



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

January 17, 2003

Jeffrey W. Bush, Deputy Commissioner
Alaska Department of Community
and Economic Development
P.O. Box 110800
Juneau, Alaska 99811-0800

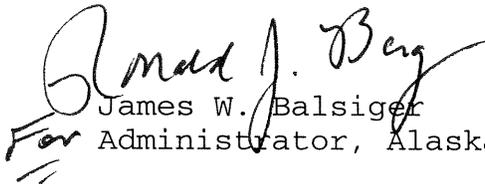
Dear Mr. Bush:

On October 15, 2002, the State of Alaska (State) submitted its recommendations for percentage allocations of groundfish, halibut, crab, and prohibited species under the Western Alaska Community Development Quota (CDQ) Program for 2003 through 2005. In addition, the State recommended approval of the Community Development Plans submitted for six CDQ groups, representing 65 western Alaska communities.

We have reviewed the State's recommendations and the CDPs according to regulations at 50 CFR Part 679. Attachment 2 describes these regulations, the information submitted by the State and the CDQ groups, and NMFS's findings and determinations.

With one exception, I approve the State's CDQ allocation recommendations for 2003 through 2005. I have disapproved the State's allocation recommendations for Bering Sea other red rockfish because this species group no longer is a valid quota category. NMFS's findings and determinations provide an explanation about how the rockfish species formerly in this quota category will be managed by NMFS without specific allocations to the CDQ groups. The CDQ allocations approved for 2003 through 2005 are shown in Attachment 1. These percentage allocations and the CDPs will expire on December 31, 2005.

Sincerely,


James W. Balsiger
For Administrator, Alaska Region

cc: CDQ groups
NPFMC



Attachment 1: 2003 - 2005 Community Development Quota
 Allocations for Groundfish, Halibut, Crab and Prohibited Species

Species or Species Group	Community Development Quota Group					
	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA
Groundfish CDQ Species						
Bering Sea (BS) Pollock	14%	21%	5%	24%	22%	14%
Aleutian Islands (AI) Pollock	14%	21%	5%	24%	22%	14%
Bogoslof Pollock	14%	21%	5%	24%	22%	14%
Pacific Cod	15%	21%	9%	18%	18%	19%
BS Fixed Gear Sablefish	15%	20%	16%	0%	18%	31%
AI Fixed Gear Sablefish	14%	19%	3%	27%	23%	14%
BS Sablefish	21%	22%	9%	13%	13%	22%
AI Sablefish	26%	20%	8%	13%	12%	21%
WAI Atka Mackerel	30%	15%	8%	15%	14%	18%
CAI Atka Mackerel	30%	15%	8%	15%	14%	18%
EAI/BS Atka Mackerel	30%	15%	8%	15%	14%	18%
Yellowfin Sole	28%	24%	8%	6%	7%	27%
Rock Sole	24%	23%	8%	11%	11%	23%
BS Greenland Turbot	16%	20%	8%	17%	19%	20%
AI Greenland Turbot	17%	19%	7%	18%	20%	19%
Arrowtooth Flounder	22%	22%	9%	13%	12%	22%
Flathead Sole	20%	21%	9%	15%	15%	20%
Alaska Plaice	14%	21%	5%	24%	22%	14%
Other Flatfish	26%	24%	8%	8%	8%	26%
BS Pacific Ocean Perch	17%	21%	6%	21%	19%	16%
WAI Pacific Ocean Perch	30%	15%	8%	15%	14%	18%
CAI Pacific Ocean Perch	30%	15%	8%	15%	14%	18%
EAI Pacific Ocean Perch	30%	15%	8%	15%	14%	18%
BS Northern Rockfish	No allocations to CDQ groups.*					
BS Shortraker/Rougheye Rockfish	No allocations to CDQ groups.*					
AI Northern Rockfish	30%	15%	8%	15%	14%	18%
AI Shortraker/Rougheye Rockfish	22%	17%	8%	17%	17%	19%
BS Other Rockfish	21%	19%	7%	17%	17%	19%
AI Other Rockfish	21%	18%	8%	17%	17%	19%
Other Species	18%	21%	9%	16%	16%	20%
Prohibited Species						
Zone 1 Red King Crab	24%	21%	8%	12%	12%	23%
Zone 1 Bairdi Tanner Crab	26%	24%	8%	8%	8%	26%
Zone 2 Bairdi Tanner Crab	24%	23%	8%	11%	10%	24%
Opilio Tanner Crab	25%	24%	8%	10%	8%	25%
Pacific Halibut	22%	22%	9%	12%	12%	23%
Chinook Salmon	14%	21%	5%	24%	22%	14%
Non-chinook Salmon	14%	21%	5%	24%	22%	14%
Halibut CDQ						
Halibut Area 4B	100%	0%	0%	0%	0%	0%
Halibut Area 4C	15%	0%	85%	0%	0%	0%
Halibut Area 4D	0%	26%	0%	24%	30%	20%
Halibut Area 4E	0%	30%	0%	70%	0%	0%
Crab CDQ						
Bristol Bay Red King Crab	17%	19%	10%	18%	18%	18%
Norton Sound Red King Crab	0%	0%	0%	0%	50%	50%
Pribilof Red & Blue King Crab	0%	0%	100%	0%	0%	0%
St. Matthew Blue King Crab	50%	12%	0%	12%	14%	12%
Bering Sea C. Opilio Crab	8%	20%	20%	17%	18%	17%
Bering Sea C. Bairdi Crab	10%	19%	19%	17%	18%	17%

* These species will be managed at the CDQ reserve level and not as CDQ group specific allocations.

(acronyms defined on following page)

Acronyms used in 2003 - 2005 CDQ allocation table

APICDA = Aleutian Pribilof Island Community Development Association

BBEDC = Bristol Bay Economic Development Corporation

CBSFA = Central Bering Sea Fishermen's Association

CVRF = Coastal Villages Region Fund

NSEDC = Norton Sound Economic Development Corporation

YDFDA = Yukon Delta Fisheries Development Association

BS = Bering Sea

AI = Aleutian Islands

EAI = Eastern Aleutian Islands

CAI = Central Aleutian Islands

WAI = Western Aleutian Islands

Attachment 2: NMFS Findings Supporting Approval of the 2003-2005 Community Development Plans and Percentage Allocations of Community Development Quota to the Six CDQ Groups

The State of Alaska (State) submitted its recommendations for 2003-2005 Community Development Plans (CDPs) and Community Development Quota (CDQ) allocations to the National Marine Fisheries Service (NMFS) on October 15, 2002, for the following six CDQ groups:

- Aleutian Pribilof Island Community Development Association (APICDA)
- Bristol Bay Economic Development Corporation (BBEDC)
- Central Bering Sea Fishermen's Association (CBSFA)
- Coastal Villages Region Fund (CVRF)
- Norton Sound Economic Development Corporation (NSEDCC)
- Yukon Delta Fisheries Development Association (YDFDA)

Regulatory Requirements

50 CFR Part 679 requires NMFS to review proposed CDPs and allocation recommendations submitted by the State and approve those that it determines meets all applicable requirements of 50 CFR Part 679.

The State of Alaska must meet the following requirements:

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 North Pacific Fishery Management Council (Council) before the State submits its recommendations about the proposed CDPs to NMFS, as required by §679.30(c).
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 Part 679.

Once NMFS receives the State's recommendations, NMFS must make determinations as to whether:

1. The State has followed the application procedures, public hearing requirement, and the Council consultation requirement in §679.30(a) through (c);
2. The CDPs contain all of the information required in §679.30(a) and the applicable definitions in §679.2;
3. The proposed CDPs are consistent with the purpose and scope of the CDQ Program as described at §679.1(e);
4. The communities represented by the CDPs meet the eligibility criteria in §679.2; and
5. The State provided NMFS with the findings and rationale for its CDP and allocation recommendations required in §679.30(d), and that the State's findings and rationale are reasonable.

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.

Under regulations at §679.30(a), CDQ allocations 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 most recent CDQ allocations expired on December 31, 2002. In this document, NMFS is making determinations about

the State's allocation recommendations for all species allocated to the CDQ Program, including groundfish, prohibited species, halibut, and crab. However, most of the information submitted to NMFS to review by the State and the CDQ groups focused on the species for which the State is recommending a different allocation in 2003-2005 than was approved in 2001 and 2002. Consequently, NMFS's determinations focus primarily on the allocation recommendations for these species.

Standard of Review of the Proposed Community Development Plans and the State's Allocation Recommendations

NMFS's role in the CDQ Program allocations is defined by the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (groundfish FMP), the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (crab FMP), and regulations at 50 CFR Part 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.

The 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 of Alaska. 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."

Regulations at 50 CFR Part 679 implementing the CDQ Program were developed by the Council based on recommendations by the State of Alaska. As intended by the FMPs, these regulations place the primary responsibility with the State of Alaska for CDQ allocations and day-to-day administration of the CDQ Program. 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. For these

reasons, NMFS interprets its standard for reviewing State CDP and allocation recommendations as an abuse of discretion standard rather than an independent or *de novo* review of the record.

The role of NMFS in review and approval of the CDPs and the allocation of quota to the eligible communities is limited by regulatory design to conducting a careful inquiry of the record provided by the State for its recommendations and to determining whether the State considered relevant factors and articulated a satisfactory explanation for its action, including a rational connection between the facts found and the recommendations made by the State. NMFS must approve the State's recommendations if it finds that the State followed the requirements described in the regulations and provided a rationale that demonstrates that the State considered relevant factors and provided a reasonable explanation for its allocation recommendations given those factors.

Summary of the State's Allocation Recommendations

Tables summarizing the State's CDQ allocation recommendations and comparing these recommendations with past allocations and with the amount requested by the CDQ groups are in Attachment 3.

- Table 3.1 provides a comparison between the percentage allocations received by each group in 2001 and 2002 with the percentage allocations recommended by the State for 2003-2005.
- Table 3.2 provides a comparison between the percentage allocations requested by the CDQ groups in the CDP applications they submitted to the State on July 1, 2002 and the percentage allocations recommended by the State.

Comparison of CDQ allocations in 2001 and 2002 with the State's recommended percentage allocations for primary target species
(See Attachment 3, Table 3.1 for more detail):

APICDA

- 5% increase in area 4C halibut CDQ allocation from 10% to 15%.
- 1% decrease in Pacific cod allocation from 16% to 15%.
- 1% decrease in Aleutian Islands fixed gear sablefish allocation from 15% to 14%.
- 1% decrease in Bristol Bay red king crab from 18% to 17%.
- 2% decrease in Bering Sea *Chionoecetes opilio* tanner (opilio) crab from 10% to 8%.

BBEDC

- A 1% increase in Pacific cod from 20% to 21%.
- A 1% increase in Bristol Bay red king crab from 18% to 19%.
- A 1% increase in Bering Sea opilio crab from 19% to 20%.
- A 2% decrease in Bering Sea fixed gear sablefish.
- A 1% decrease in Aleutian Islands fixed gear sablefish.

CBSFA

- A 1% increase in pollock from 4% to 5%.
- A 3% increase in Aleutian Islands fixed gear sablefish from 0% to 3%.
- A 1% increase in Bering Sea opilio crab from 19% to 20%.
- A 1% decrease in Pacific cod from 10% to 9%.
- A 2% decrease in Bering Sea fixed gear sablefish from 18% to 16%.
- A 5% decrease in area 4C halibut from 90% to 85%.

CVRF

- A 1% increase in Pacific cod from 17% to 18%.
- A 3% decrease in Aleutian Islands fixed gear sablefish.

NSEDC

- a 1% decrease in pollock from 23% to 22%.
- A 3% increase in Aleutian Islands fixed gear sablefish from 20% to 23%.
- A 2% decrease in Bering Sea fixed gear sablefish from 10% to 18%.

YDFDA

- A 6% increase in Bering Sea fixed gear sablefish from 25% to 31%.
- A 1% decrease in Aleutian Islands fixed gear sablefish from 15% to 14%.

For the following quota categories, the State recommended the same allocations for all CDQ groups in 2003-2005 as were approved in 2001 and 2002:

Groundfish CDQ: Atka mackerel in all areas, yellowfin sole, rock sole, Pacific Ocean perch in all three districts of the Aleutian Islands, and Aleutian Islands northern rockfish.

Prohibited species: halibut, zone 1 *Chionoecetes bairdi* tanner (bairdi) crab.

Halibut CDQ: halibut 4B, halibut 4D, and halibut 4E.

Crab CDQ: Norton Sound red king crab, Pribilof red and blue king crab, St. Matthew blue king crab, and Bering Sea bairdi crab.

