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Author

Keys, Kacy Collons

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The Community Development Quota Program: Inequity and Failure in Privatization Policy

KACY COLLONS KEYS

I. INTRODUCTION

The island of Kiska lies at the western end of the Aleutian Islands — a chain of islands lying in an almost perfect arc between the northern Pacific Ocean and the Bering Sea. Evidence of ancient communities and more recent conflict can be found here in the form of 8,000 year old stone tools lying next to sunken World War II (WWII) battleships. One thing is certain: the native communities that have inhabited these islands for thousands of years have always relied on marine resources for their survival. Further, for the native villages on Kiska and the many other Aleutian Islands, subsistence fishing practices represent not only their livelihood, but their spirit.

Aleutian populations lived in relative isolation from the rest of the world until the 1800's. Since that time, Aleuts have struggled to maintain their communities though faced with continued exploitation of marine resources and intrusion by Russian and United States governments. In the face of adversity, Aleutian villages have been able to maintain their cultures and communities through, among other things, the practice of subsistence. However, as fish stocks world wide continue to decline and the

Kacy Collons Keys is a recent graduate from the Graduate Department of Urban Planning at UCLA. In 1997, she will graduate with a law degree from Boalt Hall, UC Berkeley. Ms. Keys has devoted both her academic and professional career to the furtherance of social and environmental justice.

world's industrial nations attempt to address the issue through specific fishery management decisions, Aleutian culture and communities may be at risk.

The number of vessels comprising United States fishing fleets have, in many fisheries, grown to such great numbers that their fishing capacity far exceeds fishery productivity. This excess capacity perpetuates a cycle of overinvestment and overfishing, contributing to dangerous depletion of fish stocks. Recently, fish conservation efforts have taken the form of tradable fishing rights, and access to the resource has been privatized.

In this article, I will examine the current trend of privatization in environmental policy using the implementation of the Community Development Quota (CDQ) program in Western Alaska as a case study. The CDQ program has privatized fishing rights in an attempt to achieve both fishery conservation in general, and community development for Aleutian villages more specifically. It is my contention that market-based, privatization policies intended to simultaneously conserve resources and promote economic development are not only insufficient, but inequitable.

Consistent with the historical treatment of Native Americans, U.S. policy towards Native Alaskans often has been devastating to their communities. Similarly, the CDQ Program has excluded the traditional and subsistence interests of local native villages, even as it has attempted to include natives in the fishing industry. Through examination of the CDQ program, I will demonstrate that the advent of market-based approaches results from failed assumptions about "efficiency" and "success," and that this failure may not only have severe consequences for specific communities but for conservation efforts as well.

While market-based policies have been criticized, many critics still tend to make similar assumptions about markets and efficiency, ultimately placing their confidence in market mechanisms to achieve conservation and development goals. It is from this confidence that policy-makers in the United States have developed what may be termed a market ideology; in fact, institutional entrenchment of this notion may prevent policy-makers from even acknowledging alternative approaches. However, alternative approaches must be considered if conservation policies are to be truly successful.

After providing the reader with a brief history of fishery management in the United States and a discussion of subsistence, I begin my case study by examining both historical and current

conditions in the Western Alaskan region. I demonstrate that poverty and poor living conditions have resulted from policies which fail to consider local community needs and preferences. I then discuss the detrimental effects of the Alaska Native Claims Settlement Act (ANCSA), a policy which privatized Native Alaskan lands in the 1970's, and draw parallels between ANCSA and the CDQ program. After identifying some of the factors and assumptions which led to the failure of ANCSA, and may lead to the failure of the CDQ program, I outline some necessary changes to current policy requisite for success, and suggest that co-management may prove a viable alternative to market-based fishery management in Alaska and around the world.

II. METHODOLOGY

In writing this article I used a combination of several different methods including historical analysis, legal analysis, and the case study method. Historical analysis has typically been used as a qualitative method to examine the social ramifications of historical occurrences. In fact, Abrams defines this method in terms of three concerns — all of which are relevant for this paper: 1) the examination of the transition to industrialism as an historical process; 2) the examination of patterns of freedom and constraint in the life-histories of individuals within social contexts; and 3) the examination of the interaction between human agency and social structure as an empirical issue in world history.¹ While the historical method is useful for examining "change, process, and development,"² it may be difficult to identify analogous situations and social contexts over time.

Within the article, I identify an historical pattern of detrimental policies towards Native Alaskans and Native Americans. As policy-makers have made continual efforts to "assimilate", "modernize", and "develop" subsistence cultures, they have simultaneously restricted native self-sufficiency and sovereignty. I hold that the implementation of the CDQ program is a further manifestation of this historical process and use specific examples of past and present policy outcomes to support this argument.

In the United States, law is comprised of a complex combination of statutory provisions and adjudicatory decisions. Legal analysis deals with the examination of legal materials — statutes, cases, treaties — in order to determine both the state of the law and

its intended and actual effect within a given context. One of the shortcomings of legal analysis is that, although useful for determining the current state of the law, court interpretation of statutory law often differs with time and therefore can be historically inconsistent.

My analysis of legal documents concludes that the CDQ program, as codified in the Code of Federal Regulations, does not agree with previous statutory and case law affecting Native Alaskans, thus possibly calling the legality of the CDQ program into question. As such, the statute implementing the CDQ program should be modified to reconcile current fishery management and economic development policy with past legal obligations to protect subsistence culture and fishing rights.

The case study method usually consists of detailed analysis of a single example in order to test a given hypothesis. I have examined the CDQ program in order to test my hypothesis about the inadequacy of market-based solutions to address either conservation or economic development goals.

The advantage of using the case study method is that it provides detailed analysis of a specific example; one of its weaknesses is the difficulty of generalizing to larger populations and larger contexts. The case method often is chosen when a shortage of resources or a difficulty in access to research subjects exists.³ I have chosen this method partially because time and travel constraints have not allowed me to do field work.

In researching this topic I have used several different reference sources including primary and secondary sources, personal interviews, an electronic mail fishery "talk line,"⁴ qualitative data, and legal materials. I would have liked to participate in more personal interviews with Native Alaskans, but my inability to travel and spend the time necessary to establish relationships of trust with villagers prevented this avenue of research. Instead, I have relied on transcripts of the interviews of others.⁵ While the methods I have chosen do have weaknesses, the combination of the strengths of the three compensate for deficiencies that may exist in any one method.

III. FISHERY MANAGEMENT

In *Economic Theory and Exhaustible Resources*,⁶ Dasgupta and Heal distinguish between exhaustible resources, such as fossil

fuels, and renewable (or inexhaustible) resources, such as fish. This categorization of fish as an inexhaustible resource has persisted until very recently, and has led to the current jeopardy of several fish populations worldwide.

The seafood industry is big international business. In 1992, United States Commercial fisheries and their processing sectors earned \$3.7 billion in ex-vessel revenue after fishing for 4.8 million metric tons of fish and shellfish.⁷ In 1943, the U.S. exported five times more fish than it imported.⁸ However, following WWII, foreign governments, in an effort to develop export markets, heavily subsidized their fishing fleets. As a result, the U.S. was importing 13 times more fish than it exported by 1974.⁹

As foreign fleets descended upon U.S. waters in the 1970's, Congress passed the Magnuson Act, a protectionist policy excluding foreign actors from fishing in U.S. waters (up to 200 nautical miles offshore).¹⁰ Furthermore, in an effort to compete with foreign fleets, the National Marine Fisheries Service provided great subsidies to the U.S. fishing industry.

As a result of large subsidies, the number of vessels comprising U.S. fleets have, in many fisheries, grown to such great numbers that their fishing capacity far exceeds fishery productivity. This excess capacity perpetuates a cycle of overinvestment and overfishing, contributing to dangerous depletion of fish stocks. Currently in the United States, about 40% of managed fish populations are overexploited. In the world, about 70% of the fish stocks are "depleted" or "almost depleted."¹¹

Prior to passage of the Magnuson Act in 1976, open access management — a system with no catch or gear limitations — was the norm within the U.S. and within international waters. The world's catch of seafood has quadrupled since 1950, leading to a substantial decline in fish populations. Fishing seasons and allowable harvest limits have been reduced in unsuccessful efforts to conserve threatened fish stocks.

Limited access management has been used in several U.S. fisheries, and refers to system in which fishers must obtain a license, and pay a fee, in order to fish. Such management schemes typically set a total maximum annual catch (TAC),¹² but no maximum on individual actors. Once actors have gained entry into the fishery, each participant may catch as much fish as possible until TAC is reached. As competition increases — with shortened seasons and decreased fish stocks — fishing operations have become increasingly dependent on high technology; U.S.

fishing fleets have developed the capacity to fish far beyond the available fish stock in many fisheries resulting in a "race for fish" and leading to unsafe and irresponsible fishing practices.¹³ Often times endangered species and fish that are illegal catch (because of size or other restrictions) are caught along with the targeted fish, leading to further stock depletion. The success of limited access management schemes has been further hindered by "cheating", due in part to insufficient enforcement and penalties.¹⁴

A. Individual Transferable Quotas

Conservation efforts featuring reductions in the duration of fishing seasons and reductions in the allowable harvest limits have not proved successful in conserving fish populations. As fish stocks continue to decline, fishery management councils,¹⁵ which have come under public scrutiny for failure to adequately manage fish stocks, are experimenting with tradable fishing rights schemes. According to proponents, transferable fishing quota schemes conserve fish stocks by providing incentives for less profitable fishing operations to exit the industry, thus reducing the excessive numbers of active vessels within U.S. fisheries.

Individual Transferable Quotas, or ITQs, are tradable fishing rights, created by the National Marine Fisheries Service and local fishery management councils in an attempt to alleviate the problem of overfishing, and achieve sustainable management, in the United States.¹⁶ Under ITQ management schemes, each qualifying fisher receives an individual quota, which is a specific percentage of the annual TAC for a specific fishery. A fisher may use his percentage allocation in order to harvest fish himself, or he may transfer his allocation to someone else by lease or sale.

