

**Western Alaska Community Development Quota Program  
Implementation of the Magnuson-Stevens Act Amendments in the  
Coast Guard and Maritime Transportation Act of 2006**

Staff discussion paper - October 2006

On July 11, 2006, the President signed the Coast Guard and Maritime Transportation Act of 2006 (Coast Guard Act). Section 416(a) of the Coast Guard Act revises section 305(i)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) by replacing all of the existing language in this section with new language. The MSA amendments and legislative history are attached to the C-2 action memo as Item C-2(a). This report is intended to provide an overview of the effects of the Coast Guard Act and a proposed plan for implementation of these amendments.

**I. Introduction**

The MSA amendments address all aspects of management and oversight of the CDQ Program, including the purpose of the CDQ Program; allocations of groundfish, halibut, and crab to the CDQ Program; allocations of quota among the CDQ groups; management of the CDQ fisheries; eligible communities; eligibility criteria for participation in the CDQ Program, limits on allowable investments; the creation of a CDQ administrative panel; compliance with State of Alaska (State) reporting requirements; a decennial review and allocation adjustment process; and other aspects of program administration and oversight by the State and NMFS, on behalf of the Secretary of Commerce. Most of these MSA amendments will require revisions to Federal regulations that will be implemented through proposed and final rulemaking. Amendments also will need to be made by the Council to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs.

For the purpose of this report, staff has divided the provisions in the Act into **four** general issue categories:

- Allocations
- Fisheries management
- Decennial review and adjustment of allocations
- Administration and oversight

Staff proposes that the provisions of the Act be implemented through **seven** separate FMP and/or regulatory amendments. **Table 1** below provides an outline of each of the subparagraphs of the Act, including a brief summary of the issue, the general category under which staff has organized the issue, and the proposed vehicle for implementation. **This report references the changes to Section 305(i)(1) of the MSA by the subparagraphs (A) through (F) listed in Table 1.**

Note that of the allocation issues, one is addressed through a notice in the *Federal Register*, while others will be implemented through the rulemakings for BSAI Amendments 85 and 80.<sup>1</sup> In addition, changes to the TAC categories allocated to the CDQ Program in 2007 will be implemented through the proposed and final rules for the 2007/2008 groundfish specifications. The first fisheries management issue listed is proposed to be implemented through a regulatory amendment, and the second will likely need both an FMP and regulatory amendment. The issues associated with the decennial review may be implemented through a regulatory amendment, or may not necessitate any changes to Federal regulations or the FMPs. Finally, all of the administrative and oversight provisions are proposed to be implemented through Amendment 71 to the BSAI groundfish FMP and Amendment 22 to the BSAI crab FMP (BSAI Am. 71/22).

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<sup>1</sup>Council final action on BSAI Amendment 85 was in April 2006. Final action on BSAI Amendment 80 was in June 2006. Implementation of both amendments is expected in 2008.

Table 1. Sub-paragraph reference and subject of amendments to section 305(i)(1) of the MSA made through the 2006 Coast Guard Act

<b>Sub-paragraph of section 305(i)(1)</b>	<b>Subject of MSA requirements</b>	<b>Issue category</b>	<b>Federal vehicle for implementation</b>
(A)	Purpose of the CDQ Program.	Admin & oversight	Am. 71/22
(B)(i)	Current allocations to the CDQ Program and how those allocations are managed.	Allocations	2007/08 groundfish specifications
(B)(ii)	Allocations to the program under future sector allocation and rationalization programs or upon the establishment of new BSAI fisheries.	Allocations	BSAI Am. 85 BSAI Am. 80
(B)(iii)	Processing and other rights related to CDQ allocations.	Allocations	No regulatory revisions identified
(B)(iv)	Restrictions on the regulation of harvest of halibut, fixed gear sablefish, pollock, and crab CDQ allocations.	Fisheries management	Regulatory amendment
(C)	Percentage allocations of groundfish, halibut, and crab among the CDQ entities (CDQ groups).	Allocations	FR notice
(D)	Specific list of the 65 eligible villages and the six CDQ groups through which each may participate in the program.	Admin & oversight	Am. 71/22
(E)(i)	Requirements for CDQ entity's board of directors.	Admin & oversight	Am. 71/22
(E)(ii), (vi)	CDQ entities must elect CDQ Panel representatives and comply with requirements established by CDQ Panel.	Admin & oversight	Am. 71/22
(E)(iii)-(v)	Allowable investments, limits on non-fisheries investments, statement of compliance.	Admin & oversight	Am. 71/22
(F)(i)	Excessive share ownership, harvesting, or processing limitations in BSAI fisheries.	Fisheries management	FMP/Regulatory amendment #2 <sup>1</sup>
(F)(ii)-(iv)	Compliance with and exemptions from certain State laws.	Admin & oversight	No regulatory revisions identified
(G)	CDQ Panel membership, functions, and decision making.	Admin & oversight	No regulatory revisions identified
(H)	Decennial review and adjustment of entity allocations.	Decennial review	FMP/Regulatory amendment #3 <sup>1</sup>
(I)	Approval of community development plans and amendments not required.	Admin & oversight	Remove current regulations through Am. 71/22
(J)	Community development plan defined.	Decennial review	FMP/Regulatory amendment #3 <sup>1</sup>

<sup>1</sup>This denotes a second FMP/regulatory amendment package to implement the fisheries management changes, and a third FMP/regulatory package to implement the decennial review. Both are separate amendments from BSAI Am. 71/22.

The remainder of this report addresses each of the issues in the MSA amendments organized into the four primary categories above and describes the potential vehicles by which they will be implemented. Table 5, provided as an attachment to this report, is a more detailed explanation of each of the provisions of the Act and an initial assessment of whether the paragraph will require revisions to the FMPs or Federal regulations. Table 5 will be helpful as a reference as the Council reviews each issue in this paper.

## II. Allocations

Allocation issues include: 1) CDQ allocations under **subparagraph (B)(i)**, and 2) allocations to the program under future sector allocation and rationalization programs (**subparagraph (B)(ii)(I)**). Subparagraph (B)(ii)(I) will be implemented under BSAI Amendments 85 and 80, as appropriate. Note that the Council took final action on these two amendments in April 2006 and June 2006, respectively.

### CDQ Allocations under Section 305(i)(1)(B)(i)

**Subparagraph (B)(i)** addresses the species that are allocated to the CDQ Program and the management of these allocations.

*(B) PROGRAM ALLOCATION.—(i) IN GENERAL.—Except as provided in clause (ii), the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program in each directed fishery of the Bering Sea and Aleutian Islands shall be the percentage approved by the Secretary, or established by Federal law, as of March 1, 2006, for the program. The percentage for each fishery shall be either a directed fishing allowance or include both directed fishing and nontarget needs based on existing practice with respect to the program as of March 1, 2006, for each fishery.*

Prior to these amendments, section 305(i)(1)(A) of the MSA stated that “a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program.” The MSA now requires that “the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program *in each directed fishery of the Bering Sea and Aleutian Islands* shall be the percentage approved by the Secretary, or established by Federal law, as of March 1, 2006. NMFS interprets this change in the MSA to require allocations to the CDQ Program only for those total allowable catch (TAC) categories that had a directed fishery in 2006, when the MSA amendments were enacted.<sup>2</sup>

- *Halibut*: A directed fishery for halibut exists in the BSAI. Therefore, the current allocations of a percentage of the halibut quotas in Areas 4B, 4C, 4D, and 4E are consistent with section 305(i)(1)(B)(i) of the MSA. No changes are needed to the allocations of halibut to the CDQ Program.

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<sup>2</sup> The Conference Committee report on H.R. 889 (April 6, 2006, page H1660) states that “The Conference substitute requires that the CDQ Program continue to receive the same annual percentage allocations of each fishery as it does now under existing Federal statute and regulation.” This statement appears to be in conflict with the statutory requirement that allocations to the CDQ Program be made for each directed fishery of the BSAI. However, the legislative history also says “It is not the intent of the conferees to either change the current allocations to the CDQ program or create “squid box” problems where minor species such as squid inhibit any directed fishing under the CDQ program.” No longer allocating to the CDQ Program species or species groups that do not have a directed fishery in the BSAI would remove hard cap management for these species, which appears to be consistent with the second statement in the legislative history. NMFS will continue to examine the statute and its legislative history to ensure that our interpretations are consistent with the MSA.

- *Crab*: Some of the crab species allocated to the CDQ Program do not have directed fisheries in some years because of low stock abundance. If a commercial fishery quota is not established for a particular crab species, then no CDQ allocation is issued for that crab species that year. This process is consistent with section 305(i)(1)(B)(i) of the MSA, so no changes are needed to the allocations of crab to the CDQ Program.

Of the three species or species groups allocated to the CDQ Program (groundfish, halibut, and crab), the term “directed fishery” is most commonly applied to the groundfish TACs, because some of these TACs are not large enough to allow a directed fishery at any time during the year. Therefore, NMFS interprets this change in the MSA to require the identification of any groundfish TAC category that does not have a directed fishery in the BSAI. These TAC categories would no longer be allocated to the CDQ Program.

**Table 2** shows the groundfish TAC categories allocated to the CDQ Program as of March 1, 2006, and the percentage allocation to the program of each TAC category. Ten percent of the BSAI pollock TACs are allocated to the CDQ Program as directed fishing allowances, as required by the American Fisheries Act (AFA). Twenty percent of the fixed gear allocation of the sablefish TAC is allocated to the CDQ Program under BSAI Amendment 15, which was implemented in 1995. Squid has not been allocated to the CDQ Program since 2000 (under BSAI Amendment 66). Seven and one-half percent of the remaining groundfish TAC categories are allocated to the CDQ Program under BSAI Amendment 39, which was implemented in 1998.

Table 2 also shows the status of management of these allocations on March 1, 2006. The MSA requires that species allocated to the CDQ Program continue to be managed as either a directed fishing allowance or an allocation that includes “both directed fishing and nontarget needs” according to existing practices on March 1, 2006. Pollock is the only groundfish allocated to the CDQ Program that was managed as a directed fishing allowance on March 1, 2006. The remaining groundfish are managed as single quotas under which all catch of the species by vessels fishing on behalf of the CDQ group accrues against either the group’s allocation for that species, or against the allocation to the CDQ Program (if the species or species group is not allocated among the CDQ groups). All catch accrues against the CDQ allocations regardless of whether that fish was caught while directed fishing for the species or as incidental catch in other CDQ fisheries.

All of these groundfish CDQ allocations, except five rockfish TAC categories and the “other species” category, were managed under “hard caps” on March 1, 2006. The CDQ groups are prohibited from exceeding their CDQ allocations of these species. As shown on the second page of Table 2, northern rockfish, shortraker rockfish, roughey rockfish, other rockfish, and other species are not allocated among the CDQ groups, but are managed at the “CDQ reserve level” with soft caps. No directed fishing is allowed by any CDQ group on these species categories. All catch by all CDQ groups accrues against the CDQ allocation for these species. Retention of these species is limited by either maximum retainable amounts (MRAs) or retention is prohibited, depending on the status of the overall TAC for these species. Because these species are not allocated among the CDQ groups, no CDQ group is prohibited from exceeding a quota of these species, so catch of these species does not prevent the CDQ groups from harvesting their other CDQ allocations (unless catch by all sectors approaches overfishing).

