



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

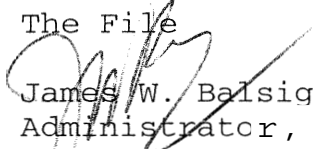
National Marine Fisheries Service

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February 13, 2002

MEMORANDUM FOR: The File

FROM:  James W. Balsiger
Administrator, Alaska Region

SUBJECT: Categorical Exclusion from Requirements to
Prepare an Environmental Assessment for
Alternatives to Revise Regulations Governing
the Administration and Oversight of the
Community Development Quota Program

In June 2001, the North Pacific Fishery Management Council (Council) requested analysis of alternatives that would amend the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) and regulations at 50 CFR 679 governing the Western Alaska Community Development Quota (CDQ) Program. These alternatives address the role of government in administration and oversight of the economic development aspects of the CDQ Program and the process through which allocations to CDQ groups are made. A draft analysis, dated November 15, 2001, was prepared by Council and NMFS staff and presented to the Council at its December 2001 meeting. The Council consolidated two issues into one issue and revised some of the alternatives. The revised list of issues and alternatives is attached.

The regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) at 40 CFR 1500-1508 and NOAA Administrative Order (NOA) 216-6 allow some actions to be categorically excluded from both further environmental review and the requirement to prepare an environmental review document if the action individually or cumulatively does not have the potential to pose significant impacts on the quality of the human environment. Section 6.03.d.4 of NOA 216-6 specifically addresses the requirements for categorical exclusions for actions taken under the Magnuson-Stevens Fishery Conservation and Management Act. In addition, NAO-216-6 allows a categorical exclusion if a prior NEPA analysis was prepared for the same action and that analysis demonstrated that the action would not have a significant impact on the quality of the human environment (NAO-216-6, Section 5.05.b).



For the reasons described below, I have determined that these alternatives, if implemented, would not individually or cumulatively have a significant effect on the human environment. Therefore, this action is categorically excluded under NOA 216-6 and the NEPA from both further environmental review and the requirement to prepare an environmental review document.

Environmental Impacts of the CDQ Program

The CDQ Program affects the human environment through the fisheries conducted by the CDQ groups to harvest CDQ allocations. The amount available for harvest by each of the six CDQ groups is determined by (1) the amount available for catch in the CDQ Program as a whole (the "CDQ reserves"), and (2) the percentage allocation of each CDQ reserve to individual CDQ groups. The alternatives under consideration would not change the process through which the CDQ reserves are established. However, they could change the process through which allocations are made to individual CDQ groups.

The annual CDQ reserves for groundfish, prohibited species, halibut, and crab are determined by the total annual catch limit for each species and the percentage of each catch limit allocated to the CDQ Program. The total annual catch limits are established by NMFS for groundfish and prohibited species, by the International Pacific Halibut Commission for halibut, and by the State of Alaska for crab. The percentage of each catch limit allocated to the CDQ Program is determined by the American Fisheries Act (AFA) for pollock (10%), the Magnuson-Stevens Act for crab (7.5%), the FMP for all other groundfish and prohibited species (7.5%, except 20% for fixed gear sablefish), and 50 CFR 679 for halibut (20% to 100%). The environmental impacts of the annual allocations of groundfish and prohibited species to the CDQ Program are addressed by NMFS in the NEPA documents supporting the annual groundfish specifications process. NMFS is not required by NEPA to prepare environmental review documents associated with halibut and crab because these catch limits are not established by Federal actions.