Critics of market-based environmental solutions point out the difficulty of trying to apply economic models to environmental questions because, "[h]umans cannot . . . impose limited notions of order on a living world that, by its very nature, will not be pinned down."¹⁷ Regardless of the validity of this statement, the reality is that current policies value market mechanisms as superior to other alternatives.¹⁸ The implementation of transferable fishing quota schemes worldwide is evidence of this trend.¹⁹

Currently, there are three ITQ management systems in place in the United States. These regulate the Atlantic Surf Clam and Ocean Quahog fisheries, the Wreckfish fishery, and the Alaskan

Halibut and Sablefish fisheries. While the character of each of these three fisheries is unique, the theory behind their ITQ management is the same: to provide for more "efficient" and sustainable management of the fish stock by limiting access through tradable fishing rights, or ITQs, which are a percentage of TAC. In theory, transferability of ITQs will encourage needed fleet downswing by giving "marginal" actors an asset which they can then sell in order to exit the market.

Regulation unique to the Alaskan fishery provides special provisions to address native community fishing rights in Aleutian Island native communities.²⁰ In an attempt to combine environmental policy with community development, the Community Development Quota (CDQ) Program is structured to reserve a certain percentage of TAC for purposes of economic development in Alaskan Native Communities.²¹

The concept of CDQs first emerged in the mid-1980's as the Bering Sea fisheries, long dominated by foreign fleets, finally became profitable for domestic industry. During the 1989 Congressional reauthorization of the Magnuson Act, Native Alaskans lobbied not only for protection of traditional fishing rights, but also for a direct share in the harvest of a multi-million dollar fisheries resource. However, due to a lack of political support, this idea was dropped until it reemerged in a different format in 1991 and was approved by the North Pacific Fishery Management Council as a pilot project.

The CDQ provision was structured to give the Governor of Alaska the lead responsibility for determining who would receive quotas. Only communities within the Bering Sea/Aleutian Island region are eligible to receive CDQs. Furthermore, eligibility requires specific inshore-offshore operations and native joint ventures with corporate fishing operations.²² In these ventures, the corporate partners purchase the rights to fish and hire western Native Alaskans to work in their operations.²³

Currently, six CDQ groups comprising 56 communities in Western Alaska have received quota allocation. These groups hold an aggregate of 7.5% of annual quota share (approximately 100,000 tons annually).²⁴ In order to receive an allocation, all applicants must develop detailed business plans in partnership with large corporate fishing operations. The content of these plans emphasizes the apparent necessity of available financing for the survival and growth of actors in the fishing industry, as all six groups that received CDQs have stated that financing and access

to lending is imperative to participation in the industry.²⁵ One of the declared goals of the CDQ program is to afford western Alaska Natives "... a fair and reasonable opportunity to participate in the ... fisheries which have been closed to them because of the high capital investments involved."²⁶ The fact that financing is of such importance, however, raises concerns for the ability of tribal fishing operations to survive.²⁷

Implementation of tradable rights management schemes follows an increasing trend of privatization in environmental policy.²⁸ Transferable quota systems have been implemented in various fisheries around the world with distinct consequences for the economic structure and the conservation of fisheries. For example, in the case of the Icelandic cod fishery, the implementation of such a management system has resulted in the concentration of fishing quota among a few large market participants;²⁹ this same phenomenon has been observed in U.S. fisheries with new ITQ management schemes.³⁰

Market-based policies assume that "efficiency" and profit maximization are optimal goals. Yet, Dasgupta and Heal plainly state that "while a competitive equilibrium of a private ownership economy has several virtues, ensuring a reasonable distribution of welfare among individuals is not one of them."³¹

This observation is extremely important when examining private property rights regimes. Notions of marginality and inefficiency accompanying such regimes are inherent with value judgments. Such policies not only assume that the goals of efficiency and profit maximization are universal, but they also assume that the current distribution of wealth is the appropriate one. However, these goals often clash with community goals, particularly where community values differ from the values of policy makers.

It is no surprise that conservation efforts affect small economic actors first and most. In implementing environmental policy, and specifically fishery management policy, it must be realized that there are fishermen and communities dependent on commercial, recreational, and subsistence fishing. "Scientific analysis, advice, and regulations must incorporate human behavior and be aware of the potential ramifications to people"³²

Keys observes that native subsistence economies and the communities they encompass are threatened whenever traditional tribal hunting or fishing activities are hindered.³³ This insight, and the differing values of subsistence and market-based regimes

(see discussion of subsistence below), leads one to question the appropriateness of tradable fishing rights management to address the needs of native fishing communities.

IV. SUBSISTENCE, STEWARDSHIP, SUSTAINABILITY

Indians' territories make up the largest land holdings within U.S. borders, after federal government holdings,³⁴ though only one percent (but over 1.5 million people) of the United States' population is indigenous.³⁵ Despite their large holdings of land and natural resources, Indians suffer the lowest standard of living, the highest unemployment rate (over 50%), and the worst poverty of any ethnic group within the United States.³⁶ As a result of this discrepancy between assets and social conditions, Indian communities are often targeted for development projects.

Fisheries are an important asset for many of the communities bordering them and native communities are no exception. Since many native communities are lacking in other significant economic resources, fisheries often are indispensable to tribal economies. From a basic nutritional standpoint, subsistence food sources provide a large percentage of all protein consumed in Native Alaskan villages.³⁷ Where this reliance upon fishing spans many generations, tribal fishing practices are frequently intertwined with the cultural and political history of the tribe.³⁸ In addition to nutritional and cultural significance, use of subsistence products also makes economic sense; in 1981 the average cost of subsistence foods was \$.31 per pound compared with an average \$2.50 per pound for imported food stuffs.³⁹ Any regulation of fisheries necessarily affects the native communities that base their culture and community survival on subsistence fishing practices.

Proponents of the CDQ program see the program as the "ultimate" tool for fish conservation in general, and native participation and economic development more specifically. While the benefits from tradable rights management schemes are far from clear,⁴⁰ the incompatibility of market oriented policies and subsistence oriented native economies is apparent. Privatization policies have, in most instances, systematically degenerated living conditions on tribal lands.⁴¹ As market-based approaches have been imposed upon tribal cultures, non-native interests often have predominated over the local interests of the tribal communities.⁴² The result of privatization in native communities has over-

whelmingly been persisting economic deprivation and associated social problems such as unemployment and poor living conditions, which undermine the subsistence and self-sufficiency capacities of tribal communities.

Before policy-makers can adequately address the subsistence needs of native communities, they must first understand that native subsistence is more than survival; it is a "way of life."⁴³ Some argue that native subsistence should be treated on a need-based basis, similar to a government entitlement grounded purely on economic necessity.⁴⁴ Such arguments either do not understand, or simply do not respect, the magnitude of importance that subsistence holds for native communities.

Legal, historic, moral, and environmental arguments all support the imperative of protecting native subsistence cultures and economies. Even though, "... in today's villages, law and government are more often the imposition of someone else's priorities, by someone else's methods,"⁴⁵ the fact is that historically, Native Americans were the first of America's people to populate the regions known today, collectively, as the United States. In the Aleutian Islands, there is evidence of the existence human communities at least 8,000 years ago.⁴⁶

Legally, within the U.S., native nations have been recognized as sovereign entities with aboriginal rights and title.⁴⁷

Aboriginal title encompasses the rights to hunt and fish. The basis of these rights is immemorial custom and practice, and the rights do not depend upon aboriginal title to land, a treaty, or an act of Congress. Aboriginal rights to hunt and fish incidental to aboriginal title may survive when aboriginal title to the land has been ceded by treaty.⁴⁸

The legally defined federal trust relationship between native nations and the United States legally requires the respect and protection of native cultures and communities, and thus of native self-determination and subsistence. Furthermore, it has been held by United States' courts that, even in the absence of treaties or tribal membership, Indians retain their hunting and fishing rights.⁴⁹

In Alaska, the state Constitution provides that "no exclusive right or special privilege of fishery is allowed."⁵⁰ This conflicts with federal law (the Alaska National Interest Lands Conservation Act, ANILCA), giving subsistence fishing priority over other fishing in federal waters.⁵¹ This conflict has caused the state of

Alaska to forfeit its ability to manage hunting and fishing on federal lands and in federal waters, as federal law supersedes state law. Thus, the federal government has full jurisdiction over fishery management of Alaskan ocean fisheries and is mandated by its federal trust responsibility, ANILCA, and the judicial interpretation of both, to protect native subsistence activities.

In addition to U.S. law, international law also requires a respect for native cultures and communities. The United Nations Declaration on the Rights of Indigenous Peoples provides several reasons for the necessity of protecting native societies including: human rights, equality, prohibition of discrimination, right to self-determination, culture, religious freedom, and democracy.⁵² Within the UN Declaration, indigenous rights have correctly been viewed as group (human) rights, with indigenous peoples having the right of self-determination to “freely determine their political status and freely pursue their economic, social and cultural development.”⁵³

The UN Declaration has important consequences for policies within the United States and around the world. In fact, the Declaration goes so far as to require “dominant” States to “accommodate” native communities.

[T]he existing State has a duty to accommodate the aspirations of indigenous peoples through constitutional reforms designed to share power democratically. This approach also would mean that indigenous peoples have the . . . right of self determination . . . to negotiate freely their political status and representation in the States in which they live.⁵⁴

Historically, “pre-contact” Americans had established their own societies, and their own institutions of economic, religious and legal culture. At least 4,500 years ago the Aleuts had emerged as an identifiable subsistence, marine-based culture.⁵⁵ In contrast, Anglo-Americans and market-based fishery management practices have been in the region for barely three generations.⁵⁶

The institutions in native societies developed over many years, and while every native practice of every native community is not necessarily “sustainable”, Native Alaskans and Native Americans have enjoyed considerable success in maintaining their environment prior to the imposition of market-based institutions. The overwhelming majority of environmental damage within the United States has occurred subsequent to the introduction of

market economies. While economies of scale (i.e., increased population) and environmental degradation (i.e., pollution) certainly contribute to resource overexploitation, the difference in market versus subsistence values is relevant.

Although there is no Native-Alaskan word for subsistence, all aboriginal languages have rich vocabularies reflecting a deep awareness of and connection to the natural world. Native people define themselves individually and collectively by this connection, drawing on ancient traditions of cosmology, wildlife harvest, and community sharing to measure their sense of well-being.⁵⁷

This same identity with the natural world does not exist within the dominant "American" culture, and certainly does not exist within corporate, market-based ideology which views natural resources as nothing more than input units for production.