Table 2. BSAI groundfish TAC categories; CDQ allocations and management approach on March 1, 2006; identification of TAC categories with a BSAI directed fishery in 2006; and notes about the likely status of the CDQ allocation in the future

TAC category	% allocation as of 3/1/2006	Management – “Existing Practices as of 3/1/2006”	Was there a BSAI directed fishery in 2006?	Likely Status in Future
Pollock, BS	10% as a DFA	Directed fishing allowance (DFA) managed with hard cap, incidental catch accrues against a single ICA for CDQ and non-AFA fisheries	yes	MSA requires both: (1) continued management under “existing practices,” and (2) regulation no more restrictive than cooperative (AFA) or IFQ fisheries.
Pollock, AI	10% as a DFA			
Pollock, Bogoslof	0%	Not allocated to CDQ Program	no	
Sablefish, BS, fixed gear	20%	Allocations include directed fishing and nontarget needs, hard cap	yes	
Sablefish, AI, fixed gear	20%		yes	
Pacific cod, BSAI	7.5%	Allocations include directed fishing and nontarget needs and are managed with a hard cap	yes	10% DFA + ICA under Am.85
Atka mackerel, EAI/BS	7.5%		yes	10% DFA + ICA under Am.80
Atka mackerel, CAI	7.5%		yes	
Atka mackerel, WAI	7.5%		yes	
Yellowfin sole, BSAI	7.5%		yes	
Rock sole, BSAI	7.5%		yes	
Greenland turbot, BS	7.5%		yes	
Greenland turbot, AI	7.5%		yes	
Arrowtooth flounder, BSAI	7.5%		yes	
Flathead sole, BSAI	7.5%		yes	
Other flatfish, BSAI	7.5%		yes	
Alaska plaice, BSAI	7.5%		yes	
Pacific ocean perch (POP), EAI	7.5%		yes	
POP, CAI	7.5%		yes	
POP, WAI	7.5%		yes	

DFA = directed fishing allowance; ICA = incidental catch allowance

Table 2 (continued). BSAI groundfish TAC categories; CDQ allocations and management approach on March 1, 2006; identification of TAC categories with a BSAI directed fishery in 2006; and notes about the likely status of the CDQ allocation in the future

TAC category	% allocation as of 3/1/2006	Management – “Existing Practices as of 3/1/2006”	Was there a BSAI directed fishery in 2006?	Likely Status in Future
Sablefish, BS, trawl	7.5%	Allocations include directed fishing and nontarget needs and are managed with a hard cap	no	No BSAI directed fishery, so would no longer be allocated to CDQ Program
Sablefish, AI, trawl	7.5%		no	
Pacific ocean perch, BS	7.5%		no	
Northern rockfish, BSAI	7.5%	Allocation to the CDQ Program for these species are managed at the CDQ reserve level with a soft cap and not allocated among the CDQ groups. No directed fishing allowed on these species in the CDQ Program	no	No BSAI directed fishery, so would no longer be allocated to CDQ program
Shortraker rockfish, BSAI	7.5%			
Rougheye rockfish, BSAI	7.5%			
Other rockfish, BS	7.5%			
Other rockfish, AI	7.5%			
Other species, BSAI	7.5%			
Squid, BSAI	0%	Not allocated to CDQ Program	yes	? because squid has not been allocated to the CDQ Program since 2000

Table 2 also identifies whether directed fishing was allowed for each species in the BSAI in 2006. Directed fishing for all of the species on page 1 of Table 2, except pollock in the Bogoslof District, was allowed at some time during 2006. Therefore, NMFS concludes that these TAC categories are consistent with the MSA term “each directed fishery” of the BSAI at the time this amendment to the MSA was made and would continue to be allocated to the CDQ Program.

The TAC categories that did not have a directed fishery in the BSAI in 2006 are:

- Pollock in the Bogoslof district
- Sablefish from the trawl allocation of the BS and AI sablefish TACs
- Bering Sea Pacific ocean perch
- Northern rockfish
- Shortraker rockfish
- Rougheye rockfish
- Other rockfish
- Other species

CDQ allocations for 2007 have already been established through the 2006/2007 groundfish specifications final rule (71 FR 10894; March 3, 2006). The species or species groups and percentage allocations identified in Table 2 as allocated to the CDQ Program in 2006 also were allocated to the CDQ Program in 2007 under this final rule. Rulemaking for the 2007/2008 groundfish specifications will be prepared after the October 2006 Council meeting. This rule will make any changes necessary for the 2007 fisheries and will implement specifications for the 2008 groundfish fisheries. **As a result of the Coast Guard Act, NMFS will propose in this rulemaking to no longer allocate to the CDQ Program the groundfish TAC categories listed above that did not have a directed fishery in the BSAI in 2006.** This action is necessary to make the rulemaking for the 2007/2008 groundfish specifications consistent with the MSA. NMFS also will propose to make changes to the CDQ allocations in BSAI Amendments 85 and 80. These proposed revisions are explained in more detail in the following section.

Catch in the CDQ fisheries of species in TAC categories that are not allocated to the CDQ Program would be managed under the regulations and fishery status that applies to the TAC category in all BSAI groundfish fisheries. Retention would either be limited to maximum retainable amounts or all catch of the species would be required to be discarded. Notices of closures to directed fishing and retention requirements for these species would apply equally to the CDQ and non-CDQ sectors. These species would be managed with “soft caps,” and catch of these species in the CDQ fisheries would not constrain the catch of other CDQ species unless catch by all sectors approached overfishing.

The MSA amendments did not address the allocations of halibut, salmon, and crab *prohibited species* to the CDQ Program. Therefore, NMFS assumes that these allocations would remain at 7.5% of each prohibited species catch limit and would continue to be allocated among the CDQ groups. Nothing in the MSA appears to restrict the Council’s ability to change the allocations of prohibited species to the CDQ Program in the future, or the management of these allocations to the program.

**All species allocated to the CDQ Program will remain at the percentage allocations in effect on March 1, 2006, unless a quota program, fishing cooperative, sector allocation, or other rationalization program is established after the date of enactment (July 11, 2006).**

Implementation of subparagraph (B)(ii) under Amendments 85 and 80

**Subparagraph (B)(ii)(I)** now requires that:

*(ii) EXCEPTIONS.—Notwithstanding clause (i)—(I) the allocation under the program for each directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) shall be a directed fishing allocation of 10 percent upon the establishment of a quota program, fishing cooperative, sector allocation, or other rationalization program in any sector of the fishery;*

BSAI Amendment 85 involves Pacific cod sector allocations and BSAI Amendment 80 involves both cooperatives and sector allocations for flatfish. However, the Council took final action on both of these FMP amendments before the MSA was amended by the Coast Guard Act. Therefore, an increase in CDQ allocations to 10 percent as a directed fishing allowance and the regulatory revisions necessary to implement these allocation changes must be added to these FMP amendments for the Council's recommendations to be consistent with the MSA.

**Amendment 85** would establish sector allocations of Pacific cod in the BSAI among nine non-CDQ harvesting sectors. Therefore, section 305(i)(1)(B)(ii)(I) of the MSA requires that, at the same time these sector allocations are established, the allocation of Pacific cod to the CDQ Program must increase to 10 percent as a directed fishing allocation.

The following summarizes the integration of this new section of the MSA into Amendment 85:

- NOAA GC has advised that the term “establishment” in section 305(i)(1)(B)(ii)(I) of the MSA means “the date on which fishing commences under an approved quota program, fishing cooperative, sector allocation or other rationalization program” (NOAA GC legal opinion, September 25, 2006). Therefore, NMFS interprets the MSA to require that the increase in the Pacific cod CDQ allocation to 10 percent of the TAC as a directed fishing allowance must occur when fishing commences under Amendment 85. At this time, and pending Secretarial approval, NMFS expects fishing under the Amendment 85 Pacific cod sector allocations to start on January 1, 2008.
- The analysis for Amendment 85 and proposed FMP amendment text must include provisions to increase the allocation of Pacific cod to 10 percent of the TAC as a directed fishing allowance to be consistent with section 305(i)(1)(B)(ii)(I) of the MSA when the Secretary reviews the proposed amendment. The proposed regulations developed by NMFS to support Amendment 85 also must be consistent with the MSA at the time the proposed rule is approved by the Secretary to be published in the *Federal Register*. These revisions have been made in the proposed FMP amendment text and the analysis, and they have been incorporated by NMFS into the proposed rule.
- The term “directed fishing allocation” means the same as “directed fishing allowance.”
- The 10 percent allocation of Pacific cod to the CDQ Program does not include the amount of Pacific cod needed for incidental catch and bycatch of Pacific cod in other groundfish CDQ fisheries.
- A CDQ Pacific cod incidental catch allowance (ICA) would be specified annually in the groundfish specifications process. This amount may change annually, depending on expected incidental catch needs in upcoming years.
- Figure 1 shows how the allocations of Pacific cod would occur under Amendment 85, with the addition of the requirements of section 305(i)(1)(B)(i)(I) of the MSA. The 10 percent allocation as a

directed fishing allowance and the CDQ incidental catch allowance would be subtracted from the Pacific cod TAC before further allocation among the non-CDQ harvesting sectors.

- The total incidental catch of Pacific cod in the CDQ fisheries has ranged from about 750 mt to 1,100 mt between 1999 and 2005, with an average of 946 mt. In 2004 and 2005, when the CDQ groups harvested the highest proportions of their flatfish CDQ allocations, the incidental catch of cod was about 1,100 mt or about 0.5% of the Pacific cod TACs in those years.
- Incidental catch of Pacific cod in the CDQ fisheries may increase in the future if CDQ allocations of groundfish increase to 10 percent of the TAC as a directed fishing allowance under Amendment 80 and if the CDQ groups harvest an increasing percentage of their flatfish allocations.
- If Amendment 85 is approved for 2008, NMFS likely will recommend in the 2008/2009 annual groundfish specifications a CDQ ICA for Pacific cod of between 0.5% and 1% of the Pacific cod TAC.

The Coast Guard Act requires that management of the Pacific cod CDQ allocations change from “hard cap” to “soft cap” management. To implement these requirements, NMFS will propose in Amendment 85 that:

- The CDQ directed fishing allowance of 10 percent of the TAC would be combined with the CDQ ICA each year to form the CDQ reserve for Pacific cod.
- The CDQ reserve of Pacific cod would then be divided among the CDQ groups based on the percentage allocations of Pacific cod in effect under section 305(i)(1)(C) of the MSA. Each CDQ group would receive one allocation of Pacific cod that would include its directed fishing allowance and a proportional share of the Pacific cod CDQ ICA.
- All catch of Pacific cod by any vessel fishing for that CDQ group would accrue against the CDQ group’s allocation of Pacific cod until that allocation was reached. When the CDQ allocation is reached, all vessels fishing on behalf of the CDQ group would be prohibited from further retention of Pacific cod (“soft cap”). Further catch of Pacific cod by vessels fishing on behalf of the CDQ group would still continue to occur in other groundfish CDQ fisheries. However, the prohibition on retention would minimize this additional catch because vessel operators would have no incentive to catch Pacific cod. The CDQ group would decide how to manage their CDQ fisheries and how to allocate their portion of the Pacific cod ICA among their vessels and target fisheries.
- Allocations made to each CDQ group would continue to be transferable among the CDQ groups, but not outside of the CDQ Program.
- No prohibitions would exist against a CDQ group exceeding the amount of Pacific cod allocated to it, because to do so would result in “hard cap” management and limitations on the group’s ability to conduct other groundfish CDQ fisheries in which additional Pacific cod may be caught.

