the risks they may be taking in a particular fisheries investment, as well as make a determination about whether the project fits

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the fisheries-related requirement. Allowing groups to invest in any type of project under Alternative 4 may lessen the need for the current level of government oversight in that respect.

### **CDQ Policy Committee Recommendation on Issue 7**

The committee was split on Issue 7. Five of the committee members supported Alternative 3, Option 2, which would allow each group to spend up to \$500,000 annually on non-fisheries related projects. It was clarified that the standard non-fishery projects that are currently allowed (scholarships, etc.) would continue to be allowed and not subject to the cap. In addition, the committee recommended Suboption 1, which would require that these projects be economic development projects in the region of Alaska represented by the CDQ group. At the time of the committee meeting, the requirement that these projects be self-sustaining was not part of Suboption 1, and there was no discussion of the practical implications of the 'economic development' requirement. In addition, neither Option 4, which would expand the limit on non-fisheries related projects to \$1,000,000, nor Suboption 2, which would restrict non-fisheries related investments to education and training or general infrastructure projects, were considered by the committee. These options were approved by the Council for consideration subsequent to the CDQ Policy committee meetings.

The remaining committee members opposed this alternative for various reasons. Two members supported Alternative 4, which would lift the restriction on investing in non-fisheries related projects completely. Another member supported the concept under Alternative 3 but was concerned that non-fisheries related projects would be weighted the same as fisheries-related projects in the allocation process, thus potentially threatening the allocation to a group that is still trying to develop locally-based fisheries.

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

Under Issue 8, there are two alternatives: 1) no action, and 2) simplify the quota transfer and alternative fishing plan process. Under Alternative 2, NMFS proposes three options for simplifying and streamlining the CDQ program administrative regulations.

#### **Alternative 1 - No Action**

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

CDQ groups may transfer quota between groups by having an amendment to their respective CDPs approved by NMFS and the State. Ten percent or less of a quota may be transferred through the technical amendment process as described at 50 CFR 679.30(g)(5). Quota in excess of 10 percent may be transferred through the substantial amendment process as described at 50 CFR 679.30(g)(4). Transfers are effective for the remainder of the calendar year in which a transfer occurs. In general, amending a CDP involves the following steps:

1. Each CDQ group requesting a transfer must notify the State in writing that they wish to modify their CDP and include a copy of the pages of the CDP that they wish to revise;
2. The State must forward the proposed transfer to NMFS with its recommendations for approval or disapproval;
3. NMFS must notify the State in writing that the change has been approved or disapproved;

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4. The transfer becomes effective when NMFS notifies the State in writing that the transfer has been reviewed and approved.

These transfer provisions were recommended by the State and supported by NMFS at the time the multispecies CDQ allocations were implemented in 1998. NMFS and the State believed that a process involving review of quota transfer by both agencies was necessary to provide for comprehensive review of each proposed transfer. Because of the coordination required between the State and NMFS, this process can be time consuming, especially for transfers requiring a substantial amendment. CDQ groups often wish to transfer quota on fairly short notice during the fishing season and the time constraints of the current review process are at odds with the fast-paced nature of some groundfish fisheries or the availability of a CDQ harvesting partner.

Between 1999 and 2001, the CDP amendment process was used to transfer CDQ 204 times, requiring 408 CDP plan modifications (two for each transfer, one for the group transferring the quota and one for the group receiving the quota). CDQ transfers occur throughout the year in response to: changes in, or the non-availability of, a group's harvesting partner; the length of a particular non-CDQ fishery season; availability of a given target species; and, weather or seasonal conditions impacting smaller vessels. Typically, quota transfers are bundled, so that a single transfer amendment encompasses multiple species. Each amendment usually includes one or more target species and an associated amount of bycatch species in proportion to the amount of the target species being transferred. Slightly more than half of the transfers represented more than 10 percent of a group's quota and thus required substantial amendments to the CDPs. During 2000-2001, transfer amounts ranged from a low of .005 percent of a group's particular CDQ to a high of 100 percent. One third of all transfers during those years exceeded 50 percent of a group's CDQ for a species group, and were used to consolidate Atka mackerel and Pacific ocean perch quotas to two groups with harvesting partners interested in actively prosecuting those CDQ fisheries.

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

In addition to being allocated a portion of each TAC amount as a CDQ, each group is allocated a portion of each PSC amount (except for herring) as a prohibited species quota (PSQ). Though the groups are allocated PSQ for crab and salmon, these species rarely limit the groundfish CDQ fisheries, and generally only prevent CDQ fishing in limited areas under specific circumstances. For example, if a group caught all of its chinook salmon PSQ, it would be prohibited from trawling in a portion of the Bering Sea for part of the year. If a group caught all of its halibut PSQ prior to fully harvesting its groundfish, it would have to cease its fishing activities or risk exceeding its halibut PSQ. Thus, only halibut PSQ has the potential to prevent a group from fully harvesting its groundfish CDQ target species.

Based on the recommendations of the State and the Council, NMFS implemented strict regulations for the transfer of PSQ between groups. At the time the CDQ program was implemented, it was believed that these regulations were necessary to hold the groups strictly accountable to minimize bycatch and to prevent CDQ groups from circumventing the allocation process by transferring so much PSQ that the basis for the allocations was undermined. Specifically, CDQ groups that wish to transfer PSQ must make the request for transfer during the month of January. The request to transfer PSQ must be part of a request to transfer CDQ and must represent an amount of PSQ reasonably required as bycatch for the associated CDQ transfer. PSQ transfers of any amount require a substantial amendment to the groups' CDPs. This effectively eliminates

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the possibility that CDQ groups can transfer PSQ among themselves during the course of the fishing year in response to needs arising from their actual harvesting performance or planned inter-group transfers of other groundfish CDQ species. Thus, other than in January, PSQ cannot be bundled along with other bycatch CDQ species for a given transfer of a target species from one CDQ group to another.

Halibut PSQ is intended to provide for the bycatch needs of directed groundfish fisheries and is allocated and accounted for separately from halibut CDQ. Most halibut bycatch occurs in the Pacific cod and flatfish fisheries and secondarily in the pollock, Atka mackerel and Greenland turbot fisheries. Because none of the CDQ groups have harvested significant amounts of their flatfish quotas, they have needed only a portion of their halibut PSQ. Since the inception of the MS CDQ program, 38 to 75 percent of halibut PSQ has remained unharvested each year and there have been no transfers of PSQ between groups. In general, flatfish prices have been low and the non-CDQ flatfish seasons have been open through much or all of the fishing year. Thus, the CDQ groups have probably been unable to develop their flatfish fisheries primarily because of factors external to the CDQ program. Nonetheless, an inability to transfer PSQ between groups during the season may constrain CDQ fisheries in the future, especially to the extent that the CDQ groups are able to more fully exploit their flatfish quotas.

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

Because each CDQ group is allocated a specific quota for each TAC and PSC species quota category, accurate catch accounting is important to NMFS and the CDQ groups. The need for accurate catch accounting led NMFS and the Council to develop very specific regulations concerning observer coverage and the standard sources of data that would be used to determine how much of a given quota had been harvested. However, NMFS and the Council wished to ensure that alternative methods of catch accounting could be proposed by CDQ groups and considered by NMFS. In order to allow this flexibility, CDQ groups are allowed to propose alternative fishing plans for a given vessel as part of their CDP. Groups may suggest the use of non-standard sources of data for catch accounting purposes, provided that those data provide equivalent or better estimates of CDQ harvest. Catcher/processors using nontrawl gear may also propose the use of a single CDQ observer, rather than the standard two observers, provided that such an alternative fishing plan can demonstrate that a single observer will be able to sample all CDQ sets within the constraints on an observer's duty limitations.

To date, CDQ groups have submitted, and had approved, alternative fishing plans for ten vessels. All have proposed the use of a single observer for nontrawl catcher/processors that wish to engage in limited CDQ fishing before or after non-CDQ fisheries. This has enabled those vessels to fish for CDQ without having to return to port simply to pick up a second observer or to incur the expense of having a second, non-mandatory observer aboard during non-CDQ fishing.

Alternative fishing plans are proposed in the initial CDPs or as subsequent substantial amendments to the CDP. Each must be reviewed and approved by the State as well as NMFS. However, the State has virtually no involvement in the catch accounting or observer coverage aspects of the MS CDQ program. Because NMFS is responsible for the fishery management aspects covered by alternative fishing plans, the agency reviews alternative fishing plans thoroughly. Thus, the requirement that the State review and approve alternative fishing plans adds additional complexity and time to the overall CDP and amendment review process.

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

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

Under this option, CDQ groups would make requests to transfer CDQ directly to NMFS without going through the technical or substantial amendment process. NMFS would review each request to ensure that a group requesting to transfer CDQ had adequate quota available to cover the transfer. Following the approval or disapproval of a CDQ transfer request, NMFS would inform the State of the outcome of a given transfer request. The transfer process would become an in-season management function of NMFS, rather than a joint State-NMFS CDP modification approval process.

Because the CDQ groups would make their quota transfer requests directly to NMFS, the time required for the approval or disapproval of a transfer request could be reduced. The transfer of small amounts of quota could potentially be approved in as little as one business day. The transfer of larger amounts of quota could take longer because NMFS would need time to consult with the State to ensure the integrity of the current allocation structure and the motives of the groups requesting the transfer. This option would also reduce the State's oversight burden, because they would no longer be required to review each transfer.

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

This option would relax the PSQ transfer provisions. It would allow CDQ groups to submit PSQ transfer requests directly to NMFS, as described above under Alternative 2, Option 1. It would allow PSQ transfers request to occur at any time during a given year. Additionally, it would allow a group to request the transfer of PSQ without an associated transfer of CDQ. NMFS would review and take action on each PSQ transfer requests, and the State would be informed of the outcome of each request.

Allowing the transfer of PSQ during months other than January and not in association with a transfer of CDQ would not be expected to change the conduct of the CDQ fisheries since, historically, the PSQ transfer provisions have not been used. Nor would it be expected to allow the CDQ groups to circumvent the allocation process since there would be no reason to transfer significant amounts of PSQ except to meet the bycatch needs associated with a CDQ transfer or the in-season requirements of a particular CDQ fishery. Rather, in the event that additional collaborative CDQ fisheries are developed, it will be possible for the CDQ groups to develop them in a manner similar to the Atka Mackerel and Pacific ocean perch CDQ fisheries. In these, target species CDQ and associated bycatch quota is consolidated by the one or two groups that have partners interested in harvesting the target species.

Without allowing a more unrestricted transfer of PSQ, additional fisheries in underutilized groundfish CDQ species could still develop. However, instead of quota being consolidated to one or two groups, a harvesting partner might have to partner with multiple groups if PSQ bycatch concerns were a significant factor in the development of a fishery, but PSQ was unable to be transferred and consolidated along with other groundfish species. This would have the same result (i.e. allowing the quota to be harvested) but would result in a much greater paperwork burden for the harvesting partner, the CDQ groups and NMFS. A harvesting entity would have to develop partnership and contractual arrangements with each group it wished to fish for, each group would have to incorporate that harvester into its CDP and fishing plan, and, finally, both the State and NMFS would have to duplicate their review of the same harvester across multiple groups.

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

Under this option, CDQ groups would no longer need to have alternative fishing plans approved by the State or NMFS via the amendment process. Similar to what is described for CDQ transfers under Alternative 2, Option 1, this option would reduce the time required for the approval or disapproval of an alternative fishing plan. CDQ groups would submit alternative fishing plans directly to NMFS. NMFS would review them, take action, and inform the State of outcome of each request. The content of alternative fishing plans relates to catch accounting and observer coverage requirements, which are items directly under NMFS' purview. As the State is not involved in the day to day fishery management aspects of the CDQ fisheries, it does not have the information necessary to know whether to approve or disapprove an alternative fishing plan. This option would remove the burden of that review from State oversight. NMFS would assume the entire responsibility for the review and approval of each alternative fishing plan.

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### 5.0 CONSISTENCY WITH OTHER APPLICABLE LAWS

#### 5.1 National Standards

Below are the ten National Standards as contained in the Magnuson-Stevens Act (MSA), and a brief discussion of the consistency of the proposed alternatives with each of those National Standards, where applicable.

National Standard 1 - Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery

None of the issues or alternatives would change the process through which overfishing limits, total allowable catch limits (TACs), or optimum yields are established for the BSAI fisheries in general, including the CDQ fisheries. In addition, none of the alternatives would change the way the CDQ fisheries are conducted. Therefore, the alternatives would have no effect on overfishing or optimum yield from the fisheries. Additional information supporting the conclusion that these alternatives would have no effect on the BSAI fisheries is in Section 5.3 below.

National Standard 2 - Conservation and management measures shall be based upon the best scientific information available.

None of the issues or alternatives considered in this analysis would change conservation or management measures that apply to the BSAI groundfish, crab, or halibut fisheries, including the CDQ harvests in these fisheries. Therefore, this action does not affect the scientific information used to manage the fisheries or the use of that information in conservation and management.

National Standard 3- To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

This action does not affect the management of the BSAI groundfish, crab, or halibut fisheries, including the CDQ fisheries. Therefore, the action would not affect the method for determining the TACs or the distribution of the TAC among geographic management areas.

National Standard 4 - Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The CDQ Program allocates quota to eligible Western Alaska communities, as required by Section 305(i) of the MSA. By design, this program provides benefits only to residents of certain Alaskan communities that met eligibility criteria first developed by the Council and implemented by NMFS in 1992, and then implemented through the MSA in 1996. However, the CDQ allocations are made only to eligible communities and are managed by CDQ groups for the benefit of these communities. The CDQ allocations are not made to individuals and regulations prevent any one CDQ group from being allocated an excessive share of the CDQ.

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National Standard 5 - Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

The amount of groundfish, prohibited species, halibut, and crab allocated annually to the CDQ Program is established in the MSA, the AFA, and the FMPs. No changes to the annual amount allocated to the program is being considered in this action. However, several issues under consideration would change the process through which the annual CDQ allocations are further allocated among the CDQ groups. Under the current regulations, these allocations are made based on evaluation criteria developed by the State of Alaska which include population, need, consistency of the Community Development Plan (CDP) with the goals and purpose of the CDQ Program, past performance of the group in implementing its CDQ projects and providing benefits to the communities, and the potential for proposed CDQ projects to provide benefits to the communities. Economic efficiency is not one of the evaluation criteria considered in making CDQ allocations among the CDQ groups.

National Standard 6 - Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

None of the issues or alternatives considered in this analysis would change conservation or management measures that apply to the BSAI groundfish, crab, or halibut fisheries, including the CDQ harvests in these fisheries.

National Standard 7 - Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

Oversight of the CDQ Program is conducted by both the State of Alaska and NMFS. The State is primarily responsible for developing CDQ allocation recommendations, day-to-day oversight of the economic development aspects of the CDQ Program, and management of the crab CDQ fisheries. NMFS is primarily responsible for reviewing the State's CDQ allocation recommendations, making the final decision on allocations, for general oversight of the State and CDQ groups in the economic development aspects of the program, and for management of the groundfish and halibut CDQ fisheries.

Many aspects of the government oversight may appear duplicative because both the State and NMFS have some role in process. For example, both the State and NMFS review and approve CDPs and amendments to the CDPs. However, in this case, the CDQ group submits the CDP or amendment to the State. The State conducts a detailed review of the document and sends it on to NMFS with a recommendation about whether NMFS should approve or disapprove the proposal. The CDQ groups communicate primarily with the State during review of the proposed documents and are not required to submit the same information to both the State and NMFS. Therefore, although this process may appear duplicative, each government agency has a different role in the process and the CDQ groups are not required to submit the same information to both the State and NMFS.