Within native subsistence cultures, priority is placed on community stewardship over resources and redistribution of those resources for the benefit of the entire community, rather than on some notion of individual ownership and profit. This culture is best described by the natives themselves:

Subsistence, our tradition, is very significant to our life-style. Our people have been taught from generation to generation to respect the land for the future generation. (Leah Atakitliq, Togiak Village)

Profit to non-natives means money. Profit to natives means a good life derived from the land and sea . . . Good old Mother Earth with all her bounty and rich culture we have developed from her treasures . . . [that] is our wealth. (Antoinette Helmer, Craig Village)

When you look through the corporate eye, our relationship to the land is altered. We draw our identity as a people from our relationship to the land and to the sea and to the resources. This is a spiritual relationship, a sacred relationship. It is in danger because, from a corporate standpoint, if we are to pursue profit and growth, and this is why profit organizations exist, we would have to assume a position of control over the land and the resources and exploit these resources to

achieve economic gain. This is in conflict with our traditional relationship to the land, we were stewards, we were caretakers, and where we had respect for the resources that sustained us. (Mary Miller, Nome Village)

The Native people have a way of life that has always been successful. (Martha Vlasloff, Tatitlek Village)

The quotes above come from Native Alaskans describing what subsistence means to them.⁵⁸ While there is no one thing that can be called the Native American belief system, native cultures have not traditionally been “consumerist” or market cultures.⁵⁹ However, subsistence culture and economy does not require a return to the “pre-contact” era or a lack of modern technology. In fact, native subsistence cultures are dynamic, integrating new technologies to increase the reliability of subsistence practices⁶⁰ while maintaining a relatively constant impact on the environment and resources.⁶¹

Respecting subsistence culture ultimately means respecting the right of communities to freely choose their own way of life. Policies which infringe upon that freedom of choice, either directly or indirectly, are not only inappropriate, but may also fail to achieve their stated goals. To the extent that native communities opt for “sustainable” resource management practices, policy-makers are obligated to pursue like policies of native resource management, compatible with native self-determination.

In addition to the legal and historical arguments outlined above, non-natives stand to benefit from protecting subsistence cultures. Policy-makers, faced with increased global environmental degradation and a litany of unsuccessful policies to address the situation, are grappling with the difficult problem of integrating sustainability into modern consumerist cultures. In fact, this is an issue with which native communities have been dealing as subsistence activities undergo modification and adaptation to current natural, social, and cultural pressures.

Given the dire situation of accelerating environmental degradation, but more particularly, the increasing decimation of fish stocks worldwide, environmental policy-makers may better be able to develop a working definition of sustainability by drawing upon traditional subsistence knowledge and values.⁶² In some cases native subsistence hunters and fishermen have already

proven to be allies to regulators — sharing their knowledge about Alaska's resources.⁶³ Other examples include Native American communities that have maintained sustainable and profitable logging practices using selective cutting of old growth timber as opposed to clear cutting which devastates forest habitats.⁶⁴

When resources are distributed through market mechanisms they are unlikely to be sustainable. The problem is not just that commercial markets often undervalue resources and invoke overconsumption, but that the prevailing culture and its social institutions have been unable to successfully address the failure in market-based systems of resource allocation and overexploitation.

To succeed in regulating native communities consistent with their federal trust obligations, policy-makers must understand that the position of native cultures and communities — their special legal status and extensive aboriginal history — is different than that of other groups within the United States, and as such requires uniquely different treatment. Due to the unique trust relationship between the federal government and native tribes, special protection of Native Americans does not violate either the equal protection requirements of the Fifth Amendment or the requirements of the Civil Rights Act.⁶⁵ In fact, the failure to protect and respect subsistence interests constitutes a violation of the federal government's trust responsibility — as this failure systematically disenfranchises and dismantles native communities.

The basis of the native struggle is fundamentally distinct, as no other group within the United States can assert a right to aboriginal lands or resources, or to separate and sovereign governmental institutions. Native Americans, with their unique history, and special legal status, pose complex issues for policy-makers, which must be adequately addressed. It is imperative for policy-makers to have a knowledge of both the legal and cultural history of Native Americans in order to sufficiently address native issues in their implementation of environment and development policies. The following two sections will discuss both the historic and current treatment of the Aleutian communities affected by the CDQ program and how past policies have failed to meet this imperative.

V. THE WESTERN ALASKA REGION

A. History

Current conditions and cultural institutions in the western Alaska region have resulted from a complex history of upheaval and adaptation. Although information on pre-contact Alaskan culture (other than subsistence) is limited, ethnographic research provides some history of social and political organization.⁶⁶ Aleut populations inhabited almost every major island in the Aleutian chain with established seasonal settlements. Each island village had a specific territory with carefully defined (and defended) boundaries, which were exclusive resource use areas.⁶⁷ Winter villages contained large communal houses organized by familial hierarchy to maximize subsistence use.

Each village had a dominant political family with a village chief who served both as a local leader and a "diplomat" between villages. Villages formed formal trade and military alliances, as well as having well defined dispute resolution and criminal justice systems. In addition to formal institutions, Aleutian religion and culture encouraged community cooperation and social harmony.

In the 1740s, much later than Columbian contact with Native Americans in the lower North American continent, Russian fur traders invaded Aleutian territories, disrupting village structures and institutions. Although not without resistance, Aleuts were forced into permanent settlements (as opposed to seasonal settlements), with Russians taking advantage of the local political and cultural institutions to achieve village cooperation in hunting and resettlement. Relatives of chiefs were taken as hostages to be returned upon completion of re-settlement and hunting activities. During the Russian period (1744-1867), the Aleutian population plummeted to just a fraction of its former numbers due to disease and exploitation.⁶⁸ However, despite drastic upheaval in settlement patterns, family organization, and population, Aleuts were able to maintain some basic cultural institutions including language and subsistence practices.

In 1867, the U.S.-Russia Treaty of Cession transferred the territory of Alaska from Russian to U.S. control, and from the onset of U.S. control, Native Alaskans were treated as inferior citizens. The treaty states:

Inhabitants of the ceded territory [shall enjoy] all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion, [but] . . . uncivilized tribes [will be] subject to such laws and regulations as the United States may . . . adopt in regard to aboriginal tribes of that country.⁶⁹

This policy, and the treatment of Native Alaskans in general, diverged sharply from policies towards Native Americans in the lower 48 states. Many Native American tribes had negotiated treaties, reservation lands, and a federal trust duty owed to them by the federal government, even if they were not enforced. Native Alaskans, on the other hand, did not even have these sorts of protections.⁷⁰ However, through legislated and adjudicated decisions, federal policies towards Native Alaskans and Native Americans were reconciled so that the federal government currently has a "trust relationship" with Native Alaskans although no treaties exist.⁷¹

More importantly for this study, a 1919 court case affirmed by the U.S. Supreme Court upheld the establishment of exclusive native fishing zones to protect native fishing and subsistence rights.⁷² The protection of native fishing rights allowed Aleutian populations to recover, somewhat, from the social and cultural upheaval of the previous period, reestablishing some seasonal village settlements. However, villages were again uprooted during WWII, as almost all Aleutian Island populations were forcibly removed to southeast Alaska.⁷³ Upon return after the War, Aleuts found their villages destroyed and their culture uprooted with many tribal elders having died during the relocation.

With the onset of statehood in 1958, the subsequent discovery of oil in the 1960's,⁷⁴ and the marginal recovery of Aleutian communities following WWII, claims on native lands and resources accelerated dramatically. While Native Alaskans have fought to protect their lands and resources since the late 19th century, lack of access to main stream power structures (through education, geography, financial resources, infrastructure, etc.) has prevented more than limited success. As Anders observes:

... [T]he destiny of Alaska Natives was defined by dominant elements of white America (i.e., government, bureaucrats, missionaries, and the military). While perhaps well intentioned, their policies have tended to be culturally ethnocen-

tric and morally indurate with frequent devastating side effects.⁷⁵

These side effects are illustrated by examining the current situation in the region.

B. Current Realities

The CDQ program currently involves 56 communities within the Aleutian Island Region.⁷⁶ The open waters in this area freeze annually and road infrastructure in the region is minimal, with almost all towns and villages completely isolated from one another.⁷⁷ In fact, the weather in the Aleutians has been described as "the worst in the world."⁷⁸ The closest CDQ community to a continuous road system is about 300 miles from Anchorage and the farthest over 1,200 miles.⁷⁹ The consequent reliance on air transportation for importing goods results in higher prices. While the region's population relies heavily on subsistence food supply, overexploitation of fish stocks since the 1950's by commercial fishing operations has threatened the future of subsistence in the region. With very little industry or employment opportunity in the region, most residents receive some form of public assistance; those jobs which do exist are within the public sector.

Characteristics of the 56 CDQ communities in the Western Alaska Region

Total Population	21,429
Average village population	390
Native Alaskans as % of total population	78%
Households with no plumbing	37%
Households with no phone	29%
Persons below poverty level	25%

Source: 1990 U.S. Census

Although almost seven years old, the U.S. Census provides the best data for the region. In 1990, the 56 communities currently involved in the CDQ program had a population of 21,429. (See Appendix for list of groups, villages, and corporations involved.) Almost 80% of residents in the CDQ region were Alaska Natives, and three of the CDQ groups had over 90% native population.

In 1990, more than one quarter of the people in the region's communities lived below the poverty level. Housing in these communities is often substandard, with many households not

having running water or indoor plumbing. Furthermore, the combination of threatened traditional subsistence culture with a lack of viable alternatives has resulted in community despair — rates of alcoholism and suicide are extremely high.⁸⁰

These statistics are important and relevant to fishery management because they demonstrate the level of disempowerment that Western Native Alaskan communities face. With such disempowerment comes a lack of resources (both financial and political) to successfully assert claims to native fishing rights and subsistence. Furthermore, such statistics demonstrate that the inequalities in fishery management do not occur in a vacuum, but are yet another example of poor U.S. policy towards native peoples.

When the federal government attempted to “help” Native Alaskan communities by providing housing that it saw as superior to traditional native dwellings, it built housing and plumbing which was not suited for the harsh Alaskan weather.⁸¹ Pipes often freeze and houses are not adequately insulated. As a result, the proportion of total household income spent on imported fuel oil and electricity in these villages is almost 50%.⁸² While fuel is plentiful in Alaska, it is extremely expensive for rural villages.⁸³ This housing policy, which supposedly was intended to benefit native villages, is only one example of how such policies have led to a perpetuation of native poverty and dependence.⁸⁴ While there is debate about the actual intentions of more recent policies, at least some feel that the detrimental effects have been intentional. As one author wrote:

If one looks at [certain policies], it is easy to identify a number of crucial areas where there are conflicts which increase the possibility of native failure and dependence through the very same institutions created to promote their development. Consequences of this nature can occur . . . through the imposition of alien competitive values and corporate institutions . . . In broad terms, natives are becoming the motors generating the flow of resources for the economic benefit of outside interests.⁸⁵

Regardless of the actual intentions of policy-makers, U.S. policies toward Native Americans and Native Alaskans historically and systematically have had negative impacts on native communities. The historical consistency of the federal government's assimilationist approach with native Indian policies can be seen

through comparison of the Alaska Native Claims Settlement Act (ANCSA) and the CDQ program. In contrast to cooperation and community values, both policies introduce competitive values and corporate institutions into native economies/cultures, with the stated intention of economic development and resource management.