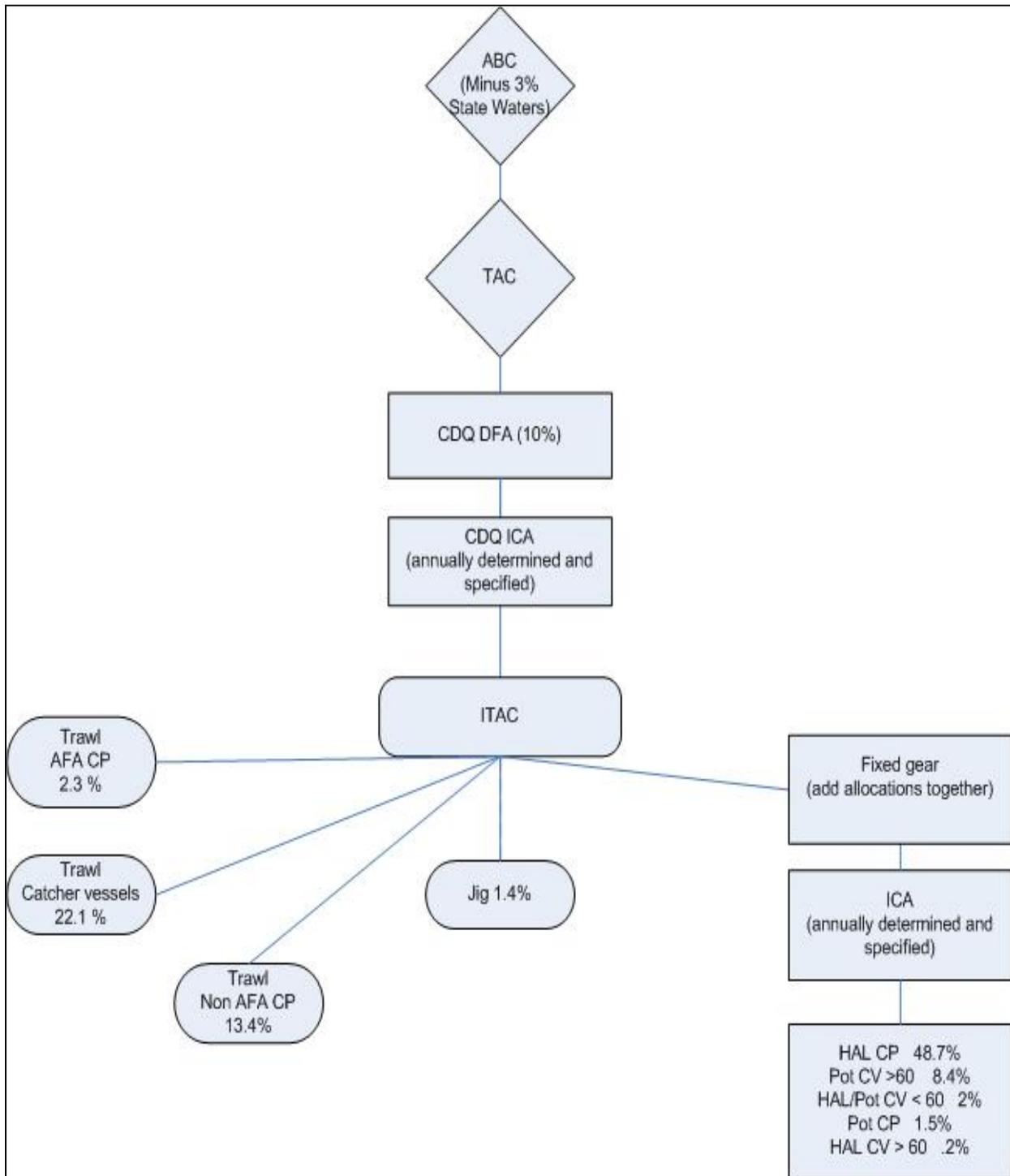


Figure 1. Allocations of Pacific cod under BSAI Amendment 85, including MSA requirements for CDQ allocations as a directed fishing allowance and a CDQ incidental catch allowance

- This approach does not require NMFS or the CDQ groups to identify the directed fishery or fisheries each vessel fishing on behalf of a CDQ group is participating in to accrue catch against a separate DFA or ICA. It also does not require the application of MRAs to manage the CDQ allocations, because the retention status for Pacific cod would change from 100 percent retention allowed while the CDQ group had an available Pacific cod allocation to no retention allowed once the CDQ allocation was reached.
- NMFS is concerned about maintaining the catch of Pacific cod in the CDQ fisheries to the amount allocated to the CDQ Program through the directed fishing allowance and CDQ ICA. The Pacific cod TAC will be fully allocated among the CDQ and non-CDQ harvesting sectors. Therefore, catch in excess of allocations by any sector could result in the total catch of Pacific cod exceeding the TAC. There is no buffer in the Pacific cod TAC/ABC to make up for overages by any of the harvesting sectors. The proposed approach for managing the allocations of Pacific cod to the CDQ Program maximizes the possibility that the catch of Pacific cod in the CDQ fisheries will not exceed the amount allocated to the program, because the CDQ groups will have no incentive to catch additional Pacific cod after the allocations are reached.

Under **Amendment 80**, the Council proposes to allow the non-AFA trawl catcher/processor sector to form cooperatives and receive allocations of Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, and flathead sole. Therefore, because Amendment 80 involves the authorization to form cooperatives, the requirements in section 305(i)(1)(B)(ii)(I) of the MSA are triggered for the Amendment 80 target species. In addition, the Council also proposed to increase the allocations of the Amendment 80 target species and “secondary species” to the CDQ Program to 10 percent of the TAC for each of these species or species groups. The secondary species in the Council’s motion on Amendment 80 includes all other species allocated to the CDQ Program in addition to the Amendment 80 target species. NMFS interprets that a change in the percentage of these secondary species TACs allocated to the CDQ Program constitutes the establishment of a sector allocation between the CDQ and non-CDQ sectors. An allocation of 10 percent of these secondary species TACs to the CDQ Program indirectly constitutes an allocation of 90 percent of the TACs to the non-CDQ sector or sectors. The establishment of sector allocations for the secondary species under Amendment 80 triggers the requirement that the allocations of species or species groups other than just the Amendment 80 target species will increase to 10 percent of the TAC as a directed fishing allowance.

Subparagraph (ii)(I) also specifies that increases in allocations required when a fishing cooperative or sector allocation is established applies only to each directed fishery of the BSAI. The TAC categories with directed fisheries in the BSAI in 2006 are listed in Table 2. Under Amendment 80, NMFS will propose that the allocation of the following TAC categories to the CDQ Program would increase to 10 percent of the TAC as a directed fishing allowance:

- Atka mackerel
- Aleutian Islands Pacific ocean perch
- Yellowfin sole
- Rock sole
- Flathead sole
- Arrowtooth flounder
- Alaska plaice
- Greenland turbot
- “Other” flatfish

NMFS also will propose similar measures to manage these species allocations to the CDQ Program under Amendment 80 as were described above for Amendment 85. For each of these species, NMFS annually

would specify a CDQ ICA that would be added to the 10 percent directed fishing allowance and then further allocated among the CDQ groups based on the applicable percentage allocations of each TAC category. All catch of these species by any vessel fishing on behalf of a CDQ group would accrue against the group's allocation until the allocation amount was reached, then further catch of these species would be required to be discarded.

No allocations to the CDQ Program would be made from the TAC categories that did not have a directed fishery in the BSAI in 2006. These species or species groups are:

- Pollock in the Bogoslof district
- Sablefish from the trawl allocation of the BS and AI sablefish TACs
- Bering Sea Pacific ocean perch
- Northern rockfish
- Shortraker rockfish
- Roughey rockfish
- Other rockfish
- Other species

NMFS also must resolve the status of squid under the section 305(i)(1)(B) of the MSA, because a directed fishery was allowed for squid in 2006. Thus, squid meets the conditions for "each directed fishery in the BSAI," although squid has not been allocated to the CDQ Program since 2000.

NMFS will propose that the list of species that would receive annual allocations to the CDQ Program would be fixed through the Amendment 80 rulemaking and could only be changed through FMP and regulatory amendments.

Catch of species that are not allocated to the CDQ Program would be managed under the regulations and fishery status that applies to the species in all BSAI groundfish fisheries. Depending on the amount of the TAC and the expected incidental catch in all groundfish fisheries, some retention may be allowed under MRAs, or all catch of the species would be required to be discarded. Closure notices for these species would apply equally to the CDQ and non-CDQ sectors.

Removing "hard cap" management of the CDQ allocations removes the potential for an enforcement action when a CDQ allocation is exceeded. Therefore, NMFS would no longer need the CDQ groups to submit the CDQ catch report to independently acknowledge the catch that is accruing against their CDQ allocations to support timely enforcement of "hard caps." As a result, NMFS will propose in Amendment 80 to remove the requirement that the CDQ groups submit a CDQ catch report to NMFS. The CDQ catch accounting and monitoring would be integrated into the regional catch accounting system managed by NMFS. The regional catch accounting system is based primarily on observer data, weekly production reports where observer data is not available, and shoreside delivery reports. All of the information necessary to manage the CDQ allocations and quotas is available from these other data sources already submitted to NMFS. Eliminating the CDQ catch report would reduce reporting costs for the CDQ groups, as well as computer programming and maintenance costs for NMFS.

Subparagraph (B)(ii)(I) specifically excludes pollock, sablefish, halibut, and crab from requirements associated with the establishment of a quota program, fishing cooperative, sector allocation, or other rationalization program. Therefore, the CDQ allocation requirements of section 305(i)(1)(B)(i) would continue to apply to these four species groups. Ten percent of the pollock TAC would continue to be allocated to the CDQ Program as a directed fishing allowance under the AFA. Ten percent of all crab TACs, except Norton Sound red king crab, would continue to be allocated to the CDQ Program under the crab rationalization program. Seven and one-half percent of the Norton Sound red king crab guideline

harvest level would continue to be allocated to the CDQ Program under the BSAI crab FMP and 50 CFR 679.31(d). The percentage allocations of halibut to the CDQ Program would continue to range from 20 percent to 100 percent of the halibut quotas in Areas 4B, 4C, 4D, and 4E under 50 CFR 679.31. Twenty percent of the fixed gear sablefish portion of the sablefish TACs would continue to be allocated to the CDQ Program under 50 CFR 679.20(b)(1)(iii)(B).

Subparagraph (B)(iv) related to regulation of harvest also must be evaluated in the Amendment 80 analysis and rulemaking to ensure that the CDQ allocations of the species allocated to cooperatives (the Amendment 80 target species) are managed no more restrictively than they are managed in the (non-CDQ) cooperative fisheries.

The fisheries management measures developed for Amendments 85 and 80 must anticipate that, in the near future, the combination of the recent changes to the MSA, Amendment 85, and Amendment 80 likely will require that the CDQ allocations of *all* groundfish species with directed fisheries in the BSAI, except fixed gear sablefish, will be 10 percent of the TAC as a directed fishing allowance. To accommodate the new requirements, NMFS proposes a consistent and integrated approach to managing CDQ allocations as directed fishing allowances. While in the past, management of a CDQ allocation as a directed fishing allowance was the exception (pollock), it will now become the method used for all groundfish CDQ allocations, with the possible exception of fixed gear sablefish.

