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WESTERN ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT QUOTA PROGRAMS, AND H.R. 553, THE WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM IMPLEMENTATION IMPROVEMENT ACT OF 2001

HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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OVERSIGHT OF THE WESTERN ALASKA AND WESTERN PACIFIC COMMUNITY DEVELOPMENT QUOTA PROGRAMS, AND H.R. 553, THE WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM IMPLEMENTATION IMPROVEMENT ACT OF 2001

Thursday, July 19, 2001
U.S. House of Representatives
Subcommittee on Fisheries Conservation, Wildlife and Oceans
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to other business, at 11:06 a.m., in Room 1324, Longworth House Office Building, Hon. Don Young, presiding.

STATEMENT OF THE HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. The Subcommittee will come to order. Because I have a lengthy opening statement, I will go ahead and read that statement, and then by that time we hope to have a minority member here.

I would like to welcome the witnesses for today's hearing, and especially thank our guests who have traveled from Alaska for the hearing.

This hearing will focus on three important issues. First, the Subcommittee will review the success of Western Alaska Company Development Quota Program. Secondly, we will look at the progress that has been made in developing a Western Pacific Community Development Program. And, thirdly, we will hear testimony on H.R. 553, the Western Alaska Community Development Quota Program Improvement Act of 2001.

As most of you know, the Western Alaska CDQ Program was created by the North Pacific Fishery Management Council as part of the pollock Fishery Management Plan (FMP), which was implement in 1992. This was done as a means of bringing economic development to the resource-poor areas of western Alaska. Other than fisheries resources, the people of this region did not have access to any other renewable resources. They could only watch as large factory fleets were able to harvest the fishery resources because entry into these fisheries required large amounts of capital.

In 1996, with the passage of the Sustainable Fisheries Act, the Western Alaska CDQ Program was authorized into law. And I am pleased to take a certain amount of credit with that, along with Harold Sparck and his vision a long, long time ago, to try to bring some type of resource development into these impoverished areas.

As the CDQ Program grew and proved a success, the North Pacific Council and the Congress recognized the program's value and added more fisheries to the CDQ program.

As the program has matured, I have carefully watched the progress of the CDQ communities as many have become increasingly integrated into the commercial fisheries of the Bering Sea. As this integration has occurred, it has become apparent that if the communities are to continue to invest in fishing opportunities in the Bering Sea, constraints on their ability to make timely business decisions must be removed. This is a growing process, and we must recognize it.

I am concerned that the constraints placed on the program by the State of Alaska, to ensure compliance with the original intent of the program, have not kept pace with the program's growth.

Two issues in particular have constrained the communities' ability to exercise control over their own financial futures. The first is the frequency of the review and allocation of fishing quotas among the six CDQ groups. The uncertainty surrounding an annual or biennial allocation to each CDQ group prevents them from making long-term business decisions and is counterproductive to the goals and intent of the original program—economic stability for the communities.

The second constraint on the CDQ groups' future success is the review and required concurrence by the State of Alaska for any investment, regardless of how small or how large, even the investment of profits earned through already-approved CDQ projects. I am unclear where the State of Alaska believes this authority is granted to the State. I have reviewed this. It is originally my proposal. Never a thought that was to come to mind, and in addition, question whether this makes sense for the future of this program.

And for those reasons, the 106th Congress introduced H.R. 5567 to deal with the problems with the oversight of the program. While that legislation was introduced too late in the session to see action, I reintroduced this legislation in the 107th Congress. It had been approximately 1 year and 2 months.

This legislation is not perfect, and I will admit that, but I believe the need for intensive oversight is here. The program has matured to the point that neither the State of Alaska, nor the National Marine Fisheries Service should have the ability to approve or disapprove everything that the CDQ groups do. It is time consuming, and allows the approval process to be controlled by political whims and by individuals who might not have any interest nor thought, in fact, use their little bully pulpit for being God and deciding how things shall be done.

The Sustainable Fisheries Act also asked the National Academy of Sciences to review the current program and to make recommendations for the future program. I am pleased that a representative of that review committee is here today, who will present those recommendations. I am a little concerned that these

recommendations were made in 1999, and very frankly, little attention has been paid to them by the agencies of the State, which claim oversight authority for the program.

I think everyone here today understands I feel very strongly about this program, and understand it has matured to the point that intrusive oversight by any agency, Federal or State, is unnecessary and should be eliminated.

This CDQ program has been incredibly successful in giving the people of this region access to the fisheries off their shores, in Federal waters, and has provided economic development and educational opportunities. While the program is beginning to show success, we are a long way from providing long-term stable economic development for this region. This program can get us there if allowed to continue and to mature. I want to work with everyone here to make sure it happens.

I look forward to hearing the testimony. You can be sure I will have questions to get this discussion moving forward, to continue the greatness of this program.

[The prepared statement of Mr. Young follows:]

Statement of The Honorable Don Young, a Representative in Congress from the State of Alaska

I would like to welcome our witnesses for today's hearing and especially thank our guests who have traveled from Alaska for the hearing.

This hearing will focus on three important issues. First, the Subcommittee will review the successes of the Western Alaska Community Development Quota Program.

Secondly, we will look at the progress that has been made in developing a Western Pacific Community Development Program.

Thirdly, we will hear testimony on H.R. 553, the Western Alaska Community Development Quota Program Implementation Improvement Act of 2001.

As most of you know, the Western Alaska CDQ program was created by the North Pacific Fishery Management Council as part of the pollock Fishery Management Plan (FMP), which was implemented in 1992. This was done as a means of bringing economic development to the resource-poor areas of western Alaska. Other than fishery resources, the people of this region did not have access to other renewable resources. They could only watch as the large factory fleets were able to harvest the fishery resources because entry into these fisheries required large amounts of capital.

In 1996, with the passage of the Sustainable Fisheries Act, the Western Alaska CDQ program became authorized in law. I am pleased to take a certain amount of credit for that action.

As the CDQ program grew and proved its success, the North Pacific Council and Congress recognized the program's value and added more fisheries to the CDQ program.

As the program has matured, I have carefully watched the progress of the CDQ communities as many have become increasingly integrated into the commercial fisheries of the Bering Sea. As this integration has occurred, it has become apparent that if the communities are to continue to invest in fishing opportunities in the Bering Sea, constraints on their ability to make timely business decisions must be removed.

I am concerned that the constraints placed on the program by the State of Alaska, to ensure compliance with the original intent of the program, have not kept pace with the program's growth.

Two issues in particular have constrained the communities' ability to exercise control over their own financial futures. The first is the frequency of the review and allocation of fishing quotas among the six CDQ groups. The uncertainty surrounding an annual or biennial allocation to each CDQ group prevents them from making long-term business decisions and is counter productive to the goals and intent of the original program - economic stability for the communities.

The second constraint on the CDQ groups' future success is the review and required concurrence by the State of Alaska for any investment, even the investment

of profits earned through already approved CDQ projects. I am unclear where the State of Alaska believes this authority is granted to the State, and in addition, question whether this makes sense for the future of the CDQ program.

For these reasons, in the 106' Congress, I introduced H.R. 5565, to deal with some of the problems with the oversight of the CDQ program. While that legislation was introduced too late in the Congress to see action, I reintroduced the legislation in the 107' Congress - H.R. 553.

This legislation may not be perfect, but I believe the need for intensive oversight is gone. The program has matured to the point that neither the State of Alaska nor the National Marine Fisheries Service should have the ability to approve or disapprove everything that the CDQ groups do. It is time consuming, it allows the approval process to be controlled by political whims, and is unnecessary.

The Sustainable Fisheries Act also asked the National Academy of Sciences to review the current program and to make recommendations for the future of the program. I am pleased that a representative of that review committee is here today and will present these recommendations. I am a little concerned that these recommendations were made in 1999 and little attention has been paid to them by the agencies which claim oversight authority over the program.

I think everyone here today understands that I feel the CDQ program has matured to the point that intrusive oversight by any agency - Federal or State - is unnecessary and should be eliminated.

This CDQ program has been incredibly successful in giving the people of this region access to the fisheries off their shores, and has provided economic development and educational opportunities. While the program is beginning to show success, we are a long way from providing long-term, stable economic development for this region. This program can get us there if allowed to continue and to mature. I want to work with everyone here to make sure that happens.

I look forward to hearing, the testimony and you can be sure I will have questions to get this discussion moving forward for the good of the CDQ program.

Mr. YOUNG. I will now recognize the ranking member, Mr. Underwood, to make a statement, and then I will welcome the first panel.

Mr. Underwood.

STATEMENT OF THE HON. ROBERT A. UNDERWOOD, A DELEGATE IN CONGRESS FROM GUAM

Mr. UNDERWOOD. Thank you, Mr. Chairman.

It is no secret that I am a firm supporter of local rights and capabilities when it comes to resources management and uses. When the Sustainable Fisheries Act was passed in 1996, the creation of the Alaska and Western Pacific Community Development Programs gave us all hope that native people would be able to benefit from, and gain access to, natural resources, access that has been slowly denied to them, for a variety of reasons, over time.

The North Pacific Fishery Management Council took the mandate given to it and began a program bringing new access and rights to the native people in the region. The State of Alaska took an interest and also became involved in the program. A study by the National Academy of Sciences, which has been commissioned by Congress, has been completed, and finds the Alaska program to be, in general, working successfully to achieve the goals set for it, except for Mr. Young's comment, which I accept. Money is being brought into the native communities, reinvestment is taking place in the fishing industry, and education and prospects are increasing for the young people.

But what about the Western Pacific Program? This was authorized as well in the Sustainable Fisheries Act, but no program has been created, no money has been brought into the native commu-

nities, no reinvestment in fishing capability has taken place. What is this about? I hope that NMFS is prepared, in testifying today, to talk not only about the success and the problems associated with the Alaska program, but also about the lack of a program in the Western Pacific.

Western Pacific fisheries are important. The native communities of the Western Pacific are important as well. A program should be created which utilizes the knowledge of the local communities, while allowing them access to traditional resources and the ability to utilize these resources in a way that is beneficial to their communities. Any program in Alaska or the Western Pacific must have a mechanism for community input and for adapting to new situations and to new needs, both within and outside the program.

Thank you, Mr. Chairman, and I look forward to hearing from these witnesses.

[The prepared statement of Mr. Underwood follows:]

Statement of The Honorable Robert Underwood, a Delegate in Congress from Guam

Thank you, Chairman Gilchrest. It is no secret that I am a firm supporter of local rights and capabilities when it comes to resources management and uses. When the Sustainable Fisheries Act was passed in 1996, the creation of the Alaska and Western Pacific Community Development Programs gave us all hope that native people would be able to benefit from, and gain access to, natural resources. Access that had been slowly denied to them, for a variety of reasons, over time.

The North Pacific Fishery Management Council took the mandate given to it and began a program, bringing new access and rights to the native people in the region. The State of Alaska took an interest and also became involved in the Program in a positive way. The Study by the National Academy of Sciences, which had been commissioned by Congress, has been completed and finds the Alaska program to be, in general, working successfully to achieve the goals set out for it. Money is being brought into the native communities, reinvestment is taking place in the fishing industry, and education and prospects are increasing for the young people.

But what about the Western Pacific Program? This was authorized as well in the Sustainable Fisheries Act. But no program has been created, no money has been brought into the native communities, no reinvestment in fishing capability has taken place. Why is this? I hope that NMFS is prepared, in testifying today, to talk not only about the success of the Alaskan program, but also about the lack of a program in the Western Pacific.

Western Pacific fisheries are important. The native communities of the Western Pacific are important. A Program should be created which utilizes the knowledge of the local communities while allowing them access to traditional resources and the ability to utilize these resources as they see fit. Any program in Alaska or the Western Pacific must have a mechanism for community input and for adapting to new situations and to new needs both within and outside the Program. Thank you, Mr. Chairman, and I look forward to hearing from these witnesses.

Mr. YOUNG. I thank the gentleman. Thanks to Bob for being here too. I appreciate it very much. And by the way, you have a good point, and we will see if we can, as we review this, maybe crank them up a little bit on the Western Pacific.

Mr. UNDERWOOD. Appreciate it.

Mr. YOUNG. All right, thank you.

We will now call Panel Number 1. Dr. Jim Balsiger, Ms. Chris Elfring, and Mr. Jeffrey Bush. And I bet you, Mr. Bush, is that Jeb Bush? Is that—I think we had better leave at Jeffrey, all right? That would be good enough. And we will start out in the order which I announced them. Doctor, you are first.

STATEMENT OF JIM BALSIGER, ALASKA REGIONAL ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE

Mr. BALSIGER. Mr. Chairman and members of the Subcommittee, thank you for inviting the National Marine Fisheries Service to this hearing on the amendment of the Magnuson-Stevens Fishery Conservation and Management Act regarding the community development programs.

I am Jim Balsiger, Alaska Regional Administrator for the National Marine Fisheries Service and the National Oceanic and Atmospheric Administration in the Department of Commerce.

The Western Alaska Community Development Quota Program was created in 1992 to provide fishermen, who resided in Western Alaska an opportunity to participate on more favorable terms in the Bering Sea and Aleutian Island fisheries, and to diversify their local economies.

Currently, 65 communities with 27,000 inhabitants located near the Bering Sea coast or on islands in the Bering Sea, are eligible to participate in the CDQ program. These 65 communities have formed six nonprofit corporations called CDQ groups.

In the last decade CDQ operations have increased significantly. Several species other than pollock are now managed under CDQs. Specific allocations of Bering Sea and Aleutian Islands groundfish and crab have been assigned to the CDQ Program. And in 1998, pollock CDQ allocation was increased from 7-1/2 percent to 10 percent. As a result, by 2000, the year 2000, about 180,000 tons of groundfish, halibut and crab were allocated to the CDQ program, and the six CDQ groups had total revenues of about $63 million. CDQ groups have accumulated assets worth approximately $187 million, including ownership of small processing plants, catcher vessels, and catcher processors that participate in the groundfish, crab, salmon and halibut fisheries.

The CDQ groups have used their CDQ allocations to develop local fisheries, invest in a wide range of fishing businesses outside the communities, and to provide residents with education, training and jobs in the fishing industry.

Thus the CDQ Program has grown and matured. But for some of the CDQ groups, this maturity also has brought the desire for increased autonomy and reduced government oversight. Congress recognized the need to evaluate the CDQ Program, and in its 1999 report, the Natural Resource Council concluded that the CDQ Program appears on track to accomplishing the goals set out in the authorizing legislation. The NRC report made a number of recommendations, the most important of which deal with the role and the extent of government oversight in the CDQ Program, the CDQ allocation process, and the ability to invest in non-fisheries related projects.

More recently, the North Pacific Council recognized the need to evaluate the CDQ Program and appointed a CDQ Policy Committee early in 2001. The committee will prepare an analysis of a number of issues, including many of the same issues addressed in the NRC report and in H.R. 553.

The CDQ Program is jointly managed by the State of Alaska and NMFS, with the State primarily responsible for the day-to-day administration and oversight of the economic development aspects of

the program, and for recommending CDQ allocations. NMFS and the Council, on the other hand, are primarily responsible for management of the groundfish and halibut CDQ fisheries, and for general oversight of allocations and economic development issues.

H.R. 553 would change the relationship between the State and NMFS in making CDQ allocation decisions and in the management of the economic development portion of the CDQ Program. Specifically, it would give more direct responsibility to NMFS for determining harvest shares, and would reduce the authority and responsibility of the State.

The CDQ allocation process is the subject of debate in a number of forums, including here in Congress with H.R. 553. In addition, the CDQ allocation process will be addressed in Federal Court, possibly sometime later this fall or winter. In this case, NMFS is being sued by APICDA, one of the CDQ groups, who contend that NMFS cannot defer authority for CDQ allocations to the State, that the evaluation criteria used for CDQ allocations must be published in NMFS regulations, and that NMFS much make an independent judgment about how to apply specific evaluation factors to make CDQ allocations.

H.R. 553 would limit government oversight to investments funded by revenues received as royalties from CDQ allocations. However, current regulations require government oversight over all CDQ investments made, regardless of the source of funds. NMFS regulations currently require that CDQ groups invest in fisheries-related projects. In addition, H.R. 553 would specify that the purpose of the CDQ Program is to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries, and to assist eligible communities to achieve sustainable long-term, diversified local economic development.

H.R. 553 would amend the community eligibility criteria to remove the requirement that a community meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register. In addition, the bill would limit CDQ Program eligibility in communities that meet all of the current MSA eligibility criteria and were members of a CDQ group at the time that H.R. 553 is signed into law.

NMFS supports the CDQ Program. Through this program, economic opportunities available to residents of Western Alaska have been improved in an area of Alaska that desperately needed that economic opportunity. We can work with the existing program, or if in its wisdom, Congress change the program, we can work with that. However, this program has significant implications to Western Alaska communities, and we believe it is well worth the time and effort to carefully consider all aspects of the program.

The Council is currently—the North Pacific Fishery Management Council is currently engaged in an ongoing review process, which we support. A full analysis of all the issues regarding implementing and managing the program will serve to identify major problems and alternative solutions to ensure that the program meets it goals.

We will work with the Council in every was possible to ensure that their analysis and recommendations comply with legal re-

quirements, and can be effectively implemented by NMFS and the State.

The Council is considering all major aspects or questions about the program, such as appropriate roles for NMFS and the State, criteria for allocations, the number and content of evaluation criteria, CDQ group generated criteria, and investment in non-fisheries related projects.

Mr. Chairman, that concludes my testimony. Again, I want to thank you for the opportunity to talk to you today and discuss this issue. The administration looks forward to working with you and other members of the Committee on this and other fisheries-related issues in the 107th Congress. Prepared to respond to any questions you might have.

[The prepared statement of Mr. Balsiger follows:]

TESTIMONY OF
JAMES W. BALSIGER, PH.D.
ADMINISTRATOR, ALASKA REGION (AKR)
NATIONAL MARINE FISHERIES SERVICE
U.S. DEPARTMENT OF COMMERCE

ON

H.R. 553
THE WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM IMPLEMENTATION IMPROVEMENT ACT OF 2001

BEFORE THE
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

July 19, 2001

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to this hearing on H.R. 553, the Western Alaska Community Development Quota Program Implementation Improvement Act of 2001. I am Jim Balsiger, Administrator for the Alaska Region in the National Marine Fisheries Service/National Oceanic and Atmospheric Administration/Department of Commerce.

The CDQ Program

The Western Alaska Community Development Quota (CDQ) Program was created by the North Pacific Fishery Management Council (Council) in 1992 as part of the inshore/offshore allocation

of pollock in the Bering Sea and Aleutian Islands. The Council established the CDQ Program to provide fishermen who resided in western Alaska an opportunity to participate in the Bering Sea and Aleutian Islands fisheries that had been foreclosed to them because of the high capital investment needed to enter the fishery. The purpose of the CDQ Program is to help western Alaska communities diversify their local economies and to provide new opportunities for stable, long-term employment. The Program focuses on using CDQ allocations to develop a self-sustaining fisheries economy.

Currently, 65 communities are eligible to participate in the CDQ Program. The CDQ communities are located within 50 nautical miles of the Bering Sea coast or on an island in the Bering Sea. Approximately 27,000 people live in the CDQ communities, which are small villages populated predominantly by Alaska Native people. These 65 communities have formed six non-profit corporations called "CDQ groups" to manage and administer their CDQ allocations, investments, and economic development projects. One CDQ group represents a single community (St. Paul, Pribilof Island) and the remaining CDQ groups represent between six and 20 communities.

Since 1992, the CDQ Program has expanded several times to include allocations of halibut, crab, all of the remaining groundfish species (such as cod, Atka mackerel, flatfish, and rockfish), and the prohibited species (salmon, halibut, and crab). In 1996, Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to require CDQ allocations of Bering Sea and Aleutian Islands groundfish and crab to the CDQ Program. In 1998, Congress increased

the pollock CDQ allocation from 7.5 percent to 10 percent under the American Fisheries Act. In 2000, approximately 180,000 metric tons of groundfish, three million pounds of halibut, and three million pounds of crab were allocated to the CDQ Program. The six CDQ groups had total revenues in 2000 of approximately $63 million, most of this from pollock CDQ royalties. Since 1992, the CDQ groups have accumulated assets worth approximately $187 million, including ownership of small local processing plants, catcher vessels, and catcher/processors that participate in the groundfish, crab, salmon, and halibut fisheries. The CDQ Program has surpassed the expectations of many people in accomplishing the goals set out for it. The CDQ groups have used their CDQ allocations to develop local fisheries, invest in a wide range of fishing businesses outside the communities, and provide residents with education, training, and job opportunities in the fishing industry. In addition to the direct economic benefits of the CDQ Program, another important accomplishment is that CDQ allocations and partnerships with the established fishing companies have provided western Alaskans increased influence in Alaska fisheries policy issues through their participation in the Council process and in other local, regional, and state-wide forums.

Issues Facing the CDQ Program

The CDQ Program has grown and matured over the last eight years. The CDQ groups have gained valuable experience managing their fisheries quotas and their investments. Their assets and revenues are growing steadily and they are becoming increasingly influential in Alaska's

fisheries and economic development policy issues. For at least some of the CDQ groups, this maturity also has brought the desire for increased autonomy and reduced government oversight.

Congress recognized the need to evaluate the CDQ Program in its 1996 amendments to the MSA. It requested that the National Research Council (NRC) prepare a comprehensive report on the performance and effectiveness of the CDQ Program. In its 1999 report, the NRC concluded that the CDQ Program "appears on track to accomplishing the goals set out in the authorizing legislation." However, it made a number of recommendations for improvement of the CDQ Program, many of which are the same issues identified by the CDQ groups, the Council, and in H.R. 553. The most important of these common issues are (1) the role and extent of government oversight in the CDQ Program; (2) the CDQ allocation process; and (3) the ability to invest in non-fisheries related projects.

The Council also recognized the need to evaluate the CDQ Program and to identify issues of concern and alternatives to address these issues. To assist them in this process, the Council appointed a CDQ Policy Committee in early 2001. The committee met twice this spring and submitted initial recommendations to the Council at the June meeting. Based on these recommendations, the Council requested that staff prepare an analysis of a number of issues including the respective roles of the National Marine Fisheries Service (NMFS) and the state of Alaska in allocations and oversight; whether CDQ allocations should be permanent or made on a fixed schedule; the evaluation criteria used for CDQ allocations; the addition of an appeals

process; whether government oversight extends to all businesses owned by a CDQ group; and whether to allow investments in non-fisheries related projects. Many of these issues also are addressed in H.R. 553. Therefore, at the suggestion of NMFS, the Council included the elements of H.R. 553 in its alternatives for analysis. The Council has scheduled initial review of the analysis at its December 2001 meeting, with final action scheduled for February, 2002.

Role of government oversight

The CDQ Program is jointly managed by the state of Alaska and NMFS based on a program design developed by the Council and implemented by NMFS in 1992. Under these regulations, the State is primarily responsible for the day-to-day administration and oversight of the economic development aspects of the Program and for recommending CDQ allocations. The State works with the CDQ groups to develop a Community Development Plan (CDP) that describes how the CDQ allocations will be used to benefit the eligible communities and to modify this plan as new projects develop. The specific criteria used to evaluate the CDP and to make CDQ allocation recommendations are implemented in State regulations.

NMFS and the Council are primarily responsible for managing the groundfish and halibut CDQ fisheries, and for general oversight of the allocations and economic development aspects of the Program. The CDQ Program was designed to address the needs of western Alaska residents, and the State was considered best suited to evaluate the needs of its residents and communities, as

well as to make the difficult decisions about how to allocate the CDQ reserve among competing users. The role of NMFS in the allocation of quota to the eligible communities under the Program has been to review the record provided by the State for its recommendations and determine whether the State considered relevant factors and provided a satisfactory explanation for its action. If NMFS finds that the State followed the process requirements described in the regulations and provided a reasonable explanation for its allocation recommendations, it approves the State's recommendations .

H.R. 553 would change the relationship between the State and NMFS in making CDQ allocation decisions, and in the management of the economic development portion of the CDQ Program. Specifically, it would give more direct responsibility to NMFS, on behalf of the Secretary of Commerce, for determining "harvest shares," or the percentage allocation of the CDQ reserve for each species or species group to each CDQ group, and would reduce the authority and responsibility of the State. In addition, H.R. 553 also would require that the criteria for evaluating the CDPs and making CDQ allocations be implemented through NMFS regulations, and NMFS would be responsible for evaluating the CDPs and allocations against this criteria. These additional oversight responsibilities for NMFS will require additional staff and budget resources to be devoted to the CDQ Program.

Currently, the MSA requires that the Council and NMFS establish the CDQ Program, and allocate a portion of the quotas from Bering Sea fisheries to the Program. However, the MSA

does not specifically instruct the Secretary to allocate CDQ to eligible communities or to CDQ groups, nor does it contain requirements about how allocations of quota to the eligible communities should be made. As a result, these activities have been delegated to the State.

The CDQ Allocation Process

The CDQ allocation process is the subject of debate in a number of different forums, including here in Congress with H.R. 553. The NRC considered the CDQ allocation process and noted that the "extensive and variable criteria" used by the State for CDQ allocations caused decisionmaking to be inconsistent and difficult to evaluate. It recommended that the criteria be simplified. However, the NRC also acknowledged the difficulty of accomplishing this recommendation and avoiding a situation where one criteria appears to take precedence or decisionmaking appears to be inconsistent.

The CDQ allocation process also will be addressed in Federal court, possibly sometime late this fall or winter. NMFS is being sued by the Aleutian Pribilof Island Community Development Association (APICDA) over the 2001-2002 CDQ allocation process, which was completed in January 2001. Among other things, APICDA contends that NMFS cannot defer authority and responsibility for CDQ allocations to the State, that the evaluation criteria used for CDQ allocations must be published in NMFS regulations, and that NMFS must make an independent judgment about how to apply specific evaluation factors to make CDQ allocations. Of particular

concern to APICDA is that the State used population as a major factor in making the CDQ allocations recommendations. APICDA believes that the Council never intended population to be a basis for CDQ allocations and that NMFS regulations do not allow the State to use population as a factor.

Fisheries-Related Investments

H.R. 553 would limit government oversight to investments funded by revenues received as royalties from CDQ allocations, and would remove the authority of the government to review and approve any expenditure of revenue from sources other than royalties. Our current regulations require government oversight over all investments made by the CDQ group itself, regardless of the source of income used for the investment. Based on 1999 financial statements, approximately 73 percent of the CDQ groups' $54 million in annual revenue was from CDQ royalties. This is the portion of annual revenue that would be subject to oversight under H.R. 553. The remaining 27 percent of revenues was from income from partnerships, interest income, sale of property, leases, loan repayment, and other income. In addition, H.R. 553 would prohibit government oversight of businesses owned by the CDQ group.

NMFS regulations currently require that the CDQ groups invest in fisheries-related projects. However, the Council's CDQ Policy Committee has developed a number of alternatives to allow investment in non-fisheries related projects, including continuing to require all investments in fisheries-related projects, as well as alternatives that range from no restrictions at all to specific

limits on the amount of revenues that may be invested in non-fisheries related projects. The NRC also addressed this issue in its 1999 report and recommended relaxing the requirement that all CDQ revenues be spent on fisheries-related investments for at least some portion of the revenues.

H.R. 553 would specify that the purpose of the CDQ Program is "(A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries; and (B) to assist eligible communities to achieve sustainable long-term diversified local economic development." This statement of purpose is very similar to the current wording of the Bering Sea and Aleutian Islands Fishery Management Plan (FMP) with respect to the CDQ Program. In the FMP, the Council expressed the purpose of the CDQ Program to provide a fair and reasonable opportunity to participate in BSAI groundfish fisheries and to help western Alaska communities diversify their local economies. However, when creating the CDQ Program, the Council also expressed its intent that the CDQ allocations be used to develop a "self-sustaining fisheries economy." Therefore, the current CDQ regulations require the groups to invest only in fisheries-related projects. The intent of the statement of purpose in H.R. 553 appears to support a diversification of investments to include non-fisheries projects.

Community Eligibility Criteria

The MSA requires that communities eligible for the CDQ Program meet criteria related to location, status under the Alaska Native Claims Settlement Act, and fishing and processing

activity. H.R. 553 would amend the community eligibility criteria to remove the requirement at §305(i)(1)(B)(iii) that a community "meet criteria developed by the Governor of Alaska, approved by the Secretary, and published in the Federal Register."

H.R. 553 also would require a community to be a member of a CDQ group to be eligible to participate in the CDQ Program. Currently, the only way that a community can be a member of a CDQ group is if the State and NMFS determined that the community met all of the eligibility criteria in the MSA and NMFS regulations. H.R. 553 could be read as limiting CDQ Program eligibility to communities that meet all of the current MSA eligibility criteria and were members of a CDQ group at the time that H.R. 553 is signed into law.

In addition to our activities on the Western Alaska CDQ Program, we are working with the Western Pacific Fisheries Management Council to establish Western Pacific community development programs. NMFS recently published the Council's eligibility criteria that Western Pacific communities of indigenous peoples must meet to participate in development programs. Western Pacific Communities of indigenous peoples also must satisfy these eligibility requirements in order to submit proposals for grants to fund fishery demonstration projects. Both Community Development Programs and funded fishway demonstration project proposals are designed to encourage participation of indigenous peoples in Federally mandated Western Pacific fisheries and to foster traditional indigenous fishing practices in the Western Pacific region.

Conclusion

NMFS supports the CDQ Program. Through this Program, economic opportunities available to residents of western Alaska have been improved in an area of Alaska that desperately needs more economic opportunity. We can work with the existing program or if in its wisdom Congress changes the program, we can work with that. However, this Program has significant implications to western Alaska communities, and we believe it is well worth the time and effort to carefully consider all aspects of the Program.

The Council is currently engaged in an ongoing review process, which we support. A full analysis of all the issues regarding implementing and managing the Program will serve to identify major problems and alternative solutions to ensure that the Program meets its goals. We will work with the Council in every way possible to ensure that their analysis and recommendations comply with legal requirements, and can be effectively implemented by NMFS and the State. The Council is considering all major aspects or questions about the Program, such as appropriate roles for NMFS and the State, criteria for allocations, the number and content of evaluation criteria, CDQ group generated criteria, and investment in non-fisheries related projects.

Mr. Chairman, this concludes my testimony. Again, I want to thank you for the opportunity to testify today and discuss this important issue. The Administration looks forward to working with you and other Members on the Committee on this and other fisheries-related issues in the 107th Congress. I am prepared to respond to any questions you and other Members of the Committee may have.

Mr. YOUNG. Thank you, Doctor. And when the panel is finished, we do have some questions, but thank you very much.

Chris, you are up. Thanks for appearing today too.

STATEMENT OF CHRIS ELFRING, STUDY DIRECTOR, NATIONAL RESEARCH COUNCIL'S COMMITTEE TO REVIEW THE COMMUNITY DEVELOPMENT QUOTA PROGRAM

Ms. ELFRING. Good morning, Mr. Chairman and members of the Subcommittee. I would also like to thank you for the opportunity to speak about the Community Development Quota Program.

My name is Chris Elfring. I am both the Director of the Polar Research Board, and a Study Director with the Ocean Studies Board at the National Academy of Sciences.

In the Magnuson-Stevens Fishery Conservation and Management Act of 1996, Congress mandated that the academies review the CDQ Program. I served as the staff person supporting the Committee that was put together to accomplish the task. The Committee consisted of 10 volunteers with expertise in fields ranging from marine ecology to fisheries economics. The Committee's members spent about 18 months in 1998 and '99, talking with people, gathering data, and deliberating on the strengths and weaknesses of the program. They released their report, as you noted, in 1999. My testimony today is an overview of the main findings of that study. My written testimony provides more detail, and I have also given staff a number of additional copies of the full report.

When the CDQ Program was implemented in late 1992, it allocated a portion of the annual harvest of certain commercial fish species directly to coalitions or villages, which because of geographic isolation and dependence on subsistence lifestyles, it had limited economic opportunities. Our Committee's task was to judge whether the program was making progress in accomplishing its goals.

Based on our study, the Committee concluded that the CDQ Program is an innovative attempt to encourage community development in Western Alaska's coastal communities. although the program is not perfect, the Committee believes that most of the problems can be attributed to the newness of the program and the inexperience of participants. We came away optimistic that overall the program was on the right track.

Because the program was still relatively new at the time of our evaluation, we didn't have the data necessary to do any kind of long-term trend analysis, and thus our evaluation was more of a snapshot of the status of the program.

We found the six CDQ groups to be of varying sizes and philosophies, and they took fairly different approaches to harvesting their quota and allocating the returns. Although the six groups were not equally successful, the Committee found significant examples of benefits accruing to the communities. Benefits included direct revenues from the fishery, as well as employment and the development of fishing infrastructure such as docks.

All six CDQ groups incorporated some education and training component for residents, although to differing degrees and with different emphases.

The State of Alaska also has played its part relatively effectively. It was efficient in reviewing the community development plans, monitoring how the communities progressed in responding to problems. Some of these responses, like reallocating quota share among communities, have been controversial, as might be expected.

Perhaps the greatest weakness of the CDQ Program was a lack of open consistent communication between the CDQ groups and the communities they represent, particularly a lack of mechanisms for substantial input from the communities into the governance structures. There has also been a lack of outreach by the State to the communities to help ensure that the communities and residents were aware of the program and how to participate.

Some debate centered on uncertainty about intended beneficiaries of the program. It is unclear whether the program is intended primarily for the native Alaskan residents of the participating communities, or if not, whether the governance structure should be modified to ensure that non-native participation is possible. Similarly, there is some dissatisfaction among people within the fishing industry who are not involved, either directly or as partners of CDQ groups, and who believe that the program unfairly targets a particular population for benefits.

The Committee also commented on the requirement that all reinvestment of profits be only in fishery-related activities. Although this is a logical initial requirement, since the objective is to help the communities establish a viable presence in a capital-intensive industry, the Committee concluded that over time there could be more flexibility in the rules governing allocation of benefit.

The main goal of the CDQ Program, community development, is by definition a long-term goal. Thus, there is a need for a set and dependable program duration and the certainty that this brings to oversight and management. This would allow CDQ groups to develop sound business plans and reduce pressures to seek only short-term results.

Another long-term issue is environmental stewardship. The CDQ Program is in large part about economic development, but economic sustainability is dependent on long-term assurance of a sound resource base. To be successful over the long term, the program will need to give more emphasis to conservation issues.

Finally, while our report reviewed the CDQ Program in a broad way, there is a need for periodic detailed review of the program, perhaps every 5 years. This could be done by the State of Alaska. Such a review would look in depth at what each group had been doing, the nature and extent of the benefits, and how funds were used. Care must be taken not to use strictly financial measures of success. Profits gained from harvest and numbers of local people trained are valuable measures, but they must be seen within the full context of the program.

In summary, the CDQ Program, like any new program with complex goals, had some problems in its start-up period. The Committee's review found a need for continued attention to establishing clear goals, defining eligible participants, and intended benefits, setting an appropriate duration and establishing rules for participation. But overall, the Committee's evaluation of the program was positive. For a relatively new program, it appears to be en route

to accomplishing the goals set out in the authorizing legislation, development of increased commercial fishing activities in the participating communities, creation of job opportunities, and improvement of the local fishing infrastructure.

Thank you for your attention.

[The prepared statement of Ms. Elfring follows:]

Statement of Chris Elfring, Polar Research Board, Ocean Studies Board, Division on Earth and Life Studies, National Academy of Sciences

Good morning Mr. Chairman and members of the Subcommittee. Thank you for this opportunity to speak to you about the Community Development Quota program. My name is Chris Elfring and I am Director of the Polar Research Board at the National Academies. In addition to my role as director of the PRB, I served as the study director (lead staff person) for the National Research Council's Committee to Review the Community Development Quota Program, which was conducted in under the oversight of the NRC's Oceans Studies Board. As you know, the National Research Council is the operating arm of the National Academy of Sciences, National Academy of Engineering, and Institute of Medicine, and was chartered by Congress in 1863 to advice the government on matters of science and technology.

In the Magnuson–Stevens Fishery Conservation and Management Act of 1996, Congress mandated that the National Academy of Sciences review the CDQ program in Alaska and evaluate its applicability in the western Pacific. In response, we put together a committee of 10 volunteer experts who spent about 18 months talking with people, gathering data, and deliberating on the strengths and weaknesses of what was then a relatively new program. The committee produced its final report, complete with conclusions and recommendations, in 1999. My testimony today provides an overview of the findings of that study. My written testimony provides additional detail and I've also provided staff with copies of the full final report.

