

ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW/
FINAL REGULATORY FLEXIBILITY ANALYSIS

FOR AMENDMENT 45
TO THE FISHERY MANAGEMENT PLAN FOR GROUND FISH
IN THE BERING SEA AND ALEUTIAN ISLANDS AREA

**Permanent Extension of the Allocation of Pollock to the
Western Alaska Community Development Quota Program**

Prepared by staff

of the

North Pacific Fishery Management Council
Alaska Department of Community and Regional Affairs
National Marine Fisheries Service

December 1, 1998

TABLE OF CONTENTS

| | |
|--|-----|
| Executive Summary | iii |
| 1.0 INTRODUCTION | 1 |
| 1.1 Purpose of and Need for the Action | 1 |
| 1.2 Alternatives Considered | 4 |
| 1.2.1 Alternative 1: No Action | 4 |
| 1.2.2 Alternative 2: Permanently extend the pollock CDQ program at 7.5 percent of the TAC. 4 | |
| 2.0 NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES | 5 |
| 2.1 Environmental Impacts of the Alternatives | 5 |
| 2.2 Impacts on Endangered or Threatened Species | 5 |
| 2.3 Impacts on Marine Mammals Not Listed Under the ESA | 9 |
| 2.4 Coastal Zone Management Act | 9 |
| 2.5 Conclusions or Finding of No Significant Impact | 9 |
| 3.0 REGULATORY IMPACT REVIEW: ECONOMIC AND SOCIOECONOMIC IMPACTS OF THE ALTERNATIVES | 10 |
| 3.1 Alternatives to be considered | 11 |
| 3.1.1 Alternative 1: Status Quo. | 11 |
| 3.1.2 Alternative 2: Permanently extend the pollock CDQ program at 7.5 percent of the TAC.11 | |
| 3.2 Summary of Development and Regulatory Environment | 12 |
| 3.2.1 Development of the Pollock CDQ Program | 12 |
| 3.2.2 Development of the Halibut/Sablefish CDQ Program | 12 |
| 3.2.3 Development of the Multi-species CDQ Program | 13 |
| 3.2.4 Overall Goals and Objectives of the CDQ Programs | 13 |
| 3.2.5 Western Alaska Communities and Organizations in the CDQ Program | 13 |
| 3.2.5.1 Pollock Allocation | 16 |
| 3.3 Implementation of the CDQ Program | 18 |
| 3.3.1 Agency Involvement | 18 |
| 3.4 Development Strategies of CDQ Groups | 19 |
| 3.4.1 Revenue Generation | 19 |
| 3.4.2 Equity Accumulation | 20 |
| 3.4.3 Vessel Acquisitions | 21 |
| 3.4.4 Community Based Fisheries Development | 21 |
| 3.4.5 Employment and training opportunities | 22 |
| 3.4.6 Fisheries Retention Activities | 23 |
| 3.4.7 Region Outreach | 23 |
| 3.5 Description of Economic and Indirect Impacts | 23 |
| 3.5.1 Labor Force and Employment | 24 |
| 3.5.2 Income | 28 |
| 3.5.3 Social Conditions | 29 |
| 3.6 Potential Impacts of Program Expiration or Continuation | 30 |
| 3.7 Estimated Number of Participants in the Pollock CDQ Fishery | 31 |
| 3.8 Administrative, Enforcement and Information Costs | 31 |

| | |
|---|----|
| 4.0 ECONOMIC IMPACT ON SMALL ENTITIES | 32 |
| 4.1 Initial Regulatory Flexibility Analysis | 32 |
| 4.2 Supplemental Initial Regulatory Flexibility Analysis | 33 |
| 4.3 What is a Small Entity? | 33 |
| 4.4 What is a Substantial Number of Small Entities? | 34 |
| 4.5 What is a Significant Economic Impact? | 35 |
| 4.6 Small Entities in the BSAI Pollock Fishery | 35 |
| 4.7 Impacts of the Alternatives on small entities | 37 |
| 4.8 Final Regulatory Flexibility Analysis (FRFA) | 37 |
| 5.0 SUMMARY AND CONCLUSIONS | 39 |
| Alternative 1: No Action | 39 |
| Alternative 2: Permanently extend the pollock CDQ program at 7.5 percent of the TAC. | 39 |
| 6.0 REFERENCES | 40 |
| 7.0 LIST OF PREPARERS | 40 |
| APPENDIX I. NOAA GC OPINION | 41 |
| APPENDIX II. MSFCMA LANGUAGE | 44 |
| APPENDIX III. DCRA REPORT | 46 |
| APPENDIX IV. SUPPLEMENTAL INITIAL REGULATORY FLEXIBILITY ANALYSIS | |

Executive Summary

Section 111(a) of the Sustainable Fisheries Act of 1996 added a new provision to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) providing specific statutory authority for the CDQ programs for pollock, sablefish, halibut, groundfish, and crab, already approved by the North Pacific Council and the Secretary of Commerce. Section 305(i)(1) requires that the Council and Secretary establish a Western Alaska CDQ program that allocates a percentage of the Total Allowable Catch (TAC) of any Bering Sea fishery. It imposes a moratorium until October 1, 2001, on submission to the Secretary of any CDQ program allocating a percentage of TAC that was not approved by the Council before October 1, 1995, and allows an extension of CDQ programs that expire during the period of the moratorium if they meet the other requirements of the section. It also provides that, for pending CDQ programs and proposed extensions of current programs, the Secretary cannot increase the percentage of TAC allocated to any CDQ program over the amount the Council approved as of October 1, 1995.

Under the above provisions establishing CDQ programs for nearly all BSAI fisheries, the MSFCMA requires the Council and Secretary to act such that a pollock CDQ program exists after its current sunset date. Further, the Council and Secretary are directed to include pollock in the multi-species CDQ program by 1999. The Sustainable Fisheries Act of October 1996 also clearly directs the Council and the Secretary that a pollock CDQ program at an amount up to the existing 7.5 percent of pollock TAC shall be included in a comprehensive multi-species CDQ program.

The Council must act to recommend an FMP amendment to extend the pollock CDQ program past 1998. While the Council could have chosen to lower the CDQ allocation to less than the current 7.5 percent, the Council chose to limit the alternatives in this analysis to:

Alternative 1: No Action.

Alternative 2: Permanently extend the pollock CDQ program at 7.5 percent of the TAC. (*Preferred Alternative*)

Only Alternative 2 appears to be consistent with Congressional intent to have a pollock CDQ program for Western Alaska. Without reauthorization of the pollock CDQ Program, the 56 affected communities, organized into six separate CDQ organizations, will no longer be given an exclusive share of the pollock resource. The 7.5% allocation yields an average of \$2 million in wages, and \$10.2 million net income on annual revenues of nearly \$20 million to CDQ program recipients. These direct benefits likely understate total economic benefits to these communities, due to the indirect benefits generated from the development projects undertaken by the program. Additionally, the direct and indirect impacts of the monies generated by the program represent a differentially higher economic impact when compared to other regions of the State of Alaska and the United States in general. This is due to the relative absence of alternative economic bases in these communities. The social benefits attributable to this program are quite clear and have not been the subject of debate during the program or in consideration of extending the program. During its deliberations in June 1998, the Council chose Alternative 2 as its preferred alternative.

None of the alternatives are expected to have a significant impact on endangered or threatened species, and none would have an affect on takes of marine mammals.

None of the alternatives is expected to result in a “significant regulatory action” as defined in E.O. 12866, National Environmental Policy Act. None of the alternatives would result in an action deemed to be “significant” under the Regulatory Flexibility Act.

1.0 INTRODUCTION

The groundfish fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) off Alaska are managed under the Fishery Management Plan for the Groundfish Fisheries of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area. Both fishery management plans (FMP) were developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Gulf of Alaska (GOA) FMP was approved by the Secretary of Commerce and become effective in 1978 and the Bering Sea and Aleutian Islands Area (BSAI) FMP become effective in 1982.

Actions taken to amend FMPs or implement other regulations governing the groundfish fisheries must meet the requirements of Federal laws and regulations. In addition to the Magnuson Act, the most important of these are the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA).

NEPA, E.O. 12866 and the RFA require a description of the purpose and need for the proposed action as well as a description of alternative actions which may address the problem. This information is included in Section 1 of this document. Section 2 contains information on the biological and environmental impacts of the alternatives as required by NEPA. Impacts on endangered species and marine mammals are also addressed in this section. Section 3 contains a Regulatory Impact Review (RIR) which addresses the requirements of both E.O. 12866 and the RFA that economic impacts of the alternatives be considered. Section 4 contains the Initial Regulatory Flexibility Analysis (IRFA) required by the RFA which specifically addresses the impacts of the proposed action on small businesses.

This Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) addresses the need to reauthorize the pollock community development quota program (CDQ) for Western Alaska. The pollock CDQ program will sunset on December 31, 1998 unless reauthorized by the Secretary of Commerce. This program has been separated from the current inshore-offshore processor allocations for pollock, which is also scheduled for action in 1998. The Council must act to recommend this amendment if it wishes to extend the pollock CDQ program.

1.1 Purpose of and Need for the Action

In the past, the Council has maintained the linkage between the allocation of pollock to the CDQ reserve and the allocation of pollock between inshore and offshore components of the industry. Recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), however, indicate that extension of the pollock CDQ program should not be temporary and that it should be combined with the multi-species CDQ program. The Council must act to recommend an FMP amendment to this effect if the Council wants to extend the pollock CDQ program past 1998.

The pollock CDQ program for 1992 through 1995 was part of Amendment 18 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands. It was approved by the Council in June 1991 and by the Secretary on March 4, 1992. The pollock CDQ program was extended through December 31, 1998, as part of Amendment 38. Amendment 38 was approved by the Council in June 1995 and by the Secretary on November 28, 1995. The multispecies groundfish and crab CDQ program was approved by the Council in June 1995 as part of Amendment 39 and by the Secretary on September 12, 1997. The proposed rule to establish a License Limitation Program (LLP) and expand the Community Development Quota (CDQ) Program was published in the Federal register on August 15, 1997. The CDQ program would be expanded to include a percentage of the total allowable catch (TAC) of BSAI groundfish and crab species in the CDQ allocations. The draft final rule was sent to NMFS HQ for review on March 16, 1998. Numerous

changes have been made to the final rule in response to 87 comments received on the proposed rule. The current target date for publication of the final rule is the week of the April 1998 Council meeting.

Section 111(a) of the Sustainable Fisheries Act of 1996 added a new provision to the MSFCMA providing specific statutory authority for the CDQ programs for pollock, sablefish, halibut, groundfish, and crab, already approved by the North Pacific Council and the Secretary of Commerce. Section 305(i)(1) requires that the Council and Secretary establish a Western Alaska CDQ program that allocates a percentage of the Total Allowable Catch (TAC) of any Bering Sea fishery. It imposes a moratorium until October 1, 2001, on submission to the Secretary of any CDQ program allocating a percentage of TAC that was not approved by the Council before October 1, 1995, and allows an extension of CDQ programs that expire during the period of the moratorium if they meet the other requirements of the section. It also provides that, for pending CDQ programs and proposed extensions of current programs, the Secretary cannot increase the percentage of TAC allocated to any CDQ program over the amount the Council approved as of October 1, 1995 (NOAA 1996).

Section 111(a) Harold Sparck Memorial Community Development Quota Program is the result of strong support for the Western Alaska CDQ program. According to the Senate report and statements on the floor, the intent is for the National Marine Fisheries Service to combine all the existing and proposed Bering Sea CDQ programs into a single, more efficient Western Alaska CDQ program.

NOAA General Counsel (GC) opined that Section 305(i) requires that an FMP amendment be submitted by the Council and approved by the Secretary in order to extend the pollock CDQ program beyond December 31, 1998. The NOAA GC legal opinion on the interpretation of Section 305(i) is included as Appendix I. Section 305(i)(1)(C)(ii) states, “With respect to a fishery management plan, plan amendment, or regulation for a Bering Sea fishery that --(I) allocated to the Western Alaska community development quota program a percentage of the total allowable catch of such fishery; and (II) was approved by the North Pacific Fishery Management Council prior to October 1, 1995; the Secretary shall, except as provided in clause (iii) and after approval of such plan, amendment, or regulation, under section 304, allocate to the program the percentage of the total allowable catch described in such plan, amendment, or regulation.”

The primary application of section 305(i)(1)(C)(ii) is to the multispecies and crab program, because that is the only one that had been approved by the North Pacific Council prior to October 1, 1995, but had not yet been approved by the Secretary of Commerce on October 11, 1996. The current pollock CDQ program had already been approved by the Secretary in 1995. This sentence cannot be read as mandating continuation of the pollock CDQ program past its expiration date, because Amendment 38 does not describe any allocation of TAC to the CDQ program for any year after 1998.

As stated above, the MSFCMA requires the Council and Secretary to act such that a pollock CDQ program will exist after its current sunset date. Further, the Council and Secretary are directed to include pollock in the multi-species CDQ program by 1999. The Sustainable Fisheries Act of October 1996, also clearly directs the Council and the Secretary that a pollock CDQ program at an amount up to the existing 7.5 percent of pollock TAC shall be included in a comprehensive multi-species CDQ program.

Congressman Young claimed that it was the intent of both houses that CDQ allocations “shall be large enough to enable communities participating in the program to accomplish the program’s objectives, and particularly the objective of establishing a sustainable local economy in each participating community.” Section 305(i)(1) has been interpreted to require the Council and the Secretary to establish a single western Alaska CDQ program. Section 305(i)(1)(C)(ii) has been interpreted to cap all CDQ programs at 7.5 percent, the highest percentage recommended for any of the programs prior to October 1, 1995. The Council directed that this analysis only address reauthorizing the pollock CDQ program at the current level of 7.5 percent of the BSAI pollock TAC.