### III. Fisheries Management

Fisheries management issues under this section include: 1) regulation of harvest (**Subparagraph (B)(iv)**), and 2) the status of the CDQ reserve management action from the December 2005 Council meeting. Subparagraph (B)(iv) is proposed to be implemented under a regulatory amendment.

#### Implementation of Requirements for the Regulation of Harvest

**Subparagraph (B)(iv)** requires:

*REGULATION OF HARVEST.—The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species.*

The BSAI fisheries with individual fishing quotas (IFQs) are halibut, fixed gear sablefish, and crab. The only BSAI fishery with fishing cooperatives is the Bering Sea pollock fishery, as established by the AFA. **Subparagraph (B)(iv) requires an assessment of the regulations governing CDQ allocations of halibut, fixed gear sablefish, crab, and pollock to identify regulations that are more restrictive than the regulations that apply in the applicable IFQ or cooperative fishery.** Regulations that are identified as inconsistent with the MSA must be revised through proposed and final rulemaking.

Initial assessment identifies three areas where the regulations governing the CDQ fisheries for halibut, fixed gear sablefish, or pollock are probably more restrictive than requirements that apply in the halibut or fixed gear sablefish IFQ fisheries or the pollock AFA fisheries. These three areas are: observer coverage requirements, catch retention requirements, and permit (LLP) requirements. A comparison and preliminary assessment is provided in **Table 3** and described in more detail below.

### *Observer coverage requirements*

Observer coverage requirements for vessels 60 feet (‘) and greater length overall (LOA) fishing for halibut CDQ or using fixed gear to fish for sablefish CDQ are higher than observer coverage requirements for vessels fishing for halibut IFQ or fixed gear sablefish IFQ. There are no observer coverage requirements for vessels directed fishing for halibut IFQ if they are not also directed fishing for groundfish. Observer coverage requirements for catcher vessels fishing for non-CDQ groundfish are based on vessel length (no coverage, 30 percent, and 100 percent coverage levels). Observer coverage requirements for vessels fishing for groundfish CDQ, including sablefish, are: one observer on  $\geq 60'$  catcher vessels and all pot catcher/processors, and two observers for catcher/processors using hook-and-line or trawl gear.

In 2005, five catcher vessels between 60' - 125' using pot gear and one catcher/processor (174' LOA) using hook-and-line gear harvested about 431 mt of fixed gear sablefish CDQ (203 mt in the BS and 224 mt in the AI). The five catcher vessels fished sablefish CDQ for a total of 216 days. If the same vessels had been fishing for sablefish IFQ, they would have been required to have 30 percent observer coverage. The hook-and-line catcher/processor fished for sablefish CDQ for three days. Catcher/processors are required to carry two observers while CDQ fishing, but they also have the option of submitting a request for approval of an alternative fishing plan that demonstrates that all CDQ catch can be observed by one observer. This catcher/processor was operating under an approved alternative fishing plan with one observer, which is the same observer coverage that would have been required if the vessel was sablefish IFQ fishing.

Two vessels between 60' - 125' fished for halibut CDQ in 2005. This resulted in approximately 40 days of observer coverage. The same vessels fishing for halibut IFQ would not have been required to carry observers. Most of the vessels that participate in the halibut CDQ fishery are  $< 60'$ . None of these vessels would have been required to carry observers under current CDQ requirements.

Thirty percent observer coverage is required for catcher vessels between 60' - 125', if the vessel is directed fishing for AFA pollock and 100 percent if the vessel is directed fishing for pollock CDQ. Therefore, the observer coverage requirements for this CDQ catcher vessel class are more restrictive than for the same AFA vessels while (non-CDQ) pollock fishing. However, in recent years, no catcher vessels that require observer coverage have participated in the pollock CDQ fisheries. Only catcher vessels delivering unsorted codends to motherships have participated in the pollock CDQ fisheries. These vessels are not required to have observers in either the CDQ or AFA pollock fisheries. Therefore, the revisions to CDQ observer coverage requirements to align pollock CDQ and pollock AFA requirements likely would have no practical effect on current observer coverage levels in the pollock CDQ fisheries.

Shoreside processors receiving deliveries from all catcher vessels groundfish CDQ fishing (including sablefish and pollock) and from vessels  $\geq 60'$  halibut CDQ fishing are required to have an observer in the plant to monitor the CDQ delivery. Observers from vessels using nontrawl gear can serve as the plant observer for the CDQ deliveries. Observer coverage at a shoreside plant receiving sablefish IFQ deliveries is 0 percent, 30 percent, or 100 percent based on the amount of groundfish processed at the plant each month. Observer coverage in shoreplants taking deliveries of AFA pollock from catcher vessels is similar to the CDQ observer coverage requirements and requires an observer to monitor each delivery.

Table 3. Comparison of regulation of harvest regulations for the halibut, sablefish, pollock, and crab CDQ fisheries compared with regulations governing the IFQ and AFA fisheries for these species

Fishery and Vessel or Processor Category	Observer Coverage Requirements in the Non-CDQ fisheries	Observer Coverage Requirements in the CDQ fisheries	CDQ more restrictive?
<b><i>Halibut (compare with IFQ)</i></b>			
Catcher vessel <60' LOA	None	None	No
Catcher vessel ≥60' LOA	None	1 observer	Yes
Catcher/processor (HAL gear)	None	2 observers, unless 1 obs. is approved under an alternative fishing plan	Yes
Shoreside processor	None	Each landing by CDQ vessels =>60' LOA must be observed, may use observer from vessel	Yes
<b><i>Sablefish (compare with IFQ)</i></b>			
Catcher vessel <60' LOA	None	None	No
Catcher vessel ≥60' LOA	30% or 100% depending on LOA	1 observer	Yes
Catcher/processor (HAL gear)	0%, 30%, or 100% depending on LOA	2 observers, unless 1 obs. is approved under an alternative fishing plan	Yes
Catcher/processor (pot gear)	0% or 30% depending on LOA	1 observer	Yes
Shoreside processor	0%, 30%, 100% observer coverage based on processor's monthly production	Each landing by CDQ vessels =>60' LOA must be observed, may use observer from vessel	Yes
<b><i>Pollock (compare with AFA)</i></b>			
Catcher vessel <60' LOA	None	None	No
Catcher vessel 60' to 124' LOA	30% observer coverage	1 observer	Yes
Catcher vessel ≥125' LOA	100% observer coverage	1 observer	No
Catcher vessel, unsorted codends	None	None	No
Catcher/processor (trawl gear)	2 observers	2 observers, all hauls must be observed	No
Mothership	2 observers, all hauls must be observed	2 observers, all hauls must be observed	No
Shoreside processor	Each landing must be observed	Each landing must be observed	No
<b><i>Crab (compare with IFQ)</i></b>	Observer coverage requirements for the crab fisheries are established by the State of Alaska. Requirements do not differ for the IFQ and CDQ crab fisheries.		No

Fishery and Vessel or Processor Category	Requirements for vessels and processors in non-CDQ fisheries	Requirements for vessels and processors in CDQ fisheries	CDQ more restrictive?
<b><i>Retention Requirements</i></b>			
Catcher vessel <60' LOA, halibut	Halibut if available IFQ, rockfish and cod <sup>1</sup>	Rockfish and cod <sup>1</sup>	No
Catcher vessel <60' LOA, sablefish	Sablefish if available IFQ, rockfish and cod <sup>1</sup>	Rockfish and cod, <sup>1</sup> all groundfish CDQ species if using CDQ catch accounting option 1 <sup>2</sup>	Yes
Catcher vessel ≥60' LOA, halibut or sablefish	Halibut or sablefish if available IFQ, rockfish and cod <sup>1</sup>	Rockfish and cod, <sup>1</sup> all groundfish CDQ species if using CDQ catch accounting option 1 <sup>2</sup>	Yes
Catcher/processor, halibut or sablefish	Halibut or sablefish if available IFQ, rockfish and cod <sup>1</sup>	Rockfish and cod <sup>1</sup>	No
Catcher vessels, any length, pollock	Pollock and cod under IR/IU at §679.27	Pollock and cod under IR/IU at §679.27, all groundfish CDQ species	Yes
Catcher/processors or motherships, pollock	Pollock and cod under IR/IU at §679.27	Pollock and cod under IR/IU at §679.27	No
<b><i>LLP Requirements</i></b>			
Halibut	Vessels fishing only for halibut IFQ are not required to have an LLP.	Vessels fishing only for halibut IFQ are not required to have an LLP.	No
Sablefish	Vessels directed fishing for sablefish IFQ are exempt from LLP requirements.	Sablefish CDQ is not included in the LLP exemption for sablefish IFQ	Yes
Pollock	LLP is required	LLP is required	No

<sup>1</sup> Vessels fishing for halibut and sablefish IFQ, or halibut CDQ must retain all rockfish and Pacific cod, unless discard is required under 50 CFR part 679, subpart B, or by the State of Alaska.

<sup>2</sup> Retention is not required if the vessel is using catch accounting option 2, which relies on observer's species composition sampling for catch estimates.

### *Groundfish CDQ retention and accounting requirements*

Catcher vessels  $\geq 60'$  fishing for groundfish CDQ or halibut CDQ are required to retain all groundfish and have it sorted and weighed at a shoreside processor (unless they choose to use observer data for catch accounting, in which case they are required to have an observer sampling station). All of the catcher vessels using fixed gear in the CDQ fisheries have selected the option of retaining CDQ species and using landed catch weights rather than installing an observer sampling station and using observer data. The retention requirements exist to obtain accurate accounting of all species that accrue against the CDQ group's allocations. A similar retention requirement for these groundfish species does not exist in the halibut or fixed gear sablefish IFQ fisheries or in the pollock AFA fisheries, with the following two exceptions.

1. Vessels directed fishing for halibut or fixed gear sablefish in both the IFQ and CDQ fisheries are required to retain all of rockfish and Pacific cod.
2. Vessels using trawl gear in both the CDQ and non-CDQ groundfish fisheries are required to retain Pacific cod and pollock under regulations at 50 CFR 679.27.

### *Permit requirements*

Federal regulations at 50 CFR 679.4(k) require vessel operators directed fishing for "license limitation groundfish" to have a License Limitation Program (LLP) license. Section 679.2 defines license limitation groundfish to exclude sablefish managed under the IFQ program, but does not exclude sablefish managed under the CDQ Program. The requirement to have an LLP license to use fixed gear to harvest CDQ sablefish probably would be considered more restrictive than the requirements that apply to the harvest of sablefish IFQ. The exemption to the definition of license limitation groundfish may need to be expanded to include sablefish CDQ harvested with fixed gear.

### *Crab regulation of harvest*

An initial assessment of applicable regulations identified no differences that would be considered more restrictive for the crab CDQ allocations or fisheries relative to the crab IFQ allocations or fisheries.