Comparison of allocations requested by the CDQ groups with the State's recommended allocations for 2003-2005
(See Attachment 3, Table 3.2 for more detail)

The CDQ groups are required to request CDQ allocations in their CDPs. In all cases, except two, the sum of the CDQ allocation requests by the six CDQ groups was greater than the amount of quota available to allocation. The two exceptions were halibut in area 4B and the Pribilof red and blue king crab. APICDA requested 100% of the area 4B halibut CDQ and no other CDQ groups requested any allocation of this quota category. By regulation at 50 CFR 679.31(b)(3), halibut CDQ must be allocated to eligible communities physically located in or proximate to the regulatory area. All of the CDQ communities located in or proximate to area 4B are members of APICDA. CBSFA requested 100% of the Pribilof Island red and blue king crab CDQ allocation and no other CDQ groups requested any allocation of this quota category. CBSFA represents the community of St. Paul in the Pribilof Islands.

In the following cases, the State recommended the same allocation for a CDQ group as the group requested in their proposed CDPs:¹

APICDA: Atka mackerel in all areas, Bering Sea Greenland turbot, flathead sole, Pacific Ocean perch in all districts of the Aleutian Islands, Zone 1 bairdi crab prohibited species quota (PSQ), and halibut in areas 4B and 4C.

BBEDC: Atka mackerel in all areas, yellowfin sole, rock sole, Pacific Ocean perch in all districts of the Aleutian Islands, Zone 2 bairdi crab PSQ.

¹This summary does not include the quota categories for which the CDQ groups requested 0% allocations and the State recommended 0% allocations. These comparisons can be found in Table 3.2.

CBSFA: Zone 1 red king crab PSQ, Zone 1 bairdi crab PSQ, halibut PSQ, non-chinook salmon PSQ, Pribilof Island red and blue king crab, and bairdi crab.

CVRF: Aleutian Islands fixed gear sablefish, Eastern Aleutian Islands/Bering Sea Atka mackerel, and halibut in area 4E.

YDFDA: Pacific cod, yellowfin sole, flathead sole, Pacific Ocean perch in all districts of the Aleutian Islands, Bering Sea other red rockfish, Aleutian Islands northern rockfish, other species, Zone 1 bairdi crab PSQ, halibut PSQ, and all crab quota categories.

In a number of cases, the State is recommending a higher allocation for a CDQ group than it requested. These examples are primarily incidentally caught species and prohibited species, for which the allocation recommendations are based on a bycatch model (described below), rather than on application of evaluation criteria. However, the State is recommending a higher percentage allocation of one target species allocation than was requested. YDFDA requested 25% of the Bering Sea fixed gear sablefish allocation and the State is recommending that it be allocated 31%. The reasons for this recommendation are discussed below in the section addressing the State's rationale. In all other cases, the State recommended lower percentage allocations than the CDQ groups requested, because the requested allocations add up to more than was available to allocate.

NMFS Determinations

- 1. The State followed the application procedures, the public hearing requirement, and the Council consultation requirement in §679.30(a) through (c).**

Application process: In Appendix 2 to its October 15, 2002, recommendations, the State submitted two items to demonstrate its compliance with the requirement at §679.30(a) to announce a CDQ application period. The State submitted a copy of a letter dated March 22, 2002, to "dear interested party," announcing the release of the application packets for the 2003-2005 CDQ Program to all of the CDQ groups and stating that the deadline for receipt of the applications was July 1, 2002. The State also submitted a copy of a public notice published in the Anchorage Daily News on March 27, 2002, announcing that the application period was between April 1, 2002, and July 1, 2002. NMFS determines that the State complied with the application procedures set forth in §679.30(a) based on the information contained in Appendix 2 to its October 15, 2002, letter.

Public hearing: In Appendix 2 to its October 15, 2002, findings, the State submitted the following documents related to the public hearing:

(a) Documentation that a public notice announcing the August 27, 2002, public hearing was published in the Bristol Bay Times, Dutch Harbor Fisherman, Tundra Drums, Nome Nugget, and the Anchorage Daily News.

(b) A copy of an on-line public notice published by the State of Alaska on July 7, 2002, announcing the August 27, 2002, public hearing.

(b) A copy of a letter dated July 9, 2002, sent to each of the six CDQ groups by the State of Alaska announcing the public hearing.

(c) A copy of the sign-up sheet for attendance at the public hearing.

(d) A 67-page transcript of the August 27, 2002, public hearing in Anchorage, Alaska.

NMFS staff attended the public hearing and teleconference on August 27, 2002, in Anchorage, Alaska. Representatives from each of the six CDQ groups presented an approximately 15-minute overview of their CDP and answered questions from the State CDQ Team. No public comments were received via teleconference. One member of the public testified at the end of the hearing. His testimony is documented in the hearing transcript.

Based on the information submitted by the State and on NMFS staff attendance at the hearing, NMFS determines the State has met the public hearing requirements of §679.30(b).

Council consultation: In Appendix 4 to its October 15, 2002, findings, the State included a copy of a September 24, 2002, letter to David Benton, Chairman of the Council. The letter provided the State's recommendations for the 2003-2005 CDQ allocations. In addition, Jeff Bush, Deputy Commissioner of the State's Department of Community and Economic Development, consulted with the Council concerning the proposed CDPs and allocations on October 6, 2002, during the Council's October 2002 meeting. NMFS staff attended this meeting. Representatives of APICDA, CBSFA, and NSEDC testified during the public comment period. After discussion of the State's recommendations and public comment, the Council concurred with the State's recommendations through a motion that passed without objection.

Therefore, based on the information submitted by the State NMFS determines the State did meet the requirement at §679.30(c) to consult with the Council before transmitting its allocation recommendations to NMFS.

Additional Elements of the CDQ Allocation Process in 2002

In addition to the process requirements in 50 CFR Part 679, the State and NMFS implemented several additional elements to the CDQ allocation process in 2002. These additional elements provided (1) public release of the State's initial allocation recommendations about three weeks earlier than they had been released in prior allocation cycles, (2) an opportunity for the CDQ groups to comment in writing to the State on its initial allocation recommendations, (3) a written response by the State to these comments, (4) a copy of the CDQ groups' comments and the State's responses to those comments to the Council prior to the State's consultation with the Council, and (5) a structured opportunity for the CDQ groups to submit written comments to NMFS after the State submitted its recommendations to NMFS on October 15, 2002.

Elements (1) through (4) were added to the process to provide the CDQ groups, the Council, and the public several additional opportunities to comment on the State's allocation recommendations before the Council made recommendations about the allocations and before they were submitted to NMFS. In previous allocation cycles, the State's recommendations usually were made available less than a week before the Council meeting and the groups had very limited time to provide comments or additional information to decision makers. NMFS also added element (5), a 15-day comment period, so that all CDQ groups had a structured opportunity to submit comments for NMFS to consider during its review of the State's allocation recommendations. This comment period was announced to the groups by letter dated September 30, 2002. NMFS added this comment period because, during the last allocation cycle, some CDQ groups submitted comments to NMFS, but other groups were not aware that they could submit comments. This comment period was added to provide all groups an equal opportunity to submit comments to NMFS and to limit the comment period to early in NMFS's review process so that all comments could be adequately considered. NMFS summarizes the comments submitted to the State and NMFS in a following section. In addition, NMFS responds to the comments that are relevant to its review of the State's CDQ allocation recommendations.

2. The CDPs contain all of the information required in §679.30 and the applicable definitions in §679.2.

On pages 2 through 7 of its October 15, 2002, findings, the State determined that the proposed CDPs for the six CDQ groups contained all of the information required in §679.30(a). The State referred to checklists that are included in each proposed CDP to identify where the required information is located in the CDP. NMFS reviewed all of the proposed CDPs and prepared checklists to verify that all of the information required under §679.30(a) and relevant definitions at §679.2 is contained in the proposed CDPs. These checklists were added to NMFS's administrative record through a memorandum to the file dated January 17, 2003.

3. The proposed CDPs are consistent with the purpose and scope of the CDQ Program as described at §679.1(e).

NMFS reviewed the proposed CDPs to determine whether they describe CDQ projects that are consistent with the goals and purpose of the CDQ Program in 50 CFR 679.1(e):

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

The CDPs describe a variety of CDQ projects including investment in fishing vessels, processing vessels, shoreside processing plants, individual fishing quotas, fishing lodges, and infrastructure in the communities to support fishing businesses. The CDPs also describe funding of scholarships, vocational training, primary and secondary school curriculum development; and grants to local fishermen's organizations, local governments, and local schools. In addition, the CDPs describe administrative expenses associated with staff, the board of directors, community outreach, travel, and management of the CDQ group's fisheries and assets. NMFS determines that these CDQ projects and associated expenditures are consistent with the goals and purpose of the CDQ Program because they are either (1) direct investments related to commercial fishing businesses activities, (2) investments in education and training of CDQ region residents, or (3) costs associated with administration of the CDQ Program.²

²A determination that a CDP describes projects consistent with the goals and purpose of the CDQ Program does not

4. Until NMFS thoroughly examines the relevant information regarding eligibility for all communities currently listed in the CDPs, NMFS determines that the 65 communities represented by the CDPs are eligible to participate in the CDQ Program for the 2003-2005 allocation cycle.

50 CFR 679.30(1)(iv) requires that a CDP contain "[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." The eligibility criteria in §679.2 follows:

Eligible community means (for purposes of the CDQ program) 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.³

(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.

necessarily mean that the projects are implemented in a manner consistent with NMFS regulations. This issue is discussed in more detail in a later section of this document.

³BSAI is the Bering Sea and Aleutian Islands area.

To date, NMFS has determined that 65 communities are eligible for the CDQ Program. Fifty-six communities were recommended by the State as eligible communities when the CDQ Program was initially implemented on November 23, 1992 (57 FR 54936). At the recommendation of the Council, the community of Akutan was added in 1996 (61 FR 41744; August 12, 1996). These 57 communities determined eligible for the CDQ Program by rulemaking are listed on Table 7 to 50 CFR Part 679.⁴

On March 8, 1999, the State submitted to NMFS recommendations and supporting documentation about the eligibility of Ekwok, Grayling, Levelock, Mountain Village, Napakiak, Napaskiak, Oscarville, and Portage Creek. The State initially identified these additional communities as eligible after a review initiated by a letter from a resident of Levelock, Alaska, who contended that Levelock did meet the location criteria contained in NMFS's 1992 final rule. In its March 8, 1999, letter to NMFS, the State recommended that these eight communities be determined eligible communities under the CDQ Program.

Through a letter dated April 19, 1999, NMFS agreed with the State's recommendations and determined that the eight communities were eligible for the CDQ Program. These eight communities have been considered eligible for the CDQ Program since that date. The communities were added to the CDPs by substantial amendments approved by the State and NMFS in June 1999. The eight communities also were included in the CDPs and CDQ allocations recommended by the State and approved by NMFS for the 2000 pollock CDQ allocations and the 2001-2002 multispecies CDQ allocations.

On October 31, 2000, APICDA submitted a letter to NMFS challenging the State's 2001 and 2002 CDQ allocations. One aspect of this challenge related to community eligibility. APICDA contended that some of the communities considered eligible by the State and NMFS did not meet the regulatory eligibility criterion of having residents who "conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI." APICDA raised two concerns about this eligibility criterion. First, it asked whether the term "current" required the communities to continue to meet this

⁴There are 56 separate entries for eligible communities on Table 7 to 50 Part CFR 679, one of which is "Pilot Point/Ugashik". Because Pilot Point and Ugashik are two separate, populated communities, NMFS considers that there are 57 CDQ communities listed on Table 7.

requirement to remain eligible for the CDQ Program. Second, it opined that the State and NMFS incorrectly determined that some communities were eligible based on this criterion. APICDA also raised these questions in 2002 during public comment to the Council on Amendment 71 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area.

NMFS addressed APICDA's comments in its January 30, 2001,⁵ decision to approve the State's CDQ allocation recommendations for 2001 and 2002 as follows:

At this time, NMFS determines that the question about eligible communities raised by APICDA is not a valid basis for disapproving the State's 2001-2002 CDQ allocation recommendations. NMFS has approved the State's recommendations that 65 communities are eligible for the CDQ Program. The CDPs were developed on the assumption that this determination was correctly made. No new information has been presented to either the State or NMFS that demonstrates that any specific community is ineligible based on that criterion. Therefore, the State's current assertion to NMFS (findings, 10/16/00, page 3) that all of the communities represented by the proposed CDPs are eligible for the CDQ Program was made on the basis of the best information available to the State at the time it reviewed the proposed CDPs. If further investigation of the concerns raised by APICDA indicates that some communities do not meet the eligibility criteria, removal of these communities from the CDQ Program can be considered at that time.

None of the CDQ groups challenged the eligibility status of any of the 65 CDQ communities in their written comments to the State or NMFS regarding the State's 2003-2005 CDQ allocation recommendations. The State didn't submit evaluation of community eligibility requirements, but recommended that all 65 communities are eligible for the 2003-2005 allocation cycle as all are on Table 7 to 50 CFR Part 679 or meet the eligibility criteria at §679.2 (page 2 of the State's findings).