STRENGTHS AND WEAKNESSES OF THE CDQ PROGRAM

The Community Development Quota (CDQ) program was implemented in December 1992 by the North Pacific Fishery Management Council. The CDQ program allocates a portion of the annual fish harvest of certain commercial species directly to coalitions of villages, which because of geographic isolation and dependence on subsistence lifestyles have had limited economic opportunities. The program is an innovative attempt to accomplish community development in rural coastal communities in western Alaska, and in many ways it appears to be succeeding. The CDQ program has fostered greater involvement of the residents of western Alaska in the fishing industry and has brought both economic and social benefits. The program is not without its problems, but most can be attributed to the newness of the program and the inexperience of participants. Overall the program appears on track to accomplishing the goals set out in the authorizing legislation: to provide the participating communities with the means to develop ongoing commercial fishing activities, create employment opportunities, attract capital, develop infrastructure, and generally promote positive social and economic conditions.

Because the program was still relatively new at the time of our evaluation (1998–1999), the data necessary for detailed evaluation were limited and it was not yet possible to detect long-term trends. The six CDQ groups, organized from the 56 eligible communities (later expanded to 57), were of varying sizes and took varying approaches to harvesting their quota and allocating the returns generated. Although not all groups have been equally successful, there were significant examples of real benefits accruing to the communities. All six groups saw creation of jobs as an important goal and stressed employment of local residents on the catcher-processor vessels and shoreside processing plants. All incorporated some kind of education and training component for residents, although to different degrees and with different emphases. Another benefit of the program is that the periodic nature of employment in the fishing industry preserves options for the local people to continue some elements of their subsistence lifestyles. The CDQ program generates resources that give local communities greater control of their futures. The State of Alaska also has played its part relatively effectively it was efficient in reviewing the Community Development Plans, monitoring how the communities progressed, and responding to problems. Some of these responses, like reallocating quota share among communities, have been controversial, as might be expected.

Perhaps the greatest weakness of the CDQ program as implemented is a lack of open, consistent communication between the CDQ groups and the communities they

represent, particularly a lack of mechanisms for substantial input from the communities into the governance structures. There has also been a lack of outreach by the state to the communities to help ensure that the communities and their residents are aware of the program and how to participate. For the CDQ program to be effective there must be a clear, well-established governance structure that fosters exchange of information among the groups' decisionmakers, the communities they represent, and the state and federal personnel involved in program oversight.

Some debate has centered on uncertainty about the intended beneficiaries of the program. It is unclear whether the program is intended primarily for the Native Alaskan residents of the participating communities or, if not, whether the governance structures should be modified to ensure that non–Native participation is possible. Similarly, there has been dissatisfaction among segments of the fishing industry that are not involved, either directly or as partners of CDQ groups, who believe that the program unfairly targets a particular population for benefits. This conflict is inevitable, given that the CDQ program is designed to provide opportunities for economic and social growth specifically to rural western Alaska. This policy choice specifically defines those to be included and cannot help but exclude others.

Although it is logical to require initially that all reinvestment of profits be in fishery-related activities because the initial objective of the CDQ program is to help the participating communities to establish a viable presence in this capital intensive industry, over time there should be more flexibility in the rules governing allocation of benefits perhaps still requiring most benefits to be reinvested in fishing and fisheries-related activities but allowing some portion to go to other community development activities. This will better suit the long-term goal of the program, which is development of opportunities for communities in western Alaska.

The main goal of the CDQ program community development is by definition a long-term goal. Thus there is a need for a set and dependable program duration and the certainty that brings to oversight and management. This will allow CDQ group decisionmakers to develop sound business plans and will reduce pressures to seek only short-term results. However, calling for the program to be long-term does not mean it must go on indefinitely nor that it must never change. Periodic reviews should be conducted, and changes made to adapt rules and procedures as necessary. There can be a balance between certainty and flexibility if the program is assured to exist for some reasonable time (e.g., ten years) and if major changes in requirements are announced in advance with adequate time to phase in new approaches (e.g., five years). The appropriate time scales will of course vary with the nature of the change, with minor changes requiring little notice and major changes requiring enough time for decisionmakers and communities to plan and adjust.

Another long-term issue is environmental stewardship. The CDQ program as currently structured is, in large part, about economic development, but economic sustainability is dependent upon long-term assurance of a sound resource base the fisheries. Thus, to be successful over the long-term the CDQ program will need to give more emphasis to environmental considerations. While this report reviews the CDQ program in a broad way, there remains a need for periodic, detailed review of the program over the long term (perhaps every five years), most likely conducted by the State of Alaska. Such a review should look in detail at what each group has accomplished the nature and extent of the benefits and how all funds were used. For a program like this, care must be taken not to use strictly financial evaluations of success. Annual profits gained from harvest and numbers of local people trained are valuable measures, but they must be seen within the full context of the program. It is a program that addresses far less tangible elements of "sustainability," including a sense of place and optimism for the future.

LESSONS FOR OTHER REGIONS

What emerges from a review of the western Alaska CDQ program is an appreciation that this program is an example of a broad concept adapted to very particular circumstances. In Alaska, where there were clearly definable communities, the fishery was already managed by quota with a portion of the quota held in reserve, and the communities had previous experience working within corporate-like structures. Others interested in the application of CDQ-style programs are likely to have different aspirations and different contexts. Wholesale importation of the Alaska CDQ program to other locales is likely to be unsuccessful unless the local context and goals are similar.

One region where the expansion of the CDQ concept has been considered is in the western Pacific, but such an expansion would need to be approached cautiously because the setting and communities are very different.

The major differences between the fisheries and communities of the two regions are: the general lack of management by quota or total allowable catch (TAC) in the western Pacific; the pelagic nature of the valuable fisheries in the region; and the lack of clear, geographically definable "native" communities in most parts of the region. Application of the CDQ program to the western Pacific would require the Western Pacific Regional Fishery Management Council to define realistic goals that fit within council purposes and plans. Definitions of eligible communities would need to be crafted carefully so the potential benefits accrue in an equitable fashion to native fishermen.

Any new program, especially one with the complex goal of community development, should be expected to have a start-up period marked by some problems. During this early phase, special attention should be given to working out clear goals, defining eligible participants and intended benefits, setting appropriate duration, and establishing rules for participation. There should be real efforts to communicate the nature and scope of the program to the residents of any participating communities, and to bring state and national managers to the villages to facilitate a two-way flow of information. In addition to these operational concerns, those involved the residents and their representatives must develop a long-term vision and coherent sense of purpose to guide their activities.

CONCLUSIONS AND RECOMMENDATIONS

Here are the detailed conclusions and recommendations as presented in the committee's final report, "The Community Development Quota Program in Alaska" (National Research Council, 1999).

Conclusion 1: Community Development Strategies

Although the Community Development Plans developed by the different CDQ groups are similar in some important respects, the specific elements included vary considerably. Each CDQ group derives income from the large-scale pollock fishery through royalties and employment, and each seeks to develop nearshore fisheries using smaller vessels. The diversity of infrastructural investments, training programs, and financial strategies adopted by the CDQ group does, in our judgment, appropriately reflect varying circumstances and reasoned approaches to diverse problems. To some extent the development plans were shaped by uncertainty about the duration of the CDQ program and by the restriction that the CDQ plans must focus on fishery development. For example, the uncertainty may have encouraged at least one CDQ group to seek a quick financial gain through sale of their processing quota rights in perpetuity. We found this permanent conveyance to be inconsistent with the philosophy and intent of the CDQ program. Finally, the economic and cultural development of these communities may at times be advanced through non-fishery employment or investments. Hence, we found no strong reason to require communities to use funds generated from their CDQs to invest only in fisheries.

Recommendations

- We recommend that the State of Alaska prohibit permanent conveyance of community development quotas into the hands of commercial enterprises outside the communities. An important aspect of the community development sought in western Alaska is the continuing and direct involvement of local people in fisheries of the Bering Sea. Sale of the CDQs to commercial interests outside the communities will create an inappropriate separation of the people from the regional resources.
- We recommend that the restriction that CDQ revenues to be invested only in fishery-related activities should be removed, at least for some portion of the revenues. Many of the communities will find that fishery investments are still the ones they wish to undertake. However, since community development is broader than fishery development, funds should also be available for other activities that will enhance community infrastructure or land-based economic activity. This broadening of the allowed investments would also remove uncertainty about whether particular investments are indeed "fishery related" and thus allowable under current rules.

Conclusion 2: Participation and Benefits

The CDQ program has had an important positive economic impact on western Alaskan communities. Significant revenues have been generated and employment has been enhanced, especially for the mobile members of the community. In addition, the general educational and training programs have been as beneficial as specific fisheries employment.

Recommendations

- The Community Development Plans (CDPs) should be careful to balance the mix of local fishing with wage-earning opportunities with fishing partners. This is important because local fishery development can occupy less mobile village residents, while wage-earning opportunities in the industrial fleet are especially important for younger adults. A focus on local fisheries opportunities, where they exist, for permanent village residents will more closely tie the CDQ program to the village economics.
- To improve the effectiveness of developing a well-trained workforce, the CDQ groups need a strategic plan for education and training programs. This would include internships and technical training for direct employment with the industrial fishing partners of the CDQ groups, formal university education in fields pertinent to the development goals of native residents, and training of administrators and board members of CDQ organizations. The ultimate objectives would be to develop both the business acumen and labor productivity of village residents.

Conclusion 3: Governance and Decision–Making

The CDQ groups were given a unique governance structure that includes elements of both State and federal oversight, which is appropriate given the goals of the program. But the extensive and variable criteria used by the State and federal governments in allocating quota among the groups causes decisionmaking to be inconsistent and difficult to evaluate. That the lists of evaluation criteria are not entirely consistent with one another in either content or order of listing presents additional opportunity for confusion among the CDQ groups and the public in evaluating the logic and fairness of the decisions made by the governor and ratified by the Secretary of Commerce.

Recommendations

- State and federal criteria for the allocation of quota based on performance and plans should be less complicated than they are and should also be consistent with one another. We recommend that changes be made to simplify the criteria, in consultation with the CDQ groups.
- The committee notes that the criteria currently are used for two purposes: to allocate quota equitably and to encourage good management. One way to clarify some of the confusion created by using the criteria in this way would be to separate these two purposes into two allocations of quota. A "foundation quota" would address issues of equity and a "performance quota" would address issues of performance. The foundation quota (likely more than half of the allocation) would be allocated on measures of population, income, employment, and proximity to the fishery being allocated. The performance quota (the remainder) would be allocated based on clearly defined performance measures such as accomplishments of the CDP goals, compliance with fishing regulations (e.g., regarding bycatch), quality of community development plans, and so forth.
- One way to improve responsiveness of the CDQ groups' managers to the communities would be to improve communication. Although the idea of locating the headquarters of the CDQ groups near potential business partners and the State government may have made sense in the early years of the program, as it matures and the management proves its business capability, relocation of the headquarters to the communities may have significant benefits in terms of responsiveness to the desires of the community members.
- Communication would be further improved if the confidentiality rules and the rules for making information available to constituents were improved. NMFS and the state needs to collaborate to resolve any potential conflicts between state laws regarding the confidentiality of financial data and the evaluation of the CDQ program objectives. Information on the number of people employed by the program and the earnings in each of the communities should be provided.
- Although some of the CDQ groups have created newsletters, a requirement that newsletters to communicate with constituents, town meetings, or other forms of communication appropriate to reach community members might be a helpful step in improving communication in the communities.

Conclusion 4: Development of Human Resources

Education, training, and other activities to develop human resources in the participating communities are an explicit part of the CDQ program mandate and a key element in ensuring the program's success because stable, healthy communities depend as much on people as on economics.

Recommendations

- To be truly effective, the CDQ groups must have education and training elements. These elements should not be haphazard, but carefully planned and coordinated so they meet community needs. Both vocational training and support for higher education will help members of the community acquire the skills and knowledge needed for more advanced technical and managerial positions. The number of people receiving education and training should be provided.
- CDQ groups need to do a better job disseminating information that describes the educational and training opportunities open to the use of program funds. They also need to improve their recordkeeping of education and training initiatives so the results can be monitored over time. A common framework for recording and reporting their efforts would be useful.

Conclusion 5: Program Duration

The CDQ program must be a long-term program because it deals with a long-term issue: development of healthy, sustainable communities in coastal Alaska. Long-term economic development requires stability in the underlying policy base so decision-makers can make choices that balance current and future needs.

Recommendations

- The original CDQ program was a three-year trial. It was subsequently extended and then made a more permanent part of the fishery management system with the passage of the Magnuson–Stevens Fishery Conservation Act reauthorization in 1996. This program has been successful in bolstering community development in western Alaska. It has passed a crucial point in its evolution and we should expect the allocation of harvests to the CDQ groups to become a long-standing, if not permanent, feature of the federal fishery management system in the North Pacific.
- The committee recommends that the CDQ program should be reviewed on a periodic basis to determine if the preliminary trends observed by the committee continue in the future. Reviewing the CDQ program in another five years may provide important additional information on the effects of the program and provide valuable suggestions for its management.

Conclusion 6: Economic Sustainability and Environmental Stewardship

Economic sustainability implies programs and policies that offer the greatest assurance of economic options over the long-term to a population that chooses to remain in specific locations. That is, given alternative economic futures for a people (or for a community), economic sustainability would entail choosing that future with the lowest probability of inducing economic decline as measured by a range of indicators. Economic sustainability is but one part of the larger problem of ecological and socio-cultural sustainability. Clearly, communities that squander their local environmental resources (or that fail to maintain cultural and social processes and structures) will be incapable of economic sustainability. Large-scale commercial fishing activities can have negative impacts on ecosystems, either independently or through interaction with natural fluctuations. Because the CDQ program is designed specifically to increase participation in fisheries activities and at the same time improve the long-term economic conditions of the participating communities, greater emphasis should be given to environmental stewardship.

Recommendations

- Concern for the long-term health of the Bering Sea ecosystem needs to feature more prominently in the CDQ program. Local concerns about environmental stewardship need to be able to be expressed in a meaningful way throughout the program's management structure, beginning with effective communication of local concerns to the CDQ group management and continuing on up through the Council process. The quota allocation process can be used to increase the emphasis on environmental stewardship.
- Economic sustainability is dependent upon sound environmental stewardship. In order for the CDQ program to help build a sustainable economy in the region, it is imperative that the underlying resource base-the fisheries-be used in ways that are sustainable over the long-term. This will require explicit, in-depth, continuing analysis of the condition or health of the fishery resource and management that can respond and adapt to changes in this condition.

Conclusion 7: Relevance of the CDQ Experience to the Western Pacific

The CDQ program was designed specifically to address the issues and environment of western Alaska and thus is not appropriate, in its current form, for the Western Pacific Region. If similar goals such as inclusion of native communities in

fisheries are desired in the region, a program could be tailored to the conditions of the western Pacific, although fisheries in the region are not now generally managed by quota. There should be real efforts to communicate the nature and scope of the program to the residents of the participating villages to facilitate a two-way flow of information. In addition, geographic criteria for eligibility would be difficult to apply because the communities are widely dispersed. As the Western Pacific Regional Fishery Management Council considers the Alaskan CDQ experience and the differential performance of the CDQ groups, it should recognize that CDQs constitute only one possible model for community-development in fisheries. But if CDQ-type programs are seriously considered for the western Pacific the committee recommends:

- CDQ-type programs in the western Pacific would need to define realistic goals that fit within Council purposes and plans, and definitions of eligible communities would need to be crafted carefully.
- To assist in the design of such programs, lessons can be learned from detailed study of the Alaskan experience related to program structure, costs, oversight, performance evaluation, and other administration issues.

FINAL THOUGHTS

What emerges from a review of the western Alaska CDQ program is an appreciation that the program is an example of a broad concept adapted to very particular circumstances. Other interested in the application of CDQ-style programs are likely to have different aspirations and different contexts. Wholesale importation of the Alaskan CDQ program to other locales is likely to be unsuccessful unless the local context and goals are similar.

Any new program, especially one with the complex goal of community development, should be expected to have a start-up period marked by some problems. During this early phase, special attention needs to be given to work out clear goals, define eligible participants and intended benefits, set appropriate duration, and establish rules for participation. In addition to these operational concerns, those involved—the residents and their representatives—must develop a long-term vision and coherent sense of purpose to guide their activities.

For the CDQ program to be effective there must be a clear, well-established governance structure that fosters exchange of information among the groups' decision-makers, the communities they represent, and the state and federal personnel involved in program oversight. Greater openness of information is critical, as is regular detailed review.

Although it is logical to require initially that all reinvestment of profits be only in fishery-related activities because the initial objective of the CDQ program is to help the participating communities establish a viable presence in this capital-intensive industry, over time there should be more flexibility in the rules governing allocation of benefits—perhaps still requiring most benefits to be reinvested in fishing and fisheries-related activities but allowing some portion to go to other community development activities. This will better suit the long-term goal of the program, which is development of opportunities for communities in western Alaska.

The main goal of the CDQ program—community development—is by definition a long-term goal. Thus, there is a need for a set and dependable program duration and the certainty that it brings to oversight and management. This will allow CDQ group decision-makers to develop sound business plans and reduce pressures to seek only short-term results. However, calling for the program to be long-term does not mean it must go on indefinitely nor that it must never change. Periodic reviews should be conducted, and changes made to adapt rules and procedures as necessary. There can be a balance between certainty and flexibility if the program is assured to exist for some reasonable time and if major changes in requirements are announced in advance with adequate time to phase in new approaches. The appropriate time scales will of course vary with the nature of the change, with minor changes requiring little notice and major changes requiring enough time for decision-makers and communities to plan and adjust.

Mr. YOUNG. Thank you very much.

Mr. Bush.

STATEMENT OF JEFFREY BUSH, DEPUTY COMMISSIONER, DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, STATE OF ALASKA

Mr. BUSH. Thank you, Mr. Chairman, and members of the Subcommittee. My name is Jeffrey Bush, and I am the Deputy Commissioner of the Alaska Department of Community and Economic Development.

First of all, I wish to thank you for holding this hearing on the status of the Western Alaska Community Development Quota or CDQ Program. As I hope will become apparent from my remarks today, and those of others, this is an exciting and very successful program, bringing many benefits to the people and communities of Western Alaska.

I have served since 1995 as a member of the State's CDQ Team, which implements the CDQ Program on the State's behalf. Because oversight and administration of the CDQ Program is within the Alaska Department of Community and Economic Development, Governor Knowles asked me to prepare testimony and appear before this Subcommittee.

I will limit my current comments to significant policy issues facing the CDQ Program that are potentially impacted by H.R. 553. The bulk of my testimony, which contains a history of the program, and more detailed State comments on H.R. 553, I have submitted in writing for inclusion in the record.

Allocation of CDQ quota is a harvest privilege that expires upon the expiration of each allocation period. Although pollock remains the mainstay of the program, representing over 80 percent of the royalties received by the groups, a total of 25 species with an annual royalty value of approximately $40 million are allocated to the groups under the program. As shown in the graphs submitted with my written testimony, pollock royalties have grown from $20 million in 1998 to $33 million in the year 2000. And the growth in the total net worth for the groups is even more impressive, having doubled in the last 2 years, with total assets for the groups now in excess of $150 million.

The State and the North Pacific Fishery Management Council recognize that there must be changes in the government's oversight role as the CDQ Program evolves. In response to the issues raised in H.R. 553, the Council formed a CDQ Policy Committee in March 2001 to review the appropriate role of government oversight of the CDQ Program, including criteria used in the allocation process. The Committee, consisting of representatives from all CDQ groups, from private industry, and from the State and Federal oversight agencies, met for four full days in April and May of this year, and reported its findings to the Council at the June 2001 Council meeting.

Issues addressed by the CDQ Policy Committee, and now subject to Council staff analysis, include whether CDQ allocations should continue to be periodic or become permanent, and the frequency of those allocation periods; whether some portion of the CDQ quota should be a fixed foundation quota based on each group's demographic characteristics, such as population; whether to adopt revised criteria for the State to use in analyzing applications and whether to require the State to score each group on each defined

criteria before making allocation recommendation; whether to adopt an administrative appeal process for any group dissatisfied with an allocation; the extent of government oversight over various group activities, including investments by subsidiary corporations; and whether to expand allowable activities of CDQ groups to include non-fisheries related investments.

The Council is scheduled to review this analysis and adopt any appropriate changes to the program at a December 2001 meeting.

The State believes that the Council remains the best forum to address, in the first instance, issues regarding the operation and management of the CDQ Program. The Council process will ensure that all interested parties are able to voice their positions, and will result in a product that will be best for the program and the people it serves.

The quota given to the six CDQ groups constitutes a grant of a public resource to achieve a government-sanctioned goal of fostering economic development in Western Alaska. The net effect of H.R. 553 would be to shift the focus of the program away from a community-centered program to a more profit-making regime. In its 1999 report on the CDQ Program, the National Research Council stated, quote: "The Committee warned that for a program like this, care must be taken not to use strictly financial evaluations of success." Unquote. The challenge for all of us is to strike the right balance between profit motivation and fostering local economic development.

I would briefly like to comment on three specific provisions proposed in H.R. 553.

H.R. 553 would remove the current program requirement that group investments be fisheries related. This issue has garnered much debate in recent years among program participants. Recognizing that the opportunities for fisheries-related investments in the region are limited, the State has long supported some loosening of the current limitations.

However, although it is important that some allowance now be made for investing in non-fisheries-related activities, it is equally important that this allowance be done in a manner that maintains the program's integrity. Each group is under pressure from its member communities to provide other benefits to their residents who have many serious and very worthwhile needs. But we must ensure that this program is not used as a replacement for education or other state-funded responsibilities in this region.

The majority of the CDQ groups and the CDQ Policy Committee have recommended that the Council allow each group to invest up to $500,000 annually in non-fisheries-related economic development projects. This appears to be a rational approach to the issue, and the State is supportive of the Committee's recommendation.

H.R. 553 would remove from government oversight projects undertaken by subsidiaries of CDQ groups. The State feels the need for accountability to the program and to the region's residents does not end with a group's initial investment in a subsidiary, many of whom are wholly owned and virtually indistinguishable from their parent group. We understand that some of the CDQ groups support increased flexibility in their investments at the subsidiary level. However, it is critically important that we continue to meet the

public policy goal that the benefits derived from the program continue to flow to the region's residents.

In addition, concerns have been raised in the past by some CDQ groups and fishing industry representatives, that constraints placed upon the CDQ groups under the current program might cost the groups business investment opportunities. Although the State is unaware of any such lost investment opportunities, we are committed to minimizing even the potential for them.

We welcome the current efforts of the Council to address this issue and identify those situations where State oversight it appropriate and those where it is not. The Council's CDQ Policy Committee has identified this as a significant issue for analysis, and we anticipate the Council will review this issue carefully when it considers recommendations to the program.

H.R. 553 proposes to give primary allocation responsibility to the National Marine Fisheries Service. By implication, the role of the State in making allocation recommendations would be reduced or eliminated. The State believes that it is in the best position to work with the CDQ groups to identify the needs and opportunities in Western Alaska, as well as maximize benefits to the residents of the region. The Alaska Department of Community and Economic Development has several local government and community development people on staff who work directly with the communities throughout the State, including those in this program, on a regular basis. Department experts in fisheries development and marketing work directly with industry players to promote Alaska's fisheries economy. Other State departments handle State fisheries management, local transportation infrastructure development, and water and sewer projects. In short, we believe that State Government personnel are better able to respond to the issues that affect our residents than Federal agency representatives, most of whom are located at a great distance from the State.

In conclusion, I wish to again thank you, Mr. Chairman, for the opportunity to address this Subcommittee regarding this exciting and very successful program. Congress, the North Pacific Fishery Management Council, the State, and the people of Western Alaska, can all be proud of the benefits realized as a result of the CDQ Program. Thank you.

[The prepared statement of Mr. Bush follows:]

Statement of Jeffrey Bush, Deputy Commissioner, Alaska Department of Community and Economic Development

Mister Chairman and members of this Subcommittee:

Thank you for the opportunity to comment on the current status of the Western Alaska Community Development (CDQ) program and the proposed federal legislation, H.R. 553, regarding that program. My name is Jeffrey Bush, and I am the Deputy Commissioner of the Alaska Department of Community and Economic Development. In that capacity, I have served since 1995 as a member of the State of Alaska's "CDQ Team", which implements the CDQ program on the state's behalf. Because oversight and administration of the CDQ program is within the Alaska Department of Community and Economic Development, Governor Knowles asked me to prepare testimony and appear before this subcommittee.

I will limit my oral comments to policy issues currently facing the CDQ program that would be impacted by H.R. 553, including program purpose and accountability and the role of state and federal governments in oversight of the program. The bulk of my testimony, which contains a history of the program and more detailed State comments on H.R. 553, is hereby submitted in writing for the record.

History of program

Under the CDQ program, a portion of the annual fish harvest in the Bering Sea/Aleutian Island (BS/AI) groundfisheries is allocated to six coalitions of western Alaska villages, known as "CDQ groups". Allocation of CDQ quota is a harvest privilege that expires upon the expiration of each allocation period.

The CDQ program is an innovative attempt to accomplish community development in western coastal Alaska, which is in one of the more impoverished regions in the United States. In many ways the program is succeeding. During its short tenure, the CDQ program has created significant employment opportunities in the BS/AI groundfisheries for residents of Western Alaska, and CDQ groups are steadily increasing their equity ownership in Seattle and foreign-based harvesting companies. However, the challenge of creating contemporary economic stability in remote villages, whose residents have been reliant on subsistence lifestyles for centuries, is a long-term undertaking.

With the passage of the Magnuson Act in 1976 the groundwork was laid for domestic participation in the fisheries. The concept of allocating part of the total allowable catch directly to disadvantaged western Alaskan communities was discussed by the North Pacific Fishery Management Council (NPFMC) beginning in the mid-nineteen eighties. Based on recommendations from the NPFMC, the Secretary of Commerce first approved CDQ pollock allocations in early 1992.[1] The allocation to CDQ groups was set at 7.5% of the overall pollock Total Allowable Catch (TAC) for the Bering Sea and Aleutian Islands management areas. The allocations were for the two-year period of 1994–95.

During the last half of 1992, communities and fishermen's groups along the Bering Sea coast began to organize in response to the pending CDQ regulations.

The program began with 55 communities that were determined eligible by criteria developed by the NPFMC in conjunction with the State of Alaska and NMFS. By 1999, the total number of eligible communities had grown to 65. 50 C.F.R. 679.30 lists the eligibility criteria:

- The community is located within 50 nautical miles of the Bering Sea, provided it is not located on the Gulf of Alaska coast.
- The community is certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act to be a native village.
- The Community's residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BS/AI.
- The community has not previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BS/AI, unless the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The community of Unalaska is excluded under this provision.

According to the 2000 U.S. Census, there are approximately 27,000 people residing in the 65 CDQ communities. The boundaries of the program extend from the northernmost community of Little Diomede in the Norton Sound Region to the southwest community of Atka in the Aleutians Islands. The CDQ quota is divided among six community organizations, which were self-determined and were based primarily on geographical proximity and cultural boundaries. All six of the organizations are non-profit corporations organized under Alaska law.

The CDQ groups are:

- Aleutian Pribilof Island Community Development Association (6 communities)
- Bristol Bay Economic Development Association (17 communities)
- Central Bering Sea Fishermen's Association (1 community)
- Coastal Villages Region Fund (20 communities)
- Norton Sound Economic Development Corporation (15 communities)
- Yukon Delta Fisheries Development Association (6 communities)

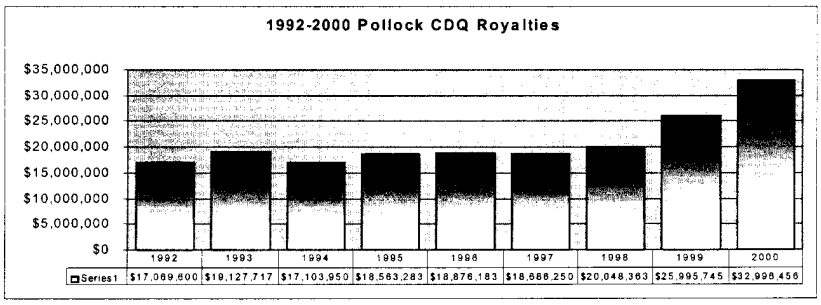
In June of 1995, the NPFMC approved a three-year extension of the pollock CDQ program as part of the inshore-offshore debate. In 1996, the CDQ program gained permanency when it was placed into law during the reauthorization of the Magnuson Act. Senator Stevens was instrumental in the reauthorization of the Act and the establishment of the CDQ program in perpetuity. He was recognized for his work by the renaming of the Act, which became the Magnuson–Stevens Act.

In 1998, Congress passed the American Fisheries Act (AFA), which included provisions to permanently extend the allocations of pollock to the CDQ program and increase the CDQ pollock allocation to 10 percent of the TAC through December 31,

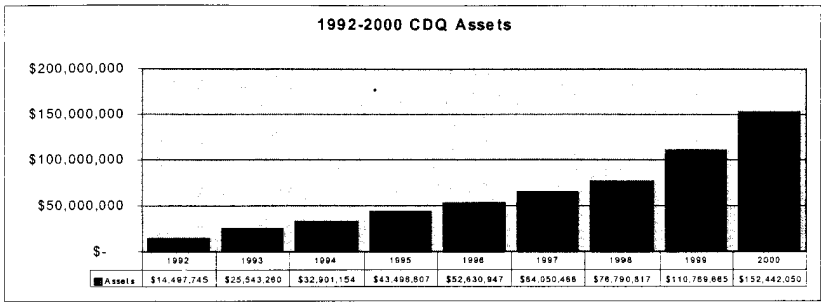
[1] The final regulations implementing the program actually were not published until December 1992.

2004.[2] Another major impact of AFA was the requirement that virtually all vessel-owning entities in the BS/AI fisheries be at least 75 percent owned and controlled by U.S. citizens by October 1, 2001. This meant that foreign-owned companies needed to divest their majority ownership interests in vessels engaged in Bering Sea fisheries. This opened the door for CDQ groups to acquire equity interests in top performing seafood companies that otherwise would not have been available. The groups became sought after business partners for the Seattle and foreign dominated owners, not only because of their quota but also because of the political capital the groups brought as Alaskan partners. By the end of 2000, all CDQ groups had acquired ownership interests in the offshore pollock processing sector.

Although pollock remains the mainstay of the program, representing over 80 percent of the royalties received by the groups, other BS/AI groundfisheries have been added to the program since its inception and are allocated out to the groups. Halibut and sablefish were first allocated for the 1995 fishing season, and crab and the so-called multi-species fisheries, including pacific cod, Atka mackerel and others, began in 1998. At present, 25 species, with an annual royalty value of approximately $40 million, are allocated to the groups under the program. Pollock royalties alone totaled nearly $33 million in 2000.



The groups continue to grow in net worth, with current total assets in excess of $152 million.



Government Oversight

The U.S. Secretary of Commerce approved the CDQ program regulations in 1992. Under those regulations, the day-to-day oversight of the CDQ program was delegated to the State of Alaska, which was charged with full review of CDQ proposals and making allocation recommendations to the Secretary. NMFS is tasked with implementing federal regulations and providing final allocation recommendations to the Secretary, who retains overall authority over the allocation process.

The federal and state governments have each added staff to respond to monitoring needs. Approximately five federal and three state positions are dedicated to CDQ program administration. Federal responsibilities include daily monitoring of catch, debriefing of fishery observers, writing regulations, and review of the overall

[2] If no action is taken by the end of 2004 to extend the 10 percent allocation, the CDQ pollock allocation will revert to 7.5 percent.

program. As in the open-access fishery, federal funds support the fishery management and allocation decision-making process.

The State is responsible for the ongoing monitoring of each CDQ group's performance, ensuring compliance with CDQ plans and regulations, providing professional assistance, reviewing quarterly and annual reports, and participating in the allocation process. Beyond requiring quarterly reports, the state also conducts regular meetings with each group, requires annual audit and compliance reports, and retains the right to conduct an internal or management audit of any CDQ group. With this unique combination of federal and state agency oversight, a thorough regulatory environment has been developed.

As part of the CDQ program allocation process, the state CDQ Team, comprised of the governor's designees, establishes a schedule for the receipt of applications, initial application evaluation, public hearings and final application review. Each group must decide which activities are best suited for its region and constituents and submit a Community Development Plan (CDP) application. The CDP must include the allocation requested for each species, a description of the goals and objectives of the CDP, the length of time necessary to achieve these goals, the number of individuals expected to be employed through the program, and a description of vocational and educational training programs the CDP will generate. The CDP details the fishery-related infrastructure in the applicant's region and describes how the CDQ group plans to enhance existing harvesting and processing capabilities.

After taking the CDP applications and public testimony into consideration, and applying the criteria set out in state regulation, the state develops the recommended allocations. The state must then consult with the NPFMC before the recommendations can be submitted to NMFS, who conducts a separate review to ensure that the state complied with applicable federal procedural requirements in making its allocation recommendations. NMFS then provides their recommendations to the Secretary of Commerce for final approval and implementation.

Current Review of Government Oversight

The state recognizes that there must be changes in the state's oversight role as the CDQ program evolves. As the program has grown, state CDQ regulations have been revised on several occasions. The last revision took place in August of 1999. More recently, in response to a few of the CDQ groups' concerns, the state began working with the CDQ groups in early 2000 to recommend program changes to further streamline and simplify the CDP amendment process. After review and approval of the state's conceptual changes by the NPFMC, NMFS drafted proposed federal regulatory changes to provide the groups more discretionary authority in their business transactions. These proposed changes were presented to the NPFMC in October 2000. During this period, Congressman Young introduced H.R. 5565, proposing to make substantial changes to governments' oversight roles regarding the program; that bill was subsequently reintroduced this session as H.R. 553.

In response to the issues raised in H.R. 553, the NPFMC formed a CDQ Policy Committee in March 2001 to review the appropriate role of government oversight of the CDQ program, including criteria used in the allocation process. The committee, consisting of representatives from all CDQ groups, private industry, and the state and federal oversight agencies, met for four full days in April and May, and reported its findings and recommendations to the Council during the June 2001 meeting. The Council accepted the report and has now tasked its staff with preparing a comprehensive analysis of the various options identified by the committee. Issues addressed by the CDQ Policy Committee and now subject to NPFMC staff analysis include:

- Whether CDQ allocations should continue to be done periodically, or made permanent
- Whether some portion of the CDQ quota should be a fixed "foundation" quota based on each group's demographic characteristics, such as population
- Whether to adopt revised criteria for the state to use in analyzing applications, and whether to require the state to "score" each group on each defined criteria before making allocation recommendations
- Whether to adopt an administrative appeal process, either within the state allocation process or through NMFS or the NPFMC, whereby any group dissatisfied with an allocation could appeal
- The extent of government oversight over various group activities, including investments by subsidiary corporations
- Whether to expand the allowable activities of CDQ groups to include non-fisheries related investments

The NPFMC is scheduled to review this analysis and adopt any appropriate changes to the program at its December 2001 meeting.

The NPFMC has repeatedly expressed support for the CDQ program. The Council is the best forum to address, in the first instance, issues regarding the operation and management of the CDQ program. The Council process will ensure that all interested parties are able to voice their positions and will result in a product that will be best for the program and the people it serves.

Specific Comments Regarding H.R. 553

The quota given to the six CDQ groups constitutes a grant of a public resource to achieve a government-sanctioned goal of fostering economic development in western Alaska. As such, the CDQ program was not designed as a direct allocation of quota to businesses, but rather was set up with government oversight to ensure accountability that the public resources were being used to achieve certain social and economic goals. This legislation would shift the focus of the program from a community-centered program to a profit-making regime. The state endorses individual initiative, however we do not want to lose sight of the original purpose of the CDQ program. As you know, the 1999 report from the National Research Council, The Community Development Quota Program in Alaska, stated, "The committee warns that for a program like this, care must be taken not to use strictly financial evaluations of success." NRC Report, page 3. The challenge for all of us is to find the right balance between the profit motive and fostering local economic development in these regions.

I would like to briefly comment on three specific provisions proposed in H.R. 553.

H.R. 553 would remove the current program requirement that group investments be "fisheries related." H.R. 553 sec. 2, Proposed M–S Act sec. 305(6)(j)(1)(B) and sec. 305(6)(j)(8)(B)(ii).