This analysis provides several opportunities to reduce duplication in reporting requirements under Issue 8. First, NMFS is proposing to revise regulations governing the transfer of groundfish and halibut quota among groups during a fishing year. These proposed revisions would reduce the duplication and costs associated with having both the State and NMFS review quota transfer requests. Currently, these transfers are considered an amendment to the Community Development Plan. As such, the transfer request forms must be first submitted to the State for review and approval. Then, the State submits the form to NMFS for review

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and approval. While the CDQ groups do not have to submit the same form to two government agencies, they do have to monitor the review and approval process through by the State and NMFS. Issue 8 proposes to require only that the transfer forms be submitted to NMFS thereby reducing the duplication associated with review by the State. The State could be notified about quota transfers once they are approved by NMFS. Issue 8 also proposes similar revisions to the process for submitting alternative fishing plans. These fishing plans currently are part of the CDP, so to change them requires an amendment that must be reviewed by both the State and NMFS. Issue 8 proposes to require that the alternative fishing plans be submitted only to NMFS, with a notice to the State if an alternative fishing plan is approved.

National Standard 8 - Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The CDQ Program was developed to benefit western Alaska communities by allocating CDQ to eligible communities to provide the means for starting or supporting commercial fisheries business activities that will result in ongoing, regionally-based, fisheries-related economies. The alternatives addressed in this analysis will directly affect the six CDQ groups representing the 65 western Alaska communities that are eligible for the CDQ Program. This amendment represents a policy decision to modify the existing program but the beneficiaries of the program (CDQ communities) would not change.

National Standard 9 - Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

None of the issues or alternatives considered in this analysis would change the amount of fish harvested in the CDQ fisheries, the type of gear used, the location of catch, the timing of the CDQ fisheries, or any regulations governing catch and bycatch in these fisheries. This analysis address proposed revisions to the administrative regulations. Therefore, the proposed action is not likely to affect the level of bycatch in the CDQ fisheries.

National Standard 10 - Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The alternatives do not affect the total catch in the CDQ fisheries, the type of gear, location, or seasons in which CDQ fisheries may occur. Therefore, most of the issues and alternatives would not have an impact on the safety of human life at sea. However, the foundation quota alternatives under Issue 4 would allocate halibut CDQ equally among CDQ groups, rather than allocate quota to communities in or proximate to the management area. Allocations of halibut CDQ farther away from local communities could require fishermen using small vessels to travel farther to fish, which may increase the risk of fishing.

### **5.2 Section 303(a)(9) - Fisheries Impact Statement**

This section of the Magnuson-Stevens Act requires that any management measure submitted by the Council take into account potential impacts on the participants in the fisheries, as well as participants in adjacent fisheries. The impacts of modifying the administration of the CDQ Program are discussed in the RIR in sections 1 through 4 of this document.

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### 5.3 National Environmental Policy Act

The regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) at 40 CFR 1500-1508 and NOAA Administrative Order (NOA) 216-6 allow some actions to be categorically excluded from both further environmental review and the requirement to prepare an environmental review document if the action individually or cumulatively does not have the potential to pose significant impacts on the quality of the human environment. Section 6.03.d.4 of NOA 216-6 specifically addresses the requirements for categorical exclusions for actions taken under the Magnuson-Stevens Fishery Conservation and Management Act. In addition, NAO-216-6 allows a categorical exclusion if a prior NEPA analysis was prepared for the same action and that analysis demonstrated that the action would not have a significant impact on the quality of the human environment (NAO-216-6, Section 5.05.b).

The Regional Administrator for the Alaska Region of NMFS determined, in a February 13, 2002, memorandum to the record, that the the alternatives presented in this analysis, if implemented, would not individually or cumulatively have a significant effect on the human environment. Therefore, this action is categorically excluded under NOA 216-6 and the NEPA from both further environmental review and the requirement to prepare an environmental review document. Following is the information contained in the memorandum describing the basis of this determination.

The CDQ Program affects the human environment through the fisheries conducted by the CDQ groups to harvest CDQ allocations. The amount available for harvest by each of the six CDQ groups is determined by (1) the amount available for catch in the CDQ Program as a whole (the "CDQ reserves"), and (2) the percentage allocation of each CDQ reserve to individual CDQ groups. The alternatives under consideration would not change the process through which the CDQ reserves are established. However, they could change the process through which allocations are made to individual CDQ groups.

The annual CDQ reserves for groundfish, prohibited species, halibut, and crab are determined by the total annual catch limit for each species and the percentage of each catch limit allocated to the CDQ Program. The total annual catch limits are established by NMFS for groundfish and prohibited species, by the International Pacific Halibut Commission for halibut, and by the State of Alaska for crab. 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 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%). The environmental impacts of the annual allocations of groundfish and prohibited species to the CDQ Program are addressed by NMFS in the NEPA documents supporting the annual groundfish specifications process. NMFS is not required by NEPA to prepare environmental review documents associated with halibut and crab because these catch limits are not established by Federal actions.

The amount of CDQ catch available annually to each CDQ group is determined through a periodic, competitive allocation process. The alternatives proposed by the Council could change this allocation process. For example, the alternatives propose changes to the respective roles for NMFS, the State, and the Council in determining allocations among the groups; the number of years for which the allocations would be effective; and the criteria used to allocate CDQ reserves among the groups. However, specific percentage allocations or the amount of fish or crab harvested by an individual CDQ group do not significantly change the environmental impacts of the CDQ fisheries as a whole, because the CDQ groups conduct their CDQ fisheries in a similar manner. For example, all six groups harvest pollock CDQ allocations using primarily large trawl catcher/processors that harvest pollock at the same time and in the same places that they harvest non-CDQ pollock. All six groups harvest cod using large longline catcher/processors that operate during the

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spring, summer, and late fall when the non-CDQ cod fisheries are closed. Halibut CDQ allocations are harvested primarily in small, near-shore fisheries in areas around the local CDQ communities. The crab CDQ allocations are harvested by large vessels fishing shortly after the non-CDQ crab fisheries close. Therefore, changes in the CDQ allocation process would not significantly change the impact of the CDQ fisheries on the environment because this impact is determined primarily by the total amount of CDQ harvested rather than the amount harvested by an individual group. Any impacts on the environment as a result of groundfish harvests off Alaska are considered annually in the NEPA documents prepared for the groundfish harvest specifications.

The CDQ Program began in 1992 with an allocation of 7.5 percent of the Bering Sea and Aleutian Islands area (BSAI) pollock total allowable catch. This allocation was made as part of Amendment 18 to the BSAI FMP and Amendment 23 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). Amendments 18/23 implemented the initial “inshore/offshore” allocations of pollock in the BSAI and pollock and Pacific cod in the Gulf of Alaska. NMFS prepared a supplemental environmental impact statement (SEIS) for this action which analyzed the impact on the human environment of the pollock and Pacific cod allocations, including the pollock CDQ allocation. The final SEIS was dated March 5, 1992. This analysis provided a description of the physical, biological, economic, and social environment and analysis of the impact of the alternatives on groundfish stocks, bycatch, marine mammals, seabirds, coastal and marine habitat, the fishing industry, and fishing communities.

The administrative regulations governing the CDQ allocation process and oversight of the economic development aspects of the CDQ Program were implemented in 1992 (57 FR 54936; November 23, 1992). The alternatives now under consideration by the Council would revise these administrative regulations. An Environmental Assessment (EA) was prepared for the 1992 implementation of the administrative regulations (final EA dated December 7, 1992). In this EA, NMFS determined that “the CDQ program redistributes the harvest of fisheries resources but will not change the total amount landed” and that “[p]hysical impacts on the environment associated with any of these alternatives are not expected to differ significantly from the current fishery. Physical impacts are associated with differences in fishing gear used, locations where fishing occurs, processing locations, etc.”

The administrative regulations for the CDQ Program were revised in 1998 when NMFS implemented Amendment 39 to the BSAI FMP, Amendment 41 to the GOA FMP, and Amendment 5 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (63 FR 30381, June 4, 1998). Amendment 39/41/5 implemented the groundfish and crab license limitation program and expanded CDQ allocations to include 7.5 percent of all BSAI groundfish, prohibited species, and crab. These additional CDQ allocations created the “multispecies” CDQ Program. The North Pacific Fishery Management Council prepared an EA for Amendment 39/41/5 (final EA dated September 9, 1997). Based on this EA, NMFS concluded that the license limitation program and the expanded CDQ allocations would not have a significant impact on the environment. With respect to the CDQ Program, the EA concluded “[T]he benefits of this type of fishery have been exhibited in the current pollock CDQ program where the result has been a slower paced fishery, higher value fisheries relative to the open access fishery, generally lower bycatch rates of PSC species, lower discard rates, and a more stable planning environment for the participants.”

In assessing the potential significance of the impacts of an action on the human environment, NAO-216-6 (section 5.05.c) requires determination that the proposed action does not involve a geographic area with unique characteristics, is not the subject of public controversy based on potential environmental consequences, does not have uncertain environmental impacts or unique or unknown risks, does not establish

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a precedent or decision in principle about future proposals, does not result in cumulatively significant impacts, and does not have any adverse effects upon endangered or threatened species or their habitats.

The alternatives under consideration by the Council address the role of government in administration and oversight of the economic development aspects CDQ Program. They are administrative and procedural in nature and they would not change the impact of the harvest of CDQ allocations on the environment. Therefore, the alternatives do not involve a geographic area with unique characteristics, they are not likely to have uncertain environmental impacts or unique or unknown risks, and they would not have any adverse effects upon endangered or threatened species or their habitats. Although some aspects of the alternatives are controversial, the controversy relates to administrative and policy issues associated with the role of government in oversight of the CDQ Program and the process through which CDQ allocations are made. These controversial issues are not associated with the potential environmental consequences of the alternatives. In addition, because the alternatives would not result in impacts on the environment, they would not establish a precedent or decision in principle about future proposals that would affect the human environment. Furthermore, the alternatives do not individually have any impact on the human environment, so they also would not have a cumulative impact on the human environment.

### **5.4 Regulatory Flexibility Act**

#### **5.4.1 Analysis Requirements**

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities. When an agency publishes a final rule, it must prepare a Final Regulatory Flexibility Analysis (FRFA). Analysis requirements for the IRFA and FRFA are described below in more detail. In the case of the issues and alternatives considered in the CDQ policy analysis (BSAI Amendment 71), the Council will make recommendations for the preferred alternative, and NMFS will develop proposed regulatory amendments to implement the Council's preferred alternative. Prior to publishing the proposed rule, the IRFA presented here will be completed to reflect analysis of the Council's preferred alternative.

The IRFA must contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);

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- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
  1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
  2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
  3. The use of performance rather than design standards;
  4. An exemption from coverage of the rule, or any part thereof, for such small entities.

In determining the scope, or ‘universe’, of the entities to be considered in an IRFA, NMFS generally includes only those entities, both large and small, that can reasonably be expected to be directly or indirectly affected by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are design to address RFA compliance.

### 5.4.2 What is a Small Entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) and small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a ‘small business’ as having the same meaning as ‘small business concern’ which is defined under Section 3 of the Small Business Act. ‘Small business’ or ‘small business concern’ includes any firm that is independently owned and operated and not dominate in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the US including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$3.5 million for all its affiliated operations worldwide. A seafood processor

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is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3.5 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small businesses if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50% of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern. Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The six CDQ groups are considered small organizations under the RFA, both because they are non-profit corporations and because they represent the CDQ communities, which are small governmental jurisdictions.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000. The 65 western Alaska communities eligible for the CDQ Program are small governmental jurisdictions.

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### 5.4.3 Reason for Considering the Proposed Action

The Western Alaska Community Development Quota program was developed by the Council for the purpose of developing sustainable fishery-based economies in western Alaska communities by providing opportunities to participate in the BSAI fisheries in order to promote their overall economic well-being.

The program was founded on the following elements:

1. Community-based planning and goal setting. Community Development Plans (CDPs) are developed by community representatives on the CDQ groups' boards to meet their social and economic goals.
2. Allocations to the CDQ groups would be based on a balance between performance and need. Performance is measured through the goals, objectives, and milestones of the CDPs with an emphasis on delivering benefits to the communities and residents of western Alaska.
3. Accountability. The oversight role of the State of Alaska and NMFS is intended to ensure accountability of the CDQ groups in implementing their CDPs and meeting the goals of the program.

Although the primary objective of the CDQ Program is to help the participating communities to establish a viable presence in this capital-intensive industry, over time there has been a growing need to take into account the changing nature of the CDQ groups, the conditions in which they operate, and the communities they serve to benefit. The problem, given the growth and maturation of the CDQ Program over the last eight years, is that some of the administrative and policy aspects of the program may not be currently structured to adapt to changes, or may need to be clarified in Federal regulations, so that they will best suit the long-term goal of the program. This analysis considers several issues, alternatives, and options for changes in the regulations governing the CDQ Program to address these concerns and issues.

### 5.4.4 Objectives of, and Legal Basis for, the Proposed Action

The objective of the issues and alternatives described in this analysis is to improve the administration, oversight, and allocation process of the CDQ Program, to clarify the responsibilities of the Council, State of Alaska, and NMFS in oversight of the program, and to minimize the cost of government oversight and administration to the CDQ groups. The Magnuson-Stevens Fishery Conservation and Management Act provides the legal basis for this proposed action.

### 5.4.5 Number and Description of Small Entities Affected by the Proposed Action

The alternatives addressed in this analysis will directly affect the six CDQ groups representing the 65 western Alaska communities that are eligible for the CDQ Program. The CDQ groups are:

Aleutian Pribilof Island Community Development Association (APICDA),  
Bristol Bay Economic Development Corporation (BBEDC),  
Central Bering Sea Fisherman's Association (CBSFA),  
Coastal Villages Region Fund (CVRF),  
Norton Sound Economic Development Corporation (NSED), and  
Yukon Delta Fisheries Development Association (YDFDA).

Table B.1 in Appendix B contains a list of the communities. The CDQ groups and the communities they represent all are small entities under the Regulatory Flexibility Act.

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### 5.4.6 Recordkeeping, Reporting and Compliance Requirements

The IRFA must contain a description of the proposed reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

All of the issues and alternatives analyzed in this document would affect all of the CDQ groups and all of the eligible CDQ communities. Therefore, all of the various impacts discussed in Section 4 would be incurred by small entities. Analysis of these impacts will not be reproduced in the section. This section will summarize the recordkeeping, reporting, and compliance requirements of the issues and alternatives and generally identify whether a particular alternative may have a lower impact on the CDQ groups than other alternatives.

The CDQ groups are required by current regulations to submit a considerable amount of information to the State and NMFS in the Community Development Plan, amendments to the plan, annual financial reports, and annual budget reports, as described in Sections 3 and 4 and in the regulations in Appendix C and D. Some of the alternatives could increase requirements to submit information to the State or NMFS, which would increase the costs to some or all of the CDQ group. Other alternatives could reduce reporting, recordkeeping, and compliance costs.

Issue 1, Alternative 2, NMFS would add an administrative appeals process to the regulations governing the CDQ allocation process. If a CDQ group appealed NMFS's initial administrative determination on CDQ allocations, the CDQ group would have to submit certain information to NMFS to describe the basis of its appeal. However, the cost of preparing and submitting information in an appeals process is necessary to participate in the process. For the CDQ group appealing NMFS's determination, this participation is voluntary, not mandatory. For the CDQ groups that do not appeal, they may feel compelled to get involved in the appeals process to protect their interests.

Issue 2, Alternative 2 provides four options for the length of the CDQ allocation cycle. The CDQ groups must submit a new proposed Community Development Plan at the beginning of each CDQ allocation cycle as an application for CDQ allocations. Therefore, the longer the CDQ allocation cycle, the fewer CDPs that must be prepared, the fewer public hearings that must be attended, the fewer comments and appeals of allocations that must be prepared and submitted. All of these things mean that the longer the allocation cycle, the lower the administrative costs to the CDQ groups of participating in an allocation cycle.