Table 2.1 shows the communities represented by each of the six CDQ groups in the CDPs submitted to NMFS by the State on October 15, 2002. NMFS considered the eligibility status of these communities during review of the State's 2003-2005 CDQ allocation

⁵Decision memorandum from James W. Balsiger to Penelope D. Dalton, dated January 17, 2001. William Hogarth concurred with this decision on January 30, 2001.

Table 2.1. Communities listed as eligible for the CDQ Program in six Community Development Plans submitted by the State to NMFS on October 15, 2002.

Aleutian Pribilof Island Community Development Association (APICDA)

Akutan
Atka
False Pass
Nelson Lagoon
Nikolski
Saint George

Bristol Bay Economic Development Corporation (BBEDC)

Aleknagik
Clark's Point
Dillingham
Egegik
Ekuk
Ekwok *
Levelock *
Manokotak
Naknek
Pilot Point
Port Heiden
Portage Creek *
South Naknek
Sovonoski/King Salmon
Togiak
Twin Hills
Ugashik

Central Bering Sea Fishermen's Association (CBSFA)

Saint Paul

Coastal Villages Region Fund (CVRF)

Chefornak
Chevak
Eek
Goodnews Bay
Hooper Bay
Kipnuk
Kongiganak
Kwigillingok
Mekoryuk
Napakiak *
Napaskiak *
Newtok
Nightmute
Oscarville *
Platinum

Quinhagak
Scammon Bay
Toksook Bay
Tuntutuliak
Tununak

Norton Sound Economic Development Corporation (NSEDC)

Brevig Mission
Diomede
Elim
Gambell
Golovin
Koyuk
Nome
Saint Michael
Savoonga
Shaktoolik
Stebbins
Teller
Unalakleet
Wales
White Mountain

Yukon Delta Fisheries Development Association (YDFDA)

Alakanuk
Emmonak
Grayling *
Kotlik
Mountain Village *
Nunam Iqua (Sheldon Point)

* indicates communities that were determined eligible by NMFS on April 19, 1999, but are not listed on Table 7 to 50 CFR Part 679.

recommendations. NMFS determined that the 57 communities listed in CDPs submitted by the six CDQ groups that also are listed on Table 7 of 50 CFR Part 679 are eligible communities for purposes of the CDQ Program. These communities meet the requirements of §679.30(a)(1)(iv) and §679.2 by the fact that they are listed on Table 7 of 50 CFR Part 679.

Eight of the communities listed in CDPs submitted by three of the CDQ groups are not listed in Table 7 of 50 CFR Part 679. These communities and CDQ groups are:

Ekwok (BBEDC)
Levelock (BBEDC)
Portage Creek (BBEDC)
Napaskiak (CVRF)
Napakiak (CVRF)
Oscarville (CVRF)
Grayling (YDFDA)
Mountain Village (YDFDA)

The eligibility of these communities is based on information submitted to NMFS by the State on March 8, 1999, and NMFS's decision to accept these recommendations dated April 19, 1999. NMFS has determined that, because these eight communities are not listed on Table 7 to 50 CFR Part 679, and in light of questions raised about their eligibility status, NMFS should review the basis of its April 19, 1999, decision that these communities are eligible for the CDQ Program.

Review of the recommendations submitted by the State on March 8, 1999, indicates two deficiencies with the State's submission. First, the State did not evaluate the eligibility criteria as written in NMFS regulations. Second, evidence submitted by the State indicates that some of these communities may not meet the eligibility requirements as written in NMFS regulations.

NMFS's primary concern with the State's recommendations is related to criterion three, which requires that an eligible CDQ community consist of residents who "conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI." When reviewing the eligibility status of these eight communities, the State, rather than applying the criterion related to fishing effort in the waters of the BSAI, actually applied the following criterion: "reliance on fishing and fishery resources," (page 3 of March 8, 1999 letter to NMFS). The State's recommendations provided the following explanation: "...the state believes the intent of this criteria [sic] is to restrict access into the CDQ program to those communities that

are traditionally reliant on fishing or fishery resource...intent was to make the previously unattainable groundfish fishery available to fishermen of western Alaska...substantial evidence was gathered regarding these communities reliance on fishing and fisheries resources."

The criterion of reliance on fishing and fisheries resources is much broader than the criterion in NMFS regulations that requires that the residents of eligible communities conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI. In addition, evidence submitted by the State to support its recommendations indicates that some of the communities probably do not meet the eligibility criterion in NMFS regulations. Specifically, based on the information submitted by the State, residents of Grayling, Mountain Village, Napakiak, Napaskiak, and Oscarville probably do not conduct 50 percent or more of their commercial or subsistence fishing effort in the waters of the BSAI. For the communities of Ekwok, Levelock, and Portage Creek (in Bristol Bay), the information submitted by the State suggests that most of the subsistence fishing effort by residents occurs in the rivers, rather than in the waters of the BSAI, but that more than 50 percent of the commercial fishing effort occurred in waters of the BSAI. Because the criterion in question requires only that half of the commercial or subsistence fishing effort occurs in the waters of the BSAI, the information submitted by the State indicates that Ekwok, Levelock, and Portage Creek probably meet the eligibility criterion in NMFS regulations.

Although NMFS's review of the information submitted by the State in March 1999 indicates that some communities may not be eligible, NMFS lacks all of the information necessary to conclude definitively that these communities are ineligible to participate in the CDQ Program. If a community were determined ineligible for the CDQ Program, it would not be allowed to be listed in a CDP. The CDQ Program provides many valuable benefits to its member communities that would not necessarily be available to ineligible communities. Furthermore, the State asserted in its recommendations that the disqualification of any or all of the eight communities would not affect the State's allocation recommendations for 2003-2005 (page 2 of the State's findings). Therefore, until NMFS thoroughly examines the relevant information regarding eligibility for all communities currently listed in the CDPs, NMFS determines that the 65 communities represented by the CDPs are eligible to participate in the CDQ Program for the 2003-2005 allocation cycle.

NMFS intends to develop an analysis that examines the eligibility status of the eight communities added to the CDQ Program in 1999, as well as the consistency of NMFS regulations with the 1996 amendments to the MSA, and a review of the eligibility of all 65 communities relative to the MSA eligibility criteria. The MSA was amended in 1996 and community eligibility criteria for the CDQ Program were statutorily prescribed by Congress. Although the regulatory provisions at 679.2 and 679.30(a)(1)(iv) make communities on Table 7 automatically eligible for the CDQ Program, the statutory criteria set forth at 16 U.S.C. 1855(i)(1)(B) do not automatically make eligible those communities listed on Table 7 of 50 CFR Part 679, but rather appears to require that all communities must meet all of the eligibility criteria set forth in 16 U.S.C. 1855(i)(1)(B)(i)-(vi).

NMFS will consult with the Council, the CDQ groups, and the individual communities in development of the analysis. NMFS anticipates that the analysis will form the basis for rulemaking. If a final rule is approved, NMFS will determine what effect, if any, changes in the eligible communities will have on CDQ allocations. However, NMFS notes that no revisions were made to CDQ allocations mid-cycle when the eight communities were added to the CDQ Program in 1999.

5. The State provided NMFS with the findings and rationale that support its CDP and allocation recommendations.

This section provides a description of the findings and rationale that support the State's allocation recommendations, a summary of the comments received from the CDQ groups, and NMFS's determinations about the State's recommendations.

The State's Findings and Rationale

The State provided findings and rationale for the 2003-2005 allocation recommendations in its October 15, 2002, letter and appendices (starting on page 11 of its findings). The State developed its allocation recommendations based on the information submitted in the proposed CDPs, on past performance of the CDQ groups, and on application of program standards and evaluation criteria in State regulations at 6 AAC 93.017 and 6 AAC 93.040(b). A copy of the State regulations is in Appendix 7 to the State's recommendations. A copy of the specific program standards and evaluation criteria used by the State as the basis for its recommendations also is in Attachment 4 of this document.

The program standards and evaluation criteria considered by the State included population and economic conditions in the communities; the degree to which the CDQ group has supported and developed local fisheries, invested in fisheries-based infrastructure in the eligible communities, developed training, education, and job opportunities for local residents; and the degree to which the CDQ group has invested in fish harvesting and processing businesses outside of the community. The State also considered the degree of oversight and involvement by the board of directors, whether the board of directors sought community input in developing the CDP, how the proposed CDP will benefit individual communities, the ability of the CDQ group to negotiate with partners, the CDQ group's compliance record, the conduct of the CDQ fisheries, and the groups' ability to manage CDQ fisheries within allocated quotas. In addition, the State considered consistency with the goals and purpose of the CDQ Program as defined by 50 CFR 679.1(e).

The State distinguished between the process it used to develop allocation recommendations for the primary target species from the allocation recommendations for incidental catch and prohibited species. The primary target species that the State focused on are pollock, Pacific cod, opilio crab, Bristol Bay red king crab, and halibut. Atka mackerel, yellowfin sole, and rock sole also are considered target species by the CDQ groups. However, the State did not recommend changes in allocations of these species as compared with the 2001 and 2002 allocations. Therefore, the State's specific comments on the CDQ allocation recommendations apply primarily to pollock, Pacific cod, opilio crab, Bristol Bay red king crab, and halibut.

On page 10 of the State's findings, the State provided the following explanation for the percentage allocation recommendations for the remaining species groups: "all other changes to the 2003-2005 allocation recommendations were computed by the state's formula-based bycatch matrix that relied on CDQ group harvest statistics."

On pages 11 through 24 of its October 15, 2002, findings, the State provided a series of statements describing its findings about each CDQ group's past performance or plans in the CDP relative to the specific program standards and evaluation criteria the State considered in making its 2003-2005 allocation recommendations. The State provided additional information about its findings in a scorecard and attached comments in Appendix 1 to the State's findings. The scorecard was developed by the State to provide additional information about its CDQ allocation

recommendations for the target species, thus providing more "transparency" to the State's decision-making process.

The State explained the scorecard as follows:

Scores were given to each group in each category on a scale of 1 to 10. However, because of the differing characteristics of each group, individual categories were weighted separately and cumulative scores were not issued. Each group also received confidential comments compiled from the state team members providing more details about the scores. There is no direct link between the scorecards and allocations, though the scorecards serve as a tool to help the state and the groups identify and recognize problems and issues affecting each group. (October 15, 2002 letter, page 11)

Through the scorecard, the State categorized the program standards and evaluation criteria in its regulations into the following six categories: (1) population and economic need, (2) Community Development Plan achievement, (3) community, regional, and statewide benefits, (4) community outreach and involvement, (5) management effectiveness, and (6) CDQ program standards. These categories include all nine of the CDQ program standards at 6 AAC 93.017 and all twenty of the evaluation criteria at 6 AAC 93.040(b).

The following summary describes the State's findings with respect to these evaluation categories and its allocation recommendations of the primary target species. The summary is provided to demonstrate that the scorecard categories represent the program standards and evaluation criteria in State regulations, that the State considered all of these program standards and evaluation criteria, and that there is a consistent relationship between the scores assigned by the State and the written findings supporting those scores. This summary does not include a discussion of every element of the State's findings and rationale described in its October 15, 2002, letter and appendices.

Population and economic need: This category of the scorecard is related to the first of the State's evaluation criteria listed in 6 AAC 93.040(b). Table 2.2 summarizes the information considered by the State in its findings on this evaluation criterion and the score assigned to each CDQ group.

Table 2.2 Summary of the State's findings about population and economic need for each CDQ group and the score assigned by the State.

CDQ Group	Score (rank)	% of CDQ Region Population (rank)	Other Economic Factors (rank of median household income)
APICDA	4.3 (5)	2% (5)	Lowest % workforce unemployed Relatively high income and low poverty rate Median household income is third highest in program (3)
BBEDC	7.3 (3)	22% (3)	Median household income is fourth highest in the program (4) Lowest poverty and unemployment rates
CBSFA	4.3 (5)	2% (5)	Median household income is highest in the program (1)
CVRF	10 (1)	30% (2)	Median household income lowest in the program (6) 20% unemployment rate
NSEDC	9 (2)	32% (1)	Median household income is the second highest in the program (2) Fairly high economic needs, particularly outside of Nome
YDFDA	6.7 (4)	12% (4)	Median household income is the 2 nd lowest in program (5) highest unemployment rate; poorest region with highest per capita of younger population in U.S.

Note: when numbers are equal for two CDQ groups, the same rank is assigned to each group.

Community Development Plan Achievement: This category includes the evaluation criteria at 6 AAC 93.040(b) (2), (16), and (17) which are related to the group's transition plan, the objectives that the CDQ group describes in its milestones, whether these objectives are realistic, and the allocation necessary to achieve these objectives.