VI. THE ALASKA NATIVE CLAIMS SETTLEMENT ACT⁸⁶

After statehood and the discovery of oil in Alaska, the State of Alaska continued to lease and sell Native Alaskan territories. In response, native communities posed increasing resistance by asserting aboriginal rights claims. Oil companies unwilling to accept tenuous title, put pressure on the U.S. Congress to resolve native land claims.⁸⁷ Answering to the powerful energy lobby, Congress passed the Alaska Native Claims Settlement Act (ANCSA) in 1971.⁸⁸

With the passage of ANCSA, all land claims of Alaska Natives, all aboriginal claims of title based on use both inland and offshore, and all existing aboriginal hunting and fishing rights were extinguished. Nearly 360 million acres of land were taken (including oil rich lands), and in return natives were "compensated" with title to 44 million acres and \$962.5 million. Unlike reservation policies in the lower 48 states however, ANCSA mandated that natives could only receive this "compensation" through the creation of regional profit-making corporations. All Native Alaskans living at the time were issued stock in these corporations with the caveat that this stock would be placed on the open market in 1991, thus making stock available for purchase by non-natives after twenty years.

ANCSA has been compared to other federal policies leading to non-native absorption of native lands and resources.⁸⁹ The General Allotment Act of 1887 resulted in private individual allocation of native lands and eventual takeover by non-native developers and land;⁹⁰ the privatization of several tribes under the termination policy of the 1950's also had severe detrimental effects.⁹¹ ANCSA has been characterized as having a similar capacity to divest natives of their land and resources.⁹² In fact, any policy which places remaining native lands and resources at risk necessarily threatens native self-sufficiency and sovereignty.

Since its inception, the average annual loss on equity for ANCSA corporations has been 20% with average annual cash dividends

equaling less than \$30.⁹³ Only one corporation has not reported a loss since its formation, and more than one has had to consider bankruptcy.⁹⁴ Both poor performance and the conversion of native corporate stock to public stock place native lands and resources at risk of permanent transference to non-native ownership.

Commentators and analysts offer many reasons for ANCSA firms' poor performance including start-up difficulties,⁹⁵ litigation expenses, land conveyance delays,⁹⁶ unsophisticated corporate managers, and the lack of a corporate product.⁹⁷ Others argue that restrictions on share transferability are the cause of corporate failure.⁹⁸ What these analyses fail to recognize is the incompatibility of the corporate form for native economic development. This is not to say that natives are incapable of leading corporations, but that historically, their community and cultural goals may be antithetic to such a structure.⁹⁹ Rather than citing flaws specific to ANCSA implementation, analysts should consider the inappropriateness of the corporate institutional structure for achieving native community goals. Gondolf provides support for this argument by comparing the viability and success of Indian agricultural regulations, which mirrored already existing peasant cooperatives with the bankruptcy and social disruption of ANCSA, which imposed a foreign institutional structure on native communities.¹⁰⁰

The contradiction between subsistence cultures and the corporate form has manifested conflict and fragmentation within Alaskan Native society.¹⁰¹ Traditional patterns of leadership were expropriated by the corporate structure, and village and family relations based on subsistence sharing have been stressed resulting in increasing stratification of formerly egalitarian communities.¹⁰²

Given the ANCSA privatization of land rights and the CDQ program's privatization of fishing rights, it is important to illustrate the similarities in both the politics and assumptions behind the two programs. First, one must recognize the uneven playing field under which the ANCSA was passed. Prior to its passage, as natives exhibited more resistance to non-native encroachment, the federal government threatened to destroy several villages through nuclear testing and dam construction.¹⁰³ In addition, if ANCSA had not been implemented, native villages faced further bureaucratic control by the Bureau of Indian Affairs, an organization with a terrible reputation regarding its treatment of native

communities. Similarly, native villages involved in the CDQ program have been presented with the choice of CDQ fishing rights or no fishing rights, and the CDQ program, like ANCSA, forces a corporate structure on native villages if they are to participate.¹⁰⁴

Second, it is necessary to acknowledge that not all natives were opposed to ANCSA. The Alaska Federation of Natives (AFN), possibly in response to seemingly insurmountable threats, saw ANCSA as a necessary compromise.¹⁰⁵ Congress chose to interpret the AFN as *the* native voice validating their policy decisions, although other groups such as the Association of Village Council Presidents (AVCP) and the United Tribes of Alaska (UTA) were adamantly opposed to the corporatization policy seeing ANCSA as a "product of non-native greed, deception, and racism."¹⁰⁶ Furthermore, a large number of village natives did not participate in the passage of ANCSA, thus undermining the statute's validity. Interestingly enough, an almost identical situation has developed with regard to passage of the CDQ program: the AFN supports the CDQ program; the Alaska Intertribal Council and the Alaska Native Coalition (successors of AVCP and UTA) are opposed to the CDQ program; and a large number of villagers remain excluded from the approval process.

Two other similarities between ANCSA and the CDQ program remain both the most important and the most disturbing: 1) the threat of non-native takeover of native resources; and 2) the imposition of a private property rights institution and the inherent assumptions accompanying such an institution.

While amendments to ANCSA were passed to further protect native land holdings,¹⁰⁷ the opening up of native regional corporate stock to the general public and the inability of Native Alaskans to assert aboriginal rights under the Act make Native Alaskans particularly vulnerable to complete divestment of their last remaining land and offshore rights. As will be discussed further below, the CDQ program is analogous to ANCSA, as tradable fishing rights and the corporate structure imposed by the CDQ program may also place native fishing rights at risk.

ANCSA policy assumed that privatization would enrich native shareholders and allow them "to abandon their traditional ways and enter the corporate world."¹⁰⁸ This assimilationist rhetoric not only assumes a superiority of market-based economies over other forms of economic institutions, but also assumes a desire on the part of native communities to adopt a market-based system.

The CDQ program assumes a similar desire on the part of native communities. In fact, studies show that Native Alaskan communities often prefer subsistence based economies over market-based economies because subsistence activities offer benefits well beyond nutrition which are not available in strictly profit-based ventures.¹⁰⁹

Further examination of the CDQ program and the corporate structure will demonstrate that the goal of economy is more complex than simply maximizing cash incomes, and that policy decisions must be compatible with social subsystems to have a truly positive impact. Conflicts arise between culture and economic activity when development strategies are formed by outsiders for the benefit of outside interests, or with the intent to change cultural norms.¹¹⁰ Rather than perpetuating dependency, economic development and environmental policies can be implemented to promote self-sufficiency, but only if cultural integrity is respected and maintained.

VII. DEFINING FAILURE: CRITIQUE OF CDQS

A. The Corporate Form and Dependency

While the legacy of ANCSA illustrates that forced corporatization is an inappropriate tool for native economic development, the CDQ program demonstrates that the profit-based schemes may not effectively combine environmental policy with economic development. The notion that privatization must reflect the cultural needs of local communities in order to be a successful resource management tool is equally salient for native and non-native communities; privatization often proves to be detrimental to other communities as well.

Transferable quota systems have been implemented in various fisheries around the world with distinct consequences for the economic structure and conservation of fisheries. Researchers have documented with statistical findings the resulting concentration of fishing quota among larger market participants.¹¹¹ In fact, small participants are often forced out of the industry altogether, while more affluent companies accumulate quotas, sometimes in excess of what they are able or willing to fish themselves. Palsson and Helgason describe this situation as follows:

This state of affairs has led many to describe the quota system

in feudal terms, with the “quota kings” or “lords of the sea” controlling most of the quota and profiting from renting it to “tenant” companies, who actually do much of the fishing.¹¹²

Similar concerns of “feudalism” arise with the implementation of the CDQ program. While the stated goal of the CDQ program is eventual self-sufficiency of native communities, the reality of reaching this goal is questionable given the current means — native dependency on corporate partnership for program participation eligibility.

In contrast to their traditional subsistence and small boat commercial fisheries, western Alaska residents will now have opportunities to work on factory trawlers . . . in shoreside processing plants, and in related seafood industry operations. With CDQs, Bering Sea coastal communities are partners with established corporations in industrial-scale seafood production . . .¹¹³

Again, comparison to ANCSA is appropriate as assimilationist values and the corporate structure are being presented as the key to economic development and self-sufficiency. In contrast, Murray argues that privatization of native subsistence systems undermines self-sufficiency by creating increased reliance on the “capitalist core”, a lack of economic choice, and internal social disruption.¹¹⁴

The Alaska Federation of Natives, supports the CDQ program. Recall, however, that the AFN is the same group which supported the ANCSA and its corporate policies. Even the AFN, however, admits that the cash economies of most villages are artificially dependent on government assistance and that “[t]he one sector that has always been self-sustaining is subsistence.”¹¹⁵ If CDQs are to protect this autonomy, artificial corporate dependency must not replace artificial government dependency.

B. Subsistence Fishing Rights at Risk

[N]ational and international regulations may not fully contemplate the impact of conservation measures upon tribal fishing, and may fail to make distinctions between tribal and non-tribal fishing. When this important distinction is not made, tribal treaty obligations may be overlooked, and . . . may frustrate Indian . . . fishing rights.¹¹⁶

While Native Alaskans theoretically hold great natural resource assets due to their subsistence rights, the CDQ program may place such assets at risk as the industrial/labor structure may eliminate subsistence protection.¹¹⁷ Furthermore, communities involved in the CDQ program may face a loss of skills and ability to practice subsistence, and thus a permanent loss of culture.¹¹⁸ If wage labor in corporate fishing operations replaces subsistence fishing practices and the knowledge of such practices is lost through the “proletarianization” of native populations,¹¹⁹ communities may lose their ability to survive in traditional ways.