### *Implementation of regulatory amendments*

The areas of inconsistency in regulation of harvest identified above require analysis and revisions to Federal regulations. The analysis will require the identification of alternatives, or an explanation of why only one set of regulatory revisions will remove the inconsistencies between section 305(i)(1)(B)(iv) of the MSA. This analysis is in preparation and an update with more detail about the alternatives and scope of the analysis will be presented to the Council at its December 2006 meeting. If these regulatory amendments undergo review at two Council meetings and subsequent preparation of proposed and final rules, it is unlikely that regulatory changes will be effective until late 2007 or 2008.

One of the alternatives NMFS will consider in this analysis is whether fixed gear sablefish CDQ should be managed under the IFQ Program regulations, similar to halibut CDQ currently. This would ensure that the fixed gear sablefish CDQ allocations are not managed more restrictively than fixed gear sablefish IFQ, because these two program allocations would be managed under the same regulations. However, NMFS is seeking further input on other potential alternatives. A specific opportunity for input on all aspects of the issue will be provided when the initial draft analysis is presented to the Council.

NMFS also must address how to comply with the requirements of the MSA for the duration of 2006, as well as 2007. CDQ groups have indicated that they are, and will be, using about the same types and numbers of vessels as were used in 2005 to fish for their remaining 2006 halibut CDQ and fixed gear sablefish CDQ. Yukon Delta Fisheries Development Association has requested NMFS to issue an enforcement policy about observer coverage requirements for vessels fishing for sablefish CDQ (see Item C-2(f) attached to the action memo for this issue). NMFS is coordinating a response to this letter with NMFS Enforcement and NOAA GC.

Status of CDQ Reserve Management Action

In December 2005, the Council recommended the following regulatory amendments for the management of groundfish CDQ reserves:

1. Remove the prohibition against allowing the transfer of groundfish CDQ or halibut PSQ from one CDQ group to another CDQ group to cover harvest overages.
2. Allocate only target species CDQ reserves among CDQ groups. CDQ target species allocations would be managed as hard caps and unallocated CDQ reserves would be managed as soft caps.

The Council adopted the following list of CDQ target and non-target species to be identified in Federal regulation:

CDQ Target Species		CDQ Non-Target Species
BS and AI pollock	Bogoslof pollock*	BSAI Alaska plaice **
BSAI Pacific cod		AI Greenland turbot **
BS and AI sablefish (fixed gear)		BSAI northern rockfish
BS and AI sablefish (from trawl allocation)*		BSAI other flatfish**
EAI/BS, CAI, and WAI Atka mackerel		BSAI shortraker rockfish
BSAI yellowfin sole		BSAI rougheye rockfish
BSAI rock sole		BS and AI other rockfish
BS Greenland turbot		BS Pacific ocean perch
BSAI flathead sole		
EAI, CAI, and WAI Pacific ocean perch		<b>Existing exceptions</b>
BSAI arrowtooth flounder		BSAI other species (not allocated among groups)
		BSAI squid (not allocated to CDQ Program)

\*A directed fishery was not allowed in the BSAI for these TAC categories, so these species would not be allocated to the CDQ Program in the future.

\*\*These species were open to directed fishing in the BSAI in 2006, so these species would continue to be allocated to the CDQ Program in the future.

NMFS began developing a proposed rule for the CDQ reserve management action following the December 2005 Council meeting. NMFS suspended work on this rulemaking in March 2006, once it became apparent that elements of the Coast Guard Act would address some of the same issues addressed by the Council’s action and, in some cases, would conflict with the Council’s action.

The primary concern about the consistency between the MSA and the Council's recommendations relates to which groundfish species will continue to be allocated to the CDQ Program and how these allocations will be managed under Amendments 85 and 80. Three TAC categories that the Council recommended be designated as CDQ target species, allocated among the groups, and managed with a "hard cap" would not be allocated to the CDQ Program under NMFS's interpretation of section 305(i)(1)(B)(i) and (ii) of the MSA (pollock in the Bogoslof district and the trawl allocation of sablefish in the BS and AI). (See the previous discussion under Section II of this paper.)

If Amendments 85 and 80 are approved, most of the groundfish species allocated to the CDQ Program would be allocated as directed fishing allowances plus an amount needed for incidental catch in the CDQ fisheries. Although these species would continue to be allocated among the CDQ groups, the MSA would require NMFS to manage these allocations with soft caps. Therefore, the Council's December 2005 recommendation about continuing to manage CDQ target species allocations with hard caps would be inconsistent with the MSA.

Three of the TAC categories that the Council recommended be designated as CDQ nontarget species and not allocated among the CDQ groups would continue to be allocated to the CDQ Program under section 305(i)(1)(B)(i) of the MSA: Alaska plaice, Greenland turbot, and other flatfish. Directed fishing for these TAC categories was allowed in 2006. Therefore, the MSA would require allocation of these species to the CDQ Program. Under Amendment 80, NMFS will propose that 10 percent of the TACs for these species or species group would be allocated to the CDQ Program as a directed fishing allowance and continue to be allocated among the CDQ groups. Therefore, elements of the Council's December 2005 recommendations about the CDQ non-target species also would be inconsistent with the MSA.

Because the allocations and management of groundfish to the CDQ Program are now governed by the MSA, NMFS proposes to implement revisions to the regulations identifying which species are allocated to the CDQ Program, the percentage allocations, and the management of these CDQ allocations through the 2007/2008 groundfish specifications and Amendments 85 and 80. **Therefore, the regulatory revisions associated with the Council's December 2005 recommendations about how to manage the species allocated to the CDQ Program would not be further developed by NMFS as a separate regulatory action.**

NMFS has not yet fully evaluated how the amendments to the MSA affect the Council's recommendation to allow the transfer of groundfish CDQ or halibut PSQ between CDQ groups to cover harvest overages (after-the-fact transfers). Analysis of this question requires further legal interpretation of section 305(i)(1)(B)(i). Specifically, NMFS must determine what current management measures are included in the requirement that allocations to the CDQ Program continue to be managed based on existing practices as of March 1, 2006. In addition, NMFS must evaluate whether the Council's recommendation for after-the-fact transfers could be included in CDQ fisheries management measures implemented to support the changes in CDQ allocations and management of these allocations required under Amendments 85 and 80. If they cannot, the Council could consider recommending that NMFS continue to pursue allowing after-the-fact transfers by incorporating it into the regulatory amendment being prepared for regulation of harvest or as a separate regulatory action.

#### IV. Decennial review and allocation adjustment process

The Coast Guard Act maintains the current CDQ allocations among the groups (those in place as of March 1, 2006), and provides a process for adjusting the allocations among the groups, starting in 2012 and every ten years thereafter. The issues related to the review and readjustment process are the subject of this section: 1) decennial review and adjustment of allocations (**Subparagraph (H)**), and 2) definition of the Community Development Plan (**Subparagraph (J)**). Both of these provisions are proposed to be implemented under the same FMP/regulatory amendment.

**Subparagraph (H)** of the Act requires that the State of Alaska conduct a decennial review (starting in 2012 and every ten years thereafter) of the CDQ groups and make any adjustments to allocations that result from the review under State law. No role is required for the Secretary of Commerce in the review or allocation adjustment unless State law prevents the State from undertaking this responsibility. If State law does not allow the State to conduct this review and readjust the allocations among the groups, the Secretary of Commerce is required to do so. **NMFS sent a letter to the State of Alaska on July 28, 2006, outlining subparagraph (H) of the Act and asking for a written legal determination by the State as to whether it has the legal authority to adjust CDQ allocations consistent with the requirements of the MSA.**<sup>3</sup> This determination will assist NMFS and the Council in determining whether FMP and/or Federal regulatory amendments are necessary to implement this provision.

The MSA provides specific authority for the State to conduct the review and allocation readjustment process without requiring a role for NMFS. If the State has this authority under its Constitution and laws to conduct the review and readjustment process consistent with the MSA, the Secretary of Commerce would not be required to review and approve the State's decisions, as has been the practice in past allocation processes. It is possible that NMFS's role could be limited to accepting a written decision from the State about the adjusted CDQ percentage allocations and, on the basis of this information, NMFS could establish the annual allocations to the CDQ groups of groundfish, halibut, and crab CDQ. Thus, the content and scope of the analysis to implement the decennial review and allocation adjustment process is dependent on whether or not the State has the authority to conduct this process.

In addition, **subparagraph (J)** of the Act defines the community development plan. This provision states that a CDP means a plan, prepared by a CDQ group, for the program that describes how the group intends: "i) to harvest its share of fishery resources allocated to the program, or ii) to use its share of fishery resources allocated to the program, and any revenue derived from such use, to assist its member villages with projects to advance economic development, but does not include a plan that allocates fishery resources to the program" [emphasis added]. (Note that while subparagraph (J) defines the CDP, subparagraph (I) explicitly states that the approval by the Secretary of a CDP, or an amendment to a CDP, is not required.<sup>4</sup>) Thus, at a minimum, current Federal regulations are inconsistent with the definition of a CDP in subparagraph (J) and must be revised. However, since current regulations require submission of a CDP only as application for allocations, this inconsistency may not require immediate action.

Both subparagraphs (H) and (J) address the decennial review process and adjustment in allocations, in that (H) appears to require the preparation and submission of the CDP defined in (J) in order for the State to conduct its review, recognizing that the CDP no longer represents an application for allocations. Staff intends to implement both subparagraphs (H) and (J) through the same regulatory amendment. **Because**

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<sup>3</sup>Letter from Robert Mecum, Acting Administrator, Alaska Region, NMFS to William Noll, Commissioner, Dept. of Commerce, Community and Economic Development. July 28, 2006. This letter is Item C-2(c) attached to the C-2 action memo.

<sup>4</sup>See letter from Robert Mecum, Acting Administrator, Alaska Region, NMFS to William Noll, Commissioner, Dept. of Commerce, Community and Economic Development. August 30, 2006. This letter is Item C-2(e) attached to the C-2 action memo.

**the analysis to implement these provisions depends heavily on whether or not the State has the authority to conduct the evaluation and reallocation process, staff recommends waiting to further analyze these subparagraphs until the State responds to the request for a determination of its authority. This is, in part, why staff is planning an FMP/regulatory amendment for the allocation issues in these paragraphs separate from BSAI Amendment 71/22. Staff recommends re-evaluating this plan if the State is unable to respond to NMFS's request by the February 2007 Council meeting.**

The following are a few summary points regarding the plan for this FMP/regulatory amendment, depending on the State's response:

1. If the State does have the legal authority to conduct the review and readjustment process, staff needs to determine how and when the results of this process get communicated to NMFS in time to revise percentage allocations that are applied to annual CDQ allocations.
2. If the State determines that it does not have the authority to conduct the review and reallocation process, analysts would not have to spend a lot of time researching and explaining how the process would work if the State has this legal authority.
3. If the State determines that it does not have the authority to conduct the review and reallocation process on its own, then staff would develop alternatives for the process through which NMFS would consider adjustments to CDQ allocations on a decennial basis. In effect, the review and potential readjustment of CDQ percentage allocations would have to be done under the authority of the Secretary of Commerce, either through rulemaking or an administrative adjudication. NMFS would be responsible to ensure that the process used as a basis for any readjustment complied with all applicable Federal laws.
4. Under both scenarios, it is uncertain how changes would be made to prohibited species quota (PSQ) percentage allocations. This authority has not been delegated to the State under the MSA. The analysis must determine if the option exists to delegate this to the State or, because it is not explicitly included in the MSA, whether NMFS must take final agency action to change PSQ allocations.