In June 1995, the Council approved the first reauthorization of inshore/offshore (II). At the same meeting, the Council also approved the license limitation program and multi-species CDQ program for groundfish and crab. The Council explicitly included the pollock CDQ allocation as part of the pollock inshore/offshore amendment package, and did not include it in the multi-species CDQ allocation. Its action mandated that the pollock CDQ program would need to be reauthorized along with inshore/offshore (II), or expire at the end of 1998. Since that time significant events have transpired which may affect the context in which the pollock CDQ program is considered. The recent Magnuson-Stevens Act includes very specific language pertaining to Western Alaska CDQ allocations. The language from Section 305 is shown in Appendix II.

The language in the Act appears to be non-discretionary in nature: i.e., it requires the North Pacific Council, and the Secretary of Commerce, to allocate a percentage of the TAC of any Bering Sea fishery under Council jurisdiction to the CDQ program. Further, the language under Section (C)(ii)(II) appears to dictate the percentage of such allocation...“with respect to any plan...that was approved by the Council prior to October 1, 1995; the Secretary shall...allocate to the program the percentage of the TAC described in such plan...”

The Congressional record (Report on the Sustainable Fisheries Act, Senate Committee on Commerce, Science, and Transportation) further illustrates the intent of Congress with regard to the CDQ allocations where it states, “this bill legislatively mandates both current and proposed Bering Sea CDQ programs, and authorizes similar programs in the western Pacific.”

To clarify congressional intent, staff researched the congressional record of the legislation. The Senate Commerce Committee report on S.39, dated May 23, 1996, states on the pages shown in parentheses:

“The North Pacific Council has implemented CDQ programs that set aside about 7.5 percent of the Bering Sea harvests of pollock, halibut, and sablefish for 55 villages in western Alaska. In addition that Council has recommended CDQs in several other major Bering Sea fisheries, including crab. The bill legislatively mandates both current and proposed Bering Sea CDQ programs and authorizes similar programs in the western Pacific (p.6)

In June of 1995, the North Pacific Council renewed the pollock CDQ program by unanimous consent (with one abstention) (p. 27) ... New section 305(i) of the Magnuson Act would explicitly provide for the western Alaska CDQ programs and combine them in a single program for regulatory efficiency... (p. 28)

New subsection (i) of section 305 of the Magnuson Act would require the North Pacific Council and the Secretary to establish a western Alaska community development program under which a percentage of the total allowable catch of each Bering Sea fishery is allocated to the program. Bering Sea CDQ programs already recommended or submitted by the North Pacific Council would be combined into a single, more efficient western Alaska CDQ program . . . (p. 28)

This subsection would establish a moratorium through FY 2000 on the submission by the North Pacific Council of a . . . western Alaska CDQ program unless the Council had recommended a CDQ allocation in the fishery prior to October 1, 1995. The moratorium therefore would limit the new combined western Alaska CDQ program to the pollock, halibut, sablefish, crab and groundfish fisheries until September 30, 2000. In addition the Secretary would be prohibited during that period from approving or implementing a greater percentage of the total allowable catch of the Bering Sea pollock, . . . for the western Alaska CDQ program than the North Pacific Council had already recommended as of September 30, 1995 in those fisheries. The effect of this restriction with respect to pollock would be that North Pacific Council and Secretary would be required to continue to allocate a percentage of pollock to the western Alaska CDQ program, notwithstanding the current

expiration date for pollock CDQs, but the Secretary would not be allowed to approve a percentage higher than 7.5 percent for pollock CDQs prior to October 1, 2000. (pp.28-29)

Senator Stevens' comments on the Senate floor on September 19, 1996, concerning manager's amendments to S. 39, echo the committee report:

Pacific Community Fisheries. The amendment requires the North Pacific Council and Secretary to establish a western Alaska community development quota (CDQ) program under which a percentage of the total allowable catch of each Bering Sea fishery is allocated to western Alaska communities that participate in the program. The amendment prevents the North Pacific Council from increasing the percentage of any CDQ allocation approved by the Council prior to October 1, 1995 until after September 30, 2001. The amendment includes a sentence at the end of a new section 305(i)(1)(C)(i) making clear that this cap through September 30, 2001 does not prevent the extension of the pollock CDQ allocation beyond 1996. In complying with the western Alaska CDQ requirement, a percentage of the pollock fishery (and each Bering Sea fishery) must be allocated to the program every year. In the event that the North Pacific Council fails to submit an extension of the pollock CDQ in 1998, it is the intent that the Secretary continue to allocate to the western Alaska CDQ program the percentage of pollock approved by the Council for previous years until the Council submits an extension.

The Council retains the ability to revise CDQ allocations, except as provided in the amendment for crab fisheries, provided that the allocations not exceed the levels approved by the Council prior to October 1, 1995 (after September 30, 2001, the Council retains the full ability to revise CDQ allocations). The Secretary is required to phase in the CDQ percentage already approved by the North Pacific Council for the Bering crab fisheries, allocating 3.5 percent in 1998, 5 percent in 1999 and 7.5 percent for 2001 or any other percentage on or after October 1, 2001. CDQ allocations already approved by the Council (pollock, halibut, sablefish, crab and groundfish) do not need to be resubmitted by the Council or reapproved (if already approved) by the Secretary.

The legislative history indicates strong Congressional intent that the pollock CDQ program continue, although the Council might be able to consider a reduced percentage. In summary, NOAA GC asserts, "When section 305(i) is read in its entirety, we believe that it requires an FMP amendment to be submitted by the Council and approved by the Secretary to extend the pollock CDQ program beyond December 31, 1998."

1.2 Alternatives Considered

This analysis is based on the description of the CDQ program as it was described in the proposed rule, published in the Federal register on August 15, 1997. The analysis will be revised upon publication of the final rule.

1.2.1 Alternative 1: No Action.

Under Alternative 1, the pollock CDQ program would sunset on December 31, 1998. The legislative history indicates Congressional intent for the CDQ program not to expire. NOAA GC has concluded that the Council is not required to submit a revision or extension of the pollock CDQ program and may choose to allow the program to expire (Appendix I).

1.2.2 Alternative 2: Permanently extend the pollock CDQ program at 7.5 percent of the TAC.

Alternative 2 would recommend that the Secretary extend the pollock CDQ program at the existing level of 7.5 percent of the pollock TAC, allocated to the CDQ reserve, without a sunset date. The intent is to include

pollock in the multi-species CDQ program to be implemented in mid-1998. Note that the pollock CDQ program extends through December 31, 1998, regardless of the date of initial implementation of the multi-species CDQ program.

The MSFCMA limits the amount of TAC that may be allocated to a pollock CDQ reserve to not more than 7.5 percent of the TAC through October 1, 2001. The Council may choose an allocation less than 7.5 percent, but may not recommend an allocation greater than 7.5 percent until after October 1, 2001. In September 1997, the Council decided to limit the alternatives in the reauthorization of the pollock CDQ program to: (1) the “no action” alternative and (2) continuation of the pollock CDQ program, without a sunset date, at 7.5 percent.

2.0 NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

An environmental assessment (EA) is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the action considered will result in significant impact on the human environment. If the action is determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An environmental impact statement (EIS) must be prepared for major Federal actions significantly affecting the human environment.

An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. The purpose and alternatives were discussed in Sections 1.1 and 1.2, and the list of preparers is in Section 8. This section contains the discussion of the environmental impacts of the alternatives including impacts on threatened and endangered species and marine mammals.

2.1 Environmental Impacts of the Alternatives

The environmental impacts generally associated with fishery management actions are effects resulting from (1) harvest of fish stocks which may result in changes in food availability to predators and scavengers, changes in the population structure of target fish stocks, and changes in the marine ecosystem community structure; (2) changes in the physical and biological structure of the marine environment as a result of fishing practices, e.g., effects of gear use and fish processing discards; and (3) entanglement/entrapment of non-target organisms in active or inactive fishing gear.

A summary of the effects of the annual groundfish harvests on the biological environment and associated impacts on marine mammals, seabirds, and other threatened or endangered species are discussed in the final environmental assessment for the annual groundfish total allowable catch specifications (NMFS 1998). In addition, the RIR in Section 3.0 of this document and appendices provides analysis of the socioeconomic impacts of the alternatives considered under Amendment 45.

2.2 Impacts on Endangered or Threatened Species

Background. The ESA provides for the conservation of endangered and threatened species of fish, wildlife, and plants. The program is administered jointly by NMFS for most marine species, and the US Fish and Wildlife Service (FWS) for terrestrial and freshwater species.

The ESA procedure for identifying or listing imperiled species involves a two-tiered process, classifying species as either threatened or endangered, based on the biological health of a species. Threatened species

are those likely to become endangered in the foreseeable future [16 U.S.C. §1532(20)]. Endangered species are those in danger of becoming extinct throughout all or a significant portion of their range [16 U.S.C. §1532(20)]. The Secretary of Commerce, acting through NMFS, is authorized to list marine mammal and fish species. The Secretary of the Interior, acting through the FWS, is authorized to list all other organisms.

In addition to listing species under the ESA, the critical habitat of a newly listed species must be designated concurrent with its listing to the “maximum extent prudent and determinable” [16 U.S.C. §1533(b)(1)(A)]. The ESA defines critical habitat as those specific areas that are essential to the conservation of a listed species and that may be in need of special consideration. The primary benefit of critical habitat designation is that it informs Federal agencies that listed species are dependent upon these areas for their continued existence, and that consultation with NMFS on any Federal action that may affect these areas is required. Some species, primarily the cetaceans, listed in 1969 under the Endangered Species Conservation Act and carried forward as endangered under the ESA, have not received critical habitat designations.

Listed Species. The following species are currently listed as endangered or threatened under the ESA and occur in the GOA and/or BSAI:

Endangered

| | |
|-------------------------------|-------------------------------|
| Northern Right Whale | <i>Balaena glacialis</i> |
| Bowhead Whale ¹ | <i>Balaena mysticetus</i> |
| Sei Whale | <i>Balaenoptera borealis</i> |
| Blue Whale | <i>Balaenoptera musculus</i> |
| Fin Whale | <i>Balaenoptera physalus</i> |
| Humpback Whale | <i>Megaptera novaeangliae</i> |
| Sperm Whale | <i>Physeter macrocephalus</i> |
| Snake River Sockeye Salmon | <i>Oncorhynchus nerka</i> |
| Short-tailed Albatross | <i>Diomedea albatrus</i> |
| Steller Sea Lion ² | <i>Eumetopias jubatus</i> |

Threatened

| | |
|--|---------------------------------|
| Snake River Fall Chinook Salmon | <i>Oncorhynchus tshawytscha</i> |
| Snake River Spring/Summer Chinook Salmon | <i>Oncorhynchus tshawytscha</i> |
| Steller Sea Lion ³ | <i>Eumetopias jubatus</i> |
| Spectacled Eider | <i>Somateria fishcheri</i> |

Section 7 Consultations. Because both groundfish fisheries are federally regulated activities, any negative effects of the fisheries on listed species or critical habitat and any takings⁴ that may occur are subject to ESA section 7 consultation. NMFS initiates the consultation and the resulting biological opinions are issued to NMFS. The Council may be invited to participate in the compilation, review, and analysis of data used in the consultations. The determination of whether the action “is likely to jeopardize the continued existence

¹species is present in Bering Sea area only.

²listed as endangered west of Cape Suckling.

³listed as threatened east of Cape Suckling.

⁴ the term “take” under the ESA means “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct” (16 U.S.C. §1538(a)(1)(B)).

of' endangered or threatened species or to result in the destruction or modification of critical habitat, however, is the responsibility of the appropriate agency (NMFS or FWS). If the action is determined to result in jeopardy, the opinion includes reasonable and prudent measures that are necessary to alter the action so that jeopardy is avoided. If an incidental take of a listed species is expected to occur under normal promulgation of the action, an incidental take statement is appended to the biological opinion.

Section 7 consultations have been done for all the above listed species, some individually and some as groups. Below are summaries of the consultations.

Endangered Cetaceans. NMFS concluded a formal section 7 consultation on the effects of the BSAI and GOA groundfish fisheries on endangered cetaceans within the BSAI and GOA on December 14, 1979, and April 19, 1991, respectively. These opinions concluded that the fisheries are unlikely to jeopardize the continued existence or recovery of endangered whales. Consideration of the bowhead whale as one of the listed species present within the area of the Bering Sea fishery was not recognized in the 1979 opinion, however, its range and status are not known to have changed. No new information exists that would cause NMFS to alter the conclusion of the 1979 or 1991 opinions. NMFS has no plan to reopen Section 7 consultations on the listed cetaceans for this action. Of note, however, are observations of Northern Right Whales during Bering Sea stock assessment cruises in the summer of 1997 (NMFS per. com). Prior to these sightings, and one observation of a group of two whales in 1996, confirmed sightings had not occurred.

Steller sea lion. The Steller sea lion range extends from California and associated waters to Alaska, including the Gulf of Alaska and Aleutian Islands, and into the Bering Sea and North Pacific and into Russian waters and territory. In 1997, based on biological information collected since the species was listed as threatened in 1990 (60 FR 51968), NMFS reclassified Steller sea lions as two distinct population segments under the ESA (62 FR 24345). The Steller sea lion population segment west of 144°W. longitude (a line near Cape Suckling, Alaska) is listed as endangered; the remainder of the U.S. Steller sea lion population remains listed as threatened.

NMFS designated critical habitat in 1993 (58 FR 45278) for the Steller sea lion based on the Recovery Team's determination of habitat sites essential to reproduction, rest, refuge, and feeding. Listed critical habitats in Alaska include all rookeries, major haul-outs, and specific aquatic foraging habitats of the BSAI and GOA. The designation does not place any additional restrictions on human activities within designated areas. No changes in critical habitat designation were made as result of the 1997 re-listing.