The federal regulations which created the CDQ program¹²⁰ contain no language protecting the native right to fish within the context of the CDQ program. Current case law is ambiguous with regard to the protection of native fishing rights for “non-subsistence” purposes. While the definition of subsistence is controversial, large scale industrial production is not likely to be protected as subsistence activity if challenged.¹²¹ If, under the CDQ program, native communities forego their subsistence fishing rights for potentially non-subsistence rights contingent on corporate participation, there is a likelihood of future corporate domination and institutionalized native dependency.¹²² When one bears in mind the historical treatment of Native Alaskans, and more specifically the vulnerability of native land claims under ANCSA privatization, a similar vulnerability of native fishing rights under the CDQ program seems a quite plausible future.

C. Economic Development and Jobs

Regardless of the validity of critiques to traditional market-based solutions, it is still the case in dominant policy circles that, “[t]he market mechanism is . . . judged to be superior to any other practical alternative.”¹²³ Similarly, while economic development theories have evolved over the last 25 years, to include both Marxist ideologies and community-based notions of empowerment, “mainstream” economic development practices remain firmly rooted in market-based ideologies¹²⁴ — a logic which currently dominates political debate and policy outcomes.

While the CDQ program is relatively new and data are limited, initial statistics indicate that the program is somewhat successful. Prior to implementation of the CDQ program, unemployment was as high as 31%, the majority of jobs were with federal, state, and local governments, and virtually none of the value of the

fishery was captured by Native Alaskans.¹²⁵ In the first two years of the program, local jobs have doubled with 57% of all non-government related jobs being associated with the CDQ program.¹²⁶ Furthermore, CDQ wages and benefits represent a 2.4% increase in regional income.¹²⁷

Such evidence of "success" assumes that jobs are the primary indication of economic development and progress, but in fact, the goals of Aleutian communities include a desire to perpetuate subsistence activity.¹²⁸

Beauregard observes that U.S. economic development policies often are designed to reinforce the "capitalist trenches"¹²⁹ with jobs a subordinate objective to investment and business interests.¹³⁰ Beauregard also mentions that traditional economic development policies, which are linked to goals of job creation and productivity, often serve to undermine indigenous development.¹³¹ Policies which measure success in terms of units of production, labor, and consumption, often exclude socio-cultural activities which do not directly generate profits as irrelevant.

Upon examination of employment created by the CDQ program, it is clear that new jobs are not aimed at empowerment or eventual self-sufficiency. Most natives work for the corporations as laborers; they are not in management or ownership positions. Contracts are short term (the longest being 60 days), with no guarantee of permanence.

Most striking, however, are descriptions of the actual work:

The vessel operates 24 hours a day, continuously fishing and processing. . . . With the factory in full operation, the processors . . . have kick shifts where they work their regular shift [six hours], the next shift, and another regular shift before they get a six hour break.¹³²

and

All the jobs in the factory are physically demanding. . . . [T]he long hours of standing and leaning over the candling table, while constantly moving one's arms and hands to sort the rapidly moving fillets, soon cause severe back pains that no amount of stretching seems to relieve.¹³³

Even those scholars who criticize traditional capitalist notions of economic development tend to couch their discussions in the labor/industrial terminology.¹³⁴ Robert Chambers observes that

"linear measures of development along scales [GNP, employment, etc.] persist as universal tools of assessment and comparison."¹³⁵ While linear measures of how a region is doing in general, cannot serve as shorthand measures of how people occupying specific economic positions within those regions are doing,¹³⁶ it is not necessarily the linearity of such measurement tools that is problematic but that such "traditional" measurements do not consider what is important to, in this case, native cultures. This results, in part, because regional development theories often lack a discourse concerning alternative social histories derived from subsistence cultures or non consumer/industrial experiences.¹³⁷

As an example, an important aspect of the CDQ program is the regulating language governing the approval, suspension, and termination of community development plans (CDPs). As stated, in order to be eligible for CDQs, natives must be in partnership with corporate entities, and must seek approval of CDPs from the Governor of Alaska and the Secretary of Commerce. Plans must include projections about job creation and new capital investment, thus forcing the adoption of market-based objectives. Furthermore, annual renewal of CDQs is contingent upon whether or not a given CDP has "successfully met its goals and objectives, or appears unlikely to become successful."¹³⁸ These legislated standards demonstrate a general disregard for the validity of non-market-based goals.

The CDQ program, as it currently exists, is based upon economic notions of efficiency and privatization, an incomplete vision of economic development, and a misunderstanding of native subsistence. Thus, it is likely to pose more problems than solutions for the Native Alaskan communities of the Aleutian Islands. While some jobs have been created, local village needs, such as infrastructure development¹³⁹ and the building of native operational capacity, have not been addressed. Additionally, while those in control of the program (all non-native), may genuinely believe that they are doing what is best for the villages, they continue to further a non-native agenda — doing *for* natives rather than working *with* them.¹⁴⁰ To be successful, management strategies must create a system in which local communities can survive. A co-management approach, as opposed to the proposed CDQ program, would better achieve resource conservation and economic development goals.

VIII. DEFINITIONS OF SUCCESS

A. Community and Co-Management of Fisheries

In a community, people perceive themselves as a distinct group with a sense of obligation to and respect for that group. If the word "community" is broken down into its Latin origins, it means within walls (*com-munus*). If one then extrapolates from that literal translation, to live in a "community" is to live together within the same walls — to share in a common shelter.

A sense of community fosters a cohesive group in which the members are willing to cooperate with each other and compromise individual needs and desires for the improvement and maintenance of the whole. Alaskan subsistence cultures operate according to this definition of community, with traditional roles of distribution ensuring that every village household, even those without hunters, receives subsistence products.¹⁴¹

However strong subsistence communities may be, they cannot live in isolation of the rest of the world. Furthermore, regardless of historical and legal arguments to the contrary, the larger world/industrial fishing community continues to see their interests as opposed to those of Native Alaskan communities, and continues to destroy the main basis (fish) for such Native Alaskan communities.

In 1992, The Union of Concerned Scientists expressed serious concern about the future of the planet. If current consumption and resource exploitation patterns worldwide, but especially in the Western world, continue unchecked — this "may so alter the living world that it will be *unable to sustain life* in the manner that we now know . . . Great change in our stewardship of the earth and the life on it is required, or our global home on this planet will be irretrievably mutilated."¹⁴²

As mainstream environmental policies and fishery management practices continue to fail, larger fishing actors may realize that their interests are the same as those of native communities — sustainable preservation of fish stocks. However, if policy-makers are to construct a policy that will benefit both native communities and the larger industrial fishing community, they must let go of the notion of privatization as a panacea. In fact, several studies reveal that privatization often is not the most efficient management method, and that common-property regimes and

co-management can be successful.¹⁴³

Comanagement focuses on cooperation and shared decision-making rather than imposed regulation or domination by certain actors.¹⁴⁴ In *Democracy and Capitalism*, Bowles and Gintis illustrate the negative consequences of the "dominance of economic metaphor in our political and moral thinking" and demonstrate the necessity of integrating notions of power and human development within economic reasoning.¹⁴⁵ This concept captures the essence of co-management.

B. Restructuring

Within dominant policy circles, co-management often is not even considered as a viable fishery management tool¹⁴⁶ as market ideology and bureaucratic entrenchment combined with large industrial interests seem to prevent change. However, as Gondolf concludes in his analysis of ANCSA, a mere overhaul of the organizational structure, as has been done with the CDQ program, is insufficient.¹⁴⁷ "Substantial restructuring of the political and economic context, as well as accommodation of local tradition and initiatives, is requisite to establish a viable [policy]."¹⁴⁸

While a comanagement strategy reflects these requisites, no policy should be imposed. The idea of integrating local actors is not new.¹⁴⁹ But the challenge is in creating an institution which will actually achieve that integration and protect local native interests, including the right to self-determination. Any such institution, to be successful for Aleutian communities, must include the following:

1) Guarantee a percentage of TAC, based on aboriginal fishing rights, and not contingent upon corporate structure, or for profit fishing practices. In the past, most policies aimed at developing native communities have forced acceptance of such policies within a non-native construct. If native communities, as autonomous nations freely choose to pursue profit-based or market-based ventures, that is their right under self determination. However, this scenario is very different than forced acceptance of such policies through coercion as exemplified by the CDQ program's requirement that native participation be contingent upon corporate partnership.

2) Understanding that subsistence provides the basis for Native Alaskan culture and community, and that native villages are entitled to generate income and infrastructure through

fishing practices, and still maintain protection of their subsistence rights.

Native subsistence is a tribal activity based on an aboriginal right and protected by the special trust relationship between native tribes and the federal government. Generating income through modern fishing practices is protected as subsistence under ANILCA. Large industrial fishing operations are not, and should not be, similarly protected. By privatizing fishing rights and requiring the corporate form, the CDQ program currently places native fishing rights at risk. Until policies related to resource management adequately protect native subsistence rights, such policies may serve to undermine, or even eliminate, such rights.

3) Integrate of native tribal government structures into the planning and implementation process. Several scholars have observed that rural development policies are often more successful when local customs and local institutions are integrated into the development process.¹⁵⁰ Furthermore, in the case of the CDQ program — a program which intends to combine resource conservation with economic development — policy-makers would be wise to utilize existing native institutions, since “conservation and perpetuation of subsistence resources . . . [is] mandated by traditional law and custom.”¹⁵¹ Not only would such inclusion of local institutions be a more likely formula for success, but it would also provide the legally required and morally necessary respect for local, self-determining, native villages.

If local institutions are to be respected, they cannot simply be emulated by non-native actors, but must actually include local villagers and village leadership in every step of the decisionmaking process. The CDQ program has non-native management concentrated at the government and industry level, with local natives barely maintaining an advisory role; instead local village natives (as opposed to natives not from local villages, or not representing local village interests) need to have an equal voice with government and industry actors.

IX. CONCLUDING REMARKS

Implementation of the CDQ program involves a complex relationship between industry, the state, and native communities. It is important to note that this is the first and only economic development policy that has been presented to Native Western

Alaskan communities related to fishing. However, local communities were not consulted or involved in forming the policy, and only became involved "after the fact", when the CDQ program was imposed on these communities. This created a relationship of dependency rather than empowerment. Policy-makers were not attentive to native community needs and did not integrate or include local tribal government institutions.

If development policies are to play a positive role in Aleutian Island communities, policy-makers must have not only of knowledge of the history of Native Alaskan, and specifically Aleutian, oppression, and of the unique legal status and treatment of Native Alaskans, but also a respect for native culture and society, and a commitment to integrate that culture into any policies which affect such communities.

