

Status of FMP Amendments
December 2, 2011

FMP Amendment Status: <u>Actions Since October 2011</u>	Date of Council Action	Start Regional Review	Transmittal Date of Action to NMFS HQ for Review	Proposed FMP Amendment Notice of Availability Published in <i>Federal Register</i>	Proposed Rule Published in <i>Federal Register</i>	Final Rule or Notice of Approval Published in <i>Federal Register</i>
Amendment 30 (KTC) – Arbitration System Changes Approved: 10/20/11	April 2008	PR: 6/21/11 FR: 10/12/11	PR: 7/19/11 FR: 10/18/11	July 25, 2011 76 FR 44297 EOC: 9/23/11	August 10, 2011 76 FR 49423 EOC: 9/9/11	November 4, 2011 76 FR 68358 Effective 12/5/11
Amendment 31 (KTC) – C-Share Active Participation/application deadline modification	April 2008	PR: 8/22/11				
Amendment 41 (KTC) – Crab regional emergency relief	December 2010	PR: 12/2/11				
Amendment 13 (Scallop FMP) – Weathervane scallop ACL, move non-weathervane species to EC Approved: 9/30/11	October 2010	NOA: 6/3/11	NOA: 7/3/11 Notice of Approval: 9/23/11	July 11, 2011 76 FR 40674 EOC: 9/9/11	No regulations	October 6, 2011 76 FR 61996
Amendment 83 (GOA) Pacific cod sector splits Approved: 9/23/11	December 2009	PR: 5/11/11 FR: 10/26/11	PR: 6/22/11 FR: 11/21/11	June 28, 2011 76 FR 37763 EOC: 8/29/11	July 26, 2011 76 FR 44700 EOC: 9/9/11	December 1, 2011 76 FR 74670 Effective: 1/1/12
Amendment 88 (GOA)-Central GOA rockfish program Approved: 11/7/11	June 2010	PR: 6/7/11 FR: 11/11/11	PR: 7/22/11 FR: 12/2/11	July 28, 2011 76 FR 45217 EOC: 9/26/11	August 19, 2011 76 FR 52148 EOC: 9/19/11	

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Amendment 86 (BSAI) and 76 (GOA) Observer Restructuring	October 2010					
Amendment 89 (GOA) Tanner crab protection	October 2010					
Amendment 93 (BSAI)-Modify Amd 80 sector coop formation criteria Approved: 10/26/11	February 2010	PR: 2/1/11 FR: 10/11/11	PR: 7/22/11 FR: 10/21/11	July 28, 2011 76 FR 45219 EOC: 9/26/11	August 10, 2011 76 FR 49417 EOC: 9/9/11	November 4, 2011 76 FR 68354 Effective 12/5/11
Amendment 93 (GOA) Chinook salmon bycatch management	June 2011	PR: 9/23/11	PR: 11/16/11	November 23, 2011 76 FR 72384 EOC: 1/23/12		
Amendment 94 (GOA) Revise CQE vessel use caps and implement other CQE-related regulatory amds (CQE Omnibus) ^{1/}	October 2011					
Amendment 97 (BSAI) – Amd 80 lost vessel replacement	June 2010					
Amendments to all FMPs to authorize permit fees (101/92/36/14/10)	October 2009					
Amendments to all FMPs for EFH omnibus related to 5-year review (98/90/40/15/11)	April 2011				No regulations	

^{1/}NMFS is consolidating three Council actions on the CQE Program into Amendment 94 and its associated proposed rule. In addition to the CQE vessel use caps, which are the subject of Amendment 94, this action will include the regulatory amendments to allow Area 3A CQEs to purchase D class halibut QS (Council final action in February 2011) and to add three new CQE communities (Council final action in December 2010).

Status of Regulatory Amendments
December 2, 2011

Regulatory Amendment Status: <u>Actions Since October 2011</u>	Date of Council Action	Start Regional Review	Transmittal Date of Action to NMFS HQ for Review	Proposed Rule Published in <i>Federal Register</i>	Final Rule Published in <i>Federal Register</i>
Groundfish Regulatory Amendments					
CDQ regulation of harvest	MSA Council 6/07	PR: 12/17/08 FR: 8/5/11	PR: 6/10/10	July 13, 2010 75 FR 39892 EOC: August 12, 2010	
BSAI fixed gear parallel fishery management measures	June 2009	PR: 6/3/10 FR: 8/19/11	PR: 2/23/11 FR: 11/3/11	March 11, 2011 76 FR 13331 EOC: 4/11/11	November 29, 2011 76 FR 73513 Effective 1/1/12
BS Chinook salmon bycatch economic data collection	12/09 final action 10/10 review regs.	PR: 4/5/11 FR: 10/4/11	PR: 4/15/11	July 18, 2011 76 FR 42099 EOC: August 17, 2011	
Revisions to MRAs in the BSAI arrowtooth flounder fishery	October 2010	PR: 8/12/11			
Remove GRS	February 2011	PR: 8/11/11			
Longline c/p monitoring requirements	Council consultation Oct 2011				
Exempted Fishing Permit Applications					
EFP to evaluate methods to reduce halibut mortality on trawlers	December 2011	11/7/11	11/9/11	Notice published November 16, 2011 76 FR 70972 EOC: Dec. 13, 2011	na

Status of Regulatory Amendments
December 2, 2011

Regulatory Amendment Status: <u>Actions Since October 2011</u>	Date of Council Action	Start Regional Review	Transmittal Date of Action to NMFS HQ for Review	Proposed Rule Published in <i>Federal Register</i>	Final Rule Published in <i>Federal Register</i>
Halibut Regulations					
Remove halibut/sablefish quota from initial recipients who never have fished or transferred quota	June 2006		PR: 8/12/09	August 23, 2010 75 FR 51741 EOC: September 22, 2010	
Establish new minimum vessel ownership criteria for using hired skipper of 12 months and 20% interest	December 2007				
Halibut catch sharing plan	October 2008	PR: 1/28/10	PR: 6/23/11	July 22, 2011 76 FR 44156 EOC: September 21, 2011	
Add 3 new communities to GOA CQE Program	December 2010	Now combined with Amendment 94 (GOA) as a CQE omnibus action			
Allow Area 3A CQEs to purchase D class halibut QS	February 2011	Now combined with Amendment 94 (GOA) as a CQE omnibus action			
Revise IFQ hired skipper provisions	April 2011				

FMP Amendments and Regulatory Actions Completed in 2011

- Steller sea lion protection measures; 75 FR 77535, (December 13, 2011), end of the comment period February 28, 2011.
- BSAI 2011/2012 harvest specifications, 76 FR 11139 (March 1, 2011), effective March 1, 2011.
- GOA 2011/2012 harvest specifications, 76 FR 11111, (March 1, 2011), effective March 1, 2011.
- Remove preliminary annual report requirement for AFA cooperatives, 76 FR 12884, (March 9, 2011), effective April 8, 2011.
- Clarify charter logbook submission requirements, 76 FR 6567, (February 8, 2011), effective March 9, 2011.
- Notice of application for an exempted fishing permit for testing a salmon excluder device for the BS pollock trawl fishery. 76 FR 17107; March 28, 2011, end of comment period April 27, 2011.
- Halibut annual management measures, 76 FR 14300, (March 16, 2011), effective April 15, 2011.
- Interpretative Rule related to the charter halibut regulations, 76 FR 19708, (April 8, 2011), effective April 8, 2011.
- Interpretive Rule for charter halibut logbook reporting requirements, 76 FR 34890, (June 15, 2011), effective June 15, 2011.
- Amendment 86 (GOA) – fixed gear endorsement for Pacific cod, 76 FR 15826, (March 22, 2011), effective April 21, 2011.
- Amendment 34 (KTC) – Adjustments to GOA sideboards for BSAI crab vessels, 76 FR 35772 (June 20, 2011), Effective July 20, 2011.
- Amendment 37 (KTC) – Exemption to west region landing requirements for WAG, 76 FR 35781 (June 20, 2011), Effective July 20, 2011.
- Amendment 38/39 (KTC) – Crab ACLs, revise rebuilding schedule for snow crab. Approved August 2, 2011 (76 FR 47493).
- Renewal of permits to SeaShare authorizing this organization to distribute Pacific salmon and Pacific halibut to economically disadvantaged individuals under the prohibited species donation (PSD) program. The permits are effective from July 8, 2011 through July 8, 2014. 76 FR 40366 (July 8, 2011).
- Updates and revisions to eLandings and other miscellaneous recordkeeping and reporting requirements, 76 FR 40628 (July 11, 2011), effective August 10, 2011.
- Amendment 13 (Scallops), weathervane scallop ACL, move non-weathervane species to ecosystem component, approved September 30, 2011 (76 FR 61996).
- Amendment 30 (KTC) , Arbitration System Changes, 76 FR 68358 (November 4, 2011), effective December 5, 2011.
- Amendment 93 (BSAI), 93 (BSAI)-Modify Amd 80 sector coop formation criteria, 76 FR 68354 (November 4, 2011), effective 12/5/11.
- BSAI fixed gear parallel fishery management measures, 76 FR 73513 (November 29, 2011), effective 1/1/12.
- Amendment 83 (GOA) Pacific cod sector splits, 76 FR 74670 (December 1, 2011), effective 1/1/12.

Alaska Region

National Marine Fisheries Service

Bering Sea and Aleutian Islands

Inseason Management Report

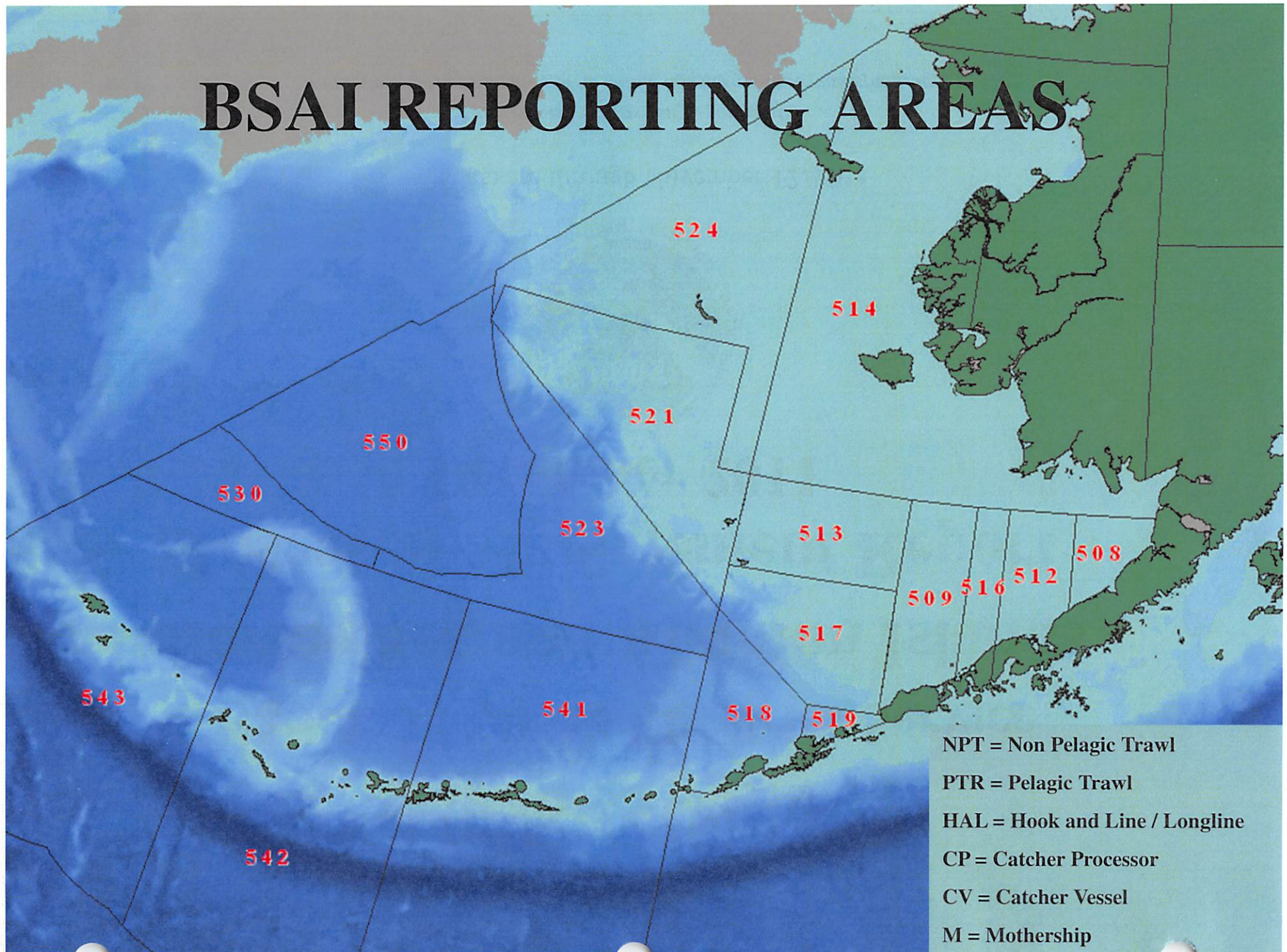
December 2011



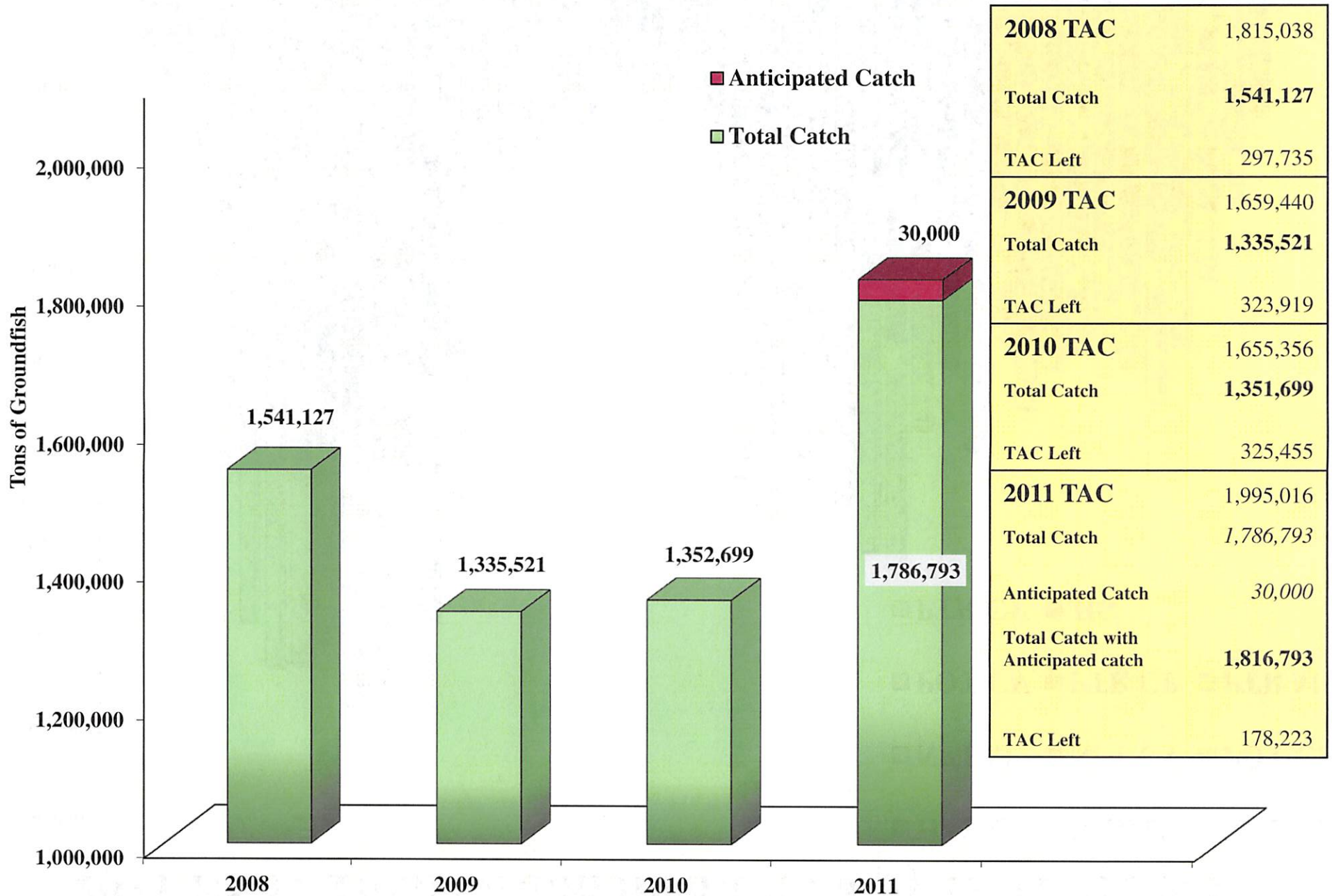
Catch data are through November 12, 2011

Management reports can be found at:
<http://alaskafisheries.noaa.gov/sustainablefisheries/inseason/default.htm>