Beginning in 1990 when Steller sea lions were first listed under the ESA, NMFS determined that both groundfish fisheries may adversely affect Steller sea lions, and therefore conducted Section 7 consultation on the overall fisheries (NMFS 1991), and subsequent changes in the fisheries (NMFS 1992). The biological opinion on the BSAI and GOA fisheries effects on Steller sea lions issued by NMFS on January 26, 1996 concluded that these fisheries and harvest levels are unlikely to jeopardize the continued existence and recovery of the Steller sea lion or adversely modify critical habitat. NMFS conducted an informal Section 7 consultation on Steller sea lions for this action in 1997 and concluded that the GOA groundfish fishery and the 1997 TAC amounts were not likely to affect Steller sea lions in a way or to an extent not already considered in previous Section 7 consultations (NMFS, January 17, 1997). Reinitiation of formal consultation was not required at that time. NMFS has reopened formal consultation on the 1998 fishery to evaluate new information specific to the 60 percent increase of pollock TAC in the combined W/C Regulatory Area. The 1998 biological opinion concluded that the 1998 fishery was not likely to jeopardize the continued existence and recovery of Steller sea lions or to adversely modify critical habitat.

Pacific Salmon. No species of Pacific salmon originating from freshwater habitat in Alaska are listed under the ESA. These listed species originate in freshwater habitat in the headwaters of the Columbia (Snake) River. During ocean migration to the Pacific marine waters a small (undetermined) portion of the stock

extend into the Gulf of Alaska as far east as the Aleutian Islands. In that habitat they are mixed with hundreds to thousands of other stocks originating from the Columbia River, British Columbia, Alaska, and Asia. The listed fish are not visually distinguishable from the other, unlisted, stocks. Mortal take of them in the chinook salmon bycatch portion of the fisheries is assumed based on sketchy information on abundance, timing, and migration patterns.

NMFS designated critical habitat in 1992 (57 FR 57051) for the Snake River sockeye, Snake River spring/summer chinook, and Snake River fall chinook salmon. The designations did not include any marine waters and, therefore, does not include any of the habitat where the groundfish fisheries are promulgated.

NMFS has issued two biological opinions and no-jeopardy determinations for listed Pacific salmon in the Alaska groundfish fisheries (NMFS 1994, NMFS 1995). Conservation measures were recommended to reduce salmon bycatch and improve the level of information about the salmon bycatch. The no jeopardy determination was based on the assumption that if total salmon bycatch is controlled, the impacts to listed salmon are also controlled. The incidental take statement appended to the second biological opinion allowed for take of one Snake River fall chinook and zero take of either Snake River spring/summer chinook or Snake River sockeye, per year. As explained above, it is not technically possible to know if any have been taken. Compliance with the biological opinion is stated in terms of limiting salmon bycatch per year to under 55,000 and 40,000 for chinook salmon, and 200 and 100 sockeye salmon in the BSAI and GOA fisheries, respectively.

Short-tailed albatross. The entire world population in 1995 was estimated as 800 birds; 350 adults breed on two small islands near Japan (H. Hasegawa, per. com.). The population is growing but is still critically endangered because of its small size and restricted breeding range. Past observations indicate that older short-tailed albatrosses are present in Alaska primarily during the summer and fall months along the shelf break from the Alaska Peninsula to the GOA, although 1- and 2-year old juveniles may be present at other times of the year (FWS 1993). Consequently, these albatrosses generally would be exposed to fishery interactions most often during the summer and fall--during the latter part of the second and the whole of the third fishing quarters.

Short-tailed albatrosses reported caught in the longline fishery include two in 1995, one in October 1996, and none in 1997. Both 1995 birds were caught in the vicinity of Unimak Pass and were taken outside the observers' statistical samples.

Formal consultation on the effects of the groundfish fisheries on the short-tailed albatross under the jurisdiction of the FWS concluded that BSAI and GOA groundfish fisheries would adversely affect the short-tailed albatross and would result in the incidental take of up to two birds per year, but would not jeopardize the continued existence of that species (FWS 1989). Subsequent consultations for changes to the fishery that might affect the short-tailed albatross also concluded no jeopardy (FWS 1995, FWS 1997). The US Fish and Wildlife Service does not intend to renew consultation for this action.

Spectacled Eider. These sea ducks feed on benthic mollusks and crustaceans taken in shallow marine waters or on pelagic crustaceans. The marine range for spectacled eider is not known, although Dau and Kitchinski (1977) review evidence that they winter near the pack ice in the northern Bering Sea. Spectacled eider are rarely seen in U.S. waters except in August through September when they molt in northeast Norton Sound and in migration near St. Lawrence Island. The lack of observations in U.S. waters suggests that, if not confined to sea ice polyneas, they likely winter near the Russian coast (FWS 1993). Although the species is noted as occurring in the GOA and BSAI management areas, no evidence exists that they interact with these groundfish fisheries.

Conditions for Re-initiation of Consultation. For all ESA listed species, consultation must be reinitiated if: the amount or extent of taking specified in the Incidental Take Statement is exceeded, new information reveals effects of the action that may affect listed species in a way not previously considered, the action is subsequently modified in a manner that causes an effect to listed species that was not considered in the biological opinion, or a new species is listed or critical habitat is designated that may be affected by the action.

Fishing activities conducted pursuant to Amendment 45 will not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on this fishery.

2.3 Impacts on Marine Mammals Not Listed Under the ESA

Marine mammals not listed under the ESA that may be present in the GOA and BSAI include cetaceans, [minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the beaked whales (e.g., *Berardius bairdii* and *Mesoplodon spp.*)] as well as pinnipeds [northern fur seals (*Callorhinus ursinus*), and Pacific harbor seals (*Phoca vitulina*)] and the sea otter (*Enhydra lutris*).

None of the alternatives will affect takes of other marine mammals not listed under the ESA. Therefore, none of the alternatives are expected to have a significant impact on marine mammals not listed under the ESA.

2.4 Coastal Zone Management Act

Implementation of each of the alternatives would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of Section 30(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

2.5 Conclusions or Finding of No Significant Impact

The alternatives simply determine whether 7.5 percent of the BSAI pollock TAC will continue to be allocated to the CDQ program. Neither alternative will alter the total amount of pollock harvested in the fisheries, nor will either alternative significantly affect the timing or nature of harvest. Therefore, none of the alternatives are likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

Assistant Administrator for Fisheries, NOAA

Date

3.0 REGULATORY IMPACT REVIEW: ECONOMIC AND SOCIOECONOMIC IMPACTS OF THE ALTERNATIVES

This section examines the pollock CDQ program, including discussions of the likely impacts of either continuing or discontinuing the program. It provides information about the economic and socioeconomic impacts of the alternatives including identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the trade offs between qualitative and quantitative benefits and costs.

The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

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

This section also addresses the requirements of both E.O. 12866 and the Regulatory Flexibility Act to provide adequate information to determine whether an action is “significant” under E.O. 12866 or will result in “significant” impacts on small entities under the RFA.

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

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

A regulatory program is “economically significant” if it is likely to result in the effects described above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be “economically significant.”

Major topics included in this regulatory impact review are summarized from a report prepared by the State of Alaska Department of Community and Regional Affairs and attached to this analysis as Appendix III:

- Background on the development of the program; a description of the regulatory and operating environment of the communities involved, with a focus on the 56 communities and six CDQ groups involved, including basic demographic, employment, and physical descriptive information; the

incorporation of the pollock CDQ program into the multi-species CDQ program; and some of the adjustments made to program administration since its inception. A comparison of this region as it existed in 1990, prior to implementation of the CDQ program, and the program through 1998 is provided to assess whether the program has attained its goals and objectives. (Section 3.2)

- Program administration by the State of Alaska. It provides a summary of CDQ groups and activities for 1992-98 and those projected into the multi-species CDQ program. Detailed descriptions of the process developed for application and allocation of the CDQ reserve to the six eligible CDQ organizations are described in Appendix III. (Section 3.3)
- Descriptions of the basic organizations of the six groups, their respective allocations and business partnerships, and the primary goals and objectives of each group. Specific projects, and the level of progress on each project for each of the six groups, their management structures and detailed statements of objectives are described in Appendix III. (Section 3.4)
- Employment and direct income impacts of the CDQ program are described, with comparisons provided to the “pre-CDQ” status. Indirect effects are also estimated. (Section 3.5)
- Projections, primarily qualitative, of the impacts of allowing the program to sunset at the end of 1998, or reauthorizing the program indefinitely. (Section 3.6)

3.1 Alternatives to be considered

At its September 1997 meeting, the Council decided to limit the alternatives for reauthorization of the pollock CDQ program to the “no action” alternative and continuation of the pollock CDQ program, without a sunset date, at 7.5 percent.

3.1.1 Alternative 1: Status Quo.

Under the status quo alternative, the pollock CDQ program would sunset on December 31, 1998. The current MSFCMA requires that a pollock CDQ program exist after its current sunset date and shall be included in the multi-species CDQ program by 1999. The Sustainable Fisheries Act of October 1996, clearly directs the Council and the Secretary that a pollock CDQ program at an amount up to the existing 7.5 percent of pollock TAC shall be included in a comprehensive multi-species CDQ program, which would also include the existing halibut and sablefish CDQ program and the recently approved CDQ programs for groundfish and crab.

3.1.2 Alternative 2: Permanently extend the pollock CDQ program at 7.5 percent of the TAC.

Alternative 2 would recommend that the Secretary extend the pollock CDQ program at the existing level of 7.5 percent of the pollock TAC, allocated to the CDQ reserve, without a sunset date. The intent is to include pollock in the multi-species CDQ program to be implemented in mid-1998. Note that the pollock CDQ program extends through December 31, 1998, regardless of the date of initial implementation of the multi-species CDQ program.

The MSFCMA limits the amount of TAC that may be allocated to a pollock CDQ reserve to not more than 7.5 percent of the TAC through October 1, 2001. The Council may choose an allocation less than 7.5 percent, but may not recommend an allocation greater than 7.5 percent until after October 1, 2001.

3.2 Summary of Development and Regulatory Environment

3.2.1 Development of the Pollock CDQ Program

In 1991, in response to the Council's inclusion of the 7.5% pollock CDQ reserve as part of Amendment 18/23, the State of Alaska developed a CDQ task force composed of members from the Department of Commerce and Economic Development, Department of Fish and Game, and the Department of Community and Regional Affairs. This task force, in consultation with NMFS, authored a paper titled, "Western Alaska Community Development Quota Program Criteria and Procedures" (CDQ Criteria). This paper was the blue print for the CDQ program, describing its purpose and goals and the procedures by which it would be implemented and administered. The State contracted with a private consultant for completion of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis to which the CDQ Criteria was attached as Appendix I. The final rule implementing Amendment 18 (57 FR 23321, June 3, 1992), or the "inshore-offshore" amendment, approved the CDQ program in concept for a temporary period from 1992 through 1995. Amendment 18 provided only for the basic allocation of pollock for the CDQ program. The CDQ allocation provides for 7.5% of the pollock total allowable catch (TAC), or one-half of the non-specific reserve for each BSAI subarea to be set aside in a "CDQ reserve."

A regulatory amendment separate from Amendment 18 implemented the CDQ program by providing regulations specifying the contents of Community Development Plans (CDPs) and the procedures for their approval by the Secretary. Approval of a CDP by the Secretary would result in the allocation of a portion of the "CDQ reserve" to a group of eligible western Alaska communities. The Council was interested in a 1992 implementation of the CDQ program because Amendment 18 authorized the CDQ program for only four years (1992-1995). NMFS quickly completed the implementing regulations in time for the successful CDQ applicants to harvest the available 1992 CDQ pollock quota. The proposed implementing regulations were published in the Federal Register in October (57 FR 46139, October 7, 1992). As a time-saving measure, the final rule only included the years 1992 and 1993 (57 FR 54936, November 23, 1992). A second final rule for 1994 and 1995 was published later (58 FR 32874, June 14, 1993). Immediately upon publishing the 1992/1993 CDQ final rule, the State initiated the CDQ application process, consultation with the Council on the Governor's recommendations for approved CDPs, and forwarding the recommended CDPs to the Secretary of Commerce for final approval after review and concurrence of the NPFMC. The Secretary of Commerce published the approval of the Governor's recommendations for CDPs on December 9 (57 FR 58157, December 9, 1992), and pollock CDQ fishing began.

A pollock CDQ proposed regulatory amendment (58 FR 68386, December 27, 1993) and a final regulatory amendment were completed in 1994 (59 FR 25346, May 16, 1994). This amendment required 100 percent observer coverage on CDQ catcher vessels, observer coverage of all CDQ landings at shoreside processors, and two observers on each pollock CDQ processing vessel. The use of volumetric or scale weight measurements of total catch is also required.

3.2.2 Development of the Halibut/Sablefish CDQ Program

The Council proposed the Halibut/Sablefish CDQ program in conjunction with the Individual Fishing Quota (IFQ) program to provide expanded CDQ benefits to eligible western Alaska communities to help achieve the goals and purpose of the CDQ program. The IFQ proposed rule was published in the Federal Register on December 3, 1992 (57 FR 57130, December 3, 1992), and the IFQ final rule was published on November 9, 1993 (58 FR 59375, November 9, 1993). Over a dozen plan and regulatory amendments to the Halibut/Sablefish CDQ program have been implemented since the program became effective in 1995.

3.2.3 Development of the Multi-species CDQ Program

At its meeting in June 1995, the Council recommended a further expansion of the CDQ program. The Council recommended that 7.5 percent of all BSAI groundfish TACs not already covered by a CDQ program along with a pro-rata share of the prohibited species catch (PSC) limit, and 7.5 percent of the BSAI crab be allocated to CDQ communities as defined in the regulations implementing the current CDQ program. The Council recommended that the expanded program be designed similarly to the current pollock CDQ program. Further, the Council did not recommend a termination date as currently exists for the pollock CDQ program.

Description of CDQ Species

Amendment 39 to the BSAI Groundfish FMP and Amendment 5 to the BSAI Crab FMP, which included the multi-species CDQ program, were approved by the Secretary of Commerce on September 12, 1997. Final regulations implementing the MS CDQ program was published on June 4, 1998. The multispecies CDQ program now includes pollock, fixed-gear sablefish and halibut, as well as the remaining groundfish species, crab, and PSQ species approved under Amendments 39/5.