The amount of CDQ catch available annually to each CDQ group is determined through a periodic, competitive allocation process. The alternatives proposed by the Council could change this allocation process. For example, the alternatives propose changes to the respective roles for NMFS, the State, and the Council in determining allocations among the groups; the number of years for which the allocations would be effective; and the criteria used to allocate CDQ reserves among the groups. However, specific percentage allocations or the amount of fish or

crab harvested by an individual CDQ group do not significantly change the environmental impacts of the CDQ fisheries as a whole, because the CDQ groups conduct their CDQ fisheries in a similar manner. For example, all six groups harvest pollock CDQ allocations using primarily large trawl catcher/processors that harvest pollock at the same time and in the same places that they harvest non-CDQ pollock. All six groups harvest cod using large longline catcher/processors that operate during the spring, summer, and late fall when the non-CDQ cod fisheries are closed. Halibut CDQ allocations are harvested primarily in small, near-shore fisheries in areas around the local CDQ communities. The crab CDQ allocations are harvested by large vessels fishing shortly after the non-CDQ crab fisheries close. Therefore, changes in the CDQ allocation process would not significantly change the impact of the CDQ fisheries on the environment because this impact is determined primarily by the total amount of CDQ harvested rather than the amount harvested by an individual group. Any impacts on the environment as a result of groundfish harvests off Alaska are considered annually in the NEPA documents prepared for the groundfish harvest specifications.

Previous NEPA Analyses

The CDQ Program began in 1992 with an allocation of 7.5 percent of the Bering Sea and Aleutian Islands area (BSAI) pollock total allowable catch. This allocation was made as part of Amendment 18 to the BSAI FMP and Amendment 23 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). Amendments 18/23 implemented the initial "inshore/offshore" allocations of pollock in the BSAI and pollock and Pacific cod in the Gulf of Alaska. NMFS prepared a supplemental environmental impact statement (SEIS) for this action which analyzed the impact on the human environment of the pollock and Pacific cod allocations, including the pollock CDQ allocation. The final SEIS was dated March 5, 1992. This analysis provided a description of the physical, biological, economic, and social environment and analysis of the impact of the alternatives on groundfish stocks, bycatch, marine mammals, seabirds, coastal and marine habitat, the fishing industry, and fishing communities.

The administrative regulations governing the CDQ allocation process and oversight of the economic development aspects of the CDQ Program were implemented in 1992 (57 FR 54936; November 23, 1992). The alternatives now under consideration by the Council would revise these administrative regulations. An Environmental Assessment (EA) was prepared for the 1992 implementation of the administrative regulations (final EA dated December 7, 1992). In this EA, NMFS determined that "the CDQ program redistributes the

harvest of fisheries resources but will not change the total amount landed" and that "[p]hysical impacts on the environment associated with any of these alternatives are not expected to differ significantly from the current fishery. Physical impacts are associated with differences in fishing gear used, locations where fishing occurs, processing locations, etc."

The administrative regulations for the CDQ Program were revised in 1998 when NMFS implemented Amendment 39 to the BSAI FMP, Amendment 41 to the GOA FMP, and Amendment 5 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (63 FR 30381, June 4, 1998). Amendment 39/41/5 implemented the groundfish and crab license limitation program and expanded CDQ allocations to include 7.5 percent of all BSAI groundfish, prohibited species, and crab. These additional CDQ allocations created the "multispecies" CDQ Program. The North Pacific Fishery Management Council prepared an EA for Amendment 39/41/5 (final EA dated September 9, 1997). Based on this EA, NMFS concluded that the license limitation program and the expanded CDQ allocations would not have a significant impact on the environment. With respect to the CDQ Program, the EA concluded "[T]he benefits of this type of fishery have been exhibited in the current pollock CDQ program where the result has been a slower paced fishery, higher value fisheries relative to the open access fishery, generally lower bycatch rates of PSC species, lower discard rates, and a more stable planning environment for the participants."

Conclusions

In assessing the potential significance of the impacts of an action on the human environment, NAO-216-6 (section 5.05.c) requires determination that the proposed action does not involve a geographic area with unique characteristics, is not the subject of public controversy based on potential environmental consequences, does not have uncertain environmental impacts or unique or unknown risks, does not establish a precedent or decision in principle about future proposals, does not result in cumulatively significant impacts, and does not have any adverse effects upon endangered or threatened species or their habitats.

