



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

March 21, 2007

Morgen Crow, Executive Director  
Western Alaska Community Development Association  
711 H Street, Suite 200  
Anchorage, Alaska 99501

Dear Mr. Crow:

This letter responds to requests from the Community Development Quota (CDQ) groups for clarification about retention requirements that apply to groundfish species not allocated to the CDQ Program. The circumstances that have created a regulatory conflict with these retention requirements are described in the attached memorandum from NOAA General Counsel (GC) to NMFS's Alaska Enforcement Division.

NOAA GC recommends that vessels participating in the groundfish CDQ fisheries be required to comply with the discard and retention standards that are applicable to vessels participating in the non-CDQ fisheries. This is consistent with how NMFS described the management of these species in the final rule for the 2007 and 2008 groundfish fisheries of the Bering Sea and Aleutian Islands area (72 FR 9451; March 2, 2007). As described in the final groundfish specifications notice, the species that are not allocated to the CDQ Program are Bogoslof pollock, Aleutian Islands Greenland turbot, other flatfish, Alaska plaice, Bering Sea Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, other rockfish, and other species. Vessels participating in the CDQ fisheries may use retained catch of species allocated to the CDQ Program as basis species for retaining catch of species not allocated to the CDQ Program. Maximum retainable amounts are described in regulations at § 679.20(e) and Table 11 to 50 CFR part 679. The status of retention of species not allocated to the CDQ program is based on the status of the fishery as determined by NMFS's In-Season Management Division and published in the *Federal Register*. Information about the status of retention of these species also is summarized on the Alaska Regional Office's website at <http://www.fakr.noaa.gov/2007/status.htm>.

If you have any additional questions about the status of retention requirements that apply to groundfish species not allocated to the CDQ Program, please contact Mary Furuness at 907-586-7447. If you have questions about future regulatory actions, please contact Obren Davis at 907-586-7241. If you have questions about enforcement of current regulations, please contact Mike Adams, NMFS Enforcement, at 907-271-1693.

Sincerely,

Robert D. Mecum  
Acting Administrator, Alaska Region

Attachment  
cc: CDQ groups  
NMFS Enforcement





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
P.O. Box 21109  
Juneau, Alaska 99802-1109


DATE:

March <sup>19</sup>26, 2007

MEMORANDUM TO:

Jeff Passer, Special Agent-in-Charge  
Alaska Enforcement Division

FROM:

  
Garland Walker, Attorney  
General Counsel for Enforcement and Litigation  
Alaska Region

SUBJECT:

Enforcement of Retention Requirements in the Community  
Development Quota Program Groundfish Fisheries

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) was amended by the Coast Guard and Maritime Transportation Act of 2006 and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. Both of these acts amended section 305(i)(1) of the Magnuson-Stevens Act, which contains requirements for the Western Alaska Community Development Quota (CDQ) Program.

Section 305(i)(1)(B) of the Magnuson-Stevens Act now requires NMFS to allocate to the CDQ Program a percentage of the total allowance catch in each directed fishery of the Bering Sea and Aleutian Islands. As a result of these new requirements, NMFS is no longer allocating to the CDQ Program a portion of the total allowance catch for Bogoslof pollock, Aleutian Islands Greenland turbot, other flatfish, Alaska plaice, Bering Sea Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, other rockfish, and other species. However, the unintended consequence of revising the list of species allocated to the CDQ Program is that NMFS regulations now require vessels participating in the groundfish CDQ fisheries to discard the catch of species not allocated to the program. Specifically,

- Regulations at §679.7(d)(16) prohibit the operator of a vessel participating in the CDQ fisheries from using any groundfish accruing against a CDQ reserve as a basis species for calculating retainable amounts of non-CDQ species. Species that are not allocated to the CDQ Program are considered “non-CDQ species.” This prohibition requires discard of all species not allocated to the CDQ Program, even if retention of this species is allowed in the non-CDQ fisheries.
- Regulations at §679.7(d)(13) and (14) prohibit catcher vessels from retaining onboard CDQ species together with license limitation groundfish, and prohibit catcher/processors from catching groundfish CDQ species together with license limitation groundfish in the same haul, set, or pot. The intent of these regulations was to separate CDQ and non-CDQ fishing so that all catch while CDQ fishing accrued against CDQ allocations. Now that some of the groundfish species that will be caught in the CDQ fisheries will no longer be considered CDQ species, these prohibitions will require the discard of these species.

Enforcement of the above regulations will result in the unintended and, from a management perspective, unnecessary consequence of increased bycatch and discards. Without a



management necessity, this would not be consistent with National Standard 9 of the Magnuson-Stevens Act. Moreover, NMFS intends to revise 50 CFR part 679 to allow the CDQ groups to retain species not allocated to the CDQ Program under the same conditions as the non-CDQ fisheries as soon as possible. In other words, the above prohibitions will soon be removed. At this time, the regulatory amendments to accomplish this removal are included in the proposed rule for Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. However, these regulatory amendments will take some time to finalize.

Because (a) the above referenced prohibitions would result in the unnecessary consequence of increased bycatch and discards in the CDQ fisheries, which would not consistent with National Standard 9 of the Magnuson-Stevens Act, and (b) because these regulations are currently being amended to delete the above prohibitions, NOAA General Counsel for Enforcement and Litigation, Alaska Region, recommends that CDQ fishing operations be held to only those discard and retention standards that are applicable to every other vessel that participates in a given fishery. Specifically, with the exception of these three prohibitions, 50 CFR part 679 provides regulations about closures to directed fishing, retention requirements, and maximum retainable amounts that would be applicable to the discard and retention of these species in both the CDQ and non-CDQ fisheries.

NOAA GCEL recommends that AED consider expending little or no enforcement resources on enforcing the prohibitions identified above (i.e., §679.7(d)(16), §679.7(d)(13) and (14)) due to the unintended consequences created by the current changes in the law and the Sustainable Fisheries Division's intent to soon remove these regulations in order to eliminate the unintended consequences. At this point, violations of these regulations would not be considered a high priority for this office. Nevertheless, this recommendation is only to assist you. Ultimately, you should take whatever action in regard to the above regulations that you deem most appropriate for AED. Please do not hesitate to contact NOAA GC or the SF if either can be of further assistance in regard this issue.