## **V. Other administrative and oversight issues**

The remaining Coast Guard Act provisions related to the administration and oversight of the CDQ Program that require changes to Federal regulations are intended to be implemented through a separate FMP/regulatory amendment. **These include those changes resulting from subparagraphs (A), (D), (E), and (I). The FMP amendment number will continue to be BSAI Am. 71 to the BSAI groundfish FMP and Amendment 22 to the crab FMP, as these numbers have previously been reserved for this action.** However, the proposed amendments will not mirror the Council's previous or current (as of December 2005) alternatives for BSAI Am. 71/22, as they must be revised to be consistent with the MSA amendments made through the Coast Guard Act.

**Table 4**, attached to this paper, provides a comparison of the Council's alternatives for BSAI Amendments 71/22 from December 2005 with the recent MSA amendments. Table 4 thus identifies which alternatives previously developed under Amendment 71/22 are no longer consistent with the MSA. This table includes the differences between the State of Alaska Blue Ribbon Panel's recommendations (Alternative 3) and the MSA. The amendments to the MSA implement many of the Blue Ribbon Panel's recommendations, but there are some provisions that vary.

In brief, this preliminary review shows that Alternative 1 (no action) and Alternative 2 are not consistent with the revised MSA. In December 2006, staff intends to provide a discussion paper that will: 1) propose to restructure the alternatives for BSAI Amendments 71/22 such that they are consistent with the MSA amendments, and 2) identify potential options under the discretionary issues that appear to allow for decisions by the Council. Initial review of this amendment package would be tentatively scheduled for February 2007.

The remainder of this section reviews subparagraphs (A), (D), (E), and (I) that will be implemented through Am. 71/22. There are several discretionary and non-discretionary issues related to these subparagraphs. Meaning, some provisions of the Coast Guard Act are specific and explicit requirements, and others provide an opportunity for the Council to develop and evaluate options for their implementation. Staff divided the non-discretionary and discretionary issues as follows for further discussion.

The **non-discretionary** requirements are primarily in subparagraphs (A), (D), and (I) as follows:

- new statement of program purpose (A)
- explicit list of eligible communities and the CDQ groups that may represent them (D)
- approval of CDPs and CDP amendments is not required (I)

The major **discretionary** issues are associated with changes needed in Federal regulations to implement the requirements related to eligibility requirements for the CDQ groups in subparagraph (E):

- composition of board of directors (E)(i)
- election of CDQ Panel members (E)(ii)
- allowable investments (E)(iii) and (iv)
- statement of compliance (E)(v)
- other CDQ Panel requirements (E)(vi)

#### Non-discretionary requirements

First, **subparagraph (A)** creates a new purpose statement for the CDQ Program:

*“(A) IN GENERAL. – There is established the western Alaska community development quota program in order –  
(i) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area;  
(ii) to support economic development in western Alaska;  
(iii) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and  
(iv) to achieve sustainable and diversified local economies in western Alaska.”*

Amendments 71/22 would add this purpose statement to the BSAI groundfish FMP and remove the current statement of purpose in Federal regulations at 50 CFR 679.1(e). There are no options associated with this subparagraph.

Second, **subparagraph (D)** lists each of the 65 eligible villages in the CDQ Program, as well as the CDQ group through which each village is allowed to participate. The list of communities in subparagraph (D) supersedes the MSA *criteria* for eligible villages, such that no new communities can become eligible for the program in the future. The subparagraph also requires that communities can only participate through the CDQ group listed in the MSA; thus, a community can no longer change to a different CDQ group or form a new CDQ group and continue its eligibility in the program. Amendment 71/22 would thus: 1)

revise Table 7 in Federal regulations to list all 65 eligible communities; 2) add the list of 65 eligible communities to the BSAI FMP; and 3) remove the community eligibility criteria from the BSAI groundfish FMP and Federal regulations. There are no options associated with this subparagraph.

Note that the Council took action on eligible communities in April 2006.<sup>5</sup> This action was necessary to make the BSAI groundfish and crab FMPs and regulations consistent with the MSA and the 2005 transportation act (SAFETEA-LU).<sup>6</sup> While not yet submitted to the Secretary of Commerce, this action would modify the community eligibility criteria in regulation to exactly conform to the criteria listed in the MSA, as well as clarify that all 65 currently participating communities are eligible. In addition, this action would establish a process in Federal regulations by which communities not listed as eligible in regulation can apply and be evaluated for eligibility in the program using the same criteria. At the time the Council took action on this issue, it was noted that this action would be affected by the 2006 Coast Guard Act, if approved. As noted above, the MSA amendments made through the Coast Guard Act limit eligible communities to only those 65 currently participating and remove the community eligibility criteria. Thus, prior to final action on Amendment 71/22, the Council will likely need to rescind its previous action on eligible communities from April 2006.

In addition, Amendments 71/22 would reorganize and update the CDQ sections in the BSAI crab FMP, and would refer readers to the BSAI groundfish FMP for detail as appropriate. These housekeeping items were also included in the eligible communities amendment package the Council approved in April 2006.

Finally, **subparagraph (I)** addresses the approval of the community development plan (CDP):

*“(I) SECRETARIAL APPROVAL NOT REQUIRED. – Notwithstanding any other provision of law or regulation thereunder, the approval by the Secretary of a community development plan, or an amendment thereof, under the program is not required.”*

Subparagraph (I) is interpreted by NOAA GC to mean that the Secretary of Commerce may not require approval of CDPs or amendments to CDPs. Because current Federal regulations<sup>7</sup> require such approval, current regulations are more restrictive than the MSA. Amendment 71/22 would thus remove Federal regulations for this requirement. There are no options associated with this subparagraph.

Note that the State has already sent a written request (August 3, 2006) to NMFS for a determination on whether approval of substantial amendments to CDPs is still required under the MSA amendments, as two substantial amendments have recently been proposed and submitted by a CDQ group to the State. NMFS determined that certain regulations related to the submission, review, and approval or disapproval by NMFS of CDPs and CDP amendments, the annual budget report, and the annual budget reconciliation report, are inconsistent with subparagraph (I) of the MSA. Thus, while these Federal regulations are proposed to be revised through Amendment 71/22, NMFS is suspending enforcement of these particular regulations until such time that rulemaking can be completed. NMFS’s response to the State and the regulations at issue are attached to the action memo for this agenda item (Item C-2(e)).

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<sup>5</sup>BSAI Amendment 87 to the BSAI Groundfish FMP and Amendment 21 to the BSAI King and Tanner Crab FMP and regulatory amendments.

<sup>6</sup>Safe, Accountable, Flexible, Efficient Transportation Equity Act (August 2005).

<sup>7</sup>Regulations at 50 CFR 679.30(d) requires NMFS to approve CDPs. Regulations at 50 CFR 679.30(g)(4) and (5) require the submission of CDP amendments and the review and approval of amendments by NMFS.

## Discretionary requirements

The major discretionary issues are associated with changes needed in Federal regulations to implement **subparagraph (E)**. **This subparagraph creates a new section that lists six requirements for participating CDQ groups. These requirements are proposed to be listed in Federal regulation under Amendments 71/22:**

- composition of board of directors (E)(i)
- election of CDQ Panel members (E)(ii)
- allowable investments (E)(iii) and (iv)
- statement of compliance (E)(v)
- other CDQ Panel requirements (E)(vi)

**Subparagraph (E)(i)** requires that the CDQ group shall be governed by a Board of Directors, 75% of the members of which are resident fishermen from the entity's member villages. It further requires that the Board shall include at least one director selected by each such member village. Current Federal regulations at 50 CFR 679.2 require that the Board be comprised of at least 75% resident fishermen of the community or group of communities. Thus, while Federal regulations would be revised under Amendments 71/22 to use the same wording as (E)(i), current regulations are not inconsistent with the MSA.

**Subparagraph (E)(ii)** requires that the CDQ group shall elect a representative to serve on the CDQ Panel established under subparagraph (G). The functions of the CDQ Panel are listed such that the panel shall: 1) administer those aspects of the program not otherwise addressed in the paragraph, either through private contractual arrangement or through recommendations to the Council, Secretary, or State of Alaska; and 2) coordinate and facilitate activities of the entities under the program. The panel can only act by unanimous vote of all six members. Recall from Table 1, that at this point, the CDQ Panel establishment, functions, and decision making processes under subparagraph (G) do not appear to require changes to the FMPs or Federal regulations. (If revisions are identified in the future, staff could include those in Amendments 71/22.) Thus, staff currently proposes to limit Amendments 71/22 to adding the requirement to Federal regulations that each CDQ group must identify a CDQ Panel representative, as this is included in the requirements to participate in the CDQ Program under subparagraph (E).

**Subparagraphs (E)(iii) and (iv) govern allowable investments by the CDQ groups, and Subparagraph (v) requires submission of an annual statement of compliance to the Secretary and the State, summarizing the purposes for which each group made such investments.** Subparagraph (E)(iii) allows each CDQ group to make up to 20% of its annual investments in any combination of the following:

- (I) *For projects that are not fishery-related and that are located in its region.*
- (II) *On a pooled or joint investment basis with one or more other entities participating in the program for projects that are not fishery-related and that are located in one or more of their regions.*
- (III) *For matching Federal or State grants for projects or programs in its member villages without regard to any limitation on the Federal or State share, or restriction on the source of any non-Federal or non-State matching funds, of any grant program under any other provision of law.*

Subparagraph (E)(iv) states:

*“The entity shall make the remainder percent of its annual investments in fisheries-related projects or for other purposes consistent with the practices of the entity prior to March 1, 2006.”*

Note that the alternatives currently in Amendment 71/22 provide various options for the type of allowable investments and the amount that the CDQ groups may invest in non-fisheries related projects (see Table 3). These alternatives are no longer consistent with the MSA, and thus, should not continue to be included for further analysis in Am. 71/22. **However, there appears to be discretion for the Council to choose options to both define terms under subparagraph (E)(iii)-(v) and/or to determine NMFS’s role in monitoring compliance with these requirements. Because limitations on allowable investments are explicitly provided for in the Act, it is assumed that the Federal government may have some role in the evaluation and/or oversight of compliance with these requirements.**

Subparagraphs (E)(iii), (iv), and (v) allow for various alternatives to implement the requirements related to allowable investments. The following represent possible alternatives for Council consideration, which address: 1) the elements of the MSA requirements that would be included in NMFS regulations, and 2) the extent to which NMFS would monitor or evaluate compliance with the allowable investment requirements. These could be included in Am. 71/22, depending on the legal interpretation of these requirements:

#### **Alternative 1: No Action**

Alternative 1 would allow the MSA requirements to stand on their own without associated Federal regulations. Because specific Federal regulations that govern allowable investments currently do not exist, there is no need to revise current regulations. If no changes were made to the FMP and regulations under Alternative 1, the MSA would provide the applicable requirements for limitations on investments and the requirement to submit the statement of compliance to the Secretary and State. Legal interpretation will inform whether this is a viable alternative, or viable in part. For example, NOAA GC may need to determine whether the MSA requirement that the CDQ groups submit a statement of compliance requires NMFS to implement regulations governing the submission of this report. This alternative will need to be evaluated regardless, in terms of the analytical need to describe the status quo.