BSAI REPORTING AREAS



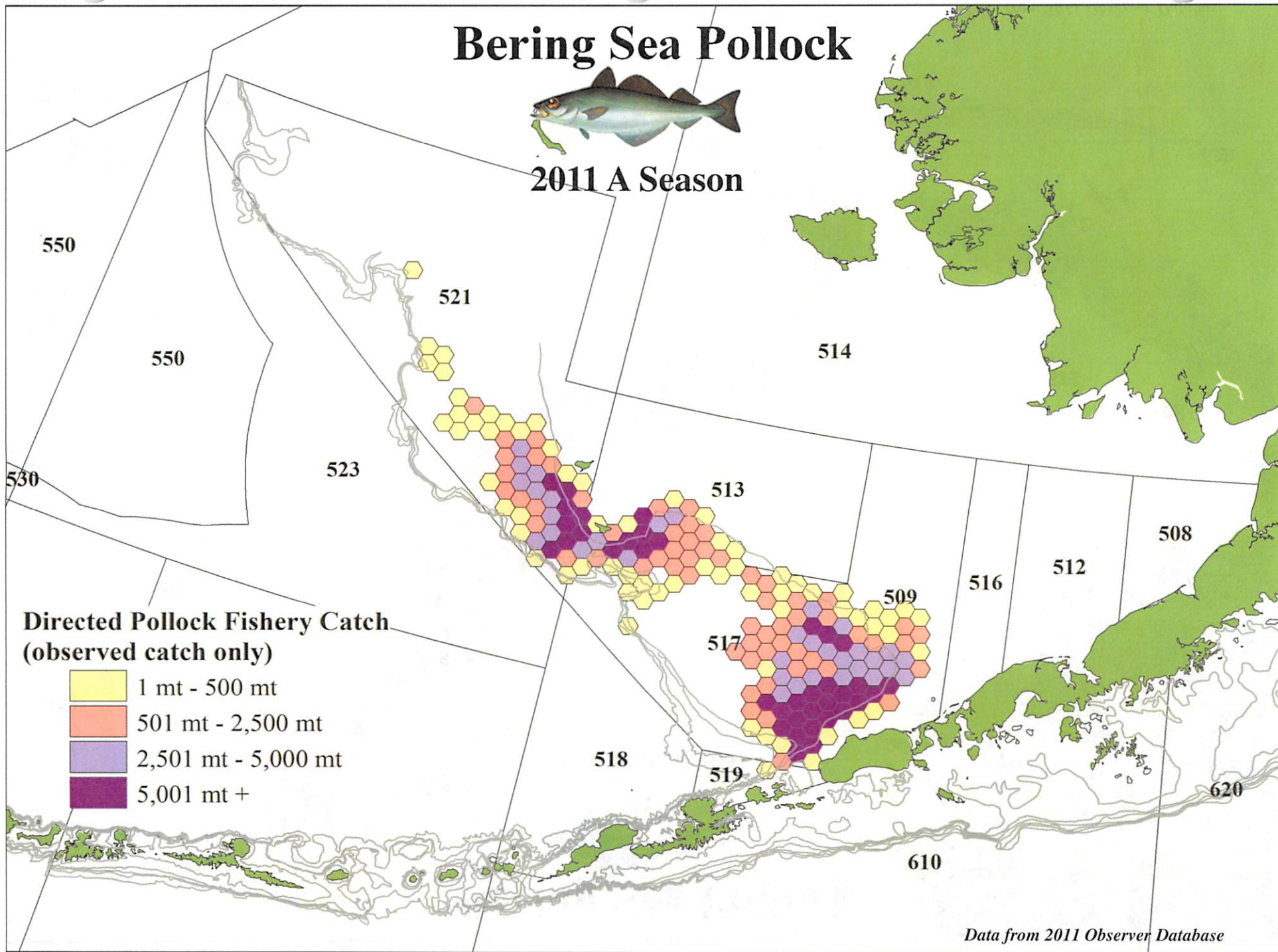
2008 - 2011 BSAI Total Catch



Bering Sea Pollock



2011 A Season

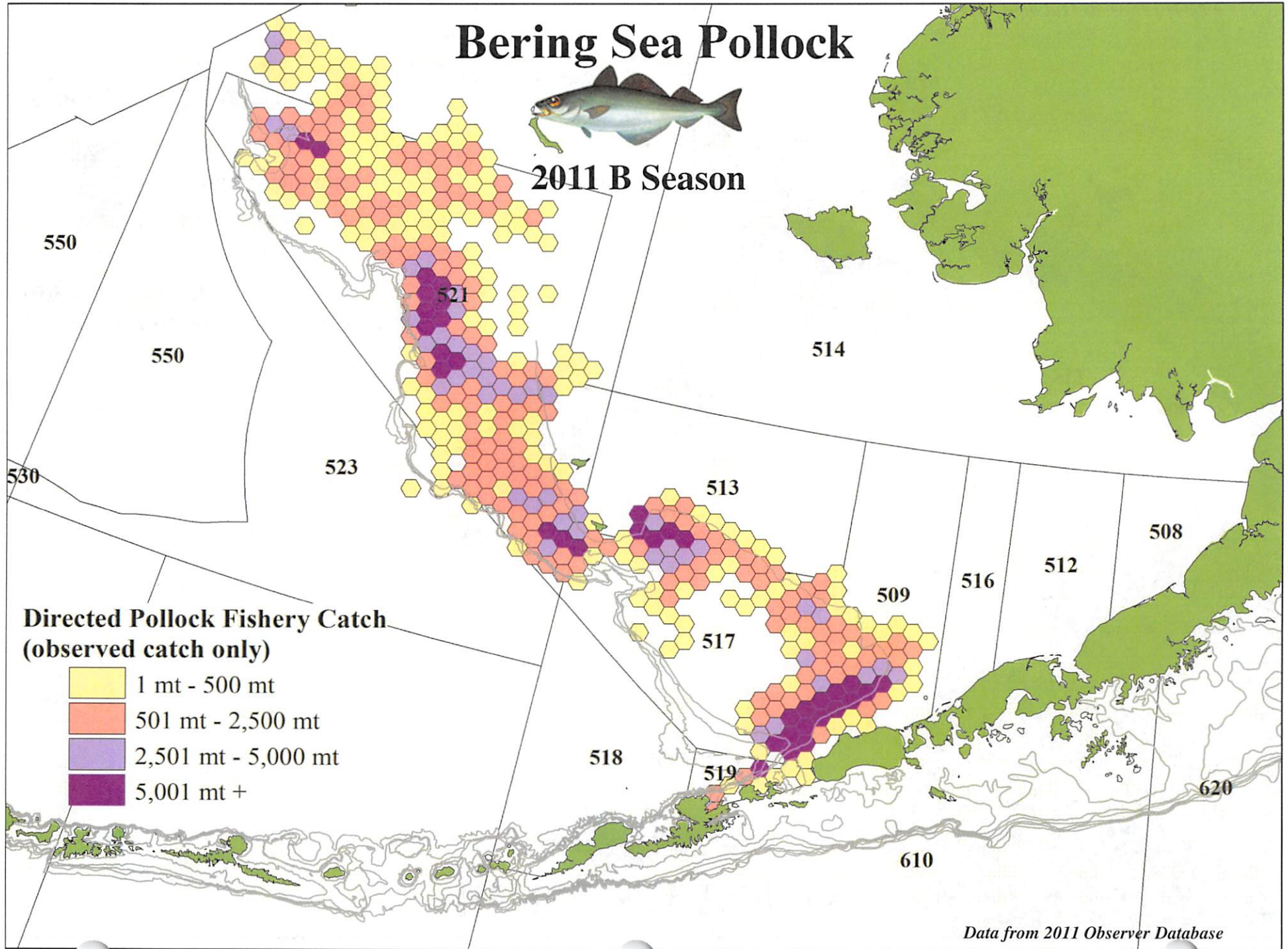


Data from 2011 Observer Database

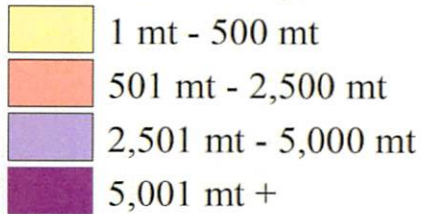
Bering Sea Pollock



2011 B Season

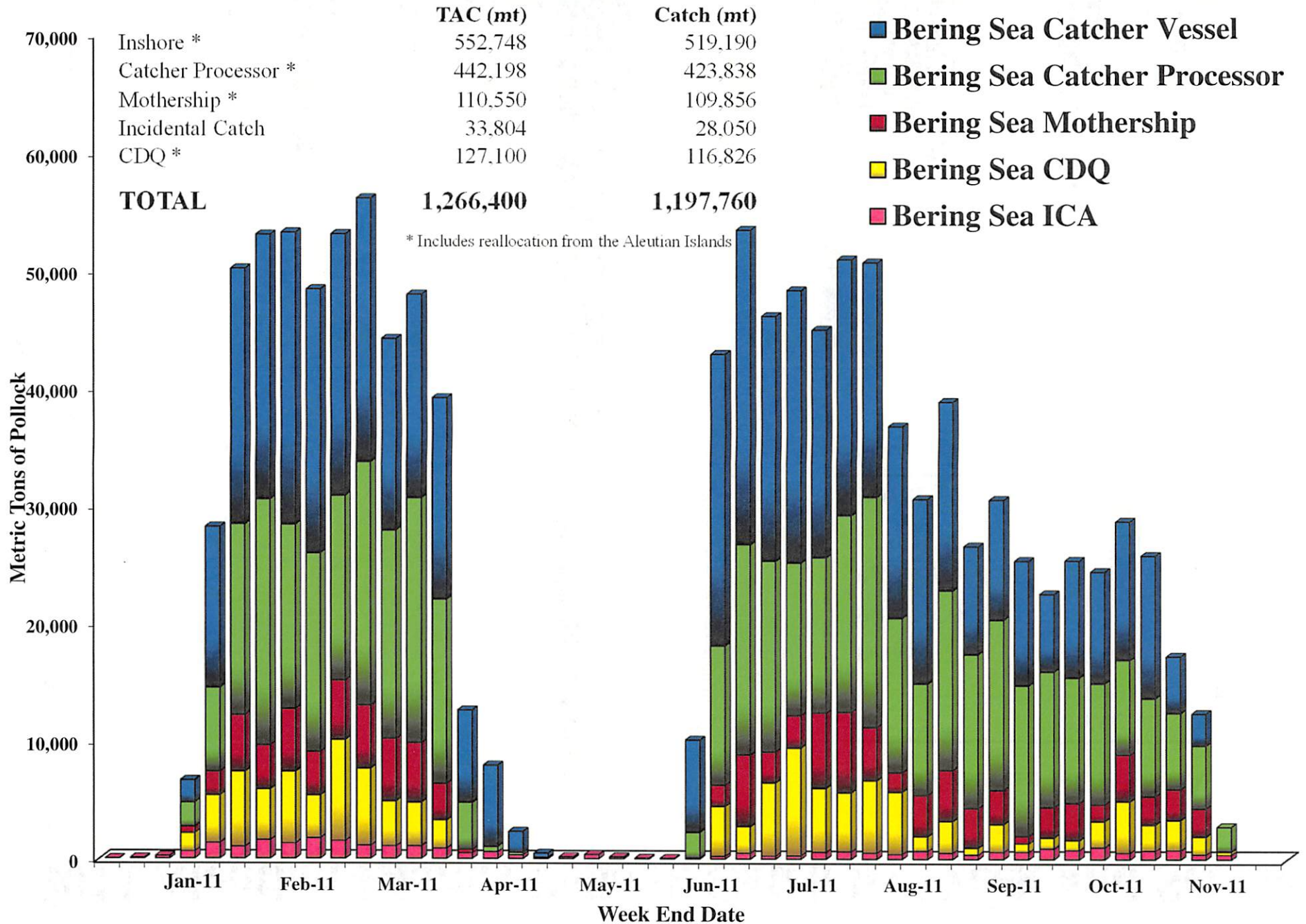


**Directed Pollock Fishery Catch
(observed catch only)**

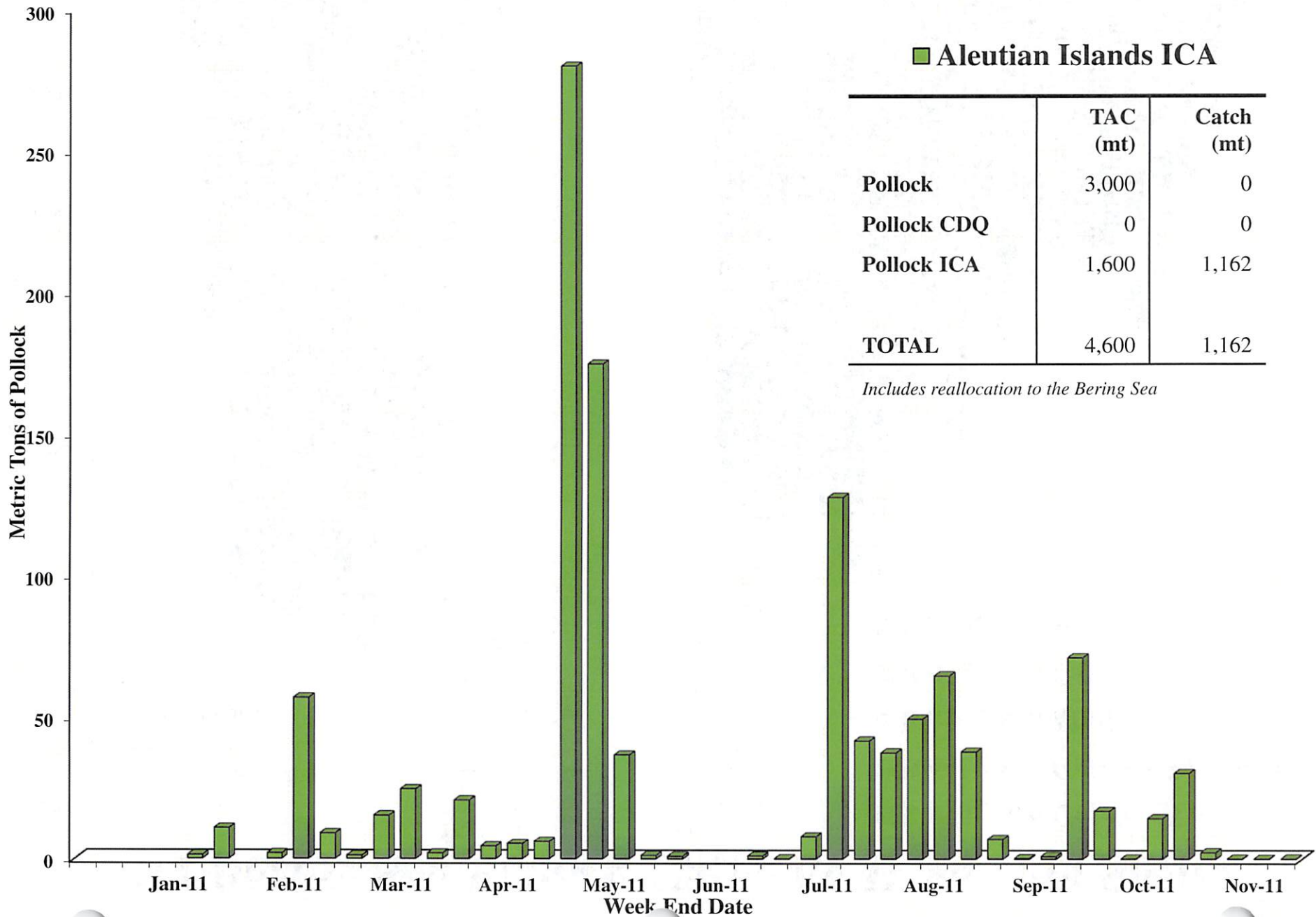


Data from 2011 Observer Database

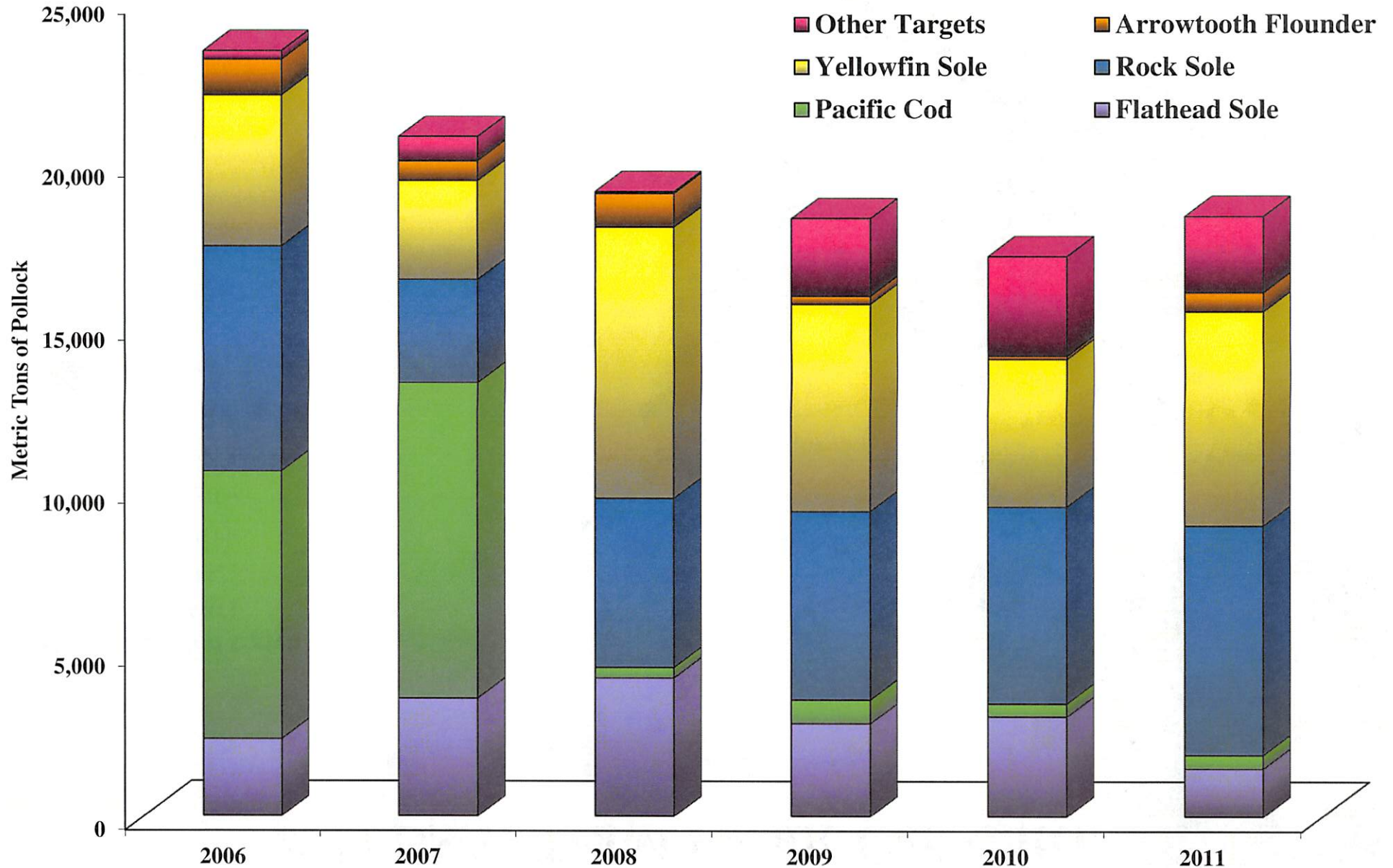
2011 Bering Sea Pollock Catch by Week and Sector



2011 Aleutian Islands Pollock Catch by Week and Sector



Amendment 80 Pollock Incidental Catch by Year and Target

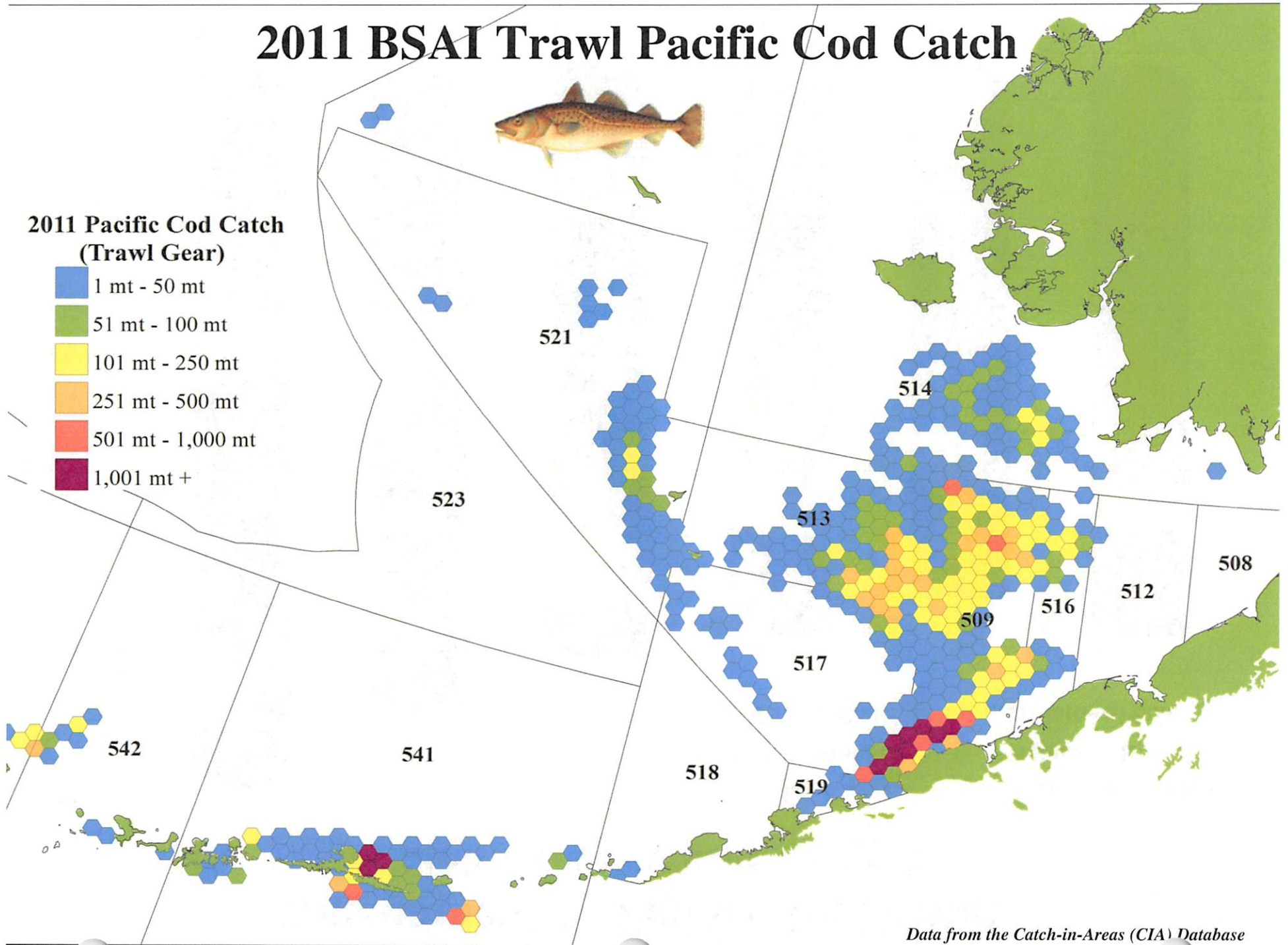


2011 BSAI Trawl Pacific Cod Catch



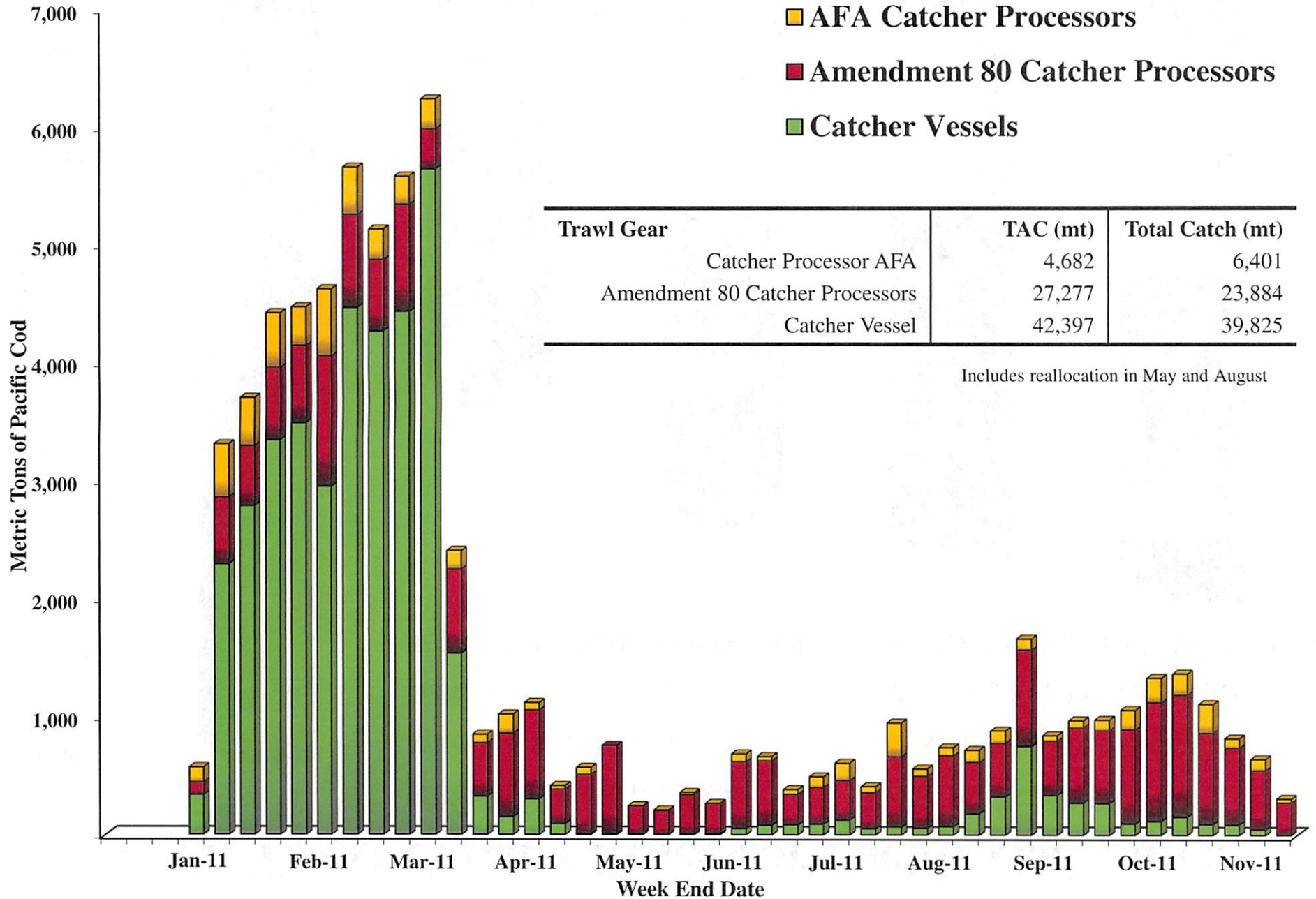
2011 Pacific Cod Catch (Trawl Gear)

- 1 mt - 50 mt
- 51 mt - 100 mt
- 101 mt - 250 mt
- 251 mt - 500 mt
- 501 mt - 1,000 mt
- 1,001 mt +

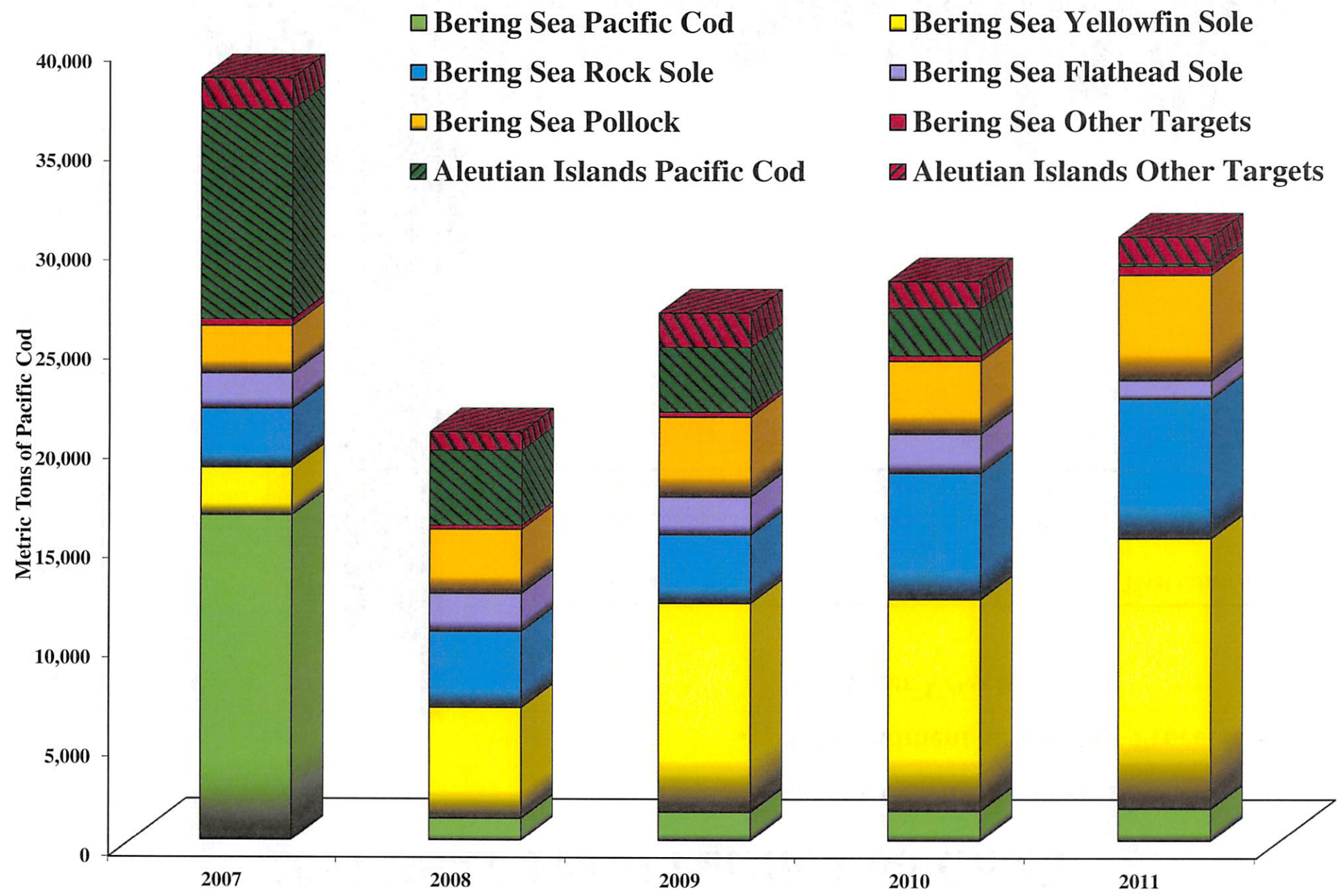


Data from the Catch-in-Areas (CIA) Database

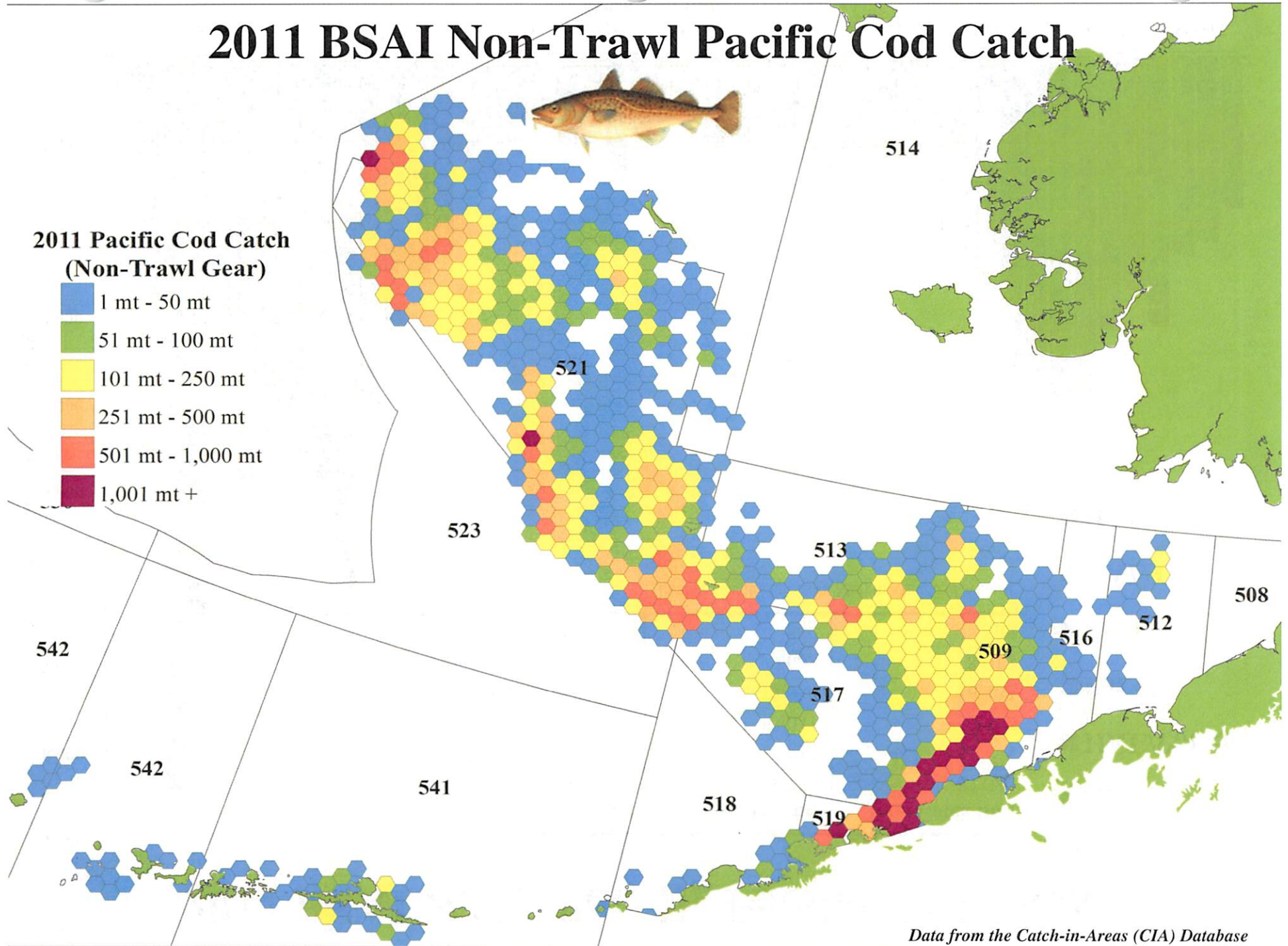
2011 BSAI Trawl Pacific Cod Catch



BSAI Trawl Catcher Processor Pacific Cod Catch

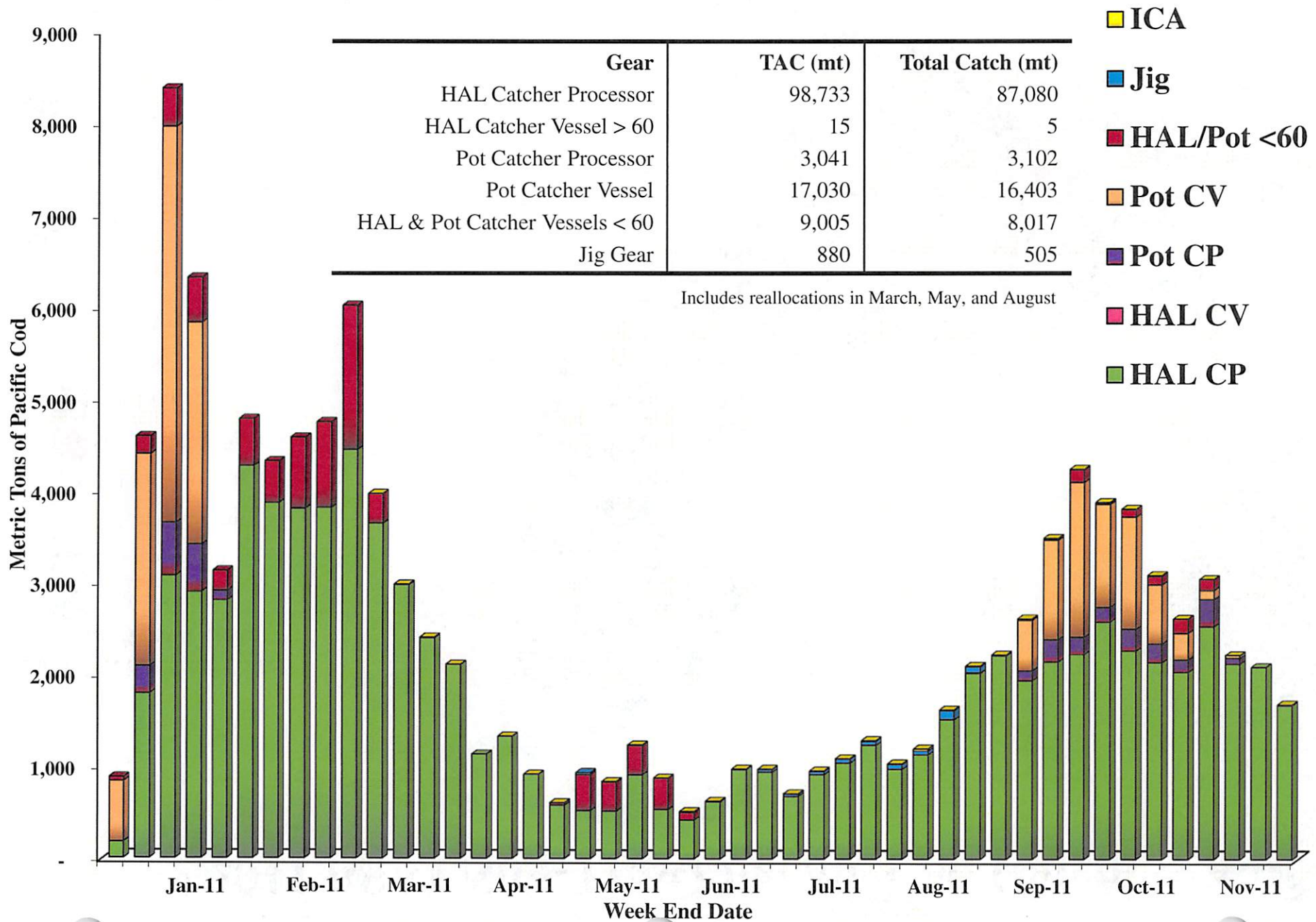


2011 BSAI Non-Trawl Pacific Cod Catch



Data from the Catch-in-Areas (CIA) Database

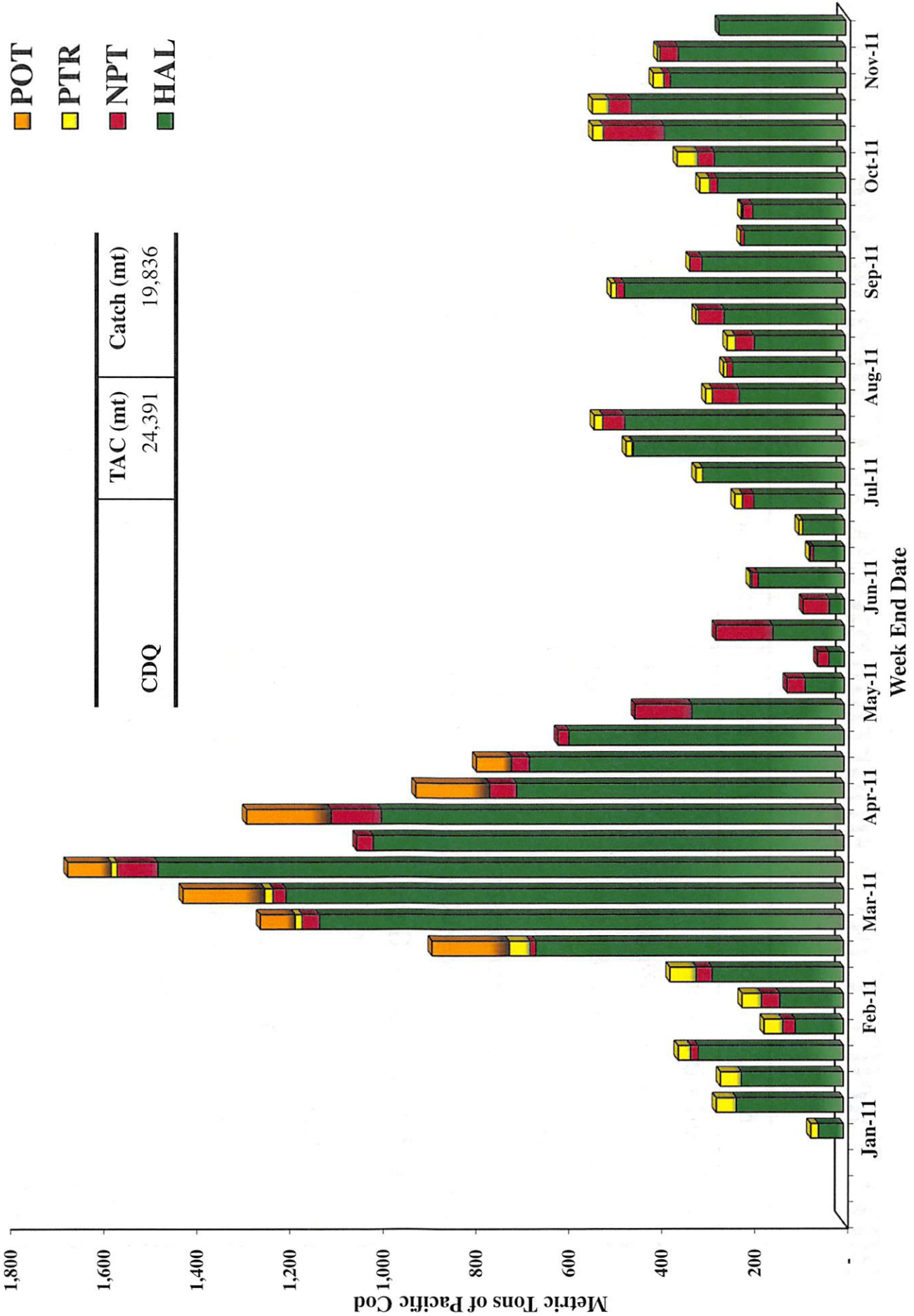
2011 BSAI HAL, Pot, Jig Pacific Cod Catch