CVRF received the highest score (9), followed by BBEDC (8.3), NSEDC (7.3), YDFDA (7), CBSFA (4.7), and APICDA (4.3). The State assigned CVRF the highest score in the category of CDP achievement based on its past history of achieving its milestones, the strength of its investment guidelines, the excellent return on its investment in American Seafoods, and its excellent plan for a transition to self sufficiency. BBEDC was credited with achieving milestones set in past CDPs, strong investment guidelines, and an excellent plan for a transition to self sufficiency. The State noted that NSEDC has strong investment guidelines in its CDP, and "has been successful employing and training a high number of residents." With respect to YDFDA, the State cited the success of its sablefish pot fishing operations, the good returns on its pollock investment, and the fact that YDFDA had "achieved a majority of its milestones in the current CDP." With respect to CBSFA, the State noted the promise of the proposed multispecies processing facility for St. Paul that is described in its CDP and the high returns on its investment in American Seafoods. However, the State remains concerned about the failures of CBSFA's past investments in crab catcher vessels and that its "overall achievement needs improvement." With respect to APICDA, the State noted the success of Atka Pride Seafoods. However, the low score for APICDA was assigned due primarily to significant financial losses in several of its other major investments and the conclusion that APICDA's milestones "show few measurable goals that will realistically benefit the people of the region."

Community, regional, and statewide benefits: This category includes program standards and evaluation criteria related to whether the "CDP provides fisheries related social and economic benefits, including employment and training programs," to the CDQ communities and the State. On its scorecard summary, the State listed the seven evaluation criteria from 6 AAC 93.040(b) and the four program standards from 6 AAC 93.017 that are included in this category.

APICDA (7.3) and CBSFA (7.3) received the highest scores in this category, followed by NSEDC (6.3) and CVRF (6.3), YDFDA (5.7), and BBEDC (5.3). APICDA was credited with the success of Atka Pride Seafoods, its focus on local infrastructure development,

the success of its offshore investments, good local employment, and high earnings per employee. However, the State was concerned with the need for better coordination of CDQ projects in the Pribilof Islands with St. Paul and the fact that APICDA's headquarters in Juneau results in few benefits to the APICDA region's economy from staff salaries. In scoring CBSFA, the State cited the promise of its multispecies project, the potential for its harbor development project, and the success of its local halibut fishery. However, the State also commented negatively about CBSFA's lack of coordination on Pribilof Islands issues with APICDA and the community of St. George. With regards to CVRF, the State noted the success of its halibut and salmon buying stations in the region and its excellent employment programs. NSEDC was credited with the many contributions it had made to Nome's economy and its strong employment, scholarship, and training programs. The State noted YDFDA's strong employment, scholarship, and training record. Finally, BBEDC's score was related to the contribution that its headquarter's office in Dillingham provides to the local economy, its success in training local residents, and its assistance in the salmon disaster.

Community outreach and involvement: This category includes evaluation criteria in 6 AAC 93.040(b) related to whether the CDQ group has "developed an effective outreach program to keep participating communities fully informed about CDQ activities and to facilitate community involvement throughout the CDP cycle." On its scorecard summary, the State listed the seven specific evaluation criteria from 6 AAC 93.040(b) that are included in this category.

The highest score for this category was given to CBSFA (8), followed by YDFDA (7.3) NSEDC (7), BBEDC (6.7), CVRF (6.3), and APICDA (5.7). CBSFA received the highest score in this category due to its headquarters in the community of St. Paul and its excellent newsletter and annual report. YDFDA also was credited with staff that are active in the region, community visits, good local recruitment, and a quarterly newsletter sent to all households. The State noted that the majority of NSEDC's staff was located in Anchorage, but that its staff was active in the region, attendance at community meetings was high, NSEDC prepared the best annual report, and provided it to all residents. BBEDC was credited for the personal outreach achieved by staff located in the region. The State credited APICDA with its successful annual outreach conference, but expressed concern that APICDA did not hold meetings in the region.

Management effectiveness: This category includes evaluation criteria in 6 AAC 93 related to board training and participation, sound business principles, exercise of due diligence, and effective management of CDQ allocations. On its scorecard summary, the State listed the seven evaluation criteria from 6 AAC 93.040(b) that are included in this category.

The highest score for this category was given to CVRF (8), followed by BBEDC (7), NSEDC (6.7), YDFDA (6.7), APICDA (5), and CBSFA (4.3). CVRF received the highest score in this category due to its strong and effective staff, low reliance on consultants, and profitable investments in the fishing industry. Although the State was concerned about high recent turnover in personnel, it stated that BBEDC had an effective staff and low administrative and board expenses. NSEDC was credited with a strong staff and consultants, although the State noted its high consultant and legal fees and the amount of administrative funds it spent contesting government oversight. The State credited YDFDA with a low reliance on outside consultants and strong board participation. However, it concluded that YDFDA "could benefit from a more comprehensive vision for the future of the corporation." The State also suggested that YDFDA should consolidate its staff in Alaska. The State credited APICDA with an excellent presentation at the private meetings, but noted concerns with its accounting department, high administrative costs, salaries, and board per diem and lack of participation by the board. As a result, the State recommended that APICDA undertake a management review. CBSFA received the lowest score due to concerns about its reliance on consultants and the effectiveness of its staff.

CDQ program standards: This category includes program standards and evaluation criteria that are related to whether (1) the CDP is consistent with the goals and purpose of the CDQ program, (2) for-profit investments earn a financial return, (3) legal and financial risk is minimized, (4) milestones are met, and (5) the CDQ groups pursue conservation-based fisheries. On its scorecard summary, the State listed the nine program standards from 6 AAC 93.017, and the nine evaluation criteria from 6 AAC 93.040(b) that are included in this category.

The highest score for this category was given to CVRF (8.7), followed by BBEDC (8), YDFDA (7.3), CBSFA (5.7), NSEDC (5.7), and APICDA (5). CVRF was given the highest score in this category because of its strong employment programs and its success in harvesting sablefish. BBEDC was credited with the success of its Pacific cod fisheries in harvesting quota and employing local residents. YDFDA also was credited with its success in harvesting

Pacific cod. With regard to CBSFA, the State expressed concern about a long-standing lawsuit by a former employee. NSEDC was given one of the lower scores due to compliance problems in its investment in the fishing vessel Mr. B and its operation of the community benefits share project (discussed below). The lowest score was given to APICDA because of the financial losses in all but one of its shoreside investments and due to a series of quota overages in its crab fisheries (discussed below).

In addition to the overall evaluation described above, the State provided the following rationale for its allocation recommendations of the primary target species.

Pollock: The State recommended an 1% increase in the pollock CDQ allocation to CBSFA primarily based on the strength of its plan to develop a multispecies processing facility in St. Paul. In addition, CBSFA and one other CDQ group received the highest royalty rates for pollock in 2000 and 2001. The State also noted that CBSFA had received significant returns from its investment in American Seafoods. CBSFA had received a 1% decrease in its pollock CDQ allocations in 2001 and 2002. The State determined that CBSFA had a "more positive condition" now. Those improvements and the strength of its CDP justified an increase in its pollock allocation.

To provide an increase in CBSFA's pollock allocation, the State had to recommend a reduction in the allocation recommendation for one of the other CDQ groups. On page 21 of its findings, the State concludes that "[A]fter taking into consideration all factors and comments, including the problems with program compliance, the state recommends a 1% reduction in NSEDC's pollock CDQ allocation." The State determined that this decrease was appropriate for a number of reasons. First, NSEDC was one of the CDQ groups to receive an increase in pollock allocations for 2001 and 2002, when CBSFA received a decrease. In addition, the State determined that NSEDC had pollock royalties among the lowest in the program in 2000 and 2001. The State also contended that NSEDC had violated the State's CDQ program standards by failing "to obtain advance full board approval of its purchase of the Mr. B." Finally, the State determined that NSEDC was spending money through its Community Benefits Share project on projects that are not fisheries related. The State contended that these expenditures violate State and NMFS regulations that require CDQ funds to be spent on fisheries related projects.

CVRF was the other CDQ group that received an increase in its pollock allocation in 2001 and 2002. For the current allocation cycle, the State assigned CVRF the highest scores in four of the

six evaluation categories. These high scores were assigned primarily because of CVRF's population, economic need, and the strength of its past performance. Consequently, the State did not recommend reducing CVRF's pollock CDQ allocation for 2003-2005.

With regard to APICDA, the State specifically noted the following:

In general, APICDA scored low on several scorecard categories. Because of the low scores, there was much debate among the state team concerning whether or not to recommend that APICDA have its pollock CDQ allocation reduced, and certainly other species allocation recommendations for APICDA were influenced by the overall poor scores. Nonetheless, it was felt that a reduction of pollock CDQ allocation to APICDA would not be recommended in order to permit the group to address the problems identified. (Page 13 of the State's findings)

Pacific Cod: The State recommended a decrease in the allocation of Pacific cod to APICDA and CBSFA, an increase in the allocations to BBEDC and CVRF, and no change in allocations to NSEDC and YDFDA. The Pacific cod allocation recommendations were based primarily on the royalty rates that the CDQ groups received for Pacific cod in 2000 and 2001, and how much of the cod allocations each group had been able to harvest in those years. The State justified the 1% increase to BBEDC and CVRF because of their success at harvesting their previous cod allocations and the high royalty rates they had received for cod. The 1% decrease in allocation to APICDA was justified because it had "failed to harvest all its quota in 2000 and 2001 and had the lowest royalty rate among the groups in 2000." The State recommended a 1% decrease for CBSFA because of its difficulty in harvesting cod in 2000 and because it had the lowest royalty rate in 2001. The State justified no change in YDFDA's allocation because, although YDFDA had difficulty harvesting its current allocation in 2001, it had among the highest royalty rates in 2000 and 2001.

Sablefish: The State recommended a number of reductions in fixed gear sablefish CDQ allocations due primarily to the difficulty that some of the CDQ groups had in harvesting their sablefish CDQ allocations in 2000 and 2001. For Bering Sea fixed gear sablefish, the State recommended decreasing BBEDC's, CBSFA's, and NSEDC's allocations by 2% each and increasing YDFDA's allocation by 6%. The increase for YDFDA was recommended because the State determined that YDFDA had "achieved a high rate of success in

harvesting its Bering Sea sablefish quota using pots in 2002 and demonstrated a commitment to continue to use Lisa Marie as the primary harvester." No change was recommended for APICDA's allocation. The State recommended no allocation to CVRF, as requested in CVRF's CDP.

For Aleutian Islands fixed gear sablefish, the State recommended a 1% reduction for APICDA, BBEDC, and YDFDA because of the difficulty these groups had in harvesting their allocations in 2000 and 2001. CVRF requested a 3% decrease in its allocation and the State agreed with this request. The State also recommended a 3% allocation for CBSFA because it had not received Aleutian Islands fixed gear sablefish allocations in the past and a 3% increase for NSEDC because of its success in harvesting past allocations.

Halibut: The only change recommended in the halibut CDQ allocations was for area 4C. The only two CDQ communities in area 4C are St. Paul and St. George on the Pribilof Islands. In 2001 and 2002, CBSFA (representing St. Paul) was allocated 90% of the halibut 4C allocation and APICDA (representing St. George) was allocated 10%. For 2003-2005, the State recommended a 5% increase in the area 4C halibut CDQ allocation to APICDA, because of the success that St. George fishermen had in harvesting APICDA's 4C allocation, and the demonstrated need for more halibut quota. The State recommended a commensurate 5% decrease in CBSFA's allocation of halibut in area 4C.

Opilio Crab: The State recommended a 1% increase in the allocation of opilio crab to BBEDC due to its "commitment to harvesting crab, as evidenced by its 40% to 45% ownership in four Bering Sea crab catcher vessels," its "plans for future acquisitions in the crab sector," and "CDQ royalties in 2000 and 2001." It also recommended a 1% increase in the allocation for CBSFA in recognition of its "plan for utilizing the quota in 2003-2005 cycle." The State acknowledged CBSFA's multispecies project, which has the potential to significantly increase local employment and tax revenues. A 2% reduction in APICDA's allocation (from 10% to 8%) was recommended because APICDA had the lowest royalty rate in 2000 and 2001, and exceeded its quota in 1999, 2000, and 2001. The State did not recommend changes in the allocations for CVRF, NSEDC, or YDFDA, noting the high royalty rates received by CVRF and YDFDA in 2000 and 2001.

Bristol Bay Red King Crab: The State recommended a 1% increase in BBEDC's Bristol Bay red king crab allocation for the same reasons stated above related to its opilio allocation. BBEDC had high royalty rates in 2000 and 2001, it has made a significant

investment in the crab industry, and intends to increase its investments in the future. The State recommended a 1% decrease in APICDA's allocation because it had "significantly lower royalty rates in 2000 and 2001." The State noted that CVRF also had among the highest royalties in 2000 and 2001.

CDQ Group Comments on the State's Allocation Recommendations

All six of the CDQ groups submitted comments to the State during September 2002 on its initial CDQ allocation recommendations. These comments are included as Appendix 1 of the State's CDQ allocation recommendations. In addition, APICDA, CVRF, and NSEDC submitted comments to NMFS between October 15 and October 31, 2002.