Issue 2, Alternative 3 proposes long-term, fixed allocations to the CDQ groups or communities. This alternative would result in lower costs of reporting, recordkeeping, and compliance by the CDQ groups because the periodic, competitive CDQ allocation cycles would end. In addition, if the level of government oversight was reduced, this may result in fewer recordkeeping and reporting requirements, thereby reducing administrative costs to the CDQ groups.

Issue 4, Alternative 2 proposes four options for foundation quotas. The foundation quotas would allocate quota to the CDQ groups on a formula based on the number of CDQ groups, the number of communities in each group, or population. These formulas would change the CDQ allocation process and result in different allocations to the various CDQ groups, as described in Section 4.4. Some of the CDQ groups would probably receive higher allocations than they currently receive under some of the foundation formulas, and other CDQ groups would receive lower allocations. However, it is impossible to determine the exact impact on any CDQ

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group, because we do not know what the future allocations will be under the status quo (periodic competitive allocations).

Issue 6 considers four alternatives for the extent of government oversight of the CDQ groups and their affiliated businesses. Oversight requirements include the information that must be submitted to the State and NMFS in the CDPs and amendments to the CDPs, and in quarterly and annual reports. In addition, oversight involves requirements for review and prior approval by the State and NMFS of investments, expenditures, and debt by the CDQ groups and, in Alternative 2, their subsidiaries. These requirements are described in more detail in Issue 6. In general, Alternative 2 proposes the highest level of oversight and would, therefore, have the highest reporting, recordkeeping, and compliance requirements. Alternative 3 would require fewer reporting, recordkeeping, and compliance requirements because it would apply requirements for prior approval of investments only to the CDQ groups. Alternative 4 would further reduce requirements for prior approval of significant investments and debt by the CDQ groups. However, the requirement that oversight apply only to the activities of the CDQ group funded by royalties may require additional reporting by the CDQ groups to provide separate accounting of activities.

Issue 7 proposes four alternatives regarding the types of allowable projects, two of which would revise NMFS regulations to allow some level of investment in non-fisheries related projects. Alternative 3 proposes four options at varying levels of maximum allowable investment in non-fisheries related projects, and Alternative 4 proposes that there be no restrictions on the amount of investment in non-fisheries related projects. The no action alternative and any alternative that allows some level of investment in non-fisheries related projects necessitates that the CDQ groups comply with reporting requirements and submit annual financial statements to demonstrate compliance with Federal regulations with respect to the type of projects the CDQ groups are undertaking. Regardless of the limit placed (\$0 - \$1 million) on the CDQ groups, each group would have to comply with reporting requirements in order to prove that they did not exceed the maximum allowable investment in non-fisheries related projects. Alternative 4 may have a lower impact on small entities with regard to recordkeeping and reporting requirements than the other alternatives under consideration, as the groups would be allowed to invest in any type of project. Under this alternative, the Council may consider a reduced government role and fewer reporting requirements, as it would remove the need for the government to make a determination about whether a specified project fits the fisheries-related requirement. Therefore, if the Council selects one of the alternatives that provides for some restriction on expenditures and thus has greater associated costs to the CDQ groups, the Council should explain the overriding policy goal that lead it to select that alternative. The policy implications at issue are described in the analysis in Section 4.7.

Issue 8 - proposes reductions in reporting requirements associated with CDQ transfers and alternative fishing plans in the CDPs.

Analysts were unable to identify any specific recordkeeping, reporting, or compliance impacts on the CDQ groups, CDQ communities, or CDQ partners associated with any of the alternatives considered for the following issues: Issue 3 (role of government) or Issue 5 (evaluation criteria). However, public comment is requested on this whether this assessment by analysts is correct.

Additional information will be added by analysts after the Council selects its preferred alternative and NMFS will complete the IRFA at the time it develops the proposed rule to implement the Council's recommendations.

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### **5.4.7 Relevant Federal Rules that may Duplicate, Overlap, or Conflict with Proposed Action**

The analysts are not aware of any other Federal rules that would duplicate, overlap, or conflict with this proposed action. Public comment is requested on this whether this assessment is correct.

### **5.4.8 Description of Significant Alternatives**

The alternatives under consideration are provided in Section 1.4. The Council has identified a wide range of issues and alternatives to be analyzed which would implement policy and administrative changes to the CDQ Program. Public comment is requested on additional alternatives that should be considered.

### **5.5 Executive Order 12898**

E. O. 12898 focuses on environmental justice in relation to minority populations and low-income populations. The EPA defines environmental justice (EJ) as the: "fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws, regulations, and policies." This executive order was spurred by the growing need to address the impacts of environmental pollution on particular segments of our society. This order (Environmental Justice, 59 Fed. Reg. 7629) requires each Federal agency to achieve environmental justice by addressing "disproportionately high and adverse human health and environmental effects on minority and low-income populations." The EPA responded by developing an Environmental Justice Strategy which focuses the agency's efforts in addressing these concerns.

In order to determine whether environmental justice concerns exist, the demographics of the affected area should be examined to determine whether minority populations and low-income populations are present, and if so, a determination must be made as to whether implementation of the alternatives may cause disproportionately high and adverse human health or environmental effects on these populations. Environmental justice concerns typically embody pollution and other environmental health issues, but the EPA has stated that addressing environmental justice concerns is consistent with NEPA and thus all Federal agencies are required to identify and address these issues.

The 65 eligible CDQ communities in western Alaska comprise one of the most economically depressed areas of the nation, and thus a major goal of the CDQ Program is to allow these communities to accumulate sufficient capital from fishing activities in the BSAI to generate sustainable, diversified, local economies. In addition, by definition, an eligible community must be certified by the Secretary of Interior as a Native village under the Alaska Native Claims Settlement Act. In total, about 87% of the population in these communities is comprised of Alaska Native residents. Because the CDQ Program was specifically designed to foster fishery participation among, and direct fishery benefits toward, minority populations and low-income populations in the economically underdeveloped communities in western Alaska, all of the directly affected entities (CDQ communities) would be considered both low-income and comprised of minority populations under this order.

To the extent that any Federal action negatively impacts the CDQ program and communities, these may be considered environmental justice impacts. The existing conditions of the CDQ region are presented in the Steller Sea Lion Final Supplemental SEIS in Appendix F(4), and additional information relating to environmental justice issues specific to Alaska Native populations is in Section 3.12.2.9 and 2.5.1.4 (November 2001). However, the action proposed in this amendment is specific to the administration and policy aspects of the CDQ Program; thus, because all of the directly affected entities are of similar demographics, there would not be disproportionate impacts to a specific minority or low-income population.

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In addition, it has been determined that the proposed actions do not appear to have any significant individual or cumulative environmental or human health effects, thus no distinct population, minority or otherwise, should be affected in this regard.

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**Appendix A. CDQ Policy Committee Recommendations – Report to Council June 2001**

Report and Recommendations of the NPFMC CDQ Policy Committee

May 24 - 25, 2001 – Anchorage, Alaska  
Hilton Hotel - 8:30 am - 5 pm

- Committee: Rick Lauber (Chair), Ragnar Alstrom, Eugene Asicksik, John Bundy, Jeff Bush, Morgen Crow, Phillip Lestenkof, John Moller, Robin Samuelsen, Greg Baker (absent)
- Staff: NMFS - Sally Bibb  
NPFMC - Nicole Kimball  
State of Alaska - Bryce Edgmon, Laird Jones, Greg Cashen
- Other: Todd Loomis, Eric Olson, Steve Rieger, Don Mitchell, Roger DuBrock, John Lamont, Norman Cohen
- Agenda: Provide the Council with a list of issues and alternatives for analysis as identified at the April committee meeting, and if possible, recommend to the Council the committee's preferred alternative on each issue.

The CDQ Policy Committee was formed to address issues related to Community Development Quota (CDQ) oversight responsibilities of the State and NMFS, as well as provide policy recommendations to the Council on changes that may be needed to regulations governing the role of NMFS and the State, the CDQ allocation process, and the administration of the CDQ Program. The Council requested a report from the committee no later than June 2001. In April, the committee identified nine issues and several alternatives and options under each issue, for further discussion at the next meeting. The committee met again on May 24 - 25, and used this list of issues as a framework document by which to make specific recommendations to the Council, if general consensus could be reached. The committee did not reach consensus on several issues, and majority/minority opinions are also noted in the following report. This report encompasses the minutes of the May committee meeting, as well as the final committee recommendations on the scope of analysis to the Council.

**This report lists each of the nine issues as identified and addressed by the committee. The committee recommendation is listed first under each issue, and the relevant committee discussion, motion, and final vote follow the recommendation.**

**ISSUE 1: Periodic or Permanent CDQ Allocations**

**COMMITTEE RECOMMENDATION**

**Alternative 2, Option 2:** Establish a fixed allocation cycle of 3 years. Develop an escape clause so that in extraordinary circumstances the State could recommend and implement a mid-cycle change to an allocation upon approval of the Council.

Committee Discussion

The Committee discussed all of the alternatives under Issue 1, but focused primarily on Alternative 2, which would establish a fixed allocation cycle. Several of the committee members supported recommending a 3-year allocation cycle. The general consensus is that a change is needed to the current 1 or 2-year cycle, as developing a CDP is relatively expensive and burdensome to the groups. Most of the groups also found that implementing a CDP within a two-year period is fairly difficult, and a shorter cycle tends to force the group to act too conservatively to provide a good investment for the communities in the region. A three-year cycle would allow the communities relative stability and reasonable expectations for the CDP, without establishing a permanent allocation.

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The State recommended establishing a two-year cycle in regulation, consistent with their written comments provided to the committee prior to the meeting. The State is concerned that extending the allocation cycle to three years is too long to wait to make adjustments if unforeseen events change a group's ability to harvest its allocation or if other circumstances external to the program necessitate a change in the allocations. In addition, the State contends that a shorter allocation cycle is appropriate in order to keep the groups accountable to the milestones identified in their CDPs, as well as to provide incentives for improvement.

Two members supported establishing a permanent allocation (Alternative 3), but stated that a three-year cycle would be a preferable second choice.

In order to mitigate the State's concern with unforeseeable circumstances and a longer fixed allocation cycle, the Chairman suggested including an "escape clause", in which the State would retain flexibility to react to statutory changes, external impacts, and environmental concerns. The escape clause would need to be identified in regulation in order for the State to implement changes without necessitating a regulatory or plan amendment to do so. The State suggested incorporating language that would require Council approval to make any mid-cycle changes the State recommends, so that the groups would have the opportunity to provide comments to the Council on any proposed changes. The State anticipates that the clause would only be invoked in the most extraordinary of circumstances, but contends that it is important to have that flexibility available.

The committee discussed the idea of adding an escape clause and generally agreed that should the State or the Council determine a need to revisit the allocations before the end of the three-year cycle, the issue would then be placed on the Council agenda. The State noted that the groups themselves would likely notify the State that a mid-cycle change is necessary. In this event, the first question for the Council would be whether to reconsider the allocations mid-cycle. If the Council agrees to reconsider the allocations, then the entire allocation process would be re-initiated.

Sally Bibb noted that the current CDQ regulations provide for transfers of CDQ allocations within an allocation cycle. Using the transfer provision to change allocations probably would only be used if the CDQ group giving up CDQ was willing to do so. She expressed concern with the process involved in reallocating quota from a CDQ group that was unwilling to have the quota reallocated and whether this process could be carried out before the three-year allocation cycle expired.

**Jeff Bush moved that the committee recommend Alternative 2, Option 2: Establish a fixed allocation cycle of three years, with an escape clause to be developed so that in extraordinary circumstances the State could recommend and implement a mid-cycle change to an allocation, upon approval of the Council.**

**The motion passed with two objections (Moller, APICDA and Asicksik, NSEDC).** NSEDC objected with the concern that the groups would not be involved in the decision should a mid-cycle allocation change be determined necessary. APICDA favored a permanent allocation.

### **ISSUE 2: Define the role of government in oversight of the CDQ Program**

#### **COMMITTEE RECOMMENDATION**

**Alternative 2:** Specifically identify elements of the government's responsibility for CDQ program administration and oversight of the economic development elements of the program. Government oversight of the CDQ program and the CDQ groups is limited by the following purposes:

1. Ensure community involvement in decision-making;
2. Detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest by verifying CDP milestone compliance and financial performance;
3. Ensure that internal investment criteria and policies are established and followed;

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4. Ensure that significant investments are the result of reasonable business decisions, i.e., made after due diligence and with sufficient information to make an informed investment decision; and
5. Ensure compliance with legal program requirements.

### Committee Discussion

John Bundy (Glacier Fish) handed out copies of substitute language for Issue 2, Alternative 2, as a motion for addressing the parameters and limitations to government oversight. It was noted that the intent is to limit government oversight without excluding the business assistance role the State has previously undertaken. That role is viewed as a service provided to the CDQ groups and was agreed should not be eliminated.

While not in the original proposed language, the State suggested adding “ensure compliance with legal program requirements” so that it is explicitly stated that the State has an oversight role in other aspects of the program. The example of predatory practices was used: if a group engages in predatory practices, with the willful intent to put another group out of business, the State would retain the authority to discourage that practice during the allocation process. The suggested language was added as a friendly amendment.

Sally Bibb (NMFS) questioned whether the list of responsibilities applied equally to the State and Federal governments or whether they are intended to be divided among the agencies. It was noted that even if the committee intends this list as primarily functions of the State, if language is added to the FMP or the regulations, it could also become the responsibility of NMFS.

One member noted that government oversight is necessary to protect the intent of the program and the beneficiaries/residents in these communities, and thus should not focus on oversight of CDQ managers. It was suggested that oversight instead be tied more closely to the allocation process. The maker of the motion clarified that his intent with outlining these oversight responsibilities is based on the assumption that the allocation process has already occurred, and that oversight is still necessary to ensure that management is acting effectively. While the true accountability should lie with the residents of the CDQ communities, the assumption is that some level of government oversight is going to be necessary, and that the groups should have input as to the appropriate parameters. The maker of the motion did not intend for the list to address the allocation process.

The committee discussed at length the responsibility of the government to “audit CDP milestones” as originally proposed. The State questioned whether use of the word “audit” implies that the committee would like the State to undertake a more formal audit process, in order to audit all of the CDP milestones and not just the financial statements. It was clarified that the intent of the motion is not to expand government oversight beyond its current bounds, but to continue the audit requirement of the financial statements as well as a review (not formal audit) of the goals and objectives in the CDPs. The language should not imply that the current financial statement audit requirement be removed or that the current audit process be expanded, but it should convey that the State continue its role in tracking and reviewing the milestone and financial performance of the groups.

The Chair noted that (c) in the draft issues/alternatives list covers the financial audit requirement and thus a separate notation for that responsibility may not be necessary. It was suggested to delete (e): audit CDP milestones, and to add explicit language that CDP milestone compliance and financial performance would continue to be reviewed by the State.

The State also noted that the list does not mention program goals, and questioned whether NMFS would be prohibited from adopting regulations necessary to comply with Federal law (the Magnuson-Stevens Act) and the FMP if limited to this list of government oversight responsibilities. NMFS confirmed that the goals and purpose of the program would still exist in the FMP regardless of any oversight responsibilities identified in regulation, and additional regulations could also be implemented to support those goals.

**John Bundy moved the language provided for Alternative 2, to limit and specify government oversight in regulation, with revisions made by the committee as referenced above. The motion passed with one objection (Moller, APICDA).** APICDA objected on the basis that the motion effectively reflects the current oversight responsibilities of the State even though they are not currently specified in regulation. APICDA noted support for a very limited government oversight role, applied to the program as whole, and not to each individual group.

### **ISSUE 3: CDQ Allocation Process - Type of Quotas**

#### **COMMITTEE RECOMMENDATION**

**Alternative 1:** Status quo. CDQ and prohibited species quota (PSQ) are specified by species, area, and gear type (sablefish and halibut). Each CDQ group is eligible to receive a percentage allocation of each CDQ or PSQ reserve as recommended by the State. The State decides how to balance demographic or socioeconomic factors with performance criteria.