#### **Alternative 2: Require submission of the statement of compliance by a specific date**

Alternative 2 would revise Federal regulations to require the submission of the statement of compliance by a specific date. This alternative represents a very limited role for NMFS. The regulations could be limited to the exact language in the MSA, without further definitions or clarifications, and establish a date at which the report is due to NMFS. The intent under this alternative is that NMFS would accept a signed certification that the report was accurate and would not independently evaluate the accuracy of the report unless some other information provided to NMFS indicated that a false statement had been filed. NMFS would need to determine the consequences of not submitting a report by the date required (e.g., enforcement action, permit sanction, etc.).

#### **Alternative 3: Limited role for NMFS**

Alternative 3 could represent a role for NMFS in the substance and format of the statement of compliance, but would not require NMFS to determine whether each CDQ group complied with the limitations on allowable investments. Federal regulations could be revised to: 1) include the MSA language governing allowable investments; 2) define specific terms (e.g. investment, fishery-related, CDQ region, other purposes consistent with the practices of the entity prior to March 1, 2006); 3) specify

the format and contents of the statement of compliance, and 4) specify the submission date of the statement of compliance.

Similar to Alternative 2, NMFS would accept that a signed certification was accurate and would not independently evaluate the accuracy or completeness of the report unless some other information provided to NMFS indicated that a false statement had been filed. In effect, the regulations would provide the CDQ groups with increased detail on the meaning of the terms in the MSA and provide a standardized format for the statement of compliance. This may help guide the CDQ groups to ensure that they are in compliance with the MSA; however, this alternative does not differ from Alternative 2 in that NMFS does not evaluate the report for accuracy.

#### **Alternative 4: NMFS actively monitors compliance with MSA requirements**

Like Alternative 3, Alternative 4 would revise Federal regulations to: 1) include the MSA language governing allowable investments; 2) define specific terms (e.g. investment, fishery-related, CDQ region, other purposes consistent with the practices of the entity prior to March 1, 2006); 3) specify the format and contents of the statement of compliance, and 4) specify the submission date of the statement of compliance.

However, Alternative 4 would provide for an increased oversight role for NMFS compared to Alternative 3. NMFS would require the submission of more detailed information about investments by the CDQ groups in order to evaluate: the total amount invested each year in each category by the CDQ group; the classification of investments into the two categories (generally fisheries related versus non-fisheries related); and whether the CDQ group complied with the spending limits in the MSA. This information could be required as part of the statement of compliance or required separately.

Legal interpretation will inform whether this alternative would be consistent with the MSA. For example, NOAA GC may need to determine whether NMFS has the authority to define specific terms (e.g., CDQ region, investment, etc.), and whether NMFS can require the submission of more detailed information than a 'summary'. This legal guidance is necessary as summary information in the statement of compliance would not provide adequate information to evaluate or verify whether the CDQ groups were complying with the MSA requirements.

**In sum, staff proposes that the alternatives for BSAI Am. 71/22 be modified to reflect the changes resulting from the Coast Guard Act related to administrative and government oversight issues (Subparagraphs (A), (D), (E), and (I)). In effect, alternatives and options that are no longer consistent with the MSA would be removed, and new alternatives and options could be added relative to the issues in which the Council may have additional discretion. Staff will provide a discussion paper in December 2006 to facilitate this effort, with a proposed restructuring of the alternatives.**

## **VI. Summary**

There is no action required by the Council at this meeting. The purpose of this report is to inform the Council about the plan to implement the various elements of the Coast Guard Act relevant to the CDQ Program. The MSA revisions can be categorized into four general issues: allocations; fisheries management; decennial review and adjustment of allocations; and administration and oversight. At this time, staff intends to implement the provisions of the Act through seven separate FMP and/or regulatory amendments. In December, staff plans to provide a discussion paper with proposed changes to the alternatives and options for BSAI Am. 71/22, in order to facilitate Council action to modify those alternatives to implement the administrative and oversight provisions consistent with the MSA.

**Table 4. Comparison of current Amendment 71/22 alternatives with MSA amendments  
(An “X” through the cell identifies alternatives previously developed for Amendment 71 that are no longer consistent with the MSA)**

Component	Alternative 1 (no action)	Alternative 2 (preferred alt from June 2002)	Alternative 3 (Blue Ribbon Panel)	MSA Amendments under 2006 Coast Guard Bill
<b>1. Role of government in oversight</b>	Not specifically defined. No revisions to current regulations.	<del>Define the role of government oversight in the CDQ Program.</del>	Option 1: State conducts nonbinding review of proposed major investments and “transparency” reporting by Div. of Banking & Securities. Option 2: Minimum role of NMFS and Council to maximum extent permissible.	Likely not necessary to specifically define in FMP or regulations, because the MSA now provides specific requirements.
<b>2. Extent of government oversight</b>	<del>No revisions to current regulations.</del>	<del>Oversight extends to CDQ groups and &gt;50% owned subsidiaries.</del>	State would implement regulations for financial reporting requirements similar to ANCSA Corps., annual report to communities, disclosure of compensation. State would provide annual report to Council, including copies of each CDQ group’s annual report to communities.	Defined by specific requirements in the MSA. Removes requirement for approval of community development plans and amendments by NMFS.
<b>3. Allowable investments</b>	<del>No revisions to current regulations.</del>	<del>CDQ groups may invest up to 20% of previous year’s pollock royalties in non-fisheries projects in the CDQ region.</del>	<del>CDQ groups may invest up to 20% of net revenues in non-fisheries related projects in the CDQ region.</del>	CDQ groups may invest up to 20% of annual investments in non-fisheries related projects, etc.
<b>4. CDQ Program purpose</b>	<del>No revisions to statement of purpose in §679.1(e).</del>	<del>Revised statement of purpose for the CDQ Program.</del>	<del>Revised statement of purpose for the CDQ Program (two options).</del>	MSA contains a specific statement of the purpose of the CDQ Program, (different from Alt. 1 – 3).
<b>5. Process by which CDQ allocations are made</b>	<del>Allocations made by NMFS informal administrative adjudication based on recommendations from State.</del>	<del>Options to continue current allocation process or to make CDQ allocations through rulemaking.</del>	Allocations would continue to be made through NMFS informal adjudication based on recommendations from the State.	MSA requires decennial review and allocation adjustment process for CDQ percentage allocations. MSA requires State to conduct this process, if authority allows. NMFS informal adjudication may be an alternative for this process, depending on State’s authority.

<b>6. Fixed versus performance-based allocations</b>	<del>100% of CDQ is allocated on a competitive basis.</del>	<del>100% of CDQ is allocated on a competitive basis.</del>	85% - 95% of each percentage allocation of <i>CDQ and PSQ</i> to a group is fixed, 5% - 15% is variable every allocation cycle.	90% of each percentage allocation of CDQ to a group is fixed, 10% is variable. No requirement related to PSQ percentage allocations.
<b>7. CDQ allocation evaluation criteria</b>	<del>Specific evaluation criteria are in State regulations and are not specified in Federal regulations.</del>	<del>List of 10 evaluation criteria that would be added to NMFS regulations. Population is the only one of these ten criteria that is consistent with MSA criteria.</del>	List of 6 evaluation criteria: 1. population/poverty level 2. # of jobs created 3. amt of in-region investment in fisheries and non-fisheries 4. amt and # of scholarships & training 5. community econ development 6. financial performance of CDQ group	MSA requires four specific evaluation criteria: 1. population, poverty level & econ development 2. financial performance of CDQ group 3. employment, scholarships, training 4. achievement of goals of the group's CDP
<b>8. Duration of the allocation cycle</b>	<del>Variable cycle length, as determined by the State. Length of allocation cycle not in Federal regulations.</del>	<del>3-year allocation cycle.</del>	10-year allocation cycle to coincide with US Census. First 10-year cycle would be 2012 - 2021.	10-year allocation cycle to coincide with US Census. First 10-year cycle would be 2012 - 2021. First review would be conducted in 2012.
<b>PROPOSED NEW COMPONENTS TO INCLUDE UNDER AM. 71/22</b>				
<b>9. Eligible communities</b>	n/a	n/a	n/a	Provides list of eligible communities and the CDQ groups under which they may participate.
<b>10. Eligibility requirements for CDQ groups</b>	n/a	n/a	n/a	MSA lists eligibility requirements for CDQ groups to participate in the program: 1. Board of Directors must be 75% resident fishermen from group's member villages. 2. Each group elects a rep to serve on CDQ Panel. 3. Allowable investments (see component 3) 4. Each group shall submit an annual statement of compliance to the SOC and State of Alaska.

Table 4 – Comparison of current Amendment 71/22 alternatives with MSA amendments

**Table 5. Summary of issues and management measures necessary to implement the MSA amendments made through the 2006 Coast Guard Act**

Provision (referring to new subparagraphs of MSA section 305(i)(1))	Summary of the issue and FMP and regulatory amendments that are required to implement provisions
<p><b>(1) Western Alaska Community Development Quota Program.—</b>  <b>(A) In General.</b>—There is established the western Alaska community development quota program in order—            (i) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area;            (ii) to support economic development in western Alaska;            (iii) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and            (iv) to achieve sustainable and diversified local economies in western Alaska.</p>	<p>The MSA statement of the purpose of the CDQ Program is different from the purpose in the BSAI groundfish FMP and 50 CFR part 679. Revise FMP amendment and regulations text to be consistent with the MSA through BSAI Amendment 71/22.</p>
<p><b>(B) Program Allocation.</b> <i>(i) In General.</i>—Except as provided in clause (ii), the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program in each directed fishery of the Bering Sea and Aleutian Islands shall be the percentage approved by the Secretary, or established by Federal law, as of March 1, 2006, for the program. The percentage for each fishery shall be either a directed fishing allowance or include both directed fishing and nontarget needs based on existing practice with respect to the program as of March 1, 2006, for each fishery.</p>	<p>NMFS interprets “each directed fishery” to mean that TAC categories without a directed fishery in the BSAI in 2006 would no longer be allocated to the CDQ Program. NMFS will propose to no longer allocate the following species to the CDQ Program in the 2007/2008 groundfish specifications, and in the future: pollock in the Bogoslof district, sablefish from the trawl allocation, BS POP, northern rockfish, shortraker rockfish, rougheye rockfish, other rockfish, and other species.</p>
<p><b>(B)(ii) Exceptions.</b>—Notwithstanding clause (i)—            (I) the allocation under the program for each directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) shall be a directed fishing allocation of 10 percent upon the establishment of a quota program, fishing cooperative, sector allocation, or other rationalization program in any sector of the fishery; and</p>	<p>BSAI Amendment 85 and Amendment 80 trigger the requirements of this paragraph. Appropriate FMP and regulatory amendments will be made through those amendment packages.</p>