CBSFA submitted a resolution passed by its board of directors and dated September 18, 2002. The resolution supported the State's CDQ allocation recommendations and asked the Council and NMFS to approve these allocations. YDFDA submitted a letter of comment to the State dated September 16, 2002. This letter thanked the State for its allocation recommendations and asked for clarification about how the scorecard related to the allocation recommendations. BBEDC submitted a letter of comment to the State dated September 12, 2002. BBEDC stated that the allocation process was "much improved compared to years past," and that the scorecard provided useful information about the State's evaluation of BBEDC. BBEDC commented in areas where it disagreed with the State's evaluation on the scorecard, but concluded by saying that the "CDQ team did a credible job of evaluating the groups as represented by the scorecard, and that the allocations track reasonably well." BBEDC, CBSFA, and YDFDA did not submit additional comments to NMFS.

CVRF submitted comments to both the State and NMFS. In a letter to the State dated September 19, 2002, CVRF questioned how the results of the scorecard related to the State's allocation recommendations, and disagreed with the State's conclusions about CVRF's performance in areas where CVRF received lower scores relative to some other groups. Specifically, CVRF challenged the State's conclusions about management effectiveness; community outreach; community involvement; and benefits to communities, the CDQ region and the State. It stated that it did not believe that the State properly considered economic need. CVRF disagreed with the State's allocation recommendation for pollock and requested that the State reconsider its recommendations. It also disagreed with the recommendations for Aleutian Islands other rockfish, which is based on the State's bycatch model.

CVRF's comments submitted to NMFS in a letter dated October 31, 2002, provided information about its increased investment in American Seafoods, increased community interest in board of director elections, and a clarification about per diem rates. However, although CVRF provided additional information to NMFS, it did not request that NMFS disapprove any of the State's CDQ allocation recommendations.

APICDA submitted comments to both the State and NMFS. In its letter to the State dated September 19, 2002, APICDA stated that although the scorecard was confusing and contradictory, it provided useful information about the State's perception of APICDA relative to the other CDQ groups. APICDA disagreed with the State's allocation recommendations for the following target species: Pacific cod, Bering Sea fixed gear sablefish, opilio crab, and Bristol Bay red king crab. APICDA also disagreed with the State's allocation recommendations for Bering Sea other red rockfish and Aleutian Islands other rockfish, which were developed using the State's bycatch model. APICDA did not challenge the State's allocation recommendations for pollock, as did CVRF and NSEDC. In its comments to NMFS, APICDA reiterated its objections to the State's allocation recommendations for Pacific cod, Bering Sea fixed gear sablefish, opilio crab, and Bristol Bay red king crab.

APICDA disagreed with the State's allocation recommendation on Pacific cod and its conclusions about relative harvest rates and royalties among the groups. APICDA also disagreed with the State's recommended allocation for Bering Sea fixed gear sablefish because APICDA also has been harvesting its sablefish allocation with pot gear and, while the State recommended a 6% increase in allocation to YDFDA, it did not recommend any increase for APICDA. APICDA disagreed with the State for basing its recommended allocation for opilio crab on APICDA's history of overages in 1999, 2000, and 2001. In addition, APICDA disagreed with the State's allocation recommendations for both opilio crab and Bristol Bay red king crab because it believed that the State did not adequately consider the needs of St. George and its proximity to the crab resources. APICDA also contended that the differences in royalty rates among the groups did not warrant a reduction in APICDA's crab allocations.

NSEDC also submitted comments to both the State and NMFS. In its September 19, 2002, letter to the State, NSEDC disagreed with the scores it received from the State in five of the six scorecard categories (population and demographics; management effectiveness; CDP achievement; community, regional, and statewide benefits; and community outreach and involvement). It

also concluded that the scores must not have been the basis for the allocation recommendations, because NSEDC could not identify any weighting scheme that would lead from the scores to the State's allocation recommendations. Finally, NSEDC contended that the State used unauthorized evaluation criteria. Specifically, NSEDC believes that the State relied on unauthorized criteria due to its comments on the appropriateness of a NSEDC subsidiary's purchase of the vessel Mr. B, its characterization of NSEDC as high maintenance and contesting government oversight, its questions in the public hearing about NSEDC's support for H.R. 553, and the State's suggestion that to be successful, NSEDC needs to spend much more time communicating with the State.

In its October 30, 2002, letter to NMFS, NSEDC referenced its previous comments to the State and organized its comments to NMFS into three categories: equal protection, actions by other entities, and right to petition the government. NSEDC requested that NMFS disapprove the State's pollock CDQ allocation recommendations because the State's allocation process and its recommendations do not afford NSEDC equal protection under the U.S. Constitution and the Alaska Constitution. NSEDC also contends that the State cannot consider the purchase of the vessel Mr. B by Norton Sound Investment Corporation (NSIC) in its allocation recommendations because, in doing so, the State is attempting to gain oversight of a 50%-owned subsidiary. Finally, NSEDC argues that the State inappropriately considered NSEDC's support of proposed amendments to the MSA and its efforts to contest government oversight in making its pollock CDQ allocation recommendations. NSEDC requests that NMFS disapprove the State's recommended pollock CDQ allocation for NSEDC.

NMFS's determinations about the State's Rationale

NMFS reviewed the allocation recommendations submitted in the State's October 15, 2002, letter, the supporting appendices (including letters submitted by the six CDQ groups to the State), and the six CDPs submitted by the State on behalf of the CDQ groups. NMFS also reviewed the letters of comment submitted to NMFS by APICDA, CVRF, and NSEDC.

The State provided an explanation of how it used the program standards and evaluation criteria published in State regulations at 6 AAC 93.017 and 6 AAC 93.040(b) as a basis for its allocation recommendations. NMFS regulations describe the process that the State must follow in making its allocation recommendations and identify the CDP as the document that must be submitted to the State and NMFS to apply for CDQ allocations. The regulations

include specific information that must be supplied in the CDP, but they do not specify that only the information in the CDP may be used as a basis for CDQ allocations. Specific guidelines about the criteria to use in evaluating proposed CDPs and making CDQ allocation recommendations are not contained in the MSA, the FMPs, or 50 CFR Part 679. The State appropriately developed program standards and evaluation criteria and implemented them under 6 AAC 93.

The program standards and evaluation criteria implemented by the State include population, social and economic conditions; past performance of a CDQ group in using allocations to provide benefits to eligible communities consistent with the goals and purpose of the program; plans described in the CDP to provide benefits to eligible communities in the future; and the conduct of the CDQ fisheries.⁶ These program standards and evaluation criteria are related to the information that must be submitted in the CDPs under Federal regulations and are relevant to the State's responsibility to recommend the appropriate CDQ allocations to the eligible CDQ communities. Therefore, NMFS determines that the program standards and evaluation criteria in 6 AAC 93 used by the State are appropriate factors to consider in making recommendations about CDP approval and CDQ allocations. In addition, based on examination of the scorecard categories described earlier, NMFS determines that the scorecard combines these program standards and evaluation criteria into six broad categories, and the scorecard does not create program standards and evaluation criteria that are different from those published in State regulations.

Two of the CDQ groups commented that the scorecard provided them valuable additional information about the basis for the State's CDQ allocation recommendations. However, five of the six CDQ groups questioned how the scorecard results related to the allocation recommendations, and four of the groups submitted comments disagreeing with some aspect of the scores they received.

The State explained that the purpose of the scorecard was to "serve as a tool to help the state and groups identify and recognize problems and issues affecting each group." In addition, the State announced that "there is no direct link between the scorecards and allocations," and "because of the

⁶Additional detail about the range of factors considered in the program standards and evaluation criteria is on page 18 of this document and in Attachment 4.

differing characteristics of each group, individual categories were weighted separately and cumulative scores were not issued." In other words, the State's allocation recommendations are based, in part, on the results of the scorecard, but there is not a mathematical formula that translates the scores in each category to the CDQ allocations recommended by the State.

Pollock is the most valuable species allocated through the CDQ Program, representing about 85 percent of annual royalties to the CDQ groups. Both CVRF and NSEDC disagreed with the State's allocation recommendations for pollock. CVRF contended that it should have received higher scores in five of the six categories and should have received its requested 27% pollock allocation. NSEDC disagreed with the State's recommended allocation of 22% of the pollock CDQ reserve due to procedural and legal flaws in the State's rationale. CBSFA supported the State's recommended 1% increase in its pollock CDQ allocation recommendation. APICDA, BBEDC, and YDFDA did not specifically contest the State's pollock CDQ allocation recommendations, although both APICDA and BBEDC disagreed with the some aspects of the State's process and scoring.

NMFS's review of the State's findings and rationale demonstrates a consistent relationship between the State's findings and its pollock CDQ allocation recommendations. As shown in Table 2.3, there is a consistent relationship between the rank of the scores for each CDQ group and the State's pollock CDQ allocation recommendations. For example, CVRF ranked first in four of six categories and also received the highest recommended pollock CDQ allocation of 24%. NSEDC ranked second or third in five of six categories and received the second highest recommended pollock CDQ allocation (22%). BBEDC ranked second or third in four of six categories and received the third highest recommended pollock CDQ allocation (21%). The State's scores for YDFDA and APICDA are not as consistent with its pollock CDQ allocation recommendations as for the other groups. However, the State explained that, although APICDA generally received lower scores, the State did not want to further reduce APICDA's pollock CDQ allocation this cycle. Rather, the State wanted to provide APICDA an opportunity to complete a management review and address some of the State's concerns. CBSFA represents only one CDQ community and was ranked fifth in population and economic need and CDP achievement and ranked last in management effectiveness. CBSFA received the lowest pollock CDQ allocation recommendation at 5%. However, for 2003-2005, the State is recommending an increase for CBSFA in recognition of improvements that it has made in recent years and in the strength of its proposed CDP.

Table 2.3. Rank of scores assigned by the State to each CDQ group in six categories and rank of the State's recommended percentage allocation for pollock for 2001 - 2003.

	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA
(1) Population and economic need	5	3	5	1	2	4
(2) CDP achievement	6	2	5	1	3	4
(3) Community, regional, and statewide benefits	1	6	1	3	3	5
(4) Community outreach and involvement	5	4	1	6	3	2
(5) Management effectiveness	5	2	6	1	3	3
(6) CDQ program standards	6	2	4	1	4	3
Recommended Pollock Allocation	4 (14%)	3 (21%)	6 (5%)	1 (24%)	2 (22%)	4 (14%)

Overall, the scorecard also shows a high degree of consistency between the rank of the score in the category of "population and economic need," and the rank of the recommended pollock CDQ allocation. CVRF was ranked highest by the State in terms of population and economic need. It ranked second in the percent of population of the CDQ region (30%), and has the lowest median household income in the program. NSEDC ranked second in its score for population and economic need and received the second highest pollock CDQ allocation recommendation from the State (22%). Although NSEDC had the highest percent of population in the CDQ Program (32%), the State determined that it had lower economic need than CVRF as evidenced by its higher median household income. BBEDC was ranked third in population and economic need and was recommended to receive the third highest pollock CDQ allocation (21%). YDFDA was ranked fourth in population and need and CBSFA and APICDA tied for the fifth rank in scores for population and economic need. The State recommended that YDFDA and APICDA be allocated 14% of the pollock CDQ allocation and CBSFA be allocated 5%.

Many of the CDQ groups' comments involved disagreement with the scores that the State assigned on the scorecard or its conclusions about managerial, financial, or fishery performance. NMFS's review of the State's CDQ allocation recommendations, and

the scorecard, is intended to evaluate whether the State followed the required process and considered relevant and appropriate evaluation factors. In addition, NMFS must determine whether the State's findings and rationale are consistent with and support its allocation recommendations. NMFS's review is not intended to provide independent evaluation of the CDQ groups' past performance or determine what allocations best provide benefits from the CDQ Program to the eligible communities. NMFS does not substitute its judgment for the State's judgment in determining how to weigh the various evaluation criteria, how to evaluate past performance or the relative quality of the proposed CDPs, or how to assign scores or ranks to the CDQ groups. Therefore, although NMFS reviewed all of the comments submitted by the CDQ groups, NMFS will not specifically address comments related to disagreements with the State's scoring or evaluation of the groups' managerial, financial or fishery performance.

NMFS will, however, respond to comments that address whether the State used appropriate evaluation criteria or violated the legal rights of the CDQ groups. The following comments appear to fall into these categories.

1. APICDA's claim that the State inappropriately considered APICDA's history of overages in makings its opilio crab allocation recommendation.
2. NSEDC's request that NMFS disapprove the State's pollock CDQ allocation recommendation for NSEDC because it violates equal protection guarantees.
3. NSEDC's claim that the State inappropriately considered that NSEDC spends too much time and money contesting government oversight in making its pollock allocation recommendations.
4. NSEDC's claim that the State inappropriately considered NSEDC's purchase of the Mr. B in makings its pollock allocation recommendations
5. Comments by several groups about the use of the bycatch matrix to determine allocation recommendations for incidental catch and prohibited species in the groundfish CDQ fisheries.