3.2.4 Overall Goals and Objectives of the CDQ Programs

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 fishery activities that will result in ongoing, regionally based, commercial fishery or related businesses (Figure 1). The CDQ programs were developed to address certain long-standing problems in the predominantly Alaska Native communities. These communities are isolated and have few natural resources with which to develop a solid, diversified economic base and stable, long-term employment. Unemployment rates are high, resulting in substantial social problems. The fisheries resources of the BSAI are adjacent to these communities, and could provide a means to develop the local economies, but the ability to participate in these fisheries is difficult because of the high capital investment needed for entry.

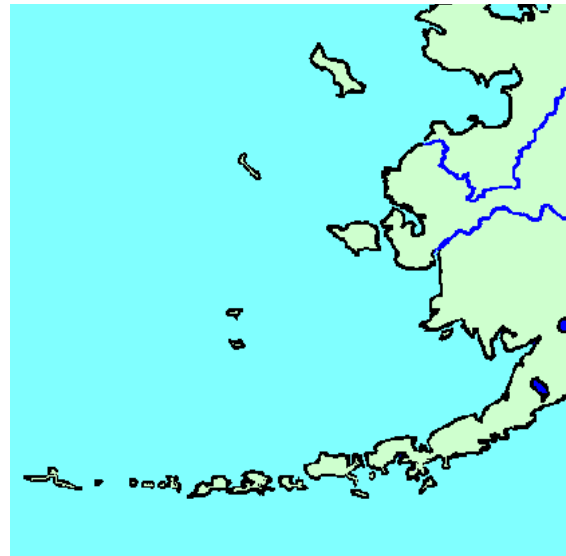


Figure 1. Western Alaska communities.

3.2.5 Western Alaska Communities and Organizations in the CDQ Program

There are 56 communities in the CDQ region of western Alaska (Table 1). The State of Alaska has reviewed and the Council has approved six CDQ organizations for managing these fisheries allocations: Aleutian Pribilof Island 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), and Yukon Delta Fisheries Development Association (YDFDA). Membership of each CDQ group is composed of at least one representative from each member community. An appropriate governing body from each community joins a CDQ group by electing a representative from the community to the CDQ organization's Board of Directors. Three-quarters of the members of each Board are required to be either commercial or subsistence fishermen.

Table 1

These 56 CDQ communities bordering the Bering Sea make up one of the most economically depressed regions of the United States. A major goal of the program is to allow these communities to accumulate sufficient capital so they can invest in the fishery, thus bringing sustainable economic development to the region. This report examines the economic impacts of the first six years of the Bering Sea pollock CDQ program on the western Alaska region.

These communities had a total population of 21,037 in 1990 (Table 2). By 1997, the population had increased 16% to 24,395. The combined population of the villages represented by individual CDQ groups range from 546 for the Aleutian Pribilof Island Community Development Association (APICDA) to 8,974 for the Norton Sound Economic Development Corporation (NSEDCC). Seventy-eight percent of the residents of the CDQ area were Alaska Natives. All of the groups have a majority Alaska Native population. For three of the groups (APICDA, Coastal Villages Region Fund (CVRF), and Yukon Delta Fisheries Development Association (YDFDA) the Alaska Native population was over ninety percent of the total.

| Table 2. Characteristics of the 56 CDQ Communities in 1989 | |
|--|--------|
| Total population | 21,037 |
| Average community population | 390 |
| Native Americans as % of the population | 78% |
| Houses with no plumbing | 37% |
| Houses with no phone | 29% |
| Persons below poverty level | 25% |
| Source: 1990 U.S. Census | |

All of the CDQ groups have a relatively large share of their population under the age of sixteen; in the YDFDA region more than 40% of the population is under sixteen. This indicates both a growing labor force that will require jobs in the future and the relatively larger significance of any employment increase relative to the working age population (Figure 2).

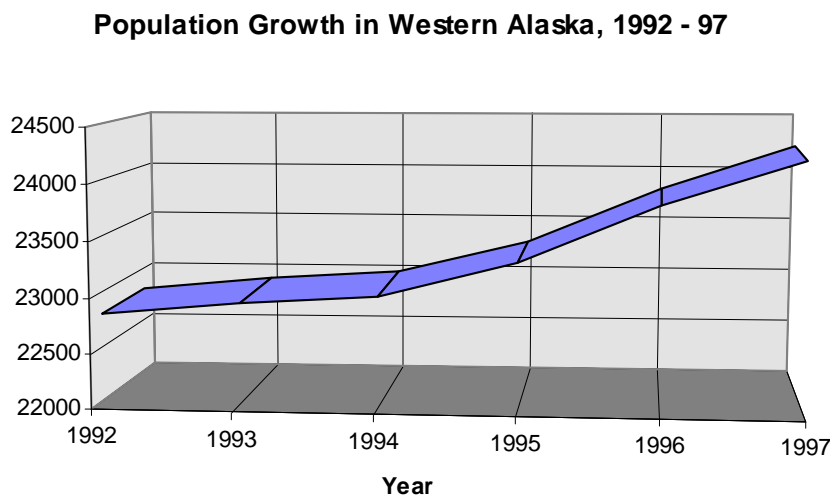


Figure 2. Population growth in Western Alaska, 1992-97.

CDQ Program Responsibilities

The proposed multispecies CDQ program would be a Federal program in which the fishing privileges for CDQs are temporarily allocated by NMFS to the CDQ groups. In return, the CDQ groups would be responsible for managing the CDQ harvests and the CDQ projects as outlined in the CDPs on behalf of the member communities. NMFS would have no obligation to allocate future CDQ or PSQ based on past allocations, and CDQ and PSQ fishing privileges would expire with the expiration of a CDP. NMFS would base its awards of CDQ and PSQ allocations to the CDQ groups on the merits of the proposed CDPs.

The proposed CDPs, developed by the CDQ groups, would be the means for requesting CDQ and PSQ allocations from NMFS. Although NMFS would award the CDQ allocations to the CDQ groups, the CDQ groups would make the allocation requests on behalf of the eligible community(ies) that is (are) participating in the CDQ group. Therefore, a CDQ group would have a fiduciary responsibility to manage its CDQ allocations, CDQ projects, and assets in the best interests of the participating CDQ community(ies).

CDQ Application Process

Under the proposed multispecies CDQ program, the State would announce a CDQ application period, during which the CDQ groups would submit proposed CDPs to the State. The State would then hold a public hearing at which the CDQ groups would present their proposed CDPs and give the affected public an opportunity to comment. After the public hearing, the State would develop recommendations for the approval of proposed CDPs, consult with the Council, and submit the State's recommendations to NMFS for review and approval or disapproval.

The CDP would be submitted to NMFS by October 7 to provide sufficient time for NMFS to review the CDPs and to approve final CDPs and their CDQ allocations by December 31 of the application year.

The Community Development Plan

The CDP would provide information to the State and NMFS about the eligible communities, the managing organization, the CDQ projects, the requested allocation of CDQ and PSQ species, the harvesting and processing partners, and how the CDQ group would account for CDQ and PSQ catches by these partners.

In order to qualify for a CDQ allocation, an organization and its member communities must meet several criteria. The major criteria for community qualification consisted of:

- Location within 50 nautical miles of the Bering Sea.
- Native village as defined by the Alaska Native Land Claims Settlement Act
- Residents conduct over 50% of their current subsistence and commercial fishing effort in the waters of the Bering Sea.
- No previously developed harvesting or processing capacity sufficient to support substantial groundfish fisheries participation

3.2.5.1 Pollock Allocations

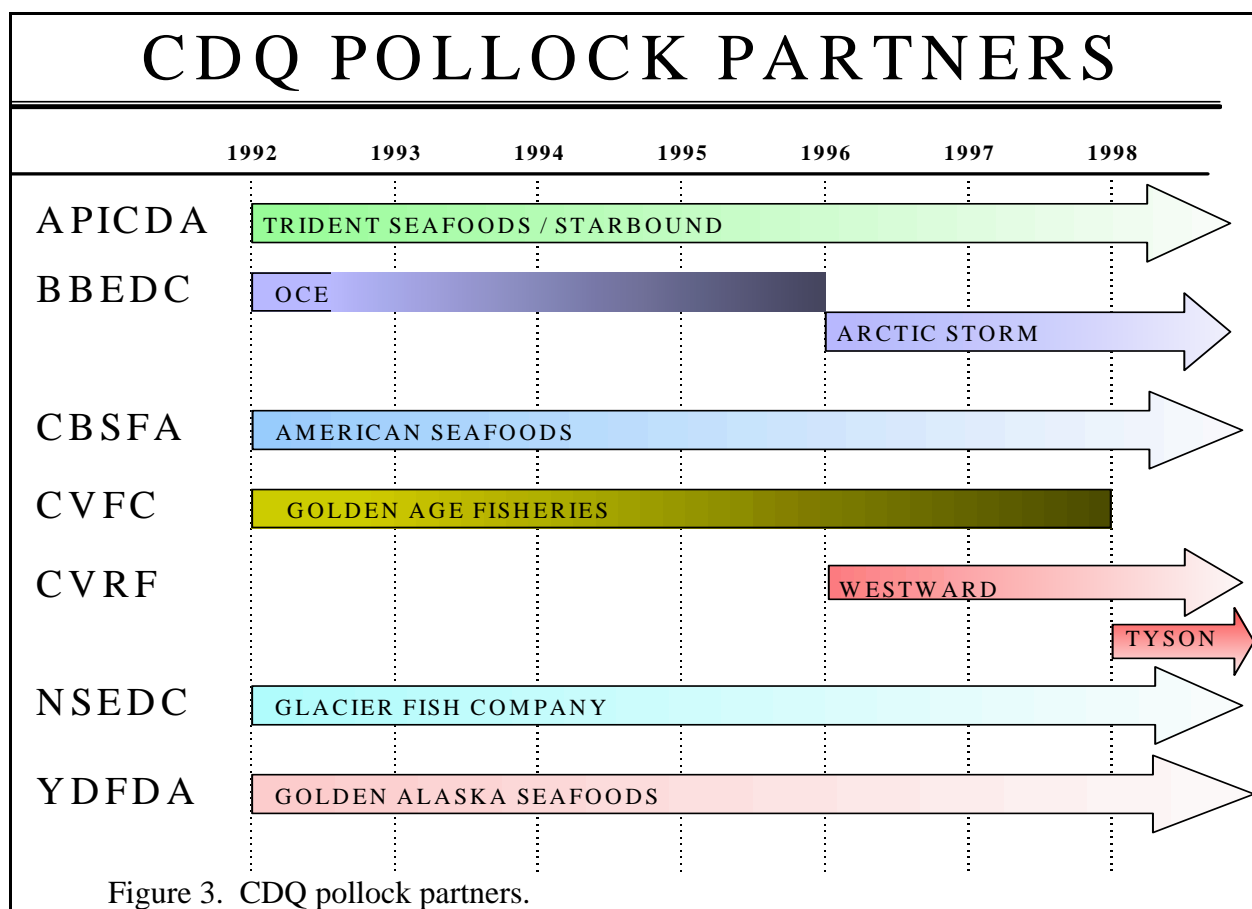
The initial application process in 1992 was accelerated. During the last half of 1992, communities and fishermen's groups along the Bering Sea coast began to organize in response to pending CDQ regulations. A total of 55 communities were eligible and all held meetings to select fishermen representatives to serve on the board of directors. In 1996 the community of Akutan successfully petitioned itself into the CDQ program. As the summer drew to a close, the communities coalesced into six different applicant organizations. The groupings were self-determined and were based primarily on geographical proximity and cultural boundaries.

A large part of the 1992/93 application process for CDQ groups involved locating and contracting with an industry partner and developing programs to utilize anticipated CDQ revenues. Each CDQ group found it necessary to contract with an established seafood company to make sure that the pollock would be harvested and processed. The concept of partnerships with industry participants was perceived as an excellent vehicle for joint venture investments. It also would facilitate an important transfer of skills and expertise in the seafood industry to the CDQ groups. It was hoped that the industry partners would contribute greatly to the entry of CDQ communities as successful participants in the Bering Sea fishing industry.

When pollock CDQs were imminent, a number of major pollock harvesters and processors investigated partnerships with potential CDQ recipients. Many CDQ groups engaged in a request for proposal (RFP) process that provided a variety of offers to choose from. Each industry proposal contained a different mix of payments, assistance with other regional fishing business ventures, and training and employment opportunities.

The industry partners were chosen by the CDQ groups based on which fishing company best fit the development goals of that group. Each of the six groups agreed to a specific price per metric ton for the use of CDQ pollock or a base price plus some form of profit sharing. By the time the 1994/95 application process occurred, a steep decline in pollock prices had demonstrated the volatility of the pollock market. Several of the groups switched from a fixed fee to a base price and profit sharing. This was done both to provide a higher potential price to the CDQ groups and to protect the industry partners in the event of a continued pollock market collapse.

Since 1992, relationships between CDQ groups and their pollock harvesting partners have remained relatively stable. Figure 3 documents these relationships over time.



To ensure the greatest benefit to the residents of the region, the allocation process is competitive, with each group preparing a CDP that will provide substantial gain to their communities. Allocation decisions are based on the CDQ organization's CDP and their ability to implement and fulfill their goals. Other important criteria which lead to differing allocations include: the number of residents represented, expressed needs, the soundness of the CDPs and past performance.

The pollock allocations for 1992 and 1993 were made in late 1992. The 1994 and 1995 allocation process began in early 1993 and the Secretary made final allocations late in the year. The 1996-98 allocations were made in 1995. The CDQ pollock allocations were adjusted in each application period (Table 3).

Table 3. CDQ pollock allocations, 1992-98.

| Approved CDQ Allocations for pollock | 1992 - 93 | 1994 - 95 | 1996 - 1998 |
|---|------------------|------------------|--------------------|
| APICDA | 18% | 18% | 16% |
| BBEDC | 20% | 20% | 20% |
| CBSFA | 10% | 8% | 4% |
| CVFC | 27% | 27% | 25% |
| NSEDC | 20% | 20% | 22% |
| YDFDA | 5% | 7% | 13% |

The CDQ program has benefitted by the combined efforts of the corporations, private industry partners, the State of Alaska Departments of Community and regional Affairs, Fish and Game and Commerce and Economic Development, NMFS and the Council.