This issue has garnered much debate in recent years among program participants. The goal of the CDQ program, as set out by the NPFMC at the program's formation and codified in federal regulations, is to provide fishery related economic opportunities for western Alaska residents. The National Research Council stated, "We recommend that the restriction that CDQ revenues [are] to be invested only in fishery-related activities should be removed, at least for some portion of the revenues." NRC Report, page 76. Recognizing that the opportunities for fisheries-related investments in the region are limited, the state has long supported some loosening of the current limitations.[3]

However, although it is important that some allowance now be made for investing in non-fisheries related activities, it is equally important that this allowance be done in a manner that maintains the program's integrity. Each group is under pressure from its member communities to provide other benefits to their residents, who have many serious and very worthwhile needs. But we need to ensure that current government program funding levels are maintained and that this program is not used as a replacement for education or other state-funded responsibilities in these regions.

The majority of the CDQ groups and the CDQ Policy Committee have recommended that the Council allow each group to invest up to $500,000 annually in non-fisheries related, economic development projects. This appears to be a rational approach to the issue and the state is supportive of the committee's recommendation.

H.R. 553 would remove from government oversight projects undertaken by subsidiaries of CDQ groups. H.R. 553 sec. 2, Proposed M–S Act sec. 305(6)(j)(8)(C)(ii).

The state feels the need for accountability to the program and to the region's residents does not end with a group's initial investment in a subsidiary. Thus, whether the CDQ group acts through its CDQ royalties or through its investment returns, and whether it acts directly or through one or more of its subsidiaries (many of whom are wholly owned and virtually indistinguishable from their parent group), the group needs to remain accountable to its communities. We understand that some of the CDQ groups support increased flexibility in their investments at the subsidiary level. However, it is critically important that the public policy goal that the benefits derived from the program continue to flow to the region's residents continues to be met.

In addition, concerns have been raised in the past by some CDQ groups and fishing industry representatives that constraints placed upon the CDQ groups under the current program might cost the groups business investment opportunities. Although the state is unaware of any CDQ business investment opportunity that has

[3] On January 18, 2000, before the U.S. Senate Subcommittee on Oceans and Fisheries, I testified that the state would support an expansion of allowable investments to include some non-fisheries related activities, provided the expansion was done carefully and within well-defined regulatory parameters.

been lost as a result of federal or state regulatory constraints, we agree that there is a need for quick review of all CDP amendments, and we are committed to minimizing even the potential for lost business opportunities. Beginning with the consolidation of all state CDQ staff in a central location in the Department of Community and Economic Development in 1999, the state has placed a high priority on the expeditious processing of CDP amendments. Our success in these efforts is clear: for example, when Coastal Villages Region Fund sought state approval of its multi-million dollar investment in American Seafoods Company, the state CDQ Team was able to review and approve the amendment in just three working days.

In addition, we welcome the current efforts of the NPFMC to address this issue and identify those situations where state oversight is appropriate and those where it is not. The Council's CDQ Policy Committee has identified this as a significant issue for analysis, and we anticipate the Council will review this issue carefully when it considers recommendations to change the program.

H.R. 553 proposes to give primary allocation responsibility to NMFS. By implication, the role of the state in making allocation recommendations would be reduced or eliminated. H.R. 553 sec. 2, Proposed M–S Act sec. 305(6)(j)(6).

The state believes that it is in the best position to work with the CDQ groups to identify the needs and opportunities in Western Alaska, as well as maximize benefits to the residents of the region. The Alaska Department of Community and Economic Development has several local government and community development people on staff who work directly with communities throughout the state, including those in this program, on a regular basis. Department experts in fisheries development and marketing work directly with industry players to promote Alaska's fisheries economy. Other state departments handle state fisheries management, local transportation infrastructure development, and water and sewer projects. In short, we believe that state government personnel are better able to respond to the issues that affect our residents than federal agency representatives, most of whom are locate at a great distance from the state.

In conclusion, I wish to again thank you, Mister Chairman, for the opportunity to address this committee regarding this exciting and very successful program. Congress, the NPFMC, the state of Alaska, and the people of Western Alaska can all be proud of the benefits realized as a result of the CDQ program.

Mr. YOUNG. I thank you, Mr. Bush. I only have—I have a series of questions for you and the other members, but I always get sort of tickled, because I am reading one of your comments in your presentation. It says: in June 1995 the NPFMC approved a 3-year extension of pollock CDQ Program as part of the inshore debate. In 1996, the CDQ Program gained permanency and was placed in law during the reauthorization of the Magnuson Act. Quote: "Senator Stevens was instrumental in reauthorizing of the Act and the establishment of the" program.

You just made a very bad error. I don't know who wrote this for you, but it passed out of this Committee a year and a half before Senator Stevens ever got his hands on it. I made this permanent. And whoever wrote this for you, if you wrote it, shame on you. If you didn't write it, shame on the person who wrote it for you. Because there is a little bit of—well, we take pride in authorship. This whole idea came right from Harold Sparck. And I took it and ran with it with the help of a lot of people, and that is why I am so intensely passionate about the program, and why I want to make it succeed. So after that little slight chastisement, I will ask you some more questions.

Mr. Bush, the National Academy of Sciences' report recommends that groups be allowed to invest earnings in businesses outside of the fishing industry. This is 1999. In some cases because of poor returns, there are no local fisheries for the groups to invest in. What other options are available under the current rules, and why hasn't the State been willing to discuss expanding the use of the

monies for other community economic developments outside the fisheries? That is the second question.

And how can they create a diverse economy, which you state in your testimony, when you only allow investment in fisheries?

Mr. BUSH. Mr. Chairman, if I may, first of all, with respect to the current rules relating to fisheries-related investments, those rules were placed in the Act or—excuse me—in the regulations at the time that the Council created this program or created the details of the program through the regulatory process. Those restrictions are in Federal regulations. The State, and actually, myself personally, have argued actually for several years that those restrictions need to be loosened up, that other economic development activities in the region need to be supported through this program particularly because, as you state, there are limited investment opportunities in fisheries in some of the areas and communities of this region. Therefore, the State has long supported it, and I think that it is safe to say that—Mr. Balsiger may be better equipped than I am to answer the rest of the question regarding the Council's approach—but I think the Council is becoming more open to the possibility of allowing non-fisheries-related activities now than they have in the past, and therefore—and I am very happy about that and supportive of that—the CDQ Policy Committee that the Council created has recommended that loosening up of investment opportunity or the investment restrictions, and we are supportive of that as well.

Mr. YOUNG. Have you ever recommended that to the Council?

Mr. BUSH. Yes, Mr. Chairman. I first recommended it—I am going to say it was 1998. It may have been 1999 was the first time I recommended it to the Council.

Mr. YOUNG. Well, my concern, I don't think there would be any action by the State or the Council if I hadn't introduced this bill, because I saw total stagnation and rejection in the idea that these actual groups have grown. Some of them have not, some of them have. And this is really my driving force behind this because I don't believe that we ought to be the parental fathers of these groups, as the BIA has been, as the Government has been with both my native groups. They say, "Oh, you can't do it because you don't have the capability of doing it. We know what is best for you. Don't question our wisdom because you are really a child." That is really where I am coming from, I want you to know that. And so I am going to be watching that, you know, as we go through this process, how we will be following the actions of the State.

And one of my criticisms of State oversight has been that the annual allocations do not allow the groups any long-term certainty—I think I heard that in your testimony—for making business decisions. I can't understand how, if I had 14 percent this year and then I might only have 10 percent next year because of a shift in population or some other reason, how can they make any long-term recommendation? In fact, I do believe the State wouldn't be responding to this right now if I hadn't introduced this bill. How can they make a long-term economic decision with the uncertainty which is placed upon them by the State?

Mr. BUSH. Mr. Chairman, if I might respond. I think that part of the problem, at least during my tenure with this program, in

terms of the allocation periods, has been that we have had several different species added to the program over the years, and those came online in different allocation cycles. We have most recently reached the point—and I think it was in the year 2000—where the allocation cycles finally came together, and we allocated for a 2-year cycle.

Mr. YOUNG. Is that consistent now, you are on a 2-year cycle?

Mr. BUSH. We are on a 2-year cycle, Mr. Chairman, yes. In fact, if we were not, right now we would be in the midst of an allocation cycle, but we are not. We are on a 2-year cycle.

Mr. YOUNG. Has there been any thought about extending that, say, to a 5 or 10-year, the length of the Magnuson Act?

Mr. BUSH. Mr. Chairman, that has been discussed. The Council's Policy Committee is recommending a 3-year allocation cycle set, a fixed 3-year allocation cycle. The State is supportive of that. The issue, of course, with longer allocation cycles—it is a tradeoff—the longer the allocation cycle, the argument becomes the less accountable the group becomes in terms of its potential successes or failures. And so you have to—and the other problem that I believe exists with longer allocation cycles, is adjustments that may become necessary based upon changing conditions.

And I will use as an example what happened with opillio crab in the Bering Sea when the crab stocks collapsed a couple of years ago. The State had, at that point, allocated a great deal of opillio crab to one of the CDQ groups because it was located where most of the opillio crab was caught. And that was a significant percentage of its allocation returns on an annual basis. When those crab stocks collapsed, it was, I think, to everyone's advantage, for the State to be able to take another allocation look, and in fact, we adjusted other species to that group in order to make up for the fact that its crab allocation had collapsed.

But I think that that is the only significant issue that I see with longer allocations, and I believe that is something that can be dealt with, and that is why the State is supportive of a 3-year allocation cycle at this time.

Mr. YOUNG. The other thing—and then I will let the gentleman from Guam ask some question in a moment, and then I will come back to you, back to the rest of the panel.

Has there been any thought about—because I notice you mentioned in your testimony about the quotas being set because of population, which is very controversial by certain groups and very accepted by other groups. Has there been any other criteria such as location, proximity, and a total equation of the end results; has that been thought of at all?

Mr. BUSH. Yes, Mr. Chairman. The State regulations have, I believe the last count was 21 different criteria. The first—there is no question—the first criteria on the list is demographic criteria, which includes population.

Mr. YOUNG. But is that the dominant factor?

Mr. BUSH. No, not at all, Mr. Chairman. Locale is a significant one, and essentially proximity to the resource. And the crab example I just gave you is a perfect example. Halibut is another one.

Mr. YOUNG. And sections of Pribilof would be another one?

Mr. BUSH. Yes. The Pribilof Islands, for example, we have always given crab allocations and significant halibut allocations to those, irrespective of their size, because of their locale in the region or nearness to the resource.

Mr. YOUNG. Okay. My time is up. I do apologize. Mr. Underwood?

Mr. UNDERWOOD. Thank you very much, Mr. Chairman.

Perhaps as I have indicated, and this is a very fortuitous opportunity for those of us from the Western Pacific, to learn a little bit more about the implementation of the program as it occurs in Alaska.

Maybe unbeknownst to you, but certainly as we are looking at this report, you know, it has been retitled here in the inside page, The Community Development Quote Program in Alaska and Lessons for the Western Pacific. And so—

[Laughter.]

Mr. UNDERWOOD. So at least all the members have that up here.

Perhaps, Ms. Elfring, if you could, tell us a little—I know this is a little bit perhaps outside the scope of your study, but if you could give us a couple of suggestions about how this program would work better in the Western Pacific, or highlight some of the issues which you thought were particularly difficult in implementing the program in Alaska.

Ms. ELFRING. Well, we did actually try—and by the way, I will blame that on our press. They like covers to be nice and neat and clean. If we give them too many words, they stick them on the inside.

But basically we did try, and after looking at it in Alaska, say, "Well, how would this work in the Western Pacific or how would it not work?" And the Committee's main conclusion there was a big caution, that essentially the CDQ Program was very specifically designed to meet conditions in Alaska, and not all of those same conditions apply in the Western Pacific. And the were careful not to say you couldn't design something that would work, but you can't pick this program up and apply it.

The two main things that they were worried about were—one was your current fisheries management is not by quota. Alaska already managed by quota, and there was a way of working within that to make this program work. Similarly, Alaska already had sort of a natural geographic way of breaking people into groups, and that is more difficult in your setting as well. And the third one may have to do with fisheries technology in terms of the scale. There is already a lot of industrial-sized fisheries going on in Western Alaska. Smaller scale in much of the Western Pacific.

So I think their main recommendation on that is if you choose to go that route, go very, very carefully, and decide what the goals are there and set the program up to those goals.

Mr. UNDERWOOD. Well, thank you very much for those insights.

Dr. Balsiger, in my earlier statement I drew attention to the fact that NMFS has not facilitated the process for the Western Pacific. Do you have any knowledge as to why that is the case?

Mr. BALSIGER. Mr. Congressman, I know that the rules and regulations have been slow in development, but I understand that there are, either published this week or very close to it. I can certainly

get back to you with the specifics on the status of the regulations that we are waiting for.

The agency is supportive of CDQ programs. We are anxious to make it work in the Western Pacific as well as it has in Alaska, but for specific details, I will get back if I can.

Mr. UNDERWOOD. Well, apparently it is more anxious in Alaska than it is in the Western Pacific because the regulations have taken some time.

And, Mr. Bush, I would just like to ratify the comments made earlier by the Chairman, because it was one of the pieces of legislation that I was trying to work some amendments on, and I know that early on, that the Western Pacific part of this, the establishment of the program for offshore territories as well, was another element of that legislation as we were working to it. You know, in the interest of, for all of you who may testify in front of Committees, be mindful of who you are testifying in front of, because it will always be perhaps to your benefit or to your detriment.

What is the—if you could encapsulate just in a few words, what is the problem with the communities making a decision about the resources that they obtained from these activities to go beyond fisheries? After all, the whole idea of engaging in these activities is to provide economic benefit to the communities, and this is a resource issue for them. This is meant to diversify. But what is the issue at stake there?

Mr. BUSH. Mr. Congressman, the issue with respect to non-fisheries-related investments, as I understand it, is that the resources at stake in this program, when the program initially began, were given to the communities with the understanding that they would be used for fisheries-related development only.

Mr. YOUNG. Will the gentleman yield?

Mr. UNDERWOOD. Sure.

Mr. YOUNG. The CDQ means for what?

Mr. BUSH. It stands for Community Development Quota.

Mr. YOUNG. It does not say anything about Community Development Fisheries. It says "quota" and means development. And that is my contention that the State has misinterpreted what was the intent, that you have to use, if it is possible, to bring back development of that community, if they use the resources from the—money from the resources which they have harvested. And that is my difference with the state. Thank you.

Mr. UNDERWOOD. Please continue.

Mr. BUSH. And, Mr. Chairman, if I might respond very briefly to what you just said. I mean, the State is only implementing the program as it has been presented to us by the Council and the Federal regulations, which have that restriction in it. As I said, the State is very supportive of expanding it to other community economic development activities. But as I understand it, that was part of the, sort of the political equation when the program initially began, because there were some very strong opponents to essentially taking the resource away from their private interests and giving it to the communities, and there were some people who, from a political perspective, felt that that should be used only for fisheries development. I am not saying that that decision, from a policy perspective,

was correct, and in fact, I think I agree with the Chairman, that in fact it was not.

Mr. UNDERWOOD. All right. Thank you for that. And I ask unanimous consent to submit a statement for the record from the Chair of the Western Pacific Fishery Management.

Mr. YOUNG. Without objection, so ordered.

[The statement of Ms. Guthertz follows:]

Statement of Judith Guthertz, Chair, Western Pacific Fishery Management Council, on H.R. 553

Chairman Gilchrest and Members of the Subcommittee, I begin my testimony by greeting you and the Members of the Subcommittee on Fisheries Conservation, Wildlife and Oceans, with a heartfelt aloha, hafa adai, talofa. I am Dr. Judith Guthertz, Chair of the Western Pacific Fishery Management Council and Council member representing the Territory of Guam.

The Council supports H.R. 553. Although the bill makes no substantial changes to the Western Pacific Community Development Program, it gives separate recognition to native Alaskans in the development of Community Development Programs. There are, however, technical changes that are contained in an addendum to this testimony.

Managing the resources of Pacific Islands communities has always been based on consensus building, an approach given recognition by Congress when it reauthorized the Magnuson–Stevens Act in 1996. Section 305 of the Act which supports the Council's community-based approach to fishery management in the Western Pacific serves as a perfect illustration.

However, forces beyond the control of the Council have effected major changes in this region's fisheries, most of which have not suffered the same overfishing as on the mainland. Nevertheless, our fishermen and the Council have continued to pursue every opportunity to adapt to new fishing and management opportunities during a period of great uncertainty. The Western Pacific Community Development Program and Demonstration Project are ways in which the Council can help fishermen respond, adapt to and ensure their survival through community-based management.

While we have no problems with the Western Pacific Community Development Program, we are very concerned and frustrated by the failure of the National Marine Fisheries Service to implement this program in a timely manner. Since 1996, the Council has worked diligently with the Fisheries Service, our advisory bodies and leaders within the indigenous communities on the eligibility criteria for participation in the Development Program and Demonstration Projects. These criteria, however, have not been implemented to date. We are deeply disappointed. In a letter received by the Council in April, the Fisheries Service is only now willing to publish the eligibility criteria in the Federal Register. These criteria were transmitted to the agency in June 1998, the same year Demonstration Project funding became available.

Over the past five years, indigenous U.S. Pacific Islanders could have benefitted from several fishery opportunities had the Development Program and Demonstration Projects been operational. For example, in August 1998, the Council completed an amendment to the Bottomfish Fishery Management Plan to reserve twenty percent of the limited entry permits for part of the Northwestern Hawaiian Islands for use by eligible indigenous communities. Delays in the approval of the eligibility criteria for the Development Program have prevented the awarding of these permits. This program and other related initiatives, such as a Native Observer Program, could be of immense value in establishing greater participation of Pacific islanders in fishing and fishery management in the region.

The Council is also working with American Samoa, Guam and the Northern Mariana Islands to include similar programs for the U.S. EEZs surrounding these islands. For example, in 1997 the Council recommended the establishment of a 50 nautical mile area closure around the American Samoa archipelago in which only pelagic fishing vessels smaller than 50 feet could operate. These closed areas were designed to protect an emerging small-vessel longline fishery in American Samoa from competition by large longline and purse seine vessels. Unfortunately, the National Marine Fisheries Service disapproved this management measure in 1999, citing the lack of need for the closed areas.

With almost predictable inevitability, however, there has been significant expansion in the number of large vessel longliners operating in American Samoa, from 3 in 1997 to 20 as of July 2001, and more are expected by the end of 2001. The

continuing expansion and evolution of the fishery has now prompted the Council to begin working on a limited entry program for longline fishing in American Samoa. Both the limited entry program and area closures would be ideal candidates for consideration under the aegis of the Community Development Programs and Demonstration Projects. However, these opportunities are being lost through bureaucratic negligence, resulting in a loss of faith by American Samoan fishermen in the management process and frustrating the Council in developing measures to protect and foster the emerging American Samoa longline fishery.

The situation in Guam and the Northern Mariana Islands is likewise stifled by the National Marine Fisheries Service disregard of the needs and unique situation of U.S. Pacific Islanders. When the Fisheries Service closed the Hawaii swordfish fishery, by banning shallow set longline fishing in the entire North Pacific, an unreasonable constraint was placed on fishery development in Guam and the Northern Mariana Islands. This gear type is used throughout the tropical Pacific to catch yellowfin tuna. This method of fishing is now denied to U.S. Pacific islanders in Guam and the Northern Mariana Islands. There is no site-specific data to support such a ban in these waters. Further, these U.S. Pacific Islanders cannot avail themselves of the Development Programs and Demonstration Projects which might provide assistance in developing new fishing opportunities.

Similarly, the Council and the U.S. Pacific Islands have not been able to make use of parallel provisions under the Magnuson–Stevens Act that permit foreign fishing nations to negotiate access to U.S. EEZs in this region. It was expected that revenues from these Pacific Insular Area Fishing Agreements (PIAFAs) would support research to develop and implement the Development Programs and the Demonstration Projects. This research is outlined in Marine Conservation Plans for each of the island areas, which were transmitted to the Fisheries Service in 1998–2000. The MCPs were approved by the Southwest Regional Administrator and forwarded to NMFS HQ where they currently languish. It is ironic that this very same Regional Administrator is now the Acting Assistant Administrator, with whom the final approval authority lies.

The Western Pacific Region covers a vast area of the Pacific and a political composition unique in the United States with its melange of territories, uninhabited and military controlled islands, a state and commonwealth. Unlike the mainland U.S. and Hawaii, our people in the territories cannot vote for a President, have no voting representation in the House of Representatives, and have no representation at all in the U.S. Senate. The Council process allows all our people direct participation in federal fishery management. The uniqueness of our area was addressed in the 1996 reauthorization in several key areas. To quote from the Act itself: "the Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which makes fisheries resources important in sustaining their economic growth." Despite these important and potentially beneficial provisions, we remain frustrated at the indecision of a disinterested bureaucracy stemming, in part, to the political uncertainties of who will be appointed as the new Assistant Administrator, but primarily the result of poor leadership and lack of management accountability. Mr. Chairman, although the Magnuson–Stevens Act is up for reauthorization, due to the intransigence of the Fisheries Service the people of the Pacific island community have no experience by which to evaluate the performance of these provisions. We hope that during the upcoming hearings, we will be able to provide reports of some activity.

Thank you for this opportunity to speak candidly with you and the Committee on our attempts to achieve the goals and intent of the Magnuson–Stevens Fishery Conservation and Management Act, particularly those sections which refer to the U.S. Pacific Islands.

Addendum: Technical changes to Magnuson Act and H.R. 553:

In H.R. 553, the new subsection (k), paragraph (2) makes reference to "a community development quota program that is not in compliance with this subsection" which refers to substantive conditions under the original subsection 305 (i). The reference "this subsection" should be revised to read "subsections (i) through (k) of this section."

In the note section of 305 establishing Western Pacific Demonstration Projects (Section 111(b) of the Sustainable Fisheries Act, Public Law 104–297), the statutory reference in paragraph (6) might be revised to read "section 305(i)(1)(B)(i) through (iv)".

Attachments:

September 30, 1997 Letter to OHA trustees from Simonds
March 17, 1998 Memorandum from Simonds to interested parties

June 18, 1998 Letter to Mr. Rolland Schmitten from Kitty Simonds
December 9, 1998 Memorandum from Simonds to C. Karnella
December 29, 1998 Letter to A. Stayman from Governor P. Tenorio
January 6, 1999 Letter to K. Simonds from C. van Bergeijk
June 22, 1999 Letter to R. McInnis from Simonds
August 12, 1999 Letter to G. Matlock from K. Simonds
August 20, 1999 Letter to K. Simonds from G. Matlock
October 1, 1999 Letter to P. Dalton from K. Simonds
August 28, 2000 Letter to R. Ziobro from K. Simonds
April 20, 2001 Letter to Kitty Simonds from R. Lent
May 18, 2001 Letter to W. Hogarth from J. Guthertz
May 18, 2001 Letter to W. Hogarth from R. Shiroma
June 7, Letter from W. Hogarth to R. Shiroma

[NOTE: The attachments have been retained in the Committee's official files.]

Mr. UNDERWOOD. I certainly would like the opportunity to talk with you, Ms. Elfring, about some of the issues attached to implementation in the Western Pacific.

Mr. YOUNG. Doctor, you mentioned the purpose of the program is to diversify their local economies. How can the communities do that in areas where the fisheries have been closed? I asked the same question of Mr. Bush. What is your answer to that?

Mr. BALSIGER. Mr. Chairman, I agree with Mr. Bush on this issue, and I think he is correct that the policy was developed through the Council, where there was a lot of public testimony, which was summed up in the Council's recommendation and NMFS regulations, initially restricting investments to fishery-related programs, but we have no problem or difficulty with seeing that expansion and diversification. I agree it is an appropriate time to consider that now.

Mr. YOUNG. Secondly, Doctor, the National Academy of Sciences report has been out for 2 years, and yet was not looked at until my bill was introduced in Congress, by the State or by the Council. They did not look at the recommendations. And while I understand the Council has been busy with other things like stellar sea lions, and you have been that busy too, what is your estimate of why the State ignored that?

Mr. BALSIGER. Well, Mr. Chairman, thank you. I don't believe that the report was ignored. We actually—I know that the State, as well as the National Marine Fisheries Service, spent some time reviewing that, and it took us a couple of years, I guess, perhaps a year and a half, to get the Council CDQ Policy Committee together, but it is a relatively, very public process, and that would be the reason I think. The process now is fully engaged. They have a lot of—

Mr. YOUNG. Do you think it would be engaged if I had not introduced this bill?

Mr. BALSIGER. The bill was certainly very inspirational in terms of accelerating it.

Mr. YOUNG. Thank you.

[Laughter.]

Mr. YOUNG. Why I say that, neither the State nor the Council had the time to review it. You know, why should the Congress, why should I be comfortable in leaving all the oversight authority and all the decisions being made, why should I be comfortable leaving

it with the Council or with the State? Two years is a long time, especially when it affects decisions on how certain groups want to advance the development of their communities.

I heard testimony yesterday about need for water and sewer—I heard Mr. Bush say this—things in the community. That is what it is all about. That is community development, you know. So, again, I am hoping that you understand—and I am not picking on you, Doctor, at all, or you, Mr. Bush—that report that Chris put out was a good report, and it sat on the shelf and there was very little attention paid to it until we got interested in introducing this legislation, because we are up for renewal, as you know. The Magnuson Act will be renewed this year, if not this year, next year, but this term. And this is a crucial part of the Magnuson Act, a CDQ Program. And we will have testimony from other witnesses later on, and difference of opinion. I understand that. Again, I feel very passionately about this program, and I want it to succeed.

Mr. Underwood, I am going to do things I get in trouble with, but would you chair this meeting, and if you have any other questions, which I believe you will have, because I had some written here that I haven't asked, and if you will ask some of those question. And if I am not back immediately, you will bring up the next panel and I will be back as soon as I can. But unfortunately, or fortunately, I have to go vote, and you don't have the opportunity to vote. So if you would do that, I deeply appreciate it.

Mr. UNDERWOOD. Okay. I will let you go if you vote no on this.

Mr. YOUNG. Well, I don't know. This is the Commerce report. I don't think you want me to vote no.

[Laughter.]

Mr. YOUNG. All right, see you later.

Mr. UNDERWOOD. [Presiding] All right. Thank you very much.

Just to finish off this panel, go back to Dr. Chris Elfring. In your report, the study results led your team to the conclusion that there is a gap in communication between the CDQ groups and the communities they represent, that is part of that. How can that be if these groups are made up of people from the communities? Perhaps you could explain some of that. I mean, it is a natural human phenomena, I know, to have disagreements, but—

Ms. ELFRING. I was going to say, that is how people work when they form groups. Sometimes people feel excluded from those groups.

Some of the Committee's members would be better able and could go into this more depth with you than I can, but essentially, as you talk to local people, there is always a filtering down of knowledge, and what gets to residents and local people is always less than the people who were in the key decision-making circles, and I think the Committee was feeling some sense that—and maybe again, it could be attributed to newness of the program, word wasn't out yet--but that there really needed to be more effect, that there weren't just a select group of decision makers making what were really community decisions. And again, that is probably not insurmountable, and it may already have changed somewhat in the 2 years since our report has come out.

Mr. UNDERWOOD. Well, how were the groups selected? Did they vary from community to community?

Ms. ELFRING. I actually think some of the other folks here might be better able to answer that than I am, because I am not—

Mr. UNDERWOOD. Mr. Bush?

Mr. BUSH. Mr. Chairman, I am not an expert on this, but I understand that there are a variety of methods. They range from elections to appointments by the communities, but they do come from the communities directly. I should also point out that, as a response I think in part to the report, the communication issue was placed within State regulations that were adopted in 1999 after the report came out, specifically putting in as a criteria the groups' communications—an allocation criteria, the groups' communication efforts with their communities. And so we do look at how the communications go to the communities by the groups when we make allocation decisions. And I can say that in response to this report, there have been changes made, and you could hear directly from the groups, but the groups are making an effort, I believe, to try to communicate with the residents of the communities, not just with the single members, in many cases, from each community, who sit on their board.

Mr. UNDERWOOD. Dr. Elfring, you are appropriately placed between the Federal and the State representative, so perhaps you could—although the report didn't go into any commentary on this, do you have any suggestions or comments on the problems and the differences associated between State regulation and Federal regulation?

Ms. ELFRING. Yes. The main Committee conclusion related to that really was that we had no problem with there being both State and Federal oversight, but the Committee was concerned about inconsistency. There was inconsistency in the evaluation criteria. There was some inconsistency in other issues. And that that made business planning really difficult, and that was probably the main issue that the Committee had with those different oversight roles.

Mr. UNDERWOOD. Was there any specific issue in the evaluation criteria or—

Ms. ELFRING. At the time—and again, I think some of this has evolved—in the book is two tables, and one is the State criteria, one is the Federal criteria. And one had a list of, I think, it is 20 or so items, and the other had summarized them down to 7. And it is just that different. If you are trying to plan, who do you plan for? Which of these two oversight layers do you pay the most attention to?

Mr. UNDERWOOD. Well, I guess that is also an important question to ask the community groups themselves.

Dr. Balsiger, Mr. Bush has indicated a couple of times in his response to the question about the use of the revenue or the income, to be free to use for purposes beyond fisheries. Mr. Bush has stated that this was pursuant to Federal regulations. It that consistent with your understanding?

Mr. BALSIGER. Mr. Congressman, yes, sir, it is. Of course, that Federal regulation was designed to implement the program that the North Pacific Fishery Management Council had derived, and there was—that was the result of a lot of public testimony, and as it filters through that semi-political process, the Council, at that

time, wanted those investments to be in fisheries-related industries, and that is why the regulations were so written.

As I mentioned earlier, the Fishery Service has no policy against expanding or diversifying those kinds of investments, and of course, as one of the things that the Council analysis, which is ongoing right now, is looking at, and the Council would address in the near future—

Mr. UNDERWOOD. Well, since you work with the Council a great deal—I assume you work with the Council a great deal—is there a shift in thinking on this particular issue over time?

Mr. BALSIGER. Mr. Chairman, we did have public testimony on this issue in Kodiak in June, and there was public testimony on both sides of the issue. And so I think that we are giving it the fullest analysis we could. I can't predict what the Council decision would be when it makes its final decision, but there certainly is a lot of interest in that particular issue.

Mr. UNDERWOOD. So would it be fair to say that what—in Mr. Young's proposed legislation here, he specifically authorizes that it could go beyond fisheries. I just want to make sure I understand this entirely. You indicated that Mr. Bush was correct in saying that the restrictions were pursuant to regulations. The regulations in turn were based on a period of commentary on the regulations made earlier. Is it your assumption that that is not specifically restricted in existing legislation? In other words, is there really a need for this particular part of the proposed legislation?

Mr. BALSIGER. Mr. Congressman, if the Council process, which I have suggested is one way to proceed or to go through, there is no guarantee that the Council recommendation would ultimately change its opinion on how the investments of CDQ monies ought to be made. And so, if your ultimate goal is to ensure with 100 percent certainty that investments are not restricted to fisheries, that probably is important to get in the bill, because the Council is going to consider that in its political process and may reach a slightly different conclusion.

Mr. UNDERWOOD. Well, I understand the Council is free to make a different conclusion, but I am saying that if they concluded, for example, today without this legislation, that diversification is entirely supportable, can they do that and still be consistent with the law as it is written today? That is what I am asking.

Mr. BALSIGER. I am sorry. I understand your question. I believe that the current legislation would allow the Council to recommend a broad diversification of investments, and if they did that, the agency would write regulations to that respect.

Mr. UNDERWOOD. In your statement you mention funded fishway demonstration project proposals. Could you please describe what these are and what their purposes are?

Mr. BALSIGER. I am sorry, Mr. Chairman. My parochial hat doesn't have that information with me. I certainly would be happy to get back to you with those.

Mr. UNDERWOOD. Okay. I have also three other questions. I know that it is a little bit out of your scope, but pertaining to the development of the Western Pacific Community Development Group, just lastly, Dr. Elfring, you mentioned that there were the—when I asked you about the implementation of this in the Western

Pacific—and correct me if I am wrong—I am understanding that there are problems associated with this that would be different from Alaska because I suppose the communities that are being assisted by this activity are less diverse than they are in the Western Pacific. I mean, I am trying to understand exactly what that particular concern is. Maybe you could elaborate on that.

Ms. ELFRING. Yes. I think the Committee's concern there wasn't so much about the diversity of the communities, but the broad geographic extent. I mean, there is a sort of natural grouping to the Alaska communities and how they were put together. And again, I think the Committee didn't believe that was insurmountable, but it made it a different scenario, and some of the procedures that you go through to form these groups would need to suit your geography basically.

Mr. UNDERWOOD. And what the other concern you mentioned?

Ms. ELFRING. The first concern was how fisheries are allocated in general. I mean, Alaska was at an advantage, if you want to call it that, in how the program was initially set up because it already managed by quota. And so thus you could say, well, we are going to take a part of this quota, and it won't be individual, it will be community. You know, there was already a reserve portion, so instead of having to eat into someone else's part of that quota, you had a part that was unclaimed—put quotes around that—so there was already an existing management scheme that this fit very well into.

Mr. UNDERWOOD. Very good. Okay, thank you. This panel is excused. Thank you very much for your testimony.

I ask unanimous consent that the testimony from the North Pacific Fishery Management Council be inserted into the record at this point.

[The information referred to follows:]

July 13, 2001

Honorable Wayne Gilchrest, Chairman
Subcommittee on Fisheries Conservation, Wildlife, and Oceans
U.S. House of Representatives
Room H–2–187 Ford House Office Building
Washington, D.C. 20515

Dear Chairman Gilchrest:

Thank you for your invitation to Mr. Rick Lauber, Chair of our Council's CDQ Policy Committee. Unfortunately, he is unable to attend the CDQ hearing on July 19. In lieu of his participation I would like to briefly describe the recent activities of our Council regarding CDQ issues, and highlight some of the specific issues raised through our CDQ Policy Committee process. A full copy of that Committee's report to the Council at our recent June meeting is attached.

First of all, I would like to take this opportunity to assure you and the Resources Committee that this Council fully supports the CDQ program, noting the myriad social and economic benefits the program has created for rural, Western Alaska coastal communities. The Council originated this program in 1992 through the pollock allocations associated with our inshore/offshore amendments and the allocations which were created as part of the halibut and sablefish IFQ program. In 1995 the Council extended the program to all BSAI groundfish and crab species, as part of our license limitation program (LLP). The Sustainable Fisheries Act of 1996 institutionalized that program as part of the BSAI Fishery Management Plans. We recognize its permanence in statute and vigorously support its continuation. The Council has consistently supported this program and its limitation to the BSAI fisheries and communities. Of recent interest to the Council are certain administrative and policy issues associated with the CDQ program. These are seen as a fine-tuning of the program and in no way detract from our overall support.

The Council formed the CDQ Policy Committee in December 2000 to address issues related to CDQ oversight responsibilities of the State of Alaska and National Marine Fisheries Service (NMFS). The committee is comprised of representatives from each of the six CDQ groups, two CDQ industry partners, one member each from the State and NMFS, and is chaired by former Council Chairman Rick Lauber. The committee was tasked with providing policy recommendations to the Council on changes that may be needed to regulations governing the role of NMFS and the State in program oversight, the CDQ allocation process, and the administration of the program. The Council requested a report from the committee no later than June 2001. The committee met on April 26–27 and May 24 - 25 of this year and identified nine priority policy issues and several alternatives and options under each issue which the committee felt warranted analysis. This list was eventually narrowed to eight issues within the committee process. The committee also made specific recommendations to the Council on each of these issues, in an effort to provide the Council with more information on the committee's priorities and preferences for future modifications to the CDQ Program. The attached report lists each of the issues as identified and addressed by the committee, as well as the relevant committee discussion, motion, and final vote on each of the recommendations.

The Council received the committee's report in June 2001 and adopted the committee's recommended suite of alternatives and options for analysis, with a few additional alternatives provided by NMFS. The Council is scheduled to review the draft analysis, prepared cooperatively by Council staff and NMFS, in December 2001, with a final decision scheduled for February 2002. The Council would receive public testimony on the draft analysis at both the December 2001 and February 2002 meetings, prior to making a final decision.