#### **Committee Discussion**

The discussion of this issue revolved around whether to establish a foundation quota versus a performance quota, or some combination of each, as opposed to the current wholly competitive process. While the overall importance of the topic was noted (as identified during the April committee meeting as a priority issue), the committee discussed the feasibility of taking up this issue in the timeframe allotted. The State suggested that this is a far more complicated issue than the committee can deal with in one meeting, and the State does not support establishing a foundation quota.

The foundation versus performance quota concept was suggested by the National Research Council (NRC) in its 1999 report on the CDQ Program. The following is excerpted from page 95 of the NRC report:

“The foundation quota (likely more than half of the allocation) would be allocated on measures of population, income, employment, and proximity to the fishery being allocated. The performance quota (the remainder) would be allocated based on clearly defined performance measures such as accomplishments of the Community Development Plan goals, compliance with fishing regulations, quality of Community Development Plans, and so forth.”

One member noted that the original intent was for the CDQ program to be entirely performance-based, in order to ensure real-time benefits to each CDQ community. Because the concept of a foundation quota is generally discussed in terms of establishing a fixed portion of the quota based on population, the committee primarily discussed the issue in that context. Those not in support of a foundation quota generally agreed that population should be one consideration, but not the only criteria for receiving quota. The hypothetical used was that the largest group (by population) could have the poorest record of supplying benefits to their communities. Some members expressed concern that a foundation quota would also provide incentive for communities to drop out of their current CDQ groups and apply for their own (guaranteed base) allocations, which could potentially erode the entire program.

CBSFA strongly supports the foundation quota plan, but only for the pollock allocations. Other members, while not supporting a foundation quota, thought that if the Council did establish a foundation quota it should apply to crab, pollock, cod, and halibut.

The committee recognized that its time could be spent more productively on other issues and agreed to move on. **The Chair noted that because there is not significant support for establishing a foundation-based quota, the committee would not be recommending any changes to the current system. In effect, the committee recommends the status quo (Alternative 1).**

#### **ISSUE 4: CDQ Allocation Process - The Evaluation Criteria**

##### **COMMITTEE RECOMMENDATION**

**Alternative 2:** The criteria for making CDQ allocations should include but are not limited to the following:

1. Number of participating communities, population, and economic condition.
2. A CDP that contains programs, projects, and milestones which show a well-thought out plan for investments, service programs, infrastructure, and regional (or community) economic development.
3. Past performance of the CDQ group in complying with program requirements and in carrying out its current plan for investments, service programs, infrastructure, and regional (or community) economic development.
4. Past performance of CDQ group governance, including: board training and participation; financial management; and community outreach.
5. A reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group.
6. The CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 CFR 679.1(e).
7. In areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

The State will develop a scorecard evaluation process for the above criteria, in consultation with the CDQ groups. (The State would provide a rationale for each of the scores on each of the listed criteria. The criteria will not be subject to a numerical weighting scheme and are not necessarily given equal weight by the State.)

The purpose of the CDQ program is to benefit eligible Western Alaska communities. The primary purpose is not to use the CDQ program as a tool to achieve other government policies. If other government policies are involved and relate to allocations, milestones, or performance measurement, they must be explicitly identified, after consultation with the CDQ groups, and agreed to by the Council.

##### **Committee Discussion**

The committee generally agreed that the current allocation process is not adequate. The State recognized problems in the past with having the CDQ groups develop and agree on a set of criteria, as each group typically advocates for the criteria in which they are strongest. This is the approach captured in Alternative 3, under the H.R. 553 proposed legislation. The Chair questioned whether development of the criteria could be effectively delegated to the groups as proposed in H.R. 553, as only one group would need to object in order to prevent consensus. In effect, the responsibility of developing the criteria would then revert back to NMFS and the Council.

NMFS noted that Congress may pass legislation (H.R. 553) allowing the groups to develop their own criteria, which could effectively bypass the Council decision-making process, if the CDQ groups agree on criteria. However, should the Council determine that they want the groups or committee to recommend a set of evaluation criteria, it would still need to go through the public process of the Council and NMFS before it could be ultimately approved.

The State questioned whether the real issue is not the content of the criteria but whether it needs to be a lesser number of criteria combined with a more transparent process. The committee also raised the question of whether it should address this issue at all or whether it should wait for the outcome of the APICDA lawsuit, which is largely based on the evaluation criteria. Doubting that the courts would take on the task of developing the criteria

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and not wanting the Council process to be dictated by external sources, the committee generally agreed that waiting for a court decision was not an adequate solution. More discussion ensued on allowing the groups to get together outside of the committee to develop and agree upon the appropriate criteria. However, the committee generally agreed that the likelihood of complete consensus is low, which would put the responsibility for developing the criteria back with the Council and NMFS.

One member suggested using the Coastal Villages (CVRF) proposal of four basic criteria as a starting point. The CVRF proposal was provided to the committee previous to the meeting. CVRF stated that their proposed criteria was largely based on the criteria that was generally agreed to by the rest of the groups in previous attempts to gain consensus on the evaluation criteria. After much discussion, the committee largely agreed that delaying the issue was not an adequate solution, and that the CVRF proposal represented a good framework with which to begin the process.

The State suggested adding a “scorecard” to whatever criteria is recommended, so that each group could see exactly which factor lowered or raised their overall score. The State cautioned about numerically weighting the scores, as the weighting becomes increasingly important as you narrow the number of criteria. The State noted that some subjectivity would remain in the process, as each criteria would not be numerically weighted, and the State would have to consider which criteria were more important. However, the State did note that fewer criteria and the scorecard method would improve the transparency of the process.

The committee clarified that this would still allow the State and NMFS to approve different allocations of individual species to different groups. This would continue to place the burden on the groups to explain their harvest strategies in the CDPs, and allow the groups to maximize their abilities and allocations.

**Bundy moved the CVRF criteria with the modifications described above. Robin Samuelsen (BBEDC) moved to add three of the existing State criteria to the CVRF list, for a total of seven. He also moved to change the introductory language to: “criteria should include but is not limited to the following”. This motion was accepted as friendly.**

**The motion passed with two objections (Moller, APICDA and Asicksik, NSEDC).** APICDA objected on the basis that the State would still be weighting the criteria subjectively, which doesn’t adequately resolve the issue of transparency. APICDA also did not support narrowing the criteria at this point. Alstrom (Yukon Delta) noted a concern with allocations based on past performance of regional or community economic development, but did not object to the overall motion. Lestenkof (CBSFA) generally objects to using population and number of communities as evaluation criteria, but also did not object to the overall motion.

**Friday: Bundy moved additional language clarifying the intent and purpose of the CDQ program and explicitly requiring the State to make the groups aware, and get Council approval, of any government policies that may affect the allocation process. The motion was amended to add this language, with one objection (Samuelsen, BBEDC).** BBEDC objected because the purpose and intent of the program is already stated in the FMP and NMFS regulations, and it contends that it is not necessary to imply that the program is used to implement other State policies. BBEDC did not object to the overall motion.

### **ISSUE 5: Public Comment on Allocation Recommendations; Appeals Process**

#### **COMMITTEE RECOMMENDATION**

**Alternative 2:** Develop a comment period for the State’s allocation recommendations such that the State is required to:

1. Issue initial CDQ allocation recommendations and an explanation of changes from the previous allocations;

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2. Accept comments from the public and the CDQ groups;
3. Issue final allocation recommendations and a written response to comments, including the reason for any changes from the State's initial allocation recommendations;
4. Consult with the Council on the final allocation recommendations; and
5. Submit final recommendations to NMFS.

The committee also recommends that the Council consider defining a more active role for NMFS as an appeals forum.

### Committee Discussion

The committee discussed the roles of the State versus NMFS, and the Chair noted that the Council typically agrees with the State recommendation, as it has limited information to warrant overturning a State recommendation. The idea that follows is that the Council may not have enough time or information to represent an adequate appeals forum. NMFS explained that while the public and the CDQ groups have the opportunity to comment on the State recommended allocations (at the Council meeting), the current process does not have an administrative appeals process through NMFS. The current process does not require NMFS to provide another public comment period, and NMFS bases the final decision primarily on information submitted by the State and on any comments by the Council. There is a distinct difference between a public comment period and a response to those comments versus a formal appeals process with a group of people that are appointed for that purpose.

NMFS does have the authority to disapprove the State's recommendations, even though the agency has not done so in the past. The State has a lot of the responsibility for the program, and NMFS does not provide detailed instructions to the State (in the form of guidelines) on how to make the allocations.

Sally Bibb stated that Alternative 3, Option 2, to develop an appeals process similar to that established in the crab FMP, may not be appropriate but was included because it is an appeals process for management responsibilities that are deferred by the Council and NMFS to the State of Alaska. The process by which we defer crab management responsibility to the State may have some parallels to CDQ Program. She noted that the lack of an appeals process is addressed in the APICDA lawsuit. The committee also discussed the potential for one group to hold up the rest of the allocations if they are involved in an appeal.

One member recommended establishing an annual meeting between the State and the CDQ groups, sometime between when the State announces the allocation recommendations (September) and when the Council approves the allocations (October). This allow the groups a forum to discuss the rationale behind the initial State recommendations. Another member noted that such a meeting would be an appropriate time to correct any errors in the application. It was suggested that to date, the groups may not have used the Council process to the fullest extent possible to make a pitch to change a State recommended allocation.

The State is concerned with the time necessary to conduct a full administrative appeal, likely much more time than a CDQ group could afford to wait. The State also noted that there is already an opportunity to comment on the recommendations to the Council, and that if there is an egregious mistake, the State could make an adjustment (under current process). If we formalize that process to allow the groups to challenge an allocation, it would be in the groups best interest to challenge every single allocation.

APICDA stated its concern that NMFS should play a larger role in the allocation process, and not just approve the State's recommendations. APICDA also thinks we should address the transparency of the process, so that other State policies do not influence the allocation process. The committee discussed the confidentiality issue and the fine line that exists between transparency in the process and keeping a group's financial information confidential.

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**Robin Samuelsen moved Alternative 2, to develop a comment period for the State's allocation recommendations, with the modification to allow both the public and the CDQ groups to comment on the initial allocation recommendations. Language was also included to reflect a requirement that the State provide a rationale for any changes from the previous year's allocation.** It was clarified that the recommendation is to establish a comment and response period and not a formal appeals process.

**The motion passed with two objections (Bush, State of Alaska and Moller, APICDA).** The State objected (minimally) on the grounds that the additional step added to the process will have no meaningful effect, due to the low likelihood that a public hearing would be productive and result in a re-allocation of all of the other groups' allocations. APICDA objected on the grounds that the motion doesn't change or strengthen NMFS' role in the allocation process. NMFS noted that this alternative keeps the agency role about the same, primarily process-oriented and limited to ensuring that the State completes the process to make the allocation recommendations but not conducting an independent review of those recommendations.

**John Bundy moved that a statement be added to the recommended alternative to reflect that the committee recommends that the Council consider defining a more active role for NMFS as an appeals forum. This language passed with one objection (Samuelsen, BBEDC).** BBEDC contends that NMFS' current role is appropriate and does not want NMFS to take on additional duties as it would slow down the entire process.

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

**COMMITTEE RECOMMENDATION**

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

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

Include a rebuttable presumption regarding State oversight of CDQ businesses, so that if a CDQ group owns 50% or more of a subsidiary company, the burden is on the CDQ group to prove that they do not exercise effective management control over that entity (as defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment (not as a CDQ-owned business) and thus subject to lower oversight and reporting requirements.

Committee Discussion

**Asicksik (NSED) moved Alternative 4, which mirrors the Congressional legislation proposed that specifies that oversight extend only to activities of the CDQ group and not to the businesses owned by the CDQ group.**

**Samuelsen (BBEDC) noted that he cannot support Alternative 4 and offered Alternative 2, which mirrors the Bright New World proposal developed by the State and the CDQ groups, as a substitute.** BBEDC could not support Alternative 4 because of the inherent ability for a group to set up several "shell" corporations as subsidiaries, in order to avoid government oversight. BBEDC contends that this does not support the intent of the Council. Further, Alternative 2 represents the concept that the groups themselves worked to develop, and it would provide the groups with maximum flexibility while keeping investments made with CDQ money within the purview of government oversight.

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The State also voiced support for Alternative 2 and discussed the need for an amendment. Currently, if a group owns 50% or more of a subsidiary company, there is a nonrebuttable presumption that the subsidiary is subject to oversight of the program. The State noted that there has always been a concern with that percentage. The reason for the 50% ownership clause is that greater than 50% ownership technically allows that entity (the CDQ group) to control the corporation, even if the CDQ group is not effectively or practically controlling the corporation.

The State offered an amendment to include a rebuttable presumption, so that if a CDQ group owns 50% or more of a subsidiary company, the burden is on the CDQ group to prove that they do not exercise effective management control over that entity (as defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment and thus subject to lower oversight and reporting requirements. Motion accepted as friendly.

The committee discussed the rationale behind requiring oversight over a subsidiary company that the group does not have effective control over. The State's position is that the CDQ groups engage in two types of activities for the benefit of their communities. The first is as direct participants of those activities. The second is an investment activity, whereby a group may invest in a fishing operation that they do not effectively control but will receive a return on their investment as a means to raise capital. In the latter case, the State can't expect a CDQ group to control a company in which they may be a majority owner but do not have effective control over, and the rebuttable presumption clause mitigates that problem. The Bright New World proposal makes a distinction between these two types of activities and cleans up the regulations that define the differences. As part of that proposal the regulations would address the difference between core projects (which require a substantial amendment for a change to a CDP) and non-core projects (which require a technical amendment for a change to a CDP). In the context of this alternative, if a subsidiary is majority-owned and effectively controlled by the CDQ group, then a substantial amendment is needed for a change to the CDP to undertake a new activity or investment that is not covered in the CDP. If not, that level of review and procedure may not be necessary.

Based on some of the discussion regarding effective management control, Bundy offered substitute language for Alternative 2 that would delete reference to 50% ownership of the subsidiary company in the State's proposal and base the extent of government oversight solely on whether the CDQ group asserts effective management control over the company. The effect is that it doesn't matter whether the group is a majority owner, it only depends on whether the group has control over the operations of the subsidiaries. Motion failed for lack of a second.

**The motion is to recommend Alternative 2, with the additional language provided by the State regarding the rebuttable presumption. The motion carried 5-4.** The objecting votes were from Asicksik (NSED), Bundy (Glacier Fish), Lestenkof (CBSFA), and Moller (APICDA). Baker was absent. NSED strongly supports Alternative 4, with very limited government oversight. APICDA noted that they have lost faith in the allocation process as administered by the State and could not support an alternative which solidified the State's oversight role. CBSFA objected on the grounds that the committee should spend more time developing the criteria to ensure good decision-making.

BBEDC expressed frustration with the direction of the committee with respect to this issue, primarily because part of being responsible to the community residents is encompassed in the need for State oversight. The State also voiced concerns about objections to the regulatory changes included in the Bright New World proposal, as the CDQ groups were primary contributors to that proposal.

### **ISSUE 7: Allowable Investments by CDQ Groups (Fisheries-Related Projects)**

Requirements would apply to the CDQ group itself and its effectively controlled subsidiaries, as recommended in the preferred alternative for Issue 6.

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### COMMITTEE RECOMMENDATION

**Alternative 3:** Revise NMFS regulations to allow investments in non-fisheries related projects.

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

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

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

### Committee Discussion

The committee generally agreed that a firm interpretation of, or modification to, the current regulations is needed.