APICDA's opilio crab CDQ allocation

The State recommended that APICDA be allocated 8% of the opilio crab available to the CDQ Program, which is 2% lower than APICDA was allocated in 2001 and 2002. This recommendation is due, in

part, to three consecutive overages in APICDA's annual harvest of opilio crab. Page 13 of the State's recommendations provides its explanation: "[t]he state recommends a reduction of 2% opilio crab CDQ in response to the lowest royalty rate on the CDQ groups in 2000 and 2001, and APICDA's difficulty in managing its allocation in 1999, 2000, and 2001, as evidenced by its quota overages for three consecutive years. The State also referenced this compliance issue in its comments attached to APICDA's scorecard in the State's Appendix 1.

In its September 19, 2002, letter to the State, APICDA disagreed with the State's opilio crab allocation recommendations for a number of reasons. APICDA argued that "[w]e paid our fines, and did not exceed the allocation in 2002. This does not seem to be an appropriate reason to reduce our allocation." (Page 3 of APICDA's letter). In its October 29, 2002, letter to NMFS, APICDA stated "[A]s regards the three overages, they were minimal in terms of pounds and percentage, (0.26% in 1999, 0.1% in 2000, and 0.8% in 2001), the product was confiscated, and the penalties were paid. It is important to note that there was no overage in 2002, which is a clear indication that any problems APICDA had with managing this fishery has substantially improved if not solved." APICDA requested NMFS to "direct the state to review and modify its crab CDQ allocation recommendations."

State of Alaska regulations at 6 AAC 93.040(b)(13) specify that the State will consider "the applicant's ability to maintain control over each of its allocations" as a factor in reviewing CDPs and as a basis for recommending CDQ allocations. Overages result when a CDQ group exceeds its allocation and are an indication that a CDQ group has been unable to maintain control over its allocation. APICDA acknowledges in its comments to the State and NMFS that these overages did occur. While it may not be appropriate for the State to penalize a CDQ group for a single overage and then recommend reduction of a CDQ allocation as a result of this same overage, NMFS believes that the State may consider a pattern of repeated overages in the CDQ allocation recommendations. Repeated overages demonstrate that a CDQ group was unable to correct its compliance problems over a period of years, and demonstrates the group's inability to maintain control over each of its allocations. Therefore, NMFS determines that it is appropriate for the State to base its recommendation to reduce APICDA's opilio crab allocation in part on the series of quota overages that occurred in 1999, 2000, and 2001.

NSEDC's pollock CDO allocation

Equal protection: In its comments to NMFS, NSEDC raises an equal protection argument under the 14th Amendment of the U.S. Constitution. NSEDC states that, "In deciding on [the Governor's] recommendations to NMFS regarding [the CDQ] allocations, the 14th Amendment to the U.S. Constitution and Article 1, section 1 of the Alaska Constitution require the Governor to do so through a procedural and substantive means that afford the CDQ groups 'the equal protection of the laws.' But the Governor's findings candidly admit that, rather than evaluating each CDQ group's CDP against the other groups' CDPs based on each of the twenty-three factors contained in the state's own regulations, the State CDQ Team and the Governor conflated the factors into six broad scorecard categories, and then evaluated each CDQ group's CDP differently vis-a-vis the categories than the Team and the Governor evaluated the other groups' CDPs." NSEDC points out that the State Team and the Governor may have weighted the population and economic need factor lightly for NSEDC but heavily for one or more of the other groups. Also, they take issue with the State's admission that no direct link exists between the scorecard categories and the Governor's allocation recommendations. Because of this admission, NSEDC claims no analytical methodology or rationale exists for the Governor's pollock CDQ allocation recommendation of 22% rather than 23%.

In order to subject a law or regulation to any form of review under the equal protection guarantee, the law or regulation must demonstrably classify people in some manner. There are three types of classification: the law, on its face, employs a classification; the law is applied in a discriminatory fashion; or the law is 'in reality . . . a device designed to impose different burdens on different classes of persons." 2 R. Rotunda, J. Nonah, and J. Young, Treatise on Constitutional Law: Substance and Procedure, § 18.4). The CDQ allocation process, and more specifically the evaluation criteria and scorecard categories used by the State, do not involve any type of classification. The process and the criteria do not, on their face, employ a classification among CDQ participants. The evaluation criteria and scorecard categories have not been applied in a discriminatory manner because they apply equally to all CDQ Program participants. The CDP approval process was no different for NSEDC than for any other CDQ Program applicant for the same period. Any deficiencies in the decision making process used by the State applied to all the CDQ Program applicants. The CDQ regulations, evaluation criteria, and scorecard categories are not designed to impose different burdens on different classes

of people, and NSEDC was treated no differently than the other CDQ program participants during the 2003-2005 allocation cycle.

Even if the CDQ allocation process creates a classification, it is not a suspect classification, nor does it impair the exercise of any fundamental right. Furthermore, the policy of allocating available catch limits among the various qualified CDQ program participants is rationally related to the goals and objectives of the CDQ program. The primary purpose of the CDQ Program is to provide a mechanism to allow western Alaska communities to develop sustainable fishing industries. The State's and NMFS's actions are rationally related to fulfilling that purpose. The factors upon which CDQ allocation decisions are based are contained in 6 AAC 93, all of which NMFS has determined are rationally related to the purposes of the CDQ Program. Therefore, NMFS determines that NSEDC's equal protection guarantees have not been violated.

Consideration of expenditures contesting government oversight:

In its October 31, 2002, letter to NMFS, NSEDC claimed that the State inappropriately considered the State's conclusion regarding NSEDC contesting government oversight in making its pollock CDQ allocation recommendations. NSEDC contends that this is not an evaluation criterion listed in 6 AAC 93.040(b) and, therefore, cannot be used as a basis for recommending a reduction in NSEDC's pollock CDQ allocation. In addition, NSEDC claimed that questions the State asked in the public hearing about NSEDC's support of proposed CDQ-related amendments to the MSA indicated that the State inappropriately considered this issue in making its allocation recommendations.

Review of the State's findings show that the State did consider the time and administrative expenses NSEDC spent contesting government oversight as a negative factor and one of the reasons that the State recommended that NSEDC be allocated 22% of the pollock CDQ reserve. Specifically, on page 22 of the State's findings, under the category of "other significant factors considered" in making CDQ allocation recommendations for NSEDC, the State writes that "NSEDC spends a considerable amount of time and administrative expenses directed towards contesting government oversight of the CDQ Program." The State also notes this factor in its comments on NSEDC's scorecard. On page 21, the State writes "[a]fter taking into consideration *all factors* [emphasis added] and comments, including the problems with program compliance, the state recommends a 1% reduction of NSEDC's pollock CDQ allocation."

The State's comments are related, in part, to an evaluation of administrative expenses by NSEDC. The State indicates its general concern about administrative expenses in a statement on page 3 of its findings: "the state, however, remains concerned about increasing administrative costs occurring among all six CDQ groups." The State's specific comments about NSEDC contesting government oversight are included in the category of "management effectiveness" on the scorecard. The State cited seven evaluation criteria from 6 AAC 93.040(b) as its authority for this category. Among the several purposes of this category was "demonstration of management effectiveness and efficiency," and one of the sources of information used by the State was an analysis of overall program and administrative costs. The State specifically considered administrative expenses in its allocation recommendations for APICDA, ("very high administrative expenses"), BBEDC ("low administrative and board expenses"), CBSFA ("has worked hard to lower administrative expenses"), and CVRF (highest board per diem rate). On page 21, the State commented that "NSEDC is incurring very high consultant fees and other administrative expenses."

Although it is appropriate for the State to evaluate administrative expenses, it is not appropriate for it to consider a CDQ group's disagreements about government oversight or efforts to change policies, regulations, or laws as a negative factor in making CDQ allocations. In reviewing the State's findings, NMFS finds that the State included a more general statement about NSEDC's excessive administrative expenses which was consistent in scope with the State's comments about administrative expenses by some of the other groups. Because the general level of NSEDC's administrative expenses was already addressed in the State's comments, NMFS concludes that the additional comment about contesting government oversight focused more on the activity of contesting government oversight than on the amount of time or money associated with this activity. Therefore, NMFS determines that the State's consideration of the time and administrative expenses that NSEDC spent contesting government oversight is not an appropriate factor to consider in making pollock CDQ allocations to NSEDC.

Purchase of the Mr. B: In its October 31, 2002, letter to NMFS, NSEDC claimed that the State inappropriately considered NSEDC's purchase of the Mr. B in making its pollock allocation recommendations. Specifically, NSEDC stated on page 2 of its letter:

In this cycle the acquisition of the Mr. B, which was an activity at the subsidiary level made by subsidiaries below

the 51% ownership threshold, was a factor the state used in its allocation recommendations. In the final version which was presented to you, the state reduces its concern over the Mr. B to a statement that 'NSEDC failed to obtain advance full board approval of its purchase of the Mr. B.' This statement is incorrect, as NSEDC did not purchase the Mr. B. It is evident from its presence in the findings and in the state's correspondence with NSEDC that the state has relied on an incorrect finding and an incorrect conception, in contravention of the NOAA G.C. opinion, that Glacier Bay Fisheries LLC, which is less than 51% owned is a program violation unless it is treated as a CDQ project. This is a significant issue to the state and the state included it in this allocation cycle, culminating in a recommended reduction in NSEDC's pollock allocation from 23% to 22%. For that reason, that recommendation should be rejected.

Review of the State's findings show that the State did consider purchase of the Mr. B in making its CDQ allocation recommendations. In its list of factors considered by the State, the State noted that "NSEDC failed to obtain advance full board approval of its purchase of the Mr. B (secured ratification of NSIC action only)" (page 21 of findings). In its comments on the scorecard, the State noted "NSEDC Board delegation of authority to NSIC for investment decisions violates program standards." In making its recommendations, the State did not contend that NSEDC had violated any federal regulations in the purchase of the Mr. B.

The program standard referenced is in State regulations at 6 AAC 93.017(4), and requires that "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." This program standard was included in the list of programs standards and regulations that the State considered in making its CDQ allocation recommendations. As discussed earlier, NMFS has determined that these program standards and evaluation criteria are appropriate for the State to consider in making its CDQ allocation recommendations.

The State's program standard cited above applies to each CDQ project listed in a CDP. At issue between NSEDC and the State is whether the purchase of the Mr. B by NSIC, a wholly owned subsidiary of NSEDC, is a CDQ project. Under NMFS regulations at 50 CFR 679.30(g)(4), if the Mr. B is a CDQ project, its purchase would require a substantial amendment approved by the State and NMFS. In addition, under State regulations, its purchase would

require approval by NSEDC's board of directors and compliance with all other State regulations related to CDQ projects.

The question of whether activities by subsidiaries of CDQ groups are CDQ projects has been the subject of debate for a number of years. On May 5, 1999, NMFS requested a legal opinion from NOAA General Counsel (NOAA GC) about the definition of a CDQ project in NMFS regulations (50 CFR 679.2). This opinion was requested to try to resolve a disagreement between the State and NSEDC about whether NSEDC's ownership of Glacier Fish Company was a CDQ project and, therefore, subject to oversight by the State and NMFS. In an opinion issued on October 4, 2000, NOAA GC concluded 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." NOAA GC further advised that NMFS regulations should be revised to clarify this issue. These regulatory revisions have not yet occurred. Therefore, due to the uncertainty about the definition of a CDQ project in NMFS regulations, NMFS determines that it cannot support the State's conclusion that the purchase of the Mr. B violated CDQ program standards because this conclusion relies on a clear understanding of the definition of a CDQ project and the scope of government oversight of investment activities of the CDQ groups' subsidiaries.

Determinations about NSEDC's pollock CDQ allocation: The determination that the State inappropriately considered two factors in making its pollock CDQ allocation recommendations for NSEDC requires NMFS to consider whether the State's recommendation is supported by its findings and rationale without the support of these two factors.

The State recommended that NSEDC be allocated 22% of the pollock CDQ reserve. This is the second highest pollock CDQ allocation recommended for all of the six groups, in recognition of NSEDC's large population and economic needs, the strength of its management, and the overall quality of the benefits it provides to its member communities. However, NSEDC was allocated 23% percent of the pollock CDQ reserve in 2001 and 2002, so this recommendation by the State represents a 1% decrease in allocation for NSEDC. The State cited a number of reasons for its pollock CDQ allocation recommendation for NSEDC in addition to the two factors rejected by NMFS. First, the State recommended a 1% increase for CBSFA, so it had to recommend a decrease for one of the other CDQ groups to provide this increase to CBSFA. NSEDC was one of the groups that received an increased pollock CDQ allocation in 2001 and 2002 as a result, in part, to a recommended reduction for CBSFA. In making its recommendation,

the State also noted that NSEDC incurs very high consultant fees and other administrative expenses, and that it had among the lowest pollock royalties in 2000 and 2001. Finally, the State noted that NSEDC was operating its community benefits share project in violation of NMFS's regulations related to the goals and purpose of the CDQ program. Therefore, NMFS determines that the State provided adequate rationale to support its pollock CDQ allocation recommendation for NSEDC without having to rely on the two factors that NMFS cannot support.