<p><b>(B)(ii) Exceptions.</b> (II) the allocation under the program in any directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) established after the date of enactment of this subclause shall be a directed fishing allocation of 10 percent.</p>	<p>No FMP or regulatory amendments are needed unless a new BSAI directed fishery is established in the future.</p>
<p><b>(B) (iii) Processing and other rights.</b> (iii) Processing and other rights.—Allocations to the program include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006.</p>	<p>Initial assessment has not identified any FMP or regulatory amendments that would be needed for this provision because, as described in the legislative intent, this subparagraph reflects current practices under the FMPs and federal regulations.</p>
<p><b>(B)(iv) Regulation of Harvest.</b>—The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species.</p>	<p>This paragraph affects the regulations governing CDQ allocations and fisheries for halibut, fixed gear sablefish, pollock, and crab (the species with IFQ programs or cooperatives). It will primarily require amendments to regulations for halibut and fixed gear sablefish CDQ fisheries and, to a lesser extent, pollock CDQ. An initial assessment has not identified any revisions required for crab CDQ. A separate regulatory amendment package will be prepared to implement these requirements.</p>
<p><b>(C) Allocations to entities.</b>—Each entity eligible to participate in the program shall be authorized under the program to harvest annually the same percentage of each species allocated to the program under subparagraph (B) that it was authorized by the Secretary to harvest of such species annually as of March 1, 2006, except to the extent that its allocation is adjusted under subparagraph (H). Such allocation shall include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006.</p>	<p>A notice was published in the <i>Federal Register</i> on August 31, 2006, listing the percentage allocations among the CDQ groups of groundfish, halibut, and crab that were in effect on March 1, 2006. These percentage allocations will be in effect unless changed under the decennial review and allocation adjustment process described in subparagraph (H). The first review is required to occur in 2012. The MSA amendments did not address the percentage allocations of prohibited species quota among the CDQ groups. The percentage allocations initially approved by NMFS on January 17, 2003, will be in effect under an administrative determination issued by NMFS on September 7, 2005. The process for changing PSQ percentage allocations should be evaluated through the FMP and regulatory amendment package for the decennial review and allocation adjustment process under subparagraph (H).</p>
<p><b>(D) Eligible Villages.</b>—The following villages shall be eligible to participate in the program through the following entities: ...</p>	<p>Supersedes Council’s April 2006 action on consistency with SAFETEA-LU under Amendments 87/22. Requires communities to be associated with specific CDQ groups. Action is to add the list of CDQ groups and associated eligible communities to FMPs and revise Table 7 to 50 CFR part 679 through revised Amendment 71/22.</p>

Table 5 – Summary of issues and management measures necessary to implement MSA amendments

<p><b>(E) Eligibility Requirements for Participating Entities.</b>—To be eligible to participate in the program, an entity referred to in subparagraph (D) shall meet the following requirements:</p>	<p>NMFS interprets the provisions of subparagraph (E) as eligibility requirements for participation in the CDQ Program and receipt of CDQ allocations.</p>
<p><b>(i) Board of Directors.</b> —The entity shall be governed by a board of directors. At least 75 percent of the members of the board shall be resident fishermen from the entity’s member villages. The board shall include at least one director selected by each such member village.</p>	<p>These are the same requirements as currently exist in §679.2, (definition of qualified applicant for the CDQ Program). Compliance information was collected through the CDPs, so a different means of collecting verification of compliance with this requirement will have to be developed. Suggest including in revised Amendment 71/22.</p>
<p><b>(ii) Panel Representative.</b> —The entity shall elect a representative to serve on the panel established by subparagraph (G).</p>	<p>Develop regulations needed to confirm compliance with this eligibility requirement through revised Amendment 71/22.</p>
<p><b>(iii) Other Investments.</b> —The entity may make up to 20 percent of its annual investments in any combination of the following:  (I) For projects that are not fishery-related and that are located in its region.  (II) On a pooled or joint investment basis with one or more other entities participating in the program for projects that are not fishery-related and that are located in one or more of their regions.  (III) For matching Federal or State grants for projects or programs in its member villages without regard to any limitation on the Federal or State share, or restriction on the source of any non-Federal or non-State matching funds, of any grant program under any other provision of law.  <b>(iv) Fishery-Related Investments.</b>—The entity shall make the remainder percent of its annual investments in fisheries-related projects or for other purposes consistent with the practices of the entity prior to March 1, 2006.  <b>(v) Annual Statement of Compliance.</b>—Each year the entity, following approval by its board of directors and signed by its chief executive officer, shall submit a written statement to the Secretary and the State of Alaska that summarizes the purposes for which it made investments under clauses (iii) and (iv) during the preceding year.</p>	<p>A requirement for the submission of the annual statement of compliance should be added to NMFS regulations as a condition of eligibility for the CDQ Program. Assess alternatives for implementation of this requirement and whether any other elements of (E)(iii) and (iv) need to be in Federal regulations through revised Amendment 71/22.</p>
<p><b>(vi) Other Panel Requirements.</b>—The entity shall comply with any other requirements established by the panel under subparagraph (G).</p>	<p>Assess how (or whether) compliance with this provision should be included in NMFS regulations as a requirement for eligibility for the CDQ Program under revised Amendment 71/22.</p>

Table 5 – Summary of issues and management measures necessary to implement MSA amendments

<p><b>(F) Entity Status, Limitations, and Regulation.</b> The entity—  (i) shall be subject to any excessive share ownership, harvesting, or processing limitations in the fisheries of the Bering Sea and Aleutian Islands Management Area only to the extent of the entity’s proportional ownership, excluding any program allocations, and notwithstanding any other provision of law;</p>	<p>Initial assessment indicates that this provision will require amendments to the BSAI crab FMP and regulations at 50 CFR part 679 (AFA) and 680 (crab). Assess alternatives and impacts through a separate FMP and regulatory amendments package, as opposed to Amendment 71/22.</p> <p>NMFS is assessing a request from one of the CDQ groups to issue an interpretation of how to apply this provision to transfers until regulations can be revised.</p>
<p><b>(F) (ii)</b> shall comply with State of Alaska law requiring annual reports to the entity’s member villages summarizing financial operations for the previous calendar year, including general and administrative costs and compensation levels of the top 5 highest paid personnel;  <b>(iii)</b> shall comply with State of Alaska laws to prevent fraud that are administered by the Alaska Division of Banking and Securities, except that the entity and the State shall keep confidential from public disclosure any information if the disclosure would be harmful to the entity or its investments; and  <b>(iv)</b> is exempt from compliance with any State law requiring approval of financial transactions, community development plans, or amendments thereto, except as required by subparagraph (H).</p>	<p>Initial assessment has not identified any FMP or regulatory amendments that would be needed for this provision. Requirements to implement these provisions would be implemented, monitored, and enforced by the State of Alaska.</p>
<p><b>(G) Administrative Panel.</b> (i) Establishment.—There is established a community development quota program panel.  (ii) Membership.—The panel shall consist of 6 members. Each entity participating in the program shall select one member of the panel.  (iii) Functions.—The panel shall—  (I) administer those aspects of the program not otherwise addressed in this paragraph, either through private contractual arrangement or through recommendations to the North Pacific Council, the Secretary, or the State of Alaska, as the case may be; and  (II) coordinate and facilitate activities of the entities under the program.  (iv) Unanimity required.—The panel may act only by unanimous vote of all 6 members of the panel and may not act if there is a vacancy in the membership of the panel.</p>	<p>Initial assessment has not identified any FMP or regulatory amendments that would be needed for this provision.</p>

Table 5 – Summary of issues and management measures necessary to implement MSA amendments

<p><b>(H) Decennial Review and Adjustment of Entity Allocations.</b></p> <p><b>(i) In general.</b>—During calendar year 2012 and every 10 years thereafter, the State of Alaska shall evaluate the performance of each entity participating in the program based on the criteria described in clause (ii).</p> <p><b>(ii) Criteria.</b>—The panel shall establish a system to be applied under this subparagraph that allows each entity participating in the program to assign relative values to the following criteria to reflect the particular needs of its villages: <b>(I)</b> Changes during the preceding 10-year period in population, poverty level, and economic development in the entity’s member villages. <b>(II)</b> The overall financial performance of the entity, including fishery and nonfishery investments by the entity. <b>(III)</b> Employment, scholarships, and training supported by the entity. <b>(IV)</b> Achieving of the goals of the entity’s community development plan.</p> <p><b>(iii) Adjustment of allocations.</b>—After the evaluation required by clause (i), the State of Alaska shall make a determination, on the record and after an opportunity for a hearing, with respect to the performance of each entity participating in the program for the criteria described in clause (ii). If the State determines that the entity has maintained or improved its overall performance with respect to the criteria, the allocation to such entity under the program shall be extended by the State for the next 10-year period. If the State determines that the entity has not maintained or improved its overall performance with respect to the criteria—<b>(I)</b> at least 90 percent of the entity’s allocation for each species under subparagraph (C) shall be extended by the State for the next 10-year period; and <b>(II)</b> the State may determine, or the Secretary may determine (if State law prevents the State from making the determination), and implement an appropriate reduction of up to 10 percent of the entity’s allocation for each species under subparagraph (C) for all or part of such 10-year period.</p> <p><b>(iv) Reallocation of reduced amount.</b>—If the State or the Secretary reduces an entity’s allocation under clause (iii), the reduction shall be reallocated among other entities participating in the program whose allocations are not reduced during the same period in proportion to each such entity’s allocation of the applicable species under subparagraph (C).</p>	<p>The State is required to conduct the decennial review and evaluation of the CDQ group’s performance based on criteria in (H)(ii). The CDQ Panel is required to participate in the process.</p> <p>(H)(iii)(II) authorizes the State to adjust up to 10 percent of a CDQ group’s percentage allocation. If State law prevents the State from undertaking this responsibility, the MSA authorizes the Secretary of Commerce to adjust allocations. On July 28, 2006, NMFS wrote a letter to the State asking it to make a determination about its legal authority to conduct the allocation adjustments authorized by the MSA. NMFS has not yet received a response from the State.</p> <p>The analysis of alternatives to implement this subparagraph will differ depending on the State’s authority to conduct allocation adjustments and the role required for the Secretary of Commerce. Staff advises analyzing these alternatives in an FMP and regulatory amendment package separate from revised Amendment 71/22. Regulations for the decennial review and allocation adjustment process are not needed as soon as regulations for other provisions of the Coast Guard Act (first review not required until 2012). In addition, addressing this subparagraph in a separate FMP and regulatory amendment package would provide the State more time to respond to NMFS’s letter.</p>
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Table 5 – Summary of issues and management measures necessary to implement MSA amendments

<p><b>(I) Secretarial Approval Not Required.</b>—Notwithstanding any other provision of law or regulation thereunder, the approval by the Secretary of a community development plan, or an amendment thereof, under the program is not required.</p>	<p>NMFS issued an interpretation and interim policy suspending enforcement of requirements to submit Community Development Plans (CDPs), amendments to CDPs, the annual budget report, and the annual budget reconciliation report on August 30, 2006. Regulations for these requirements should be removed as soon as possible through Amendment 71/22. Any new requirements for CDPs would be considered in the FMP and regulatory amendment package for the decennial review and allocation adjustment process under subparagraph (H).</p>
<p><b>(J) Community Development Plan Defined.</b>—In this paragraph, the term ‘community development plan’ means a plan, prepared by an entity referred to in subparagraph (D), for the program that describes how the entity intends—(i) to harvest its share of fishery resources allocated to the program, or (ii) to use its share of fishery resources allocated to the program, and any revenue derived from such use, to assist its member villages with projects to advance economic development, but does not include a plan that allocates fishery resources to the program.</p>	<p>(H)(ii)(IV) requires information from the CDPs to be used in the decennial review of the CDQ group’s performance. Therefore, some form of a CDP will continue to be part of the CDQ Program. Assessment of the future role of the CDP will be included in the FMP and regulatory amendment package developed for the decennial review and allocation adjustment process under subparagraph (H).</p>