3.3 Implementation of the CDQ Program

3.3.1 Agency Involvement

When the Secretary approved the CDQ program regulations in 1992, much of the implementation aspects of the CDQ program were delegated to the Governor of Alaska using an application and review process. The State was charged with full review of CDQ proposals and making allocation recommendations to the Secretary. The Secretary retained overall allocation decision authority, including the authority to modify any allocation at any time.

The CDQ program is basically a grant-type program, jointly managed by the Governor and the Secretary, through the NPFMC. The allocation of fish made by the Secretary to a CDQ group is based on the Secretary's judgment that the CDQ group's CDP meets the regulation's evaluation criteria and will satisfy the CDQ program's goals and objectives. The State is tasked to ensure that each CDQ group is following their CDP. The State has developed a set of regulations for each CDQ program that largely mimic the Federal regulations and place additional reporting requirements on the CDQ groups that assist the State in fulfilling its federally mandated responsibilities for monitoring the CDQ programs. The State is responsible for the day-to-day CDQ management and contact with the CDQ groups and administers the program through the Department of Community and Regional Affairs, the Department of Commerce and Economic Development, and the Department of Fish and Game. The State's lead agency for CDQ administration is the Department of Community and Regional Affairs. NMFS generally works with the State in an oversight role to ensure that the CDPs are being followed. Although the State is responsible for day-to-day management and administration, the Secretary has oversight and the final responsibility for ensuring that an allocation of CDQ fish is handled according to the CDP. Failure of a CDQ group to follow their CDP is grounds for revocation of the CDQ allocation by the Secretary.

For the 56 western Alaska communities that are eligible to participate in the CDQ program, a single community or a group of eligible communities creates a board of directors to represent themselves. This group of communities is called the CDQ group or CDQ applicant. The CDQ group hires staff or contracts with someone to develop a Community Development Plan (CDP) containing the required information in the correct format as described in the regulations. A CDP is a request for a percentage allocation of CDQ fish, plus the CDQ group's planned development projects that would be funded with the allocation. The applicant

must plan to either manage the CDP themselves and be their own managing organization, or hire a managing organization externally.

3.4 Development Strategies of CDQ Groups

Despite different organizational strategies (discussed in detail in Appendix III, Chapter V) all CDQ groups share the same mission of developing self-sufficient fishing economies in western Alaska. Just as the CDQ groups have developed starkly different organizational cultures, there are similar development strategies they all incorporate to achieve the program mission. This chapter will explore these strategies by looking at activities of the CDQ groups in the following categories: revenue generation, equity accumulation, vessel acquisitions, fisheries related community development, employment and training opportunities, fishing retention efforts and region outreach.

3.4.1 Revenue Generation

The most common component of any CDQ group/industry partner relationship is the CDQ royalty. In the valuable pollock industry, harvesting partners have been willing to pay for access to the quota. The same is true in the multi-species program, where the benefits from harvesting a quota have fostered beneficial agreements with industry partners.

Figure 4 highlights the aggregate revenue stream and corresponding net income for the CDQ program. Revenues have consistently been in excess of \$20 million in the past few years despite slight decreases in the pollock TAC. Better royalty arrangements and an increase in investment interest account for the consistent returns. Figure 4 further demonstrates the net income of the groups. Since 1993, groups have averaged a net income of 45% of revenues. This has developed considerable savings and investment capital for future investments.

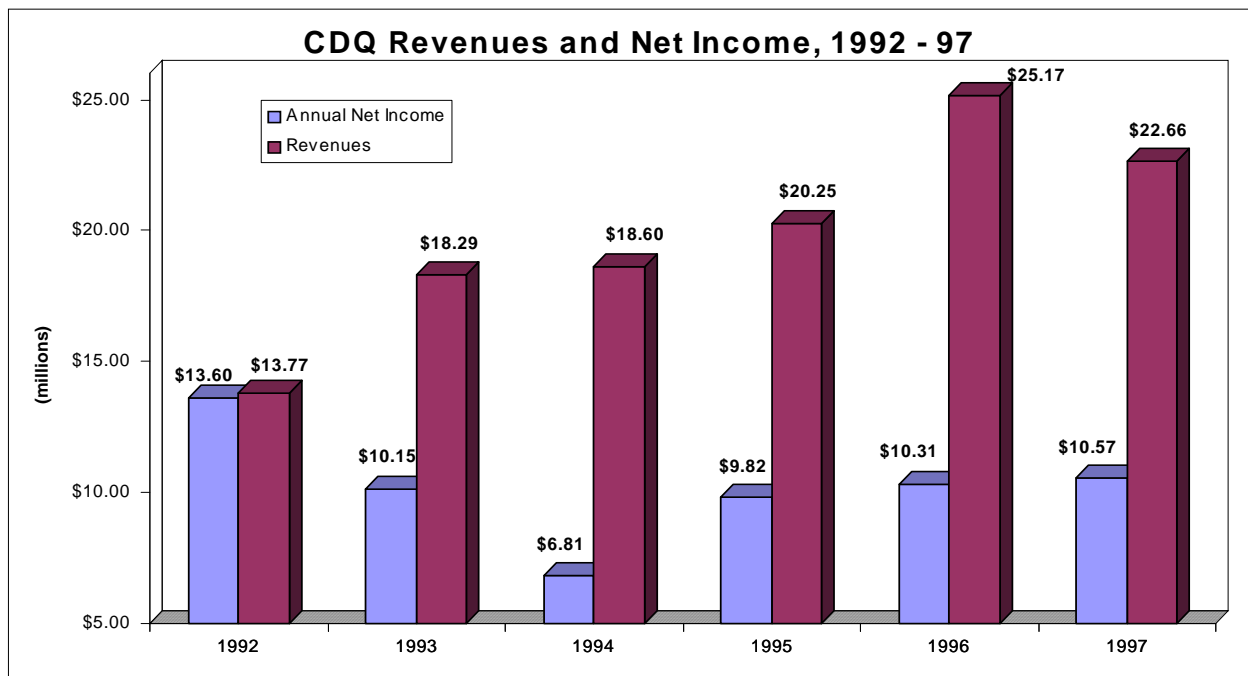


Figure 4. CDQ revenues and net income, 1992-97.

3.4.2 Equity Accumulation

One method to measure the performance of the CDQ program is to look at equity growth. Figure 5 shows that equity has increased an average of 37% annually since 1992, or just over \$10 million each year. This equity reflects assets in fishing vessels, on-shore projects, loan portfolios and IFQ holdings. The consistent increase in equity accumulation is evidence that the CDQ groups are working towards their mission of developing independent, self-sustaining fishing economies for their communities.

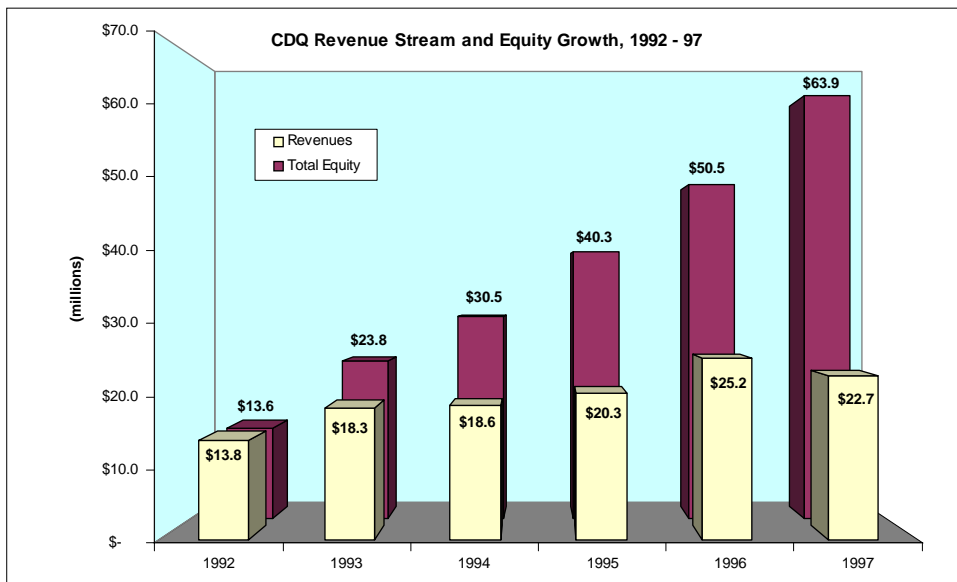


Figure 5. CDQ revenues stream and equity growth, 1992-97.

3.4.3 Vessel Acquisitions

One strategy every CDQ group has implemented to fulfill the CDQ mission is to become invested in the Bering Sea fishing fleet (Figure 6). Accumulated savings have provided important capital used in making these investments. Potential partners bring CDQ groups in as partners for various reasons including: available working capital, potential of future quota, and political alliances. Although the CDQ groups have quota available to them, it is a mandatory criterion that large vessel investments evidence themselves as profitable without CDQ. Past events have shown that valuable quota should not be used to subsidize vessel investments.

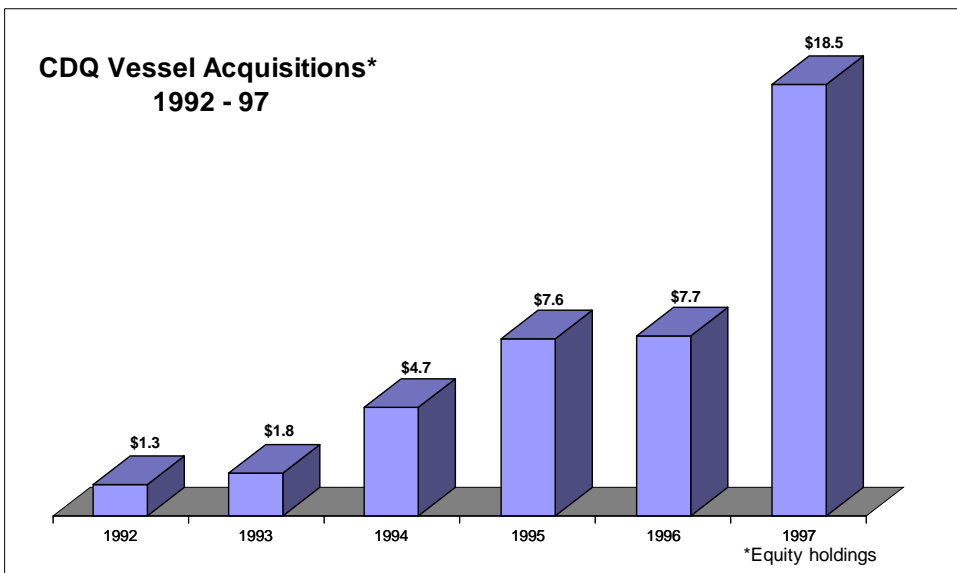


Figure 6. CDQ vessel acquisitions (millions), 1992-97.

Continued investment in the fishing industry is expected. Many of the acquisitions witnessed in 1997 were made as the CDQ groups geared up for the expanded species program. Development of this program has brought several new fisheries directly into the CDQ group's operations leading to investments in different fisheries.

3.4.4 Community Based Fisheries Development

Community based fisheries development is a very broad concept and the groups have pursued a wide range of development activities. CDQ groups will continue to test various projects for feasibility. Engaging in locally based fisheries investments in order to develop community based fishery economies has been a primary strategy of almost all CDQ groups. This development strategy has manifested itself in a form unanticipated by program originators. At odds with this strategy is a fundamental tenet of the program that investments must be profitable in order to achieve self sustainability. There are many barriers to developing a profitable community-based fishing economy in western Alaska. The CDQ groups must choose their shore-based community investments carefully and only after strategic planning are profitable investments commenced.

The geographic landscape in much of western Alaska is not always hospitable to the Bering Sea fishing industry. Only in the Aleutian and Pribilof Islands can one consistently find coastlines that allow for reasonable development of fishing infrastructure projects like docks and harbors. Proximity also plays a key role in fishing activities as the costs of distribution often makes seafood distribution/production prohibitively expensive in an industry controlled by global markets. Problems associated with high costs are further exacerbated by poor consolidation of resource supply. Finally, local experience in the fishing industry, although available, is not yet widespread enough to handle a huge push of local investments. None of these barriers is insurmountable; however, in order to overcome them, the CDQ groups must work patiently and creatively.

CDQ groups are making community investments and engaging in projects that speak to the mission of the CDQ program. Appendix III, Chapter V examines CDQ group activity in its region. Various types of fisheries related investments include:

- Loans for buying stations, processing facilities, value added seafood processors, and other profit generating operations;
- Boat and gear loan programs;
- Operating buying centers;
- Facilitating local fishing industry activity;
- Infrastructure projects that provide an opportunity for return in the future; and
- Direct capital contributions to community projects.

Given the varied nature of these investments, total expenditures are difficult to quantify. These investments represent CDQ group involvement at the community level and serve as a good start towards understanding fishing needs at the local levels and exploring the best mechanisms for getting the benefits of the program to the community level.

3.4.5 Employment and training opportunities

The CDQ Program has had measurable success in securing career track employment opportunities for their residents. Figure 7 lists some of the types of work opportunities provided by CDQ groups. CDQ groups have assured community residents the opportunity to work. Relationships formed with harvesting partners have opened up employment opportunities for non-CDQ Alaskan residents as well. Appendix III provides detailed

statistics on CDQ employment measured since the program began. By 1997 CDQ groups had over 200 people employed in pollock industry.

Training of residents is an important strategy for all of the CDQ groups. The CDQ groups provide training for their residents based not only on the needs of the individual, but the needs of the community overall. Argued as an essential way to promote a locally based fishery economy in the long run, CDQ groups have been actively providing training and educational opportunities for their residents. Appendix III provides detailed statistics on CDQ training since 1993.