The alternatives under consideration by the Council address the role of government in administration and oversight of the economic development aspects CDQ Program. They are administrative and procedural in nature and they would not change the impact of the harvest of CDQ allocations on the environment. Therefore, I have determined that the alternatives do not involve a geographic area with unique characteristics, they are not

likely to have uncertain environmental impacts or unique or unknown risks, and they would not have any adverse effects upon endangered or threatened species or their habitats. Although some aspects of the alternatives are controversial, the controversy relates to administrative and policy issues associated with the role of government in oversight of the CDQ Program and the process through which CDQ allocations are made. These controversial issues are not associated with the potential environmental consequences of the alternatives. In addition, because the alternatives would not result in impacts on the environment, they would not establish a precedent or decision in principle about future proposals that would affect the human environment. Based on the information described in this memorandum, I have determined that the alternatives under consideration by the Council do not individually have any impact on the human environment. Therefore, the alternatives also would not have a cumulative impact on the human environment.

E. O. 12898 addresses "environmental justice," and instructs each Federal agency to identify and address disproportionately high and adverse human health and environmental effects on minority and low-income populations. As environmental justice concerns affect the human environment, it is appropriate to consider them in environmental review documents prepared under NEPA. The proposed action is administrative and procedural in nature and, because it does not have any impacts on the human environment, it also would not cause disproportionately high and adverse human health or environmental effects on minority or low-income populations.

Attachment

Attachment

Issues and Alternatives for CDQ Policy Analysis As revised by the NPFMC in December 2001

ISSUE 1: Define the role of NMFS, the State of Alaska, and the Council in making CDQ allocations

Issue 1 provides 5 alternatives for the role of NMFS, the State of Alaska, and the Council in CDQ allocations. No changes are proposed to the roles of NMFS, the Council, the State of Alaska, or the International Pacific Halibut Commission in management of the groundfish, halibut, and crab CDQ fisheries.

Alternative 1: Status quo: Do not change the CDQ administrative regulations. Continue to require the State to make CDQ allocations recommendations and NMFS to have a limited role in reviewing and approving the State's recommendations.

Alternative 2: NMFS would make CDQ allocations through an administrative process that may continue to require the State to submit CDQ allocation recommendations. Regulatory amendments would be implemented to describe the administrative process that would be used to make CDQ allocations, including evaluation criteria and a NMFS administrative appeals process.

Alternative 3: NMFS would continue to make CDQ allocations through an administrative process that would require the State to submit CDQ allocation recommendations. Regulatory amendments would be implemented to describe the administrative process that would be used to make CDQ allocations, including evaluation criteria. No appeals process would be included. The State would conduct a comment period and hearing as follows:

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

Alternative 4: The State of Alaska would be responsible for CDQ allocations. Regulatory amendments would be implemented to minimize the role of NMFS and the Council in CDQ allocations and oversight of the economic development aspects of the program by allocating CDQ to the State of Alaska for purposes of the CDQ Program.

Alternative 5: The Council would be responsible for developing CDQ allocation recommendations, and NMFS would implement the allocations through proposed and final rulemaking. NMFS would not make independent decisions about the CDQ allocations, but it would review the Council’s allocation recommendations for compliance with the MSA and other applicable laws.

ISSUE 2: Periodic or Long-Term CDQ Allocations

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

Alternative 2: Establish a fixed allocation cycle in regulation:

Option 1: 2-year allocation cycle

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

Option 3: 5-year allocation cycle

Option 4: 10-year allocation cycle

Sub-option 1: Establish an “escape clause” which would allow the State to recommend reallocation of CDQ mid-cycle under extraordinary circumstances. The Council and NMFS would have to approve the State’s recommended reallocation.

Sub-option 2: Establish an “escape clause” which would allow for a three-stage intervention process as follows:

Level 1 - advisory (State advises groups of serious concerns)

Level 2 - State mandates the group to make changes

Level 3 - consider CDQ reallocation

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

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

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

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

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

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

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

ISSUE 4: CDQ Allocation Process - Type of Quotas

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

Alternative 2: Establish a separate foundation quota and performance quota

Allocations of CDQ among the CDQ groups are categorized as foundation quota and performance quota as defined below:

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

Performance quota - some proportion of the CDQ allocations are based on competition among the groups in areas such as financial performance, feasibility of proposed projects, needs of the local fishery, etc. The process used for the competitive allocations will be determined under Issue 4.