When local voices are not integrated into the policy-making process, and such policies are purportedly fashioned to serve such communities, the result usually is that such communities are sacrificed for the interests of some other, more powerful interests. This has been particularly true in the case of historical U.S. policy towards Native Alaskans and Native Americans. In the case of the CDQ program, it is obvious that large corporate fishing interests, and state interests, wield more influence than Native Alaskans, and that the disparity results in the circumvention or subjugation of native cultural interests and the needs of local villages. When investor and business interests are of first concern in the economic development process, the result is creation of "a hierarchy in which workers and small business [and native] people are less important than large investors."¹⁵²

This hierarchy is not only problematic for native communities, but may also serve to undermine the possible conservation benefits of tradable rights management more generally. Tradable rights schemes, often created to benefit business and industrial interests, have been shown to result in corporate agglomeration and possible collusion.¹⁵³ This results in a few industrial actors amassing control over access to the resource, how the resource is used, what happens to the products, and how the benefits are distributed.¹⁵⁴

Comanagement offers a promising alternative to the above scenario; before successful co-management regimes can be implemented, larger and more powerful actors must be willing not only to share their power, but to be held (democratically) accountable for their actions. As such, it is unlikely that co-management will

result until larger and more powerful actors realize that their long term interests coincide with smaller actors, or until political and economic regimes move beyond market ideologies. With respect to native fishing rights and the federal trust responsibility, the forced imposition of market ideology may be illegal as it has proved detrimental to native communities. If the CDQ program were restructured to reflect subsistence values and co-management, it would become more successful at achieving both conservation and economic development goals, thereby demonstrating the greater potential of non-market-based policies to preserve resources and achieve social equity.

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APPENDIX

CDQ Group	Participating Communities	Corporate Partner
Aleutian Pribilof Island Community Development Association	Atka, False Pass, Nelson Lagoon, Nikolski, St. George, Akutan, Unalaska	Trident Seafoods Corporation and Starbound Partnership
Bristol Bay Economic Development Corporation	Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk, Manokotak, Naknek, Pilot Point, Port Heiden, Savonoski/King Salmon, South Nakek, Togiak, Twin Hills, Ugashik	Oceantrawl, Inc.
Central Bering Sea Fishermen's Association	St. Paul	American Seafoods Company Inc.
Coastal Villages Fishing Cooperative	Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Ksigillingok, Mekoryuk, Newtok, Nightmute, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, Tununak	Golden Age Fisheries
Norton Sound Economic Development Corporation	Brevig Mission, Diomedea/Inalik, Elim, Gambell, Golovin, Koyuk, Nome, St. Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, White Mountain	Glacier Fish Company
Yukon Delta Fisheries Development Association	Alakanuk, Emmonak, Kotlik, Sheldon Point	Golden Alaska Seafoods

NOTES

1. Abrams, P. *Historical Sociology*. (Shepton Mallet, Open Books, 1982).
2. Abercrombie, Nicholas; Hill, Stephen; and Turner, Bryan S. *The Penguin Dictionary of Sociology*. (Penguin Books, 1984).
3. Ibid.
4. Fishfolk, Listserv@mitvma.mit.edu.
5. For example, see Berger, Thomas R. *Village Journey: The Report of the Alaska Native Review Commission*. (New York, Hill and Wang, 1985).
6. Dasgupta, P.S. and Heal, G.M. *Economic Theory and Exhaustible Resources*. (Cambridge: Cambridge University Press, 1979).
7. National Oceanic and Atmospheric Administration. "Our Living Oceans" (Washington, D.C.: U.S. Department of Commerce, 1993), 3.
8. Snow, Cleave. "The Northeast Commercial Fishing Industry." (Springfield, MA: Farm Credit Bank of Springfield, November 1990).
9. Ibid. By 1993 approximately 45% of the seafood consumed in the U.S. was imported.
10. Magnuson Fishery Conservation and Management Act, 16 U.S.C.A. §§1801 et. seq. (1976)
11. Fairlie, Simon; Hagler, Mike; O'Riordan, Brian. "The Politics of Over-fishing." *The Ecologist* 25 (1995): 46
12. The TAC, or Total Allowable Catch, is set annually by the National Marine Fisheries Service as a function of maximum sustainable yield for a specific fish stock. The maximum sustainable yield is a quantity determined to be sufficient to protect the reproductive health of the fish stock. It is important to note that the setting of TAC is a political process as well as a scientific one. Industry interests may lobby for or against a certain setting of TAC.
13. In Alaska, under limited access management, the capacity of the fishing fleet was so much greater than the TAC, that the season had been shortened to two days, and more job related deaths were attributed to the fishing industry than any other industry. This death rate results from hurried and unsafe fishing practices, as well as competitive violence. In international waters, there are several stories of competing vessels shooting at each other and even sinking each other. See Parfit, Michael. "Diminishing Returns: Exploiting the Ocean's Bounty." 188 *National Geographic* 5 (November 1995): 10-11.
14. During the 1980's the Reagan administration gutted the budget of the National Marine Fisheries Service (NMFS), with NMFS incurring the largest percentage budget reduction of any of the federal natural resource agencies during the Reagan years. This left the agency with little money for enforcement efforts.
15. Fishery management councils (FMCs) are regional councils, as part of the National Marine Fisheries Service, which set local fishery management policy subject to approval by the Secretary of Commerce. It is important to note that these councils have typically been dominated by large industrial fishing

interests, and thus the industry has been self-regulating. For example, in New England, under FMC management, fish populations declined 65% from 1977-1987. See Collins, Charles H. "Beyond Denial: The Northeastern Fisheries Crisis." National Fish and Wildlife Foundation (March 23, 1994): 6.

16. ITQ management was first introduced in this country with the ratification of Amendment 8 to the Surf Clam and Ocean Quahog fishery management plan. 55 Federal Register 24184 (June 14, 1990). While other countries including New Zealand, Australia, Canada, and Iceland also have ITQ systems, this article will be limited to a discussion of domestic ITQ management.

17. E. Gumbine. *Ghost Bears*. (Island Press, 1992): 63.

18. Pearce, David W. and Turner, R. Kerry. *Economics of Natural Resources and the Environment*. (Johns Hopkins University Press, 1990).

19. See Organisation for Economic Co-Operation and Development. *The Use of Individual Quotas in Fisheries Management* (1993).

20. 50 C.F.R. §676.24

21. The community must be certified under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601.

22. For purposes of eligibility, native communities must not only be in partnership with corporate actors but must also establish separate community development organizations specifically for the purpose of designing or implementing community fisheries development plans. 50 C.F.R. §676.24 and Bering Sea Fishermen's Association. "The CDQ Program: New Economic Potential for Western Alaska" (March 1993).

23. *Ibid.* (March 1993): 2-3.

24. State of Alaska. "Economic Impacts of the Pollack Community Development Quota Program." Revised Draft Report (April 1995): 1-2.

25. See Bering Sea Fishermen's Association (March 1993) and State of Alaska (April 1995), in which CDQ group plans are outlined. Some excerpts from these plans follow: ". . . [to] make funds available for the purchase of fishing vessels, Individual Fishing Quotas, and other opportunities." (Aleutian Pribilof Island Community Development Association); ". . . to provide matching funds for infrastructure construction, and financing for the acquisition of Individual Fishing Quotas." (Bristol Bay Economic Development Corporation); ". . . [to] establish a boat loan program for the purchase and construction of vessels." (Central Bering Sea Fishermen's Association).

26. Bering Sea Fishermen's Association, (March 1993): 3, *op. cit.* 22.

27. See also Collons, Kacy. "ITQs as Collateral Rightly Understood: Preserving Commerce and Conserving Fisheries." 14 *UCLA Journal of Environmental Law and Policy* 2 (1995/1996): 285, 307-310, in which the author illustrates that fishing quotas are not being accepted as collateral and therefore smaller actors without capital cannot obtain loans.

28. This trend first became prominent during the 1980's under the Reagan administration. The United States administers a tradable air pollution permit system for Sulfur Dioxide; in the Los Angeles Basin, the South Coast Air Quality Management District is overseeing a tradable air pollution permit system — the Regional Clean Air Incentive Market (RECLAIM). Private property rights are

also being considered as an alternative to the Endangered Species Act. See Sax, Joseph L. "Property Rights Legislation in the 104th Congress." 4 *Environmental Law News* 4 (Winter 1995-1996).

29. Palsson, Gisli and Helgason, Agnar. "Figuring Fish and Measuring Men: The Quota System in the Icelandic Cod Fishery." *Ocean and Coastal Management* (forthcoming).

30. See McCay, Bonnie and Creed, Carolyn. "Social Impacts of ITQs in the Sea Clam Fisheries." *New Jersey Sea Grant Program* (1994); and Greer, Jed. "The Big Business Takeover of U.S. Fisheries: Privatizing the Oceans Through Individual Transferable Quotas." *Greenpeace* (April 1995).

31. Dasgupta, P.S. and Heal, G.M. (1979): 255, *op. cit.* 6.

32. Collin, Robert W. & Collin, Robin Morris. "Essay on Environmental Justice: Equity as the Basis of Implementing Sustainability: An Exploratory Essay." 96 *West Virginia Law Review* 1173 (Summer 1994).

33. Keys, C.S. "New Threats to Tribal Subsistence Economies: A Law and Policy Essay." (work in progress).

34. Davis, Shelton H. "Resources and Sanctuary: Indigenous Peoples, Ancestral Rights, and the Forests of America." 17 *Cultural Survival Quarterly* 1 (Spring 1993): 24.

35. Keys, Craig S. "Columbus Day for Native Americans." *Hastings Law Review* (September 29, 1992).

36. *Greenpeace*. "500 Years of Plunder." (October, November, December 1992).

37. Over 85% of households obtain more than half their food through subsistence means. Murray, David A. "Self-Sufficiency and the Creation of Dependency: The Case of Chief Isaac, Inc." 16 *The American Indian Quarterly: Journal of American Indian Studies* 2 (Spring 1992):183-185.