Gear	TAC (mt)	Total Catch (mt)
HAL Catcher Processor	98,733	87,080
HAL Catcher Vessel > 60	15	5
Pot Catcher Processor	3,041	3,102
Pot Catcher Vessel	17,030	16,403
HAL & Pot Catcher Vessels < 60	9,005	8,017
Jig Gear	880	505

- ICA
- Jig
- HAL/Pot <60
- Pot CV
- Pot CP
- HAL CV
- HAL CP

2011 BSAI CDQ Pacific Cod Catch



1,800

1,600

1,400

1,200

1,000

800

600

400

200

0

Metric Tons of Pacific Cod

Jan-11

Feb-11

Mar-11

Apr-11

May-11

Jun-11

Jul-11

Aug-11

Sep-11

Oct-11

Nov-11

Week End Date

2011 Pacific Cod Apportionments & Catch in the BSAI

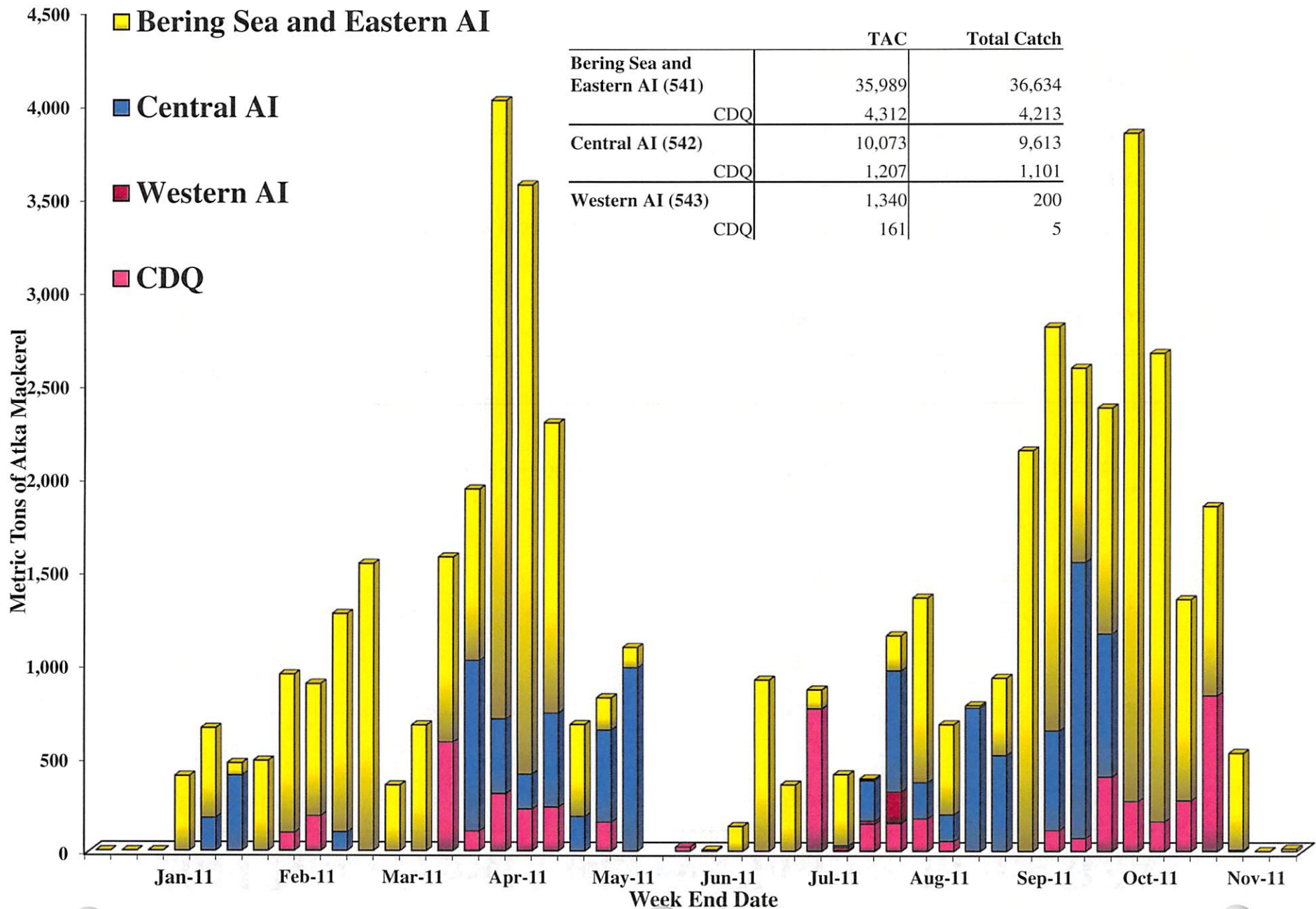
Fishery Component	TAC (mt)	Reallocations	Revised TAC	Catch (mt)
Hook and Line Gear				
Catcher Processor	98,733		98,733	87,080
Catcher Vessels >= 60 Feet LOA	405	-390	15	5
Pot Gear				
Catcher Processor	3,041		3,041	3,102
Catcher Vessels >= 60 Feet LOA	17,030		17,030	16,403
Hook & Line and Pot Gear				
Catcher Vessels < 60 Feet LOA	4,055	4,950	9,005	8,017
Trawl Gear				
AFA Catcher Processor	4,682		4,682	6,401
A80 Catcher Processor	27,277		27,277	23,884
Catcher Vessel	44,987	-2,590	42,397	39,825
Jig Gear	2,850	-1,970	880	505
CDQ	24,391		24,391	19,836
ICA	500		500	127
TOTAL	221,619		227,950	205,133

Includes reallocations in March, April, May and August

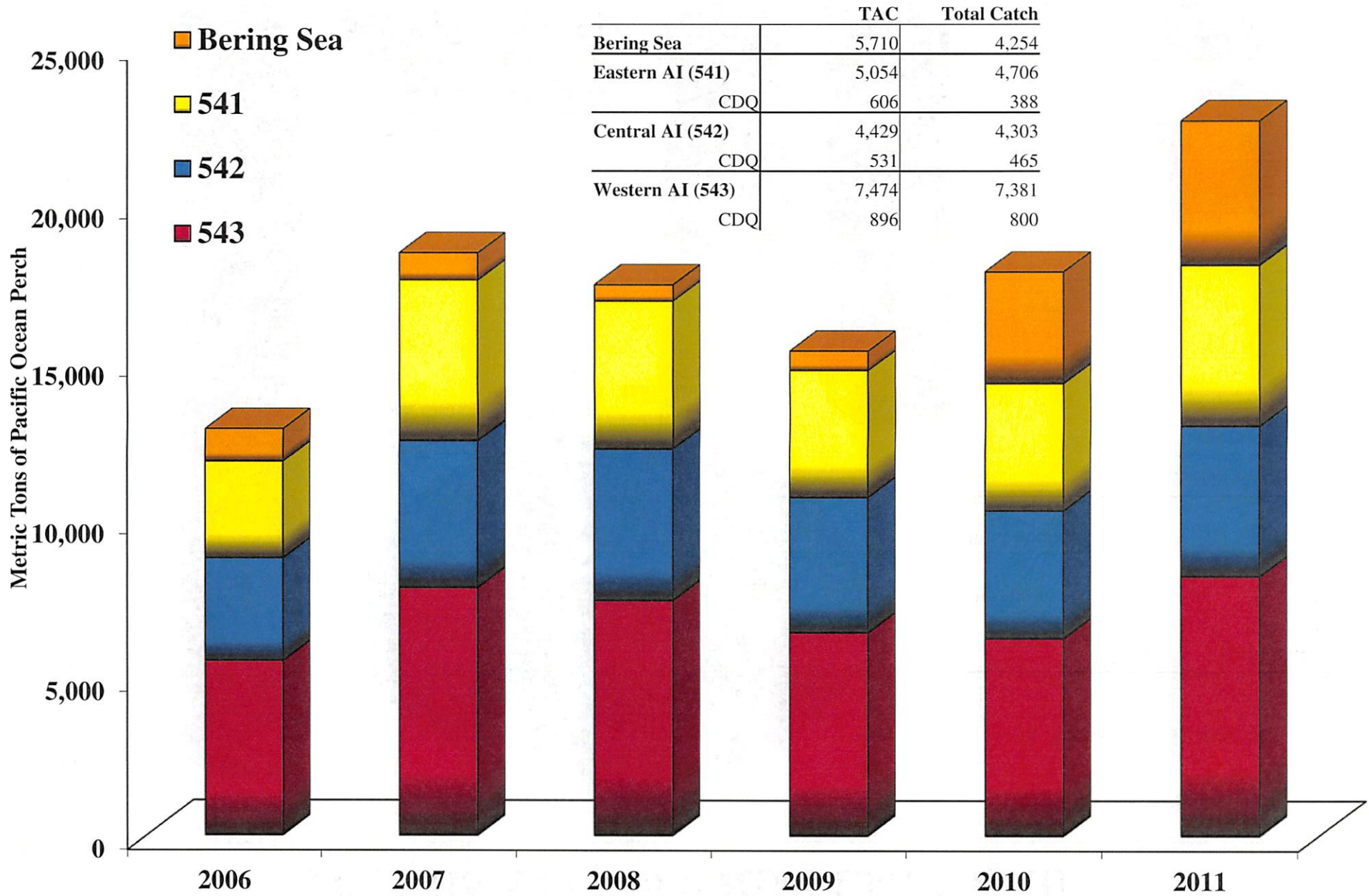
2011 Non-Trawl Fishery Closures in the BSAI

Hook-and-Line	Open	Closed	Reason
Pacific Cod			
Catcher processor	Jan 1		No closure
Catcher vessels < 60 ft	Jan 1	Mar 8	TAC
	Apr 30		No closure
Catcher vessels >= 60 ft	Jan 1		No closure
<hr/>			
Greenland Turbot (Bering Sea)	May 1	Open	
<hr/>			
Pot	Open	Closed	Reason
Pacific Cod			
Catcher processor	Jan 1	Jan 24	TAC
	Sep 1	Oct 23	TAC
Catcher vessel < 60 ft	Jan 1	Mar 8	TAC
	Apr 30	Oct 24	Octopus OFL
Catcher vessel >= 60 ft	Jan 1	Jan 21	TAC
	1-Sep	Oct 24	Octopus OFL

2011 Atka Mackerel Catch by Week and Area

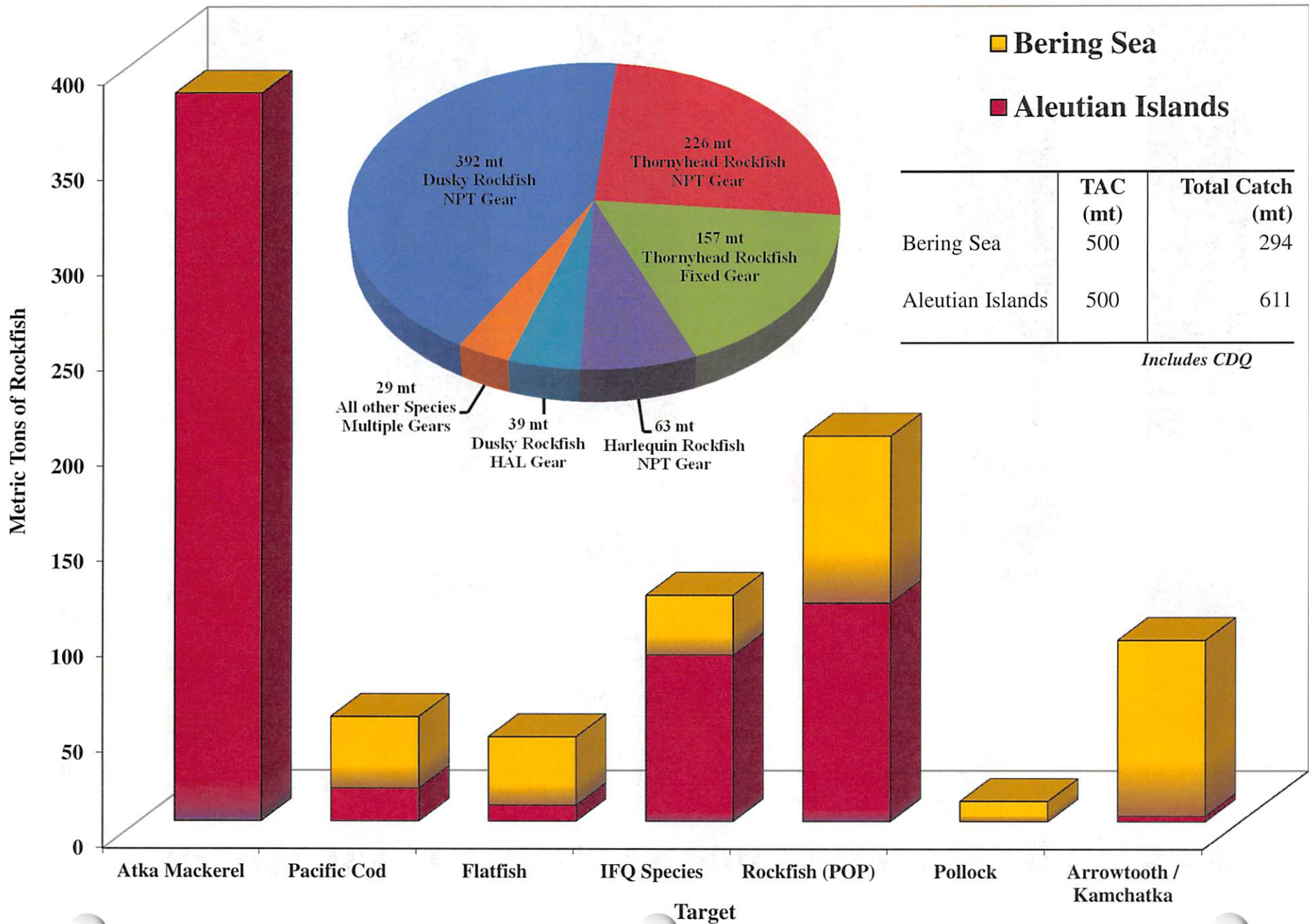


2006-2011 BSAI Pacific Ocean Perch Catch by Area



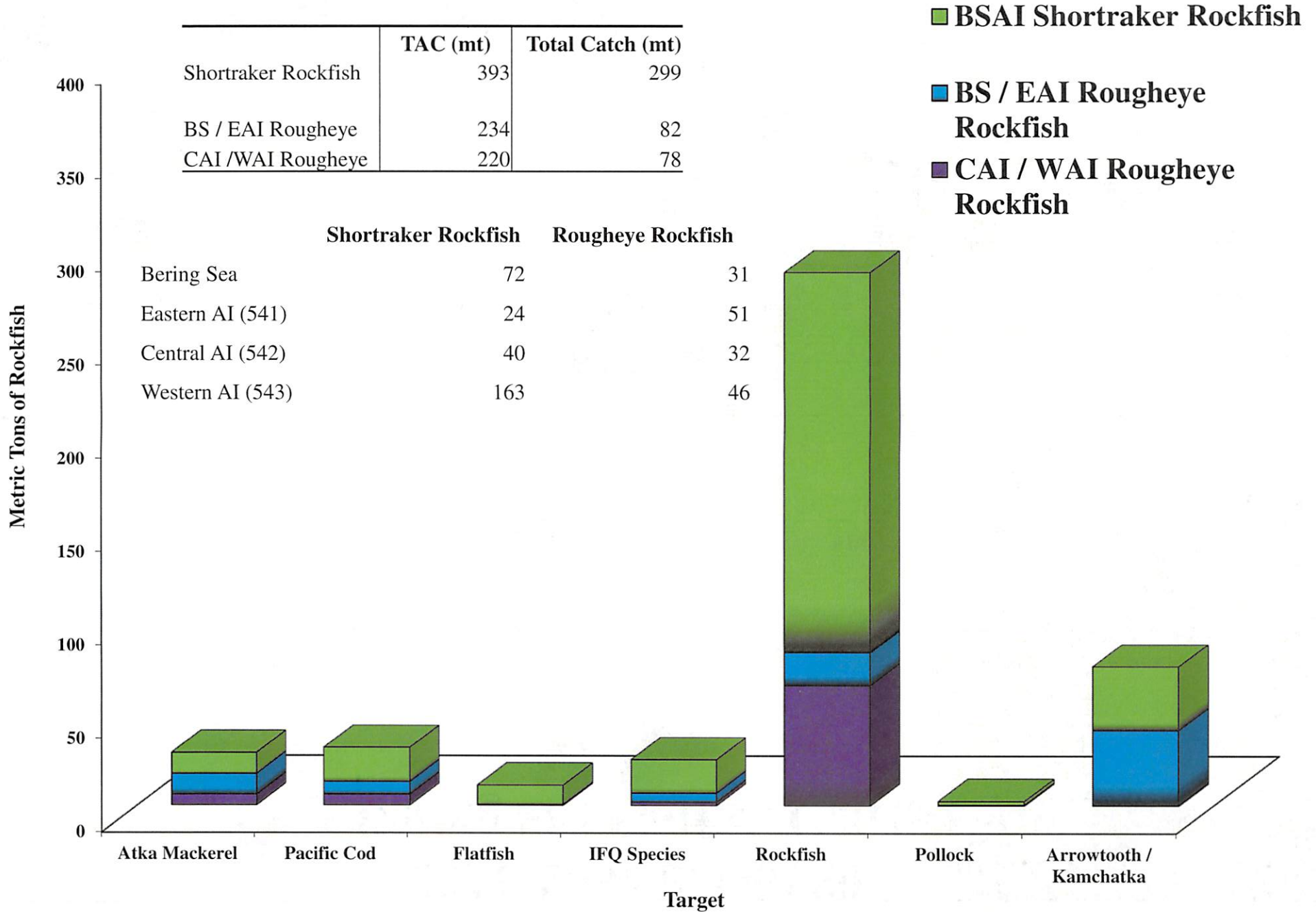
	TAC	Total Catch
Bering Sea	5,710	4,254
Eastern AI (541)	5,054	4,706
CDQ	606	388
Central AI (542)	4,429	4,303
CDQ	531	465
Western AI (543)	7,474	7,381
CDQ	896	800

2011 BSAI Other Rockfish Catch



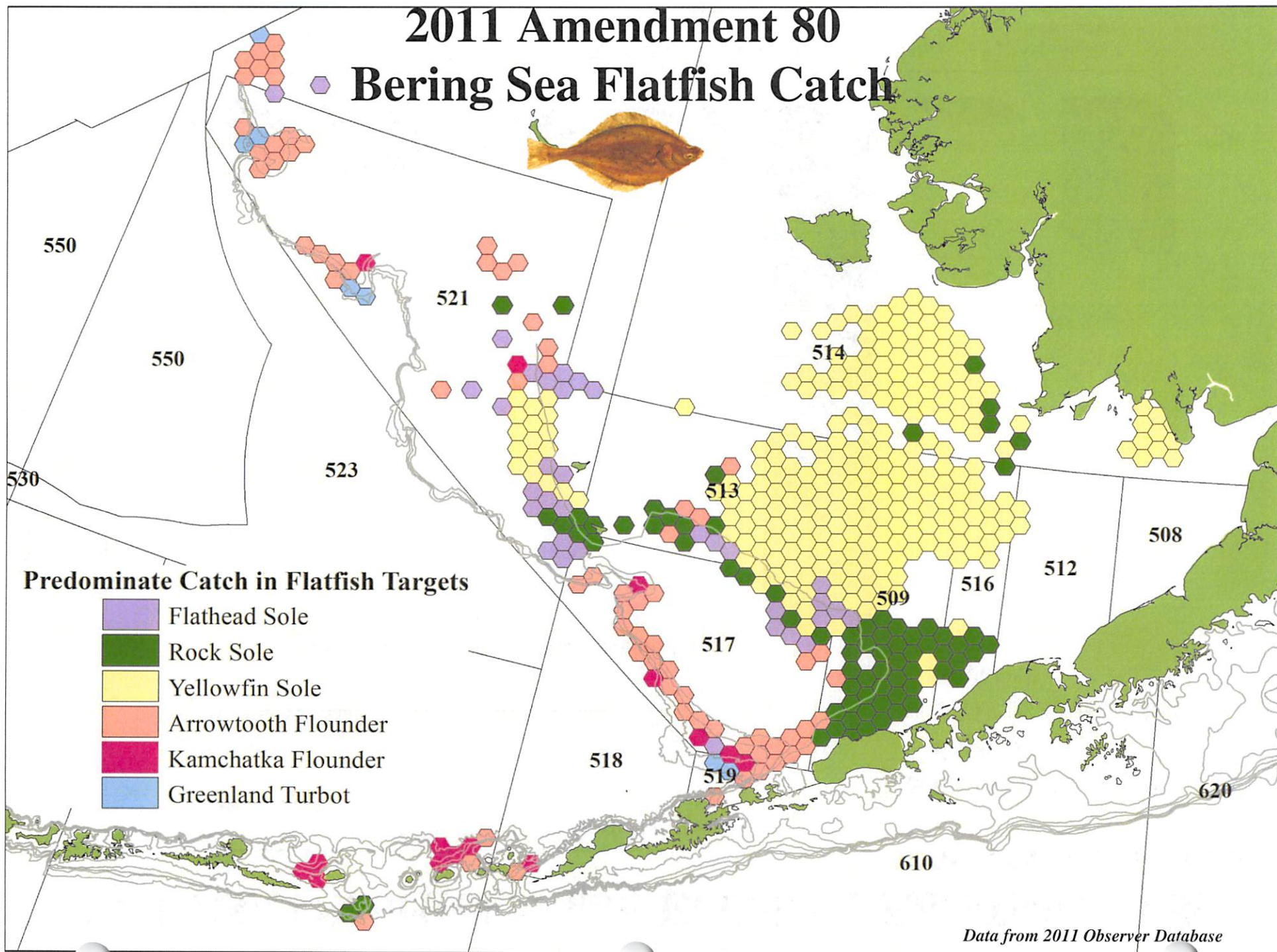
2011 BSAI Shortraker and Rougheye Rockfish Catch

	TAC (mt)	Total Catch (mt)
Shortraker Rockfish	393	299
BS / EAI Rougheye	234	82
CAI / WAI Rougheye	220	78