While the committee did not reach consensus on several issues, the majority/minority opinions are represented in the attached committee report. Several of the issues and recommendations are related to government oversight responsibilities and stem from issues raised in Congressman Young's proposed legislation (H.R. 553, the Western Alaska CDQ Program Implementation Improvement Act of 2001). Please note again that while the committee has provided specific recommendations to the Council on some of these issues, the full suite of alternatives and options identified by the committee and NMFS will be analyzed and reviewed before the Council makes its formal recommendations. The comprehensive list of alternatives and options under consideration is attached. A summary of the key issues, and the CDQ Policy Committee's initial recommendations to the Council, are listed below.

- *Issue 1: Periodic or Permanent CDQ Allocations*

  The State currently makes periodic, competitive allocations among the CDQ groups. This issue addresses whether to continue this practice, establish a fixed allocation cycle in regulation, or make permanent allocations to the CDQ groups. The committee recommended establishing a fixed allocation cycle of 3 years, with a clause provided for mid-cycle changes in extraordinary circumstances.

- *Issue 2: Define the Role of Government in Oversight of the CDQ Program*

  The current BSAI FMP references that the CDQ Program is a joint program between NMFS and the State of Alaska, and NMFS regulations specify requirements for the State in overseeing the CDQ allocation process, contents of the CDPs, the process for amending the CDPs, and periodic reports. The committee noted that significant confusion exists regarding the oversight roles of NMFS and the State because there is not explicit language in the current regulations outlining those responsibilities. Given that concern, the committee recommended specifically identifying and limiting government oversight to the following purposes in regulation:

  1. Ensure community involvement in decision-making;
  2. Detect and prevent misuse of assets through fraud, dishonesty, or conflict of interest by verifying CDP milestone compliance and financial performance;
  3. Ensure that internal investment criteria and policies are established and followed;
  4. Ensure that significant investments are the result of reasonable business decision, i.e., made after due diligence and with sufficient information to make an informed investment decision; and
  5. Ensure compliance with legal program requirements.

Please note the Council's addition of the general, overarching issue of further defining the respective oversight roles of NMFS and the State of Alaska (described in the attached list of Council issues and alternatives for analysis). While the

committee identified Issue 2 to limit the specific roles of government in the oversight of the CDQ Program, the Council added a fundamental issue which pertains to the respective roles of the Federal and State agencies that jointly oversee the program. Issue 2 and the general issue are thus related; the committee recommended government oversight duties in Issue 2, and the general issue addresses which government agency should be responsible for these duties and ultimately approving the CDPs and the final allocations to the CDQ groups. In addition to status quo, the following alternatives will be analyzed: modifying the current responsibilities of NMFS and the State to include NMFS regulations to guide the State's process in making allocation decisions; eliminating NMFS" role in the allocations and allocating the CDQ reserve to the State for direct allocation to the CDQ groups; and revising the FMP and regulations so that NMFS has primary responsibility for the CDQ allocations.

Issue 3: CDQ Allocation Process - Type of Quotas

Currently the CDQ and prohibited species quota (PSQ) are specified by species, area, and gear type, and each CDQ group is eligible to receive a percentage allocation of each CDQ or PSQ reserve as recommended by the State of Alaska and approved by the Secretary of Commerce. The committee recommended continuing this competitive process, as opposed to making some portion of the CDQ allocations fixed or based on demographic characteristics.

Issue 4: CDQ Allocation Process - Evaluation Criteria

The State has published a list of evaluation criteria in regulation (6 AAC 93, included in the committee report) and decides how to apply that criteria in making CDQ allocations. The State explains its application of the criteria in its written allocation recommendations to the Council and NMFS. No specific criteria are published in NMFS regulations. The committee recommended a specific list of nine evaluation criteria to use in determining the CDQ allocations, several of which mirror the current State criteria. These criteria are included in the attached committee report. Because the committee is comprised of representatives from all six CDQ groups, the process by which the committee developed and agreed to these criteria (noting two objections) is similar to the process proposed in H. R. 553, whereby the CDQ groups would be tasked to develop and agree on the evaluation criteria, which must then be used by the State and NMFS.

Issue 5: Public Comment on Allocation Recommendations: Appeals Process

The State currently issues its CDQ allocation recommendations a few days before the Council meeting at which the State consults with the Council. The CDQ groups may testify to the Council about the State's allocation recommendations, and the Council must take comments into consideration in deciding whether to support the State's recommendations. If the State's allocation recommendations change as a result of these comments, they must re-consult with the Council. NMFS issues a final agency decision if it approves the State's allocation recommendations. NMFS regulations do not require a public comment period on the State's allocation recommendations after they are submitted to NMFS; they also do not require publishing the agency decision in the Federal Register. Noting concerns with the lack of an appeals process, the committee recommended developing a comment period for the State's allocation recommendations such that the State is required to, among other things: 1) upon issuing the initial recommendations, provide an explanation of changes from the previous year's allocations; 2) accept pubic comments on the initial recommendations; and 3) issue final recommendations and provide a written response to public comments, including any changes from the initial allocation recommendations.

Issue 6: Extent of Government Oversight (definition of a CDQ project)

The current NMFS regulations are not explicit on the extent of government oversight authorized by the definition of a CDQ project. This issue primarily addresses whether government oversight extends only to the activities of the CDQ group, or whether it also extends to businesses that the CDQ groups own. H.R. 553 also addresses this issue, and proposes that oversight would only apply to the activities of the CDQ group itself.

The committee recommended a proposal by the State of Alaska to reduce the requirements for expenditures that require review and prior approval by the State and NMFS and to clarify that oversight of the CDQ Program includes the activities of businesses that the CDQ groups own. The committee also recommended including a rebuttable presumption in regulation, such that if a CDQ group owns 50% or more of a subsidiary company, the burden is on the CDQ group to prove that it does not exercise effective management control over that subsidiary (as

defined by control of the daily operations and management of the company). If it is determined that they do not exercise effective management control, then any activity of that entity is treated as a standard investment (not as a CDQ-owned business) and thus subject to lower oversight and reporting requirements.

Issue 7: Allowable Investments by CDQ Groups (fisheries-related projects)

NMFS regulations (50 CFR 679.1(e)) implement what NMFS understands as the Council's intent - that the revenue generated by the CDQ allocations is to be spent only on "fisheries-related" projects to benefit the communities in the CDQ groups. Current regulations do not include specific investment guidelines or a list of allowable investments, and some decisions about acceptable investments have been based on policy or practical considerations (scholarships, stocks, etc.). H. R. 553 also addresses this issue and would expand the type of investments that could be made with CDQ royalties and assets.

The committee recommended modifying the regulations to incorporate some flexibility in the type of project in which the CDQ group can invest. The committee recommended that CDQ groups be allowed to invest up to 20% or a maximum of $500,000 of their pollock royalties in non-fisheries related projects, and that those projects must be economic development projects in the region of Alaska represented by the CDQ group. To date the Council has supported the concept of fisheries-related projects only, but will be considering possible adjustments when they take final action on these issues.

Issue 8: Other CDQ Administrative Issues

The committee noted that the State has proposed several minor administrative changes, primarily related to streamlining the reporting and CDP amendment process. The committee supported incorporating these changes in the analysis.

The committee was initially created on the basis that it would be disbanded upon completion of its task to address the priority policy issues and provide recommended changes to the Council. Upon receiving the committee report, however, the Council decided to keep the committee intact for a minimum of one year, in order to address on-going and upcoming CDQ policy issues on an as-needed basis. One potential responsibility of that committee may be to review the draft analysis before it is submitted to the Council in December 2001, and make final recommendations to the Council on these issues.

The Council recognizes the importance of this program to the rural communities of western Alaska, and continues to support its implementation. Given the rapid growth and evolving nature of the program since its inception in 1992, the Council also supports moving ahead with an analysis of the policy issues surrounding the program. A review of these issues will help ensure that the program is appropriately structured to adapt to changes in the fisheries, and will continue to benefit these communities to the fullest extent possible. Thank you for considering these comments relative to your upcoming hearings.

Sincerely,

David Benton
Chairman

cc: Dave Whaley, Legislative staff
Robin Samuelsen, Council member

Attachments:

Report and Recommendations of the NPFMC CDQ Policy Committee (June 2001)

Draft Issues and Alternatives for CDQ Policy Analysis (June 2001)

[NOTE: The attachments have been retained in the Committee's official files.]

Mr. UNDERWOOD. We can have the second panel come up. The second panel: Mr. Larry Cotter, Mr. Robin Samuelsen, Ms. Merculief, Mr. Crow, Mr. Asicksik and Mr. Alstrom.

Good afternoon, and welcome to the Committee, and we will start off with Mr. Cotter.

STATEMENT OF LARRY COTTER, CHIEF EXECUTIVE OFFICER, ALEUTIAN PRIBILOF ISLAND COMMUNITY DEVELOPMENT ASSOCIATION

Mr. COTTER. Good afternoon, Mr. Chairman. I would like to thank you for inviting me to testify today.

I have been involved in the CDQ Program since its inception. In fact, I was a voting member of the North Pacific Fishery Management Council when the program was initiated and development and adopted.

I currently serve as the Chief Executive Officer for the Aleutian Pribilof Island Community Development Association, otherwise known as APICDA.

The CDQ Program is arguably the most important economic development program ever implemented in Western Alaska. APICDA is proud of its accomplishments since its formation some 8-1/2 years ago in December 1992. On an annual basis APICDA provides in excess of 170 jobs to local residents from our member communities, generating a local resident payroll of approximately $2.5 million a year. In addition, APICDA has provided nearly $1 million in training and education scholarships for over 200 residents. APICDA's focus has been on shore-side economic development in our member communities. We have invested in excess of $20 million in infrastructure and business development in our communities during the last years. We have also invested in several large Bering Sea class harvesting and processing vessels that operate as profit centers and generate revenue that we use in support of our shore-side operations.

None of this would have been possible without the CDQ Program. The CDQ Program, however, is not without its problems, although most of them can be attributed simply to growing pains. Federal CDQ regulations delegate substantial responsibility to the State of Alaska as part of the CDQ allocation process. The State develops a recommended allocation for each of the groups, and the Secretary of Commerce ultimately approves or disapproves the allocation. The intent of the regulations are to insure that a fair and equitable allocation process is used by the State when making its recommendations.

In our opinion, there is no credibility to the current State decision-making process on allocations. Decisions made by the State are made behind closed doors. Although there is 20 some criteria, there is no ranking or relative weight associated to those that we are aware of, and the groups ultimately, simply have no idea how allocations are made or what thinking process is used in making them.

Unfortunately, the Secretary of Commerce appears to have delegated his or her responsibility in the allocation process, to the State. National Marine Fishery Service and NOAA, acting on behalf of the Secretary, maintain that the Federal Government's role is essentially ministerial, that is, the State will make the decisions, and the Secretary will simply determine whether or not the State followed the process outlined in the regulations.

As a result, the Secretary has abrogated its responsibility to determine whether or not the State is making fair and equitable allocation recommendations. At the very least, since this is a Federal

program, we would expect that NMFS would ensure that the process used by the State is fair and equitable and not arbitrary and capricious.

The position adopted by NMFS and NOAA results in a denial of due process to any CDQ group who wishes to object to or challenge allocation recommendations developed by the State. Since the State of Alaska CDQ regulations do not provide for an appeal of its recommendations, and NMFS has withdrawn from the process, there is no one to appeal to except the courts.

We believe that it is now in the best interest of the CDQ groups, their members, their partners and the public, for each group to receive a fixed CDQ allocation that extends for the life of the program. The CDQ Program, in each of the six groups, has matured sufficiently that it is no longer necessary or in the best interest of the program itself, in our opinion, for the groups to compete against each other for CDQ allocations.

Individually and collectively the groups need financial stability. Fixed allocations will eliminate politics from the allocation process, reduce costs for both the Government and the CDQ groups, allow each of the groups to better utilize their personnel, and increase financial stability for each of the groups since we will know in advance what our allocation will be for the future.

Rules and regulations exist for the purpose of outlining the boundaries of acceptable behavior. The concept of oversight as a simple mechanism to ensure that rules and regulations are adhered to is an appropriate and acceptable tool in our opinion. However, when oversight results in micro management or unnecessarily burdens those being overseen, it creates an unnecessary bureaucracy which increases costs and reduces the efficiency of the corporation.

In APICDA's opinion, it is inappropriate to continue requiring the different groups to receive approval from the State of Alaska and the Secretary of Commerce before a group can make an investment or make adjustments in its budgets or operating plans. Why should the State of Alaska or the Secretary of Commerce be able to substitute their decision in place of the decision made by a group of board of directors from a CDQ organization? If the decision is within the scope of the program and adheres to the rules and regulations regarding investments, the current oversight requirements are unnecessary, costly, inefficient and inhibiting.

Our proposal on oversight is very simple. The CDQ groups should be required to operate within the law and live within the rules and regulations of the program, to amend their community development plans when appropriate, to provide timely copies of the amendment to the State and to the National Marine Fishery Service, and to provide reasonable advance notification to the State of Alaska and/or NMFS when new investments are to be made. Nothing else is really necessary. The State and/or NMFS can do an annual audit to ensure that the groups have operated with the law.

Another issue of significance is the extent of allowable investments by CDQ groups. When establishing the CDQ Program, the North Pacific Council limited the scope of investments to those that are directly or indirectly related to the fishing industry. There are increasing calls by different CDQ groups for this policy to be

modified to allow limited or unlimited investments in non-fishery-related projects investments. APICDA and one other CDQ group, Central Bering Sea, are unique among the six CDQ groups, in that our communities are located immediately adjacent to the groundfish and shellfish fishing grounds, and the other four CDQ groups are not. As a result, we are in a position to use our CDQ allocations to develop local economies in our member villages that are based upon and rely upon those fisheries. That is the focus of our program. By virtue of our location, APICDA is required to expend substantial sums on infrastructure. Anyone familiar with the Bering Sea realizes that development is expensive and risky. The intent of the CDQ program is to provide a mechanism to support that. We could support providing the necessary flexibility for the other CDQ groups to develop non-fishery-related resources adjacent to their communities, and to develop outside investments using CDQ funds, if sufficient CDQ allocations are set aside for those CDQ groups who have the capability to reasonably complete the development of sustainable local economies.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Cotter follows:]

Testimony of Larry Cotter
Before The Honorable Wayne T. Gilchrest, Chairman
Subcommittee on Fisheries Conservation, Wildlife & Oceans
United States House Committee on Resources

July 19, 2001
Washington, D.C.

Introduction

I would like to thank you, Mr. Chairman, and the members of your committee for inviting me to testify today.

During the past fifteen years, I have been fortunate to participate in the community development quota program from its inception as a concept in the 1980s to its present state. When the program was first articulated, I was a voting member of the North Pacific Fishery Management Council. I was present during the deliberations, debate, development and subsequent adoption of the program. After concluding my tenure on the Council, I assisted several Aleut villages in forming their CDQ organization and establishing their program. Ultimately, I became the Chief Executive Officer of the Aleutian Pribilof Island Community Development Association (APICDA), a position I hold today.

The CDQ program is arguably the most important economic development program ever implemented in Western Alaska. Since its inception in December 1992, millions of dollars have been invested in local economic development and thousands of jobs have been created in some of the poorest regions of the United States.

APICDA is proud of its accomplishments since its formation. On an annual basis APICDA provides in excess of 170 jobs to local residents from our member communities, generating a local resident payroll of approximately $2.5 million. In addition, APICDA has provided nearly $1 million in training and education scholarships for over 200 residents. APICDA has also initiated, participated in, or completed on its own the following projects:

- Dredging of Zapadni Bay Harbor on St. George Island;
- Construction of a new, sub-port facility (Tract I) on St. George Island, in partnership with the St. George Tanaq Corporation;
- Construction and formation of Puffin Seafoods, L.L.C. on St. George Island, in partnership with the St. George Fishermen's Association;
- Construction of a dock facility in Nelson Lagoon;
- Filling four acres of APICDA-owned land adjacent to the new dock facility in Nelson Lagoon;

- Formation of the Nelson Lagoon Storage Company, L.L.C. (a vessel, gear, and pot storage operation in Nelson Lagoon) in partnership with the local tribal council;
- Construction of a gear storage warehouse in False Pass;
- Extension of water and electric services to the city dock in False Pass;
- Formation of Bering Pacific Seafoods, L.L.C. in False Pass, including renovation of the barge Dipper;
- Construction of a small dock and attendant floating barges in Atka;
- Formation of Atka Pride Seafoods, in partnership with the Atka Fishermen's Association;
- Construction of a major dock facility in Atka;
- Construction of Nazan Bay Inn in Atka;
- Construction of a vessel haul-out in Nikolski;
- Construction and formation of the Nikolski Lodge, L.L.C.;
- Purchase of 250,000 pounds of halibut/sablefish IFQs;
- Purchase of five thirty-two foot longline vessels (all of which have been converted to thirty-five feet);
- Purchase of three medium size vessels;
- Equity investments in five large Bering Sea commercial fishing vessels (the F/LL *Prowler*. the F/LL *Ocean Prowler*, the F/LL *Bering Prowler*, the F/V *Golden Dawn*, and the F/V *Farwest Leader*) and one factory trawl vessel (the F/T *Starbound*);
- Purchase of two commercial charter sport vessels (the *Grand Aleutian* and the *Augusta D*); and
- Formation of OceanLogic, L.L.C.

These purchases and projects represent a total investment well in excess of $20 million. None of this would have been possible without the CDQ program.

The CDQ program is not without its problems, although most of them can be attributed to growing pains. Chief among our concerns is the process utilized by the state of Alaska and the National Marine Fisheries Service (NMFS) to allocate CDQ quotas among the six groups. Secondarily, we have concerns with the level and scope of government oversight of the program and the attendant bureaucracy.

Purpose of the CDQ Program

The purpose of the CDQ program was to develop stable local economies based upon the fishing industry in the participating villages. When developing and adopting this

program, the members of the North Pacific Fishery Management Council and the industry were insistent that the CDQ allocations be utilized in a meaningful way to extend participation in the North Pacific fisheries to the participating communities. There was fear that the program could degenerate into a quasi-welfare program. To ensure that would not happen, the Council developed a process by which the CDQ organizations would be required to comply with rigorous planning and reporting requirements.

This approach required that the individual groups develop in depth community development plans (CDPs), each of which would contain comprehensive budgets, business plans, descriptions of projects and programs, and establishment of management teams and community outreach systems. The CDPs would be comprehensively evaluated, and the performance of each group reviewed. The state of Alaska would meet with the groups individually, discuss each group's CDP and performance, gain clarity and understanding of each group's program, and ultimately make a recommendation for allocation among the six groups. The recommended allocation would subsequently be forwarded to the North Pacific Fishery Management Council for its review and recommendation, if any, and then to the Secretary of Commerce for a final decision to approve or disapprove the allocation.

In general, the system devised by the Council has worked well. CDPs are important documents and tools for each of the groups. The requirement that we have CDPs has forced us to focus our present and long-term attention on critical planning and development details. The problem is that the current CDQ allocation process has serious difficulties and, in our opinion, is flawed beyond repair.

The CDQ Allocation Process

Federal CDQ regulations delegate substantial responsibility to the state of Alaska as part of the CDQ allocation process. The state is required to provide a notice of a pending CDQ allocation, publish the format in which the CDPs are to be submitted, conduct a public hearing on the CDPs, and develop allocation "recommendations" among the groups. The recommendations, with supporting rationale, are then forwarded to the North Pacific Fishery Management Council for its review and comment, if any, and then to the Secretary of Commerce for his or her final "approval or disapproval." The federal regulations provide criteria which are to be used by the state when developing its recommendations. The intent of the regulations are to ensure that a fair and equitable allocation process is used by the state when making its recommendations

The allocation process, unfortunately, is not fair and equitable, and the recommendations made by the state are, in our opinion, arbitrary and capricious. The state of Alaska does

hold a public hearing, but it is a perfunctory event in which each of the groups is allowed to provide a twenty minute overview of their program, followed by some brief questions from the state's CDQ team. There is no credibility to the subsequent state decision-making process. Although the state has developed some twenty criteria to follow in making allocation decisions, there is no relative weight assigned to the criteria so that a CDQ group can determine what criteria has greater importance than another. The state conducts a cursory "private" meeting with each group prior to making its allocation recommendations, but the meetings are one and one-half hours in length and do not allow time for any substantive exchange of views or clarifications of past or future projects or programs. The state does not provide an annual report card to the groups, so no group has a clear idea of how they are doing in the eyes of the state: we may think we are doing great, and perhaps we are, but the state may not share our perspective and none of us will know that until the state recommends a reduction in our allocation. The decisions made by the state are made behind closed doors. None of the groups have any idea whether the state understands their program.

Unfortunately, the Secretary appears to have fully delegated his or her responsibility or participation in the allocation process to the state of Alaska. The National Marine Fisheries Service (NMFS) and NOAA, acting on behalf of the Secretary, maintain that the federal government's role is essentially ministerial; that is, the state will make the decisions, and the Secretary will simply determine whether or not the state followed the process outlined in the regulations. By limiting its participation to determining whether or not the "i" is dotted and the "t" is crossed, the Secretary has abrogated the federal government's responsibility to determine whether or not the state is making fair and equitable allocation recommendations. This is in conflict with the intent of the federal regulations — if the Congress wanted the CDQ program to be a state program it should have stated as much: the fact that the CDQ program is a federal program should provide, at the very least, that the appropriate federal agency will ensure that the process used by the state is fair and equitable and not arbitrary and capricious.

The position adopted by the NMFS and the National Oceanographic and Atmospheric Administration (NOAA) also results in a denial of due process to any CDQ group who wishes to object to or challenge allocation recommendations developed by the state of Alaska. By taking itself out of the allocation process, the U.S. Department of Commerce has eliminated itself as an entity to which a CDQ group can appeal or object with respect to a CDQ allocation recommendation from the state. Since the state of Alaska CDQ regulations do not provide for an appeal of its recommendation, there is no one to appeal to except the courts. This, in part, is why APICDA has filed lawsuits in federal and state court against the Secretary and the state of Alaska, respectively, challenging the state's

2001 and 2002 CDQ allocation recommendations and the approval of those recommendations by the Secretary.

The current CDQ allocation process is terrible. Each of the six groups are pitted against one another, so cooperation among groups between allocations is inhibited. Some groups are fearful that the state will reduce their allocation if the group challenges the state or does not follow the stated or unstated political manifesto of the state. There is no credibility to the process. Allocations are for a period of one to two years. All of the groups know for a fact that the series of one-year pollock CDQ allocations used by the state between 1998 and 2000 were simply designed to place political pressure on one particular CDQ group to conform. How can long term, prudent financial decisions be made when an arbitrary political process can substantially reduce a CDQ allocation on a whim or as part of some grand political strategy? And where can a CDQ group turn for relief? Not the state of Alaska — it does not have an appeal process. And, not the federal government — it has decided to abrogate its responsibility to the process.

The current CDQ allocation process is a process based upon the subjective application of criteria and politics, with decisions made in secret behind closed doors, and one without oversight, credibility or the right of appeal or challenge.

We believe that it is now in the best interests of the CDQ groups, their members, their partners, and the public, for each group to receive a fixed CDQ allocation that extends for the life of the program. The CDQ program and each of the six groups has matured sufficiently that it is no longer necessary, or in the best interests of the program itself, for the groups to compete against each other for CDQ allocations. Individually and collectively, the groups need financial stability. Since each of the groups is still developing a diversified investment portfolio, and since the focus of our investment strategy is the commercial fishing industry, instability is our constant companion and enemy. The elimination of the uncertainty associated with periodic CDQ allocations will eliminate one very critical part of the instability we currently endure. Fixed allocations will make it easier for the groups to work together, to share ideas and programs that are benefiting CDQ residents, to invest together, and to provide the opportunity for a substantially improved planning horizon. Fixed allocations will also eliminate politics from the allocation process, reduce costs for both the government and the CDQ groups, and allow each of the groups to better utilize their personnel.

If fixed allocations are implemented, the oversight process described below should be used to ensure that each group is operating within the parameters of the CDQ program and the respective group's CDP. In the event that a group strays from compliance, regulations should be enacted to allow the Secretary to temporarily reduce the offending

group's allocation until they bring themselves back into compliance (at which time their allocation is reinstated in its entirety). An appropriate mechanism needs to be incorporated commensurate with this regulation to ensure that an accused offending group has access to due process.

Oversight of the CDQ Program

With regard to government oversight of the CDQ program, the state of Alaska serves as the primary entity in charge of oversight. Initially, the state had a paternalistic approach to CDQ oversight. This may have been appropriate at the time, simply to ensure that the various groups understood the consequences of their actions. As the years have passed, however, the CDQ program has matured substantially: the respective board of directors and management teams have grown and become quite sophisticated, and the array of assets and business activities of each of the CDQ organizations has increased substantially. Nevertheless, the paternalistic approach remains, albeit in a more sophisticated form.

Rules and regulations exist for the purpose of outlining the boundaries of acceptable behavior. The concept of oversight as a simple mechanism to ensure that rules and regulations are adhered to is an appropriate and acceptable tool. However, when oversight results in micro-management or unnecessarily burdens those being overseen — whether purposeful or not — the oversight has a negative effect and inhibits the ability of the groups to effectively manage their businesses, to compete, and to maximize their flexibility the same as any other private sector corporation. It also creates an unnecessary bureaucracy, which increases costs and reduces the efficiency of personnel.

In APICDA's opinion, it is inappropriate to continue requiring the different groups to receive approval from the state of Alaska and the Secretary of Commerce before a group can make an investment or make adjustments in its budgets or operating plans. Why should the state of Alaska or the Secretary of Commerce be able to substitute their decision in place of the decision made by a CDQ group board of directors? If the decision is within the scope of the program, and adheres to the rules and regulations regarding investments, these "oversight" requirements are paternalistic, unnecessary, costly, inefficient and inhibiting.

APICDA recognizes that the CDQ program is different because the fish and shellfish allocated come from a common property resource. As such, it is appropriate that the CDQ groups be held to a different standard in terms of reporting and oversight. We believe oversight would be best accomplished by reporting from the CDQ organizations

coupled with an annual audit conducted by the state or NMFS. We do not believe anything in addition is necessary.

Our proposal on oversight is very simple: the groups should be required to operate within the law, and live within the rules and regulations of the program; to amend CDPs, when appropriate, and provide timely copies of the amendments to the state and/or the NMFS; and, to provide reasonable advance notification to the state of Alaska and/or the NMFS when new investments are being made. Nothing else is really necessary, unless one is interested in building a government bureaucracy or using this program as a political tool for other unrelated objectives.

Allowable CDQ Investments

Another issue of significance is the extent of allowable investments by CDQ groups. When establishing the CDQ program, the North Pacific Fishery Management Council limited the scope of investments to those that are directly or indirectly related to the fishing industry. This comports with: 1.) the Council's intention that the CDQ program result in stable local economies based upon the fishing industry, and 2.) the Council's philosophy that the CDQ program result in participation in the fishing industry by Bering Sea and Aleutian Islands (BSAI) residents. This makes considerable sense given that the CDQ program is funded by groundfish and shellfish allocations taken from the common property resources of the BSAI.

There are increasing calls by different CDQ groups for this policy to be modified to allow limited or unlimited investments in non-fishery related projects or investments. APICDA and CBSFA are unique among the six CDQ groups in that our communities are located immediately adjacent to the groundfish and shellfish fishing grounds and the other four CDQ groups are not. As a result, we are in a position to use our CDQ allocations to develop local economies in our member villages that are based upon and rely upon groundfish and shellfish fisheries. That is what we have done, and that is what we are continuing to do.

It is impossible for APICDA to support a change in regulations that would allow any non-fishery related projects or investments without a corresponding change in the CDQ allocation process that results in fair and equitable, fixed allocations.

It is true that APICDA supports a very small population in comparison to most of the other groups. But population was never an allocation criteria adopted by the North Pacific Council or by the Secretary. By virtue of our location, APICDA is required to expend substantial sums on infrastructure and local fishery-related business development.

Anyone familiar with the Bering Sea and Aleutian Islands knows that development in that region is a hugely expensive and a risky venture. The intent of the CDQ program was to provide a mechanism to support that development and help offset that risk. Modifying the program to allow for non-fishery related investments without ensuring that the groups that have the continuing ability, need, and mandate to develop local fishery economies, destroys the original intent of the program and the promises of those who created it.

If, on the other hand, the allocation approach we identified above is enacted, APICDA could support allowing CDQ funds to be used for non-fishery related purposes. Good arguments can be made that stable economies will never result in many or most Western - Alaska villages unless those economies are based upon a combination of local resources adjacent to the respective community(ies) and outside investments.

Many of the villages participating in the CDQ program do not have a reasonable locus to Bering Sea or Aleutian Islands fishery resources, but do have access to other resources. If sufficient CDQ allocations are set aside for those CDQ groups that are located adjacent to groundfish and shellfish resources to allow them to reasonably complete the development of sustainable local economies based upon the fishing industry, we could support providing the necessary flexibility for the other CDQ groups to develop the resources adjacent to their communities and to develop outside investments. Otherwise, we sacrifice our future in fisheries for someone else's future in non-fisheries. That is not what was intended when this program was developed.

Conclusion

Mr. Chairman and members of the committee, I want to thank you again for the opportunity to testify before you and offer APICDA's comments. Despite the natural growing pains associated with the CDQ program, there is no question that this is the most important program in Western Alaska. The simple ability for communities and their residents to plan their future, to be in control of their destiny, and to have something to actually look forward to is a unique experience for most of the CDQ communities. This program has empowered our communities and our residents to dream and have confidence in a worthwhile future. There is no question that the CDQ program has clearly established during its first eight years that it is not a pipe dream — it works.

Yes, we have growing pains. Yes, we need some help to work out our problems. And, yes, this is a program worth keeping.

Thank you, Mr. Chairman.

Mr. UNDERWOOD. Thank you for your testimony.

Mr. Samuelsen. I am going to have to try to insist that we try to stick within the 5 minutes, although Mr. Cotter squeezed an addition of 2-1/2 minutes out of this. Go ahead, Mr. Samuelsen.

STATEMENT OF H. ROBIN SAMUELSEN, JR., CHAIRMAN, BOARD OF DIRECTORS, BRISTOL BAY ECONOMIC DEVELOPMENT ASSOCIATION

Mr. SAMUELSEN. Thank you, Mr. Chairman. That is the nature of Mr. Cotter.

For the record, my name is Robin Samuelsen. I am from the Bristol Bay Economic Development Corporation. Behind me I have Hazel Nelson, who is our vice president.

Mr. Chairman, I make up—BBEDC makes up 17 villages within the Bristol Bay Region. I am also a tribal chief, Mr. Chairman, and I want to make one clarification. The CDQ Program is not a Alaska Native program. We represent everybody that lives within our communities, regardless of ethnic background.

The CDQ Program is entering its tenth year, and I can honestly say that no one thought this program would survive, let alone thrive. We were against adversity like never seen before in the Alaska fishing community. Outside interests were united in destroying the community development program.

We are from isolated villages. The lowest prices I could find in the Bristol Bay Region for gasoline was $3.00 a gallon just before I came down. Heating fuel was 2.45, and the lowest price I could find for a gallon of milk was $6.18. In 1997 and 1998 the Federal and State Government declared my region an economic disaster. Our salmon did not return. This year we are missing 12 million salmon to ocean fish. We are facing another disaster in the year 2001, not only from a biological standpoint, but also from the farm-raised Chilean salmon that is flooding our marketplace.

Our people live in cash plus subsistence economy. They have done that for thousands of years in Bristol Bay.

Ten years ago not one person from my region was employed in the Bering Sea. Today we have over 350 people working from our communities. These are not slime-line positions. These are upward mobility positions. People are in upper management and are working their way up.

We have invested in pollock, crab, cod, halibut with partners from Alaska to Washington. These investments have proven themselves very valuable. BBEDC's primary focus has been in-region development, increasing the skills of our residents. We have teamed up with the University of Alaska, Fairbanks, and many of our people do not have high school diplomas. In order to enter into a slime-line position, they need a GED. We have gotten many people their GEDs. Our dropout rate in our high schools is reversing, and things are finally looking up.

We haven't forgotten about our elementary kids. You need to teach them young. So we have introduced our kids to the 9 to 5 work world, and we have got all four school districts signed on.

Bristol Bay used to be the salmon capital of the world, but then again, our salmon prices have plummeted. Our internships are very important. We employ these young people both inside the

region and outside the region. There has never been a program like the CDQ Program. Combined, it has helped my people like no other program has, and I believe that if it were not for the competitive nature of this program, between us, the CDQ groups, and the need to live up to our community development plans, coupled with strong Federal and State oversight, we in the CDQ Program will not have come as far as we have.

This leads me to the oversight issues. State, Federal and the North Pacific Fishery Management Council have all done a good job of ensuring that this use of a public resource is doing what it is supposed to do. The Council and NMFS specifically put the State of Alaska into lead oversight day-to-day management role, and they are the most qualified for the job. Neither NMFS nor the Council wants to take on this responsibility.

The CDQ groups have a lengthy process to go through before any allocations of resources are made to them. We must submit a CDP, provide quarterly and annual reports, participate in public hearings.

I won't read through all my testimony because I don't have the time, but, yes, Chairman Young has been successful. If it wasn't for Chairman Young introducing H.R. 553, I don't think the Council would have taken this issue, I don't think the State would have looked at this issue, and the CDQ groups have been crying out, but because of other issues such as stellar seal lions, the American Fisheries Act, a whole host of lawsuits and putting the North Pacific Fishery Management Council, as well as NMFS, under a regulatory lawsuit siege, the priorities were set forth by the courts. And if it wasn't for you, Mr. Young, and introduction of this bill, I don't think the Council would have looked at the problems of the CDQ community that they are having in oversight, but thanks to you and the introduction of this bill, I think that the Council is moving forward. We are going to look at—the Council formed a Committee that has brought forth recommendations. The Council will take the recommendations in October, and ship them out for final analysis, and hopefully will act on them in December.

I just got lectured about time. Mr. Chairman, thank you.

[The prepared statement of Mr. Samuelsen follows:]

Testimony of
Harold Robin Samuelsen Jr. President and CEO
Bristol Bay Economic Development Corporation
Subcommittee on Fisheries Conservation, Wildlife and Oceans
House Committee on Resources
United States House of Representatives
July 19, 2001

"Implementation of the Community Development Quota Program in Western Alaska"

Mr. Chairman and members of this Subcommittee:

On behalf of the residents of the the Bristol Bay Economic Development Corporation I want to thank you for providing BBEDC the opportunity to comment on the past and present status of the Western Alaska Community Development (CDQ) program and the legislation, H.R. 553, regarding the program. My name is Harold R. Samuelsen Jr.; I am the President and CEO of BBEDC. I have been involved in this program ever since the North Pacific fishery Management Council created it. BBEDC is made up of 17 villages and has a population of approximately 6,000, of whom are mostly Alaskan Natives.

Review of the Western Alaska CDQ Program

The CDQ program is entering its tenth year and I can honestly say that no one thought that this program would survive let alone thrive. Well I am happy to report to you here today that this program has thrived on many fronts. It has improved the lives of many in our remote communities. The CDQ program is the only program that is bringing hope to the people we represent. The CDQ program is providing economic self-sustaining economies, but those economies do not happen overnight. Our commercial salmon fisheries have all but collapsed because of poor returning spawning salmon and the negative impacts of farmed raised salmon flooding the market at subsidized wholesale prices.

Remember we are isolated rural communities not connected by any road system to an urban area. We have airline service however it's a very expensive airline service. The price for a gallon of gas is $3.00, heating fuel per gallon is $2.45, a gallon of fresh milk is $6.18. Our cost of living is the highest in the nation.

We have a cash plus subsistence economy. Most of our members participate in subsistence activities, gathering berries, putting up different forms of smoke, salted and frozen fish. Moose, bear and caribou provide a stable meat source. To participate in subsistence activities one needs cash for fuel, boats, guns and ammo, the CDQ related employment provides this much-needed cash.

BBEDC'S CDQ Experience

Ten years ago not one person from my region was working in the pollock fisheries of the Bering Sea. Today we have about 350 people working not only in the Bering Sea, but also in the State of Washington as well as in our region. The CDQ employment is very important for our regions residents.

BBEDC has made investments in Pollock, Crab, Cod and halibut with partners from Alaska to Washington. BBEDC is looking to increasing its equity ownership in vessels and companies in the Bering Sea. These investment partnerships have return significant profits to our region, and provided many excellent employment opportunities. I am just not talking slime line jobs either. Our people are working their way up in every more responsible positions.

BBEDC's primary focus in-region is on developing the skills of our residents. Our young people are now going off to college in greater numbers, a very positive sign. Why? Because we at BBEDC have formed a trust fund that is providing scholarships to our village residents. This fund is inflation proofed and will be providing scholarships for years to come, with or without a CDQ program.