Yukon Delta is concerned with the potential for not having any fisheries-related projects to invest in during particular years, due to stressed commercial fisheries in its region. The current requirement that all CDQ projects are fisheries-related may inhibit the group from investing in any projects during a given year, and securing any return for their communities. A suggestion was made to add flexibility to the regulations so that groups can take advantage of alternative, better opportunities, especially in the case that there aren't any fisheries-related projects to invest in. Yukon Delta voiced support for Alternative 3, Option 2, which would limit the amount of investments in non-fisheries related projects to a maximum of 20% of pollock royalties. It was noted to keep in mind the variations in the group's investment abilities—while 20% may represent a lot of money for a larger group, it is a fairly modest amount for a smaller group. Yukon Delta also supports Suboption 1, which would require any non-fisheries related projects to be done in the region represented by the CDQ group.

Another member, while voicing support for Alternative 2, Option 3, expressed concern with a policy that would limit the investment to a specific percentage, as it may influence a group to invest in a project solely for that reason and not because it is a good business decision. It was stated that the groups need flexibility to meet the needs of each group's individual region.

NSEDC supports a less restrictive option (Alternative 4) which would allow the CDQ groups to decide what percentage of their total revenues they wish to invest in non-fisheries related projects, without a limit.

BBEDC noted problems with the fact that some communities represented by the groups are well above the commercial fishing district. In order to make meaningful investments in those communities the program needs additional flexibility regarding this issue. BBEDC also cautioned the committee and suggested imposing a maximum dollar amount to be invested in non-fisheries related projects, so that the CDQ groups do not get taxed with taking over State responsibilities for such projects as fixing roads, hiring teachers, etc.

The Chair also cautioned the committee that while one purpose of the CDQ program is to make a profit, that is not the sole purpose. Degrading the public perception of the program may risk eroding support for the entire program.

Sally Bibb noted the need to clarify in regulation the ability of the CDQ groups to spend money on non-fisheries related projects such as scholarships, cultural events, and charitable contributions. The need to clarify our policy on these types of expenditures is particularly important if the Council decides to limit non-fisheries related expenditures to "economic development projects."

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CBSFA supported Alternative 2 (prohibiting non-fisheries related projects) and cited the original intent of the program. Concern was voiced that a non-fisheries related project would be weighted the same as a fisheries-related project, and potentially affect a group's allocation that is still trying to meet the "fisheries" intent of the program.

**Samuelson moved Alternative 3, Option 2, with additional language to institute a cap of \$500,000 of pollock royalties that can be invested in non-fisheries related projects. Suboption 1 would also apply, to require non-fisheries projects to be done in-region.** It was clarified that this limitation would be applied on an annual basis, and that the standard non-fishery projects that are currently allowed (scholarships, etc.) would continue to be allowed and not subject to the cap.

A few members voiced opposition to the \$500,000 cap. A motion was made to delete the cap but failed.

**The State voiced concern with not restricting the types of non-fisheries related projects, and made a motion to amend the language so that non-fisheries projects would be limited to *economic development* projects and not encompass community social programs.** The amendment was accepted as friendly, with no objections from the committee.

**Alternative 3, Option 2, Suboption 1, as amended above by the State, passed 5-3. Lestenkof (CBSFA), Moller (APICDA), and Asicksik (NSED) objected based on the concerns expressed above during the discussion.**

### ISSUE 8: Governance

After some discussion, **the committee voted not to take action on Issue 8**, as no change is determined necessary. It can be removed from the list of issues and alternatives for analysis.

### ISSUE 9: Other CDQ Administrative Issues

NMFS noted that most of the administrative changes under this issue would be incorporated, should the Council initiate an analysis, regardless of the committee's recommendations. These are primarily reporting changes based on the State's recommendations to simplify and streamline the regulations regarding the CDP process. In effect, all of these changes would be considered in an analysis for a regulatory package regardless of whether the committee takes action on Issue 9.

Given the above discussion, the committee supports the Council incorporating the options under Issue 9 in an analysis.

### OTHER ISSUES

#### **Fishery management issues:**

NMFS organized these issues in a separate 3-page paper which was distributed to the committee prior to this meeting. Although extremely relevant, these issues are considered separate from the policy issues the committee was tasked to address. These issues will be addressed in an initial analysis for the October 2001 Council meeting. **The committee took no action on these issues.**

#### **Continuation of the committee:**

The committee was initially created on the basis that it would address the policy priorities of the committee, provide recommendations to the Council, and subsequently be dis-banded. **The committee recommends the Council keep the committee intact for at least another year, to address on-going and upcoming CDQ issues on an as needed basis.**



**Appendix C. State of Alaska Regulations at 6AAC93  
WESTERN ALASKA COMMUNITY  
DEVELOPMENT QUOTA PROGRAM  
(as amended August 19, 1999)**

**6 AAC 93.010 PURPOSE OF REGULATIONS.**

The purpose of this chapter is to implement the state's role in the Western Alaska Community Development Quota Program (CDQ Program) for the Bering Sea and Aleutian Islands Area under 50 C.F.R. 679.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

**6 AAC 93.012 REFERENCES TO FEDERAL LAW.**

In this chapter, each reference to a provision of 50 C.F.R. 679 refers to that provision as revised as of June 9, 1999.

History - Eff. 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

**6 AAC 93.015 CDQ TEAM; RESPONSIBILITIES; LEAD STATE AGENCY.**

(a) To carry out the state's role in the CDQ program under 50 C.F.R. 679, a CDQ team shall perform functions as directed in and under this chapter. The CDQ team consists of

(1) the commissioner of the Department of Community and Economic Development, or one or more of the commissioner's representatives from that department, including one person to act as CDQ manager;

(2) the commissioner of the Department of Fish and Game, or one or more of the commissioner's representatives from that department; and

(3) one or more other state employees or state officials designated jointly by those commissioners, if additional members of the team would be beneficial.

(b) The Department of Community and Economic Development is the lead agency. CDQ program material submitted under this chapter shall be submitted to the lead agency.

(c) To fulfill the purpose of this chapter, including providing accountability to the CDQ program, the CDQ team shall

(1) solicit submittals of community development plans (CDP) from eligible communities;

(2) review and evaluate proposed CDPs;

(3) make recommendations regarding CDQ allocations and changes to allocations;

(4) review and make recommendations regarding amendments to approved CDPs;

(5) monitor the performance of each CDQ group in achieving the group's milestones and objectives in its CDP;

(6) seek to ensure consistency between the CDQ program standards in 6 AAC 93.017 and a CDQ group's activities that are subject to this chapter and 50 C.F.R. 679; and

(7) based on reports and other information obtained under this chapter, prepare and submit to the governor, for the governor's review, approval, and necessary action, the state's annual progress report described in 50 C.F.R. 679.30(g) and (h).  
(d) The governor will, in the governor's discretion, delegate in writing the responsibility for carrying out one or more duties of the governor under this chapter to the CDQ team.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - The mailing address for submitting material under this chapter is: CDQ Team, Office of the Commissioner, Department of Community and Economic Development, P.O. Box 110803, Juneau, Alaska 99811-0803.

**6 AAC 93.017 CDQ PROGRAM STANDARDS.**

To carry out the state's role under 50 C.F.R. 679 and this chapter, the CDQ team shall apply the standards listed in (1) -

(9) of this section, as applicable. The CDQ team shall determine whether

(1) a CDP provides specific and measurable benefits to each community participating in the CDP;

(2) as part of a CDP, a CDQ project provides benefits to individual residents of a participating community, to a single participating community, or to all participating communities;

(3) a proposed CDP has the support of all participating communities;

(4) each CDQ project listed in a CDP has the support of the applicant's or CDQ group's board of directors, reflected by official action of the board;

(5) before initiating a proposed CDQ project, a CDQ group exercised a level of due diligence that reflects the value of the investment, the risk involved, and the type of project;

(6) a reasonable likelihood exists that a for-profit CDQ project will earn a financial return to the CDQ group;

(7) the CDQ group has minimized legal and financial risk;

(8) the CDQ group has clearly demonstrated how a proposed CDQ project will further the goals and purpose of the CDQ program as stated in 50 C.F.R. 679.1(e); and

(9) in areas of fisheries harvesting and processing, the CDQ group, to the greatest extent possible, has promoted conservation-based fisheries by taking actions that will minimize bycatch, provide for full retention and increased utilization of the fishery resource, and minimize impact to essential fish habitats.

History - Eff. 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

**6 AAC 93.020 CDQ APPLICATION PERIOD.**

(a) Within a reasonable time before an application period is to begin, the CDQ team shall

(1) establish the application period by scheduling a deadline for receipt of proposed CDPs from qualified applicants and by scheduling a projected time frame for

(A) initial evaluation;

(B) holding a public hearing to discuss all CDPs received; and

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- (C) final review;
- (2) publish a notice that announces the CDQ application period, states the allocation cycle, and states the deadline for submitting a proposed CDP; the notice must be published in at least one newspaper of general circulation in Western Alaska and in at least one newspaper of general circulation in the state; and
- (3) mail a copy of the notice to each eligible community.
- (b) Except as provided in 6 AAC 93.075 (b), the deadline for submission of a proposed CDP set by (a)(1) of this section may not be less than 14 days after publication of the notice under (a) of this section.
- (c) If, after publication of the notice under (a) of this section, the CDQ team determines that it is necessary to change the allocation cycle, the CDQ team shall notify all applicants and eligible communities and publish notice of the change.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

**6 AAC 93.025 REQUIREMENTS FOR SUBMITTING A PROPOSED CDP.**

- (a) To apply for an allocation under 50 C.F.R. 679, a qualified applicant must submit to the CDQ team, on or before the deadline set under 6 AAC 93.020, a complete proposed CDP that contains the information required by 50 C.F.R. 679.30(a), including
  - (1) a statement that the applicant is a qualified applicant as defined in 50 C.F.R. 679.2; this statement must be accompanied by a certificate of incorporation showing that the applicant is a nonprofit corporation formed under AS 10.20;
  - (2) a statement as to whether the applicant is also the managing organization for the proposed CDP;
  - (3) a statement that each community participating in the proposed CDP is an eligible community as defined in 50 C.F.R. 679.2;
  - (4) with the list of communities participating in the CDP required by 50 C.F.R. 679.30(a)(1)(iv),
    - (A) the population of each community;
    - (B) the economic conditions in each community; and
    - (C) evidence that the applicant has developed an effective outreach project to keep participating communities informed about the CDQ group's activities and to facilitate community input throughout the course of the CDP;
  - (5) for each member of the applicant's board of directors, a letter of support or election results from the board member's eligible community and a statement of support from the governing body of each community participating in the proposed CDP; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;
  - (6) for each species allocation, evidence, such as a contract with a business partner, that the applicant has not obligated, and does not intend to obligate, further allocations to a third party;
  - (7) for an applicant that is also a managing organization,
    - (A) evidence that the managing organization has a board of directors with a membership composed of at least 75 percent

- resident fishermen from the community or group of communities participating in the CDP, with at least one member from each community; and
- (B) a statement of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;
- (8) for a managing organization that will participate in a fishery on behalf of the applicant, but is not the applicant, a statement of support from the governing body of each community that the organization represents; the statement of support may be a copy of a resolution, letter, or other appropriate expression of support;
- (9) information regarding the particular benefits that an allocation under the CDP would generate for the Bering Sea and Aleutian Islands region; in addition, the applicant may provide information regarding any benefits to the state or the United States;
- (10) the applicant's existing and foreseeable business relationships; to meet the requirement of this paragraph, the applicant shall
  - (A) provide copies of any contractual service arrangements dealing with legal, lobbying, audit, accounting, allocation management, investment research, fund management, and similar services;
  - (B) provide copies of profit sharing arrangements;
  - (C) provide copies of funding and financing plans; and
  - (D) describe each type of relationship, including joint ventures, loans, partnerships, corporations, and, if applicable, distribution of proceeds;
- (11) a copy of the investment policies that the applicant will follow for
  - (A) for-profit CDQ projects;
  - (B) infrastructure CDQ projects;
  - (C) fund and cash management CDQ projects; and
  - (D) other applicable CDQ projects;
- (12) as part of the detailed description of each CDQ project required by 50 C.F.R. 679.30(a)(1)(i), information that
  - (A) identifies the project as an active or proposed CDQ project;
  - (B) describes the project's normal scope of operations; and
  - (C) indicates whether an active project should be classified as a core or noncore CDQ project;
- (13) a milestone table that sets out specific and measurable objectives for each CDQ project and dates for achieving each objective;
- (14) budgets, including
  - (A) a general budget for the proposed CDP that identifies all allocation revenue, project revenue, and project expenditures for the entire period for the proposed CDP;
  - (B) an annual budget listing detailed expenses for each CDP project for the first year of the proposed CDP; and
  - (C) an annual comprehensive budget for the allowable administrative expenses, as previously determined by the CDQ

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team, specifically indicating the expenses that are chargeable to the managerial, general administrative, and policy phases of a CDQ group and the group's projects;  
(15) a description of how the applicant plans to report financial and audit information to the CDQ team throughout the course of its CDP, in accordance with 6 AAC 93.050 ; and  
(16) any additional information that the CDQ team finds is necessary to determine whether to recommend approval of the proposed CDP under 6 AAC 93.040(c).

(b) An eligible community may not  
(1) submit more than one proposed CDP during a single CDQ application period; or  
(2) participate in more than one CDP; this paragraph does not prevent an eligible community from participating in halibut allocations that are restricted by regulatory areas of the International Pacific Halibut Commission and 50 C.F.R. 679.30.  
(c) Except for circumstances that the CDQ teams finds were beyond the applicant's control, the CDQ team may not evaluate a proposed CDP received after the deadline set under 6 AAC 93.020 .

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)  
Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015 .

**6 AAC 93.030 INITIAL EVALUATION OF PROPOSED CDPS.**

(a) The CDQ team shall perform an initial evaluation of a proposed CDP submitted under 6 AAC 93.025 to determine whether the CDP is complete. Within 15 days after a proposed CDP is received, the CDQ team shall notify the CDP applicant of any information needed to make the CDP complete. The applicant must submit the needed information within 10 days after being notified by the CDQ team. If, after the initial evaluation period, the CDQ team finds that additional information is needed for completeness, the applicant will have 10 days after notification to provide the information.

(b) After the initial CDP evaluation, the CDQ team shall schedule a public hearing under 6 AAC 93.035 as required by 50 C.F.R. 679.30(b).

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

**6 AAC 93.035 PUBLIC HEARING.**

(a) The CDQ team shall schedule at least one public hearing on all pending complete proposed CDPS, providing for a teleconference site in each geographical area that is subject to a proposed CDP.

(b) The CDQ team shall provide notice of the date and location of a public hearing

(1) to each applicant whose proposed CDP is the subject of the hearing;  
(2) through newspaper publication; in addition, notice may be provided through other media; and  
(3) to any other person the CDQ team believes will be

interested in a pending CDP.

(c) A public hearing under this section must be recorded and transcribed. The transcript of the public hearing will be made available to the public, upon request, at the same time that the transcript is submitted under 6 AAC 93.045

(d) Repealed 8/19/99.

History- Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

**6 AAC 93.040 FINAL EVALUATION OF PROPOSED CDPS [COMPLETE CDP APPLICATIONS]**

(a) After the public hearing under 6 AAC 93.035 , the CDQ team shall evaluate all complete proposed CDPS to determine whether the CDPS are consistent with the standards in 6 AAC 93.017 and meet the applicable requirements of this chapter and 50 C.F.R. 679.