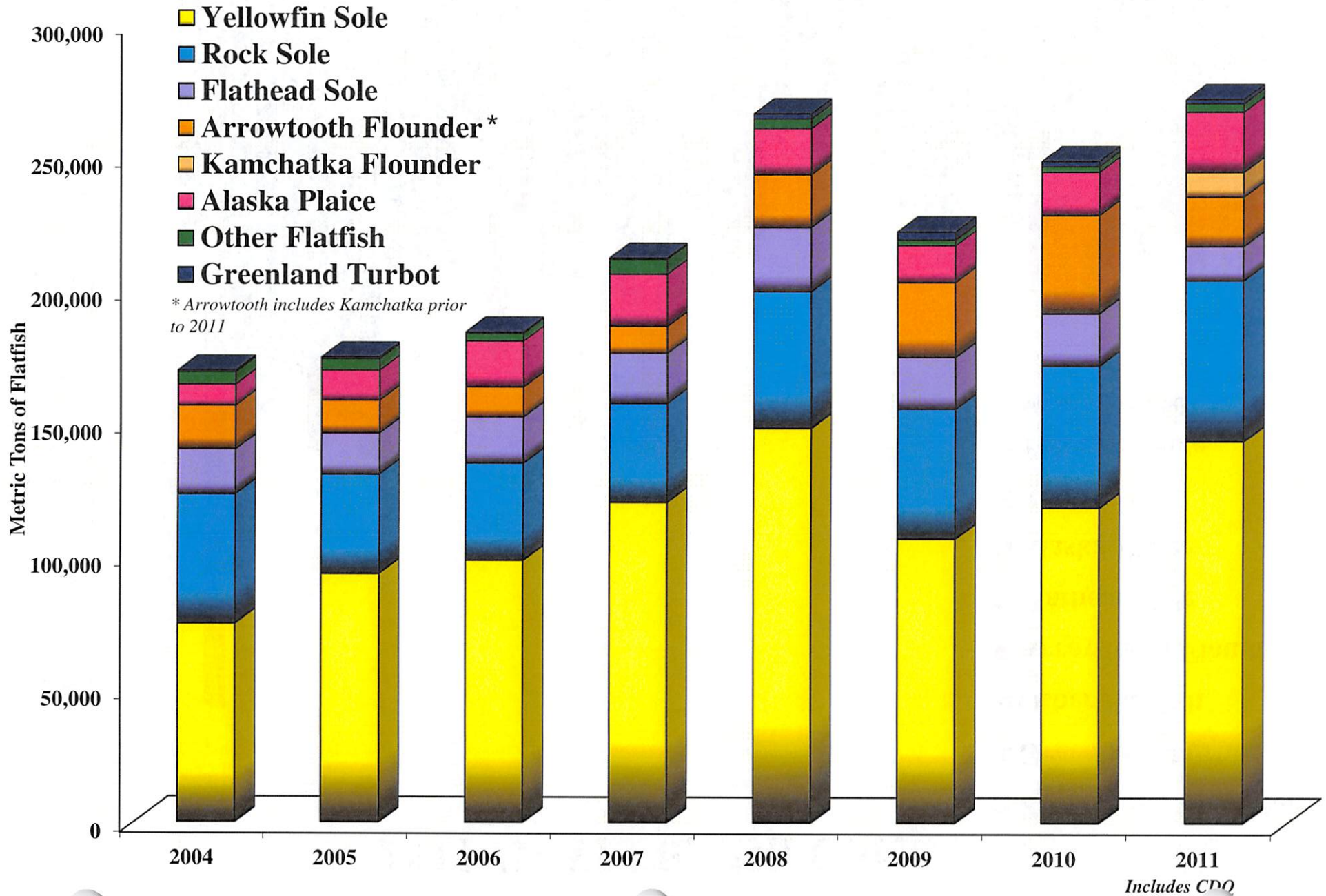
2011 Amendment 80

Bering Sea Flatfish Catch



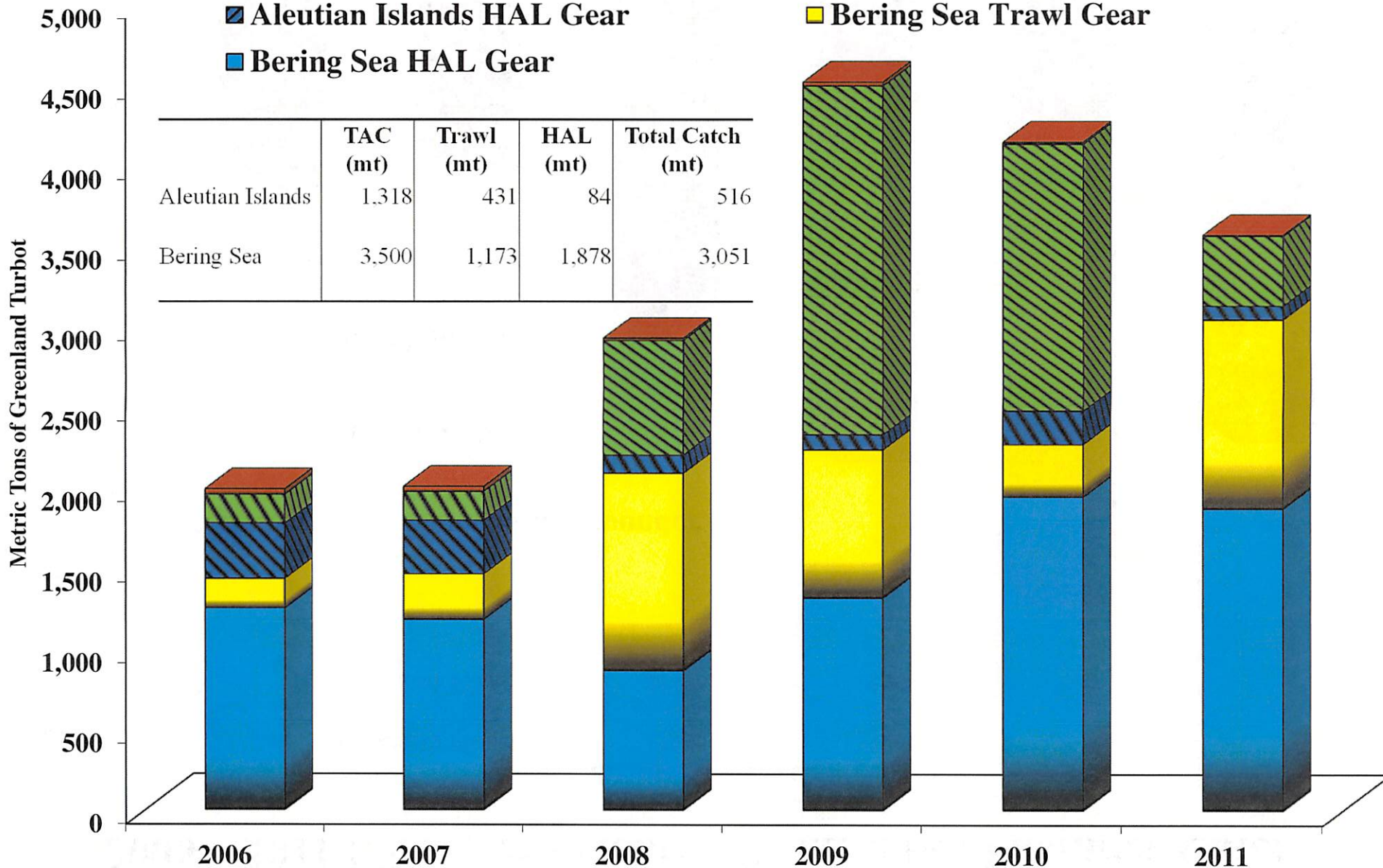
Data from 2011 Observer Database

2004-2011 BSAI Trawl Flatfish Catch by Species



2006 – 2011 BSAI Greenland Turbot Catch

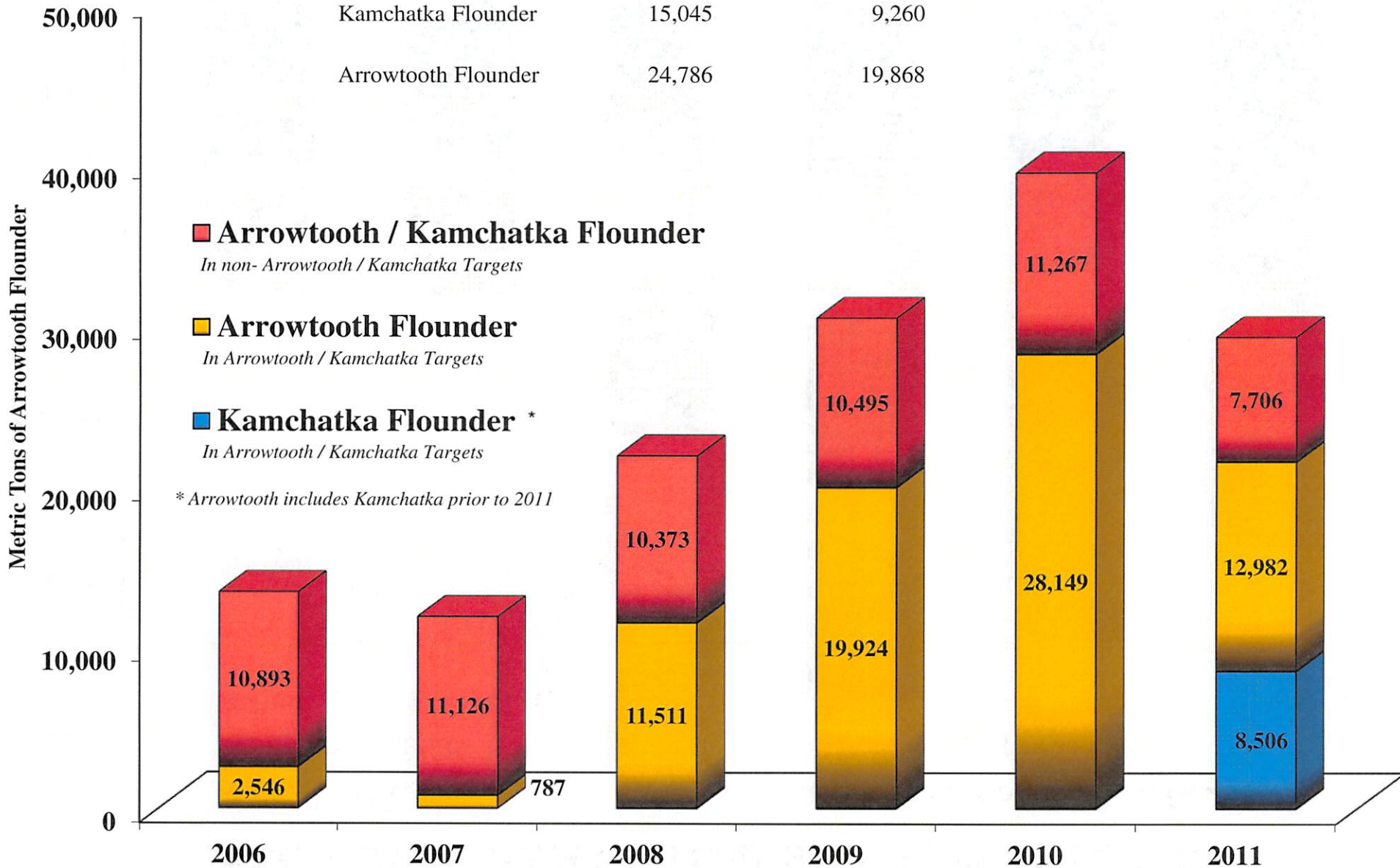
- BSAI Pot Gear
- ▨ Aleutian Islands HAL Gear
- Aleutian Islands Trawl Gear
- Bering Sea HAL Gear
- Bering Sea Trawl Gear



Includes CDQ

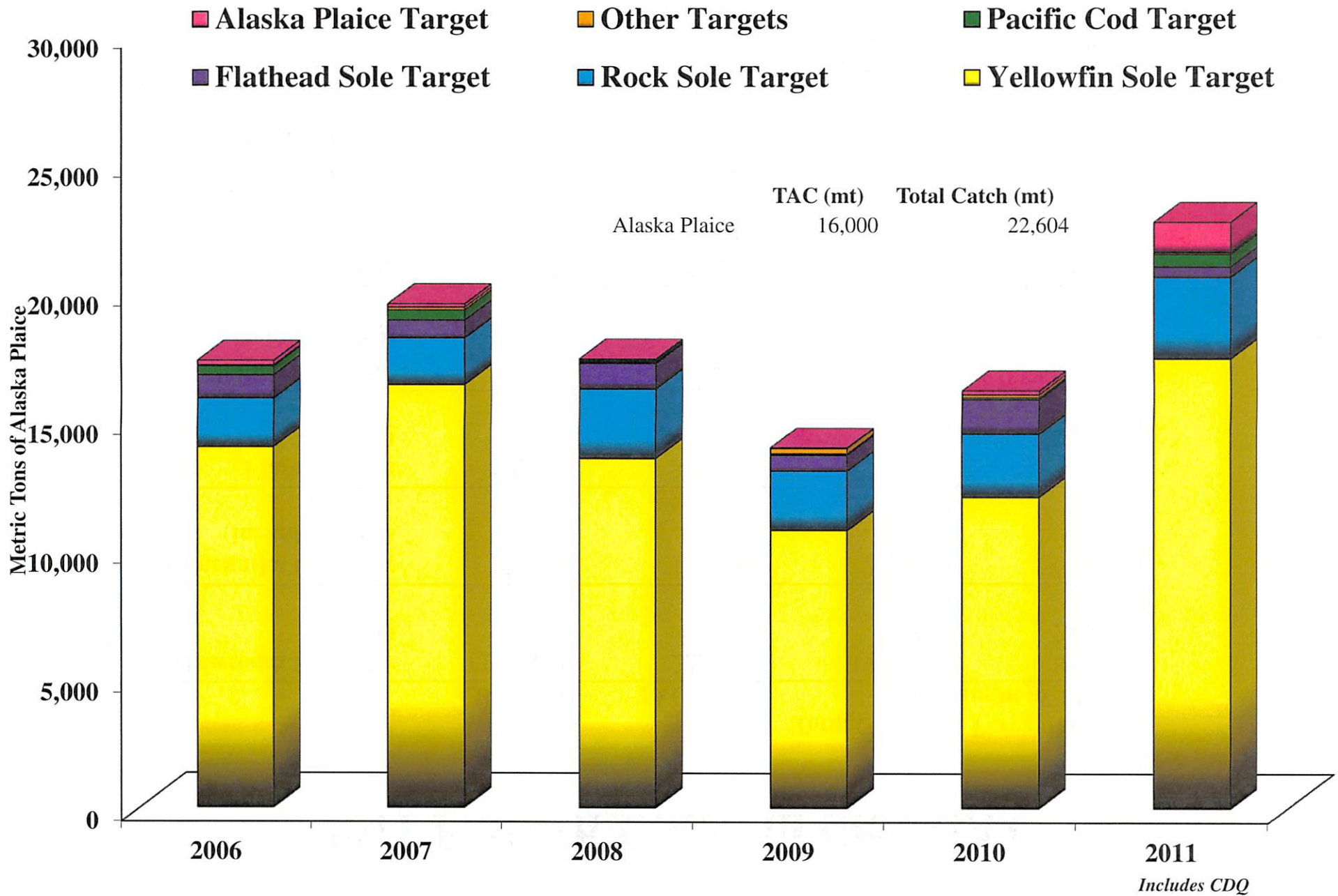
2006 – 2011 BSAI Arrowtooth / Kamchatka Flounder Catch

2011	TAC (mt)	Total Catch (mt)
Kamchatka Flounder	15,045	9,260
Arrowtooth Flounder	24,786	19,868



Includes CDO

2006 – 2011 BSAI Alaska Plaice Catch



2011 Flatfish Catch in the BSAI

	ABC (mt)	TAC (mt)	Total Catch (mt)	Percentage Caught of TAC
Arrowtooth Flounder	153,000	22,015	19,120	87%
CDQ		2,771	748	27%
Kamchatka Flounder (includes CDQ)	17,700	15,045	9260	62%
Flathead Sole	69,300	37,102	12,553	34%
CDQ		4,446	644	14%
"Other Flatfish" (includes CDQ)	14,500	3,000	3,146	105%
Rock Sole	224,000	75,905	57,063	75%
CDQ		9,095	3,278	36%
Alaska Plaice (includes CDQ)	65,100	16,000	22,604	141%
Yellowfin Sole	239,000	175,028	128,154	73%
CDQ		20,972	15,044	72%

Groundfish Retention by the Amendment 80 Fleet

2010

	Less than 80 %	Between 80 % and 85 %	Greater than 85 %
Number of Vessels	5	9	6
Total catch	60,091	159,008	141,765
Retained Catch	46,969	130,660	125,927
Discarded catch	13,122	28,348	15,838
Percent Retained	78.2 %	82.2 %	88.8 %
<i>Percentage of total catch</i>	17 %	44 %	39 %

TOTAL CATCH	RETAINED CATCH	DISCARDED CATCH	PERCENT RETAINED
360,864	303,556	57,308	84.1 %

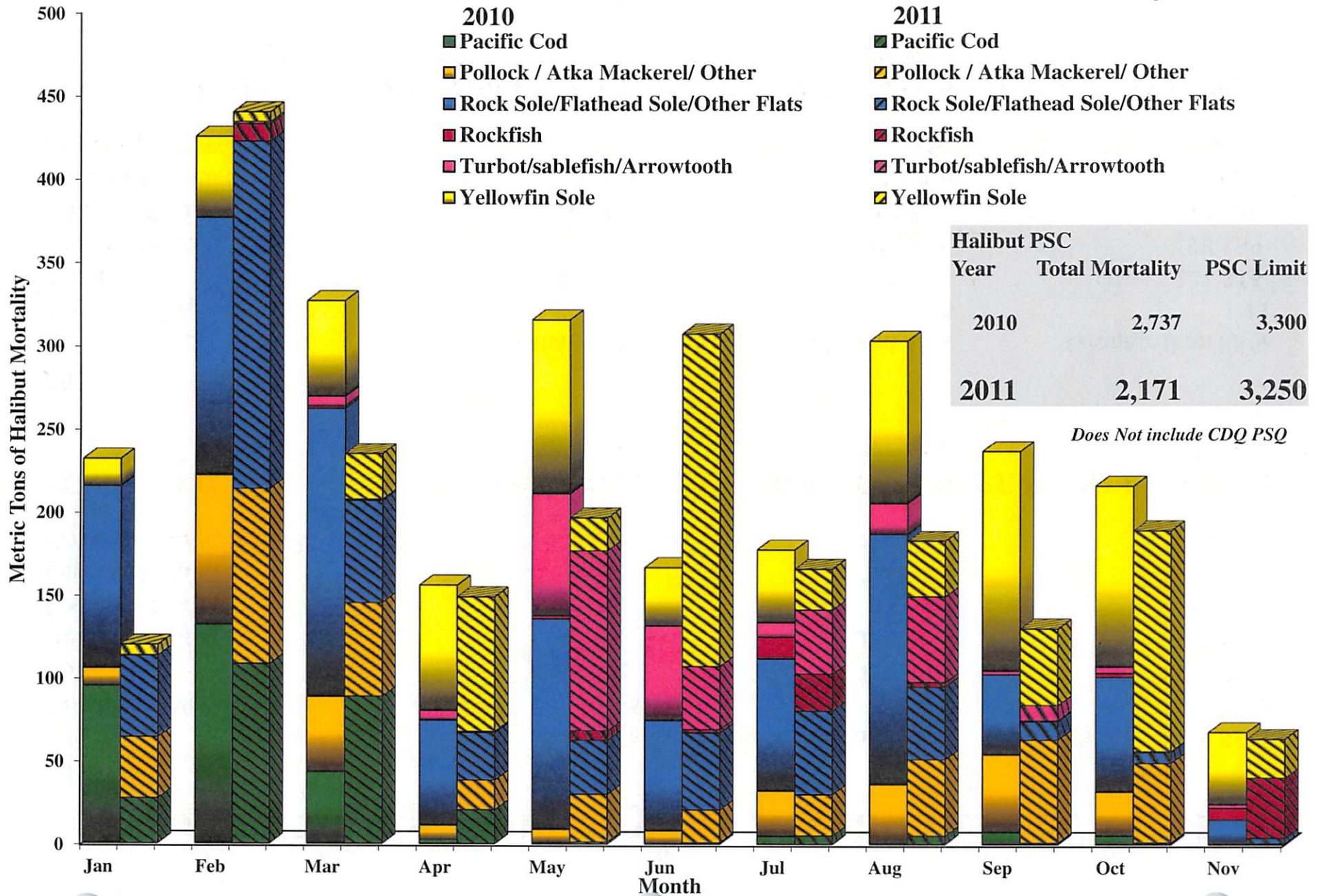
2011

	Less than 80 %	Between 80 % and 85 %	Greater than 85 %
Number of Vessels	3	6	11
Total catch	18,895	111,739	221,315
Retained Catch	14,015	92,508	198,159
Discarded catch	4,880	19,231	23,156
Percent Retained	74.2 %	82.8 %	89.5 %
<i>Percentage of total catch</i>	5 %	32 %	63 %

TOTAL CATCH	RETAINED CATCH	DISCARDED CATCH	PERCENT RETAINED
351,949	304,682	47,267	86.6 %

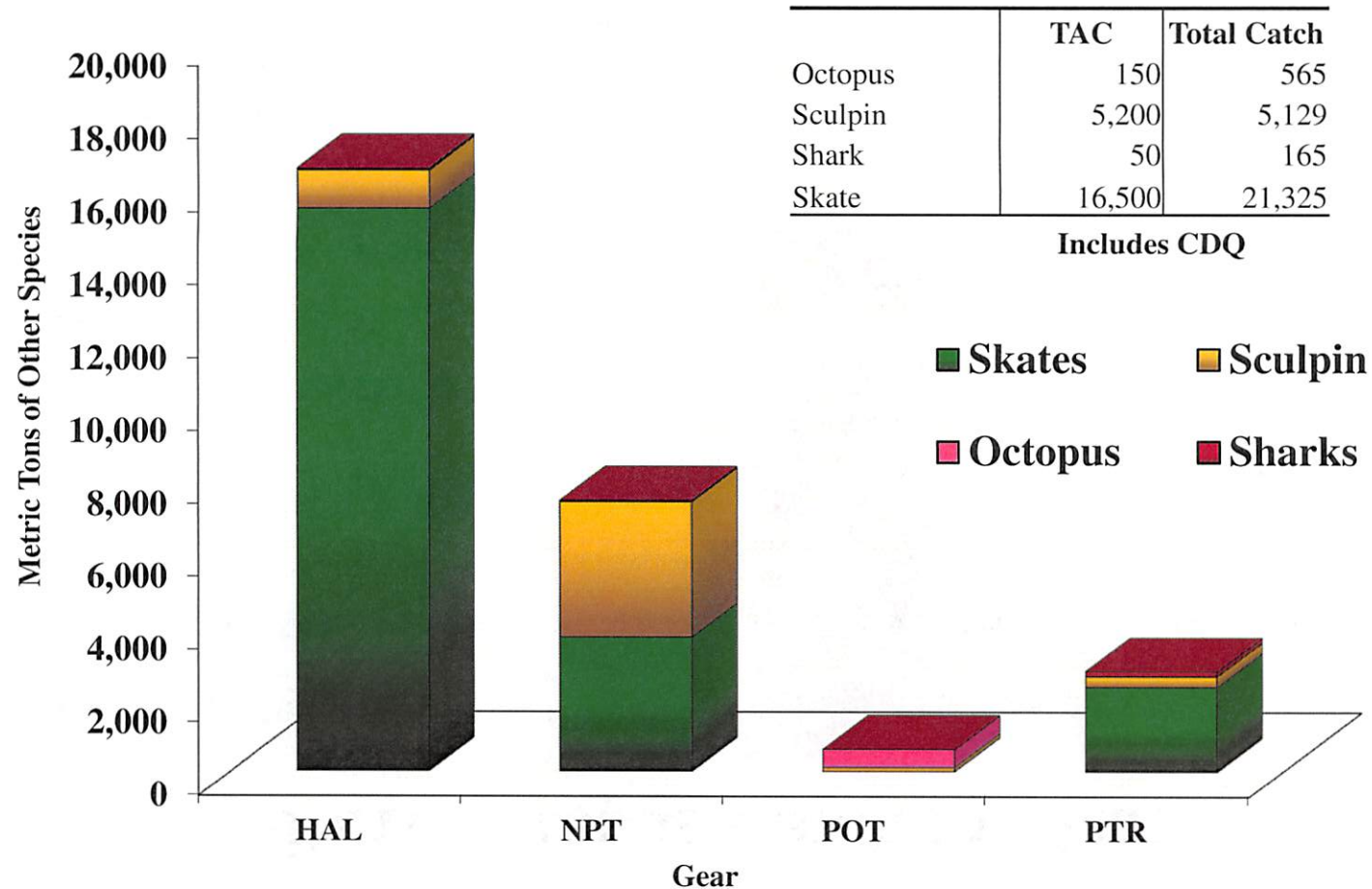
*Total catch is total observed groundfish from Non-AFA Trawl Catcher processors
Retained Catch is the round weight primary products reported on Weekly/daily production reports
All weights in Metric Tons*

2010/2011 BSAI Trawl Halibut Mortality



2011 BSAI Other Species by Gear

Gear	Octopus	Other Shark	Skates	Salmon Shark	Sculpin	Sleeper Shark	Spiny Dogfish
HAL	37	<1	15,366		1,024	18	6
NPT	32		3,647	2	3,703	7	<1
POT	487		<1		114	<1	<1
PTR	9	2	2,312	110	287	18	<1
TOTAL	565	3	21,325	112	5,129	44	7



BSAI Octopus Catch by Gear

Gear	HAL	NPT	NPT	POT	PTR	Total	% Pot Gear
Target	Pacific cod	Pacific cod	Flatfish Species	Pacific cod	Pollock		
2007	21	14	11	131	4	181	72%
2008	17	15	13	163	4	213	77%
2009	14	2	10	41	5	72	57%
2010	31	5	14	126	1	178	71%
2011	37	19	13	487	9	563	87%

Inseason Actions on Octopus

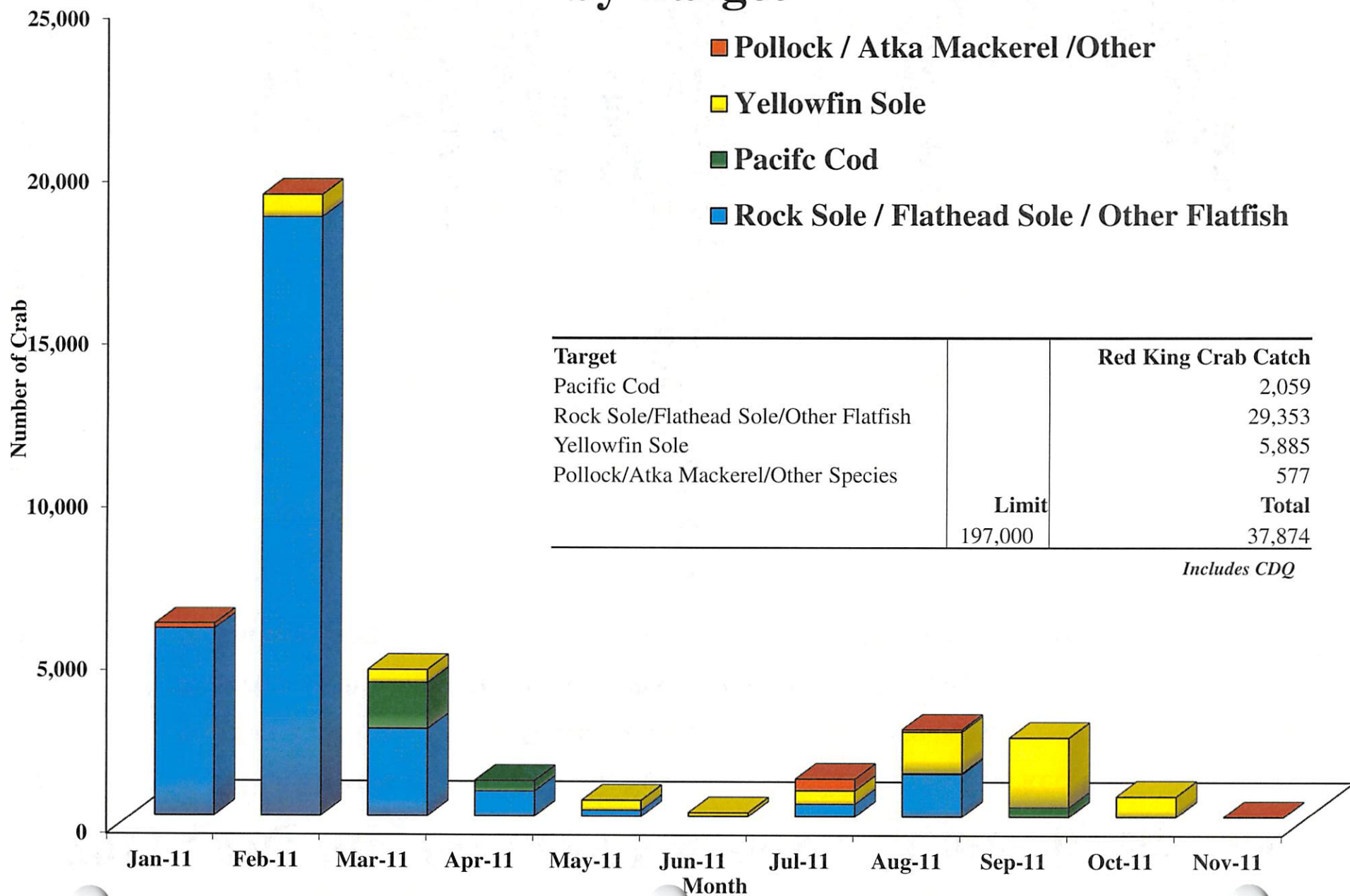
NMFS prohibited directed fishing for Octopus on January 13, 2011 (Information Bulletin 11-02)

NMFS prohibited retention of Octopus on September 1, 2011 (Information Bulletin 11-63)

NMFS prohibited directed fishing for Pacific Cod by vessels using pot gear on October 24, 2011 (Information Bulletin 11-81)

2011	HAL	NPT	PTR	POT
Octopus Catch (mt)	37	32	9	487
Groundfish Catch (mt)	131,596	426,342	1,199,038	29,390
Rate	0.028 %	0.008 %	0.001 %	1.657 %

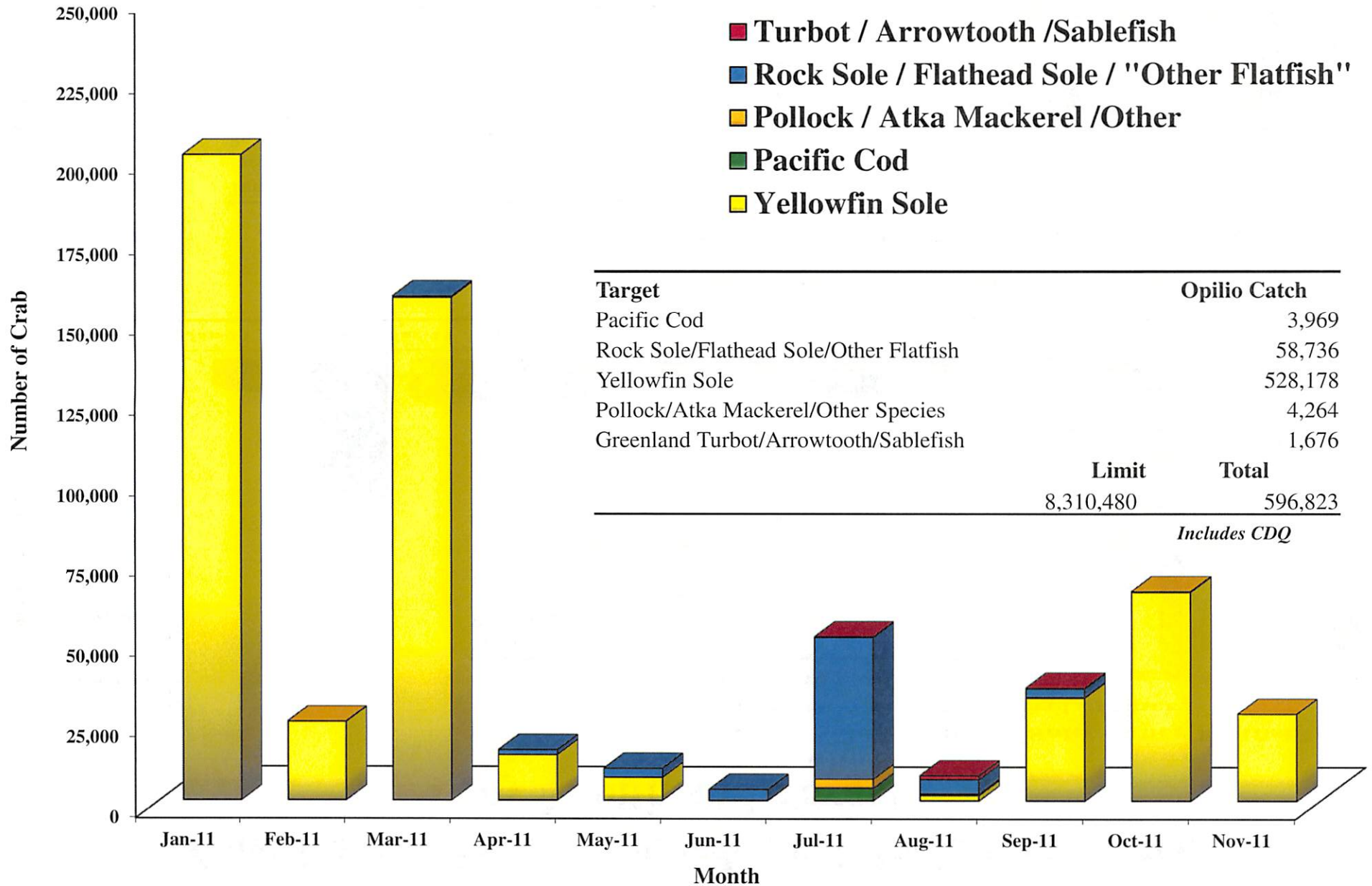
2011 Zone 1 Trawl Red King Crab Incidental Catch by Target