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

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

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

Suboption 1: Foundation quota applies only to a portion of the pollock allocation as described in Options 1 - 3.
Performance quota applies to the remainder of the pollock allocations and allocations of all other species.

Option 4: Foundation quota: 50% of the CDQ pollock reserve is allocated to the CDQ group on the basis of the population of the communities represented by the group.
Performance quota applies to the remainder of the pollock allocations and allocations of all other species.

ISSUE 5: CDQ Allocation Process - The Evaluation Criteria

Alternative 1: Status quo - Continue to publish the CDQ evaluation criteria in State regulations, but do not publish them in NMFS regulations.

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

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

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

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

Option 1: Scorecard

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

The criteria on the scorecard must mirror the evaluation criteria and be as transparent as possible while maintaining confidentiality of business information.

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

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

Alternative 1: No Action. Regulations governing the extent of government oversight of the business activities of the CDQ groups and their subsidiaries would not be revised. An October 4, 2000, legal opinion by NOAA GC concludes that NMFS’ regulations on this question are unclear and need to be revised.

Alternative 2: Implement revisions to the CDQ Program administrative regulations based on the State of Alaska’s proposal. These revisions would reduce requirements for expenditures that require review and prior approval by the State of Alaska and NMFS and would clarify that oversight of the CDQ Program by the State of Alaska and NMFS includes the activities of businesses that the CDQ groups own.

Include a rebuttable presumption regarding State oversight of CDQ businesses, such that if a CDQ group owns 50% or more of a subsidiary company, the burden is on the CDQ group to prove that they do not exercise *effective management control* over that entity (as defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment (not as a CDQ-owned business) and thus subject to lower oversight and reporting requirements.

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

Alternative 4: (From H.R. 553) Oversight extends only to activities of the CDQ group, not to businesses owned by the CDQ group. Define CDQ project as:

(i) “CDQ project” means a program or activity that is administered or initiated by a CDQ group and that is funded by revenue the CDQ group derives or accrues during the duration of a community development plan approved by the Secretary from harvesting the fishery covered by the plan.

(ii) such term does not include a program or activity administered or initiated by a subsidiary, joint venture, partnership, or other entity in which a CDQ group owns an equity interest, if the program or activity is funded by the assets of the subsidiary, joint venture, partnership, or other entity, rather than by the assets of the CDQ group.

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

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

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

Current regulations do not include specific investment guidelines or a list of allowable investments. Some decisions about allowable investments have been made by policy or practicality. For example, CDQ groups provide scholarships for college without restricting the program of study to “fisheries-related.” Investments in substance abuse programs are not restricted to people working in fisheries-related businesses. The CDQ groups’ investment accounts include stocks, bonds, and other financial instruments which are not “fisheries-related.”

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

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

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

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

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

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

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

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

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

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

ISSUE 8: Other CDQ Administrative Issues

Alternative 1: No Action.

Alternative 2: Develop proposed regulatory amendments to simplify and streamline recordkeeping and reporting requirements, including:

Transfers of CDQ/PSQ allocations

- (1) do not allow transfers of percentage allocations (can transfer CDQ/PSQ each year)
- (2) require an amendment to CDP for transfers of percentage allocations

Transfers of CDQ/PSQ would not be amendments to a CDP - just a transfer procedure

- (1) require approval by State of Alaska for transfers
- (2) require notification to State of Alaska at time NMFS approves transfers

PSQ Transfers

- (1) allow at any time during year
- (2) do not require transfer of groundfish CDQ with PSQ
- (3) require prior approval by State or notification to State by NMFS upon approval

Revisions to the format of the fishing plan

- (1) reduce information requirements
- (2) do not consider as a technical amendment to a CDP
- (3) require prior approval by State or notification to State by NMFS upon approval
(depends on whether new vessel or processor is a “partner” with a new contract that State may want to review)

Simplify annual and periodic reports