Community Benefits Share Project: NMFS is providing additional determinations about NSEDC's community benefits share project because it was an important factor in the State's pollock CDQ allocation recommendation for NSEDC. In addition, NMFS supports the State's conclusions that NSEDC's community benefits share project has not been operated in compliance with NMFS regulations at 50 CFR 679.1(e).

The State addressed this issue on page 21 of its findings, stating that "[t]he funds provided by NSEDC to its member communities for their Community Benefits Share grants were not required by NSEDC to be spent on fisheries related projects. See Appendix 10. Per 50 C.F.R. 679.1(e), the state finds that NSEDC's Community Benefits Share project is not in compliance with the goals and purpose of the CDQ program." NSEDC did not challenge the State's conclusions about the community benefits share project in its comments to the State or NMFS.

NMFS regulations at 50 CFR 679.1(e) state that

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

In Appendix 10 to its findings, the State submitted copies of information from NSEDC's quarterly reports. In 2001, some of the projects that were funded through the community benefits share project were:

- In White Mountain: community activities, summer fluoride program, school, spring clean up, and librarian.
- In St. Michael: city buildings fuel and maintenance, school activities, community activities.

- In Golovin: council, police, streets, roads, festivals, events, snow machine shop, post office.
- In Teller: IRS levy, city expenses.
- In Brevig Mission: equipment for the teen center.
- In Shaktoolik: employment of permit holders to repair the community's snow fence, snow plowing.
- In Stebbins: capital improvements.

The lists of projects funded in 1999 and 2000 show a similar range of projects that do not appear to be related to starting or supporting commercial fisheries business activities.

The State and NMFS have communicated their concerns about the community benefits share project to NSEDC numerous times over the last few years. The State sent NSEDC a letter dated October 8, 1999, requesting that it provide information in its quarterly report about how the community benefits share grants were being spent to "provide the state and National Marine Fisheries Service with assurance that the funds are being used in a manner consistent with the CDQ program." Sally Bibb (NMFS) attended NSEDC's July 25, 2000, board meeting and discussed NMFS's concern that projects funded through the community benefits share must be fisheries related. During review of the 2001 through 2002 CDPs, NMFS notified the State that it appeared that NSEDC was spending this money on projects that were not fisheries related, and that the description of the community benefits share project in NSEDC's proposed CDP (for 2001-2002) did not adequately communicate that the communities would be required by NSEDC to spend the grant money on fisheries related projects. NMFS requested that NSEDC's CDP be revised. In a letter dated January 2, 2001, the State also requested that NSEDC provide the CDP revisions requested by NMFS. NSEDC did not submit the requested revisions to its CDP. In a February 1, 2001, letter to NSEDC, NMFS acknowledged that NSEDC had declined to revise its CDP to address NMFS's concerns. NMFS also clarified its interpretation of its regulations in writing, stating that NMFS regulations required "that CDQ revenues must be spent on CDQ projects that start or support 'commercial fisheries business activities.' Furthermore, this requirement applies to expenditures by the CDQ group regardless of whether the money being spent was earned from CDQ royalties, interest income, profit-sharing, or any other source."

The information provided by the State and in NSEDC's quarterly reports demonstrates that NSEDC continues to allow funds dispersed through the community benefits share project to be spent on projects that are not fisheries related. Therefore, NMFS agrees with the State that NSEDC has violated NMFS regulations at 50 CFR 679.1(e) and has spent funds in a manner inconsistent with the goals and purpose of the CDQ Program. NMFS also supports the State's consideration of this fact in making its 2003-2005 CDQ allocation recommendations for NSEDC.

Use of the bycatch matrix model

APICDA and CVRF raised questions about the State's allocation recommendations for Bering Sea other red rockfish (APICDA) and Aleutian Islands other rockfish (APICDA and CVRF). Both CDQ groups questioned the accuracy of the State's bycatch matrix model in determining allocations for these species, and contended that there must be errors in this model. The State explained that it used historical catch in the CDQ fisheries to develop the bycatch matrix model. The model estimates the amount of incidental catch and prohibited species associated with specific target species allocations. The State has been using this type of model since 1998.

NMFS supports the use of this type of model to develop allocation recommendations for incidental catch and prohibited species. However, it is difficult to develop a computer model that accurately represents all of the factors that will occur during commercial fishing operations to affect the catch of incidental and prohibited species. In addition, the CDQ reserves for incidental catch and prohibited species will not always provide sufficient amounts of incidental catch and prohibited species bycatch. The Council and NMFS established the CDQ reserves at 7.5% of the total allowable (TAC) for these species. This percentage was based on the amount originally allocated for the pollock CDQ Program in 1992. The percentage allocation of each TAC to the CDQ reserves was not established to guarantee that the CDQ groups would get a sufficient amount of quota to fully harvest all of their target species.

NMFS suggests that, if the CDQ groups have questions or suggestions about how to improve the bycatch model, they should begin immediately to work with the State to evaluate this model so that proposed revisions could be reviewed and implemented prior to the next CDQ allocation cycle. However, for the reasons described above, the questions raised by APICDA and CVRF about the bycatch model do not justify NMFS disapproving the State's allocation recommendations for these species.

Allocation recommendations for Bering Sea Other Red Rockfish

One exception exists to NMFS's decision to approve the State's allocation recommendations for the incidental catch species based on application of the bycatch matrix model. NMFS determines that it cannot approve the State's allocation recommendations for Bering Sea other red rockfish because this quota category no longer exists in the BSAI groundfish fisheries.

Bering Sea other red rockfish has been a quota category in the past, and included shortraker rockfish, roughey rockfish, sharpchin rockfish, and northern rockfish. The Bering Sea other red rockfish species group was split to Bering Sea sharpchin/northern and Bering Sea shortraker/roughey in 2001, and into Bering Sea northern and Bering Sea shortraker/roughey in 2002.⁷ The Council recently recommended continuation of the 2002 quota categories for the 2003 fishing year. NMFS expects similar splits in the quota category to continue in the future. By emergency rule, NMFS was able to continue to manage Bering Sea shortraker/roughey rockfish and Bering Sea northern rockfish as other red rockfish in 2001 and 2002. However, this option no longer exists because emergency rules are not being used to implement the BSAI groundfish specifications for 2003.

In light of NMFS's determination to disapprove the State's allocation recommendations for Bering Sea other red rockfish, NMFS will manage the the CDQ reserves for (1) Bering Sea shortraker/roughey rockfish, and (2) Bering Sea northern rockfish for 2003-2005 as described below:

1. 7.5% of the total allowable catch for Bering Sea shortraker/roughey rockfish and Bering Sea northern rockfish has been allocated to the CDQ Program as CDQ reserves and will be available for harvest by all six CDQ groups.
2. Each CDQ group will be required to report its catch of these species through the standard CDQ catch reporting procedures and to follow all other CDQ catch accounting regulations, including observer coverage and equipment requirements. NMFS will monitor the catch of these rockfish species by each CDQ group, and monitor the overall catch in the CDQ Program.

⁷Sharpchin rockfish were added to the other rockfish species group.

3. NMFS will manage the CDQ allocations of Bering Sea shortraker/rougheye and Bering Sea northern rockfish at the CDQ sector level, based on regulations at 50 CFR 679.20(d). These regulations allow NMFS to establish retention standards to prevent the CDQ groups from targeting on these species to try to maintain total catch in the CDQ fisheries within the CDQ reserve amounts.
4. Under §679.20(d), if the catch of Bering Sea shortraker/rougheye rockfish or Bering Sea northern rockfish by all sectors approaches the overfishing limit, NMFS will take management action to prevent overfishing of these species. The CDQ fisheries will be among those fisheries that NMFS would consider for closure to prevent overfishing. NMFS could issue a closure notice that would prohibit any vessel fishing for a CDQ group from participating in a specified directed fishery. As with the non-CDQ fisheries, these closures could be focused on target species, gear type, or area.

Conclusion

With one exception, NMFS approves the State's 2003-2005 CDQ allocation recommendations as described in the State's October 15, 2002, letter and the proposed CDPs for six CDQ groups based on the determinations that (1) the State followed the requirements of 50 CFR Part 679 in developing its allocation recommendations; (2) the proposed CDPs contain the information required under §679.30(a); and (3) the State considered relevant evaluation factors and provided a rational connection between the facts found by the State and the CDP and allocation recommendations made by the State. The State's allocation recommendations demonstrate a consistent relationship between the State's evaluation criteria, the results of the scorecard, and the State's allocation recommendations. The one exception to approval of the State's recommendations is Bering Sea other red rockfish. The basis for these determinations is contained in the findings described above.

Attachment 3

Tables

Table 3.1 Comparison of the CDQ allocations for 2001-2002 with the State's CDQ allocation recommendations for 2003-2005.

Table 3.2 Comparison of the CDQ allocations requested by the CDQ groups with the State's CDQ allocation recommendations for 2003-2005.

Table 3.1 Comparison of the CDQ allocations in 2001 and 2002 with the State's recommended allocations for 2003 through 2005.

Allocation Categories	APICDA			BBEDC			CBSFA			CVRF			NSEDC			YDFDA		
	01-02	03-05	+/-	01-02	03-05	+/-	01-02	03-05	+/-	01-02	03-05	+/-	01-02	03-05	+/-	01-02	03-05	+/-
Groundfish CDQ Species																		
BS Pollock	14%	14%	0%	21%	21%	0%	4%	5%	1%	24%	24%	0%	23%	22%	-1%	14%	14%	0%
AI Pollock	14%	14%	0%	21%	21%	0%	4%	5%	1%	24%	24%	0%	23%	22%	-1%	14%	14%	0%
Bogoslof Pollock	14%	14%	0%	21%	21%	0%	4%	5%	1%	24%	24%	0%	23%	22%	-1%	14%	14%	0%
Pacific Cod	16%	15%	-1%	20%	21%	1%	10%	9%	-1%	17%	18%	1%	18%	18%	0%	19%	19%	0%
BS FG Sablefish	15%	15%	0%	22%	20%	-2%	18%	16%	-2%	0%	0%	0%	20%	18%	-2%	25%	31%	6%
AI FG Sablefish	15%	14%	-1%	20%	19%	-1%	0%	3%	3%	30%	27%	-3%	20%	23%	3%	15%	14%	-1%
BS Sablefish	17%	21%	4%	20%	22%	2%	10%	9%	-1%	17%	13%	-4%	18%	13%	-5%	18%	22%	4%
AI Sablefish	24%	26%	2%	23%	20%	-3%	9%	8%	-1%	10%	13%	3%	10%	12%	2%	24%	21%	-3%
WAI Atka Mackerel	30%	30%	0%	15%	15%	0%	8%	8%	0%	15%	15%	0%	14%	14%	0%	18%	18%	0%
CAI Atka Mackerel	30%	30%	0%	15%	15%	0%	8%	8%	0%	15%	15%	0%	14%	14%	0%	18%	18%	0%
EAI/BS Atka Mackerel	30%	30%	0%	15%	15%	0%	8%	8%	0%	15%	15%	0%	14%	14%	0%	18%	18%	0%
Yellowfin Sole	28%	28%	0%	24%	24%	0%	8%	8%	0%	6%	6%	0%	7%	7%	0%	27%	27%	0%
Rock Sole	24%	24%	0%	23%	23%	0%	8%	8%	0%	11%	11%	0%	11%	11%	0%	23%	23%	0%
BS Greenland Turbot	20%	16%	-4%	22%	20%	-2%	7%	8%	1%	15%	17%	2%	15%	19%	4%	21%	20%	-1%
AI Greenland Turbot	16%	17%	1%	20%	19%	-1%	5%	7%	2%	21%	18%	-3%	20%	20%	0%	18%	19%	1%
Arrowtooth Flounder	24%	22%	-2%	22%	22%	0%	9%	9%	0%	11%	13%	2%	10%	12%	2%	24%	22%	-2%
Flathead Sole	20%	20%	0%	20%	21%	1%	10%	9%	-1%	15%	15%	0%	15%	15%	0%	20%	20%	0%
Other Flatfish	25%	26%	1%	23%	24%	1%	9%	8%	-1%	10%	8%	-2%	10%	8%	-2%	23%	26%	3%
Alaska Plaice	25%	14%	-11%	23%	21%	-2%	9%	5%	-4%	10%	24%	14%	10%	22%	12%	23%	14%	-9%
BS Pacific Ocean Perch	18%	17%	-1%	21%	21%	0%	7%	6%	-1%	18%	21%	3%	18%	19%	1%	18%	16%	-2%
WAI Pacific Ocean Perch	30%	30%	0%	15%	15%	0%	8%	8%	0%	15%	15%	0%	14%	14%	0%	18%	18%	0%
CAI Pacific Ocean Perch	30%	30%	0%	15%	15%	0%	8%	8%	0%	15%	15%	0%	14%	14%	0%	18%	18%	0%
EAI Pacific Ocean Perch	30%	30%	0%	15%	15%	0%	8%	8%	0%	15%	15%	0%	14%	14%	0%	18%	18%	0%
BS Other Red Rockfish	23%	18%	-5%	18%	19%	1%	8%	8%	0%	16%	18%	2%	16%	18%	2%	19%	19%	0%
AI Northern	30%	30%	0%	15%	15%	0%	8%	8%	0%	15%	15%	0%	14%	14%	0%	18%	18%	0%
AI Shortraker/Rougheye	22%	22%	0%	18%	17%	-1%	7%	8%	1%	18%	17%	-1%	17%	17%	0%	18%	19%	1%
BS Other Rockfish	25%	21%	-4%	21%	19%	-2%	7%	7%	0%	12%	17%	5%	13%	17%	4%	22%	19%	-3%
AI Other Rockfish	23%	21%	-2%	17%	18%	1%	7%	8%	1%	18%	17%	-1%	17%	17%	0%	18%	19%	1%
Other Species	18%	18%	0%	20%	21%	1%	10%	9%	-1%	16%	16%	0%	16%	16%	0%	20%	20%	0%