Target	Red King Crab Catch
Pacific Cod	2,059
Rock Sole/Flathead Sole/Other Flatfish	29,353
Yellowfin Sole	5,885
Pollock/Atka Mackerel/Other Species	577
Limit	Total
197,000	37,874

Includes CDQ

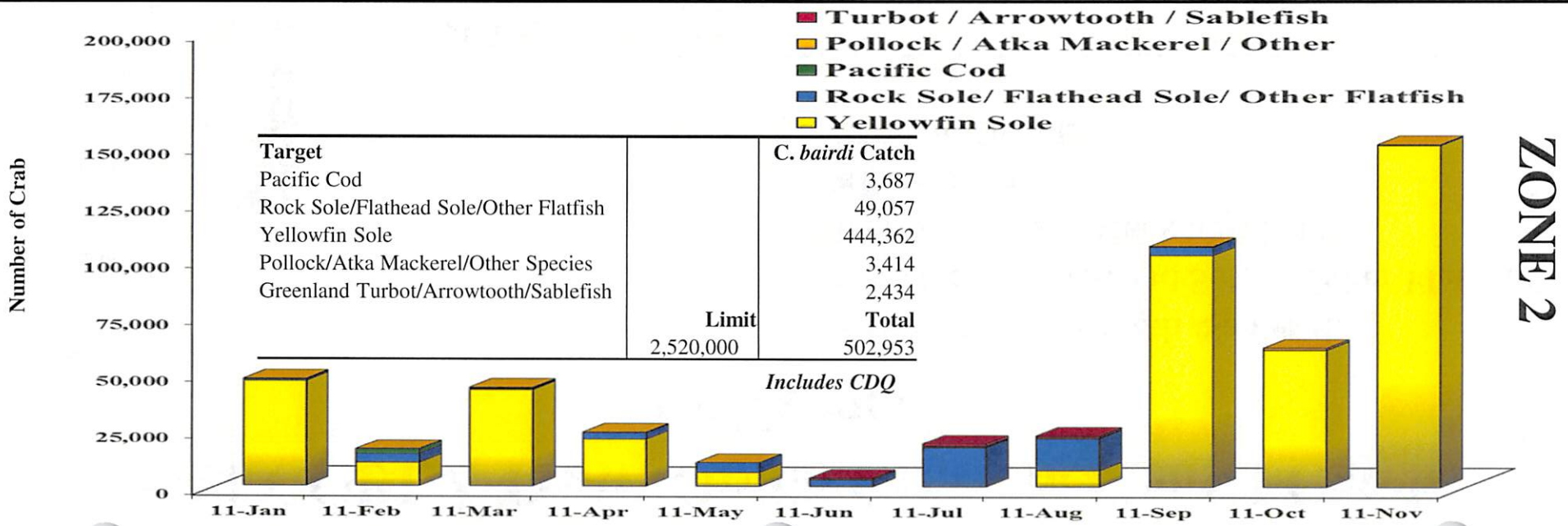
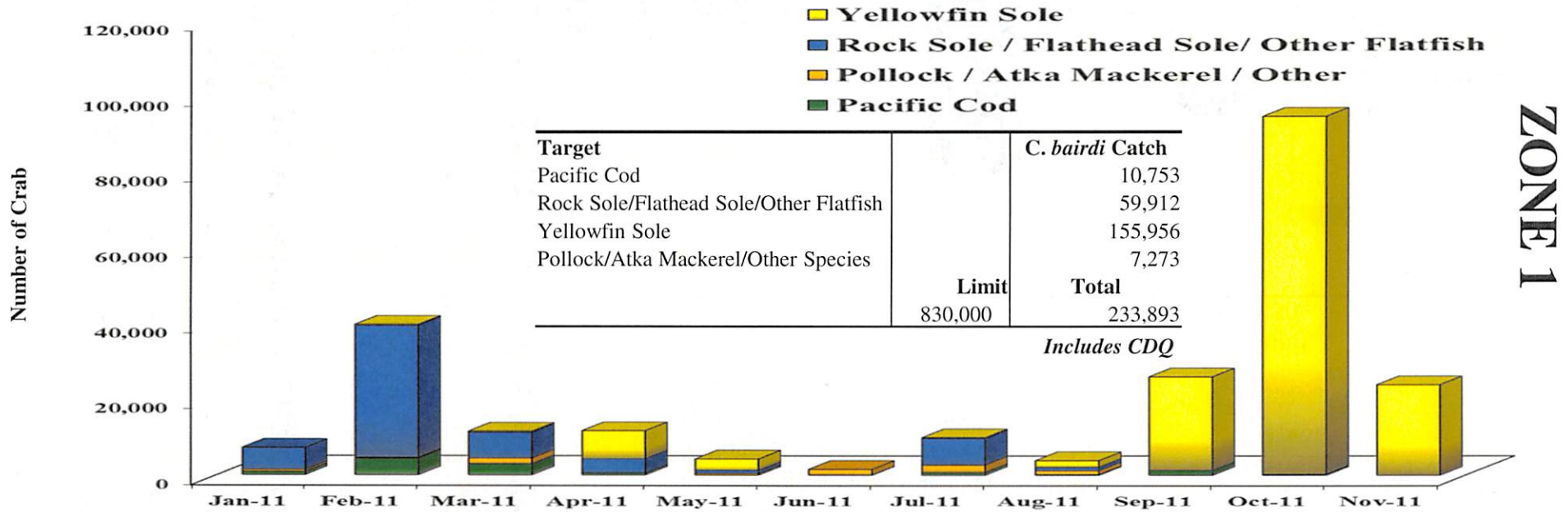
2011 COBLZ Trawl Opilio Crab Incidental Catch by Target



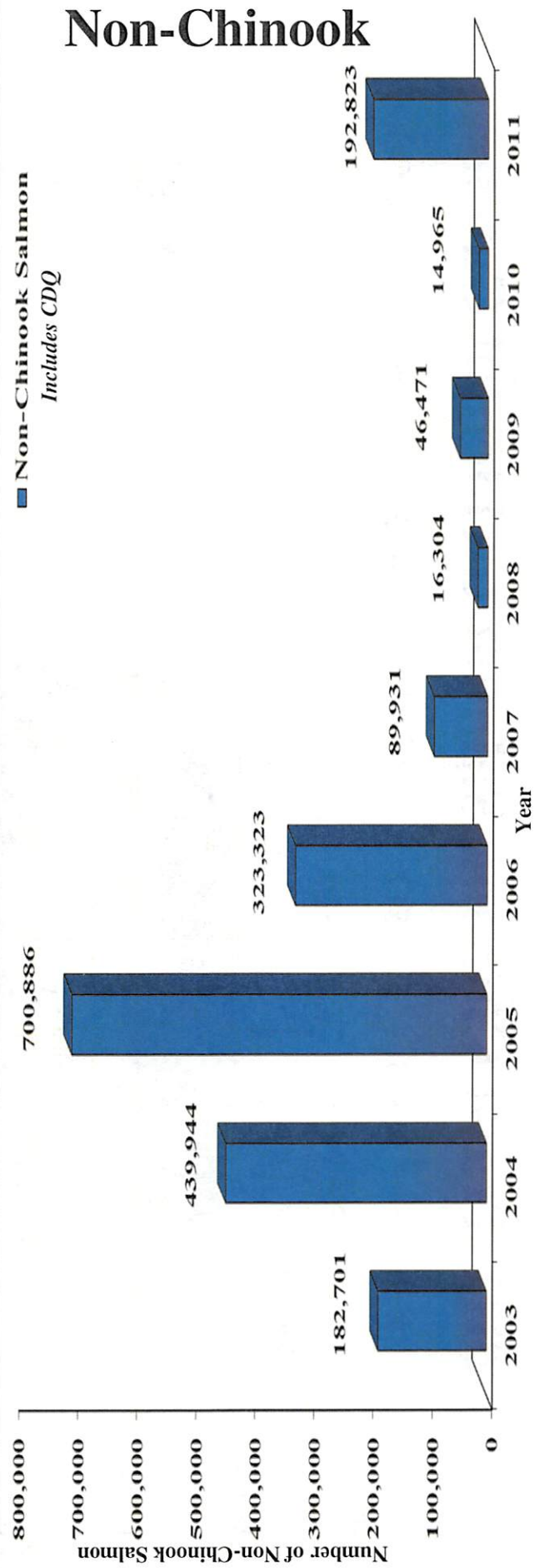
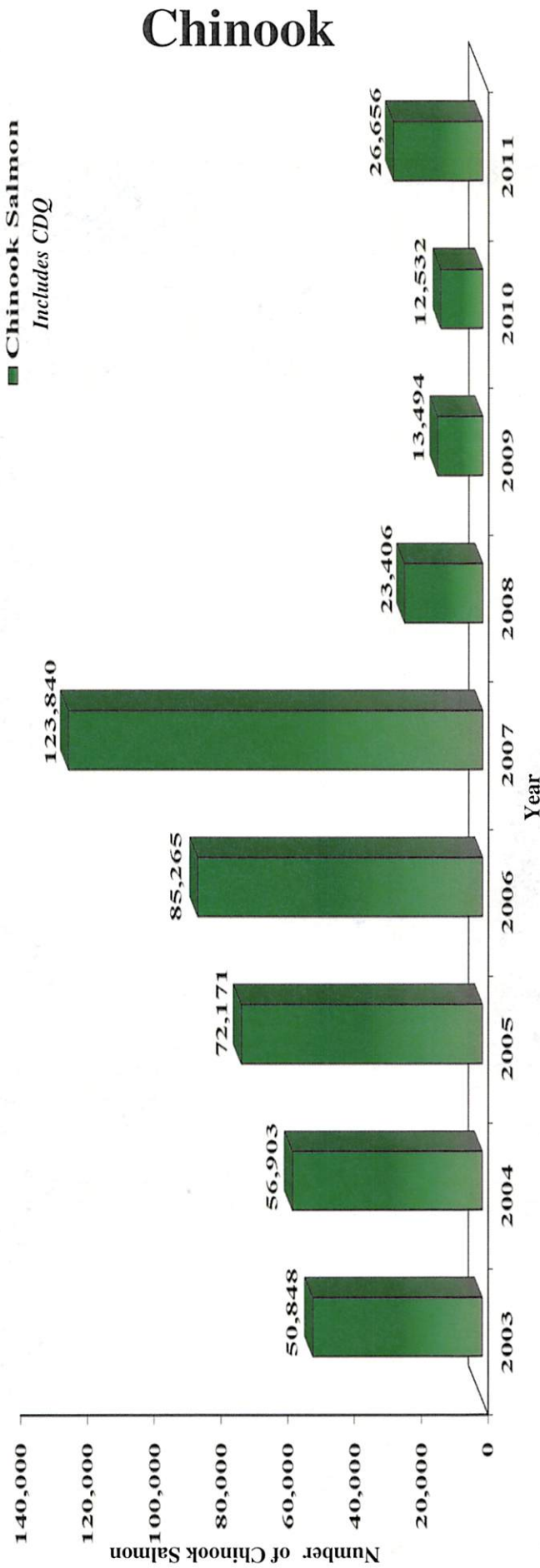
Target	Opilio Catch
Pacific Cod	3,969
Rock Sole/Flathead Sole/Other Flatfish	58,736
Yellowfin Sole	528,178
Pollock/Atka Mackerel/Other Species	4,264
Greenland Turbot/Arrowtooth/Sablefish	1,676
Limit	Total
8,310,480	596,823

Includes CDQ

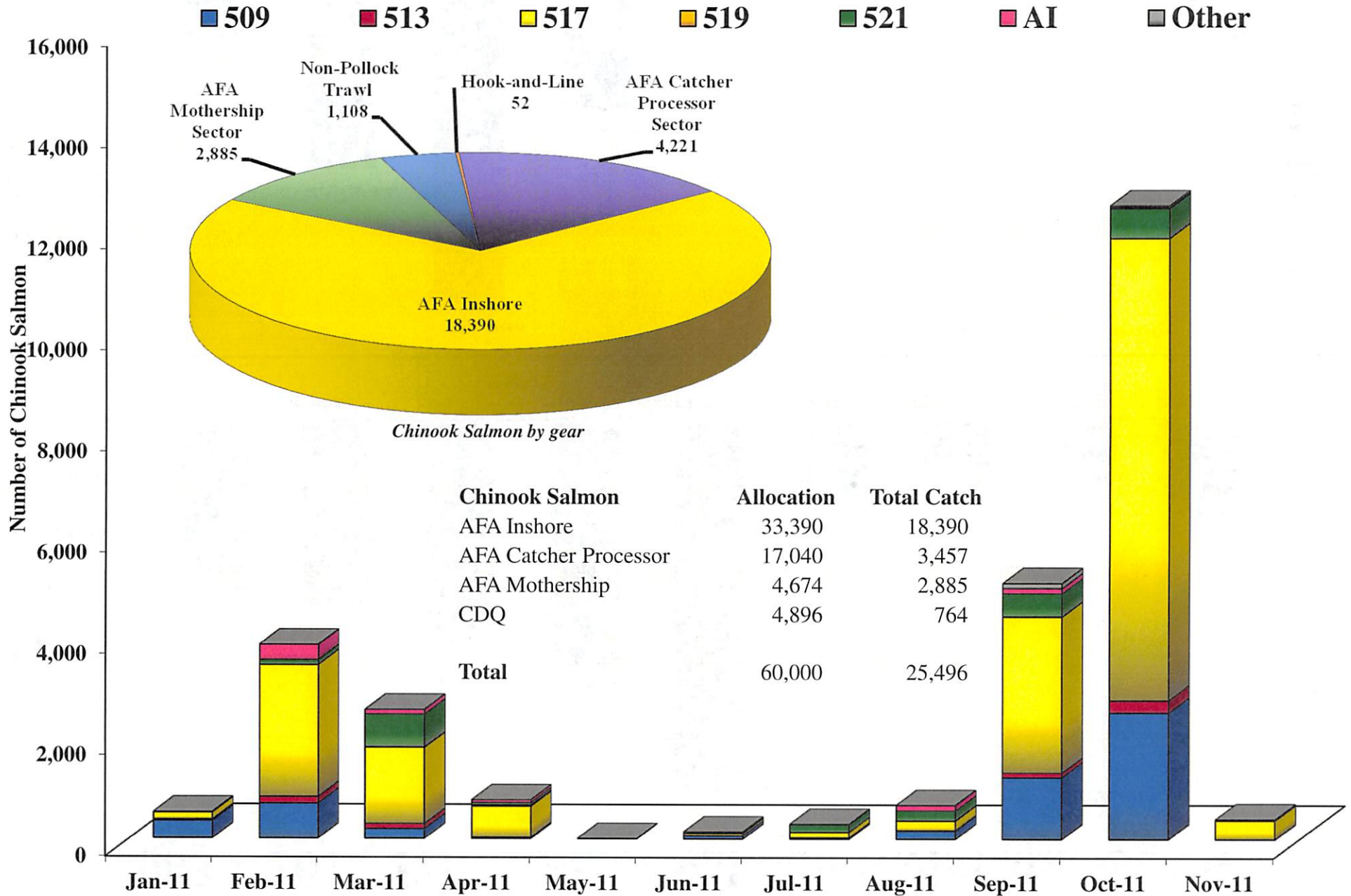
Zone 1 and 2 Trawl *C. bairdi* Crab Incidental Catch by Month and Target



2003 – 2011 Trawl BSAI Salmon Incidental Catch

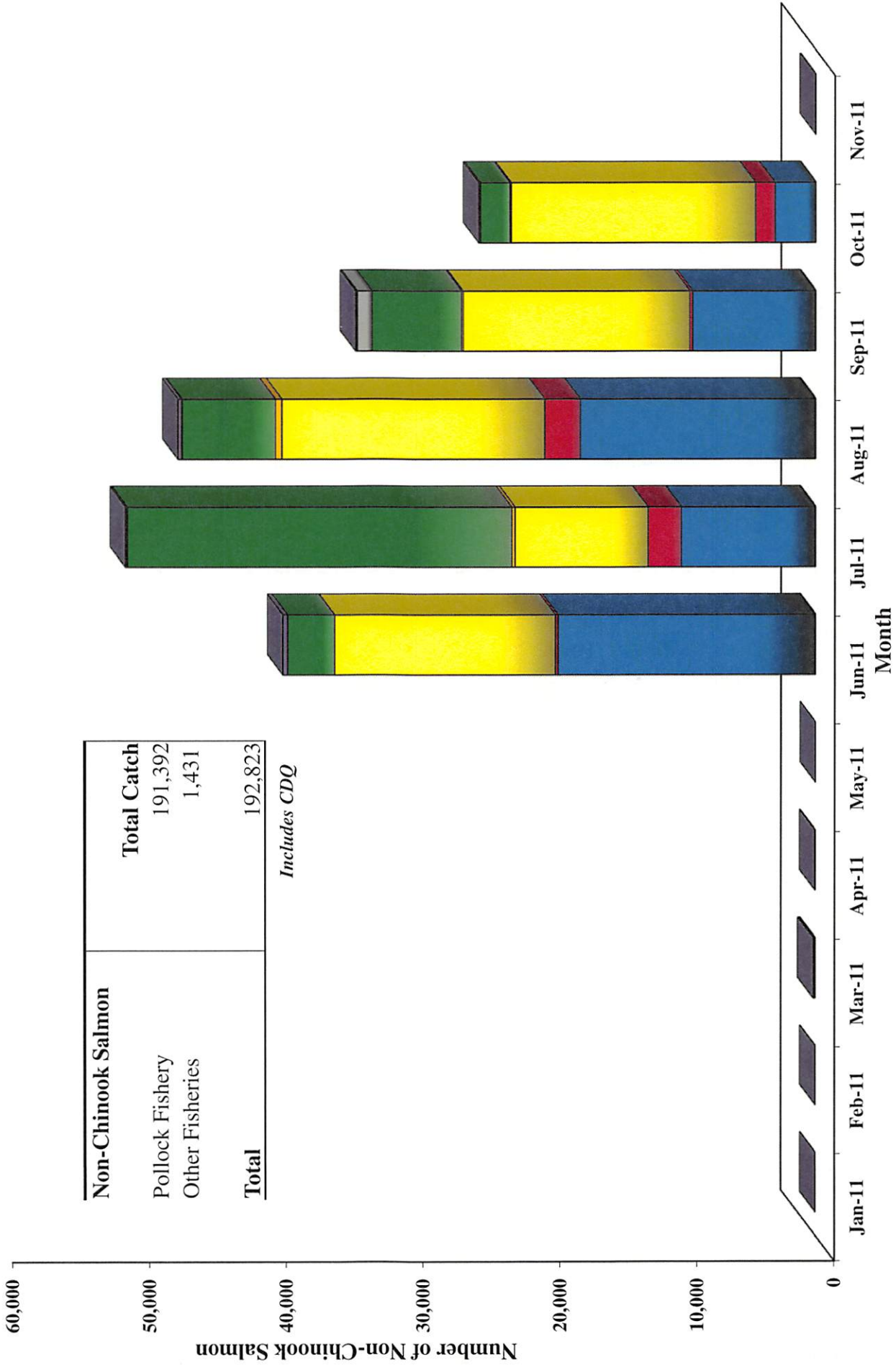


2011 Trawl Chinook Salmon Incidental Catch



2011 Trawl Non-Chinook Salmon Incidental Catch

■ 509 ■ 513 ■ 517 ■ 519 ■ 521 ■ 524 ■ AI ■ Other



Non-Chinook Salmon	Total Catch
Pollock Fishery	191,392
Other Fisheries	1,431
Total	192,823

Includes CDQ

Alaska Region
National Marine Fisheries Service
Gulf of Alaska
Inseason Management Report
December 2011



Catch data are through November 12, 2011

Management reports can be found at:
<http://alaskafisheries.noaa.gov/sustainablefisheries/inseason/default.htm>