A list of some of the training made available by the CDQ groups is provided below:

Types of Job Opportunities for CDQ Residents

- **Work aboard harvesting vessels in various positions**
- **Internships with industry or government**
- **Local fishing facilitated by CDQ projects**
- **Work at processing facilities in CDQ communities and elsewhere**
- **Roe technician jobs following requisite training**
- **Administrative positions**
- **Construction jobs from local CDQ projects**
- **Field managers for various CDQ projects or businesses**

Figure 7. Types of job opportunities.

Vocational Education

Aluminum Boat Fabrication
Auto and Diesel Technology
Biomedics Electronic Technician
Business Management

Carpenter
Paralegal
Power Plant Operation
Seafood Industry Management

Technical Training

Processing Workers vessel Safety
Fishing Training
Computer Applications
Electronic Navigation
Equipment Operation
Mechanics/Welding
HVAC

Grants Management
Clerical
EMS
HAZWOP
Marine Fire fighting
Industrial Refrigeration

Higher Education

Includes University and College

3.4.6 Fisheries Retention Activities

CDQ groups have actively pursued the acquisition and retention of limited access fishing permits and licenses within their region. As fishery management systems continue to move towards directed fishing harvest privileges through mechanisms like IFQ and limited entry permits, fishing activities quickly become marketable rights or assets. Fishermen who are having trouble making a living or are facing excessive debt, often choose to sell their right to fish. These actions are generally pursued to solve short term problems, but the long term consequences may prove even more problematic. Commonly the sale is to someone outside of the region. This is causing an outflow of fishing rights from western Alaska. Region residents that are finding their ability to harvest fish in their backyards is diminishing. CDQ groups are looking to help fishermen help themselves by providing other alternatives for solving these short term problems and keeping the fishing rights in the region.

CDQ groups are providing services and programs that seek to address the problem. The most basic strategy finds CDQ groups actually purchasing shares of IFQ where allowable. Often a CDQ group will act as an intermediary for region residents by providing technical or financial backing in facilitating IFQ or permit retention. Some groups have developed loan or buy back programs for region residents to utilize in retaining fishing rights. One group has set up a permit brokerage to work directly with resident fishermen and government agencies such as the IRS to stem the outflow of fishing rights. Although approaches may vary, each group has considered the problem and is working to remedy the situation.

3.4.7 Region Outreach

Region outreach is not a strategy that provides immediate returns, however it is believed necessary to inform community residents of the benefits of the program. Intended to be a community driven program, the CDQ groups need the energy and talents of region residents to elevate their corporate strategies in order to complete the CDQ mission. As this is a major priority, CDQ groups devote time and money towards informing their communities of activities and programs. The CDQ groups publish newsletters and other brochures for area wide distribution in their member communities. Staff frequently travel to the communities to meet with residents to inform them of opportunities, listen to new ideas and take note of their concerns. Difficulties in communicating the CDQ program to rural isolated communities in western Alaska cannot be overstated. Education of the public is important and the CDQ groups have taken this as a means towards fulfilling the CDQ program mission.

3.5 Description of Economic and Indirect Impacts

A summary of the direct and indirect impacts of the CDQ program to the six CDQ organizations is provided in the “Revised Draft Report on Economic Impacts of the Pollock CDQ Program,” compiled by the State of Alaska Department of Community and Regional Affairs. This report provides the reference point for evaluating the impacts of either continuing or discontinuing the CDQ program and is appended to this EA/RIR/IRFA as Appendix III and is included in the RIR by reference. These findings are also summarized in this section.

Prior to the CDQ program, virtually none of the value of the Bering Sea groundfish resource was captured by the CDQ eligible communities in Western Alaska. Since its inception in 1992, the pollock CDQ program has earned over \$119 million in CDQ revenues for the development of the Western Alaska economy. In 1997, 1,212 CDQ jobs were filled with wages totaling nearly \$8 million. Nearly 850 education and training opportunities exceeding \$1 million occurred in 1997. Since inception, 3,650 training opportunities, costing \$4.85 million, were achieved. Nearly 4,900 individuals were employed in CDQ programs, with total wages of \$27.6 million.

3.5.1 Labor Force and Employment

Table 4 shows labor force and employment characteristics of the CDQ group villages. The civilian labor force is only 59% of the population aged 16-65. Civilian labor force participation is limited by membership in the military and those who choose not to participate in the labor force.

At the time of the census, all CDQ groups were experiencing relatively high levels of unemployment, ranging from 9% (BBEDC) to 31% (YDFDA). While these high unemployment rates partly reflect the seasonality of employment opportunities and the timing of the census in April, they also may show the effects of limited employment opportunities. Unemployment is defined as the percentage of those within the labor force who are not working. When people know there are no jobs available, they sometimes stop looking and are not counted as unemployed. This lends to the possibility that there are higher unemployment rates than were actually recorded.

Table 5 also shows the types of jobs held by the residents of the CDQ areas in 1989. There is a relatively low share of the resident population working in the industries and occupations associated with fishing. While almost fifteen percent of the employment in the APICDA and CBSFA regions was in the fisheries industry, no other region had over five percent in this industry. Only CBSFA had a significant share of employment in manufacturing, which is almost entirely fish processing. While work in the transportation industry may also be fisheries-related, fishing industry employment was not significant in most of the CDQ group areas in 1990. In five of the groups, Educational Services and Public Administration were the most important industries, indicating the importance of public sector/government jobs to these regions.

Table 4

Table 5

Table 6

3.5.2 Income

Table 6 describes the income characteristics of the CDQ group communities in 1989. All of these regions had median incomes which were lower than the state median income of \$41,408 in 1989. The median income of the Central Bering Sea area and the Bristol Bay area was less than ten percent below the state level, but in the Yukon Delta area and the Aleutian Pribilof area the median income was only slightly greater than half the state level. In 1989 the poverty rate for the state was almost seven percent. The poverty rates in all the CDQ areas except the Central Bering Sea area were at least twice the state rate. The relatively high cost of living in rural Alaska suggests that in real terms, comparing the median incomes may actually underestimate the economic well being of residents in these regions.

Table 7 summarizes the total jobs and wages reported for all CDQ groups. Since 1994, the CDQ program has created more than \$5 million in annual wages.

Table 7. CDQ Employment and Wages: All CDQ Groups

| | 1993 | 1994 | 1995 | 1996 | 1997 |
|-----------------------|--------------|--------------|--------------|--------------|--------------|
| Number Working | | | | | |
| Management | 26 | 48 | 58 | 63 | 63 |
| CDQ Pollock-Related | 186 | 213 | 228 | 261 | 356 |
| Other Fisheries | 64 | 276 | 393 | 691 | 663 |
| Other Employment | 95 | 531 | 157 | 138 | 130 |
| Total | 371 | 1,068 | 836 | 1,153 | 1,212 |
| Total Wages | | | | | |
| Management | \$ 586,537 | \$ 1,012,125 | \$ 1,218,892 | \$ 1,636,860 | \$ 1,803,766 |
| CDQ Pollock-Related | 1,000,360 | 1,280,695 | 1,866,619 | 1,686,104 | 2,660,938 |
| Other Fisheries | 609,058 | 1,000,103 | 1,132,824 | 2,280,554 | 2,756,688 |
| Other Employment | 0 | 1,791,479 | 1,350,766 | 723,724 | 887,338 |
| Total | \$ 2,195,955 | \$ 5,084,402 | \$ 5,569,101 | \$ 6,327,242 | \$ 8,108,730 |
| Average Wage | | | | | |
| Management | \$ 22,559 | \$ 21,086 | \$ 21,015 | \$ 25,982 | \$ 28,631 |
| CDQ Pollock-Related | 5,378 | 6,013 | 8,187 | 6,460 | 7,474 |
| Other Fisheries | 0 | 3,624 | 2,883 | 3,300 | 4,383 |
| Other Employment | 6,411 | 3,374 | 8,604 | 5,244 | 6,826 |

An overview of the relative impacts of the CDQ program may be gained by comparing employment and income generated by the CDQ program with employment and income reported by the 1990 U.S. Census on data from 1989, as a measure of total annual income in 1989. Two different measures of employment are reported from April 1989: total employment and “basic” employment (Table 8). “Basic” employment refers to employment in the following private sector industries: 1) agriculture, forestry and fisheries; 2) mining; 3) construction; 4) manufacturing, nondurable goods; and 5) manufacturing, durable goods.

Basic industries usually produce goods or services for sale outside a region, and usually represent the foundation of a region’s economy. Other industries, such as transportation, communications, trade, and

services are usually considered “support” industries, in that they provide goods or services for sale within a region and are driven by income produced in the basic industries. In rural Alaska, government often provides much of the foundation that basic industries might provide in other, more developed regions. Basic employment is much lower than total employment, although the census may have understated basic employment because fishing and mining activities are concentrated during the summer months (Table 9).

From 1993 - 1997, CDQ employment has ranged from 6% - 18% of the region’s total employment. For the same years, CDQ employment has shown a range of 52% - 165% of basic employment. Although CDQ jobs appear to represent a relatively small share of *total* jobs in the CDQ region, they represent a very substantial increase in “basic” employment. Income may provides another indication of the CDQ program’s impact on the region. By 1997, CDQ related wages have increased to 3.6% of the region’s total wages.

Table 8. CDQ Employment & Income Compared with 1989 Employment & Income Reported by 1990 U.S. Census

| Variables for Analysis: | |
|----------------------------|---------------|
| Employment in 1989 | 6,281 |
| “Basic” employment in 1989 | 679 |
| Total income in 1989 | \$219,708,878 |

| CDQ employment | Aggregate CDQ | CDQ Employment as | CDQ Employment as |
|----------------|-----------------------|---------------------------------|--------------------------------------|
| | Employment Numbers | a % of Total 1989 Employment | a % of “Basic” Employment in 1989 |
| 1993 | 355 | 6% | 55% |
| 1994 | 1,068 | 17% | 157% |
| 1995 | 836 | 13% | 123% |
| 1996 | 1,153 | 18% | 170% |
| 1997 | 1,212 | 19% | 179% |

| | CDQ wages | CDQ wages as % of 1989 |
|------------|--------------|---------------------------|
| 1993 wages | \$ 2,195,955 | 1.0% |
| 1994 wages | \$ 5,084,402 | 2.3% |
| 1995 wages | \$ 5,569,101 | 2.5% |
| 1996 wages | \$ 6,327,242 | 2.9% |
| 1997 wages | \$ 8,108,730 | 3.7% |

3.5.3 Social Conditions

In 1990, more than 25% of the people in the 56 CDQ communities lived below the poverty level. Most residents of western Alaska are Alaska Natives. Many older people speak English as a second language or not at all. Much of the housing available in the communities is substandard and utilities that most U.S. citizens take for granted such as water and phones are in short supply. In over half of the communities, five gallon buckets or outhouses remain the primary means of sewage disposal. In 1990, only thirteen communities (24%) had piped water and sewer available to at least half of the homes. The result is poor health conditions, high rates of infectious diseases, and low living standards.

Western Alaskan communities in general have many of the social ills associated with poverty and isolation. Many of these communities experience considerable problems with drug and alcohol abuse. Young people suffer from high rates of teen pregnancy and suicide. Prevalent throughout many communities is a feeling of despair and hopelessness.

3.6 Potential Impacts of Program Expiration or Continuation

Without reauthorization of the pollock CDQ Program, the 56 affected communities, organized into six separate CDQ organizations, will no longer be given an exclusive share of the pollock resource. The 7.5% allocation yields an average of \$ 2 million in wages, and \$10.2 million net income on annual revenues of nearly \$20 million to CDQ program recipients. These direct benefits likely understate total economic benefits to these communities, due to the indirect benefits generated from the development projects undertaken by the program. Additionally, the direct and indirect impacts of the monies generated by the program represent a differentially higher economic impact when compared to other regions of the state and the United States in general. This is due to the relative absence of alternative economic bases in these communities. The social benefits attributable to this program are quite clear, as described in Appendix III, and have not been the subject of debate during the program or in consideration of extending the program.

A quantitative analysis is beyond the scope of this EA/RIR/IRFA, and would be difficult to perform under any circumstances. However, based on information contained in Appendix III and other sources, it is possible to conduct a qualitative examination of this issue. Many of the development projects initiated through the CDQ program have been completed, while many more are still in development stage. If this program is allowed to expire at the end of 1998, in less than six years (part of 1992 through 1997), the program will have resulted in the creation of infrastructures that did not previously exist, as well as progress on further infrastructures (Chapter V of Appendix III provides an detailed reports of the activities of all six CDQ groups). It will also have resulted in a substantial infusion of money and economic activity previously unrealized in the participating communities. Net income since 1992 totaled \$61 million on \$118.74 million in revenues.

What is also difficult to quantify, but perhaps most important, is the social impact to the residents of these communities which would occur if these accomplishments were nullified, and the prospect of real involvement in the fisheries as an economic base for the communities is removed. There are various issues which may be examined as indicators of progress towards program development, but three important questions have been identified:

(1) *What is the level of jobs and income which have been created and how do these compare to previous conditions?* Examination of this question indicates that, though there is variance between the CDQ groups, overall jobs and income have increased relative to previous conditions. Furthermore, the increase in basic, fisheries related jobs, where this is very little alternative economic base, is a significant achievement.

(2) *Are new economic activities resulting in local control and decision making relative to fisheries development?* Once allocations are made between the six CDQ groups, the process allows for control decision making at the local CDQ group level, with input from the industry partners.

(3) *Are the benefits sustainable and will they be likely to continue in the absence of the direct allocation?* This question appears to epitomize the issue under consideration—whether to continue the program indefinitely. As noted earlier, some of the infrastructures and resident training which has occurred will contribute to the region's future growth and viability even if the program were to be discontinued. On the other hand, if the initiatives to date are not sufficient to bring this region into the fisheries in a meaningful way, then the discontinuation of the program will likely result in a regression to the status occurring prior to the program's implementation.