01-02 means 2001-2002

03-05 means 2003-2005

+/- means increase or decrease in percentage allocation

Allocation Categories	APICDA			BBEDC			CBSFA			CVRF			NSEDC			YDFDA		
	01-02	03-05	+/-	01-02	03-05	+/-	01-02	03-05	+/-	01-02	03-05	+/-	01-02	03-05	+/-	01-02	03-05	+/-
Prohibited Species																		
Zone 1 Red King Crab	29%	24%	-5%	23%	21%	-2%	8%	8%	0%	7%	12%	5%	7%	12%	5%	26%	23%	-3%
Zone 1 Bairdi Tanner Crab	26%	26%	0%	24%	24%	0%	8%	8%	0%	8%	8%	0%	8%	8%	0%	26%	26%	0%
Zone 2 Bairdi Tanner Crab	23%	24%	1%	22%	23%	1%	9%	8%	-1%	12%	11%	-1%	11%	10%	-1%	23%	24%	1%
Opilio Tanner Crab	24%	25%	1%	22%	24%	2%	9%	8%	-1%	11%	10%	-1%	10%	8%	-2%	24%	25%	1%
Pacific Halibut	22%	22%	0%	22%	22%	0%	9%	9%	0%	12%	12%	0%	12%	12%	0%	23%	23%	0%
Chinook Salmon	15%	14%	-1%	21%	21%	0%	4%	5%	1%	23%	24%	1%	23%	22%	-1%	14%	14%	0%
Non-Chinook Salmon	15%	14%	-1%	21%	21%	0%	5%	5%	0%	23%	24%	1%	22%	22%	0%	14%	14%	0%
Halibut CDQ																		
Halibut 4B	100%	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Halibut 4C	10%	15%	5%	0%	0%	0%	90%	85%	-5%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Halibut 4D	0%	0%	0%	26%	26%	0%	0%	0%	0%	24%	24%	0%	30%	30%	0%	20%	20%	0%
Halibut 4E	0%	0%	0%	30%	30%	0%	0%	0%	0%	70%	70%	0%	0%	0%	0%	0%	0%	0%
Crab CDQ																		
Bristol Bay Red King Crab	18%	17%	17%	18%	19%	19%	10%	10%	10%	18%	18%	18%	18%	18%	18%	18%	18%	18%
Norton Sound Red King Crab	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	50%	50%	0%	50%	50%	0%
Pribilof Red & Blue King Crab	0%	0%	0%	0%	0%	0%	100%	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
St. Matthew Blue King Crab	50%	50%	0%	12%	12%	0%	0%	0%	0%	12%	12%	0%	14%	14%	0%	12%	12%	0%
Bering Sea C. Opilio Crab	10%	8%	-2%	19%	20%	1%	19%	20%	1%	17%	17%	0%	18%	18%	0%	17%	17%	0%
Bering Sea C. Bairdi Crab	10%	10%	0%	19%	19%	0%	19%	19%	0%	17%	17%	0%	18%	18%	0%	17%	17%	0%

01-02 means 2001-2002

03-05 means 2003-2005

+/- means increase or decrease in percentage allocation

Table 3.2 Comparison of the CDQ allocations requested by the CDQ groups with the State's CDQ allocation recommendations for 2003-2005.

Allocation Categories	APICDA			BBEDC			CBSFA			CVRF			NSEDC			YDFDA		
	Request	State	Diff.															
Groundfish CDQ Species																		
BS Pollock	18%	14%	-4%	23%	21%	-2%	10%	5%	-5%	27%	24%	-3%	31%	22%	-9%	17%	14%	-3%
AI Pollock	18%	14%	-4%	23%	21%	-2%	10%	5%	-5%	27%	24%	-3%	31%	22%	-9%	17%	14%	-3%
Bogoslof Pollock	18%	14%	-4%	23%	21%	-2%	10%	5%	-5%	27%	24%	-3%	31%	22%	-9%	17%	14%	-3%
Pacific Cod	18%	15%	-3%	25%	21%	-4%	20%	9%	-11%	27%	18%	-9%	31%	18%	-13%	19%	19%	0%
BS FG Sablefish	25%	15%	-10%	25%	20%	-5%	20%	16%	-4%	0%	0%	0%	31%	18%	-13%	30%	31%	1%
AI FG Sablefish	20%	14%	-6%	25%	19%	-6%	10%	3%	-7%	27%	27%	0%	31%	23%	-8%	20%	14%	-6%
BS Sablefish	25%	21%	-4%	25%	22%	-3%	20%	9%	-11%	27%	13%	-14%	31%	13%	-18%	18%	22%	4%
AI Sablefish	20%	26%	6%	25%	20%	-5%	10%	8%	-2%	10%	13%	3%	31%	12%	-19%	24%	21%	-3%
WAI Atka Mackerel	30%	30%	0%	15%	15%	0%	15%	8%	-7%	9%	15%	6%	31%	14%	-17%	20%	18%	-2%
CAI Atka Mackerel	30%	30%	0%	15%	15%	0%	15%	8%	-7%	9%	15%	6%	31%	14%	-17%	20%	18%	-2%
EAI/BS Atka Mackerel	30%	30%	0%	15%	15%	0%	15%	8%	-7%	15%	15%	0%	31%	14%	-17%	20%	18%	-2%
Yellowfin Sole	29%	28%	-1%	24%	24%	0%	15%	8%	-7%	27%	6%	-21%	31%	7%	-24%	27%	27%	0%
Rock Sole	10%	24%	14%	23%	23%	0%	15%	8%	-7%	27%	11%	-16%	31%	11%	-20%	20%	23%	3%
BS Greenland Turbot	16%	16%	0%	25%	20%	-5%	10%	8%	-2%	27%	17%	-10%	31%	19%	-12%	21%	20%	-1%
AI Greenland Turbot	18%	17%	-1%	25%	19%	-6%	10%	7%	-3%	21%	18%	-3%	31%	20%	-11%	18%	19%	1%
Arrowtooth Flounder	18%	22%	4%	25%	22%	-3%	15%	9%	-6%	27%	13%	-14%	31%	12%	-19%	24%	22%	-2%
Flathead Sole	20%	20%	0%	20%	21%	1%	15%	9%	-6%	27%	15%	-12%	31%	15%	-16%	20%	20%	0%
Other Flatfish	20%	26%	6%	23%	24%	1%	18%	8%	-10%	27%	8%	-19%	31%	8%	-23%	23%	26%	3%

Table 3.2 Comparison of the CDQ allocations requested by the CDQ groups with the State's CDQ allocation recommendations for 2003-2005.

Allocation Categories	APICDA			BBEDC			CBSFA			CVRF			NSEDG			YDFDA		
	Request	State	Diff.															
Alaska Plaice	20%	14%	-6%	23%	21%	-2%	16%	5%	-11%	27%	24%	-3%	31%	22%	-9%	23%	14%	-9%
BS Pacific Ocean Perch	30%	17%	-13%	15%	21%	6%	15%	6%	-9%	27%	21%	-6%	31%	19%	-12%	18%	16%	-2%
WAI Pacific Ocean Perch	30%	30%	0%	15%	15%	0%	12%	8%	-4%	4%	15%	11%	31%	14%	-17%	18%	18%	0%
CAI Pacific Ocean Perch	30%	30%	0%	15%	15%	0%	12%	8%	-4%	4%	15%	11%	31%	14%	-17%	18%	18%	0%
EAI Pacific Ocean Perch	30%	30%	0%	15%	15%	0%	12%	8%	-4%	4%	15%	11%	31%	14%	-17%	18%	18%	0%
BS Other Red Rockfish	23%	18%	-5%	24%	19%	-5%	15%	8%	-7%	27%	18%	-9%	31%	18%	-13%	19%	19%	0%
AI Northern	20%	30%	10%	23%	15%	-8%	12%	8%	-4%	27%	15%	-12%	31%	14%	-17%	18%	18%	0%
AI Shortraker/Rougheye	17%	22%	5%	23%	17%	-6%	12%	8%	-4%	27%	17%	-10%	31%	17%	-14%	18%	19%	1%
BS Other Rockfish	16%	21%	5%	24%	19%	-5%	15%	7%	-8%	27%	17%	-10%	31%	17%	-14%	22%	19%	-3%
AI Other Rockfish	16%	21%	5%	23%	18%	-5%	15%	8%	-7%	27%	17%	-10%	31%	17%	-14%	18%	19%	1%
Other Species	19%	18%	-1%	25%	21%	-4%	18%	9%	-9%	27%	16%	-11%	31%	16%	-15%	20%	20%	0%
Prohibited Species																		
Zone 1 Red King Crab	19%	24%	5%	23%	21%	-2%	8%	8%	0%	27%	12%	-15%	31%	12%	-19%	26%	23%	-3%
Zone 1 Bairdi Tanner Crab	26%	26%	0%	23%	24%	1%	8%	8%	0%	27%	8%	-19%	31%	8%	-23%	26%	26%	0%
Zone 2 Bairdi Tanner Crab	23%	24%	1%	23%	23%	0%	9%	8%	-1%	27%	11%	-16%	31%	10%	-21%	23%	24%	1%
Opilio Tanner Crab	26%	25%	-1%	23%	24%	1%	9%	8%	-1%	27%	10%	-17%	31%	8%	-23%	24%	25%	1%
Pacific Halibut	20%	22%	2%	25%	22%	-3%	9%	9%	0%	27%	12%	-15%	31%	12%	-19%	23%	23%	0%
Chinook Salmon	19%	14%	-5%	23%	21%	-2%	4%	5%	1%	27%	24%	-3%	31%	22%	-9%	17%	14%	-3%
Non-Chinook Salmon	19%	14%	-5%	23%	21%	-2%	5%	5%	0%	27%	24%	-3%	31%	22%	-9%	17%	14%	-3%

Table 3.2 Comparison of the CDQ allocations requested by the CDQ groups with the State's CDQ allocation recommendations for 2003-2005.

Allocation Categories	APICDA			BBEDC			CBSFA			CVRF			NSEDC			YDFDA		
	Request	State	Diff.															
Halibut CDQ																		
Halibut 4B	100%	100%	0%		0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Halibut 4C	15%	15%	0%		0%	0%	90%	85%	-5%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Halibut 4D		0%	0%	30%	26%	-4%	0%	0%	0%	30%	24%	-6%	40%	30%	-10%	27%	20%	-7%
Halibut 4E		0%	0%	40%	30%	-10%	0%	0%	0%	70%	70%	0%	25%	0%	-25%	0%	0%	0%
Crab CDQ																		
Bristol Bay Red King Crab	25%	17%	-8%	25%	19%	-6%	17%	10%	-7%	27%	18%	-9%	31%	18%	-13%	18%	18%	0%
Norton Sound Red King Crab	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	100%	50%	-50%	50%	50%	0%
Pribilof Red & Blue King Crab	0%	0%	0%	0%	0%	0%	100%	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
St. Matthew Blue King Crab	50%	50%	0%	25%	12%	-13%	0%	0%	0%	27%	12%	-15%	31%	14%	-17%	12%	12%	0%
Bering Sea C. Opilio Crab	25%	8%	-17%	25%	20%	-5%	25%	20%	-5%	27%	17%	-10%	31%	18%	-13%	17%	17%	0%
Bering Sea C. Bairdi Crab	25%	10%	-15%	25%	19%	-6%	9%	19%	10%	27%	17%	-10%	31%	18%	-13%	17%	17%	0%

Attachment 4 State of Alaska regulations at 6 AAC 93 for CDQ program standards and evaluation criteria used as a basis for the State's CDQ allocation recommendations.

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.

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.