We have teamed up with the University of Alaska and have focused on getting our young adults a GED, our high school drop out rate is very high, and this program is another huge success. Not all of our people are four-year college material, to address this we set up an extensive Voc/Tech training program. Many of our residents have taken advantage of the in-region training, while others are going to trade schools outside the region.

Nor have we forgotten about our elementary kids and the need to introduce them to the 9 to 5 world. We created an "Education Initiative" to prepare young residents to compete successfully in the job market by emphasizing work readiness skills. We have four school districts in Bristol Bay and all four districts have signed on to this program.

Bristol Bay is the salmon capital of the world. We have a limited entry system that allows a person to participate in the salmon fisheries. Since the inception of the limited entry law, the number of local permit holders has been dwindling. This is due to selling permits outside the region, to permits being seized for bad loans that cannot be repaid or IRS seizures for back taxes. BBEDC formed the Bristol Bay Permit Brokerage to work closely with the people of Bristol Bay to minimize permit losses. For example, 588 Bristol Bay residents were in the arrears with or had problems with the IRS in 1999, but very few permits were seized. The IRS made a commitment not to take any local limited entry permits as long as that person was working through BBEDC'S permit brokerage.

We employ over 40 internships a year both within and outside the region. These interns are finding full time jobs after completing our internship program; our success rate has been around 95%, Our interns ages range from 14 to 70 years old.

BBEDC has set up a Regional Business and Infrastructure Development program that helps local people develop business plans and start new business. BBEDC also has a Regional Fisheries Development program, which identifies potential new commercial seafood development opportunities within Bristol Bay. Halibut is a prime example; my people love to fish halibut and it provides much needed cash in the early spring months.

Without CDQ's none of these programs would be here today. Combined, they have helped my region like no other program has. I personally believe that if it were not for the competitive nature of this program between the CDQ groups and the need to live up to our own Community Development plans coupled with strong Federal and State oversight, we in the CDQ program would not have come as far as we have. That leads me into the oversight issue.

Government Oversight

State, Federal and the North Pacific Fishery Management Council all have done a good job of ensuring that this use of a public resource is doing what it is supposed to do. The NPFMC and NMFS specifically put the State of Alaska in the lead oversight role, as they are the most qualified for the job. Neither NMFS nor the council wants to take on this responsibility.

Let me make it quite clear that my Board of Directors support the continued oversight by the State of Alaska. This oversight moves the program forward and insures that benefits flow back to the region. Many program have come and gone, in our region. Millions of dollars have been spent with little or no benefits to the regions residents. Congress must insure that the CDQ program is bringing the benefits back to the region and that the CDQ program is helping the regions residents. This Mr. Chairman will not be possible, in my opinion, without continuing state oversight.

The CDQ groups have a lengthy process to go through before any allocations of the resource are made to them. We must submit a CDP application, provide quarterly and annual reports and participate in a public hearing and one-on-one meetings with state regulators. In our CDP, we submit an allocation request for each species, a description of the group's goals and objectives, specific milestones for the allocation period, including how many people we are going to provide employment, vocational and educational training programs for any fishery related infrastructure development within our region.

Our CDP is our plan against which our success is measured for the next allocation period. Once this is submitted to the State of Alaska and a public hearing is held, the State of Alaska makes its allocation recommendation. These recommendations are then presented to the NPFMC for their comments then submitted to NMFS. The Secretary of Commerce has final approval of the CDP's and implementation. This process has proven itself and it works.

As the CDQ program has grown, changes in the oversight roles have had to change as well. All the CDQ groups as well as the State of Alaska and NMFS sat down to address changes that we all felt were necessary. We call this concept a "Brave New World". This evolved into a revised concept called a "Bright New World" in subsequent meetings. This concept addressed many changes to the program that the CDQ groups wanted and most of the CDQ groups supported. In early 2000 we again all sat down because one or two of the CDQ groups were not happy with the way things was turning out. We opted to strive for a streamlined, simple CDP process, which we did and then the State presented these changes to the NPFMC who accepted these changes. NMFS drafted these changes into regulatory changes and submitted them to the Secretary of commerce for final approval.

Meantime, Congressman Young introduced H.R. 5565. H.R. 5565 was never brought before the BBEDC Board or myself. This bill took us completely by surprise. With all do respect to Congressman Young, BBEDC could not support the bill. The changes proposed in H.R. 5565 was a substantial departure to the program as well as the government's oversight roles regarding the CDQ program at the council level.

During this time, APICDA, filed a lawsuit in state and federal court challenging the 2001-2002 allocations and the process used by the government agencies in making those allocations. BBEDC along with two other CDQ groups filed in federal court and intervened in this lawsuit to support the State of Alaska and NMFS allocation awards for the 2001-2002 CDQ allocations. This lawsuit is still pending in the courts.

The NPFMC formed a CDQ Policy Committee in March 2001, made up of all CDQ groups, the State of Alaska, NMFS and two industry people. I represented BBEDC on the committee. The charge of this committee was to review the issues raised in H.R. 553, Bright New World and and to make recommendations for changes to the program. The committee met in May and June for four days and reported its recommendations during the June NPFMC meeting. The NPFMC accepted the report and tasked its staff to analyze the various options identified by the committee. For more detailed information, I suggest that you look at the written testimony of the NPFMC. The NPFMC has scheduled final action on these recommended changes in its December 2001 meeting.

BBEDC supports the current process and the involvement of the NPFMC, State of Alaska and NMFS in oversight of the CDQ program, as well as the changes recommended by the committee and chosen as the preferred alternative by the Council. BBEDC feels very strongly that without oversight this program would not have achieved what it has achieved to date.

Here are a few issues addressed by the committee:

1. Should the program be expanded to allow the CDQ groups to invest in non-fisheries related investment?
2. Should the CDQ allocations continue to be done periodically or made permanent?

3. Should the allocations be based on a fixed foundation quota based on demographic characteristics, such as population or proximity to resource?
4. Revise the criteria for the state to use in applications and should a scorecard be developed and used by the state on each defined criteria before making allocation recommendations, so that the process is more transparent?
5. Should we adopt an administrative appeal process within the state, NMFS or NPFMC allocation process?

Comments on H.R. 553

I would like to comment on a few things in H.R. 553. One thing this bill would do is remove the requirement that groups must invest in fisheries related investments. The policy group addressed this issue and came up with a solution that would allow CDQ groups to invest up to $500,000.00 annually in non-fisheries related projects. However, this investment had to be made in-region and had to be economic development projects. This concept was approved by just about all the CDQ groups, state and federal oversight teams thought this concept was fine and addressed the problem that allowing only fisheries related investments was too restrictive in some areas where there are few such opportunities. BBEDC feels that limiting the exemption is essential to keep the CDQ program largely a fisheries development program.

H.R. 553 would also remove from government oversight projects undertaken by a CDQ group or its subsidiaries funded by "second tier" income form financial or business investments, as opposed to primary royalty income derived directly from quota lease payments. This is the most contentious issue. It appears to be driven by fears of government interference rather than reality. I would note for the record that the CDQ policy committee recommended some changes that would lessen state oversight of legitimate fishing businesses over which the group's don't exercise management control. The state and NMFS have always responded in a timely manner on amendments to CDP. I know of no investment delays caused by oversight by the state or NMFS.

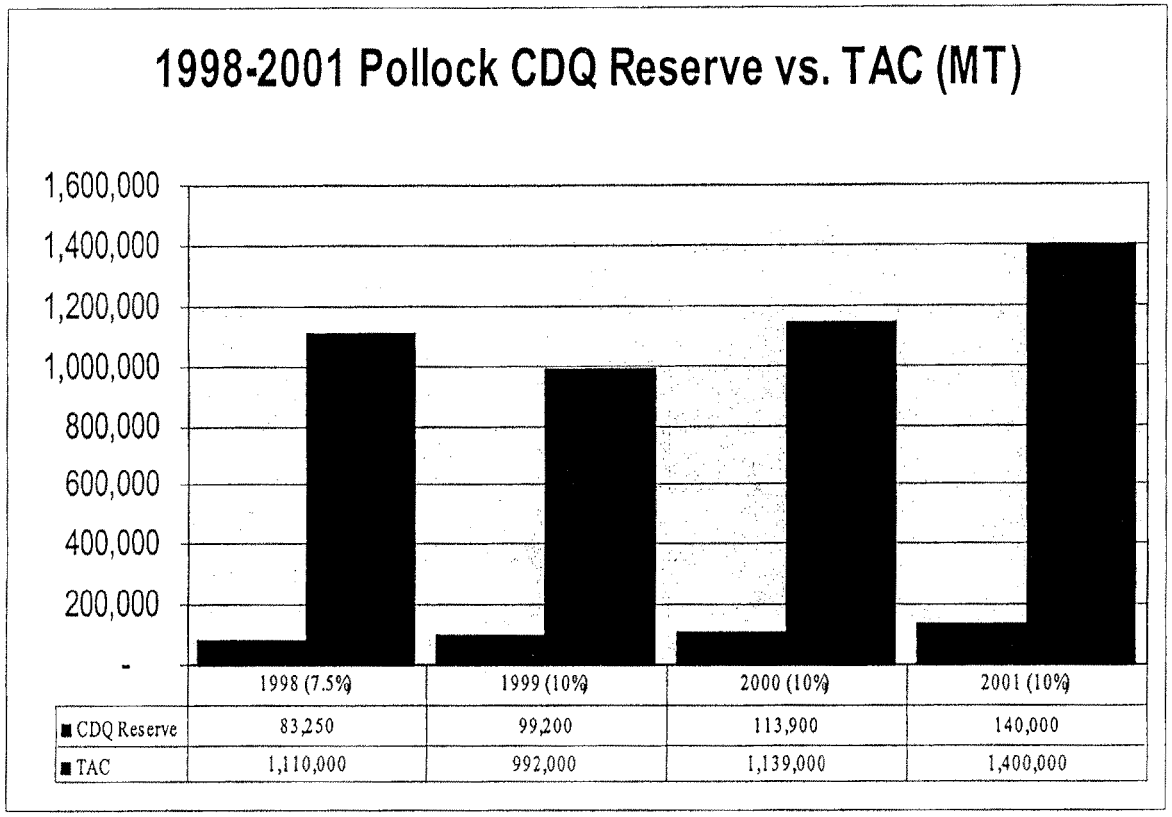
Exempting income other than royalties from oversight open "Pandora's Box". A CDQ group would set up shell corporations then invest a major chunk of its income in this shell company that uses its profits outside Alaska and returns nothing to the communities. No jobs or training for the people of the region. If this provision passed it would allow CDQ groups like BBEDC to invest in an Arizona golf course once we create a corporate veil. This was never the intent of the CDQ program, it was never the intent of the NPFMC, and it was only the intent of one CDQ GROUP who lobbied hard for H.R.553. If you want to destroy the Western Alaska CDQ program this is the avenue to do just that.

BBEDC also opposes shifting the primary allocation responsibility to NMFS as envisioned in H.R. 553.. The NMFS regulatory process is slow and cumbersome and would hurt the CDQ groups as well as potential partners. BBEDC believes that the state is and has been the best entity to lead in making the CDQ allocations.

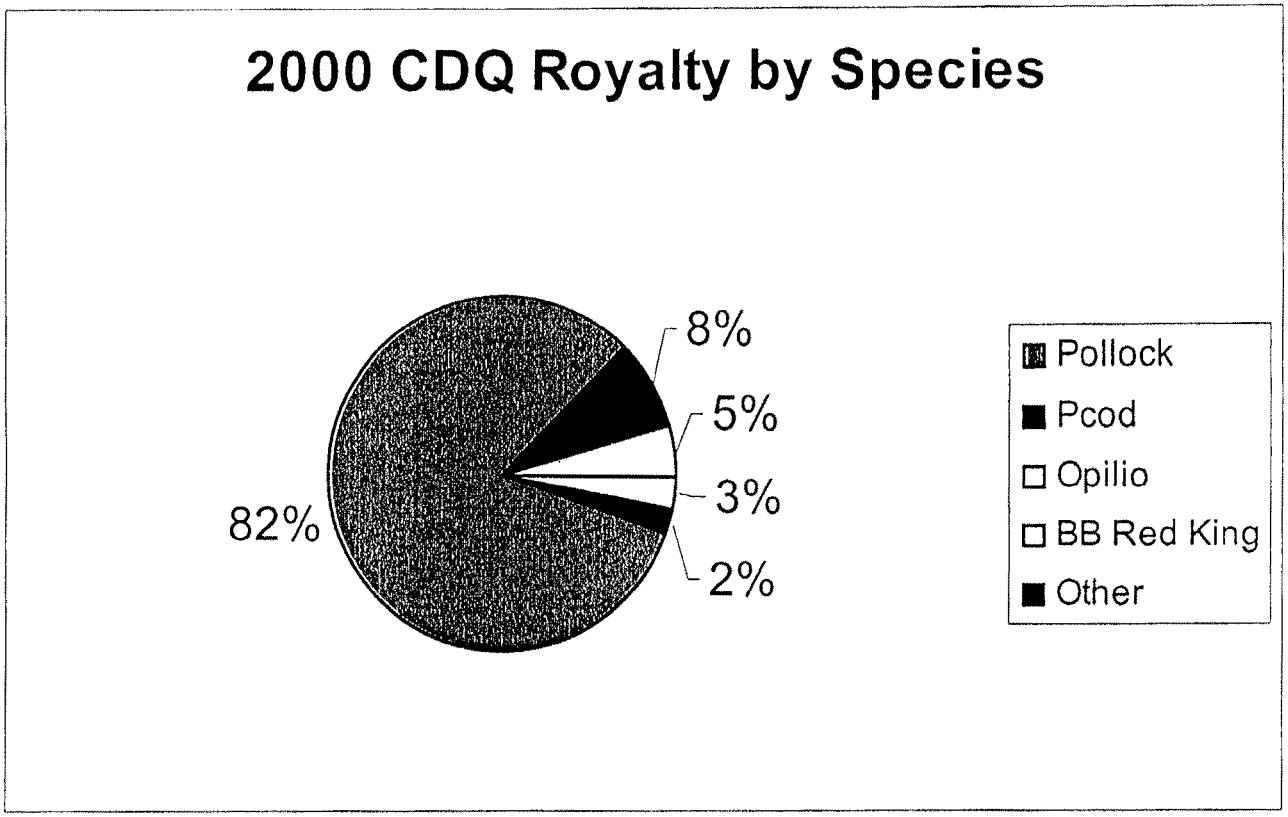
In closing, Mr. Chairman, I would suggest and hope that H.R.553 be tabled and not proceed any further. Congressman Young has not only put the CDQ program on the front burner here in Washington, but with the State of Alaska, NMFS and the NPFMC.

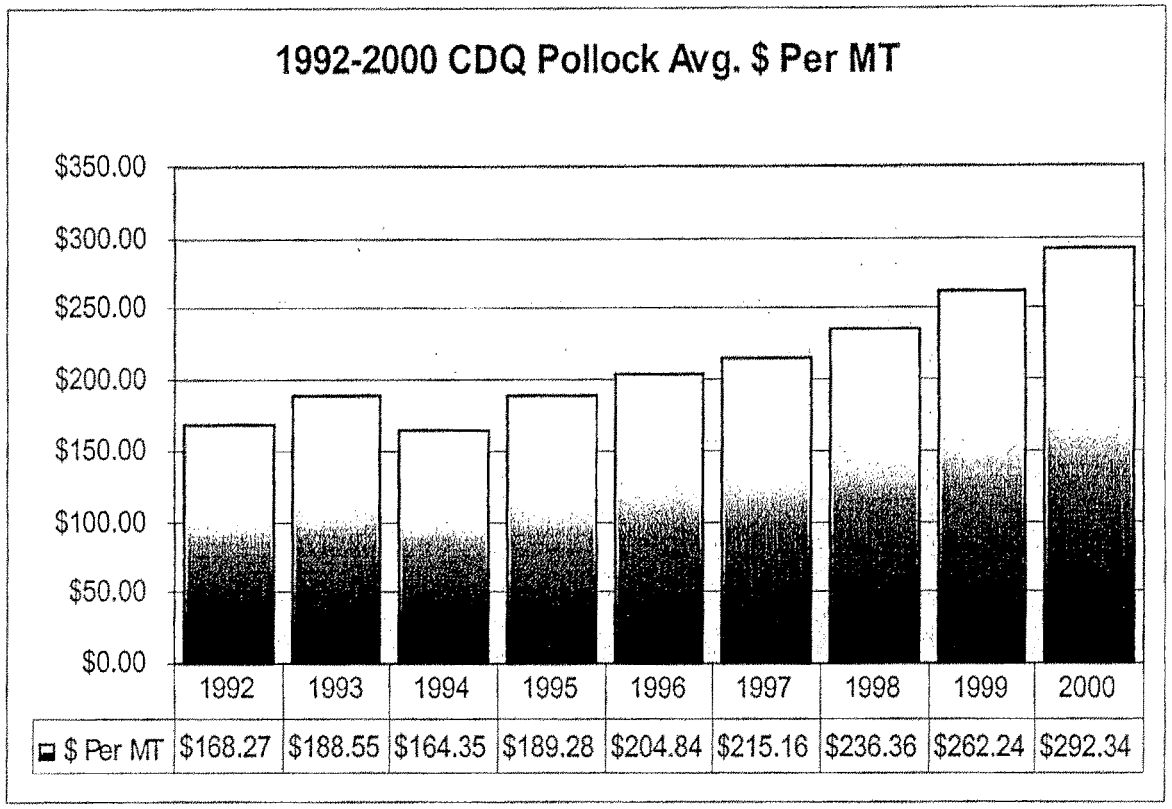
By his actions and introduction of H.R. 553, he has helped the CDQ group's iron out their problems and differences with the CDQ oversight management agencies. Once the NPFMC adopts the changes in December of this year I believe we will have a stronger CDQ program that would continue bringing opportunities back to the people we represent.

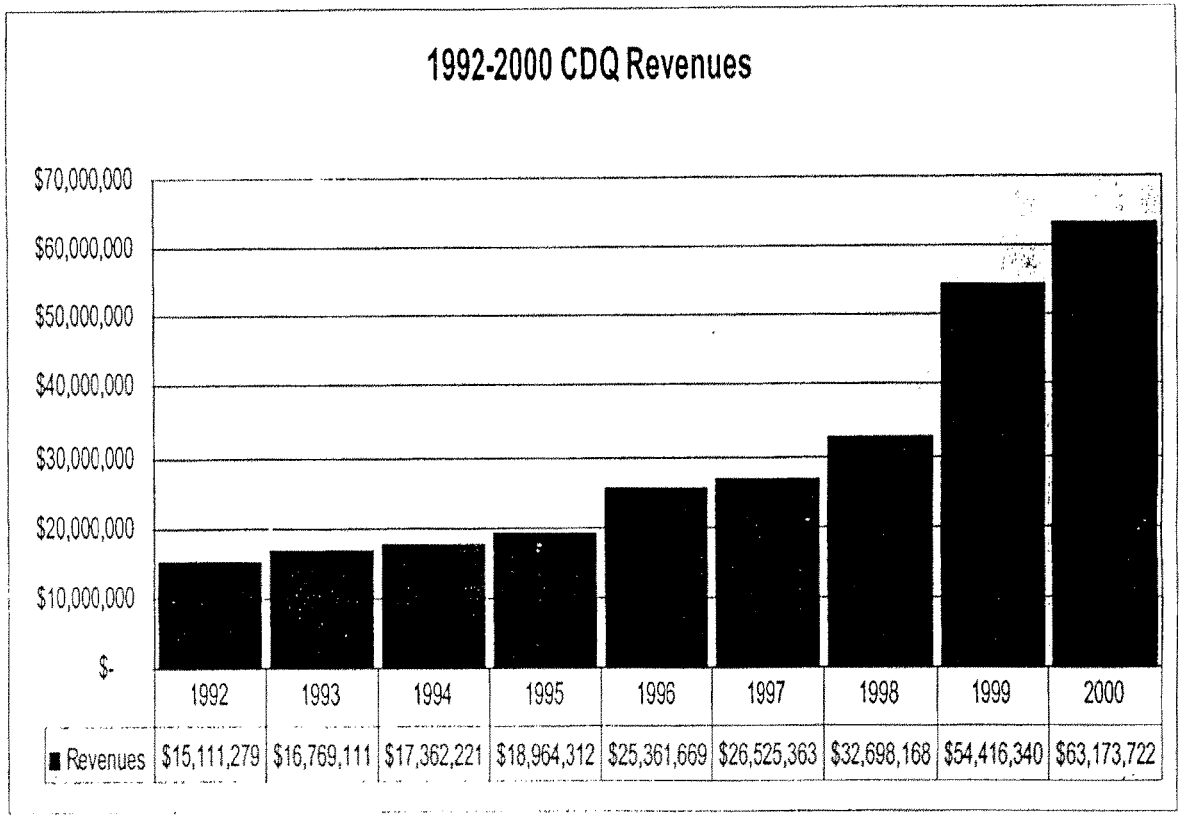
I wish to thank you Mr. Chairman and members of the committee for the opportunity to address this committee. A big thank you to Congressman Young for his past and continued support of the CDQ program. We are adjusting the CDQ rules and oversight in Alaska through the NPFMC process and I strongly feel that is where the problems and issues need to be addressed, not here in Washington D.C. Thank You.



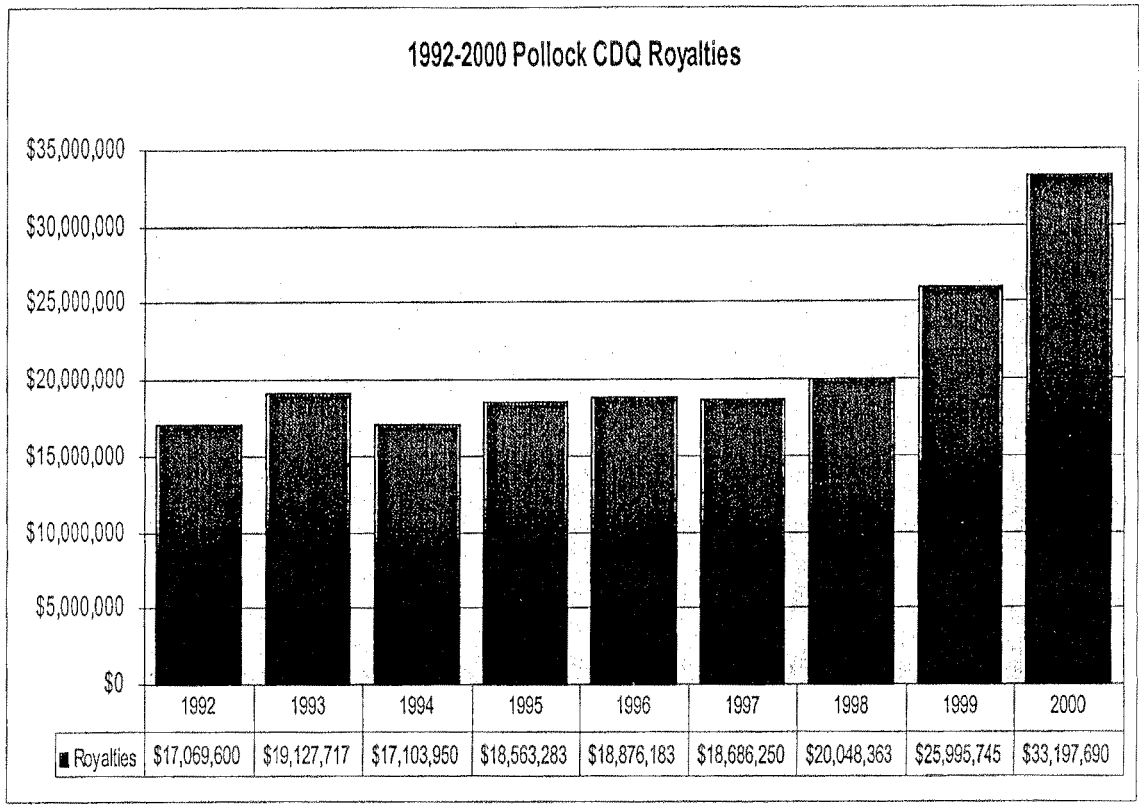
	1998 (7.5%)	1999 (10%)	2000 (10%)	2001 (10%)
CDQ Reserve	83,250	99,200	113,900	140,000
TAC	1,110,000	992,000	1,139,000	1,400,000


2000 CDQ Royalty by Species
8%
5%
3%
2%
82%
Pollock
Pcod
Opilio
BB Red King
Other

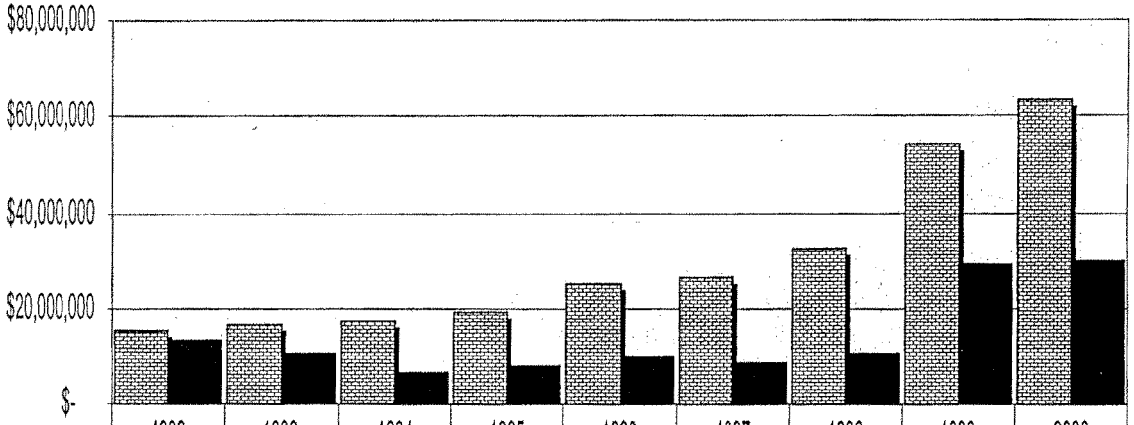

1992-2000 CDQ Pollock Avg. $ Per MT
$350.00
$300.00
$250.00
$200.00
$150.00
$100.00
$50.00
$0.00
1992 1993 1994 1995 1996 1997 1998 1999 2000
$ Per MT $168.27 $188.55 $164.35 $189.28 $204.84 $215.16 $236.36 $262.24 $292.34



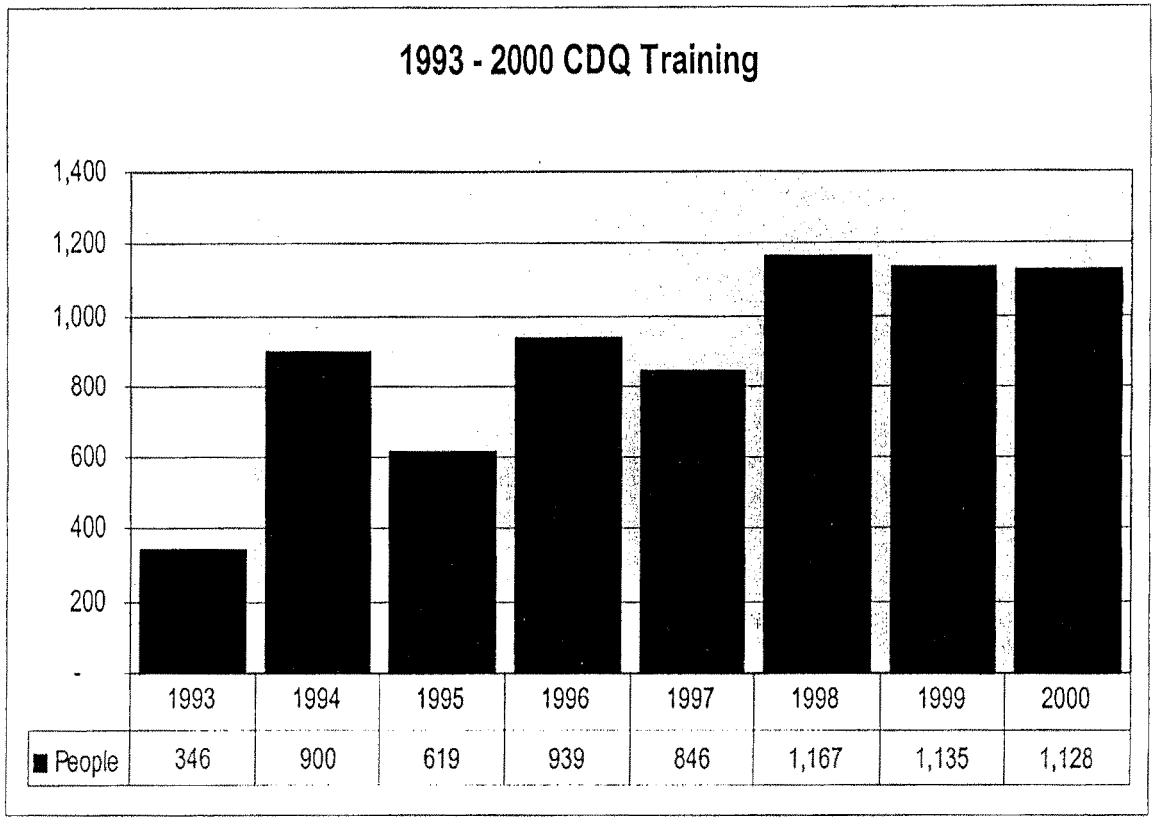
	1992	1993	1994	1995	1996	1997	1998	1999	2000
Revenues	$15,111,279	$16,769,111	$17,362,221	$18,964,312	$25,361,669	$26,525,363	$32,698,168	$54,416,340	$63,173,722

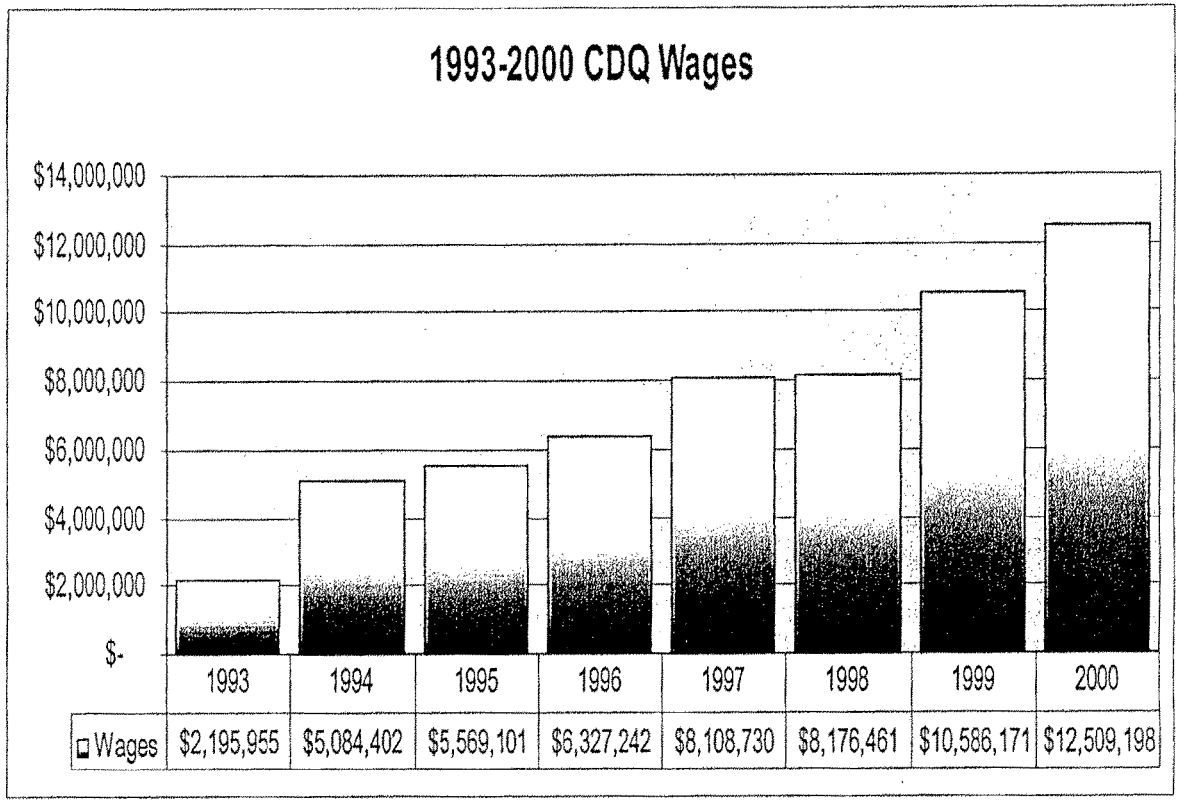


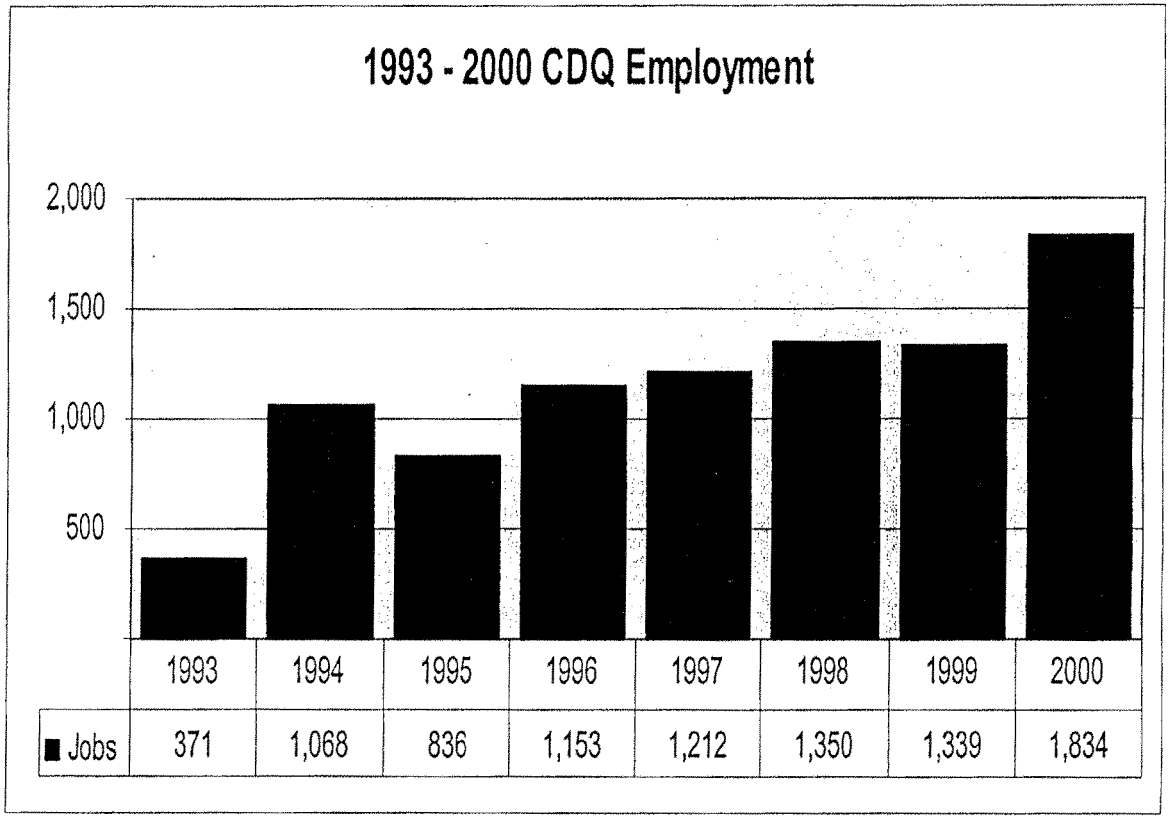
	1992	1993	1994	1995	1996	1997	1998	1999	2000
Royalties	$17,069,600	$19,127,717	$17,103,950	$18,563,283	$18,876,183	$18,686,250	$20,048,363	$25,995,745	$33,197,690



	1992	1993	1994	1995	1996	1997	1998	1999	2000
Revenues	$15,111,279	$16,769,111	$17,362,221	$18,964,312	$25,361,669	$26,525,363	$32,698,168	$54,416,340	$63,173,722
Net Income	$13,335,747	$10,353,028	$6,736,966	$7,886,696	$10,060,313	$8,362,430	$10,344,391	$28,992,730	$29,951,752


1993 - 2000 CDQ Training
1,400
1,200
1,000
800
600
400
200
-
1993
1994
1995
1996
1997
1998
1999
2000
People
346
900
619
939
846
1,167
1,135
1,128


1993-2000 CDQ Wages
$14,000,000
$12,000,000
$10,000,000
$8,000,000
$6,000,000
$4,000,000
$2,000,000
$-
1993
1994
1995
1996
1997
1998
1999
2000
Wages
$2,195,955
$5,084,402
$5,569,101
$6,327,242
$8,108,730
$8,176,461
$10,586,171
$12,509,198



	1993	1994	1995	1996	1997	1998	1999	2000
Jobs	371	1,068	836	1,153	1,212	1,350	1,339	1,834

Mr. YOUNG. [Presiding] Thank you, and thanks for—you stayed right in time. In fact, you had 15 seconds left. That is all right.