The benefits to the recipients of any direct allocations of resource must be weighed against the costs to the remainder of the industry and the nation as a whole. In the case of the CDQ program, the Council felt that the benefits, both economic and social, of the CDQ allocation outweighed the costs to other industry sectors which are already characterized by overcapitalization and fierce competition for available quota. Given the current status of the program, the impacts of the allocation decision are likely magnified in the current consideration. For example, allowing the program to expire at this time may make the program recipients technically no worse off than they were before the allocation; however, the real and perceived negative impacts are probably greater now that the program has partially reached attainment of its goals. Therefore, the trade-offs between economic and social benefits to the CDQ recipients, and costs to the remainder of the fleet, would appear to be greater in today's context than in 1992. At least some of the costs of the program are recouped by industry partners in the CDQ operations, which also fish in the open access fisheries.

The final consideration discussed here is relative to the benefits of the CDQ portion of the fishery in terms of harvest of pollock, economic efficiencies in that harvest mode, and bycatch and discards associated with that harvest mode. As described in Section 5.2 in the EA/RIR/IRFA for Amendment 38, CDQ fisheries are characterized by a slower pace of fishing, increased accuracy of catch and bycatch monitoring, more efficient utilization of catch, and reductions in discards. Reductions in bycatch of non-target and prohibited species are also commonly attributed to these fisheries, though no quantitative verification has been undertaken in this study. All of these positive aspects of these fisheries represent increased overall returns to the nation from the pollock fishery resource. This is expected to occur wherever portions of the quota are removed from the race for fish and allocated directly to a recipient who receives a guaranteed harvest and the individual accountability that accompanies that guarantee.

3.7 Estimated Number of Participants in the Pollock CDQ Fishery

NMFS (1998) estimates that the following number or type of vessels and processors are currently participating in the pollock groundfish CDQ fisheries:

- ▶ 6 CDQ groups
- ▶ 24 trawl catcher/processors or motherships
 - 22 catcher/processors and 2 motherships currently in pollock CDQ fisheries
- ▶ 24 trawl catcher vessels \geq 60' LOA
 - 19 currently delivering pollock CDQ to shoreplants and 5 currently delivering pollock CDQ in unsorted codends to motherships
- ▶ 3 shoreside processors

3.8 Administrative, Enforcement and Information Costs

Additional costs by NMFS or the State of Alaska for extending the pollock CDQ program are not expected under Alternative 2. Under Alternative 2, NMFS proposes to incorporate pollock into the Multi-Species (MS) CDQ program. Estimated NMFS staff and budget expenditures under the combined MS CDQ program, of which pollock is the predominate fishery, total \$1,565,000 (NMFS 1998).

4.0 ECONOMIC IMPACT ON SMALL ENTITIES

The Regulatory Flexibility Act (RFA) first enacted in 1980 was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a federal

regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on a substantial number of small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file *amicus* briefs in court proceedings involving an agency's violation of the RFA.

4.1 Initial Regulatory Flexibility Analysis

If a proposed rule is expected to have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis must be prepared. The central focus of the IRFA should be on the economic impacts of a regulation on small entities and on the alternatives that might minimize the impacts and still accomplish the statutory objectives. The level of detail and sophistication of the analysis should reflect the significance of the impact on small entities. Under 5 U.S.C., Section 603(b) of the RFA, each IRFA is required to address:

- ▶ A description of the reasons why action by the agency is being considered;
See Section 1.1 on page 1 of this analysis.
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
See Section 1.0 on page 1 of this analysis.
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);

See Section 4.6 below in this analysis.

- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

This proposed rule has no proposed reporting, recordkeeping and other compliance requirements.

- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;

No Federal rules duplicate, overlap or conflict with the proposed rule.

- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. The use of performance rather than design standards;
4. An exemption from coverage of the rule, or any part thereof, for such small entities.

The only alternative that could minimize any significant economic impact of the proposed rule on the small entities that are affected by the allocation of pollock to the CDQ program would be Alternative 1 (not allocating pollock to the CDQ program). However, the selection of Alternative 1 would result in significant economic impacts on another group of small entities, namely the CDQ communities. Therefore, neither alternative would completely eliminate some level of significant impact on small entities.

4.2 Supplemental Initial Regulatory Flexibility Analysis

See Appendix IV for a supplemental Initial Regulatory Flexibility Analysis prepared by NMFS.

4.3 What is a Small Entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a ‘small business’ as having the same meaning as ‘small business concern’ which is defined under Section 3 of the Small Business Act. ‘Small business’ or ‘small business concern’ includes any firm that is independently owned and operated and not dominate in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the US including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$ 3 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or less persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small businesses if it employs 100 or less persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls

or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines "small organizations" as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

4.4 What is a Substantial Number of Small Entities?

In determining the scope, or 'universe', of the entities to be considered in making a significance determination, NMFS generally includes only those entities, both large and small, that can reasonably be expected to be directly or indirectly affected by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this criterion. NMFS then determines what number of these directly or indirectly affected entities are small entities. NMFS generally considers that the 'substantial number' criterion has been reached when more than 20% of those small entities affected by the proposed action are likely to be significantly impacted by the proposed action. This percentage is calculated by dividing the number of small entities impacted by the action by the total number of small entities within the universe. The 20 percent criterion represents a general guide; there may be instances when, in order to satisfy the intent of the RFA, an IRFA should be prepared even though fewer than 20 percent of the small entities are significantly impacted.

4.5 What is a Significant Economic Impact?

NMFS has determined that an economic impact is significant for the purposes of the RFA if a regulation is likely to result in:

- more than a 5 percent decrease in annual gross revenues,
- annual compliance costs (e.g., annualized capital, operating, reporting) that increase total costs of production by more than 5 percent,
- compliance costs as a percent of sales that are 10 or more percent higher for small entities than compliance costs for large entities,
- capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities, or
- the regulation is likely to result in 2 or more percent of the small entities affected being forced to cease business operations.

Note that these criteria all deal with adverse or negative economic impacts. NMFS and certain other Federal agencies interpret the RFA as requiring the preparation of an IRFA only for proposed actions expected to have significant adverse economic impacts on a substantial number of small entities over the short, middle, or long term. Most regulatory actions are designed to have net benefits over the long term; however, such actions are not shielded from the RFA's requirement to prepare an IRFA if significant adverse economic impacts on a substantial number of small entities are expected in the short or longer term. Thus, if any action has short-term significant adverse impacts on a substantial number of small entities, even though it will benefit small entities in the long term, an IRFA must be prepared.

4.6 Small Entities in the BSAI Pollock Fishery

To identify the number and type of business concerns participating in the BSAI pollock fishery that meet the definition "small entities", the operations participating in the BSAI pollock fishery must be measured against the size and affiliation standards outlined in section 4.2. While available data on ownership and affiliation patterns in the BSAI pollock fishery are not sufficiently detailed to discern whether each individual business concern meets the definition of "small entity," data available do allow some general conclusions on the number of small entities in each industry component. These general conclusions are displayed in Table 9 for 1996. Note that Table 9 was prepared for an analysis of the inshore/offshore allocation of pollock so industry participants are divided into the inshore processing sector and offshore processing sector.

Table 9 Estimated numbers and types of small entities participating in the BSAI pollock fishery in 1996

| <i>Industry component or type of entity</i> | <i>Small</i> | <i>Large</i> | <i>Total</i> |
|---|--------------|--------------|--------------|
| <u>Inshore sector</u> | | | |
| Inshore processors | 0 | 8 | 8 |
| Inshore catcher-boats | 40 | 51 | 91 |
| | | | |
| <u>Offshore sector</u> | | | |
| True motherships | 0 | 3 | 3 |
| Catcher-processors | 0 | 31 | 31 |
| Catcher-boats | 24 | 25 | 49 |
| | | | |
| <u>Small organizations</u> (CDQ groups) | 6 | 0 | 6 |
| | | | |
| <u>Government jurisdictions</u> (cities) | 60 | 1 | 61 |
| TOTAL | 130 | 119 | 249 |

Inshore processors. Four of the 8 inshore processors operating in the BSAI pollock fishery are either wholly owned subsidiaries or close affiliates of Japanese multi-national corporations. Due to their affiliation with large foreign entities with more than 500 employees worldwide, none of these processors is a small entity. Of the remaining 4 inshore processors, 3 are owned by US companies that employ more than 500 persons in all their affiliated operations, and therefore cannot be considered small entities. The remaining inshore processor has been identified as closely affiliated with its 5 delivering catcher-boats and the gross annual receipts of the affiliated entities taken together (the processor and its 5 affiliated catcher-boats) exceed the \$3 million criterion for fish harvesting operations. Therefore, none of the inshore processors in the BSAI pollock fishery appear to meet the criteria for small entities.

Inshore catcher-boats. A total of 118 catcher-boats participated in the BSAI pollock fisheries in 1996: 69 operate in the inshore sector exclusively, 27 operate in the offshore sector exclusively, and 22 operate in both sectors. Of the 91 catcher-boats that operate exclusively or partly in the inshore sector, the ownership data in the sector profiles identify 26 vessels owned in whole or part by inshore processors. These 26 vessels may be considered to be affiliated with their respective inshore processor owners and cannot therefore be considered small entities because none of the inshore processors in the BSAI pollock fishery themselves are small entities. An additional 5 catcher-boats have been identified as closely affiliated with an inshore floating processor and these 5 catcher-boats taken together with their affiliated processor exceed the \$3 million criterion for fish harvesting operations and are therefore not believed to be small entities. Furthermore, an additional 20 catcher-boats have ownership affiliations with other catcher-boats or catcher processors. The gross annual receipts of each of these groups of affiliated catcher-boats is believed to exceed the \$3 million criterion for small entities when all their fisheries earnings are taken as a whole. The remaining 40 catcher-boats operating exclusively or partly in the inshore sector are believed to qualify as small entities.

Offshore catcher-boats. Twenty seven catcher-boats operate in the offshore sector exclusively and 22 operate in both sectors for a total of 49 offshore catcher-boats. Of these, 13 have ownership affiliations with large inshore or offshore processors and, therefore, do not meet the \$3 million criterion for small entities. An additional 12 catcher-boats have ownership affiliations with other vessels or operations that taken together with their affiliated entities are believed to exceed the \$3 million gross receipts criterion for small entities when all their fisheries earnings are taken as a whole. The remaining 24 catcher-boats operating exclusively or partly in the offshore sector are believed to qualify as small entities.

True motherships. Three “true motherships” operate in the offshore sector. All 3 “true motherships” have ownership or business affiliations with large Japanese-owned processing companies, and are further affiliated with some of their delivering catcher-boats. Taken together with their affiliated entities, none of the “true motherships” are believed to meet the criteria for small entities.

Offshore processors. To qualify as a small entity, a catcher processor must be independently owned and operated, have no more than 49 percent foreign ownership, and have gross annual receipts of less than \$3 million. None of the offshore catcher processors operating in the BSAI pollock fishery appear to meet the criteria for small entities.

Small organizations. The 6 CDQ groups participating in the BSAI pollock fishery are the only small organizations that are directly affected by the pollock CDQ allocation.

Small governmental jurisdictions. The governmental jurisdictions with direct involvement in the BSAI pollock fishery are the 56 CDQ communities and 4 Alaska non-CDQ communities (Unalaska, Sand Point, King Cove, and Kodiak). All of these communities are small governmental jurisdictions with direct involvement in the BSAI pollock fishery. The remaining government jurisdiction with direct involvement in the BSAI pollock fishery, Seattle, does not qualify as a small governmental jurisdiction.

4.7 Impacts of the Alternatives on small entities

Small business entities affected directly. The 64 independent catcher-boats appear to be the only small business entities participating in the BSAI pollock fishery. The allocation of 7.5 percent of the pollock TAC to the CDQ fisheries reduces the amount of pollock available for harvest by these small entities and may reduce their annual gross revenues by more than a 5 percent relative to Alternative 1 which would not allocate pollock to the CDQ program. The impact of the pollock CDQ allocation on the 4 Alaska non-CDQ communities (Unalaska, Sand Point, King Cove, and Kodiak) is not known, but could be significant depending on the amount of annual revenue lost because pollock CDQ may be processed at different plants than pollock from the open access fisheries.

Small organizations and small governmental jurisdictions. The 6 CDQ groups representing 56 western Alaska communities derive a significant portion of their CDQ revenues from the pollock CDQ allocation. The preferred alternative of allocation of 7.5 percent of the pollock TAC to the CDQ program will allow these small entities to continue to benefit from the pollock CDQ fisheries. Alternative 1 (not reauthorizing the allocation) would have a significant impact on these small entities.

4.8 Final Regulatory Flexibility Analysis (FRFA)

When an agency issues any final rule, it must either prepare an FRFA or certify that the rule will not have a significant economic impact on a substantial number of small entities. The FRFA must discuss the comments received, the alternatives considered and the rationale for the final rule. Each FRFA must contain:

- A succinct statement of the need for, and objectives of, the rule;

See Section 1.0 on page 1 of this analysis.

- A summary of significant issues raised by the public comments in response to the IRFA, the agency's response to those comments, and a statement of any changes made to the rule as a result of the comments;

NMFS received no comments on the IRFA. Four comments were received on the proposed rule to implement Amendment 45. One of these comments was from a CDQ group and expressed general support for the preferred alternative. Three of these comments were from other Federal agencies and expressed no comment on the FMP amendment or proposed rule. NMFS acknowledged these comments. No changes to the rule were made as a result of these comments.

- A description and estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;

See Section 4.6 in this analysis.

- A description of the reporting, recordkeeping, or other compliance requirements of the rule; and

The final rule implementing Amendment 45 has no reporting, recordkeeping or other compliance requirements.

- A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

The economic impact of the preferred alternative on small entities occurs because the preferred alternative allocates 7.5% of the BSAI pollock TACs from the open access fisheries to the CDQ fisheries. This percentage allocation was recommended by the North Pacific Fishery Management Council in Amendment 45 to the BSAI FMP. The Council considered the economic costs of this allocation on the fishermen and processors participating in the open access fisheries and the economic benefits of this allocation on the CDQ communities in western Alaska and determined that the benefits of the allocation outweighed the costs. No action by NMFS, except disapproval of the Council's FMP amendment and a recommendation that the Council consider a smaller allocation of pollock TAC to the CDQ Program, could minimize the significant economic impact of this action on small entities.