GULF OF ALASKA REPORTING AREAS

NPT = Non Pelagic Trawl

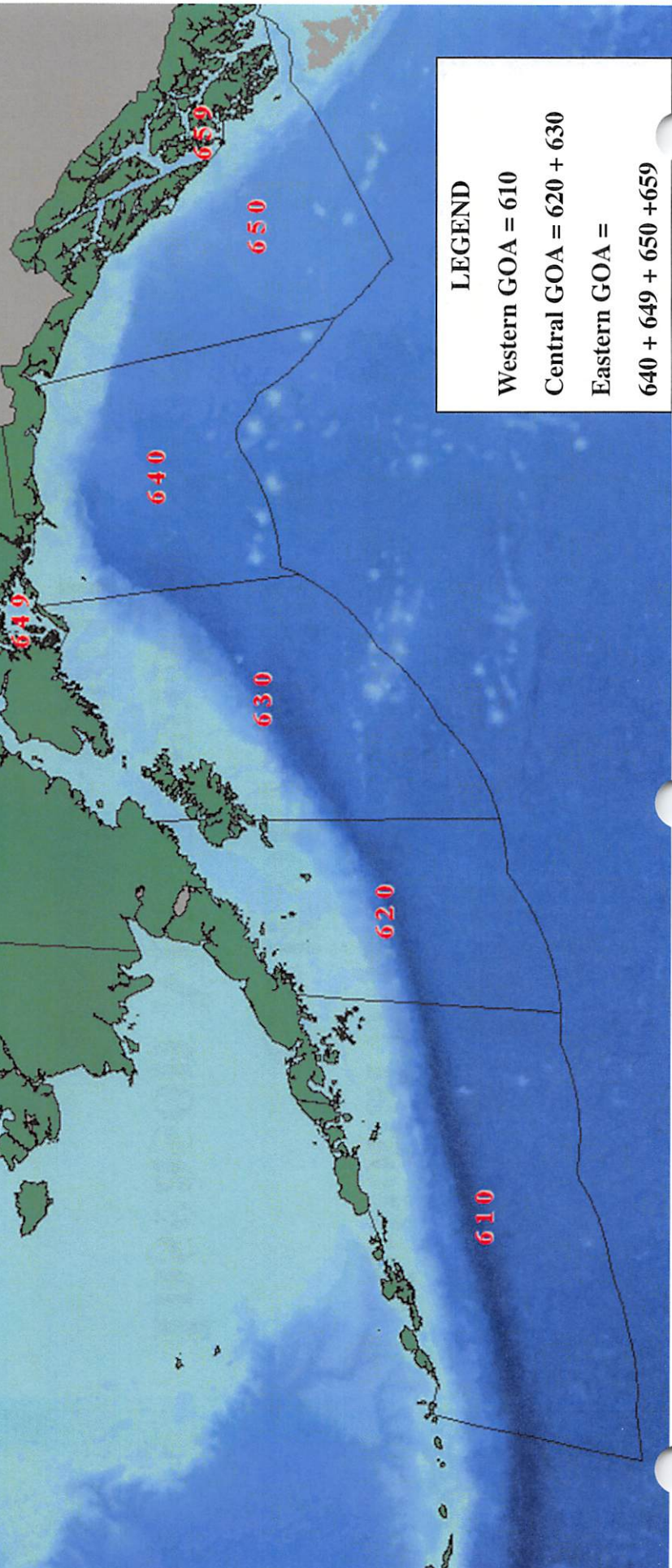
PTR = Pelagic Trawl

HAL = Hook and Line / Longline

CP = Catcher Processor

CV = Catcher Vessel

ALASKA



LEGEND

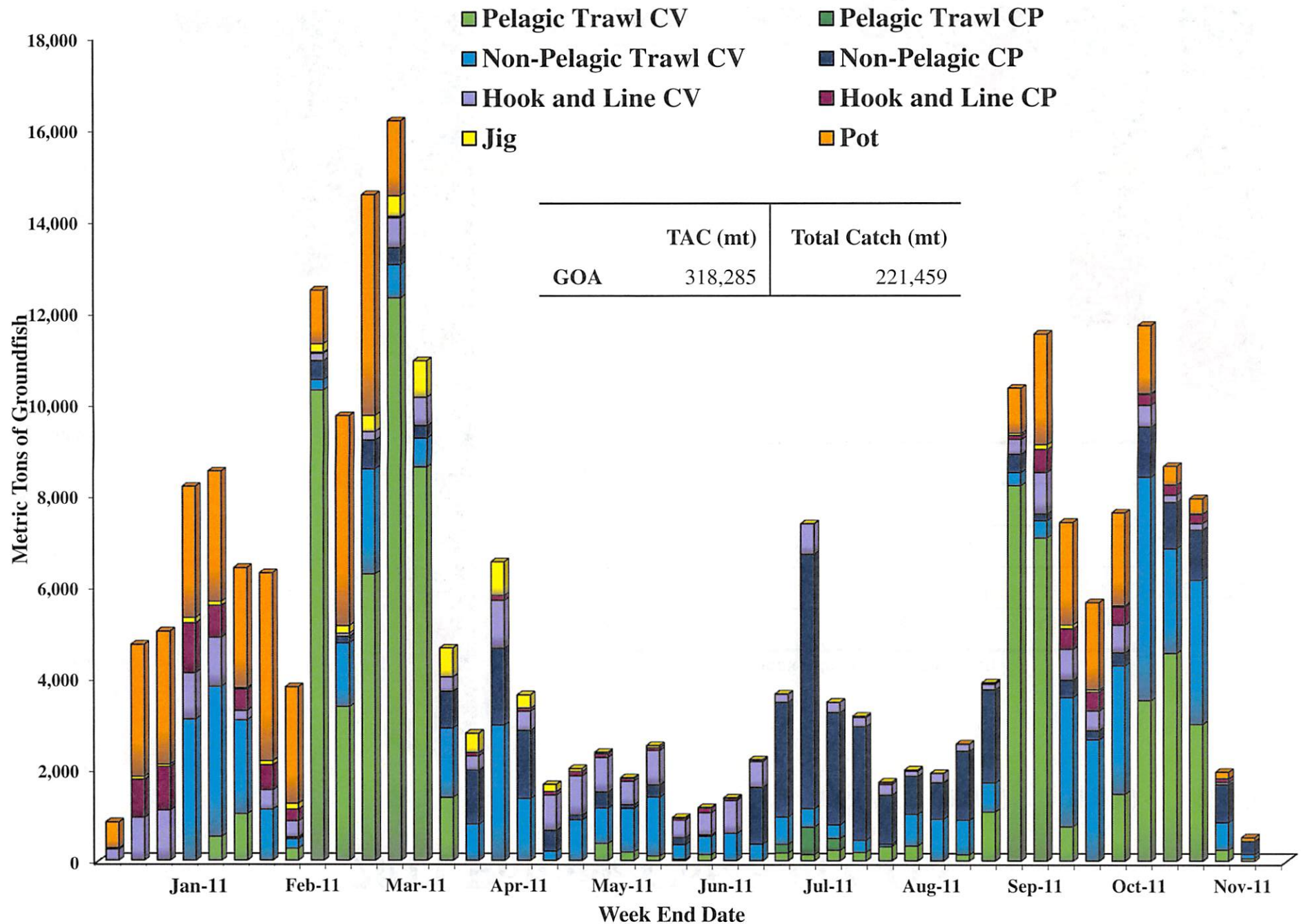
Western GOA = 610

Central GOA = 620 + 630

Eastern GOA =

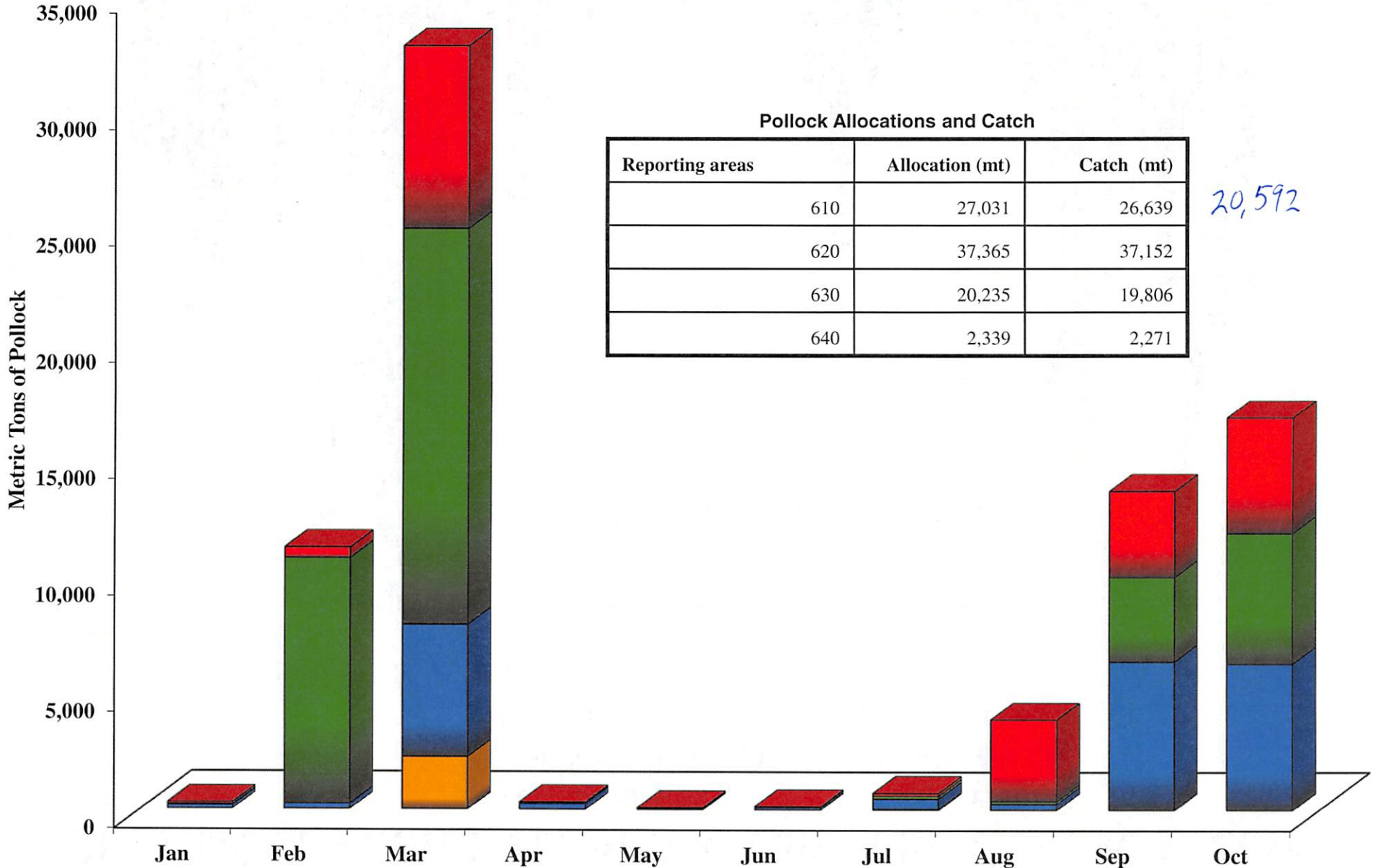
640 + 649 + 650 +659

2011 GOA Total Groundfish Catch by Gear & Sector



2011 Pollock Catch in GOA

610 620 630 640



20,592

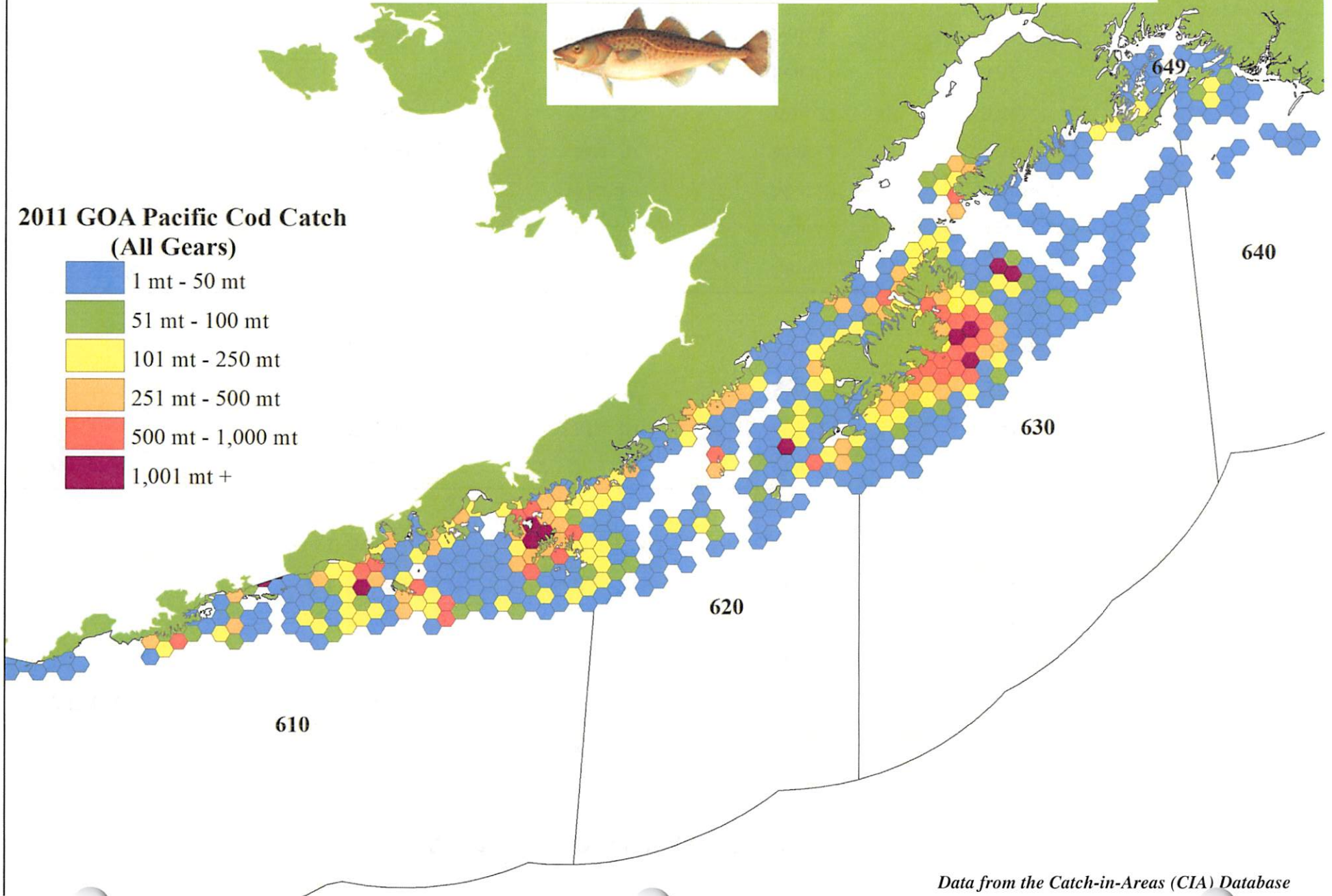
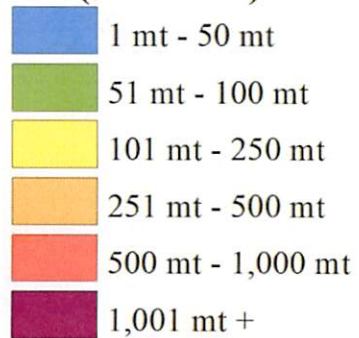
2011 Pollock Closures

		Open	Closed	Reason
610 Pollock	A Season	Jan 20	Jan 23	TAC
		Feb 27	Mar 10	Season end
	B Season	Mar 10	March 28	TAC
	C Season	Aug 25	Sep 17	TAC
	D Season	Oct 1	Nov 1	Season end
<hr/>				
620 Pollock	A Season	Jan 20	Feb 25	TAC
	B Season	Mar 10	Mar 22	TAC
	C Season	Aug 25	Sep 4	TAC
	D Season	Oct 1	Nov 1	Season end
<hr/>				
630 Pollock	A Season	Jan 20	Jan 21	TAC
		Feb 28	Mar 1	TAC
		Mar 7	Mar 10	Season end
	B Season	Mar 10	Mar 12	TAC
	C Season	Aug 25	Aug 27	TAC
		Sep 4	Sep 9	TAC
	D Season	Oct 1	Nov 1	Season end

2011 Gulf of Alaska Pacific Cod Catch

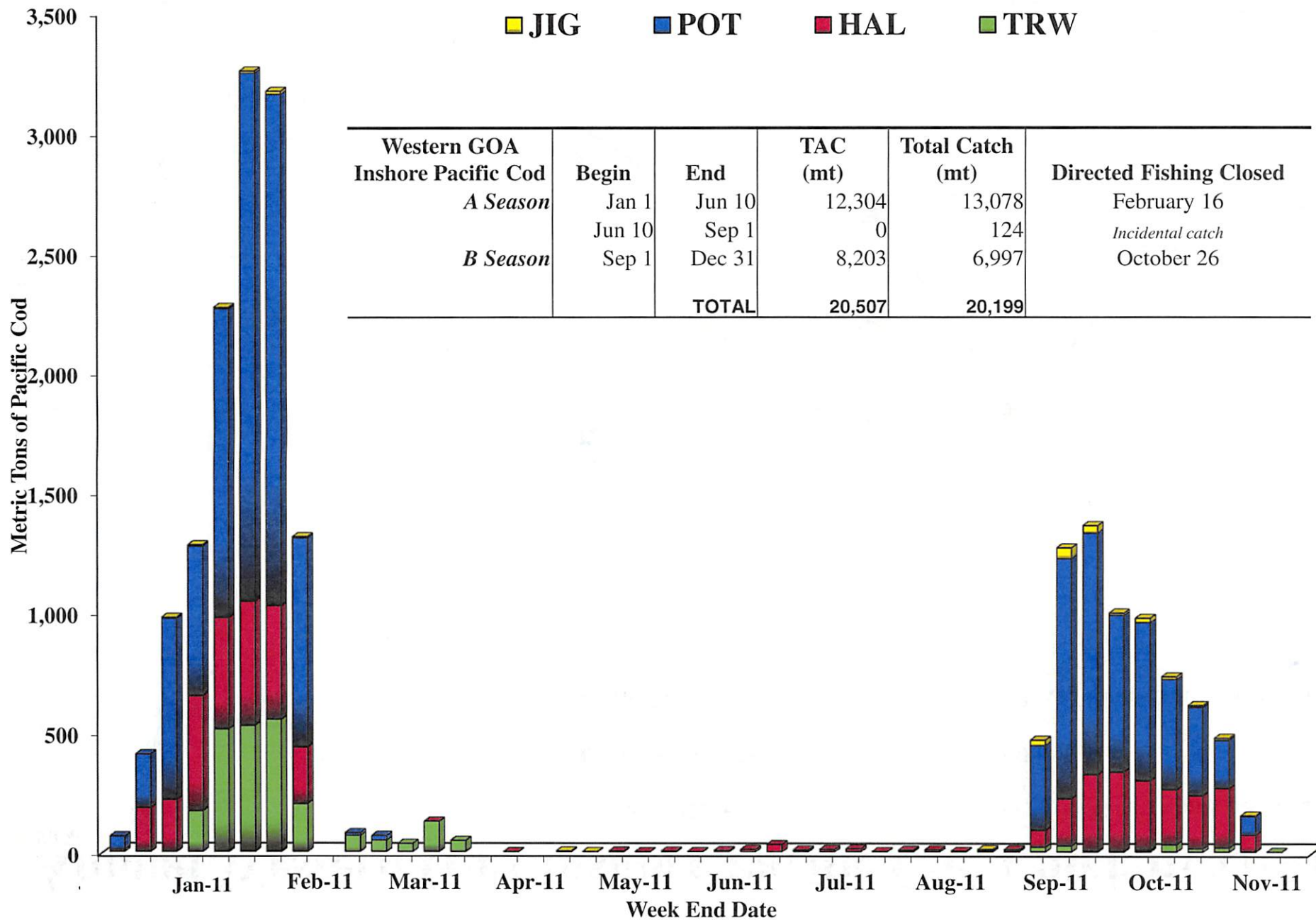


2011 GOA Pacific Cod Catch (All Gears)

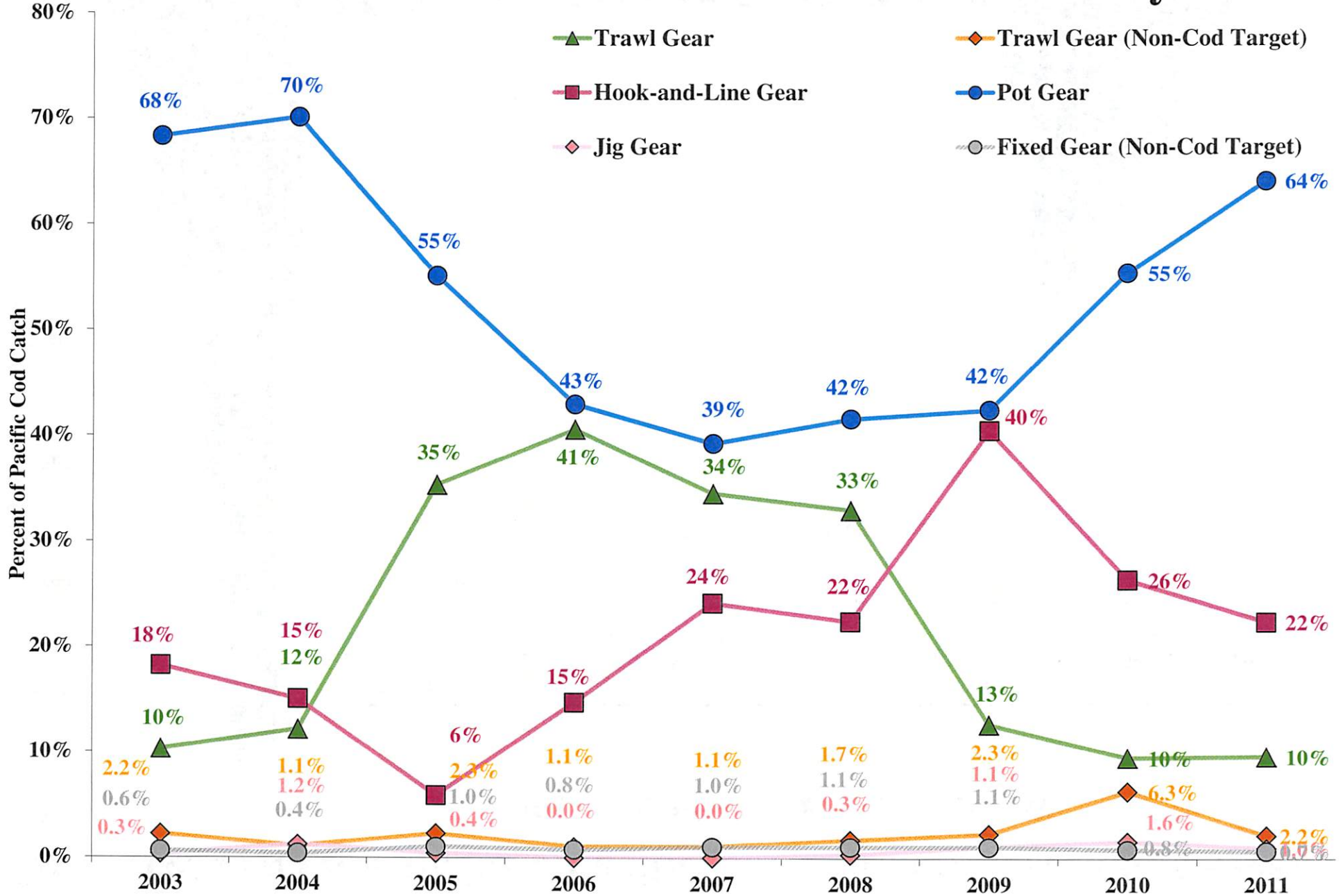


Data from the Catch-in-Areas (CIA) Database

2011 Western Gulf Inshore Pacific Cod Catch by Week and Gear



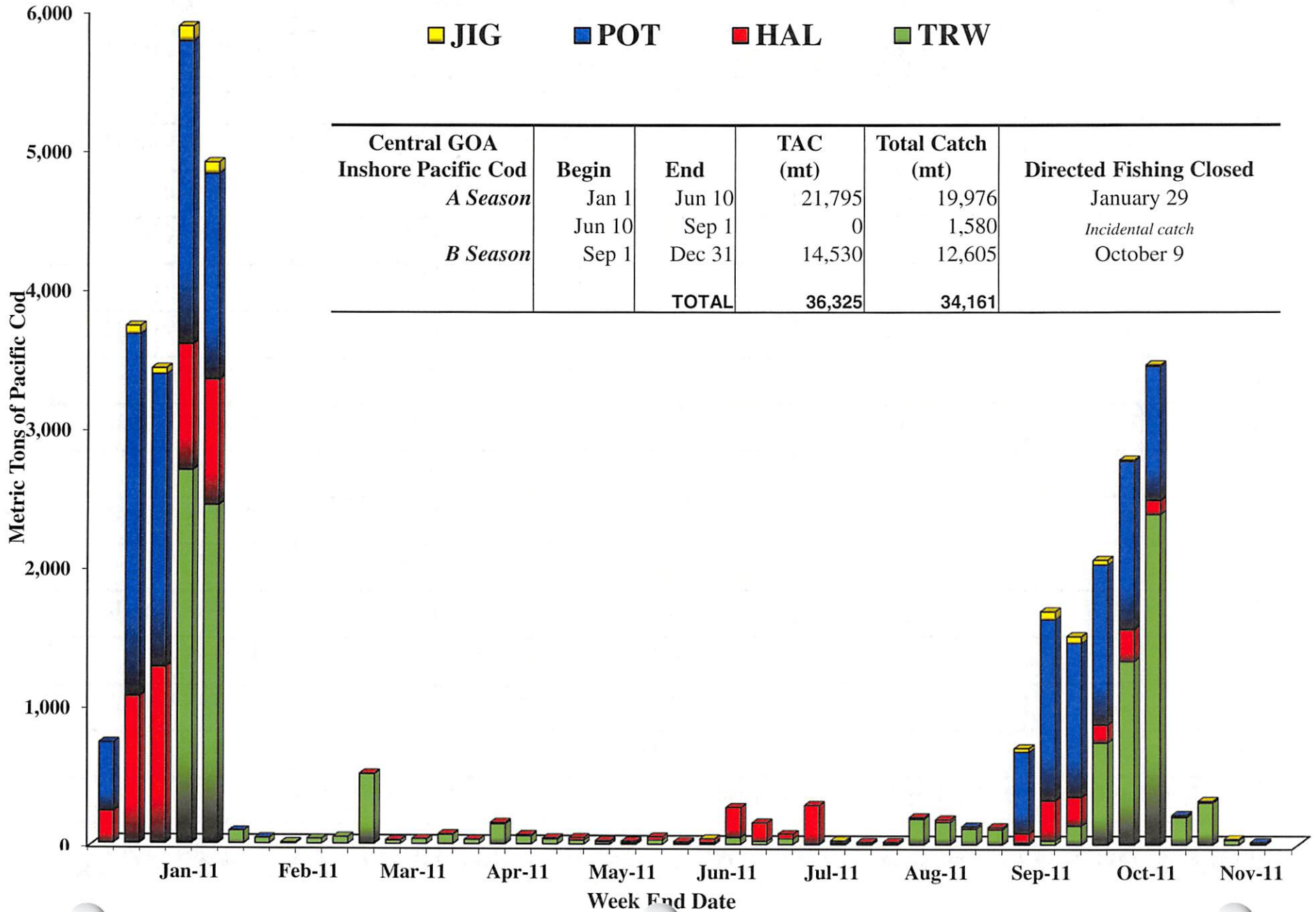
Annual Western Gulf Inshore Pacific Cod Catch by Gear



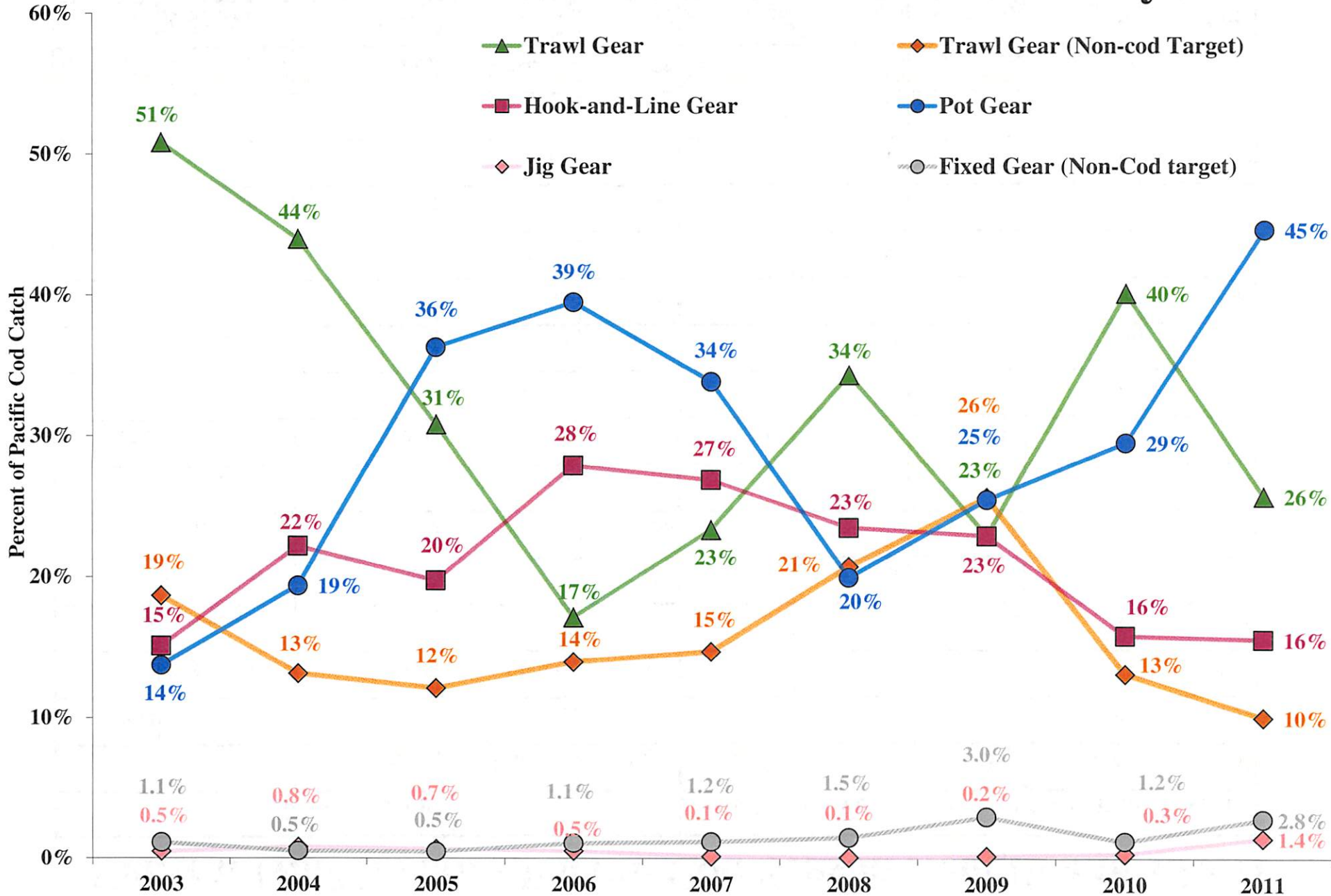
Western Gulf Inshore Pacific Cod Season Length and Effort

Season Length					Number of Vessels Directed Fishing (Effort)				
		Open	Closed	Days	HAL	Pot	Jig	Trawl	Total
2004	A Season	1-Jan	24-Feb	54	10	72	29	21	113
	B Season	1-Sep	No Closure	121	11	29	4	3	47
2005	A Season	1-Jan	24-Feb	54	14	64	10	31	98
	B Season	1-Sep	No Closure	121	15	18	1	1	33
2006	A Season	1-Jan	2-Mar	60	12	63	0	26	83
	B Season	1-Sep	No Closure	121	16	9	1	0	26
2007	A Season	1-Jan	8-Mar	66	17	64	1	31	94
	B Season	1-Sep	No Closure	121	11	14	3	0	28
2008	A Season	1-Jan	29-Feb	59	17	58	0	28	87
	B Season	1-Sep	No Closure	121	8	16	8	2	33
2009	A Season	1-Jan	25-Feb	55	21	55	0	27	88
	B Season	1-Sep	No Closure	121	17	16	10	2	43
2010	A Season	1-Jan	19-Feb	49	24	43	3	16	82
	B Season	1-Sep	13-Oct	42	15	27	31	0	72
2011	A Season	1-Jan	16-Feb	46	15	63	11	13	96
	B Season	1-Sep	26-Oct	55	10	31	21	0	61

2011 Central Gulf Inshore Pacific Cod Catch by Week and Gear



Annual Central Gulf Inshore Pacific Cod Catch by Gear



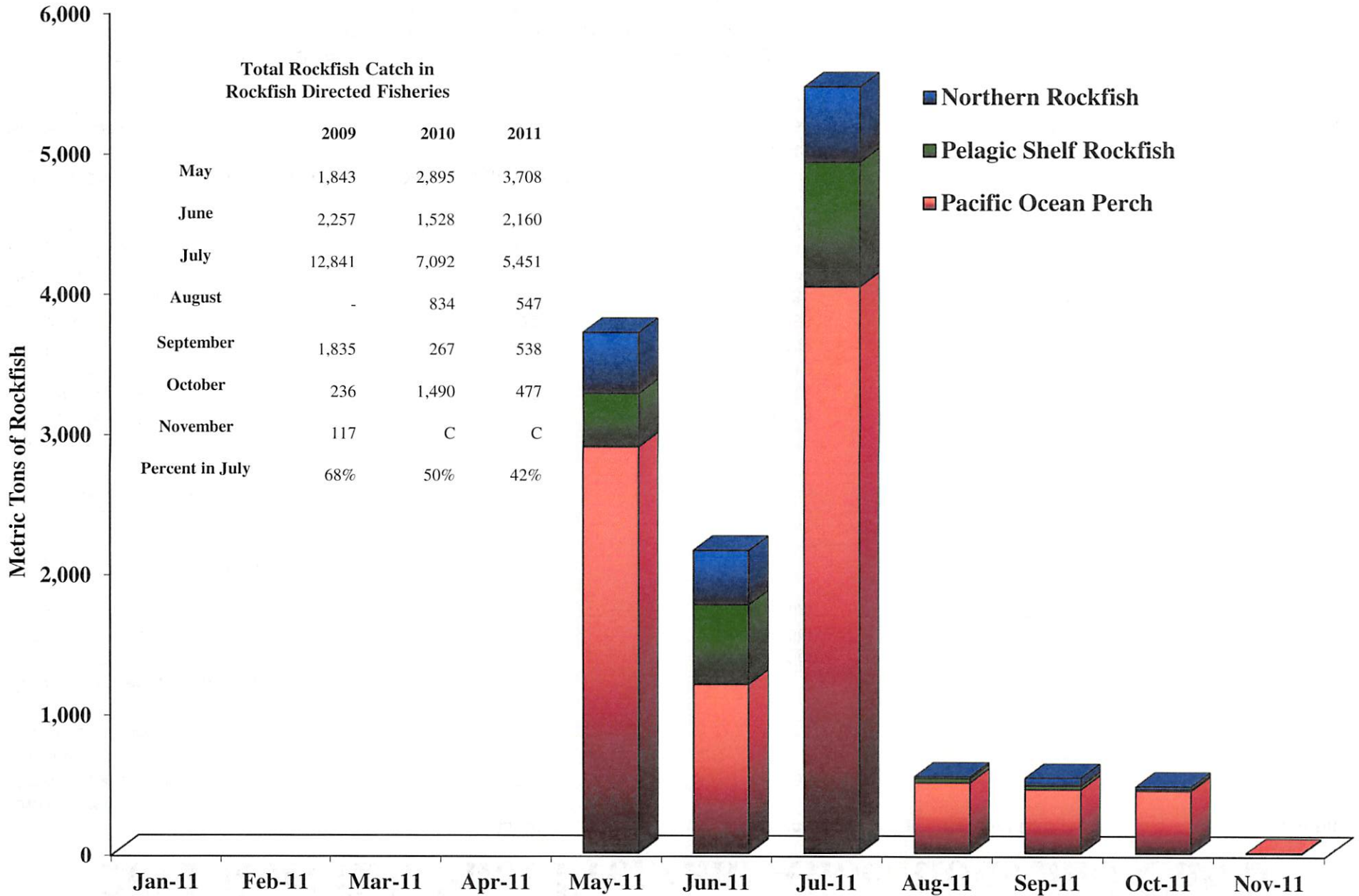
Central Gulf Inshore Pacific Cod Season Length and Effort