38. Keys, C.S. (work in progress), *op. cit.* 33.

39. Murray (Spring 1992):184, *op. cit.* 37.

40. Problems exist with equity, initial allocation, possible anti-trust violations, and conservation.

41. The Dawes Allotment Act of 1887 (25 U.S.C. §§331 et. seq.), which gave individual Indians private title to land plots under the condition that they adopt "civilized" lifestyles, and the termination policy of the 1950's, which terminated tribal status for certain tribes, provide two examples of assimilationist privatization policies with devastating effects for native communities. While neither of these policies involved the imposition of the corporate form, both involved a shift from communal property to private property. For a more in depth discussion of these two policies, see Anders, Gary C. "Social and Economic Consequences of Federal Indian Policy: A Case Study of the Alaska Natives." 37 *Economic Development and Cultural Change* 2 (January 1989); American Indian Lawyer Training Program. *Indian Tribes as Sovereign Governments: A Sourcebook on Federal-Tribal History, Law, and Policy*. (Oakland: AIRI Press, 1988); National Indian Justice Center. "Base Closures and Urban American Indians: A Report for the East Bay Conversion and Reinvestment Commission." (1994).

42. Collons, Kacy A. and Keys, Craig S. "The Invisibility of America's

Native Communities: Absent in Theory, Excluded in Practice." 3 *Critical Planning* (June 1996): 21.

43. Berger, Thomas R. *Village Journey: The Report of the Alaska Native Review Commission*. (New York: Hill and Wang, 1985).

44. See Sacks, Jeremy David. "Culture, Cash, or Calories: Interpreting Alaska Native Subsistence Rights." 12 *Alaska Law Review* 247 (December 1995).

45. Kitka, Julia. Prepared Testimony of Julia Kitka, President, Alaska Federation of Natives Before a Joint Hearing of the Senate Energy and Natural Resources Committee, the Senate Indian Affairs Committee, and the House Resource Committees on the Alaska Natives Commission Report and Section 29 Agreement Between the Department of the Interior and the Alyeska Pipeline Service Company (November 16, 1995).

46. Lenihan, Daniel J. "Aleutian Affair." *Natural History*. (June 1992): 59-60.

47. This notion has been redefined several times over the years both through judicial interpretation and statutory modification. However, the doctrine of aboriginal rights was first recognized in the Supreme Court case, *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823).

48. Chapin, Kristen. "Indian Fishing Rights Activists in an Age of Controversy: The Case for an Individual Aboriginal Rights Defense." 23 *Environmental Law* 3 (July 1993): 971-995. Note that this quote combines the complex findings of several court cases interpreting of statutory language.

49. See *Kimball v. Callahan*, 493 F. 2d 564 (1974), in which the court held that Indians who elected to withdraw from the tribe . . . nevertheless retained . . . rights to hunt, trap and fish. . . ."

50. Alaska Constitution. Article VIII.

51. The Alaskan Native Interest Land Claims Act (ANILCA - P.L. 96-487, 94 Stat. 2371) was passed in 1980 in an effort to protect the Alaskan subsistence lifestyle and restore native aboriginal commercial fishing rights. While some commercial activity is permitted as consistent with a subsistence lifestyle, "ANILCA does not permit the establishment of significant commercial enterprises under the guise of subsistence uses. Thus the size of the transaction or the manner in which it is conducted may place it outside the bounds of customary trade." *United States v. Alexander*, 938 F.2d 942, 948 (9th Cir.1991).

Federal law under ANILCA, attempts to protect subsistence as sustenance, but simultaneously undermines subsistence culture by providing resource priority to all rural residents rather than all native residents, thus refusing to recognize/acknowledge the distinct significance, above and beyond physical survival, that a subsistence lifestyle holds for Native Alaskan villages.

52. *Cultural Survival Quarterly*. "A Wave of Change: The United Nations and Indigenous Peoples." (Spring 1994).

53. Burger, Juliana. "A Project for the Decade." *Cultural Survival Quarterly*. (Spring 1994): 39.

54. *id.*

55. Lenihan (1992): 59-60, *op. cit.* 46.

56. Davis, Mike. "Los Angeles After the Storm: The Dialectic of Ordinary Disaster." 27 *Antipode* (1995:3).

57. Richardson, Jeffrey R. "Alaska Struggles to Reconcile Preservation, Sport Hunting, and an age-old Way of Life." 66 *National Parks* 3-4 (March/April 1992): 34.

58. Berger (1985: Section on subsistence), *op. cit.* 43.

59. It is not the author's intent to describe an exact way in which subsistence economies operate; the intended point is that native subsistence cultures may vary, but in all instances, they do not equate with strictly market-based cultures and economies.

60. Kruse, John A. "Alaska Inupiat Subsistence and Wage Employment Patterns: Understanding Individual Choice." 50 *Human Organization* 4 (Winter 1991): 323-325.

61. Richardson (March/April 1992: 36-39), *op. cit.* 57.

62. McNeely and Pitt provide several examples of where native practices have successfully been integrated into larger state policies. McNeely, Jeffrey A. and Pitt, David. *Culture and Conservation: The Human Dimension in Environmental Planning* (1985).

63. Richardson (1992): 39, *op. cit.* 57.

64. The Menominee tribe of Wisconsin and the Tule tribe of California are two examples of tribes that have logging operations on their land with sustainable (in terms of both economics and forest renewal) methods rather than clear cutting and forest destruction.

65. "... [L]egislation preferring Indians is constitutional when applying the rational basis test as long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians." *Alaska Chapter, Associated General Contractors of America v Pierce*, 694 F. 2d 1162, 1170 (Ninth Cir., 1982). See also *Morton v Mancari*, 417 U.S. 535, 94 S.Ct. 2474 (1974), in which the Supreme Court held that preferential treatment of Indians did not constitute "invidious racial discrimination" but was rationally tied to the furtherance of Indian self-government.

66. Shinkwin, Anne D. "Traditional Alaska Native Societies." in Case, David S. *Alaska Natives and American Laws*. University of Alaska Press (1984): 344-349.

67. Non-member Aleuts of a given territory had to gain permission from the resident society in order to have access to resources within the defined territory.

68. Pre-contact population estimates range from 16,000 (Shinkwin, 1984: 344, *op. cit.* 66) to 12,000 (Lenihan, June 1992: 59, *op. cit.* 46), dropping to between 3,000 and 1,500 during the period of Russian rule.

69. U.S.-Russian Treaty of Cession (1867).

70. The author, in no way, intends to imply that Native Americans were treated well by the U.S. government. While native tribes in the lower 48 states did have "official" legal protections, these formalities were often not enforced, or were fashioned to work against the tribes. And while the historical relationship between tribes in the lower 48 states and Alaskan tribes is different, the oppression and exploitation experienced by both groups is fundamentally the same.

71. See *Alaska Chapter, Associated General Contractors of America v. Pierce*, 694 F. 2d 1162, 1170 (Ninth Cir., 1982).

72. *U.S. v. Alaska Pacific Fisheries*, 5 Ak. Rpts. 484 (D.C. Ak. 1916); affirmed *Alaska Pacific Fisheries v U.S.*, 250 F. 274 (9th Cir. 1917).

73. See Lenihan (June 1992), *op. cit.* 46.

74. Oil was not discovered in the Aleutian Islands, but in Prudhoe Bay which was also native territory. However, this discovery affected U.S. policy toward all Native Alaskans.

75. Anders (January 1989: 286), *op. cit.* 41.

76. Although some of the communities are not actually within the Aleutian Island Region, they have been assumed so by policymakers for purposes of implementation. In order to maintain consistency, the author will maintain this assumption.

77. State of Alaska (April 1995), *op. cit.* 24.

78. Lenihan (June 1992: 51), *op. cit.* 46.

79. State of Alaska (April 1995), *op. cit.* 24.

80. Kitka (November 16, 1995), *op. cit.* 45.

81. Alaska Federation of Natives. (March 3, 1989) Report of the Alaska Federation of Natives on the Status of Alaska Natives: A Call for Action. Hearing Before the Select Committee on Indian Affairs (S-HRG. 101-67). United States Senate.

82. Anders, Gary C. "A Critical Analysis of the Alaska Native Land Claims and Native Corporate Development." in Lyden, Fremont J. and Legters, Lyman H., eds. *Native Americans and Public Policy*. (University of Pittsburg Press, 1992): 93-94.

83. *Ibid.* Anders points out that electricity is 10 to 15 times more expensive than in the average American city, and oil costs up to six times more than it does in Anchorage.

84. David Murray argues that the influx of modern industrial institutions and economically developed resources has served, perversely, to accelerate native dependency on external markets and the "alien political institutions" that support them, thus undermining efforts at self-determination and self-sufficiency. Murray (Spring 1992), *op. cit.* 37.

85. Anders (1992): 93, *op. cit.* 82.

86. Information for this section comes mainly from the following sources. Significant overlap of information makes specific citation difficult. See Anders, Gary C. "Social and Economic Consequences of Federal Indian Policy: A Case Study of the Alaska Natives." 37 *Economic Development and Cultural Change* 2 (January 1989); Anders, Gary C. "A Critical Analysis of the Alaska Native Land Claims and Native Corporate Development." in Lyden, Fremont J. and Legters, Lyman H., eds. *Native Americans and Public Policy*. (University of Pittsburg Press, 1992); Bruzzese, M. Lynne. "U.S. v. Alexander: Defining and Regulating "Subsistence Use" of Resources Among Alaska Natives." 33 *Natural Resources Journal* 461 (Spring 1993); Bryner, William M. "Toward a Group Rights Theory for Remediating Harm to the Subsistence Culture of Alaska Natives." 12 *Alaska Law Review* 293 (December 1995); Case, David S. *Alaska Natives and American*

Law. (University of Alaska Press, 1984); Flanders, Nicholas E. "The Alaska Native Corporation as Conglomerate: the Problem of Profitability." 48 *Human Organization* 4 (Winter 1989); Gondolf, Edward W. "In Search of a Viable Community-Based Economic Organization: Native Village Corporations and Peasant Sugar Cooperatives." 47 *Human Organization* 2 (Summer 1988); Hirschfield, Martha. "The Alaska Native Claims Settlement Act: Tribal Sovereignty and the Corporate Form." 101 *Yale Law Journal* 1331 (April 1992); Kancewick, Mary and Smith, Eric. "Subsistence in Alaska: Towards a Native Priority." 59 *University of Missouri, Kansas City Law Review* 645 (Spring 1991); Karpoff, Jonathan M. and Rice, Edward M. "Structure and Performance of Alaska Native Corporations." *Contemporary Policy Issues*. Vol. 10, No. 3. (July 1992); Korsmo, Fae L. "Evaluation, Tribal Sovereignty, and the Alaska Native Land Claims Settlement Act." in McClain, Paula D., ed. *Minority Group Influence: Agenda Setting, Formulation, and Public Policy*. (Greenwood Press, 1993); Langdon, Steve J., ed. *Contemporary Alaskan Native Economies*. (New York: University Press of America, 1986); Murray, David A. "Self Sufficiency and the Creation of Dependency: The Case of Chief Isaac, Inc." 16 *The American Indian Quarterly: Journal of American Indian Studies* 2 (Spring 1992).