Ms. Merculief, you are up next.

STATEMENT OF PATIENCE MERCULIEF, ADMINISTRATIVE DIRECTOR AND CDQ QUOTA MANAGER, CENTRAL BERING SEA FISHERMEN'S ASSOCIATION

Ms. MERCULIEF. Thank you, Mr. Chairman, for the opportunity to be here today. It is an honor to be here on behalf of the members of the CBSFA community. I apologize for the fact that Mr. Phillip Lestenkof, President of CBSFA, is not here today because he is in fact in the middle of our halibut fishery.

I first ask that our written testimony be included in the record in its entirely, and second, we have provided you with a portfolio of the CBSFA halibut fishery in action, and I hope that the members of the Committee and the staff can improve their understanding by looking at pictures of our halibut fleet and harbor in action. A picture is often worth a thousand words.

It is the CDQ Program and almost 1-1/2 million pounds of CDQ and IFQ halibut that has allowed the St. Paul fleet to develop. It allows access to the fish, provides the resources to finance individual CBSFA fishermen, to purchase boats and also purchase additional IFQ halibut in Area 4C, the area surrounding St. Paul. Without the CDQ Program, this would be another situation where the residents of St. Paul would have sat by in poverty, and watched people from Seattle, Anchorage, Kodiak, or Dutch Harbor, benefit from the halibut resource in the waters around St. Paul. Whatever improvements are necessary, the bottom line is that this program is a success.

In the community of St. Paul, a community of about 600 people, 120 people are making at least a portion of their living fishing. There are 20 boats fishing and at least 10 captains are netting more than $30,000. Five of those are netting over 50,000 a year from the halibut fishery. The total gross revenue to the community of St. Paul from the halibut CDQ fishery is approximately $3 million. All of this has happened in the last decade because of the CDQ Program. 55 percent of the United States commercial fishing industry catches their fish within 65 miles of St. Paul Island. Yet there would not be an economically viable in-shore fishing fleet in the community without the CDQ Program.

The future depends on the CDQ Program too. If CBSFA receives adequate allocations and is not burdened with excessive regulation by the State, there is potential for:

No. 1. Icicle Seafoods moving a processor to the harbor to process cod, pollock and other flat fish. CBSFA, Icicle and the City of St. Paul have signed an MOU to allow this to happen; and

No. 2. With the eventual return of crab, the continued harvest and processing of crab for the benefit of the CDQ groups that are not located near the resource. CDQ crab harvesting and processing on St. Paul benefits all of the CDQ groups;

No. 3. The ability of the community to develop the necessary infrastructure, such as construction of the local authorized small-boat harbor, so that CBSFA can upgrade its boats and other groups can take advantage of the immense resource surrounding St. Paul;

No. 4 The revenues to finance individual fisherman's acquisition of larger vessels and additional fish quotas so that fishermen can expand and diversity into other fisheries; and

No. 5. The training, internship and other educational programs to allow the local residents to participate successfully in these programs.

There are two impediments, first the State's focus on population in allocating quotas, rather than commercial fishery development potential; and secondly, the over regulation that diverts revenues and focus of the CDQ groups from the market in commercial fishery to bureaucratic administrative activities.

Allocation is always a tough issue. CBSFA admits that there is justification for the State concentrating to some extent on population as the criteria. However, there are other equally important criteria. These are: (1) proximity of the community to the resource, (2) the commercial fishing development potential in a community, (3) the need of a communities' fishermen to have access to a portion of the resource, and (4) the infrastructure required to allowed participation in the commercial fisheries in the waters around the community. These are all legitimate policy criteria, and are, CBSFA contends, the purposes for the program, they should be considered on an equal basis as population.

As the St. Paul developing halibut fleet demonstrates, access to the resources, financing and education, and infrastructure and markets are all important benefits that allow Alaskans in Western Alaska to participate in the private sector economy. It is time to follow the Alaskan Native Claims Settlement Act, rather than the old BIA model. ANCSA started with Government oversight, but succeeded by allowing the corporations to become successful in the market like other non-native corporations. The initial CDQ oversight may be justified, but now it is time to move toward the ANCSA model.

In conclusion, the CDQ Program is one of the most innovative and successful economic development programs that creates economic opportunities in rural areas in those communities adjacent to our fishery resources. As the National Resource Council and this hearing demonstrate, there are areas which needed improvement, and we urge the community to pass H.R. 553 with changes, and make the improvements needed. The improvements, however, only make a great program even better.

Chairman Young, CBSFA thanks you for your leadership in creating the program and your continued leadership in introducing legislation to make some mid-course corrections. We also thank you for conducting this hearing. With your consistent involvement, the CDQ Program will reach its potential. It will continue to be the model program we all want. On behalf of all the people on St. Paul Island in the Pribilofs, thank you.

[The prepared statement of Ms. Merculief follows:]

Statement of Patience Merculief and Tony Smith on behalf of the Central Bering Sea Fishermen's Association (CBSFA)

Good morning. My name is Patience Merculief and with me is Tony Smith, CBSFA's legal representative, who has been involved with the CDQ program since its inception on St. Paul's behalf and who will assist me with this testimony. I was born and raised on St. Paul Island and currently work for the Central Bering Sea

Fishermen's Association (CBSFA). It is an honor for me to be present today on this issue of critical importance to my community.

First, Mr. Chairman, I would like to apologize for the fact that Mr. Phillip Lestenkof, President of the Central Bering Sea Fishermen's Association, is unable to be here in person to present the views of CBSFA. As my testimony will demonstrate, the CDQ Program has given the fishermen on St. Paul Island, Alaska, an opportunity to be very successful commercial fishermen. Without the CDQ Program, it is doubtful that the Aleut Natives on St. Paul Island would be anywhere near as successful as they are, but this hearing is in the middle of the most important commercial fishing season (the halibut season) for Mr. Lestenkof and the members of CBSFA. As we speak, Mr. Lestenkof is, weather permitting, on the waters of the Bering Sea fishing for halibut in a very small vessel as a day boat commercial fisherman. He is able to do this because of the CDQ Program. Mr. Lestenkof has a record of being one of the successful fishermen on St. Paul Island, and it is commercial fishing, not his position as CBSFA President, that is his past and future livelihood.

While I ask that Mr. Smith discuss CBSFA's main concerns before this body, I wanted to state that the CDQ program is critical to the livelihoods of many residents on St. Paul Island and has played a key role in our community's development. While recognizing the positive impacts of the CDQ program, CBSFA also acknowledges that the program, its needs, and the needs of its beneficiaries have evolved, and therefore, adjustments are required to reflect the new realities.

The fact is that because of the CDQ Program, I will become an intern at a major seafood company this fall, my brother is able to support himself and his family as one of the top halibut fishermen in the fleet and my father, as City Manager of St. Paul Island, is constantly working with the CDQ Program to develop the commercial and public infrastructure that benefits the Aleuts in the community and all the commercial fishermen fishing in the Bering Sea. I can assure the Subcommittee, the Congress, the Administration and anyone interested that the CDQ Program works and has made a difference in our lives. For this, I personally want to thank Chairman Young and the others who have developed this program.

I will now turn this over to Tony Smith for more detailed comments on the program and what CBSFA views as its future. Thank you.

Thank you. Good morning. My name is Tony Smith. I have attached a current resume summarizing my experience as it pertains to the subject matter of the hearings. Suffice it to say that I have been involved in the development of the CDQ Program since it first was conceived both as a government official and as counsel to communities, CDQ organizations and associations of CDQ groups. In the course of my testimony, I will point out some areas where we believe the program needs improvement, but in terms of sound public policy benefiting the ecosystem of the Bering Sea and the coastal communities in Western Alaska, this program is a winner. It is a program that, in my view, should be a model for coastal communities worldwide, and especially on the Russian side of the Bering Sea.

As this testimony will demonstrate, the CDQ Program has given the fishermen on St. Paul Island, Alaska, an opportunity to become successful commercial fishermen. Without the CDQ Program, the Aleut Natives on St. Paul Island would not have had this opportunity as the fisheries were fully utilized by others. The program has also allowed this remote coastal village located in the middle of one of the world's richest fisheries, to participate in the fishery off its shores. While 55% of the United States' commercial fisheries is within 65 miles of St. Paul Island, without the CDQ Program, the residents could not have commercially participated or been able to develop the necessary infrastructure. CBSFA and St. Paul demonstrate the benefits of the program noted by the National Research Council.

The idea of giving the local residents an opportunity and a stake in the sustainability of the commercial resources in their coastal areas is also one of the most effective ways to assure that the resource is well-managed. Unlike the distant water commercial fleet, which can move to other fishing grounds around the world if the resource is over fished, the residents of St. Paul Island, Alaska, and the other Western Alaska coastal communities, are not able to pick up their communities and move to distant grounds when a fishery declines as a result of mismanagement, or otherwise.

This alone is an important benefit of the CDQ Program.

The CBSFA Success Story.

The community of St. Paul Island, Alaska, consists of approximately 800 Aleut Natives. It is the largest Aleut community in the world and 97 percent of the residents are Aleut Natives. In the short period of time that the CDQ Program has been in existence, the community has been given the opportunity by the program to

develop an inshore day boat commercial halibut fishery. The result is a fleet of locally-owned vessels that is a major source of employment and is the major livelihood of a substantial number of the residents of St. Paul.

CBSFA, with the implementation of the CDQ Program, began training and financing CBSFA members in acquiring commercial fishing boats. Eventually, when the opportunity presented itself with the 1995 allocations of halibut in area 4C around the Island, this program was expanded to include acquiring IFQ halibut allocations when the halibut IFQ program began. CDQ funds were used to finance CBSFA members in buying IFQ halibut allocations from other commercial fishermen for the surrounding waters, on the open market. This program is ongoing, but the results are remarkable and Aleut fishermen have been able to buy IFQ allocations on the open market so that they can benefit from the resource around their home.

On St. Paul Island, one hundred eighty Aleuts now earn all, or a portion, of their living from the halibut fishery. CBSFA and its members have received over 900,000 pounds of CDQ allocations in Area 4C and approximately 600,000 pounds of IFQ allocations. Thus, St. Paul residents have access to catch approximately 1.5 million pounds of halibut off their shores. At the recent ex-vessel price of $1.50 a pound, this is $3.00 million dollars of revenue for a community of 600 from a fishery off their shore that use to go to fishermen from all over the world. It is also a three month fishery, that can be harvested by small boats fishing during the day when the weather is acceptable.

There are twenty captains of commercial day fishing vessels on St. Paul. Five of those captains are earning over $50,000 per year after expenses and a number of others are earning more than $30,000 per year from the halibut fishery. The halibut fishery is a day fishery where the CBSFA fishermen fish on 20 to 36-foot boats. Some of the most successful captains are now trying to upgrade their boats to larger vessels in order to participate in other commercial fisheries for additional species where the fishermen have to venture further from port.

As a result of the CDQ Program, St. Paul has been able to attract commercial processors and fish buyers to the Island to process the approximately 2.0 million pounds of halibut available in Area 4C. For example, CBSFA and the City of St. Paul presently have entered into an MOU with Icicle Seafoods, another processor, to move one of their processors to St. Paul in order to process cod, pollock and other species, if certain improvements to the harbor are made. The CDQ funds will be critical to allow their small Native community to make those improvements. When it happens, all of the catcher vessels in the Bering Sea will benefit.

Congress has authorized a small boat harbor as part of the St. Paul Harbor Improvement Project. Right now, there is no mooring area in the harbor. As a major portion of the small boat harbor facilities are non-navigation facilities which the Corps of Engineers will not construct, the CDQ Program provides the funds so these facilities can be built. When completed, St. Paul will be a dynamic small boat commercial fishery in the middle of America's most productive commercial fishery. The local Native people will be a part of this—all because of the CDQ Program.

Not only this, but for the first time in its history, the CDQ Program has given the Aleut residents of St. Paul an opportunity to earn their livelihood, and take care of their families, in the private sector based on their skill, determination and ability as commercial fishermen. Prior to the CDQ Program, the residents of St. Paul depended on the fur seal harvest, government employment, and employment with various non-governmental organizations (NGOs) that are active in the Pribilofs because of the importance of the wildlife located there. The CDQ program has offered the alternative opportunity of real participation in the private sector. The transformation of the economy from politics to individual initiative and market forces is another substantial benefit of the CDQ Program.

The Establishment of the CDQ Program.

The CDQ Program was initially established by the North Pacific Fishery Management Council (NPFMC) in 1991 to allow fishermen residing in Western Alaska communities an opportunity to participate in the Bering Sea/Aleutian Islands ground fisheries and other near-shore fisheries as part of the Council's Pollock Fishery Management Plan. The reason given was to provide a means to initiate or support commercial fisheries activities which will result in sustainable, regionally based commercial fisheries economies. The National Research Council notes the "... program was designed to improve social and economic conditions ... by helping communities build their capacity to engage in commercial fishing."

When the NPFMC program was statutorily incorporated into the Sustainable Fisheries Act (Magnuson–Stevens) in 1996, the purpose was expressed as creating an opportunity for the residents of the coastal communities to participate commer-

cially in the Bering Sea fisheries. The regulations implementing Magnuson–Stevens state that the goal is:

> "... to allocate CDQ (Community Development Quota in certain species) to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries related economy." 50 C.F.R. 679.1(e)(N).

The regulations are consistent with the initial intent of the NPFMC in establishing the CDQ Program.

Thus, Magnuson–Stevens codified the NPFMC's CDQ Program for the Bering Sea. In the House Committee Report, accompanying the House-passed version of Magnuson–Stevens in October 1995, the Committee recommended the continuation of the NPFMC's program pointing out that Western Alaska is one of the poorest, most underdeveloped areas in the United States. Located on the Bering Sea coast, the residents of the area, predominantly Native, have historically watched valuable marine resources exploited by both foreign and American distant water fleets. The CDQ Program provides a means to develop the local economies and to give the Native people an opportunity to participate in the commercial fisheries for each species.

While begun in 1991 as part of the NPFMC pollock management plan, in 1992 the NPFMC, in conjunction with a limited access plan for halibut and cod, expanded the CDQ Program. Eligible communities were authorized to expand their participation by allowing them to harvest 20 percent of the total allowable catch of Bering Sea cod and approximately 20 percent of the Bering Sea halibut. The plan was implemented in 1995 and has been the basis for developing the halibut and cod fishery at St. Paul Island.

The 1996 Magnuson–Stevens Act reauthorization codified the additional pollock, cod and halibut fisheries and expanded the program to include a percentage of each species of the Bering Sea fishery. To accomplish this objective, the Act amended Section 313 of the Magnuson–Act to require the NPFMC to establish, and the Secretary of Commerce to adopt, regulations implementing the Western Alaska CDQ Program as a permanent, independent program.

The House Committee Report specifically states that:

> "The Committee expects that, for each Bering Sea fishery, the NPFMC, with the final approval of the Secretary, will allocate to the communities participating in the program a percentage that is adequate to ensure their significant and sustainable economic participation in the fishery."

The CDQ Program was considered, by both houses of Congress, to be very important for the coastal communities in order to provide the opportunity for their commercial and subsistence fishermen to ensure healthy coastal communities. The program is essential for providing access to the resources in order to develop self-sustaining fisheries-based economies and infrastructures to support continued development. In addition, by becoming stakeholders in the nearby commercial fishery resource, the program creates the incentive among coastal community residents to work for the protection and sustainable management of the resources on which they, their families, and their communities depend for economic and cultural survival.[1]

In implementing the federal regulations contained in 50 C.F.R. 679.30, the State promulgated regulations in 6 AAC 93. State regulations have been issued and the State has been managing the program, but there are clearly areas of the program administration that need to be reviewed and, from the CBSFA perspective, improved.

Administration of the Program.

In the State regulation of the CDQ Program, the State of Alaska has followed the path of constant and intense oversight. Budgets need to be reviewed in detail and constantly updated. Business plans are subject to revision by the State and must be followed, and formats are often more important than results. While standards may be ambiguous, the evaluation process is bureaucratic, intrusive, and extremely detailed. Government officials, through their oversight, decide what companies, vessels or infrastructure should be purchased, operated or sold by CDQ organizations. The intrusive, bureaucratic program requires substantial amounts of administrative time and burdens.

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[1] As the 1999 National Academy of Sciences suggests, because a portion of the fishery resources are now local profits, these coastal communities are positioned to be the natural protectors of the environment particularly of the Bering Sea and the sustainability of the underlying resource base—the fishery.

In addition, quota allocations to CDQ groups are awarded mostly on a calculation of the population in a region and the number of jobs that are provided, rather than on the issue of whether a sustainable, profitable, long-term commercial fisheries business is being developed. The result is that consideration of population and the pressure for low-end jobs ends up as a higher priority than (1) long-term investment in a sustainable business enterprise, (2) infrastructure that creates opportunities for the coastal communities to participate in a sustainable fishery, or (3) in St. Paul's case, the development of a new fleet of commercial fishermen succeeding in a day boat halibut and cod fishery because they have access to the fish and the capital.

Criteria for Administration.

Generally CBSFA agrees with the 1999 National Academy of Sciences study on the CDQ Program in Alaska that by making a long-term commitment to the CDQ Program, simplifying the criteria used in the allocation of quotas and reducing the high administrative expenses, the CDQ Program will run much more effective.

CBSFA does not contend that there should be no oversight by the State of Alaska, nor that it is inappropriate to consider employment/jobs as one of the factors in allocating CDQ quotas. What CBSFA contends, and urges Congress to consider as you look at the CDQ Program and at the Young bill, H.R. 533, are revisions that will ensure that the initial purposes of the CDQ Program are followed, that the CDQ organizations be allowed to make long-term financial commitments and that access to fish and development of enterprises and infrastructure are placed on an equal footing as are the creation of low end jobs and subsidies.

We should learn from the Alaska Native Claims Settlement Act (ANCSA). At the beginning of ANCSA there was government budget and programmatic oversight. However, after the Native corporations were up and running, the oversight was reduced to a minimum. Governmental oversight of the CDQ Program should follow the highly successful ANCSA model, which allowed the Native village and regional corporations to make their decisions and carry out their goals.

CDQ groups should be allowed to submit business records maintained in the ordinary course with a minimum of supporting reference the same as non-native businesses, so that they can devote their time to management of CDQ Programs. For example, the required submittal of Community Development Plan amendments for bureaucratic review becomes more important than adjusting a CDQ group's program to market forces.

Allocations.

The administration of the CDQ Program by short-term periodic, competitive allocations among the CDQ groups, particularly when the principal requirement is creation of jobs (of whatever nature), undermines the program. The competition process does not further the original intent of the CDQ Program and should be reconsidered. CBSFA, for example, has suffered significant losses under the competitive allocation process (CBSFA lost 60% of their original allocation) despite the fact that CBSFA is one of the CDQ groups that is and has excellent prospects for continuing to develop the infrastructure and the processing capacity to allow all Alaska and Northwest residents and its member fishermen to process species close to the resource.

CBSFA believes that if the Federal Government, through the National Marine Fisheries Service, were involved in the allocation decisions, this would improve the administration of the program. The CDQ Program is, since 1996 and the passage of the Magnuson–Stevens Act, a creature of federal legislation and deals with the federal fisheries resource. NMFS" responsibility as a commercial fishery manager is to manage and supervise the commercial fishery in the Bering Sea and this responsibility should not be wholly delegated to the State of Alaska. The sustainable development of the commercial fishery in the Bering Sea is a federal responsibility.

The State of Alaska, as a government entity, however, has different responsibilities. Part of those responsibilities is spreading benefits throughout the State. Sometimes this responsibility conflicts with the intent of the CDQ Program which is supposed to develop sustainable commercial fisheries in local coastal communities. NMFS therefore should try to strike a balance in the management of this federal program with the political goals of the State. For example, the tension between allocating CDQ to be used for access to the fishery with the CDQ as a source of cash to meet State responsibilities and create jobs must be managed.

At least a portion of the commercial fisheries resource should be allocated to the coastal communities that are next to the fishery. This is good public policy. It ensures local interest in the management of coastal resources. It ensures that residents of Alaska and the Bering Sea are not condemned to poverty as they watch a distant water fleet harvest and process the resource. The opportunity for coastal communities to be stakeholders is important and needs to have a priority role. The

need to continue to develop the commercial fishery should be a priority. A CDQ group that has profits and only needs subsidization should lose quota to one that is building commercial fishing infrastructure.

CBSFA does not contend CDQ allocations may not be used to subsidize jobs in some rural villages, even if the commercial fishery has declined or has never been significant in that village. This also may be good public policy. However, both should be balanced and administered to make long-term commercial fisheries development the most important criteria.

Part of this can be accommodated by changing the length of the allocation cycle. At present, a CDQ group receives an allocation for a two-year period, which is then subject to competition at the end of the cycle. The size of the allocation depends on bureaucratic discretion and whether the CDQ group has done what the State wants, coupled with the group's population and number of jobs created, irrespective of what those jobs are. This is not consistent with the intent of the program and ignores the long-term need to have the allocation available so that the communities can compete in the commercial fisheries. A minimum wage job on the processing line is not the same as the captain of a small day boat that successfully catches and sells halibut.

The CDQ allocation is also more than just dollars. It is access to the resource. It is the opportunity of the coastal communities to participate in the Bering Sea commercial fishery. At the outset, the allocation may be converted to dollars in order to develop and maintain the infrastructure, or capitalize the business. However, the allocation ultimately is worth more. It is critical to the coastal communities' ability to participate in the commercial fisheries, just as the allocations that are currently given to harvesters or processors allow them to participate in the commercial fishery.

A portion of the CDQ resources awarded to a CDQ Program should be available to be used to develop and maintain public infrastructure in coastal communities on the Bering Sea. If public infrastructure is not supported in these communities, eventually the entire industry will be off-shore, a negative development for the State and for conservation. In furtherance of community development, the National Academy of Sciences study on the CDQ Program in Alaska recommends the need for education and training. The study suggests that educational and training monies should be spent two-fold: scholarship money to send young adults to universities and training programs to enable the communities to become more self-sufficient. Education and training reinforces the infrastructure and furthers the investment in these communities. It has helped CBSFA build its fleet.

The commercial fisheries outside of three miles is a federal resource, but the harbors, the small boat facilities, the outfalls, and other infrastructure that a community needs to participate in a fishery, requires a substantial investment of local resources. The federal resource should support access to the federal commercial fishery.

Conclusion.

On behalf of CBSFA, we stand ready and willing to assist the Subcommittee, the Congress, the National Marine Fisheries Service, and the State of Alaska in revising the CDQ Program to carry out its intent. This program is a winner and has been crucial to the development of St. Paul Island's halibut and cod fishery. It clearly has worked on St. Paul, but there is much to be done.

For example, on St. Paul the Corps of Engineers' Federal Project, including a small boat harbor for fifty vessels, requires Local Share and the CDQ resource allocation should be available for this. The expansion of processing capabilities so that the local fishermen, and the Northwest fleet can process at St. Paul Island is beneficial to the United States, the State of Alaska, and the entire Northwest and should be a priority of the program. It requires a viable CDQ partnership in order for this to happen.

In the longer term, the CDQ Program is critical to the development of waste facilities, outfalls, and other infrastructure necessary to allow the most important ecosystem in the Northern Hemisphere to develop in a sustainable, environmentally friendly manner.

The Pribilof Islands are known as the "Galapagos of the North" because of their environmental diversity and importance. In the Galapagos in Ecuador, there is no CDQ Program and the rampant expansion of the tourism and fish economy to satisfy large groups of Ecuadoreans who moved there from other parts of the country and the activities of distant water fleets stand in stark contrast to St. Paul and the other Western Alaska communities who have the CDQ Program. By giving the coastal communities an allocation of resource, the same as we do to harvesters and processors, the community has a stake in the management of that resource. This

ensures that we will have an environmentally sensitive, sustainable program supported by the people of the coastal communities. The CDQ program works, it only needs an adjustment in its administration.

Thank you for the opportunity to testify.

Mr. YOUNG. Thank you for the testimony. And where did you go to school?

Ms. MERCULIEF. I went to school at Mount Edgecumbe High School and the University of Alaska Fairbanks, and also a year I studied in Japan.

Mr. YOUNG. I appreciate that, and one of the reasons I say that, is that Mount Edgecumbe is—you know, they closed it, and I was instrumental in getting it reopened. Probably one of the better things we did. I mean, I think you have done well. Good job.

Ms. MERCULIEF. Thank you.

Mr. YOUNG. Mr. Morgen Crow.

Mr. CROW. Thank you, Mr. Chairman. Patience is a hard act to follow.

Mr. YOUNG. You will do well, believe me.

STATEMENT OF MORGEN CROW, EXECUTIVE DIRECTOR, COASTAL VILLAGES REGION FUND

Mr. CROW. First of all, let me thank our congressman from Alaska, the Honorable Don Young, and his staff, for initiating a review of how Federal legislation might improve the Western Alaska Community Development Program. I hope that my comments will help to develop this trusting relationship between the CDQ groups and the oversight agencies to improve the governance of this wonderfully successful program.

My name is Morgen Crow. I am the Executive Director of Coastal Villages Region Fund, the organization managing the CDQ on behalf of 20 communities in our region. Our communities represent 30 percent of the total population eligible to participate in the CDQ Program.

With me are Simeon John of Toksook Bay, our President, and Howard Amos of Mekoryuk, CVRF's Vice-President. These gentlemen, in addition to their service on the board of CVRF, first fished commercially for salmon, herring and halibut.

Our region is a land of limited resources. Operating dollars for health, education, and our Government programs amount to tens of millions each year, yet our region remains at the top of the list for unemployment, addiction, suicide and other social problems that are typical of third-world environment, imprisoned and in poverty, because there are no opportunities.

I believe this program, the CDQ Program, can make a difference because of its access to the resources of the Bering Sea. In our region, where social programs are well funded, societal problems still abound. A key part of the answer is the CDQ Program with an appropriate level of oversight that will accommodate the changes in the industry, region, and the program.

We want to be a successful group in a successful program so that we can continue to provide hope for those in our region that want to exercise their right to work and be rewarded for their efforts. We want to set out to accomplish this by looking in the mirror to as-

sess our strengths and our weaknesses to determine how we can fit in. It is from this experience that we ask for modifications in the CDQ regulations through the Council process.

In regard to our salmon business, minimal infrastructure and small communities, poor marketing conditions arising from competition from farmed salmon, limit the extent to which it is prudent to invest further in fisheries. As a result, CVRF is seeking to expand the category of economic development projects in which it can participate. For the CVRF region, it is critical to explore each and every feasible project as the locally available resources simply do not contain enough value by themselves to meet the major goal of the CDQ Program, which is to create a self-sustaining economy in the 60 plus eligible communities.

Many agencies and companies have attempted this goal. To date, none have been successful. The CDQ Program provides the best opportunity because it provides a continuous source of revenue, and when properly managed, will achieve this goal.

Since the ultimate authority for management rests with the Congress, we appreciate your interest in holding this hearing, making your determination as the proper role and level for Government oversight. Based on our experience in the program over the past 10 years, we have determined that it is time for changes in the regulations governing CDQ oversight. The changes we propose are intended to maintain a balance between the Federal Government's need to protect the public interest in the fishery resources of the Bering Sea, and to allow the beneficiaries of the program to determine their own future. We believe this balance can be best achieved with continued participation of the State of Alaska as the primary oversight entity, subject to the limitations that have been agreed to by the North Pacific Council.

The CDQ Committee of the North Pacific Council has made recommendations to the Council to change the level of oversight by the State and by NMFS. CVRF participated in these recommendations, and has come up with three additions to those recommendations, which I would like to go through at this time.

The first recommendation is to allow up to a million dollars per year in non-fisheries-related in-region economic development, an increase from the $500,000 limit proposed by the CDQ Policy Committee. While one group consists of a single community, and a second of six communities, CVRF has 20 communities spread along a coastline of nearly 300 miles. Up-front costs for a single project alone may cost $500,000 in the first year. With 20 communities and a limited number of sensible fisheries-related investments available, CVRF believes that the limit for non-fisheries-related investments be a minimum of $1 million annually.

We have also asked that we be allowed to invest $200,000 per year for community grants, grants to support village activities, from sobriety conferences to bladder festivals, are important to the social welfare in our communities. The CDQ Program should be able to contribute to these efforts. For Coastal Villages, a program of $200,000 annually equals an average of only $10,000 per community per year. Certainly the CDQ Program can participate to this extent without losing focus on economic development. Coastal Vil-

lages wants to be a good corporate citizen in our own community via this mechanism.

With respect to H.R. 553, I think all the CDQ groups agree on the issue of by-catch. This proposal is currently before the Council. We will be advocating for its adoption in time for the 2002 season. We do not support the proposal of having the Secretary of Commerce in charge of CDQ allocations rather than the State of Alaska. While we have seen the ups and downs of allocation, we believe the state has done a relatively good job weighing various criteria in coming up with rational decisions that have been endorsed by NMFS and the Council. Consequently, we do not endorse locking in allocations at any certain levels.

Much of our experience is based on the current management process. We respectfully request that the Subcommittee not make any dramatic changes at this time.

Mr. Chairman, I want to thank you and the Subcommittee for this opportunity to provide our testimony on this very important topic.

[The prepared statement of Mr. Crow follows:]

Statement of Morgen Crow, Executive Director, Coastal Villages Region Fund

Mr. Chairman and members of the Subcommittee:

First, let me thank our Congressman from Alaska, the Honorable Don Young and his staff for initiating a review of how federal legislation might improve the Western Alaska Community Development ("CDQ") Program. I hope that my comments will help to develop a trusting relationship between the CDQ groups and the oversight agencies to improve the governance of this wonderfully successful program.

My name is Morgen Crow. I am the Executive Director of the Coastal Villages Region Fund ("CVRF"), a not-for-profit organization managing the CDQ program on behalf of the twenty communities in our region. I have held this position for just over a year and a half. Our communities represent 30% of the total population eligible to participate in the CDQ program. With me are Simeon John of Toksook Bay, CVRF President, and Howard Amos of Mekoryuk, CVRF's Vice–President. These gentlemen, in addition to their service on the Board of CVRF, fish commercially for salmon, herring, and halibut. Additionally, each of us is a shareholder in our regional native corporation as well as shareholders in our respective village corporations.

History of Coastal Villages

Of the six groups in the western Alaska CDQ program, Coastal Villages has had the most tumultuous past. Our group began in 1992 as Coastal Villages Fishing Cooperative ("CVFC") a for-profit cooperative, which, as an investor in the Imarpiquamiut Partnership, owned the factory trawler, the F/V Brown's Point. The partnership arrangement, even though approved by CDQ oversight, turned out to be unprofitable. The State of Alaska recommended to the National Marine Fisheries Service ("NMFS") that it terminate the CDQ pollock allocation if CVFC did not, among other things, dissolve the partnership. CVRF was formed to supercede CVFC and to manage the CDQ allocation for the twenty-village region. CVRF contributed enough money to wrap up the affairs of CVFC. As an attachment, I have included an excerpt from the report on the CDQ program by the National Research Council completed near the end of 1998.

Between 1996 and 1998, the State oversight body cut our CDQ pollock allocation by nearly 20%. After CVFC was dissolved by the efforts of the new company in 1998, CVRF signed royalty agreements licensing its rights to harvest Bering Sea and Aleutian Islands pollock with several large processors from both the in shore and the off shore sectors, ultimately buying into the largest of the at-sea catcher/processors, American Seafoods. Ironically, that company, now owned in part by Coastal Villages scrapped the F/V Brown's Point. That action symbolically represents the turning point at Coastal Villages.

Economic Condition of the CVRF Region

Our region is a land of limited resources. This limitation and its effect on commerce of the area can be seen in the performance of our regional for-profit Native Corporation. All of the 13 regional corporations created by the Alaska Native Claims Settlement Act ("ANCSA") have experienced growing pains in the form of operating losses as Alaska's first people learned the fundamentals of business and capitalism. Most have overcome these initial losses and become successful corporations due in part to the strength of their natural resources. One that has not is the regional native corporation that overlaps our CDQ region. Over the last 30 years of ANCSA, most of the approximately 80 million dollars of the original contributed capital to this regional entity has been lost, and the corporation lacks the resources to overcome its history. Recently, its board faced a recall by shareholders.

Social Condition of the CVRF Region

Operating dollars for health, education, and other government programs amount to tens of millions each year. Yet our region remains at the top of the list for unemployment, addiction, suicide, and other social problems that are typical of a third world environment imprisoned in poverty because there are no opportunities. I believe this program, the CDQ program, can make a difference because of its access to the resources of the Bering Sea. Indeed our region, our company, and our CDQ program, have undergone dramatic changes. In our region, where social programs are well funded, societal problems still abound. A key part of the answer is the CDQ program with an appropriate level of oversight that will accommodate changes in the industry, region, and the program. We want to be a successful group in a successful program so that we can continue to provide hope for those in our region that want to exercise their right to work and be rewarded for their efforts. We want to learn from our mistakes. We have set out to accomplish this by looking in the mirror to assess our strengths and weaknesses to determine how we can fit into this program. It is from this experience that we ask for the modifications in the CDQ regulations.

CDQ Program in the CVRF Region

We view the CDQ program as a unique opportunity to bring the benefits from the offshore fisheries directly into the communities, by taking a systems approach to economic development that effectively addresses the unique social, cultural, environmental, and political complexities of our region. For us, the CDQ program represents an enormous opportunity for those willing and able to better themselves. Locally, residents can choose to fish and sell their catches to the only remaining salmon buyer in the entire region owned and operated by Coastal Villages Seafoods, a subsidiary of CVRF in conjunction with one of our member communities - Quinhagak. Residents from Quinhagak can choose to work in this village's processing plant and sleep in their own beds at the end of their workday. Similar opportunities are available in Toksook Bay, Tununak, Mekoryuk, and Chefornak, where CVS operates halibut plants in cooperation with these communities. Region residents can work at these plants within our region or in the Bering Sea fishing industry if they choose to work outside the region.

While the CDQ program has provided the means for CVRF and the other CDQ groups to invest in the Bering Sea fisheries and to return the proceeds of the investments into the member communities, this limited focus cannot address all of the economic development challenges that we face. There is a limit to the amount of investment that makes sense in our region's fisheries. For example, in regard to our salmon business, minimal infrastructure in small communities and poor market conditions arising from competition from farmed salmon limit the extent to which it is prudent to invest further. As a result, CVRF is seeking to expand the category of economic development projects in which it can participate. For the CVRF region, it is critical to explore each and every feasible project as the locally available resources simply do not contain enough value by themselves to meet the major goal of the CDQ Program—to create a self-sustaining economy in the 60-plus eligible communities.

Many agencies and companies have attempted this goal. To date, none have been successful. The CDQ Program provides the best opportunity because it provides a continuous source of revenue, that when properly managed, will achieve this goal.

CDQ Oversight

As described above, the first critical piece of the puzzle is the CDQ Program itself. The second is having a properly managed organization that is in a position to obtain the available benefits and to make sure that they are used to benefit the communities and their residents. The third piece is the management of the program by the

State of Alaska, NMFS, and the North Pacific Fishery Management Council ("North Pacific Council"). Since the ultimate authority for management rests with the Congress, we appreciate your interest in holding this hearing and making your determination as to the proper role and level for government oversight.

Based upon our experience in the program over the past ten years, we have determined that it is time for changes to the regulations governing CDQ oversight. The changes we propose are intended to maintain a balance between the Federal Government's need to protect the public interest in the fishery resources of the Bering Sea and the need to allow the beneficiaries of the program to determine their own future. The goal of governance should be to provide enough scrutiny to ensure that the groups are acting in accordance with established procedures without impeding the internal governing bodies' ability to decide on paths of actions and set policy that reflect their view of the regions' needs.