(b) The CDQ team shall consider the following factors when reviewing a complete proposed CDP:

(1) the number of participating eligible communities and  
(A) the population of each community; and

(B) the economic conditions in each community;

(2) the size of the allocation requested by the applicant and the proper allocation necessary to achieve the milestones and objectives as stated in the proposed CDP;

(3) the degree, if any, to which each CDQ project is expected to develop a self-sustaining local fisheries economy, and the proposed schedule for transition from reliance on an allocation to economic self-sufficiency;

(4) the degree, if any, to which each CDQ project is expected to generate capital or equity in the local fisheries economy or infrastructure, or investment in commercial fishing or fish processing operations;

(4) the degree, if any, to which each CDQ project is expected to generate

(A) capital or equity in the local fisheries economy or infrastructure; or

(B) investment in commercial fishing or fish processing operations;

(5) the applicant's contractual relationship, if any, with joint venture partners and the managing organization;

(6) the applicant's and the applicant's harvesting and processing partners', if any, involvement and diversity in all facets of harvesting and processing;

(7) the coordination or cooperation with other applicants or CDQ groups on CDQ projects;

(8) the experience of the applicant's industry partners, if any;

(9) the applicant's CDQ projects for employment, education, and training that provide career track opportunities;

(10) the benefits, if any, to the state's economy or to the economy of communities that are not eligible to participate in the CDQ program that are in addition to the benefits

generated by the proposed CDP for participating communities;  
(11) a demonstration, through the information submitted under 6 AAC 93.025(a)(11), that the applicant has a formal,

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effective administrative process that sets out sound business principles and examples of due diligence that the applicant will exercise;

(12) the development, if any, of innovative products and processing techniques as well as innovation in harvesting gear for conservation and maximum utilization of the fishery resource;

(13) the applicant's ability to maintain control over each of its allocations;

(14) the capital or equity generated by the applicant's CDQ projects for fisheries-related business investment;

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

(16) the applicant's transition plan, including the objectives set out in the milestone table submitted under 6 AAC 93.025

(a)(13);

(17) for each CDQ project, the inclusion in the proposed CDP of realistic measurable milestones for determining progress;

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

(19) the likely effectiveness of the outreach project described in 6 AAC 93.025(4)(C); and

(20) comments provided by other agencies, organizations, and the public.

(c) After evaluation under this section, the CDQ team shall transmit to the governor for the governor's review and necessary action each proposed CDP and the CDQ team's evaluation and recommendation regarding each CDP. The governor will then make a written finding that a proposed CDP either

(1) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the National Marine Fisheries Service (NMFS) for approval for an allocation in the amount requested by the applicant;

(2) meets the requirements of this chapter and 50 C.F.R. 679 and will be recommended to the NMFS for approval with a reduced allocation from the amount initially requested by the applicant; or

(3) does not meet the requirements of this chapter and 50 C.F.R. 679 and will not be recommended to the NMFS for approval.

(d) If there is a sufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion, recommend all of those CDPs to the NMFS for approval.

(e) If there is an insufficient quota of fishery resource available to meet the combined total allocations requested in all of the complete proposed CDPs that meet the requirements of this chapter and 50 C.F.R. 679, the governor will, in the governor's discretion and after consultation by the CDQ team under (f) of this section,

(1) apportion the available quota among the applicants whose

CDPs will be recommended for approval and will recommend the apportionment to the NMFS for approval; or

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

(f) Before the CDQ team recommends an apportionment of the quota under (e) of this section, it shall consult with the applicants that might be affected by the proposed apportionment. The CDQ team may request an applicant to submit a revised CDP to assist the CDQ team in determining the

(1) economic feasibility and likelihood of success of the proposed CDP with an allocation of fishery resource less than that requested; and

(2) particular benefits that may be derived by participating communities affected by an allocation of fishery resource less than that requested.

(g) In apportioning the quota of fishery resource under (e) of this section, the governor will consider the information specified in this chapter and 50 C.F.R. 679 and seek to maximize the benefits of the CDQ program to the greatest number of participating communities.

(h) Before forwarding recommendations to the NMFS under 6 AAC 93.045, the governor will, or, at the governor's direction, the CDQ team shall, consult with the North Pacific Fishery Management Council regarding the proposed CDPs to be recommended by the governor for allocations and incorporate any comments from the council into the written findings required under (c) of this section and 50 C.F.R. 679.30(d).

History- Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

**6 AAC 93.045 RECOMMENDATIONS TO THE NMFS REGARDING PROPOSED CDPs.**

After making written findings under 6 AAC 93.040 regarding the complete proposed CDPs, 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; and

(2) notify in writing each CDP applicant as to whether the applicant's proposed CDP was recommended to the NMFS for approval, including whether any reduction of allocation was recommended under 6 AAC 93.040.

History- Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

**6 AAC 93.050 QUARTERLY AND ANNUAL REPORTS.**

(a) In order for the CDQ team to monitor a CDP as required under 50 C.F.R. 679.30, a CDQ group shall submit to the CDQ team a quarterly report for each calendar quarter in

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which that group's CDP is in effect, and an annual report as described in (d) of this section. Each quarterly report must be submitted by the deadline stated in (b) of this section and must contain the information required by (c) of this section.

(b) A CDQ group shall submit a quarterly report to the CDQ team, to be received or postmarked on or before

(1) April 30 for a CDP in effect during the preceding January, February, or March;

(2) July 30 for a CDP in effect during the preceding April, May, or June;

(3) October 30 for a CDP in effect during the preceding July, August, or September; and

(4) January 30 for a CDP in effect during the preceding October, November, or December.

(c) A quarterly report submitted under this section must include

(1) information describing how, during the period covered by the report, the CDP group has met the milestones and objectives of the CDP as set out in the CDP;

(2) a year-to-date report of all CDQ harvesting and processing activities of the CDQ group;

(3) comprehensive financial statements if required by the CDQ team; a statement required under this paragraph must include, as applicable,

(A) a consolidated balance sheet;

(B) a consolidated income statement that clearly identifies, by CDQ project, revenue and expenditures;

(C) a cash flow statement; and

(D) financial statements for the CDQ group's subsidiaries;

(4) complete year-to-date data regarding training, education, and employment under the CDP, provided in a format specified by the CDQ team;

(5) minutes for any CDQ group board or directors meetings that were held during the quarter; and

(6) any other information that the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program; if the CDQ team requires additional information under this paragraph, the CDQ team shall notify the CDQ group in writing at least 15 days before the report is due.

(d) The quarterly reports submitted under this section for a calendar year are subject to an independent audit performed by a reputable accounting firm. The CDQ group's selection of an accounting firm is subject to the CDQ team approval. The independent audit constitutes a CDQ group's annual report and must be submitted by the CDQ group to the CDQ team, to be received or postmarked no later than May 31 of the year following the calendar year covered by the audit. The audit must include

(1) a report that indicates whether the CDQ group is meeting the milestones and objectives of the CDP as set out in its CDP; the CDQ group shall meet with an auditor to develop agreed upon procedures for the content of this report;

(2) consolidated financial statements, reported according to

generally accepted accounting principles and, if determined necessary by the CDQ team, supplemental schedules reporting the financial position and results of operations for each of the CDQ group's consolidated for-profit subsidiaries classified in the CDP as a core CDQ project;

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

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

(5) except for fund and cash management CDQ projects, a budget reconciliation between all CDQ projects and administrative budgets, and actual expenditures;

(6) a management report or letter; and

(7) any other information that the CDQ team determines is necessary to carry out the state's role in the administration of the CDQ program; if the CDQ team requires additional information under this paragraph, the CDQ team shall notify the CDQ group in writing at least 15 days before the group's annual report is due.

(e) In this section, "postmarked" means the

(1) United States Postal Service postmark;

(2) the date of placement with a courier-type delivery service as evidenced on the shipping documents;

(3) the date the document is delivered to the CDQ team by facsimile; or

(4) the date the document is delivered to the CDQ team by electronic mail.

History- Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

AK Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015

**6 AAC 93.055 AMENDMENTS TO AN APPROVED CDP.**

(a) General requirements. A CDP is a working business plan that must be kept current. A CDQ group that seeks to amend a CDP under this section and 50 C.F.R. 679.30 shall submit to the CDQ team a written request for approval of the amendment under the appropriate process described in this section. A CDQ group may not engage in an activity that requires an amendment to the group's CDP until the amendment is recommended for approval by the state and approved by the NMFS.

(b) Submittal requirements. When submitting a proposed CDP amendment under (c) or (d) of this section, in addition to the information that is required to be submitted under 50 C.F.R. 679.30(g)(4) or (5), the CDQ group shall describe how the amendment

(1) is consistent with the standards in 6 AAC 93.017, the group's investment policies submitted under 6 AAC 93.25(a)(11), and the requirements of 50 C.F.R. 679; and

(2) will affect the CDQ group's ability to meet the milestones and objectives in its CDP.

(c) Substantial amendments. A substantial amendment to a

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CDP is subject to (f) and (h) of this section and 50 C.F.R. 679.30(g)(4). A substantial amendment requires the commissioner to make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(4). A substantial amendment is required if a CDQ group intends to

- (1) make a change described in 50 C.F.R. 679.30(g)(4)(iv);
- (2) pursue a proposed CDQ project that will be classified in the amended CDP as a core CDQ project;
- (3) add a new proposed CDQ project;
- (4) make a substantial variation in the normal scope of operations for an active core CDQ project described under 6 AAC 93.025 (a)(12)(B); or
- (5) engage in a CDQ activity that would result in an active noncore CDQ project being classified as a core CDQ project under 6 AAC 93.057 .

(d) Technical amendments for noncore projects. A technical amendment under this subsection is subject to 50 C.F.R. 679.30(g)(5). If a CDQ group intends to pursue an activity described in this subsection, the group shall send a letter of notification to the CDQ manager, describing the activity and seeking a technical amendment to the CDP. With the letter of notification, the CDQ group shall include the information required by (b) of this section. An activity under this subsection is subject to (g) and (i) of this section and requires the CDQ manager to make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(5). Subject to (g)(2) of this section, the CDQ manager will make a decision under this subsection within 10 days after a letter of notification is received. Notification under this subsection is required when a CDQ group intends to

- (1) pursue a proposed noncore CDQ project that is clearly identified in the CDP text and budget, if the CDQ team advises the CDQ group that notification under this section is required; or

- (2) make a substantial variation in the normal scope of operations of an active noncore CDQ project, if the variation will impact the CDQ project performance measures described in the milestone table submitted under 6 AAC 93.025 (a)(13);

(e) Other technical amendments. A technical amendment to a CDP is subject to 50 C.F.R. 679.30(g)(5). A technical amendment requires the CDQ manager to review the materials submitted by the CDQ group and make a recommendation for approval or disapproval before the proposed amendment can be forwarded to the NMFS under 50 C.F.R. 679.30(g)(5). A technical amendment to the CDP under this subsection is required when a CDQ group intends to

- (1) make a change in its board of directors or key administrative staff;

- (2) make a change in a contract dealing with a business relationship described under 6 AAC 93.025 (a)(10)(A);

- (3) add a harvesting or processing contract that is substantially

similar to an existing contract in the group's approved CDP; the CDQ group shall provide a copy of the contract; or

- (4) make any other change that the CDQ team determines is technical in nature.

(f) Review process for substantial amendments. The CDQ team shall use the following process in its review for a substantial amendment proposed under (c) of this section:

- (1) the CDQ team shall determine within 30 days whether the amendment

- (A) is consistent with the standards, policies, and requirements discussed under (b)(1) of this section; or

- (B) will reduce the CDQ group's ability to meet the milestones and objectives in its CDP;

- (2) if the CDQ team finds an amendment to be inconsistent under (1)(A) of this subsection or will reduce the CDQ group's ability to meet the milestones and objectives in its CDP,

- (A) the CDQ team shall notify the CDQ group; the group will have 10 days to respond with more information;

- (B) within 10 days after the CDQ group's response is received, the CDQ team shall repeat the review under (1) of this subsection; and

- (3) the CDQ team shall repeat the process described in (2) of this subsection until the CDQ team recommends approval of the amendment or makes a determination under (h) of this section.

(g) Review process for technical amendments for noncore projects. The CDQ manager shall use the following process in the review of a technical amendment for a noncore project proposed under (d) of this section.

- (1) the CDQ manager shall determine within 10 days whether the amendment

- (A) is consistent with the standards, policies, and requirements discussed under (b)(1) of this section; or

- (B) will reduce the CDQ group's ability to meet the milestones and objectives in its CDP;

- (2) if the CDQ manager finds that an amendment is inconsistent under (1)(A) of this subsection or will reduce the CDQ group's ability to meet the milestones and objectives in its CDP,

- (A) the CDQ manager shall notify the CDQ group; the group will have five days to respond with more information;

- (B) within 10 days after the CDQ group's response is received, the CDQ manager shall repeat the review under (1) of this subsection; and

- (3) the CDQ manager shall repeat the process described in (2) of this subsection until the CDQ manager recommends approval of the amendment or makes a determination under (i) of this section.

(h) Recommendation for disapproval of a substantial amendment. If the CDQ team finds that a substantial amendment proposed under (c) of this section is inconsistent with the standards, policies, or requirements referred to in (b) of this section, or that the amendment will reduce the CDQ group's ability to successfully meet the milestones and

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objectives in its CDP, the CDQ team shall recommend that the commissioner forward the amendment to the NMFS with a recommendation for disapproval. If the commissioner decides to recommend disapproval under this subsection, the commissioner will notify the CDQ group, advising the group that it may request reconsideration under 6 AAC 93.090.

(i) Recommendation for disapproval of a technical amendment for a noncore project. If the CDQ manager finds that a technical amendment for a noncore project proposed under (d) of this section is inconsistent with the investment policies or federal requirements referred to in (b) of this section, or that the amendment will reduce the CDQ group's ability to successfully meet the milestones and objectives in its CDP, the CDQ manager shall recommend disapproval of the amendment. If the CDQ manager finds that the amendment is inconsistent with the standards in 6 AAC 93.017, the CDQ manager may recommend disapproval of the amendment. The CDQ group may request reconsideration of the CDQ manager's decision under 6 AAC 93.090.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)  
Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015.

### **6 AAC 93.057 RECLASSIFICATION OF CORE AND NONCORE PROJECTS.**

(a) If the annual progress report prepared by the CDQ team under 6 AAC 93.015 will address a CDQ project classified in the CDP as a noncore CDQ project that has been found by the CDQ team to meet the criteria for a core CDQ project in 6 AAC 93.900, the CDQ team may reclassify a noncore CDQ project as a core CDQ project in that report and shall request the CDQ group to seek a substantial amendment to its CDP under 6 AAC 93.055 (c). For the purposes of this subsection, the criteria in the definition of "core CDQ project" at 6 AAC 93.900 (13)(C)(i) may not be considered.

(b) If a CDQ group believes that a project classified in the group's CDP as a core CDQ project should instead be classified as a noncore CDQ project, the CDQ group may petition the CDQ team to reclassify the project. A CDQ group may submit a petition under this subsection only between June 15 and August 15.

(c) The CDQ team shall consider the following factors in its review of a petition submitted under (b) of this section:

- (1) the maturity of the business cycle, the stability of management, and the profitability of the project;
- (2) the success of the project in meeting the milestones and objectives in the CDP;
- (3) whether the majority of activities of the project are occurring in, or in proximity to, an eligible CDQ community; and
- (4) the overall impact the project has on the success of the CDQ group's CDP.

(d) If the CDQ team approves a petition submitted under (b) of this section, the petition will be treated as a technical

amendment that is recommended for approval by the NMFS under 50 C.F.R. 679.30(g)(5).

History - Eff. 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)  
Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015.

### **6 AAC 93.060 SUSPENSION OR TERMINATION OF A CDP; DECREASE IN ALLOCATION.**

(a) The governor will, in the governor's discretion, recommend to the NMFS in writing that a CDP be partially suspended, suspended, or terminated or that allocations under CDP be decreased if, as part of the annual progress report prepared under 6 AAC 93.015 or in response to an allegation under (c) of this section, the CDQ team notifies the governor that the CDQ team has determined that a CDQ group

(1) has failed to comply with

(A) this chapter; or

(B) 50 C.F.R. 679;

(2) has failed to meet its milestones or objectives; or

(3) appears unlikely to meet its milestones or objectives.

(b) Nothing in (a) of this section precludes the governor from including a recommendation for a decreased allocation with a recommendation for a partial suspension.