87. Hirschfield (April 1992), *op. cit.* 86.

88. P.L. 92-203 (1971), 43 U.S.C. §1601.

89. Fuller, Lauren L. "Alaska Native Claims settlement Act: An Analysis of the Protective Clauses of the Act through a Comparison of the Dawes Act of 1887." 4 *American Indian Law Review* 2 (1976): 269-278.

90. See American Indian Lawyer Training Program (1988): 8-9, *op. cit.* 41, in which the affects of the General Allotment Act are discussed. "[T]he primary effect [of General Allotment] was that Indian land holdings decreased from 138 million acres in 1887 to 48 million acres in 1934, a total loss of 90 million acres. Another effect was the checkerboard pattern of ownership . . . causing serious jurisdiction and management problems." See also, discussion in footnote 41 of this document.

91. Termination removed the federal trust responsibility and special reservation status for certain resource-rich tribes. For example, timber operations on the Menominee reservation were incorporated with disastrous consequences — bankruptcy and absorption of tribal timber resources by non-native creditors.

92. Anders (January 1989):291-299 and (1992):85, *op. cit.* 86; Karpoff and Rice (July 1992), *op. cit.* 86; Flanders (Winter 1989), *op. cit.* 86.

93. Karpoff and Rice (1992): 71, *op. cit.* 86.

94. Flanders (1989: 299), *op. cit.* 86.

95. Hirschfield points out that the costs of creating and managing new corporations were partially responsible for corporate insolvency, merger, and the sale of land to avoid bankruptcy. Hirschfield (April 1992): 1339, *op. cit.* 86.

96. Korsmo points out that ". . . ten years after ANCSA, the native corporations had received less than half of the land . . ." Monetary payments were also slow in delivery. Korsmo (1993): 89, *op. cit.* 86.

97. See Berger (1985), *op. cit.* 43, and U.S. Department of Interior. "ANCSA

1985 Study." Prepared by ESG, Falls Church, VA (1984).

98. Karpoff and Rice (1992), *op. cit.* 86.

99. This statement is not intended to imply a lack of diversity within the native communities of Alaska or elsewhere. There is no one "native community", and while some native communities and individuals support privatization, many native communities still struggle to maintain subsistence cultures and economies which are not based on private property or "free" enterprise.

100. Gondolf (Summer 1988), *op. cit.* 86.

101. Langdon (1986): 28-30, *op. cit.* 86.

102. Gondolf (1988): 154, *op. cit.* 86.

103. Korsmo (1993: 85-90), *op. cit.* 86.

104. The CDQ program allowed natives to form non-profit CDQ corporations. However, these non-profit groups are being forced to convert to for profit institutions in order to compete with industrial actors. Dewey Schwalenberg, of the Alaska Intertribal Council, feels that it is unlikely that such for profit endeavors can be sustained at the local level. (Interview with Dewey Schwalenberg, March 6, 1996).

105. However, it is important to note that the AFN, while a native organization, stood to benefit from support of ANCSA as many of its members became the future leaders of the twelve regional corporations created.

106. Korsmo (1993): 87, *op. cit.* 86.

107. The Alaska National Interest Lands Conservation Act was passed in 1980. See footnote 51 for further discussion.

108. Hirschfield (April 1992): 1340, *op. cit.* 86.

109. Kruse, John A. "Alaska Inupiat Subsistence and Wage Employment Patterns: Understanding Individual Choice." 50 *Human Organization* No. 4 (Winter 1991).

110. Smith, Dean Howard. "The Issue of Compatibility Between Cultural Integrity and Economic Development Among Native American Tribes." 18 *American Indian Culture and Research Journal* 2 (1994).

111. Palsson and Helgason (forthcoming), *op. cit.* 29.

112. *Ibid.* at 19.

113. Bering Sea Fishermen's Association (March 1993: 1), *op. cit.* 22.

114. Murray (Spring 1992), *op. cit.* 37.

115. Kitka (November 16, 1995).

116. Keys, Craig S. (work in progress: 1), *op. cit.* 33.

117. Note that while the federal government now has a trust relationship with Native Alaskan tribes, the State of Alaska does not recognize native preference, but only looks at subsistence as a rural issue.

118. See Anders (1992: 94), *op. cit.* 80, citing Ferrey, Steven. "Selling Energy to the Eskimos." *The Nation* (June 17, 1981). "Because the severe climate compresses the native work year into a few short summer months, either the subsistence or conventional currency for survival must be earned while the weather permits [but not both]."

119. Murray points out that natives are not without tactics of resistance to this movement wage dependency. Murray (Spring 1992): 180-183, *op. cit.* 37.

120. 50 C.F.R. §676.

121. See *United States v Alexander*, 938 F.2d 942, 948 (9th Cir. 1991), *supra* note 48.

122. It is important to note that the CDQ program is still a pilot project which may be revoked or discontinued at any time. In the current era of budget cuts and Congressional conservatism, one must concede that the elimination of this program is, at least, possible. Although the regulations which govern the CDQ program do allow for compensation if quota share is reduced (50 CFR §676.24(I)), no such compensation results if the program is discontinued. In fact, regulations governing the Individual Fishing Quota (IFQ) system, of which the CDQ program is a part, specifically protect the Federal government from Takings claims in the event that the program is discontinued (50 CFR §676.20(g)). No exceptions are made for native communities. Native communities thus face the prospect of losing their traditional fishing rights and having no recourse or financial compensation in the event that the program is discontinued.

123. Pearce and Turner (1990), *op. cit.* 18.

124. See Bingham, Richard D. and Mier, Robert, eds. *Theories of Local Economic Development: Perspectives from Across the Disciplines* (1993).

125. State of Alaska (April 1995): 1-4, *op. cit.* 24.

126. *Ibid.*

127. *Ibid.*

128. See Kruse (Winter 1991), *op. cit.* 109, in which the author suggests that subsistence is not just an activity of necessity, but rather one of individual and community choice.

129. Beauregard, Robert. "Constituting Economic Development: A Theoretical Perspective." in *Theories of Local Economic Development: Perspectives From Across the Disciplines*. Bingham, Richard D. and Mier, Robert, eds. (1993) citing Katznelson, I. *Capitalist Trenches* (1981).

130. Beauregard (1993), *Ibid.*

131. *Ibid.*

132. *The CDQ Report*. Issue No. 2 (September 1994).

133. *Ibid.*

134. See Scott, Allen J. and Storper, Michael. "Regional Development Reconsidered." Lewis Center for Regional Policy Studies, UCLA (1990), in which the authors discuss a flexible production model as an alternative to the traditional core/periphery view. While this model may paint a picture different than traditional notions of economic development, the assumption remains that jobs are the key to regional development. While this may be true for most American locales, it does not speak to the needs of Native Alaskan subsistence societies that see a value in continuing their traditional practices.

135. Chambers, Robert. "The State and Rural Development: Ideologies and an Agenda for the 1990's." Institute for Development Studies (November 1989).

136. For more discussion of problems with traditional measurements of success, see Naila Kabeer's discussion of use of the poverty line. She points out that the poverty line focuses on purchasing power, thus ruling out non-market consumption possibilities. Kabeer, Naila. *Reversed Realities: Gender Hierarchies*

in *Development Thought*. Verso, London (1994).

137. See Collons, Kacy and Keys, Craig. (June 1996), *op. cit.* 42.

138. 50 CFR §676.24 (h)(3)(ii)

139. Many local villages would have liked to see the expansion of onshore operations. However, due to new taxes imposed since the implementation of the CDQ program (16% state landing tax on offshore operators), industry has pulled itself from onshore operations, thus eliminating the possibility of infrastructure development.

140. Schwalenberg, Dewey. (March 6, 1996), *op. cit.* 105.

141. Berger (1985: 56), *op. cit.* 43.

142. Sarkissian, Wendy. Lecture, Graduate School of Architecture and Urban Planning, University of California, Los Angeles (April 12, 1994).

143. See, for example, Berkes, Fikret, ed. *Common Property Resources: Ecology and Community-Based Sustainable Development*. (London: Belhaven Press, 1989); McCay, Bonnie and Acheson, James M., eds. *The Question of the Commons: The Culture and Ecology of Communal Resources*. (University of Arizona Press, 1987); and Pinkerton, Evelyn, ed. *Co-Operative Management of Local Fisheries: New Directions for Improved Management and Community Development*. (University of British Columbia Press, 1989).

144. Pinkerton (1989:4-5), *Ibid.*

145. Bowles, Samuel and Gintis, Herbert. *Democracy and Capitalism: Property, Community, and the Contradictions of Modern Social Thought*. (London: Basic Books, 1986).

146. See Gimbel, Karyn L. *Limiting Access to Marine Fisheries: Keeping the Focus on Conservation*. (Washington, D.C.: Center for Marine Conservation and World Wildlife Fund, 1994), which compiles papers and analyses from one of the most recent and largest fishery management conferences. Out of a total 300 published pages, less than 30 focused on co-management as an option.

147. Gondolf (Summer 1988: 156-158), *op. cit.* 86.

148. *Ibid.* at 157.

149. See, for example, Bowles and Gintis (1986), *op. cit.* 145; Cernea, Michael M., ed. *Putting People First: Sociological Variables in Rural Development*. (Oxford University Press, 1985); Chambers, Robert. *Rural Development: Putting the Last First*. (Longman Group Limited, 1983); Friedmann, John. *Empowerment: The Politics of Alternative Development*. (Blackwell Publishers, 1992).

150. See Cernea. (1985), *Ibid.*; Chambers. (1983), *Ibid.*; Gondolf. (Summer 1988), *op. cit.* 86; and McNeely and Pitt (1985), *op. cit.* 62.

151. Kancewick and Smith (Spring 1991), *op. cit.* 86.

152. Beauregard (1993), *op. cit.* 129.

153. Greer (April 1995), *op. cit.* 30.

154. Palsson and Helgason (forthcoming), *op. cit.* 29.