We believe that this balance can be best achieved with the continued participation of the State of Alaska as the primary oversight entity, subject to the limitations that have been agreed to by the North Pacific Council, as well as those others that we have proposed and are discussed later in my testimony.

Current Course of CDQ Oversight

The CDQ Policy Committee of the North Pacific Council has made recommendations to the Council to change the level of oversight by the State and NMFS, the allocation process and criteria, and allowable uses of funds received by CDQ groups through the CDQ program. In summary, the recommendations include the following:

- Establish a 3 year CDQ allocation cycle
- Limit government oversight
- Clarify allocation criterion
- Provide for an appeals process for CDQ allocations to the Council
- Make other changes that will simplify the administration of the program's reporting requirement.

CVRF participated in the development of these recommendations and continues to support their adoption at the earliest possible time. Additionally, as I have described previously, CVRF sees the need for additional flexibility in the program in order to develop a comprehensive program for economic development that better fits our region. Consequently, CVRF makes the following three recommendations:

- Allow $1,000,000 per year in non-fisheries related, in-region economic development, an increase from the $500,000 limit proposed by the CDQ Policy Committee. While one CDQ group consists of a single community and a second of six communities, CVRF has twenty member communities spread along a coastline of nearly 300 miles. Up front costs for a single project alone may cost $500,000 in the first year. With twenty communities and a limited number of sensible fisheries-related investments available, CVRF believes that the limit for allowable non-fisheries related investments be a minimum of $1 million annually.
- Allow $200,000 per year for community grants. Another method of providing direct benefits to communities is through a community grant program. Grants to support village activities, from sobriety conferences to bladder festivals, are important to the social welfare of the communities. The CDQ Program should be able to contribute to these efforts. For CVRF, a program of $200,000 annually equals an average of only $10,000 per community per year. Certainly, the CDQ Program can participate to this extent without losing its focus of economic development.
- Request an exemption from amendment approval for investments by fishing industry companies that are partially owned or wholly owned by a CDQ group, as long as the investments are fishing industry-related by the partners and do not require any new CDQ money. This recommendation is not related directly to the effect of the program on individual communities, but is important in regard to relationships between industry and the CDQ groups. This relationship must be a mutually beneficial one if the program is to be able to generate the benefits that are in turn provided to the communities. CVRF believes that its industry partners should be able to conduct their businesses with little interference from government entities. The real test is whether the CDQ groups are providing benefits back to their communities not having the government mettle in actions of our industry partners.

To date, these requests have not been adopted for analysis by the North Pacific Council, but I am certain that there is enough time for the Council to adopt all these improvements as part of their review of the CDQ program so that they can be implemented in time for the 2003–2005 allocation process that will be completed in the fall of 2002.

Proposed Course of CDQ Oversight—H.R. 553

As I stated at the beginning of my testimony, CVRF greatly appreciates the interest that the Subcommittee is taking in the governance of the CDQ Program. There are several parts of H.R. 553 that we wholeheartedly support. However, a considerable amount of disagreement remains to some elements of the current language in H.R. 553 among the CDQ groups.

- One issue that does need attention is that of bycatch. The CDQ Program has been at the forefront of fisheries conservation. Regulations requiring two observers on the large vessels, accountability for each species harvested, scales to weigh the catch, are all measures that the CDQ groups have not only accepted, but, in many cases, have promoted. However, except for certain aspects of the CDQ pollock fishery, the CDQ fisheries are extremely vulnerable to disruption because of the requirement that a CDQ group not exceed any of its small quotas for individual bycatch species. For example, CVRF has an allocation of 33,000 metric tons of pollock with an allowance of 1.6 metric tons of other red rockfish. One tow could use the entire quota of other red rockfish resulting in the shut down of the CDQ pollock fishery. The remainder of the fleet does not have these constraints. I believe that I can say with certainty that most groups agree that this is a problem and that the solution is to allocate a specified amount of quota to the target species (e.g., Pacific cod, sablefish, turbot, Atka mackerel, rock sole, yellowfin sole, etc.) and treat the other bycatch species similar to how they are dealt with by the regulations governing the remainder of industry. This proposal currently is before the North Pacific Council and we will be advocating for its adoption in time for the 2002 season.
- We do not support the proposal of having the Secretary of Commerce in charge of CDQ allocations rather than the State of Alaska. While we have seen the ups and downs of allocations, we believe that the State has done a good job of weighing the various criteria and coming up with rational decisions that have then been endorsed by NMFS and the North Pacific Council. Consequently, we also do not endorse locking in allocations at any certain levels.
- As to agreement on allocations among the CDQ groups, we find it difficult to envision a situation where this might occur. Each group has different experiences, geography, poverty levels, history, and probably most of all—expectations.
- As I have discussed above, work is in progress on addressing the fisheries-related, non-fisheries-related economic development issues.
- Finally, in regard to the "CDQ project" definition, all parties have learned that the fast moving pace of business must be part of the reality of CDQ oversight. In our recent experience, programs and investments that either directly benefit and meet the needs of residents of our region or maximize the economic value of the CDQ allocations have been fast-tracked and approved without exception. We have made huge in-roads into this industry with the cooperation of the oversight entities and the Council. Still, we do support removing fisheries-related investments by our industry partners from the definition of a "CDQ project" for the reasons outlined previously.

Recommendation / Conclusion

Coastal Villages Region Fund has come a long way over the past decade. Changes to the CDQ governance regulations are needed to accommodate the new position of our company, our investments, and the program. The CDQ Program will continue to evolve, which in turn will require additional refinements to the program. The rate in which these changes take place is probably the largest of all questions. While there is still a lot of work to be done to implement the first round of improvements, there is progress being made.

I believe that the current process of governance and management has led to the best managed fishery on earth and created a unique program that can bring needed economic benefits back to our region. We should continue to make the changes necessary to respond to the results of the past decade and protect the dynamic nature of this program. Through the efforts of the CDQ groups, in cooperation with the North Pacific Council, the State of Alaska, and NMFS, this program has achieved far beyond what was envisioned at its inception. For us, it is a unique opportunity to bring a special kind of benefit to our region: the chance to move ahead in the process of creating economic benefit from the resources in the Bering Sea. I believe that we have the knowledge, experience, vision, and passion to compete on behalf of this company in the evolving world of the fishing industry. I believe that we have these same qualities when it comes to creating the economic future of our communities. I do not believe that we will be the next big idea to fail the people of our region if we are allowed to utilize the abilities that we bring to the table. Knowing

that much of our experience is based on the current management process, we respectfully request that the Subcommittee not make dramatic changes at this time.

Mr. Chairman, I want to thank you and the Subcommittee for this opportunity to provide our testimony on this important topic.

Mr. YOUNG. Thank you, Morgen. And you did well.

Mr. Gene.

STATEMENT OF EUGENE ASICKSIK, CEO AND PRESIDENT, NORTON SOUND ECONOMIC DEVELOPMENT CORPORATION

Mr. ASICKSIK. Mr. Chairman and members of the Subcommittee, I am Eugene Asicksik, President and Chief Executive Officer of Norton Sound Economic Development Corporation. I also have Janis Ivanoff, my Vice-President, with me here today.

NSEDC represents 15 Western Alaskan villages located on Seward Peninsula and the Norton Sound Region, and on St. Lawrence Island. NSEDC has participated in the program since 1992, and is very familiar with, and in some cases has been at the forefront of the issues that have come up as the program has grown.

On behalf of NSEDC's board of directors, I would like to thank Congressman Young for introducing H.R. 553. The bill's enactment will resolve a number of important policy issues that relate to the administration and implementation of the CDQ Program. Resolutions of these issues are provided in H.R. 553, will help the program fulfill its potential for the residents of NSEDC, its members, and its communities.

Before moving to specific measures in the bill, let me briefly explain NSEDC's approach to long-term sustainable economic development. NSEDC has pursued a mixture of activities, some of which are oriented toward immediate benefits for our residents such as fishery development projects, vocational training and academic scholarships. Another group of activities are oriented toward developing a sustainable income stream for the organization that will help support its programs. The needs of NSEDC's communities are immense since our communities have a high percentage of residents living below the poverty level and a high incidence of substance abuse and suicide. This mix of immediate programs and long-term investments is very significant to our communities. We are developing external financial strength, and we are developing internal strength in our communities as our workforce benefits from vocational and academic education, and the community's economic infrastructure benefits from in-region projects, whether they are business projects or not.

H.R. 553 will enhance our ability to make long-term income-producing investments, and it will enhance the range of ways in which we can benefit our communities. I believe a fundamental difference reflected in H.R. 553 compared to the regime the CDQ Program has operated under during the first 9 years of its existence is philosophy. H.R. 553 reflects a willingness to let communities decide for themselves, internally, what is best for their community, in contrast to the requirement in current regulations for advance external review and approval: essentially, any major activity that a CDQ group wishes to undertake reflects a premise of superiority to or mistrust of the ability of these communities. The State and

North Pacific Fishery Management Council wants to decide, for us, what the proper mix of fishery-related and non-fishery-related projects will be. For anything significant, the State wants the CDQ groups to come to them for advance review and approval before the group purchases it, builds it or changes the operation of it. Further, for companies into which the CDQ groups have invested, the State wants advance review and approval before those companies make any purchase over $1 million.

The reforms in H.R. 553 will allow NSEDC to optimize its development programs for its residents by allowing a more broad-based set of possibilities, and will allow NSEDC to develop a more diverse and therefore more sustainable source of funds to support those programs. Further, the reforms will place more responsibility in the hands of the communities themselves and the board of directors and the communities represented by a CDQ managing organization.

With the reforms in H.R. 553, NSEDC still will be very willing to comply with reasonable safeguards regarding the award of CDQ allocations, such as ensuring that management capabilities are in place to harvest the allocation in an environmentally appropriate manner, and that a proper governance structure is in place to ensure that the use of the allocation or the royalty money derived from it is controlled by the community participating in the program. Also, NSEDC is willing to subject itself to after-the-fact audit, just as it does now, regarding its performance and results.

I need to say something about allocation. The NRC confirms what most or all CDQ groups will tell you: that the allocation process is a significant source of instability in the program. The possibility of change in allocation is never far from any group's mind as they decide what program to undertake or what position to take on questions regarding oversight. Because it is a zero sum game, achieving consensus on allocation is very difficult.

H.R. 553 describes a process for getting to a long-term resolution on allocation by first encouraging the groups to work it out amongst themselves, and if that fails, describing a process to come to more transparent and less subjective allocations. We support the process described in H.R. 553.

In closing, let me reemphasize how much I believe in the potential of the CDQ Program. With the reform presented in H.R. 553, the program will be set to realize its full potential. Already my organization is a real participant in the Bering Sea Fisheries, owning 50 percent of the company with two pollock factory trawlers, one factory long-liner, and other harvesting/processing/marketing capabilities. The second-generation revenues from our investment, which supplement our CDQ royalties, are becoming material even within the first decade of the existence of the program. We are proud of what we have accomplished. While NSEDC has far to go to fill its potential to meet the chronic needs in our communities, over the next decade we look forward to reporting steady and substantial progress.

In my written testimony I explain in more detail the effects of H.R. 553 and the reasons for our support. Thank you very much for the opportunity to testify.

[The prepared statement of Mr. Asicksik follows:]

Mr. Chairman and members of the Subcommittee, I am Eugene Asicksik, the president and executive director of the Norton Sound Economic Development Corporation (NSEDC).

In 1992 fifteen communities in the Seward Peninsula and Norton Sound region of western Alaska designated NSEDC as the organization that the communities would employ to participate in the western Alaska community development quota program (CDQ program). For the past nine years NSEDC has actively participated in the program. Through that participation NSEDC has acquired substantial firsthand knowledge regarding the policy issues that have arisen as the program has grown. NSEDC appreciates being afforded an opportunity to share its views with the Subcommittee.

NSEDC strongly supports the enactment of H.R. 553. And on behalf of the NSEDC board of directors, we would like to thank Congressman Young for introducing the bill. The bill's enactment will resolve a number of important policy issues that relate to the administration of the CDQ program and whose resolution is essential to enable NSEDC to continue to maximize the benefit of the program to our member communities.

Before discussing NSEDC's position regarding the policy issues that are addressed in H.R. 553, I would note that in our federal constitutional system Congress decides the nation's natural resource policies and executive branch agencies then implement Congress's decisions. By way of example, in both the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)

and the American Fisheries Act (AFA), Congress decided the policies pursuant to which Bering Sea commercial fisheries are to be managed. With the assistance of the North Pacific Fishery Management Council (Council), the Secretary of Commerce (Secretary) then implements Congress's policy decisions.

Consistent with that basic constitutional principle, it is appropriate that Congress, rather than the Secretary (and the Council), decide the policy questions that the enactment of H.R. 553 will resolve.

With respect to those policy questions, NSEDC's position is as follows:

A. Objectives of the Western Alaska CDQ Program

On the Council's recommendation, in 1992 the Secretary promulgated regulations that established the western Alaska CDQ program. Those regulations did not identify the policy objectives of the program.

When a question was raised as to whether Congress intended the MSFCMA to delegate the Secretary authority to establish the CDQ program, in 1996 Congress amended the MSFCMA to expressly delegate the Secretary that authority. However, like the Secretary's original regulations, the amendment, which is now section 305(i)(1) of the MSFCMA, does not identify the policy objectives of the program.

H.R. 553 amends section 305(i)(1) to explain that Congress intends the western Alaska CDQ program

(A) to afford eligible communities a fair and equitable opportunity to participate in Bering Sea fisheries; and

(B) to assist eligible communities to achieve sustainable long-term diversified local economic development.

NSEDC strongly supports both program objectives.

With respect to the first program objective, in 1976 Congress enacted the MSFCMA to require the Secretary to phase out foreign fishing in the exclusive economic zone by encouraging fishing by United States fishermen. In accomplishing that objective, MSFCMA national standard no. 4 directed the Secretary to allocate fishing privileges among United States fishermen in a manner that would be "fair and equitable" to all fishermen. However, between 1977 and 1992 the Secretary did not afford fishermen who reside in western Alaska communities a "fair and equitable" opportunity to participate in the newly Americanized Bering Sea commercial fishery.

Knowing it would need new and unbiased information in order to evaluate legislation such as H.R. 553, in 1996 Congress directed the National Academy of Sciences to study, and then to report to Congress regarding, the western Alaska CDQ program. In 1999 a committee of the Academy's National Research Council delivered its report. See National Research Council, The Community Development Quota Program in Alaska (1999)(hereinafter "NAS Report").

The report describes the lack of opportunities that were afforded to fishermen in western Alaska communities to

participate in the Americanization of the Bering Sea commercial fishery as follows:

> The creation of the EEZ [exclusive economic zone] represented a transfer of wealth - in the form of the value of fish biomass - away from foreign fishing nations and to Americans who had previously fished, or who could claim some legitimate interest in harvesting activities in the newly established zone.

Id. 14.

> But because the indigenous peoples were not typically participants in the development of the commercial fisheries, many did not have access to these economic opportunities.

Id. 13.

In other words, the Secretary's implementation of the MSFCMA created new market shares in the Bering Sea commercial fishery for United States fishermen who had access to the capital that was needed in order to enter the fishery as foreign fishermen departed. But United States fishermen in the small and impoverished western Alaska communities that are scattered along the Bering Sea coastline had no capital, and, as a consequence, had no fair and equitable opportunity to enter the fishery. In 1992 the Secretary, and in 1996 Congress, established the CDQ program to alleviate that unfairness and inequity.

Congress's enactment of H.R. 553 will clarify that one purpose of the CDQ program is to ensure that residents of western Alaska communities are afforded the same "fair and equitable" opportunities that Congress - through its enactment of the AFA - and the Secretary - through his implementation of the MSFCMA in the Bering Sea - have afforded to other United States fishermen.

With respect to the second program objective identified in H.R. 553, since 1992 the National Marine Fisheries Service (NMFS) has told the CDQ groups that all business activities in which they engage, and all benefits they distribute to their member communities, must be fishery-related. NMFS's rationale for its fishery-related restriction is that, regardless of whether the restriction is good or bad policy, it is the policy that the Council recommended when it urged the Secretary to establish the CDQ program.

To implement the Council's recommendation, the Secretary included a sentence in the preamble to his original CDQ program regulations, which states that "[t]he CDQ program is intended to help develop commercial fisheries in western Alaska communities." See 57 Federal Register 54937 (1992). And in 1998 when he revised the CDQ program regulations, the Secretary amended 50 C.F.R. 679.1 by adding a subsection (e), which states:

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

63 Federal Register 30398 (1998).

Whether, as a matter of law, 50 C.F.R. 679.1(e) prohibits CDQ groups from making any non-fishery-related business investments is unclear; particularly since, from the program's inception, NMFS has approved of CDQ groups investing monies they have earned from the harvest of their CDQ quotas by purchasing

stock in non-fishery-related businesses such as the Disney Corporation and General Motors in order to generate additional income. In addition, there also has been substantial confusion regarding whether all benefits that CDQ groups provide to their member communities must be fishery-related. While NMFS takes the position that they must be, the agency has approved CDQ groups distributing monies they have earned from the harvest of their CDQ quotas to residents of their member communities as scholarships that are spent to study non-fishery-related subjects.

With respect to the purported prohibition on CDQ groups making non-fishery-related investments, the National Research Council committee that studied the CDQ program concluded in its report that

> The NPFMC, the NMFS, and the State of Alaska have determined that all investments made by the CDQ groups must be in "fishery related" activities. This restriction means that although the CDQ program has two objectives - community development and fishery development - "community development" is defined as "fishery development." The committee finds this strict requirement to be of dubious merit . . . To the extent that there are viable fishery-related investments in the coastal villages that promise reasonable returns on investment, they should be pursued. However, we can foresee a time when this restriction on investment opportunities will force the CDQ boards to make investments that may not promote economic diversity and sustainability at the village level. It is also possible that the available sound fisheries investments in many villages will ultimately be exploited, in which case the restriction will force some CDQ boards to undertake less than ideal investments. A more compelling argument is that "community development" should be seen as broader than just fisheries development.
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> . . .

> [T]he economic and cultural development of these communities may at times be advanced through non-fishery employment or investments. Hence, we found no strong reason to require the communities to use funds generated from their CDQs to invest only in fisheries.

NAS Report, at 74-76.

The committee then recommended

> that the restriction that CDQ revenues to (sic) be invested only in fishery-related activities should be removed, at least for some portion of the revenues. Many communities will find that fishery investments are still the ones they wish to undertake. However, since community development is broader than fishery development, funds should also be available for other activities that will enhance community infrastructure or land-based economic activity.

Id. 76.

H.R. 553 implements the committee's recommendation by amending section 305(i)(1) of the MSFCMA to establish that the purposes of the program include "assist[ing] eligible communities to achieve sustainable long-term diversified local economic development" (rather the "regionally based, fisheries-related economy" that is referenced in 50 C.F.R. 679.1(e)). H.R. 553 also implements the committee's recommendation in the bill's "CDQ project" definition. The definition clarifies that CDQ projects do not include business investments, or distributions to member communities, that a CDQ group finances with monies other than the monies it earns from the harvest of its CDQ quotas. Revenue that a CDQ group receives from all other sources may be invested or utilized in the group's member communities however the

group's board of directors determines will best benefit the communities.

NSEDC strongly supports the provisions of H.R. 553 relating to non-fishery-related investments; among other reasons because, as NSEDC explained in the written comments it submitted to the CDQ policy committee that the Council established last fall in response to Congressman Young's introduction of H.R. 553 in the 106th Congress as H.R. 5565:

> There is no reason that a fisheries-related requirement should improve CDQ groups' performance. If fisheries-related projects are the best projects in the region anyway, then they will get funded even without a fisheries-related restriction. If other projects are the best projects, then a fisheries-related restriction would serve only to ensure that inferior projects are funded instead.

After considering the views of NSEDC and the other participants expressed in the meetings it hosted, the Council CDQ policy committee, on a divided vote, recently recommended to the Council that it recommend to the Secretary that he develop a regulation whose promulgation would authorize CDQ groups to annually invest up to 20 percent of their pollock royalties, or $500,000 (whichever sum is smaller) in non-fishery-related projects.

But every CDQ group is different from every other CDQ group. As a consequence, a $500,000 cap on non-fishery-related investments may be appropriate for the Central Bering Sea CDQ group, which represents one community that has a population of 532, or the APICDA CDQ group, which represents six communities that have a combined population of 1,143. But a $500,000 cap may

not be appropriate for NSEDC, which represents fifteen communities that have a combined population of 10,773.

In addition, the CDQ policy committee's recommended approach assumes that, as a matter of policy, the Council, rather than the CDQ groups' boards of directors, should decide the mix of fishery-related and non-fishery-related investments that will provide the most benefits to the groups' member communities.

The National Research Council committee that studied the CDQ program concluded in its report that that assumption is factually wrong and poor public policy. As the report explains:

> If the CDQ program is to have serious developmental consequences, it will have to open the possibilities, especially for young people, to make a go of it in their local communities. But at the same time, there is something more to the value of autonomy that engages the villages and regional organizations as such, the structures by which the CDQ program is constituted. More than any previous welfare or development initiative, more even than the native corporations, the CDQ program seems to offer a viable way for local people to gain control over the means by which they are articulated to the larger economy and society.
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> . . .
>
> In this regard, it should be remarked that "development" has come to include - not only in Native Alaska but generally in the world - a growing aspiration for self-determination, both as the means and the end. The people seek a measure of governance, one that will allow them to shape their own future - not only in ways that safeguard their language, values, and customs but according to these cultural desiderata. Such distinctive control by and for members of local communities has thus become a crucial condition of development.

NAS Report, at 45-46.

NSEDC agrees with the analysis of the National Research Council committee. For that reason, NSEDC believes that H.R. 553's, rather than the CDQ policy committee's, is the better approach because it allows NSEDC's board of directors to decide the mix of fishery-related and non-fishery-related investments that are in the best interest - both short term and long term - of NSEDC's member communities.

In that regard, over the past nine years the NSEDC board of directors has pursued a carefully calibrated mix of activities. Some of those activities, such as small boat fishery development projects, vocational training, and academic scholarships, provide immediate needed benefits to residents of NSEDC's member communities, a significant percentage of whom live below the poverty level and too many of whom, particularly teenagers and young adults, have a high incidence of substance abuse and suicide. Other activities, most notably NSEDC's purchase of a fifty percent equity interest in Glacier Fish Company, as well as its investment in blue chip securities, generate revenue that, over the long term, will enable NSEDC to continue to finance the aforementioned, as well as other needed benefits in its member communities.

NSEDC's opportunities to make investments that generate the revenue needed to continue to finance community benefits has been restricted by the Secretary's and the State's insistence that all equity investments (other than passive stock investments) be limited to investments in companies and businesses that are

involved in the fishing industry, even if those investments are financed with monie that NSEDC has earned other than through the harvest of its CDQ quotas. In addition, the State has insisted that NSEDC submit its proposed equity investments to the State for prior review and approval.

The policy rationale for these restrictions has never been fully explained. However, as a consequence of their imposition, NSEDC's investment portfolio is less diversified and, therefore, more risky than a diversified portfolio of investments would be. The risk threatens NSEDC's ability to provide a needed level of benefits to its member communities over the long term.

B. CDQ Projects.

To obtain a share of the percentage of the total allowable catch or guideline harvest level of a Bering Sea fishery that has been allocated to the western Alaska CDQ program, the Secretary's regulations require each CDQ group to submit a community development plan (CDP) to the State of Alaska. A CDP must include a "detailed description of all CDQ projects" that the group intends to initiate during the period of time during which the CDP is in effect. See 50 C.F.R. 679.30(a). After reviewing its content, the State transmits each CDP to the National Marine Fisheries Service (NMFS), along with a recommendation. After considering the State's recommendation, NMFS (acting for the Secretary) approves or disapproves the CDP. See 50 C.F.R. 679.30(d).

That is the process that the Secretary's regulations require. However, as a matter of unofficial past practice, the State requires the CDQ groups to amend their CDPs to reflect the State's recommendations, after which the State transmits the amended CDPs to NMFS, which then approves them as a matter of routine.

During the period of time during which an approved CDP is in effect, the Secretary's regulations require the State to monitor implementation of the CDP on "a [CDQ] project-by-[CDQ] project basis." To implement a "substantial amendment" to its approved CDP, the Secretary's regulations require a CDQ group to submit its amendment, first to the State, and then for approval by NMFS (after NMFS considers the State's recommendation regarding the amendment) before the amendment may be implemented.

In addition to business activities and programs in member communities that a CDQ group finances with monies the group earneds from the harvest of the group's CDQ quotas, the "CDQ project" definition in the Secretary's regulations states that "CDQ projects" also include all other business activities and programs in member communities that are "funded by a CDQ group's assets." See 50 679.2.[1] The State has further asserted that

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[1]Pursuant to 50 C.F.R. 679.2, a "CDQ project" is:

> Any program that is funded by a CDQ group's assets for the economic or social development of a community or group of communities that are participating in a CDQ group, including, but not limited to, infrastructure development, CDQ investments, employment and training programs, and CDP administration.

the phrase "CDQ group's assets" includes the assets of entities, such as subsidiaries, joint ventures, and partnerships, in which a CDQ group owns an equity interest, even though the entity has a legal existence that is separate and distinct from the CDQ group.

Today, CDQ groups own equity interests of various percentages in Glacier Fish Company, American Seafoods, and other fishing companies that are major participants in the Bering Sea commercial fishery. Implementation of the State's interpretation of the Secretary's "CDQ project" definition has the practical consequence of allowing the State to preapprove and otherwise control - through its recommendations regarding NMFS's approval of CDPs and of substantial amendments to CDPs - the business activities of those companies.

Last October, NOAA General Counsel concluded that the text of the Secretary's "CDQ Project" definition is ambiguous regarding whether the business activities of subsidiaries, joint ventures, partnerships, and other entities in which CDQ groups own equity interests are "CDQ projects." See attached Memorandum from Lauren M. Smoker, Staff Attorney, GCAK, to James W. Balsiger, Administrator, NMFS Alaska region (October 4, 2000).

H.R. 553 includes a statutory definition of the term "CDQ project" that clarifies that the definition does not include the business activities of subsidiaries, joint ventures, partnerships, and other entities in which CDQ groups own equity interests, or activities of CDQ groups that the groups finance

with monies that they earn other than from the harvest of their CDQ quotas.

NSEDC believes that the H.R. 553 "CDQ project" definition strikes the proper balance between public accountability regarding the CDQ groups' use of public fishery resources and the strong public interest in affording the boards of directors of CDQ groups the right of self-determination to decide for themselves the mix of business and other activities that will best benefit their member communities. In addition, by clarifying that the State does not have authority to pre-approve CDQ group business activities that are not "CDQ projects" (as H.R. 553 defines the term), the problems of confidentiality, potential State liability for inappropriate and negligent intrusion into business transactions, and the disincentive that the pre-approval process has created which discourages fishing company boards of directors from allowing CDQ groups to purchase controlling interests in their companies will be alleviated.

C. The Allocation Process

The opportunity to harvest a share of the total allowable catch or guideline harvest level of a Bering Sea commercial fishery - and particularly of the Bering Sea pollock fishery - is of significant economic value. For that reason, the CDP application process through which the Secretary allocates CDQ quota harvest shares to the CDQ groups is highly competitive.

50 C.F.R. 679.30(d) provides that "[u]pon receipt by NMFS of the proposed CDPs and the State's recommendations for approval,

NMFS will review the proposed CDPs and approve those that it determines meet all applicable requirements." However, the State requires the CDQ groups to amend their CDPs to conform to the State's recommendations before the State transmits the CDPs to NMFS. And NMFS (acting for the Secretary) then routinely approves the amended CDPs without exercising independent agency judgment.[2]

That administrative process has the practical consequence of delegating the State - i.e., the Governor of Alaska - de facto authority to make final federal agency decisions regarding a federal program that has been established by Congress.

That regulatory reality has created a strong inducement for CDQ groups to conform the content of their CDPs to the perceived desires of the members of the State CDQ Team who recommend to the Governor the CDQ quota harvest shares that the Governor recommends to NMFS. And since the same members of the State CDQ Team also monitor the business activities of the CDQ groups

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[2]The National Research Council committee's report on the CDQ program describes the State's de facto control over the allocation of CDQ quota harvest shares among the CDQ groups as follows:

> [The CDPs are] submitted [by the groups] to the State of Alaska, which reviews the plans for compliance with federal and state guidelines and may return a plan for revision if pertinent information is missing. The state [i.e., the Governor's staff] recommends allocation to the governor, who has the option of changing it. Once the state has decided on an allocation, the [NPFMC] is consulted. Although the National Marine Fisheries Service is required to perform a final review of the plans prior to their approval and authorization, this has been basically a pro forma step to date.

NAS Report, at 63-64.

during the period of time during which approved CDPs are in effect, every CDQ group is in constant competition with every other CDQ group to try and please the members of the Team, in the hope that the group will be rewarded for doing so when the Team makes its recommendations to the Governor regarding the group's next CDP. As the National Research Council committee that studied the CDQ program concluded in its report:

> Given the extensive amount of review that the State and the Federal Government exercise over the CDQ program, one would expect that management of the CDQ groups places considerable effort in compliance with that oversight. Information would be readily available to the State of Alaska, less so to community members. A major issue is the extent to which communication with the State potentially reduces the responsiveness of the management of the CDQ groups to the desires of their constituents in the communities they serve.

NAS Report, at 93.

The administrative process that the State CDQ Team employs to determine the Governor's recommendations to NFMS is inherently capricious. The Team purportedly decides on its recommendations by evaluating the CDQ groups' CDPs based on twenty factors listed in the State's CDQ program regulations. See 6 Alaska Administrative Code 93.040. The Team also considers confidential information that CDQ groups (other than the group that submitted the information) have no opportunity to evaluate or rebut. And the Team meets behind closed doors with each CDQ group in a private meeting at which the group's CDP is discussed. The meeting is not recorded, and, consequently, is not subject to judicial or other external review.

With respect to the twenty factors on which the State CDQ Team purports to base its recommendations, the National Research Council committee that studied the CDQ program concluded in its report that

> Multi-criteria decision-making is difficult. As Arrow and Raymond (1986) have shown for the general case, such decision-making is troubled by two tendencies: either one criterion appears to take over as the single criterion, or decisions appear to be inconsistent. These dangers exist whether or not the analyst applies a "scoring system," which implies a single unit of measure for all of the criteria. Use of a scoring system tends to increase the probability of being inconsistent. Thus, it should be no surprise that the [CDQ companies] most affected by the application of the many criteria that the State uses find the outcome somewhat difficult to fathom.

NAS Report, at 88.

> [CDQ groups] fear that their particular allocation of a share of the total CDQ quota is highly uncertain. This uncertainty arises from a sense that the criteria used by the State of Alaska to allocate individual shares of the total quota are unclear. There is a concern that if a group is perceived by the State as receiving "too much" income their share of the total allocation may be reduced and given to another group with greater needs. Conversely, if a group is not performing well it may lose its share of the total allocation in the future. The committee finds these various forms of uncertainty to have undesirable effects on the development strategies chosen by the various boards of directors [of CDQ companies].

Id. 74.

The uncertainty motivates the CDQ groups to engage in business activities of which they hope the State CDQ Team will approve, for policy, rather than for business, reasons. Conversely, it also motivates the groups not to engage in business activities of which the Team, as a matter of State fish

policy, does not approve, even if a decision to engage in a particular activity makes good business sense, and the activity would provide important benefits to the group's member communities.

H.R. 553 remedies this fundamental defect in the administration of the CDQ program, first by encouraging the CDQ groups to decide the groups' respective CDQ quota harvest shares between themselves. If the groups cannot agree, H.R. 553 encourages the groups to decide between themselves on the criteria that NMFS will apply to allocate CDQ quota harvest shares to the groups. If the groups cannot agree on allocation criteria, H.R. 553 requires the Secretary to "promulgate regulations that establish criteria that the Secretary shall consider in determining harvest shares [for each CDQ group]."

The Secretary has awarded participants in the Bering Sea halibut and sablefish fisheries permanent harvest shares. And, through the American Fisheries Act, Congress has awarded harvest shares to participants in the inshore, offshore, and mothership sectors of the Bering Sea pollock fishery. If a similar system is not created to award individual CDQ groups their present harvest share percentages as permanent or semi-permanent allocations, the allocation process that Congress's enactment of H.R. 553 will create will substantially improve the allocation process that is the heart of the CDQ program and whose reform is long past due.

D. State Oversight

As the CDQ program has grown over the past nine years, there has been increasing conflict between CDQ groups and the State of Alaska over the State's proper role in participating with NMFS in administering the program. NSEDC and several other CDQ groups believe that CDQ groups should be publicly accountable for the use they make of their CDQ quota harvest shares, but that the groups' boards of directors - rather than the State CDQ team - are best positioned to make business and other decisions regarding the mix of fishery-related and non-fishery-related business activities in which the groups should engage, the day-to-day conduct of the groups' business activities, and the manner in which the groups return benefits to their member communities.

The State disagrees. In its view, business decisions made by the boards of directors and managers of the CDQ groups, as well as business decisions made by the boards of directors and managers of companies in which CDQ groups own equity interests, should be subject to the advance review and approval of the State CDQ Team.

If enacted, H.R. 553 will significantly reduce that breadth of State oversight and allow CDQ groups to engage in long term business planning without having to be concerned that those plans may be subject to the political vagaries that the periodic change of State administrations invariably brings. For that reason, NSEDC strongly supports the bill's enactment.

It does so, first and foremost, because increasing the decisionmaking autonomy of the CDQ groups' boards of directors and managers is consistent with Congress's long time commitment to Native American self-determination.

To be eligible to participate in the CDQ program, a western Alaska community must have been certified by the Secretary of the Interior to be a "Native village" for purposes of the Alaska Native Claims Settlement Act (ANCSA). Consistent with that eligibility requirement, in 1996 when Congress amended the MSFCMA to expressly direct the Secretary to establish the CDQ program, Senators Stevens and Inouye reminded the Senate that a substantial majority of the residents of the communities that are participating in the program are Alaska Natives for whose economic and social well-being Congress, under established principles of federal Indian law, has a fiduciary responsibility. See generally 142 Cong. Rec. S10820-24 (daily ed. Sept. 18, 1996).[3]

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[3]Senator Stevens informed the Senate that

> the provisions for the community development quotas are based in part on the authority of Congress to regulate the commerce of the Indian tribes. The communities of the west coast of Alaska are predominately Alaska native people. They were there and fishing a long time before anyone else came on the fishing scene . . . We are allocating a portion of the fisheries to the communities involved that are historic native communities along our coast.

142 Cong. Rec. S10824 (daily ed. Sept. 18, 1996). See also Alliance Against IFQs v. Brown, U. S. District Court for the District of Alaska, No. A93-480 CIV, Transcript of Order Granting Motion for Summary Judgment (Dec. 19, 1994)(holding that Secretary was authorized to create the CDQ program by regulation (cont.)

Since 1970 the hallmark of Congress's Native American and Alaska Native policy has been a commitment to indigenous self-determination. In 1971 Congress required Alaska Natives who reside in the western Alaska communities that are participating in the CDQ program to organize state-chartered business corporations to implement ANCSA. When it did so, Congress intentionally decided not to subject the boards of directors and managers of ANCSA corporations to federal or state oversight other than the oversight that the State exercises over all business corporations.

For the past thirty years the State has not objected to, and indeed has supported, that arrangement. But for reasons of happenstance more than of intentional design, since 1992 the State has asserted a degree of oversight authority over the decisionmaking of CDQ group boards of directors and managers that contravenes Congress's self-determination policy that ANCSA enshrines.

The State has argued that three governmental interests justify its oversight over CDQ groups. The first is the State's interest in ensuring that the groups make informed and financially prudent business decisions. The second is the State's interest in ensuring that the business decisions of CDQ groups are consistent with State fish policy, whatever that

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because the Secretary "has substantial authority, without violating MSFCMA national standard four, to specifically, intentionally, and voluntarily benefit Alaska Natives if [the Secretary] spells out the fact that that is what she is doing").

policy may be at any particular time for any particular Governor. The third is the State's interest in ensuring that the revenue that CDQ groups earn is expended to benefit the groups' member communities.

None of those policy rationales can bear the weight of analysis.