(c) If, at any time during the course of a CDP, the CDQ team is advised that a CDQ group has failed to comply with 50 C.F.R. 679 or with this chapter, the CDQ Team will send a written notice of the allegation to the CDQ group at the address on file at the department for the group. The CDQ group may, within 10 days after receipt of the notice, submit to the CDQ team a written response to the allegation. The CDQ team shall consider the CDQ group's written response, if any, in deciding whether to make a recommendation to the governor under (a) or (b) of this section. If the CDQ team decides to make a recommendation under (a) or (b) of this section, the CDQ team shall include the CDQ group's written response, if any, with the recommendation transmitted to the governor.

(d) Before sending the governor's recommendation under (a) or (b) of this section to the NMFS, the CDQ team shall inform the CDQ group of the governor's decision. The CDQ group may request reconsideration of the governor's decision under 6 AAC 93.090.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151  
Authority - Ak. Const., art. III, sec. 1  
Ak. Const., art. III, sec. 24  
AS 44.33.020 (11)

### **6 AAC 93.070 CONFIDENTIAL RECORDS.**

(a) Except as provided in (b) and (c) of this section, records submitted under this chapter by an applicant or a CDQ group that are in the possession of the governor or the CDQ team are subject to AS 09.25.110 - 09.25.120 and are open to inspection by the public during regular office hours.

(b) A participating community, applicant, CDQ group, or managing organization wishing to protect a record that was provided to the state under this chapter may file with the governor or CDQ team a written petition identifying the

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record to be protected and showing good cause to classify the record as confidential. If, at the time of submission, a participating community, applicant, CDQ group, or managing organization wishes to protect a record being submitted under this chapter, the community, applicant, group, or organization shall mark the record as "confidential" and show good cause to classify the record as confidential.

(c) Good cause to classify a record as confidential under this section includes a showing that

(1) disclosure of the record to the public might competitively or financially disadvantage or harm the participating community, applicant, CDQ group, or managing organization with the confidentiality interest, or might reveal a trade secret or proprietary business interest; and

(2) the need for confidentiality outweighs the public interest in disclosure.

(d) If the governor or CDQ team determines that good cause exists under (c) of this section, the governor or CDQ team will, in writing, classify the records as "confidential" and restrict access to them.

(e) Except as provided in Alaska Rules of Court, a record classified as confidential under this section will not be made public or furnished to any person other than the United States Secretary of Commerce, the North Pacific Fishery Management Council, the Alaska Region of the National Marine Fisheries Service, the governor, the CDQ team and staff, or other authorized representatives of the governor.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015 .

### **6 AAC 93.075 GENERAL PROVISIONS.**

(a) The governor will, in the governor's discretion, consider other factors not identified in this chapter if those factors are relevant to the decision or recommendation in question.

(b) The governor will, in the governor's discretion, relax or reduce the notice requirements of 6 AAC 93.020 - 6 AAC 93.040 if the governor determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126

Authority - Art. III, Sec. 1, Ak. Const.

Art. III, Sec. 24, Ak. Const.

### **6 AAC 93.080 REPORTING OF CDQ PROGRAM FISHERY HARVEST.**

A buyer of fish that, under AS 16.05.690 and 5 AAC 39.130 , is required to record and report a purchase of fish shall also record and report the buyer's purchases of fishery resources that are harvested through a CDQ program. This shall be done in the manner required by AS 16.05.690 and 5 AAC 39.130 and other regulations adopted under that statute.

History - Eff. 1/1/98, Register 144

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

### **6 AAC 93.090 RECONSIDERATION PROCESS.**

(a) A CDQ group may submit to the CDQ team a request for

reconsideration of a decision under 6 AAC 93.055 or a decision under 6 AAC 93.060. Subject to (e) of this section, the request for reconsideration must be submitted within 20 days after the CDQ group receives notice of the decision. For a decision to be reconsidered, the request for reconsideration must include additional information that was not provided for consideration in the initial decision.

(b) For reconsideration of a decision under (1) 6 AAC 93.055 (h), the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the commissioner regarding are consideration decision; (2) 6 AAC 93.055 (i), the CDQ manager shall review the additional information submitted with the request for reconsideration and make a reconsideration decision; or(3) 6 AAC 93.060 , the CDQ team shall review the additional information submitted with the request for reconsideration and make a recommendation to the governor regarding are consideration decision.(c) Within 20 days after a request for reconsideration is received, notification to the CDQ group of the reconsideration decision will be made by

(1) the commissioner, for a decision under 6 AAC 93.055 (h);

(2) the CDQ manager, for a decision under 6 AAC 93.055 (i); or

(3) the governor, for a decision under 6 AAC 93.060 .

(d) Findings regarding a reconsideration decision will be submitted to the NMFS along with the final recommendation regarding the amendment, suspension, termination, or decrease in allocation. The CDQ team shall shorten the time within which a request for reconsideration may be submitted under (a) of this section if the CDQ tem determines that a participating community will be competitively or financially harmed by a delay in issuing the decision.

History - Eff. 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - The mailing address for the CDQ team is set out in the editor's note at 6 AAC 93.015 .

### **6 AAC 93.900 DEFINITIONS.**

In this chapter

(1) "active CDQ project" means a CDQ project that was initiated under an approved CDP or through the amendment process in 6 AAC 93.055 , and that continues its status as a CDQ project;

(2) "allocation" includes a CDQ allocation and a PSQ allocation under 50 C.F.R. 679;

(3) "allocation cycle" means the time of duration of a CDP as designated at the onset of the CDQ application period;

(4) "application period" means the time between the date of publication of the notice under 6 AAC 93.020 (a) and the forwarding of the final CDP recommendation to the NMFS;

(5) "CDP" means community development plan;

(6) "CDQ" means community development quota;

(7) "CDQ activity" means an activity pursued by the CDQ group that is paid for, directly or indirectly, through CDQ assets;

(8) "CDQ asset" means property of a CDQ group;

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- (9) "CDQ liability" means a debt of a CDQ group;
- (10) "CDQ manager" means the department employee designated by the commissioner;
- (11) "CDQ team" means the state officials designated in or under 6 AAC 93.015;
- (12) "commissioner" means the commissioner of the department;
- (13) "core CDQ project" means a CDQ project that
- (A) has a collective ownership by the applicant or CDQ group that is in excess of 49 percent;
- (B) has a level of involvement by the applicant or CDQ group that demonstrates effective managing control, as determined by the CDQ team; or
- (C) meets at least two of the following criteria:
- (i) the applicant's or CDQ group's equity interest in the CDQ project constitutes at least 25 percent of the applicant's or group's assets;
- (ii) the CDQ project has total indebtedness that the applicant or CDQ group is directly liable for in excess of 25 percent of the applicant's or group's assets;
- (iii) the CDQ project has total indebtedness that the applicant or CDQ group is directly liable for in excess of 25 percent of the applicant's or group's assets;
- (iii) the CDQ project has been determined by the annual progress report prepared under 6 AAC 93.015 to not meet the milestones and objectives in the CDP for three consecutive years;
- (iv) the CDQ project receives funding from the applicant or CDQ group in a calendar year;
- (14) "department" means the Department of Community and Economic Development;
- (15) "fisheries-related" means to have a direct or indirect link to the commercial fisheries industry;
- (16) "for-profit CDQ project" means a CDQ project with a central activity that involves an ongoing exchange of goods or services for compensation between two or more parties;
- (17) "governing body" means a city council, traditional council, or Indian Reorganization Act (IRA) Council;
- (18) "NMFS" means the federal National Marine Fisheries Service;
- (19) "noncore CDQ project" means a CDQ project that is not a core CDQ project;
- (20) "proposed CDQ project" means a CDQ project that is yet to be initiated;
- (21) "substantial variation" means a significant change in the normal scope of operations of an active CDQ project as stated in the CDP; a "substantial variation" includes a change that could result in a determination of inconsistency with the standards in 6 AAC 93.017 and a change that could affect a CDQ group's ability to meet the milestones and objectives in the CDP.

History - Eff. 11/18/92, Register 124; am 4/10/93, Register 126; am 8/13/94, Register 131; am 1/1/98, Register 144; am 8/19/99, Register 151

Authority - Ak. Const., art. III, sec. 1

Ak. Const., art. III, sec. 24

AS 44.33.020 (11)

Editor's Notes - Definitions of other terms under in 6 AAC 93 are found at 50 C.F.R. 679.2.

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Appendix D. Federal Regulations

Excerpts from 50 CFR PART 679

Fisheries of the Exclusive Economic Zone off Alaska

Regulations related to the CDQ Program allocations and administration (does not include regulations governing management of the groundfish and halibut CDQ fisheries). § 679.1 Purpose and scope.

Regulations in this part were developed by the Council under the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Along with part 600 of this chapter, these regulations implement the following:

\* \* \* \* \*

(e) Western Alaska CDQ Program.

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.

§ 679.2 Definitions.

\* \* \* \* \*

Community Development Plan (CDP) means a business plan for the economic and social development of a specific Western Alaska community or group of communities under the CDQ program at § 679.30.

CDQ allocation means a percentage of a CDQ reserve specified under § 679.31 that is assigned to a CDQ group when NMFS approves a proposed CDP.

CDQ delivery number means a sequential number assigned by the catcher vessel operator that uniquely identifies each CDQ delivery. The sequence of CDQ delivery numbers begins with the first fishing activity under a multispecies CDQ plan, and the number is incrementally adjusted by one with each delivery of fish.

CDQ group means a qualified applicant with an approved CDP.

CDQ number or group number means a number assigned to a CDQ group by NMFS that must be recorded in all logbooks and all reports submitted by the CDQ group or by

vessels and processors catching CDQ or PSQ under an approved CDP.

CDQ project means 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, but not limited to, infrastructure development, CDQ investments, employment and training programs, and CDP administration.

CDQ representative means the individual who is the official contact for NMFS regarding all matters relating to a CDQ group's activities.

CDQ species means any species or species group that has been assigned to a CDQ reserve under § 679.31.

Community Development Quota (CDQ) means the amount of a CDQ species established under § 679.31 that is allocated to the CDQ program.

Community Development Quota Program (CDQ Program) means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

Community Development Quota reserve (CDQ reserve) means a percentage of a total allowable catch for groundfish, a percentage of a catch limit for halibut, or percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ program.

\* \* \* \* \*

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

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

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

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

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

\* \* \* \* \*

Qualified applicant means, for the purposes of the CDQ program:

- (1) A local fishermen's organization that:
  - (i) Represents an eligible community or group of eligible communities;
  - (ii) Is incorporated under the laws of the State of Alaska or under Federal law; and
  - (iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities); or
  
- (2) A local economic development organization that:
  - (i) Represents an eligible community or group of communities;
  - (ii) Is incorporated under the laws of the State of Alaska or under Federal law specifically for the purpose of designing and implementing a CDP; and
  - (iii) Has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities).

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**Subpart C--Western Alaska Community Development Quota Program**

**§ 679.30 General CDQ regulations.**

*(a) Application procedure.*

The CDQ program is a voluntary program. Allocations of CDQ and PSQ are made to CDQ groups and not to vessels or processors fishing under contract with any CDQ group. Any vessel or processor harvesting or processing CDQ or PSQ under a CDP must comply with all other requirements of this part. In addition, the CDQ group is responsible to ensure that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this part while harvesting or processing CDQ species. Allocations of CDQ and PSQ are harvest privileges that expire upon the expiration of the CDP. When a CDP expires, further CDQ allocations are not implied or guaranteed, and a qualified applicant must re-apply for further allocations on a competitive basis with other qualified applicants. The CDQ allocations provide the means for CDQ groups to complete their CDQ projects. A qualified applicant may apply for CDQ and PSQ allocations by submitting a proposed CDP to the State during the CDQ application period that is announced by the State. A proposed CDP must include the following information:

(1) Community development information. Community development information includes:

(i) Project description. A detailed description of all proposed CDQ projects, including the short- and long-term benefits to the qualified applicant from the proposed CDQ projects. CDQ projects should not be designed with the expectation of CDQ allocations beyond those requested in the proposed CDP.

(ii) Project schedule. A schedule for the completion of each CDQ project with measurable milestones for determining the progress of each CDQ project.

(iii) Employment. The number of individuals to be employed through the CDP projects, and a description of the nature of the work and the career advancement potential for each type of work.

(iv) Community eligibility. A list of the participating communities. Each participating community must be listed in Table

7 to this part or meet the criteria for an eligible community under § 679.2.

(v) Community support. A demonstration of each participating community's support for the qualified applicant and the managing organization through an official letter approved by the governing body of each such community.

(2) Managing organization information. A proposed CDP must include the following information about the managing organization:

(i) Structure and personnel. A description of the management structure and key personnel of the managing organization, such as resumes and references, including the name, address, fax number, and telephone number of the qualified applicant's CDQ representative.

(ii) Management qualifications. A description of how the managing organization is qualified to carry out the CDP projects in the proposed CDP, and a demonstration that the managing organization has the management, technical expertise, and ability to manage CDQ allocations and prevent exceeding a CDQ or PSQ.

(iii) Legal relationship. Documentation of the legal relationship between the qualified applicant and the managing organization (if the managing organization is different from the qualified applicant) clearly describing the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement.

(iv) Board of directors. The name, address, and telephone number of each member of the board of directors of the qualified applicant. If a qualified applicant represents more than one community, the board of directors of the qualified applicant must include at least one member from each of the communities represented.

(3) Business information. A proposed CDP must include the following business information:

(i) Business relationships. A description of all business relationships between the qualified applicant and all individuals who have a financial interest in a CDQ project or subsidiary venture, including, but not limited to, any arrangements for management and audit control and any joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties.

(ii) Profit sharing. A description of all profit sharing arrangements.

(iii) Funding. A description of all funding and financing plans.

(iv) General budget for implementing the CDP. A general account of estimated income and expenditures for each CDQ project for the total number of calendar years that the CDP is in effect.

(v) Financial statement for the qualified applicant. The most recent audited income statement, balance sheet, cash flow statement, management letter, and agreed upon procedures report.

(vi) Organizational chart. A visual representation of the qualified applicant's entire organizational structure, including all divisions, subsidiaries, joint ventures, and partnerships. This chart must include the type of legal entity for all

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divisions, subsidiaries, joint ventures, and partnerships; state of registration of the legality; and percentage owned by the qualified applicant.

(4) Request for CDQ and PSQ allocations.

A list of the percentage of each CDQ reserve and PSQ reserve, as described at § 679.31 that is being requested. The request for allocations of CDQ and PSQ must identify percentage allocations requested for CDQ fisheries identified by the primary target species of the fishery as defined by the qualified applicant and the gear types of the vessels that will be used to harvest the catch.

(5) Fishing plan for groundfish and halibut CDQ fisheries.

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

(i) List of eligible vessels and processors

(A) Vessels

(1) Information required for all vessels. A list of the name, Federal fisheries permit number (if applicable), ADF&G vessel number, LOA, gear type, and vessel type (catcher vessel, catcher/processor, or mothership). For each vessel, report only the gear types and vessel types that will be used while CDQ fishing. Any CDQ vessel that is exempt from license limitation requirements under § 679.4(k)(2)(iv) of this part must be identified as such.

(2) Information required for observed vessels using trawl or hook-and-line gear and motherships taking deliveries from these vessels. For each catcher/processor and catcher vessel 60 ft (18.29 m) LOA or greater using trawl or hook-and-line gear and not delivering unsorted codends, or for each mothership, the CDP must include the following information that will be used by NMFS to determine whether sufficient observer coverage is provided to sample each CDQ haul, set, or delivery. Provide the information for groundfish CDQ fishing as defined under § 679.2 and provide separate information by management area or fishery if information differs among management areas or fisheries.