Season Length					Number of Vessels Directed Fishing (Effort)				
		Open	Closed	Days	HAL	Pot	Jig	Trawl	Total
2004	A Season	1-Jan	31-Jan	30	90	36	34	41	201
	B Season	1-Sep	17-Nov	59*	50	18	11	42	121
2005	A Season	1-Jan	26-Jan	25	84	36	29	34	183
	B Season	1-Sep	No Closure	121	41	30	8	34	113
2006	A Season	1-Jan	28-Feb	58	60	41	28	33	162
	B Season	1-Sep	No Closure	121	56	28	6	8	98
2007	A Season	1-Jan	27-Feb	57	66	57	10	28	161
	B Season	1-Sep	No Closure	121	58	26	6	24	114
2008	A Season	1-Jan	20-Feb	51**	78	50	7	30	165
	B Season	1-Sep	3-Oct	32	57	17	4	30	108
2009	A Season	1-Jan	27-Jan	26	78	53	9	29	169
	B Season	1-Sep	1-Oct	30	49	16	5	26	96
2010	A Season	1-Jan	31-Jan	30	69	44	9	37	159
	B Season	1-Sep	13-Sep	12	29	21	14	32	96
2011	A Season	1-Jan	29-Jan	28	56	45	22	34	157
	B Season	1-Sep	9-Oct	39	26	28	41	36	131

* Season closed from 10-Sep to 28-Sep (17 days)

** Season closed 20-Feb to 29-Feb (8 days)

Central GOA Targeted Rockfish Catch by Month



2011 Rockfish Pilot Program Allocations and Catch

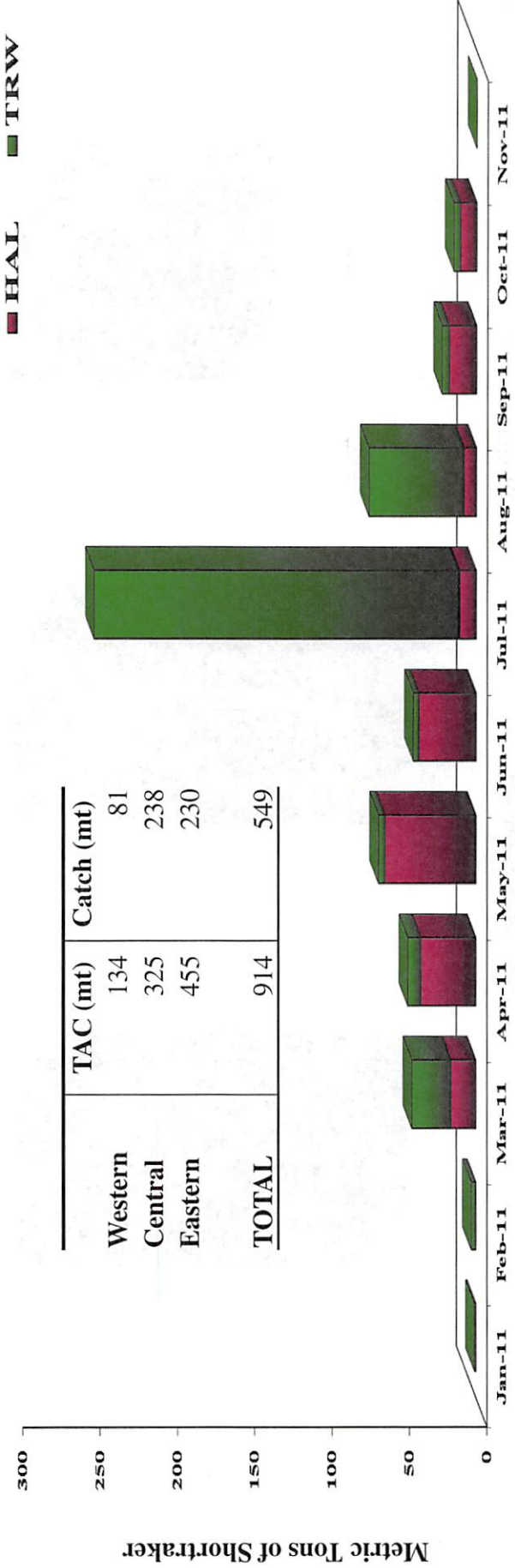
	Limit	Catch	Percent Caught	Remaining
Entry Level				
Pacific Ocean Perch	494	488	99%	6
Northern Rockfish	109	2	2%	107
Pelagic Shelf Rockfish	148	15	10%	133
Catcher Processor Limited Access				
Pacific Ocean Perch	458	Confidential	Confidential	Confidential
Northern Rockfish	150	Confidential	Confidential	Confidential
Pelagic Shelf Rockfish	359	Confidential	Confidential	Confidential
Catcher Vessel Limited Access				
Pacific Ocean Perch	0	0	0%	0
Northern Rockfish	2	0	0%	2
Pelagic Shelf Rockfish	0	0	0%	0
Cooperatives				
Pacific Ocean Perch	8,926	8,718	98%	208
Northern Rockfish	1,920	1,415	74%	505
Pelagic Shelf Rockfish	2,445	1,613	66%	832
Pacific Cod	843	702	83%	141
Sablefish	472	456	97%	16
Thornyhead Rockfish	193	81	42%	112
Shortraker Rockfish	83	59	71%	24
Rougeye Rockfish	434	241	56%	193
Pacific Halibut	208	73	35%	135
Primary Species Totals Including Central GOA Incidental Catch				
Pacific Ocean Perch	10,379	10,542	102%	-163
Northern Rockfish	2,281	1,699	74%	582
Pelagic Shelf Rockfish	3,052	2,103	69%	949

In 2006, 5 catcher processors and 25 trawl catcher vessels targeted rockfish in the Central GOA.
 In 2007, 5 catcher processors and 27 trawl catcher vessels targeted rockfish in the Program.
 In 2008, 6 catcher processors and 27 trawl catcher vessels targeted rockfish in the Program.
 In 2009, 8 catcher processors and 26 trawl catcher vessels targeted rockfish in the Program.
 In 2010, 8 catcher processors and 27 trawl catcher vessels targeted rockfish in the Program.
 In 2011, 5 catcher processors and 25 trawl catcher vessels targeted rockfish in the Program.

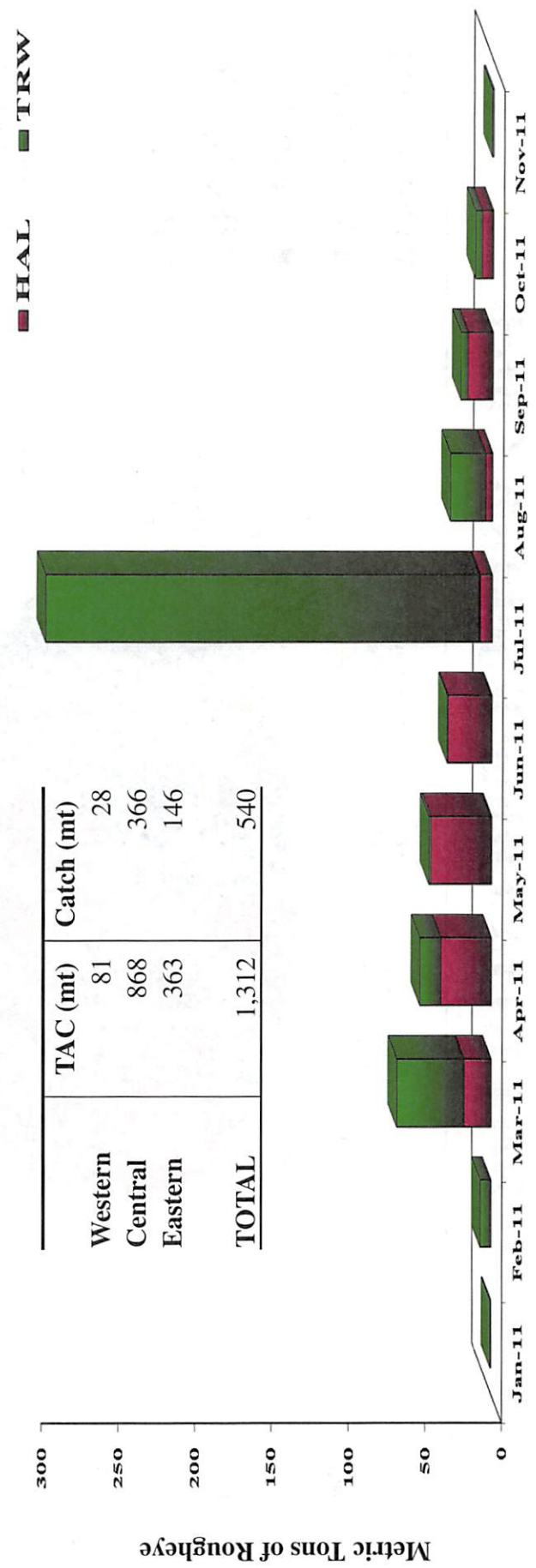


2011 GOA Shortraker and Rougheye Rockfish Catch

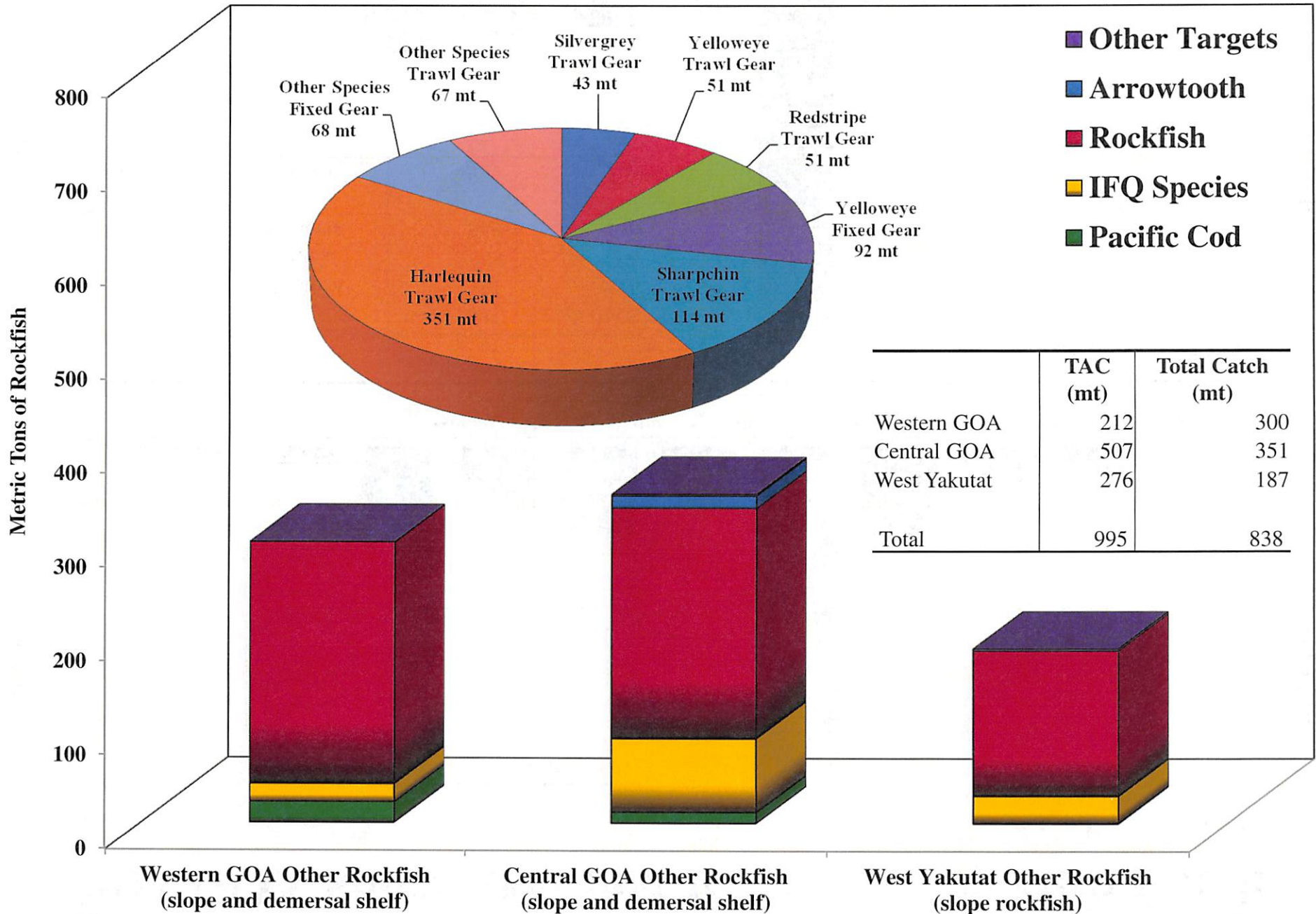
Shortraker



Rougheye

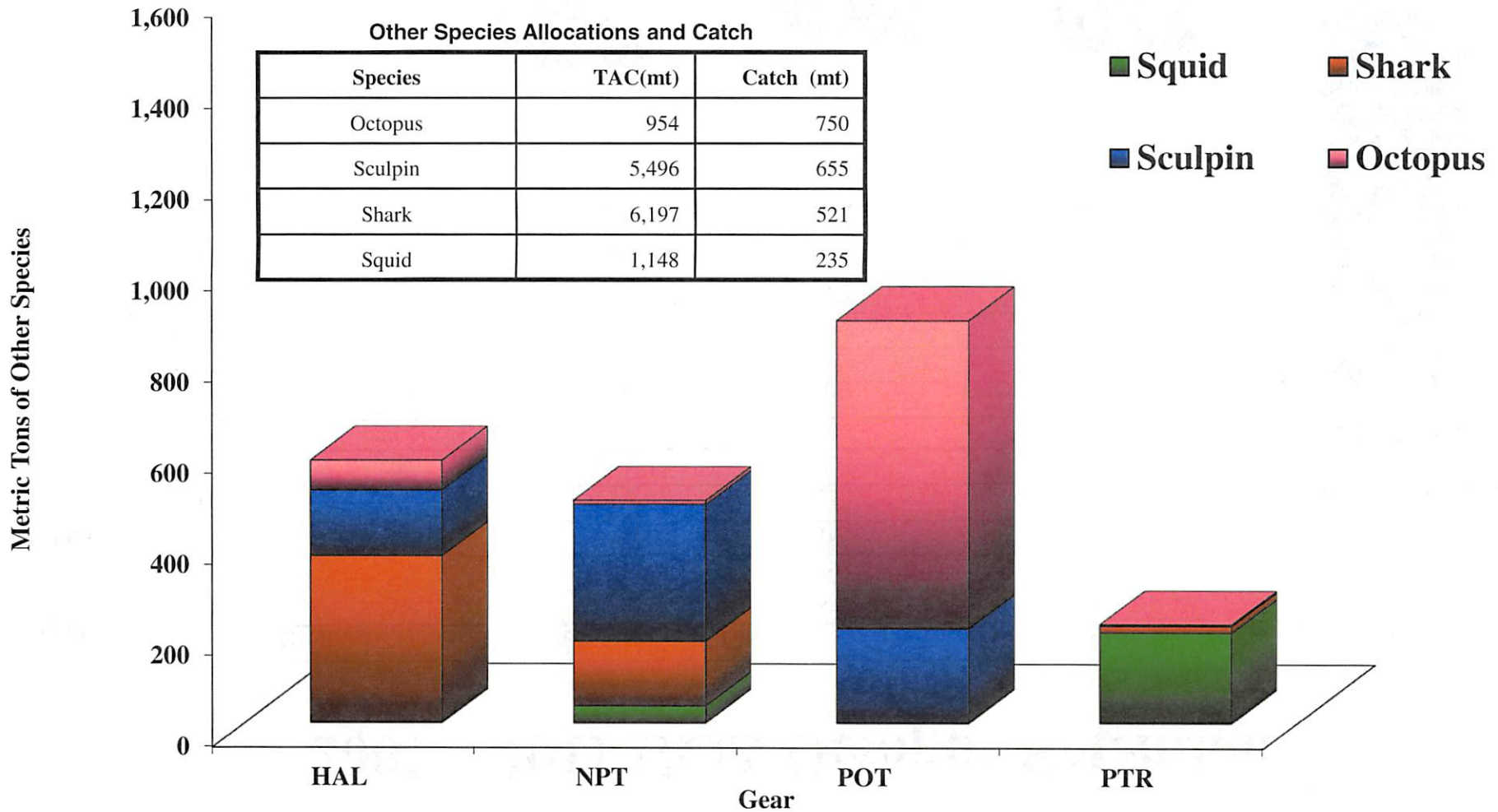


2011 GOA Other Rockfish Catch

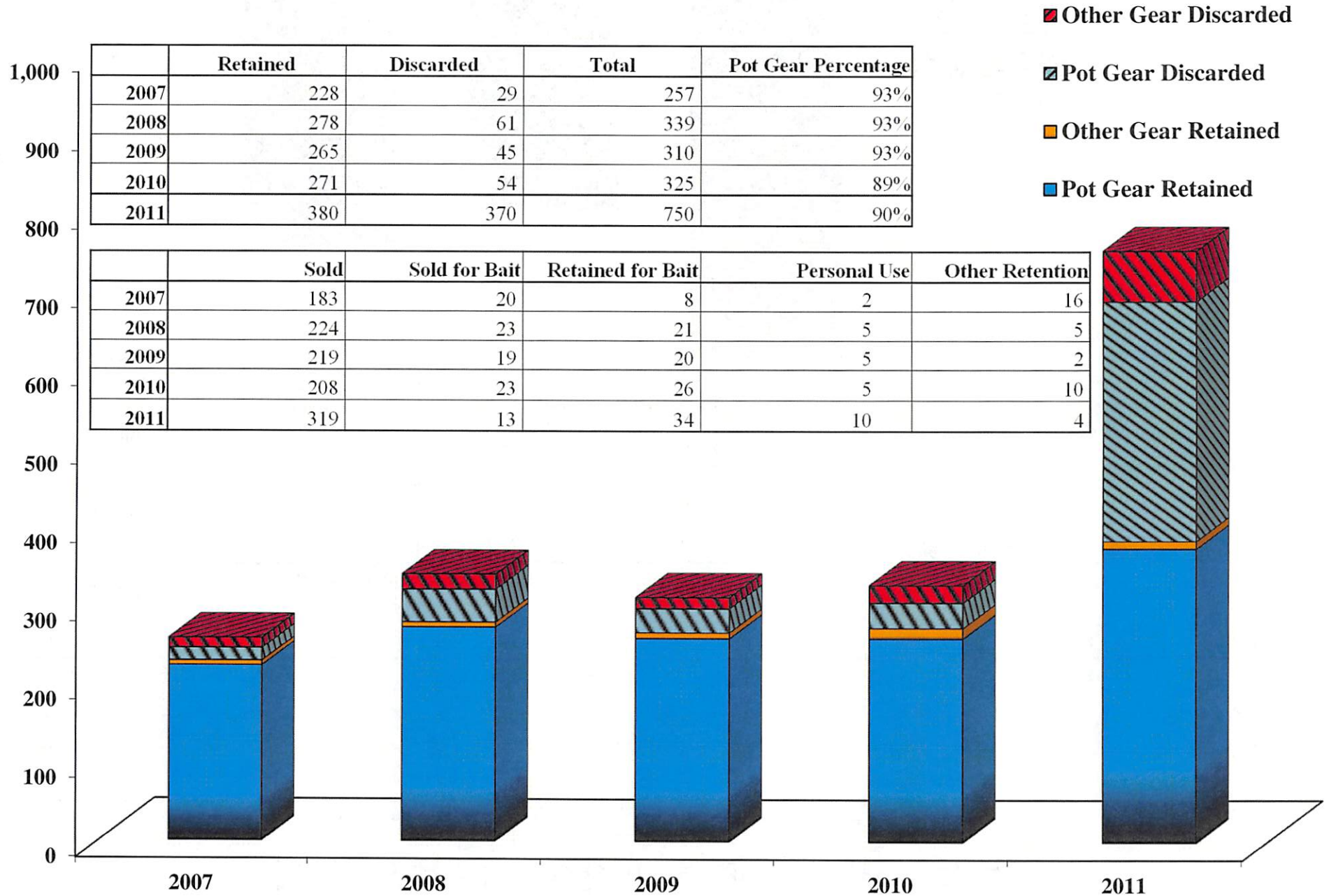


2011 GOA Other Species by Gear

Gear	Octopus	Other Shark	Squid	Salmon Shark	Sculpin	Sleeper Shark	Spiny Dogfish
HAL	65	< 1	< 1		145	9	357
NPT	9	3	37	2	301	13	123
POT	675				206		< 1
PTR	1	< 1	198	5	3	3	5
TOTAL	750	4	235	7	655	25	485



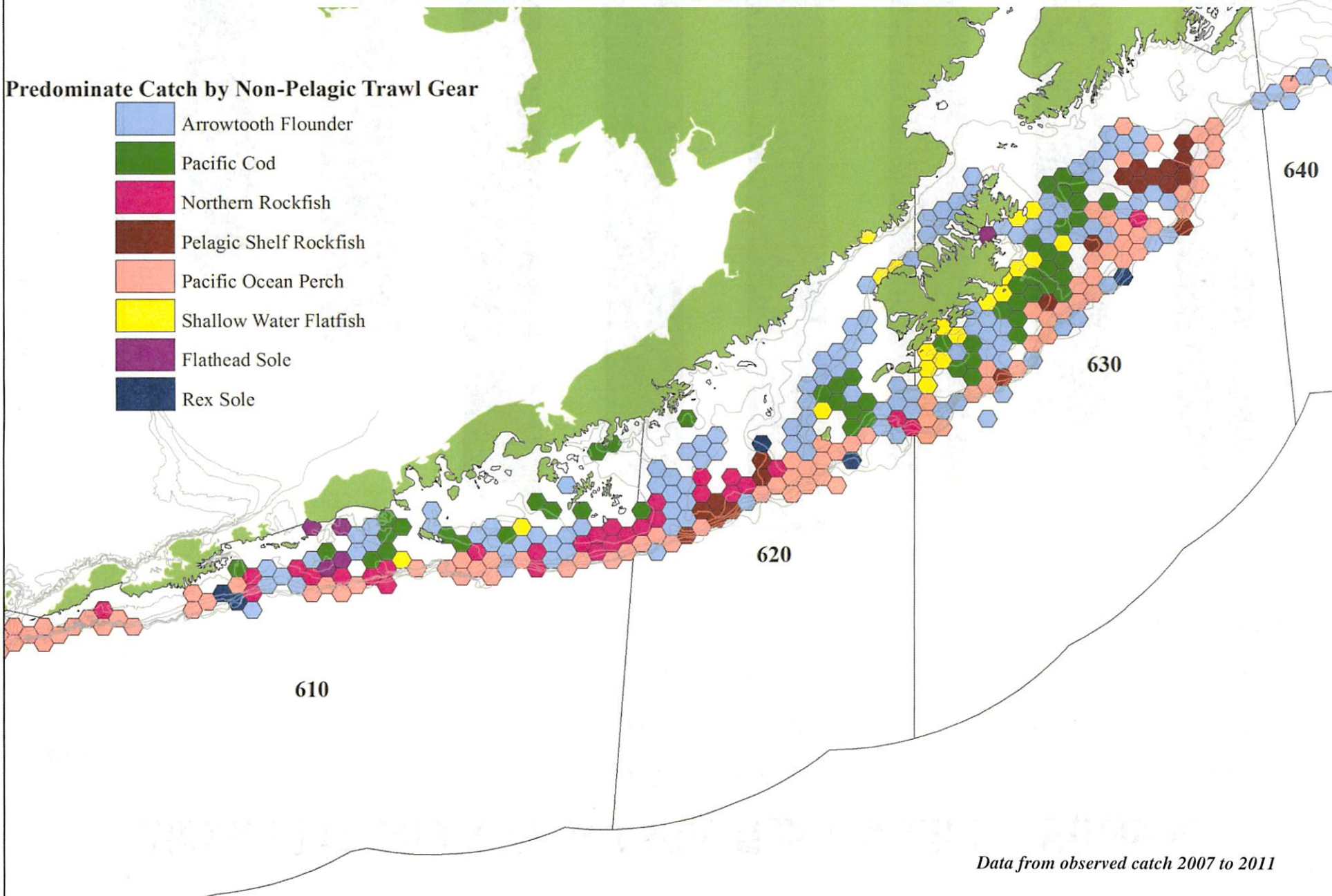
2007 – 2011 GOA Octopus Retention



2007 -2011 Observed Non Pelagic Trawl Gear Catch

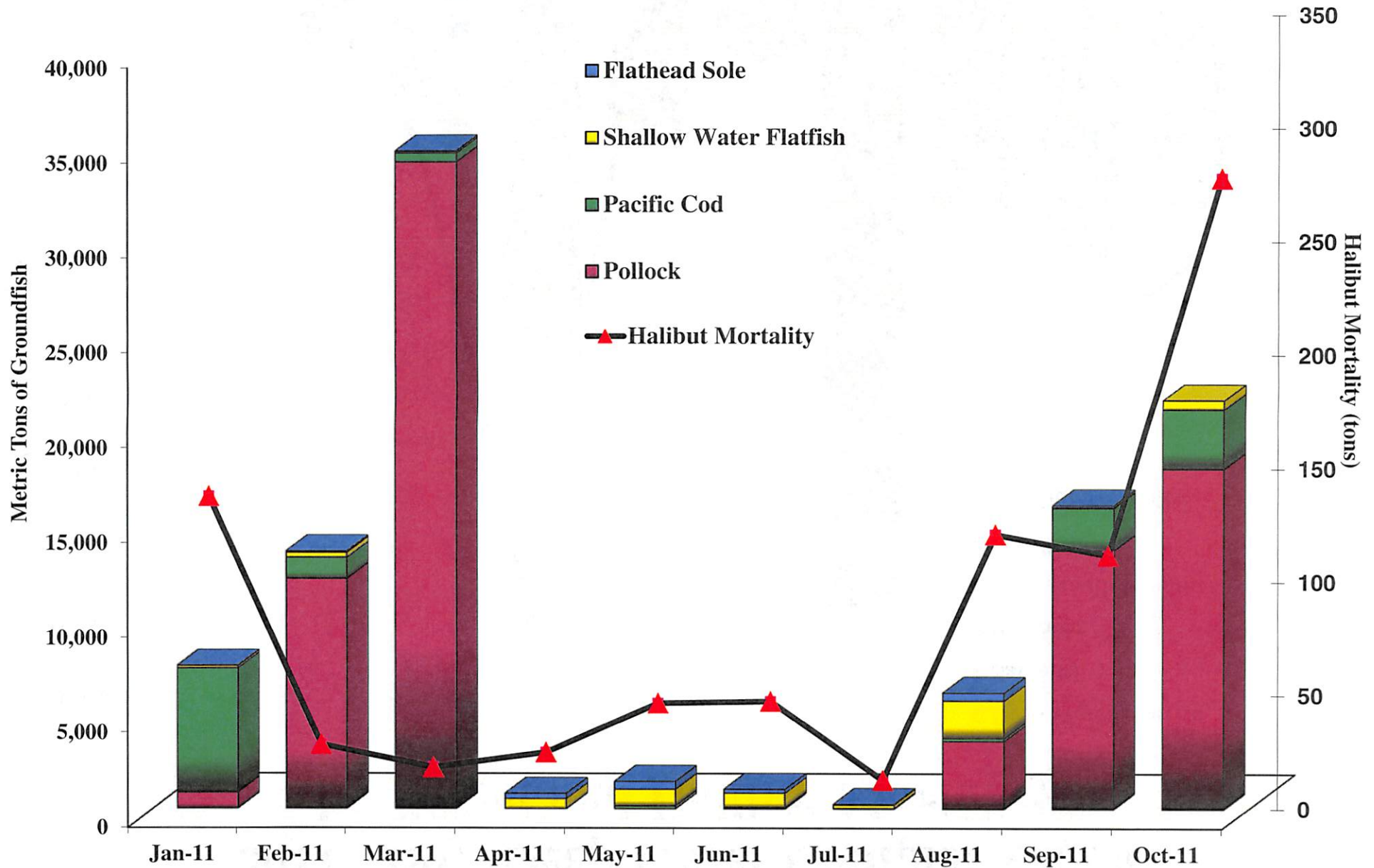
Predominate Catch by Non-Pelagic Trawl Gear