With respect to the State's interest that CDQ groups make informed and financially prudent business decisions, in 1992 the Secretary received the following comment when he published the proposed regulations whose final promulgation established the CDQ program:

> Comment 19: Native Alaskan communities that participate in the CDQ program may agree to enter into business arrangements that are not fully in their interest because of lack of experience in such business negotiations. Specific regulations that protect the interests of native Alaskan communities should be added to the CDQ regulations.

The Secretary considered, and then rejected, that suggestion because

> The risk of making a poor business decision is inherent in virtually all businesses. It would be difficult and probably not appropriate for the Federal government to intervene in this area. (emphasis added).

57 Federal Register 54939 (1992).

And even if it were appropriate for government to involve itself in reviewing and approving the business decisions of the boards of directors CDQ groups, the State CDQ Team does not have the capability to competently perform that function. No member of the Team has had either the requisite training or substantial

professional business experience, much less experience in the highly competitive and time-sensitive fish business. In that regard, in recent years the financial difficulty in which the Coastal Villages CDQ group became enmeshed as a consequence of its purchase of the Brown's Point catcher-processor vessel has been invoked by the State as an example of why State oversight is necessary. But the State CDQ Team reviewed, and then approved, Coastal Villages' purchase of the Brown's Point.

With respect to the State's interest in ensuring that the business decisions of CDQ groups are consistent with State fish policy, at the April 26, 2001 meeting of the Council CDQ Policy Committee, Jeffrey Bush, the Deputy Commissioner of the Alaska Department of Commerce and Economic Development, stated that the Governor believes that the extent to which the content of a CDQ group's CDP is consistent with State fish policy is a relevant factor that will influence his recommendation to NMFS regarding the approval of the CDP.

NSEDC disagrees with Deputy Commissioner Bush's view that it is proper for a Governor to use his de facto authority to grant or withhold a federal asset in order to pressure a CDQ group to make a business decision of which the Governor, as a matter of policy, approves, but which may be contrary to the best interests of the group's member communities or unfair to non-CDQ group owners of a company in which the CDQ group may have invested.

As a threshold matter, it is not possible for a CDQ group to know at any point in time what a Governor's fish policy,

particularly in its particulars, is. In addition, in 1999 the State promulgated revised regulations to govern its participation in assisting NMFS to administer the CDQ program. Section 40(b) of those regulations - i.e., 6 Alaska Administrative Code 93.040(b) - lists twenty factors that the State CDQ Team "shall consider . . . when reviewing a complete proposed CDP." The extent to which the content of a CDP is consistent with State fish policy is not a listed factor.

Finally, with respect to the State's interest in ensuring that the revenue that CDQ groups earn is expended to benefit the groups' member communities, the assumption that implicitly underlies that rationale is that the members of CDQ group boards of directors cannot be trusted to ensure that benefits are provided to the communities whose residents selected them.

That assumption reflects a troubling paternalism that should have no place in either the State or NMFS's Alaska Native-related policies.

Rather than subjecting CDQ group boards of directors and managers to continuous State oversight, Congress should encourage CDQ groups to strengthen their internal governance structures to ensure that the members of the groups' boards of directors are selected in free and fair elections in which candidate board members are accountable to the residents of the communities they represent for their prior performance, and by encouraging CDQ groups to adopt guidelines for investments and transparent financial accountability. The groups also should be required to

conduct the same annual audits, and to prepare and distribute the same annual reports that describe their financial performance and business and other activities, that ANCSA regional corporations conduct and prepare and distribute.

In conclusion Mr. Chairman, the NSEDC board of directors and the residents of NSEDC's member communities strongly support the CDQ program, which has provided important economic and other benefits throughout the Seward Peninsula and Norton Sound region of western Alaska. Over the past nine years the CDQ program has accomplished much. And with the prompt enactment of H.R. 553, during the years ahead, the program can fulfill its potential to become western Alaska's most important economic development program.

Thank you.

Mr. YOUNG. Thank you, Eugene.
Mr. Alstrom.

STATEMENT OF RAGNAR ALSTROM, EXECUTIVE DIRECTOR, YUKON DELTA FISHERIES DEVELOPMENT ASSOCIATION

Mr. ALSTROM. Mr. Chairman, my name is Ragnar Alstrom. I serve as Executive Director of the Yukon Delta Fisheries Development Association. With me in the audience is John Lamont, who is the President of Yukon Delta. We are the community development quota group representing the villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village and Numan Iqua at the mouth of the Yukon River. I am here to offer comments on proposed legislation, H.R. 553, the Western Alaska Community Development Quota Program Implementation Improvement Act of 2001.

I would like to begin by emphasizing the importance of the community development quote program to the people I represent. The population of the delta, which according to the U.S. Census Bureau, is the youngest in the United States, consists of approximately 95 percent Yupik Eskimo or Athabascan Indian. The residents live largely a subsistence hunting lifestyle. For the last 85 years the people of this region have relied on a small commercial salmon fishery to supplement this subsistence lifestyle. Beginning in 1998, and continuing to the present day, the salmon returns to the Yukon River have collapsed. This has resulted in the complete closure of the commercial fishery in 2001 and severe restrictions being placed on the subsistence fishery.

The Federal and State Governments have worked to alleviate hardships caused by the loss of this small salmon based cash economy. Public works projects such as airport improvements, water and sewer projects, school renovations and other such public projects have been undertaken in this region. Although these projects are much needed and appreciated, there are only so many health clinics, head-start schools and post offices that can be built in a village. We now see these Government projects winding down and very few projects slated for the future. Residents have very few opportunities available to them in which to generate an income. Our local, regional and village native corporations generate very few jobs in region.

The CDQ Program, through Yukon Delta Fisheries Development Association, has become the largest private resource for providing jobs and training to the residents of its member villages. There is no other nongovernmental entity out there that can provide the access to jobs and training that is being provided through the CDQ Program.

In regard to H.R. 553, Yukon Delta Fisheries Development Association offers the following comments.

We are in support of primary oversight of the CDQ Program to continue to be the State of Alaska's responsibility, including making the primary allocation recommendations, oversight of a group's ongoing CDQ projects, and approval of proposed CDQ projects.

Yukon Delta Fisheries Development Association believes that when changes are to be made as to oversight and regulation of the CDQ Program, those changes should be analyzed and approved by the North Pacific Fisheries Management Council. Specifically,

those changes should first be debated and formulated within the North Pacific Fisheries Management Council's CDQ Policy Committee prior to submitting to the Council. To ensure input from all parties involved, the Committee is made up of a representative from each CDQ group along with members from the State of Alaska and Federal Government. The concerned parties are at the present time successfully working toward democratic resolution of the issues.

Yukon Delta Fisheries Development Association believes that the CDQ regulation requiring that all of a group's investments be fisheries related, be amended to allow for some investment in non-fisheries-related projects in region. Yukon Delta Fisheries Development Association is in support of the North Pacific Council's CDQ Policy Committee recommendation of allowing up to $500,000 annually to be spent on in-region non-fisheries-related projects. For Yukon Delta, this is a very important amendment that is needed in this regulation. With the collapse and closure of the salmon fishery on the lower Yukon River, there are no fisheries-related projects in-region we can invest in properly. If we are to bring jobs to this region we need a regulation amended to allow for other types of profitable in-region investments.

Yukon Delta Fisheries Development Association would once again like to emphasize the importance of this program to Western Alaska, and recommend that any proposed changes as to regulation be done at a local level through the North Pacific Fisheries Management Council.

Mr. Chairman, if I could continue for another 20 seconds. I come from a village where the population's—half the population's below the age of 19. There is nothing else out there for us to do. We are willing to—we think this program is so important that we are willing to suffer some discomfort in oversight to keep the program in place. We don't want to see the program disappear. That is how important that is to us. You know, what is left out there, for this young population, what else do we have? We don't want to stay on welfare for the rest of our lives. It is just a very, very important program. I just wanted to emphasize that. Thank you.

[The prepared statement of Mr. Alstrom follows:]

Statement of Ragnar Alstrom, Executive Director, Yukon Delta Fisheries Development Association

Mr. Chairman:

My name is Ragnar Alstrom, I serve as Executive Director of the Yukon Delta Fisheries Development Association. The Community Development Quota (CDQ) Group representing the villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village and Nunam Iqua at the mouth of the Yukon River. I am here to offer comments on proposed legislation H.R. 553, the—Western Alaska Community Development Quota Program Implementation Improvement Act of 2001".

I would like to begin by emphasizing the importance of the Community Development Quota program to the people I represent. The population of the Delta, which according to the U.S. Census Bureau is the youngest in the United States, consists of approximately 95% Yupik Eskimo or Athabascan Indian. The residents live largely a subsistence hunting lifestyle. For the last 85 years the people of this region have relied on a small commercial salmon fishery to supplement this subsistence lifestyle. Beginning in 1998, and continuing to the present day, the salmon returns to the Yukon River have collapsed. This has resulted in the complete closure of the commercial fishery in 2001 and severe restrictions being placed on the subsistence fishery.

The Federal and State governments have worked to alleviate hardships caused by the loss of this small salmon based cash economy. Public works projects such as airport improvements, water and sewer projects, school renovations and other such public projects have been undertaken in the region. Although these projects are much needed and appreciated, there are only so many health clinics, headstart schools and post offices that can be built in a village. We now see these government projects winding down and very few projects slated for the future. Residents have very few opportunities available to them in which to generate an income. The local regional and village native corporations generate very few jobs in region.

The CDQ program through Yukon Delta Fisheries Development Association has become the largest private resource for providing jobs and training to the residents of its member villages. There is no other non governmental entity out there that can provide the access to jobs and training that is being provided through the CDQ program.

In regard to H.R. 553 Yukon Delta Fisheries Development Association offers the following comments:

We are in support of primary oversight of the CDQ program to continue to be the State of Alaska's responsibility, including making the primary allocation recommendations, oversight of a group's ongoing CDQ projects and approval of proposed CDQ projects.

Yukon Delta Fisheries Development Association believes that when changes are to be made as to oversight and regulation of the CDQ program, those changes should be analyzed and approved by the North Pacific Fisheries Management Council. Specifically, those changes should first be debated and formulated within the North Pacific Fisheries Management Council's CDQ Policy Committee prior to submitting to the Council.. To ensure input from all parties involved, the Committee is made up of a representative from each CDQ group along with members from the State of Alaska and Federal Government.. The concerned parties are at the present time successfully working toward democratic resolution of the issues. Introduction of H.R. 553 at this time would overrule the current process and be counterproductive.

Yukon Delta Fisheries Development Association believes that the CDQ regulations requiring that all of a group's investments be "fisheries related" be amended to allow for some investment in "non fisheries related" projects in region. Yukon Delta Fisheries Development Association is in support of the North Pacific Council's CDQ Policy Committee recommendation of allowing up to $500,000 annually to be spent on in region "non fisheries" related projects. For Yukon Delta Fisheries Development Association this is a very important amendment that is needed in this regulation. With the collapse and closure of the salmon fishery on the Lower Yukon River there are no "fisheries related" projects in region we can invest in profitably. If we are to bring jobs to this region we need the regulation amended to allow for other types of profitable in region investments.

In conclusion, Yukon Delta Fisheries Development Association would once again like to emphasize the importance of this program to Western Alaska and recommend that any proposed changes as to regulation be done at a local level through the North Pacific Fisheries Management Council.

Mr. YOUNG. Thank you. And I thank the panel.

Patience, you brought up something that is interesting. You mentioned the fact that maybe it is time we pattern this after the Alaska Native Land Claims Act and the corporations. And this if for the whole panel. And it goes back to the oversight. What if we set up it up where there is—under that act itself, the nonprofits, the profits and the regional all are audited at least once a year by an independent auditing group. You know, that is the way it works. And then that is reported, and if we find out something wrong, well, then the oversight takes place. Would that work? And go back to the oversight problem. And by the way, I don't object to the State oversight. I object to how they have overseen. That is my objection. I want you to know that. I am not necessarily happy about giving it to the Federal Government. You know how I feel about that.

But I think all of you—and I mentioned this yesterday to you in my office—that you ought to sit down and make some recommendations what the State can be allowed to do and what you don't want it to do if it is not done by the Council's Committee. And if the Council doesn't accept what the Committee recommends, then I need those recommendations. As I told you yesterday, we are going to proceed in a very nice steady pace, parallel to what occurs by the Council and the Subcommittee and what agreements you can come to, so that we don't all of a sudden wake up 2 years from now and say nothing has changed.

So I want to know, what would be wrong with the idea of just an audit, period, and let you go about as most all the village corporations have done? And although some have failed, some have been quite successful. And the regional corporations, some have been very successful, some some successful, and very frankly, only one or two are really in bad shape right now. What would be wrong with a system like that?

Ms. MERCULIEF. Nothing that I can see. I think that is what we would prefer, just to be on a system where we have limited oversight and an annual audit. So we are in support of a system like that.

Mr. YOUNG. It was just handed to me by my staff, that ANCSA says that they can pay dividends. I am not asking you to pay dividends. I think that part of the program is to reinvest and to build for infrastructure and that type thing.

Robin, go ahead.

Mr. SAMUELSEN. Thank you, Mr. Chairman. I think the CDQ Program is a performance-based program versus ANCSA. In my region, I think we have surpassed the employment of the ANCSA corporations, and we have only been in existence 9 years. Because the program says it has go to be community based, you need to employ people, both in-region and outside the region. You need to train people. And, you know, although we had grand conjures that that is what ANCSA was going to do, by and large it didn't do it.

Mr. YOUNG. With all due respect, Robin, it has done it in some areas. It may not have been in other areas, but that is the fault of the corporation itself, I mean, as you know. I mean, you can change that I believe. Yes.

Mr. SAMUELSEN. The difference is, is that CDQ groups represent six geographical areas, and because of the oversight, because it is performance based, you are having, in all areas you are having employment, you are having upward mobility training, and economic development in all communities that are represented by the CDQ Program.

Mr. YOUNG. All right. Ragnar, I go back to a comment you made. $500,000 invested outside fisheries, again I ask you and the rest of the panel, why should one shoe fit all? Because Morgen has said that is not enough, and I hope you understand, he is right. If you have got 20 villages, and you—how many villages do you have?

Mr. ALSTROM. Mr. Chairman, I have six villages representing 3,500 people.

Mr. YOUNG. But if you take the recommendation of $500,000 outside investment other than fisheries, $500,000 and six villages,

amounts to about $125,000. In his area it would amount to—how much is that? $20,000 approximately.

Mr. ALSTROM. Mr. Chairman?

Mr. YOUNG. Yes?

Mr. ALSTROM. It was a political decision. We actually, Yukon had supported a larger amount. This is the amount—we wanted to—the point was we wanted—I don't think we want it fully blown open, but we wanted an amount to invest in profitable non-fisheries-related projects in region.

Mr. YOUNG. Now, again, we had this discussion yesterday. What is wrong with eliminating the cap at all, having no cap at all? Gene?

Mr. ASICKSIK. I have no problem with removing the cap. In fact, I proposed it at the CDQ Policy Committee, and made a motion, and I lost on a 4-4 split or 6-6 split decision made by the Chairman to go the other way.

So I believe that it should be up to the CDQ groups and their board of directors to determine and submit it. You know, I wouldn't mind submitting it to the state that this is what we would like to do on a non-fisheries-related project. I am not asking for a free-for-all, but if we at NSEDC and the board of directors feel that they need to do something in a community, they should not be hampered by a $500,000 cap. We might want to develop a new fishery in one of our communities that might require more than 500,000. As you well know, processing fish costs—I mean, you are going to incur safe water and other issues. We are under construction of a brand new plant in Nome, Alaska right now, and we have been approached by Nome Joint Utilities that maybe the amount of crab shells that will be discharging into their sewer system might be too much for the system that Nome has. So we are faced with putting in a line with a grinder. That is going to have to—or shuttling crab waste and halibut waste out to the ocean. If we had known earlier that—although we do have copies that they were going to allow it, but now it might be too much—that is something we are going to have to look at. And then with that, we have to probably go back with some substantial amendment to construct this line or to purchase the grinder.

Mr. YOUNG. Would anyone else like to comment on that? Because to me, this is one of the crucial points. You are not all the same. One has six groups. One has 20 groups. One is a larger percentage, a different flow. And what bothers me, when there is no sort of flexibility in the State on oversight, on taking the differences, I don't think they can properly oversee your groups, because I don't think they have the perspective of what you are trying to do. I was hoping to ask Mr. Bush, and later on I may ask him, how large a turnover you have in the oversight group of the CDQs. But I will get to him later. I will send that question to him.

Go ahead, Larry.

Mr. COTTER. Mr. Chairman, in the beginning it was the North Pacific Council that limited CDQ investments to fishery-related projects.

Mr. YOUNG. That was a regulation from the Council, correct?

Mr. COTTER. Yes, sir. And the reason for that, the program was controversial as it was being adopted. You know, we had to force

it through. There was concern from the industry, that they were saying, "We are giving up fish, so we want to make sure that the revenues derived from this program are going to be used to help these communities and these residents participate in the fishing industry." And that is how that happened.

And I do not dispute at all that the world has changed, and it is appropriate now for the communities to be able to invest outside of the fishing industry. Realistically, there is no other opportunity in many locations for communities in Western Alaska to develop if they don't find something other than fisheries.

The only concern that we have from our group is that if the program is modified so non-fishery-related investments are allowed, what happens to those of us who still have substantial fishery development activity to fund and develop? Under the current allocation formula, we could continue to lose allocations, and those revenues, those royalties, would flow to other communities and other regions to develop non-fishery-related projects. And so we end up sacrificing our fishery development opportunities for those who have non-fishery-development opportunities. And that would be fine for us if we have a fair and equitable allocation that allows us to move forward in the future and realistically develop our communities.

In the absence of that, it is very difficult for us to be able to support it.

Mr. YOUNG. What if we based it—and I want you all—what if we based the amount of money on the revenue generated from the fisheries activities, base it on a percentage as far as outside investment? Anybody got a comment on it? Robin?

Mr. SAMUELSEN. Thank you, Mr. Chairman. I believe the Council, Mr. Chairman, is looking at allowing a percentage of the allocation, of your pollock allocation, or up to $500,000, is one of the options. There was proposals and recommendations by the Committee for that. There was support for that. There was also dissension within the Committee, the CDQ Policy Committee, that wanted it at a million. I think we have got to be very careful here, Mr. Chairman, that we are not opening Pandora's Box. As you well know, that the legislature funding in Alaska, I think would like to have the CDQ groups pay for everything, roads, airports, you-name-it.

The State has a responsibility in our communities to provide certain services, and you know, the CDQ Program came along, and we are filling a niche that has been always void in our villages. And I want to caution you, Mr. Chairman, that we don't create a quasi-social welfare program aiding the State of Alaska and alleviating duties that the State of Alaska should be providing to our communities.

Mr. YOUNG. Well, Robin, along those lines, what if we write in this legislation that that can't occur? I don't believe they can do that anyway, although the legislature is going to try to do it, but that is one of my running battles is reapportionment. Unfortunately, the villages in this group are going to be less represented than you were in the past, as you know. That is because of the population growth. But we might want to look at whether we can—I will have to have staff look—whether that is a possibility, that none of these monies are to replace any State requirement and the

responsibility of the State to take service for the good of the communities. And I don't think—I absolutely agree with you, I don't think that should be the—you should not be the funder of something the State should be doing, as they are doing in Anchorage, Fairbanks, and Juneau and Petersburg and wherever it may be.

But I understand your concern, and I would have the same concern, but I think if we do something, we possibly can address that issue. I believe we appreciate it.

Patience?

Ms. MERCULIEF. On the issue we were talking about, our concern, our communities' concern is our ability—we are still developing our fisheries infrastructure, and our allocation was cut from 10 percent to 4 percent, and it really limits our ability to continue to develop our fishing infrastructure. We have Icicle Seafoods, who wants to come into the harbor, but we need to dredge so we can have them there, so they can do the processing of pollock and cod and other flatfish. And although our halibut fishery is a success, the people can't launch their boats without the use of a crane, and if those cranes break down, they have no way to get their boats in and out of the water, because we don't have a launching ramp that is adequate.

So while we recognize that other groups need and want to expand into other areas, we are—boy, we would like some of that extra money around to develop non-fisheries-related activities, but we are not there yet. We are still working on developing our fisheries-related infrastructure.

Mr. YOUNG. When did you go from 10 to 4, or was that a slow process?

Ms. MERCULIEF. It went from, I believe 10 to 7, down to 4, and then back up to 5 last year, and then back down to 4 this year.

Mr. YOUNG. And this is the reason I asked Mr. Bush, how can you invest with that bouncing up and down of the quotas? And I know we have got two big quota holders here or three big quota holders, but what happens to the rest of you if it goes up and down? I don't know how—even you guy have got to be worried about this. I mean, what do they base the cut on?

Ms. MERCULIEF. That is an area of great confusion to us, because we haven't been able to identify specific criteria for the reasons we were cut so drastically. I mean, over 50 percent of our revenue was cut, you know, 10 percent to 4 percent on pollock.

Mr. YOUNG. Okay. This is all pollock, right?

Ms. MERCULIEF. Yes.

Mr. YOUNG. All pollock. Now, again, what if we wrote into this legislation a criteria for cutting and increasing instead of leaving it to the discretion of the State?

Ms. MERCULIEF. I think that is needed. I think we would all support that.

Mr. YOUNG. Anybody else have a comment on that, anybody? Go ahead. I know you were looking there. I can always tell when you have something to say.

Mr. SAMUELSEN. Thank you, Mr. Chairman. I have a comment on everything.

[Laughter.]

Mr. YOUNG. We know. Go ahead.

Mr. SAMUELSEN. I think, Mr. Chairman, that, you know, we have all seen our allocations fluctuate, and as Chairman, I think it is your prerogative that you—I don't know the rules down here, but you may be always to call the State NMFS back up. There is reasons why that happened. And I don't want to get into that arena because that isn't my area of expertise.

Mr. YOUNG. I won't have them up for the Committee again, but I am going to have the questions answered. That is part of this program. You know, I am deeply concerned because I, as a person that used to try to run a business, I just don't know how any of you can sit down and plan an investment, increase your fishing capability. How you can do that when you are at the will and the whim of two government agencies that can cut your quota.

See, again, I am rambling. I will go on with my questions. This still smacks to me as the BIA, the big father, and I just really have great respect for what has been done in the State of Alaska by the Alaskan Native people. We have some horror stories. But that National Native Lands Act is also a success story. And it was my intent, when we introduced this legislation, when we work with this legislation with Harold Sparck, that we would have an economic base in the villages. And I want to stress "economic base" derived from a renewable resource, not an expendable resource, a renewable resource. Of course, there is a lot of salmon price dropped, as you know. Lord help us, I don't know what we are ever going to do with that again. Maybe we all ought to go in the sport fishing business and make some money. But we didn't know that was going to happen.

If I had my way—and I will say this publicly—if I had my way, I would like to see this group at this table own all the Bering Sea fisheries. I have never understood why it has to come out of another state. I think it would be extremely important to give that area of Alaska, which is impoverished, a tremendous economic boost and development, because you would have money to develop it.

Larry, you had something to say there. I am sorry. I get to rambling on this issue.

Mr. COTTER. Well, Mr. Chairman, I was going to comment on the allocation issue. And the problem is that it is so complicated and so murky, that I don't think any of us really understand what takes place. There are criteria, but we don't know how those criteria are applied. We don't know whether there is special weight given to one criteria over another. We don't have annual meetings with the State where they give us a report card and tell us, "You are doing good" or "You are doing bad," or "We think you ought to improve here or there." We move forward with our projects. We have an hour and a half meeting with the State, mostly where we say what we are doing during the allocation process, and then the State goes and makes a recommendation.

When the State publishes its findings, justifying its recommendation, the information provided is so subjective that it is impossible to determine whether or not apples to apples are being compared or it is apples to oranges.

So under the existing process, I think it is virtually impossible for any group to move forward from one allocation cycle to the next

with any sense of certainty that they are going to be able to maintain their allocation. And that just simply is not going to work for the future. We have got to get a better system where there is some certainty and some reliability. Otherwise, groups are going to experience some very significant problems with their investments and with the banks, and with their program overall.

Mr. YOUNG. Let me follow that, Larry. Why should the State be involved in at all; why not let the Council do it?

Mr. COTTER. Well, Mr. Chairman, I think in the beginning—again, in the beginning, the Council didn't want to be involved in the process, because I think it—

Mr. YOUNG. Chicken Little.

Mr. COTTER. —that it was going to be very political.

I am not sure that they want to be involved in it now. And my contention is that, really, nobody should be involved in it. Some type of formula should be developed and applied to the six groups, and that should be put into law, that says each group gets this amount, and that is it. And we move forward into the future knowing what we are going to have.

Now, the argument against that is that the program allocation should be based on performance. And that is well and good, but that was more important before than it is important now. Each of the groups have different investments. Some of them are working out, some of them aren't working out. Resources go up and down. A crab investment 3 years ago may have made a lot of sense. Today it is losing money. Let us just get the allocations—

Mr. YOUNG. Let me interrupt you. Is there a criteria? Robin, is there a criteria?

Mr. SAMUELSEN. Thank you, Mr. Chairman. In the record there is a draft issues and alternatives for CDQ policy analysis.

Mr. YOUNG. That is coming out of the Committee. There is no criteria now by the State. They issue quotas based upon the will and the whim of how they feel that day.

Mr. SAMUELSEN. No, Mr. Chairman. There is allocation criteria.

Ms. MERCULIEF. Like the lady mentioned earlier, in the Natural Resources study, the State has 21 different listed criteria, but we don't know how they are weighted, or which criteria—

Mr. YOUNG. There is nothing—what I am going to get to from the State—and that is one of the question I am going to submit to them—is why they based the increase or decrease of quotas for different groups, and what criteria did they use, and was it uniform? See, because I—this to me looks like somebody possibly could be playing, as I mentioned before, God, and that affects your lives, and I think it affects the integrity of this organization. And what I am looking for is a way to keep somebody from playing that role. If anybody wants to play it, I do. And I will guarantee it, it is not going to be, it will be the devil. But I am just saying, somewhere there has to be, Larry, Gene, Morgen, Patience, Robin, everybody has to be treated equal as far as the criteria goes. It cannot be different. In fact, I am surprised that someone hasn't raised this question in court before, because there has to be some difference somewhere.

Gene? By the way, I have got another question to ask you, Gene. Go ahead.

Mr. ASICKSIK. Yes. I think what is being missed here is the other allocations. You know, when you see a decrease in your allocation, or an increase—in my case, I got an increase, but I seen a decrease in all other species—the decrease that we seen, it became harder or sometimes, in some cases, not feasible for us to go after a targeted species. So there is other allocations that have affected us, and I think everybody is just mainly looking at the pollock allocations, and yes, pollock is 80 percent of all six groups' revenues. And crab was mentioned earlier, that crab was a big issue sometime ago, but now it is not. I mean it was a revenue generator, but now it is not. And in some groups can be a money loser. This year, hopefully, it will rebound and they can start making money again.

So there are other allocations. Sometimes there is no rationale or no explanation of why you have got increased in rock sole or yellowfin sole, but you don't have enough skates to go after it, you know.

Mr. YOUNG. Now, along those lines again—I don't want to get in the allocation program, but it always intrigues me. We are fighting over a 10 percent of halibut allocation, right?

Mr. COTTER. Pollock.

Mr. YOUNG. Pollock, excuse me, pollock. And the rest are 7-1/2 for halibut, and 7-1/2 for yellowfin?

Mr. COTTER. All other groundfish.

Mr. YOUNG. All other groundfish.

Mr. ASICKSIK. Yes.

Mr. YOUNG. I am just running this through my mind now. What would happen—you know, I think we ought to concentrate on another effort to raise that 10 percent to 15 percent and the 7-1/2 to 10. And then—and spread it around a little bit, guys. That is something I think because we even—my goal is really to have the controlling force in the Bering Sea, but that is something we can talk about later.

Eugene, has your group ever had a project or investment rejected by the State?

Mr. ASICKSIK. Well, early on we had submitted a proposal to purchase a long liner back in 1993 or '94. And we were told that we could not invest into it 100 percent, that we had to go to our harvesting partner, which is Glacier Fish Company, and see if they would be interested, and that Glacier would have to own 51 percent and NSEDC—

Mr. YOUNG. What was the reason for that? What reason did they give you?

Mr. ASICKSIK. That we didn't have the expertise and the knowledge of owning a vessel, and that we didn't have the skippers or, just the expertise.

Mr. YOUNG. But see, that was a decision made by an outside force about a business community that is really operated by board members within your organization. Now, that is the thing I object to. I mean, what right do they have to tell you to do that? Do you think they had that right to do that?

Mr. ASICKSIK. Well, they are the oversight, and they are still currently the oversight, so we did go back to Glacier Fish Company, and Glacier did agree and meet with the State, that they would participate in purchasing.

Mr. YOUNG. But they are mini managing your group.

Mr. ASICKSIK. Yes, or—

Mr. YOUNG. And this is something that I am very, very frustrated about.

The State's criteria, Larry, that is used to allocate six groups has been characterized as inconsistent and difficult to evaluate when the allocations are made every year or every 2 years. Doesn't that leave you, as I said, vulnerable again to the whims of the State?

Mr. COTTER. Absolutely, Mr. Chairman. It is no secret that APICDA has the smallest population of all of the CDQ groups. Quite frankly, we are between 2 and 3 percent of the total population. So from a perspective of a lot of groups, our population should mean that we should get a very low allocation. What that has to do with the allocation process, we initially received 18 percent of the pollock CDQ allocation. The State reduced us to 16 percent a few years later, and explained to the North Pacific Council that the reason they made the reduction was because of population. They then came back last year, and they reduced us by another 2 percent, down to 14 percent. They told us in private that that was based on population. We then challenged the process, and then the State changed its opinion and said that it was based on performance.

In their letter to NMFS, describing performance, they made statements such as we have—APICDA has—the fifth highest administrative cost, for example, of any of the six groups. Well, they didn't say whether we were too high or too low. They didn't provide any information about whether or not that was justifiable or not. In fact, we have 17 subsidiary corporations, and probably have far more hands-on costs incurred in managing personnel, et cetera, then the other groups, so that might be good.

They had a bunch of criteria like that, or statements, that allows—makes it impossible for you to know how you compare against other groups.

We are very concerned that next year when we go through this allocation process again, that we are going to get cut primarily because of population or other factors, and that is why, Mr. Chairman, we filed suit against the State and National Marine Fisheries Service, over the allocation process.

Mr. YOUNG. Have you had any indication they are going to be punishing you for that suit?

Mr. COTTER. I don't believe that is going to happen, Mr. Chairman.

Mr. YOUNG. Well, what about 150 pounds of fish, over fishing.

Mr. COTTER. Well, it was 1,400 pounds, Mr. Chairman, of crab and—

Mr. YOUNG. That is about as many fish as Robin lost yesterday and didn't get shipped down to me.

[Laughter.]

Mr. COTTER. Mr. Chairman, you know, Mr. Bush responded to me very rapidly after our press release on those charges, and assured me that the State, the CDQ team was not involved in that, and I believed him.

Mr. YOUNG. Is there any other comments, Eugene?

Mr. ASICKSIK. Yes. I would like to go back to that non-fisheries-related investments. I think that NSEDC's position was that we just don't want to go out there and invest in something that, you know, a vocal board member wants, you know. What we would like is the flexibility—in our region, you know, we would probably be competing against individuals in a community for teacher housing, but we do have communities that have a very—varying needs of teacher housing, and I look at that as an investment. I look at it as when I was living in Shaktoolik, personally, I considered building a 4-plex and leasing it to the school district. The State will not build housing for its teachers or for the troopers or for doctors. But the State will provide funds for renting. And they are—I think it was Robin mentioned it earlier, that, you know, we CDQ groups have suppressed some of our village corporations, and we do have revenues that we can invest into a 4-plex or a duplex, triplex or 6-plex, and provide housing and, you know, create, or get a agreement with the school district, to where teachers—yes, we might compete with private individuals, but I believe if you provide housing and if you have got adequate housing, you are going to entice more teachers and better teachers to come into the region, so you are going to have a longer longevity and eventually you will have a better-educated youth and a better community overall. There are communities that the school district would have to try and renovate a house. You know, in some communities I heard that there is no floor, so they have to build a floor in there. So you would save your school district some funds.

Another personal thing that I look at is why does Unakleet have a airport—I mean a facility that when you land there, you could actually come out of the weather? You could build something at these airports. If you want to call them hangars, Shaktoolik has—I am just using Shaktoolik, my home town—we have five different airlines coming in every day. Surely these airlines can get together and lease a facility to where someone can make some money, and you would have less produce frozen, you would have a place for people to warm up. You know, the new airport that is under construction is a mile further than the old one, and we are known for our winds. But I see that as a business opportunity that NSEDC could get involved in and build, not just in my community, but there are 14 other communities—well, if you exclude Nome and Unakleet, there is no other community in our region that has a facility where people can come into that community to get out of the weather, especially during the—

Mr. YOUNG. Well, Gene, I happen to agree with all of you in the sense that—the big dish—I never thought this program was for just fisheries related, because it says community development, and development has got a broad spectrum, and I think that should be up to the board and the group to decide what they are going to do to develop that community, and if they have the money derived from a renewable resource, there ought to be some latitude, and I hope we will get to that.

I have one last question. How does the performance for a CDQ group invested in fisheries, that employs a large number of people, but loses money? How does that—does anybody know how your

performance can be determined? Is that good or bad? You are losing money, but you are employing people. Robin?

Mr. SAMUELSEN. Thank you, Mr. Chairman. I think that—I will use BBEDC as an example. Our salmon runs are crashing. Our markets are drying up.

Mr. YOUNG. But this has nothing to do with CDQs.

Mr. SAMUELSEN. Yes. Last year BBEDC made a substantial investment in the salmon industry, and we lost a substantial amount of money on that investment last year because of probably 25 percent management and 70 percent market conditions, with the advent of farmed salmon flooding the market.

Mr. Chairman, there is nothing in our regions to invest in but salmon. So we fail last year. Is the State going to penalize us? Are the councils going to penalize us? No, they are not.

Mr. YOUNG. Are you sure of that?

Mr. SAMUELSEN. I am positive of that.

Mr. YOUNG. I want you to remember that if they cut your quota by about 4 percent.

Mr. SAMUELSEN. That is right. They are not going to let us continue losing that kind of money. They are going to make us redesign a program and take another look at it, and that is what my board is going through in September of this year. We are going to take another look at it and try to figure it out, how to develop a niche market. But we haven't been threatened since the advent of the CDQ Program, about if you lose money, we are going to cut your quota.

Mr. COTTER. Mr. Chairman?

Mr. YOUNG. Yes, sir.

Mr. COTTER. Just the opposite side of that coin was we also invested in a salmon processing facility last year, and opened it in False Pass, and we lost a substantial amount of money. And part of the justification that the State used in their findings for reducing our allocation, was that we had poor economic performance in that operation, whereas two other groups had good—had successful operations in salmon, without, of course, describing what successful means. Did they lose less money or make money? But, yes, the State does apply that criteria at least differently between groups.

Mr. YOUNG. Well, see, this is what I am going to get at, and Mr. Bush is going to get these questions. If he is in the audience, I want him to understand, I want a set rule of criteria applied equally to everyone. It is not correct to penalize one person for doing one thing and reward the other one for the other thing. And that is what causes dissension amongst this group. A uniform set of rules that you can follow and know where you are going to go is crucially important if you have a future in planning your investment and how you are going to handle it.

And like I say, I am amazed that you have been able to have the success you have had with that type of oversight conduct, and how you have been able to plan anything. You know, it amazes me immensely.

I have another meeting. This has been going on from 11 to 1:30. And I want to thank all of you, and as I mentioned to you yesterday, this is not a hostile position on my part, and I hope not on your part. I am trying to make sure this program continues to

grow, and I hope it grows, and I will work to try to get further allotments if possible, further amounts of fish in every arena so you can grow.

Again, as you leave this meeting room and you go back to your hotels or you fly to Alaska—and God bless you when you go back; I will see you there in August—try to think about what can we do together collectively, because you are small in number, remember that. There is three of us down here, only one Chairman left, and we have an opportunity this next year—this year or next year, to renew the Magnuson Act, and this is going to be one of linchpins of the Magnuson Act, is how the CDQ Program works and where we are going to go in the future.

I want to thank each one of you for being in the room and for the audience in participating. This meeting is adjourned.

[Whereupon, at 1:27 p.m., the Subcommittee meeting was adjourned.]

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