5.0 SUMMARY AND CONCLUSIONS

Section 111(a) of the Sustainable Fisheries Act of 1996 added a new provision to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) providing specific statutory authority for the CDQ programs for pollock, sablefish, halibut, groundfish, and crab, already approved by the North Pacific Council and the Secretary of Commerce. Section 305(i)(1) requires that the Council and Secretary establish a Western Alaska CDQ program that allocates a percentage of the Total Allowable Catch (TAC) of any Bering Sea fishery. It imposes a moratorium until October 1, 2001, on submission to the Secretary of any CDQ program allocating a percentage of TAC that was not approved by the Council before October 1, 1995, and allows an extension of CDQ programs that expire during the period of the moratorium if they meet the other requirements of the section. It also provides that, for pending CDQ programs and proposed extensions of current programs, the Secretary cannot increase the percentage of TAC allocated to any CDQ program over the amount the Council approved as of October 1, 1995.

Under the above provisions establishing CDQ programs for nearly all BSAI fisheries, the MSFCMA requires the Council and Secretary to act such that a pollock CDQ program exist after its current sunset date. Further, the Council and Secretary are directed to include pollock in the multi-species CDQ program by 1999. The Sustainable Fisheries Act of October 1996, also clearly directs the Council and the Secretary that a pollock CDQ program at an amount up to the existing 7.5 percent of pollock TAC shall be included in a comprehensive multi-species CDQ program. NMFS is currently reviewing the final rule that would implement the multi-species (MS) CDQ program for the later part of 1998.

The Council must act to recommend an FMP amendment to extend the pollock CDQ program past 1998. While the Council could have chosen to lower the CDQ allocation to less than the current 7.5 percent, the Council chose to limit the alternatives in this analysis to:

Alternative 1: No Action.

Alternative 2: Permanently extend the pollock CDQ program at 7.5 percent of the TAC.

Only Alternative 2 appears to be consistent with Congressional intent to have a pollock CDQ program for Western Alaska. Without reauthorization of the pollock CDQ Program, the 56 affected communities, organized into six separate CDQ organizations, will no longer be given an exclusive share of the pollock resource. The 7.5% allocation yields an average of \$2 million in wages, and \$10.2 million net income on annual revenues of nearly \$20 million to CDQ program recipients. These direct benefits likely understate total economic benefits to these communities, due to the indirect benefits generated from the development projects undertaken by the program. Additionally, the direct and indirect impacts of the monies generated by the program represent a differentially higher economic impact when compared to other regions of the State of Alaska and the United States in general. This is due to the relative absence of alternative economic bases in these communities. The social benefits attributable to this program are quite clear and have not been the subject of debate during the program or in consideration of extending the program.

None of the alternatives are expected to have a significant impact on endangered or threatened species, and none would have an affect takes of marine mammals.

None of the alternatives is expected to result in a “significant regulatory action” as defined in E.O. 12866.

None of the alternatives are likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

6.0 REFERENCES

National Oceanic and Atmospheric Administration. 1996. A Guide to the Sustainable Fisheries Act, Pub. L. 104-297. Office of General Counsel, Washington, D.C. 20230. 69 p.

National Marine Fisheries Service. 1997. Economic Status of the Groundfish Fisheries off Alaska, 1996. Prepared by R.K. Kinoshita, A. Greig, and J.M. Terry. Alaska Fisheries Science Center, Resource Ecology and Fisheries Management Division, Seattle, Washington. September 2, 1997.

North Pacific Fishery Management Council. 1992. Environmental Assessment/ Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for Amendments 18/23 to the Gulf of Alaska and Bering Sea/Aleutian Islands Fishery Management Plans (Inshore-Offshore Processing Allocations and Pollock CDQ Program). NPFMC, 605 W. 4th Avenue, Suite 306, Anchorage, AK.

_____. 1995. Environmental Assessment/ Regulatory Impact Review /Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for the Proposed Reauthorization of Amendments 38/40 to the Gulf of Alaska and Bering Sea/Aleutian Islands Fishery Management Plans (Inshore-Offshore Processing Allocations and Pollock CDQ Program). NPFMC, 605 W. 4th Avenue, Suite 306, Anchorage, AK.

7.0 LIST OF PREPARERS

Jane DiCosimo
NPFMC
605 W. 4th Avenue, Suite 306
Anchorage Alaska 99501

Glenn Haight
Department of Community and Regional Affairs
P.O. Box 112100
Juneau Alaska 99811-2100

Sally Bibb
NMFS
P. O. Box 21668
Juneau Alaska 99802

APPENDIX I. NOAA GC OPINION

APPENDIX II. MSFCMA LANGUAGE

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

(1) (A) The North Pacific Council and the Secretary shall establish a western Alaska community development quota program under which a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program.

(B) To be eligible to participate in the western Alaska community development quota program under subparagraph (A), a community shall--

- (i) be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the western most of the Aleutian Islands, or on an island within the Bering Sea;
- (ii) not be located on the Gulf of Alaska coast of the north Pacific Ocean;
- (iii) meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register;
- (iv) be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) to be a Native village;
- (v) consist of residents who conduct more than one-half of their current commercial or subsistence fishing effort in the waters of the Bering Sea or waters surrounding the Aleutian Islands; and
- (vi) not have previously developed harvesting or processing capability sufficient to support substantial participation in the groundfish fisheries in the Bering Sea, unless the community can show that the benefits from an approved Community Development Plan would be the only way for the community to realize a return from previous investments.

(C) (i) Prior to October 1, 2001, the North Pacific Council may not submit to the Secretary any fishery management plan, plan amendment, or regulation that allocates to the western Alaska community development quota program a percentage of the total allowable catch of any Bering Sea fishery for which, prior to October 1, 1995, the Council had not approved a percentage of the total allowable catch for allocation to such community development quota program. The expiration of any plan, amendment, or regulation that meets the requirements of clause (ii) prior to October 1, 2001, shall not be construed to prohibit the Council from submitting a revision or extension of such plan, amendment, or regulation to the Secretary if such revision or extension complies with the other requirements of this paragraph.

(ii) With respect to a fishery management plan, plan amendment, or regulation for a Bering Sea fishery that--
(I) allocates to the western Alaska community development quota program a percentage of the total allowable catch of such fishery; and

(II) was approved by the North Pacific Council prior to October 1, 1995; the Secretary shall, except as provided in clause (iii) and after approval of such plan, amendment, or regulation under section 304, allocate to the program the percentage of the total allowable catch described in such plan, amendment, or regulation. Prior to October 1, 2001, the percentage submitted by the Council and approved by the Secretary for any such plan, amendment, or regulation shall be no greater than the percentage approved by the Council for such fishery prior to October 1, 1995.

(iii) The Secretary shall phase in the percentage for community development quotas approved in 1995 by the North Pacific Council for the Bering Sea crab fisheries as follows:

- (I) 3.5 percent of the total allowable catch of each such fishery for 1998 shall be allocated to the western Alaska community development quota program;
- (II) 5 percent of the total allowable catch of each such fishery for 1999 shall be allocated to the western Alaska community development quota program; and
- (III) 7.5 percent of the total allowable catch of each such fishery for 2000 and thereafter shall be allocated to the western Alaska community development quota program, unless the North Pacific Council submits and the Secretary approves a percentage that is no greater than 7.5 percent of the total allowable catch of each such fishery for 2001 or the North Pacific Council submits and the Secretary approves any other percentage on or after October 1, 2001.

(D) This paragraph shall not be construed to require the North Pacific Council to resubmit, or the Secretary to reapprove, any fishery management plan or plan amendment approved by the North Pacific Council prior to October 1, 1995, that includes a community development quota program, or any regulations to implement such plan or amendment.

APPENDIX III. DCRA REPORT

APPENDIX IV
SUPPLEMENTAL INITIAL REGULATORY FLEXIBILITY ANALYSIS

Supplemental Initial Regulatory Flexibility Analysis

for Amendment 45 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area

Background

Amendment 45 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) would permanently extend the allocation of 7.5 percent of the pollock total allowable catch in the Bering Sea and Aleutian Islands Area (BSAI) to the Western Alaska Community Development Quota (CDQ) Program. Amendment 45 was transmitted to NMFS by the North Pacific Fishery Management Council (Council) on July 29, 1998. The Council prepared a draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), which considered two alternatives. Alternative 1 (no action) would allow the pollock CDQ allocation to expire on December 31, 1998. Alternative 2 would permanently extend the 7.5 percent allocation of the pollock total allowable catch (TAC) to the CDQ program. The Council selected Alternative 2 as the preferred alternative.

In the draft EA/RIR/IRFA, the Council determined that the continued allocation of 7.5 percent of the pollock TAC to the CDQ Program could have a significant impact on a substantial number of small entities.

Under the Regulatory Flexibility Act, NMFS is required to consider any significant alternatives that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. NMFS has prepared this supplemental IRFA to provide information on an additional alternative not explicitly considered by the Council.

This supplemental IRFA does not repeat information provided in the original EA/RIR/IRFA about Amendment 45, the CDQ Program, CDQ communities, or the value of the pollock CDQ fisheries. Please consult that analysis for the background information necessary to understand the conclusions drawn in this supplemental IRFA.

An Additional Alternative

The original IRFA concludes that

“The only alternative that could minimize any significant economic impact of the proposed rule on the small entities that are affected by the allocation of pollock to the CDQ program would be Alternative 1 (not allocating pollock to the CDQ program). However, the selection of Alternative 1 would result in significant economic impacts on another group of small entities, namely the CDQ communities. Therefore, neither alternative would completely eliminate some level of significant impact on small entities.”

The original IRFA text should have stated that the Council could have considered other alternatives in addition to Alternative 1 and Alternative 2. The Council could have explicitly considered alternative allocation percentages between 0 percent and 7.5 percent that could have reduced the negative economic impact of the allocation of pollock on the small entities participating in the moratorium groundfish fisheries. For example, the Council could have considered an allocation of 3.5 percent of the pollock TAC to the CDQ Program.

When considering alternative allocation percentages, the Council assumes that specifying alternatives that cover the minimum and maximum allocation percentages under consideration implies consideration of any allocation percentage in that range. For example, for Amendment 45 the Council considered a minimum

allocation of 0 percent and a maximum allocation of 7.5 percent of the pollock TAC to the CDQ Program. The information in the EA/RIR/IRFA would provide the Council with sufficient information to have selected an allocation percentage anywhere between 0 percent and 7.5 percent. Therefore, the Council implicitly considered a range of allocation percentages between 0 and 7.5 percent and selected the 7.5 percent allocation as their preferred alternative.

NMFS has determined that compliance with the Regulatory Flexibility Act requires explicit consideration of a specific alternative within the range of a 0 percent and 7.5 percent allocation of pollock to the CDQ Program. This third alternative could reduce to some extent the impact of the allocation of pollock on some of the small entities negatively impacted by the Council's preferred alternative (7.5 percent allocation).

Therefore, in reviewing the proposed FMP amendment and proposed rule for Amendment 45, NMFS will consider an additional alternative.

FMP Amendment Process

Although NMFS has prepared this supplemental IRFA to consider an alternative not explicitly considered by the Council, the Magnuson-Stevens Act would not allow NMFS to select this alternative at this time. NMFS may only approve, disapprove, or partially approve an FMP amendment proposal submitted by the Council. If NMFS believed that Alternative 3 should have been either explicitly considered by the Council, or selected as the preferred alternative, NMFS would be required to disapprove the FMP amendment and return it to the Council for further consideration.

Alternative 3: Permanently allocate 3.5 percent of the pollock TAC to the CDQ program.

Impact of the Alternatives on Small Entities

Determination of the number and type of small entities participating in the BSAI pollock fisheries is contained in the original EA/RIR/IRFA. Following is additional discussion addressing Alternative 3 relative to Alternatives 1 and 2.

Small business entities affected directly: Sixty-four independent catcher-boats appear to be the only small business entities participating in the BSAI pollock fishery. The allocation of 7.5 percent of the pollock TAC to the CDQ Program reduces the amount of pollock available for harvest by these small entities and may reduce their annual gross revenues by more than 5 percent relative to Alternative 1, which would not allocate pollock to the CDQ program. An allocation of 3.5 percent of the pollock TAC to the CDQ Program does not reduce the amount of pollock available to the small entities as much as the Council's preferred alternative and is less likely to reduce their annual gross revenues by more than a 5 percent than is the Council's preferred alternative. Conversely, to the extent that the CDQ communities benefit from the pollock allocation, they would benefit less from the 3.5 percent allocation than from the 7.5 percent allocation.

The impact of the pollock CDQ allocation on the four Alaska non-CDQ communities (Unalaska, Sand Point, King Cove, and Kodiak) is not known, but could be significant depending on the amount of annual revenue lost because pollock CDQ may be processed at different plants than pollock from the open access fisheries. If these communities experience a negative impact from the allocation of pollock to the CDQ Program, Alternative 3 (3.5 percent allocation) would cause less of a negative economic impact than the Council's preferred alternative.

Small organizations and small governmental jurisdictions. The six CDQ groups representing 56 western Alaska communities derive a significant portion of their CDQ revenues from the pollock CDQ allocation. The preferred alternative of allocation of 7.5 percent of the pollock TAC to the CDQ program will allow these small entities to continue to benefit from the pollock CDQ fisheries. Alternative 1 (not reauthorizing the allocation) would have a significant impact on these small entities. Alternative 3 (3.5 percent allocation) also

would likely have a significant impact of these small entities because it would reduce the value of the pollock CDQ allocation to the CDQ groups by more than half.

Each of the alternatives results in some likely negative economic impact on some small entities participating in the BSAI pollock fisheries. Alternative 1 would negatively impact the CDQ communities, Alternative 2 would negatively impact the catcher vessels and small communities participating in the moratorium pollock fisheries. Alternative 3 would probably negatively affect all of the small entities - the CDQ communities, catcher vessels, and the small communities - but to a lesser extent than Alternative 1 would affect the CDQ communities, or Alternative 2 would affect the catcher vessels and small non-CDQ communities.