(i) Number of CDQ observers that will be aboard the vessel. For catcher/processors using hook-and-line gear proposing to carry only one CDQ observer, the CDP must include vessel logbook or observer data that demonstrates that one CDQ observer can sample each set for species composition in one 12-hour shift per fishing day.

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

(iii) For vessels using trawl gear, the average and maximum total catch weight for any given haul while groundfish CDQ fishing.

(iv) For vessels using trawl gear, the number of hours necessary to process the average and maximum haul size while groundfish CDQ fishing.

(v) For vessels using hook-and-line gear, the average number of hooks in each set and estimated time it will take to retrieve each set while groundfish CDQ fishing.

(vi) Whether any halibut CDQ will be harvested by vessels groundfish CDQ fishing.

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

(ii) Sources of data or methods for estimating CDQ and PSQ catch. The sources of data or methods that will be used to determine catch weight of CDQ and PSQ for each vessel or processor proposed as eligible under the CDP. For each vessel or processor, the CDP must specify whether the NMFS' standard sources of data set forth at § 679.32(d)(2) or some other alternative will be used. For catcher vessels using nontrawl gear, the CDP must also specify whether the vessel will be retaining all groundfish CDQ catch (Option 1) or will be discarding some groundfish CDQ catch at sea (Option 2). The qualified applicant may propose the use of an alternative method such as the sorting and weighing of all catch by species on processor vessels or using larger sample sizes than could be collected by one observer. NMFS will review the proposal and approve it or notify the qualified applicant in writing if the proposed alternative does not meet these requirements. The qualified applicant may remove the vessel or processor for which the alternative method is proposed from the proposed CDP to facilitate approval of the CDP and add the vessel or processor to the approved CDP by substantial amendment at a later date. Alternatives to the requirement for a certified scale or an observer sampling station may not be proposed. NMFS will review the alternative proposal to determine if it meets all of the following requirements:

(A) The alternative proposed must provide equivalent or better estimates than use of the NMFS standard data source would provide and the estimates must be independently verifiable;

(B) Each haul or set on an observed vessel must be able to be sampled by an observer for species composition;

(C) Any proposal to sort catch before it is weighed must assure that the sorting and weighing process will be monitored by an observer; and

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(D) The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24-hour period and the CDQ observer is required to sample no more than 9 hours in each 24-hour period.

(iii) Amendments to the list of eligible vessels and processors. The list of eligible vessels and processors may be amended by submitting the information required in paragraphs (a)(5)(i) and (ii) of this section as an amendment to the approved CDP. A technical amendment may be used to remove any vessel from a CDP, to add any vessel to a CDP if the CDQ group will use NMFS' standard sources of data to determine CDQ and PSQ catch for the vessel, or to add any vessel to a CDP for which an alternative method of determining CDQ and PSQ catch has been approved by NMFS under an approved CDP for another CDQ group. A substantial amendment must be used to add a vessel to an approved CDP if the CDQ group submits a proposed alternative method of determining CDQ and PSQ catch for NMFS review.

(6) CDQ planning

(i) Transition plan. A proposed CDP must include an overall plan and schedule for transition from reliance on CDQ allocations to self-sufficiency in fisheries. The plan for transition to self-sufficiency must be based on the qualified applicant's long-term revenue stream without CDQs.

(ii) Post-allocation plan. [Reserved]

**(b) Public hearings on CDQ application.**

When the CDQ application period has ended, the State must hold a public hearing to obtain comments on the proposed CDPs from all interested persons. The hearing must cover the substance and content of proposed CDPs so that the general public, particularly the affected parties, have a reasonable opportunity to understand the impact of the proposed CDPs. The State must provide reasonable public notification of hearing date and location. At the time of public notification of the hearing, the State must make available for public review all State materials pertinent to the hearing.

**(c) Council consultation.**

Before the State sends its recommendations for approval of proposed CDPs to NMFS, the State must consult with the Council and make available, upon request, the proposed CDPs that are not part of the State's recommendations.

**(d) Review and approval of proposed CDPs.**

The State must transmit the proposed CDPs and its recommendations for approval of each of the proposed CDPs to NMFS, along with the findings and the rationale for the

recommendations, by October 15 of the year prior to the first year of the proposed CDP, except in 1998, when CDPs for the 1998 through 2000 multispecies groundfish CDQs must be submitted by July 6, 1998. The State shall determine in its recommendations for approval of the proposed CDPs that each proposed CDP meets all applicable requirements of this part. Upon receipt by NMFS of the proposed CDPs and the State's recommendations for approval, NMFS will review the proposed 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 proposed CDP along with revised recommendations for approval to NMFS.

**(e) Transfer.**

CDQ groups may request that NMFS transfer CDQ allocations, CDQ, PSQ allocations, or PSQ from one group to another by each group filing an appropriate amendment to its CDP. Transfers of CDQ and PSQ allocations must be in whole integer percentages, and transfers of CDQ and PSQ must be in whole integer amounts. If NMFS approves both amendments, NMFS will make the requested transfer(s) by decreasing the account balance of the CDQ group from which the CDQ or PSQ species is transferred by the amount transferred and by increasing the account balance of the CDQ group receiving the transferred CDQ or PSQ species by the amount transferred. NMFS will not approve transfers to cover overages of CDQ or PSQ.

(1) CDQ allocation. CDQ groups may request that NMFS transfer any or all of one group's CDQ allocation to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs.

(2) CDQ. CDQ groups may request that NMFS transfer any or all of one group's CDQ for a calendar year to another by each group filing an appropriate amendment to its CDP. If the amount to be transferred is 10 percent or less of a group's initial CDQ amount for that year, that group's request may be made through the CDP technical amendment process set forth at paragraph (g)(5) of this section. If the amount to be transferred is greater than 10 percent of a group's initial CDQ

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amount for the year, that group's request must be made through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

(3) PSQ allocation. CDQ groups may request that NMFS transfer any or all of one group's PSQ allocation to another CDQ group through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of a CDQ allocation, and the requested amount of PSQ allocation must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of a PSQ allocation may be submitted to NMFS from January 1 through January 31. Requests for transfers of a PSQ allocation will not be accepted by NMFS at other times of the year. The PSQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs.

(4) PSQ. CDQ groups may request that NMFS transfer any or all of one group's PSQ for one calendar year to another by each group filing an amendment to its CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. Each group's request must be part of a request for the transfer of CDQ, and the requested amount of PSQ must be the amount reasonably required for bycatch needs during the harvesting of the CDQ. Requests for the transfer of PSQ may be submitted to NMFS from January 1 through January 31. Requests for transfers of PSQ will not be accepted by NMFS at other times of the year. The PSQ will be transferred as of the date NMFS approves the amendments of both groups and is effective only for the remainder of the calendar year in which the transfer occurs.

*(f) CDQ group responsibilities.*

A CDQ group's responsibilities include, but are not limited to, the following:

- (1) Direct and supervise all activities of the managing organization;
- (2) Maintain the capability to communicate with all vessels harvesting its CDQ and PSQ at all times;
- (3) Monitor the catch of each CDQ or PSQ;
- (4) Submit the CDQ catch report described at § 679.5(n)(2);

(5) Ensure that no CDQ, halibut PSQ, or crab PSQ is exceeded;

(6) Ensure that the CDQ group's CDQ harvesting vessels and CDQ processors will:

- (i) Provide observer coverage, equipment, and operational requirements for CDQ catch monitoring;
- (ii) Provide for the communication of observer data from their vessels to NMFS and the CDQ representative;
- (iii) Maintain contact with the CDQ group for which it is harvesting CDQ and PSQ;
- (iv) Cease fishing operations when requested by the CDQ group; and
- (v) Comply with all requirements of this part while harvesting or processing CDQ species.

(7) Comply with all requirements of this part.

*(g) Monitoring of CDPs*

(1) Annual progress report.

(i) The State must submit to NMFS, by October 31 of each year, an annual progress report for the previous calendar year for each CDP.

(ii) Annual progress reports must be organized on a project-by-project basis and include information for each CDQ project in the CDP describing how each scheduled milestone in the CDP has been met, and an estimation by the State of whether each of the CDQ projects in the CDP is likely to be successful.

(iii) The annual report must include a description by the State of any problems or issues in the CDP that the State encountered during the annual report year.

(2) Annual budget report.

(i) Each CDQ group must submit to NMFS an annual budget report by December 15 preceding the year for which the annual budget applies.

(ii) An annual budget report is a detailed estimate of the income from the CDQ project and of the expenditures for each subsidiary, division, joint venture, partnership, investment activity, or CDQ project as described in paragraph (a)(1)(i) of this section for a calendar year. A CDQ group must identify the administrative costs for each CDQ project. The CDQ group's total administrative costs will be considered a separate CDQ project.

(iii) An annual budget report is approved upon receipt by NMFS, unless disapproved by NMFS in writing by December 31. If disapproved, the annual budget report will be returned to the CDQ group for revision and resubmittal to NMFS.

(3) Annual budget reconciliation report. A CDQ group must reconcile its annual budget by May 30 of the year

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following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDQ project that is described in paragraph (a)(1)(i) of this section.

(4) Substantial amendments. A CDP is a working business plan and must be kept up to date.

(i) Substantial amendments to a CDP require a written request by the CDQ group to the State and NMFS for approval of the amendment. The State must forward the amendment to NMFS with a recommendation as to whether it should be approved.

(ii) NMFS will notify the State in writing of the approval or disapproval of the amendment within 30 days of receipt of both the amendment and the State's recommendation. Except for substantial amendments for the transfer of CDQ and PSQ, which are effective only for the remainder of the calendar year in which the transfer occurs (see paragraphs (e)(2) and (4) of this section), once a substantial amendment is approved by NMFS, the amendment will be effective for the duration of the CDP.

(iii) If NMFS determines that the CDP, if changed, would no longer meet the requirements of this subpart, NMFS will notify the State in writing of the reasons why the amendment cannot be approved.

(iv) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to:

(A) Any change in the list of communities comprising the CDQ group or replacement of the managing organization.

(B) A change in the CDP applicant's harvesting or processing partner.

(C) Funding a CDP project in excess of \$100,000 that is not part of an approved general budget.

(D) More than a 20-percent increase in the annual budget of an approved CDP project.

(E) More than a 20-percent increase in actual expenditures over the approved annual budget for administrative operations.

(F) A change in the contractual agreement(s) between the CDQ group and its harvesting or processing partner or a change in a CDP project, if such change is deemed by the State or NMFS to be a material change.

(G) Any transfer of a CDQ allocation, PSQ allocation, PSQ, or a transfer of more than 10 percent of a CDQ.

(H) The addition of a vessel to a CDP if the CDQ group submits a proposed alternative method of determining CDQ and PSQ catch under paragraph (a)(5)(ii) of this section for NMFS review.

(v) The request for approval of a substantial amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate.

(B) An explanation of why the proposed change to the CDP is a substantial amendment.

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment.

(D) A comparison of the original CDP text, with the text of the proposed changes to the CDP, and the revised pages of the CDP for replacement in the CDP binder. The revised pages must have the revision date noted, with the page number on all affected pages. The table of contents may also need to be revised to reflect any changes in pagination.

(E) Identification of any NMFS findings that would need to be modified if the amendment is approved, along with the proposed modified text.

(F) A description of how the proposed amendment meets the requirements of this subpart. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(5) Technical amendments. Any change to a CDP that is not considered a substantial amendment under paragraph (g)(4)(iv) of this section is a technical amendment.

(i) The CDQ group must notify the State in writing of any technical amendment. Such notification must include a copy of the pages of the CDP that would be revised by the amendment, with the text highlighted to show the proposed deletions and additions, and a copy of the CDP pages as they would be revised by the proposed amendment for insertion into the CDP binder. All revised CDP pages must include the revision date, amendment identification number, and CDP page number. The table of contents may also need to be revised to reflect any changes in pagination.

(ii) The State must forward the technical amendment to NMFS with its recommendations for approval or disapproval of the amendment. A technical amendment is approved by NMFS and is effective when, after review, NMFS notifies the State in writing of the technical amendment's receipt and approval.

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***(h) Suspension or termination of a CDP.***

An annual progress report, required under paragraph (g)(1) of this section, will be used by the State to review each CDP to determine whether the CDP, CDQ, and PSQ allocations thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(1) If the State determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(2) If the State recommends to NMFS that an allocation be decreased, the State's recommendation for decrease will be deemed approved if NMFS does not notify the State in writing within 30 days of receipt of the State's recommendation.

(3) If the State determines that a CDP has not successfully met its goals and objectives or appears unlikely to become successful, the State may submit a recommendation to NMFS that the CDP be partially suspended, suspended, or terminated. The State must set out, in writing, the reasons for recommending suspension or termination of the CDP.

(4) After review of the State's recommendation and reasons thereof, NMFS will notify the Governor, in writing, of approval or disapproval of the recommendation within 30 days of its receipt. In the case of suspension or termination, NMFS will publish notification in the Federal Register, with reasons thereof.

**§ 679.31 CDQ reserves.**

Portions of the CDQ and PSQ reserves for each subarea or district may be allocated for the exclusive use of CDQ applicants in accordance with CDPs approved by the Governor in consultation with the Council and approved by NMFS. NMFS will allocate no more than 33 percent of the total CDQ for all subareas and districts combined to any one applicant with an approved CDP application.

***(a) Pollock CDQ reserve.***

In the proposed and final harvest specifications required by § 679.20(c), one-half of the pollock TAC placed in the reserve for each subarea or district of the BSAI will be apportioned to a CDQ reserve for each subarea or district.

***(b) Halibut CDQ reserve.***

(1) NMFS will annually withhold from IFQ allocation the proportions of the halibut catch limit that are specified in paragraph (b) of this section for use as a CDQ reserve.

(2) Portions of the CDQ for each specified IPHC regulatory area may be allocated for the exclusive use of an eligible Western Alaska community or group of communities in accordance with a CDP approved by the Governor in consultation with the Council and approved by NMFS.

(3) The proportions of the halibut catch limit annually withheld for the halibut CDQ program, exclusive of issued QS, and the eligible communities for which they shall be made available are as follows for each IPHC regulatory area (see Figure 15 to this part):

(i) Area 4B. In IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available to eligible communities physically located in, or proximate to, this regulatory area.

(ii) Area 4C. In IPHC regulatory area 4C, 50 percent of the halibut quota shall be made available to eligible communities physically located in IPHC regulatory area 4C.

(iii) Area 4D. In IPHC regulatory area 4D, 30 percent of the annual halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory areas 4D and 4E.

(iv) Area 4E. In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory area 4E. A fishing trip limit of 6,000 lb (2.7 mt) applies to halibut CDQ harvesting in IPHC regulatory area 4E.

(4) For the purposes of this section, "proximate to" an IPHC regulatory area means within 10 nm from the point where the boundary of the IPHC regulatory area intersects land.

***(c) Groundfish CDQ reserves.***

(See § 679.20(b)(1)(iii))

***(d) Crab CDQ reserves.***

King and Tanner crab species in the Bering Sea and Aleutian Islands Area that have a guideline harvest level specified by the State of Alaska that is available for commercial harvest are apportioned to a crab CDQ reserve as follows:

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

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

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*(e) PSQ reserve.*

(See § 679.21(e)(1)(i) and (e)(2)(ii)).

*(f) Non-specific CDQ reserve.*

**[NOTE: This paragraph is suspended until December 31, 2001; see Paragraph (g) below]**

Annually, NMFS will apportion 15 percent of each arrowtooth flounder and “other species” CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group’s non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific CDQ reserve to the CDQ group’s arrowtooth flounder or “otherspecies” CDQ is a technical amendment to a community development plan as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

*(g) Non-specific CDQ reserve*

(applicable through December 31, 2001).

Annually, NMFS will apportion 50 percent of the arrowtooth flounder CDQ and 15 percent of the “other species” CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group’s non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific reserve to the CDQ group’s arrowtooth flounder or “other species” CDQ is a technical amendment to a community development plan as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