- Arrowtooth Flounder
- Pacific Cod
- Northern Rockfish
- Pelagic Shelf Rockfish
- Pacific Ocean Perch
- Shallow Water Flatfish
- Flathead Sole
- Rex Sole

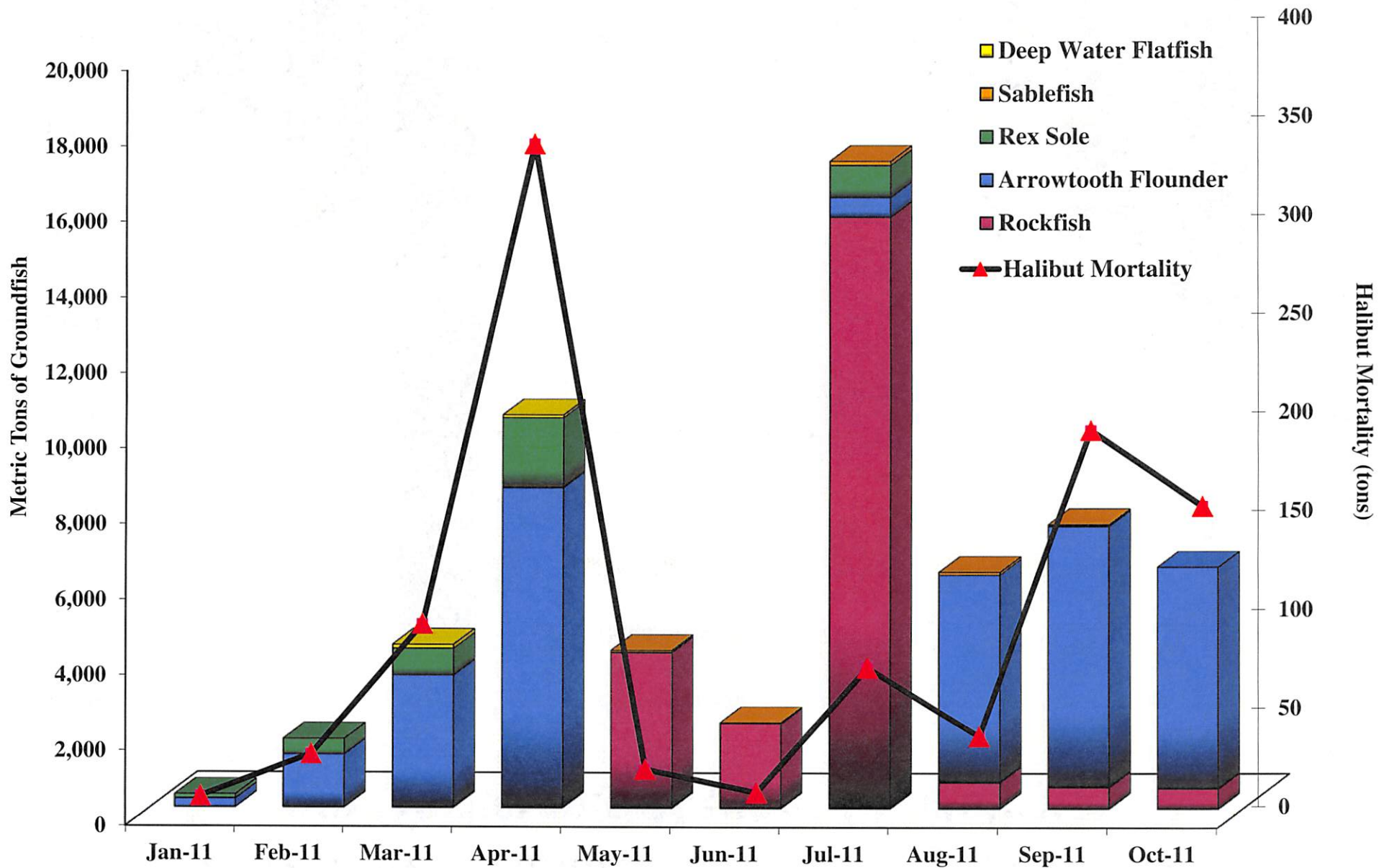


Data from observed catch 2007 to 2011

2011 Trawl Shallow Water Complex Catch by Target and Halibut Mortality



2011 Trawl Deep Water Complex Catch by Target and Halibut Mortality



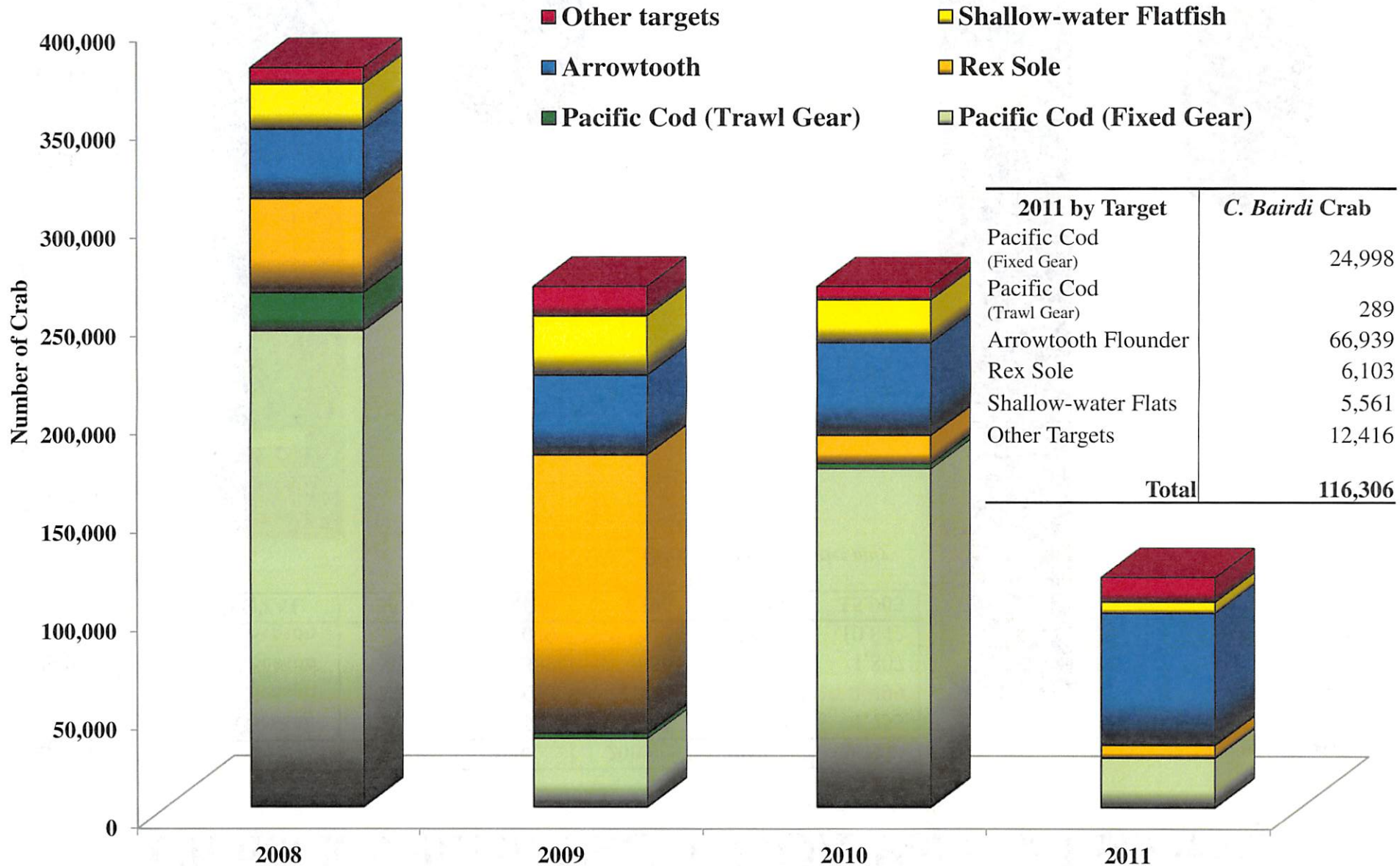
2011 Flatfish and Skate Catch in the GOA

	TAC (mt)	Total Catch (mt)	Percentage caught of TAC
Arrowtooth Flounder			
Central	30,000	28,308	94%
Western	8,000	1,704	21%
Flathead Sole			
Central	5,000	2,303	46%
Western	2,000	393	20%
Rex Sole			
Central	6,294	2,732	43%
Western	1,517	131	9%
Shallow Water Flatfish			
Central	13,000	3,828	29%
Western	4,500	124	3%
Deep Water Flatfish			
Central	2,919	443	15%
Western	529	13	2%
Big Skate			
Central	2,049	1,967	96%
Western	598	70	12%
Longnose Skate			
Central	2,009	803	40%
Western	81	49	61%

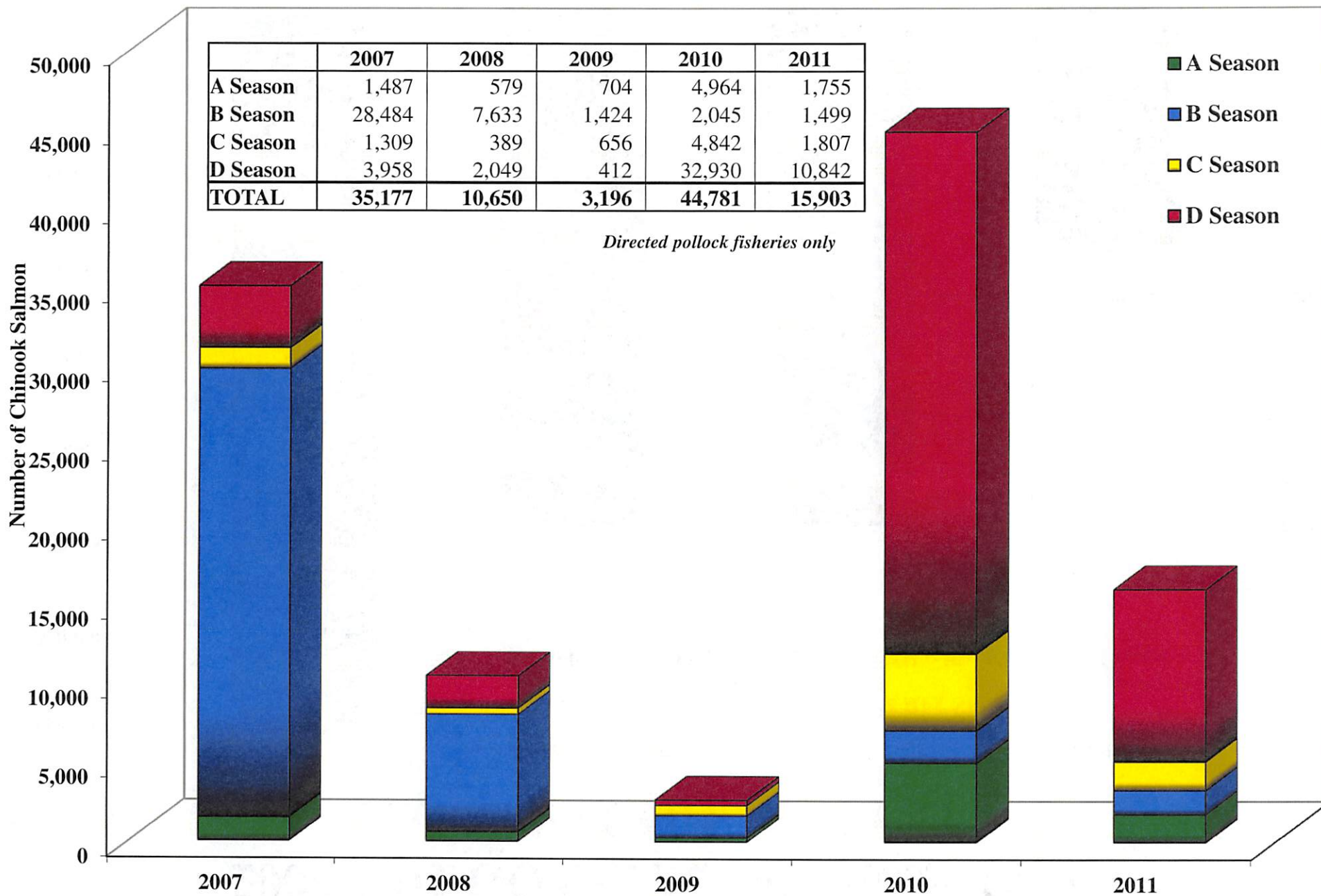
2011 Trawl Halibut Mortality

Shallow Water Complex	Season	Start Date	End Date	Limit (mt)	Total Mortality (mt)
	1	Jan 20	Apr 1	450	185
	2	Apr 1	Jul 1	100	108
	3	Jul 1	Sep 1	200	129
	4	Sep 1	Sep 30	150	115
			TOTAL	900	537
Deep Water Complex	Season				
	1	Jan 20	Apr 1	100	119
	2	Apr 1	Jul 1	300	336
	3	Jul 1	Sep 1	229	75
	4	Sep 1	Sep 30	0	183
			TOTAL	800	713
Rockfish Pilot Program				206	70
Fall Halibut Allocation		Oct 1	Nov 1	300	528
Total Halibut Mortality				2,000	1,778

2008-2011 GOA *C. Bairdi* Tanner Crab Incidental Catch by Target

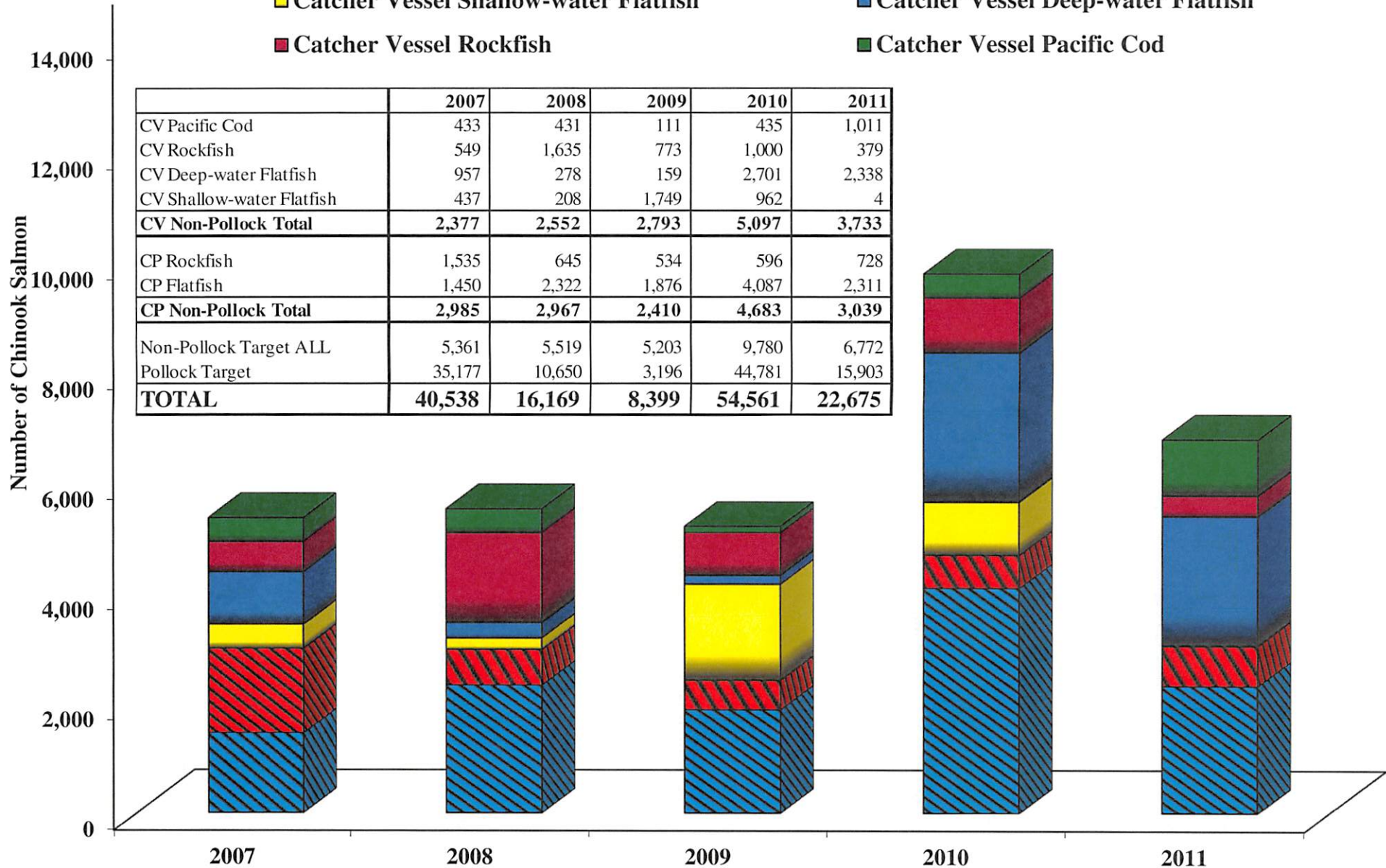


Chinook Salmon PSC in GOA Pollock Fisheries



Chinook Salmon PSC in GOA Non-Pollock Fisheries

- CP Flatfish
- Catcher Vessel Shallow-water Flatfish
- Catcher Vessel Rockfish
- CP Rockfish
- Catcher Vessel Deep-water Flatfish
- Catcher Vessel Pacific Cod



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NOV 29 2011



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA B-2
DECEMBER 2011

November 28, 2011

Eric Olson, Chair
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Mr. Olson:

At its last meeting the North Pacific Fishery Management Council asked the National Marine Fisheries Service (NMFS) to provide a report on the Essential Fish Habitat consultation process. The Council asked for a summary of the range and scope of reviews NMFS undertakes for federal actions proposed by various agencies, and a reminder of the process for bringing any such issues to the Council's attention for possible Council action. The enclosed report responds to the Council's request. We look forward to discussing this with the Council during the NMFS Management Report (agenda item B-2) at the December meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Balsiger".

James W. Balsiger, Ph.D.
Administrator, Alaska Region

Enclosure



Overview of the Interagency Consultation Process for Actions that May Adversely Affect Essential Fish Habitat in Alaska

Prepared for the North Pacific Fishery Management Council
by the National Marine Fisheries Service, Alaska Region
November 2011

At its October 2011 meeting the North Pacific Fishery Management Council asked the National Marine Fisheries Service (NMFS) to provide a report on the Essential Fish Habitat (EFH) consultation process. The Council asked for a summary of the range and scope of reviews NMFS undertakes for federal actions proposed by various agencies, and a reminder of the process for bringing any such issues to the Council's attention for possible Council action. This report responds to the Council's request.

Legislative and Regulatory Background

In 1996 Congress added new habitat provisions to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Section 303(a)(7) of the amended MSA required that every fishery management plan (FMP) describe and identify EFH¹ for federally managed species, minimize to the extent practicable the adverse effects of fishing on EFH, and identify other actions to encourage the conservation and enhancement of EFH. The 1996 amendments to the MSA also directed the Secretary to develop by regulation guidelines to assist the Fishery Management Councils in developing the EFH components of FMPs. NMFS issued an interim final rule with such guidelines in 1997 and a final rule in 2002. The EFH provisions of the MSA were not changed by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

Section 305(b) of the MSA requires federal agencies to consult with the Secretary regarding all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH. NMFS is required to provide conservation recommendations regarding any federal or state agency action that would adversely affect EFH. Action agencies do not have to follow NMFS's recommendations. As specified by Section 305(b)(4) of the MSA, federal agencies must respond in writing to any NMFS EFH conservation recommendations, and in the case of a decision that is inconsistent with NMFS's advice, the action agency must explain its reasons for not following the recommendations. The EFH regulations establish the procedures for coordination, consultations, and recommendations regarding proposed actions that may adversely affect EFH (50 CFR Part 600, Subpart K).

When it added the EFH provisions to the MSA, Congress found that "One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss

¹ EFH means "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." "Waters" include aquatic areas and their associated physical, chemical, and biological properties. "Substrate" includes sediment underlying the waters. "Necessary" means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem. "Spawning, breeding, feeding, or growth to maturity" covers all habitat types utilized by a species throughout its life cycle. (50 CFR 600.10)

of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States” (16 U.S.C. 1801(a)(9)). Congress also stated that a purpose of the amended MSA is “to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat” (16 U.S.C. 1801(b)(7)).

Experience Implementing EFH Consultations

NMFS began conducting EFH consultations in 1999 when the first EFH designations took effect. Prior to EFH, NMFS reviewed federal agencies’ actions under the Fish and Wildlife Coordination Act and other authorities and offered recommendations on many actions. The EFH provisions of the MSA provided more structure for this process and focused the consultations on the habitats that sustain MSA-managed species.

Every year the NMFS Alaska Region reviews in the range of 100 to 200 actions proposed by federal and state agencies that have the potential to affect living marine resources. Staff evaluate each action to determine whether it would affect EFH or other resources for which NMFS has statutory responsibility. In a typical year the actions include a wide range of activities such as harbor redevelopment, navigation dredging, offshore disposal of materials, pollutant discharges, coastal construction, mining, forestry, oil and gas exploration, Naval training exercises, hydropower development, and transportation infrastructure projects (highways, bridges, airport expansions, etc.). Action agencies include the Army Corps of Engineers, Environmental Protection Agency, Bureau of Ocean Energy, Bureau of Land Management, Federal Energy Regulatory Commission, Federal Highway Administration, Federal Aviation Administration, and others.

Over the years NMFS has found that our habitat biologists are most effective at avoiding or minimizing impacts to EFH during pre-consultation coordination with project proponents and action agencies. NMFS staff work to incorporate measures that avoid and minimize impacts to EFH to the greatest extent practicable during early scoping and design of projects, prior to the activity reaching the stage where the consultation process would be initiated. In many cases this early work obviates the need for EFH consultation, or at least narrows the issues to be resolved. As a result the Alaska Region provides EFH conservation recommendations on fewer than 50 proposed actions annually. In 2011 the Alaska Region provided such recommendations on about 20 proposed actions.

NMFS also completes EFH consultations regarding its own actions, including fishery management actions. In Alaska we generally only complete a full EFH consultation on the annual harvest specifications, but every rulemaking includes an evaluation of potential adverse effects to EFH to verify whether the effects are within the scope of the annual consultation.

Related Information in Council Fishery Management Plans

As required by the MSA and the EFH regulations (50 CFR 600.815(a)(4)), the Council’s FMPs include information about activities other than fishing that may adversely affect EFH, as

well as recommendations to avoid or minimize adverse effects. NMFS updated this information most recently in conjunction with the 5-year review of EFH sections of Council FMPs that was completed in 2010, and a summary will be included in the omnibus EFH FMP amendment that the Council will soon submit to NMFS for Secretarial review.

NMFS habitat biologists use the non-fishing effects synthesis as a reference when reviewing proposed actions for potential impacts to EFH, and when considering possible ways to avoid or minimize adverse effects. The synthesis includes summaries of the effects of various activities on fish habitat, as well as numerous literature citations. NMFS may consider this information, along with information from many other sources, when developing comments and recommendations on proposed actions. Federal action agencies also may use the synthesis as a reference when preparing the EFH Assessments they provide to NMFS as a part of EFH consultations.

Council Role in Commenting on Actions that May Affect EFH

The MSA provides a role for Fishery Management Councils in commenting on federal or state agency actions that would affect fish habitat. Under Section 305(b)(3) of the MSA, Councils may comment on any action that may affect the habitat, including EFH, of a fishery resource under Council authority, and must comment if in the view of the Council the action is likely to substantially affect the habitat, including EFH, of an anadromous fishery resource under Council authority.

The EFH regulations at 50 CFR 600.930(a) state that each Council should establish procedures for reviewing federal or state agency actions that may adversely affect the habitat, including EFH, of a species under its authority. The regulations note that a Council could direct Council staff to track proposed actions, recommend that a Council committee identify actions of concern, or enter into an agreement with NMFS to have NMFS notify the Council of actions of concern. In Alaska we have followed the latter approach, with NMFS Habitat Conservation Division staff informing Council staff about pending actions that may be of particular interest to the fishing industry and/or that may affect habitats of direct concern to the Council. The following examples illustrate how this has worked in recent years:

1. In 2005, NMFS informed Council staff that the National Science Foundation (NSF) was proposing a federally funded geological research project that involved using a rock dredge in the vicinity of a coral garden site near Semisopchnoi Island. NMFS provided EFH conservation recommendations to NSF and gave a copy to the Council. The Council subsequently sent its own letter to NSF expressing concern about the action in light of Council efforts to protect vulnerable bottom habitats in the Aleutian Islands. NSF responded by detailing measures it would take to minimize adverse effects, such as restricting the amount of time the sampling gear would contact the bottom and avoiding the summits of volcanic cones as much as possible to stay away from high densities of coral.
2. In 2006, NMFS worked with the Minerals Management Service (MMS) to have Council staff included in a "North Aleutian Basin Information Status and Research Planning Meeting" to provide an overview of commercial fisheries in Bristol Bay and the eastern Bering Sea.

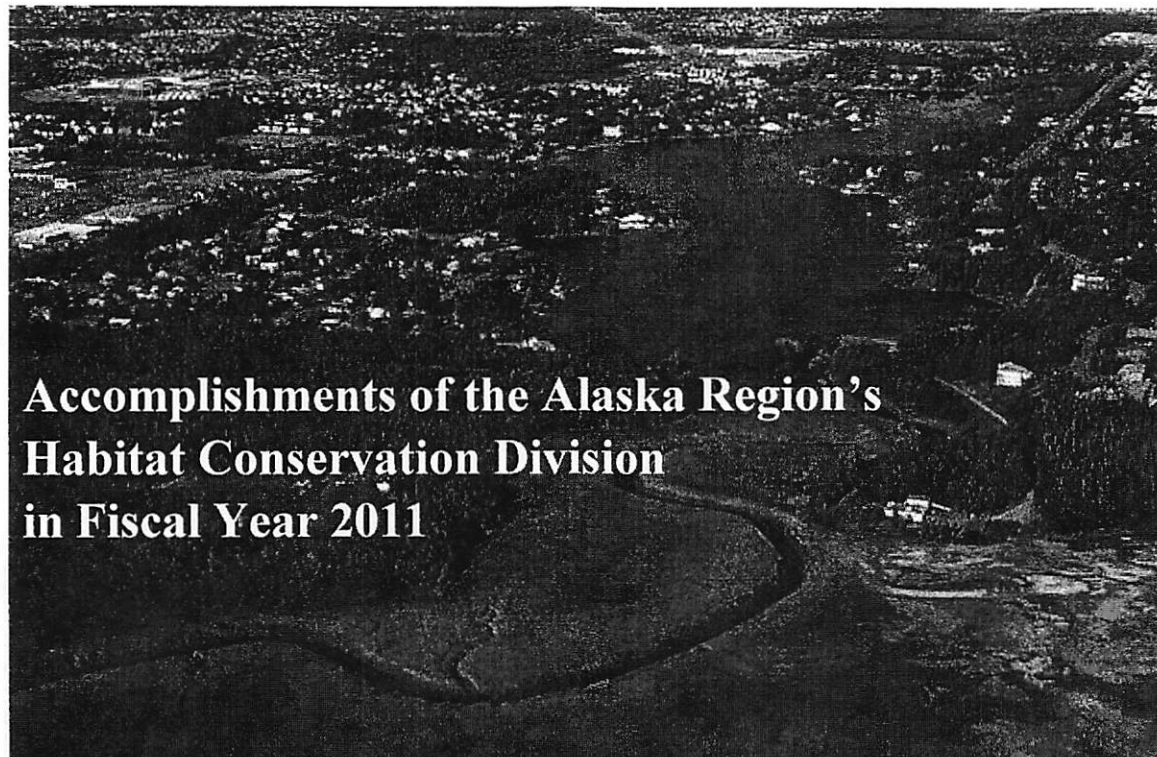
MMS had included the North Aleutian Basin in its draft *Outer Continental Shelf Oil and Gas Leasing Program, 2007-2012* and was beginning to evaluate environmental constraints and potential user conflicts for future oil and gas leasing and development. Council staff provided crucial information on the significance of commercial fisheries in the area: historic catch levels, landings value, and related figures. In 2008, Council staff and the Alaska Department of Fish & Game (ADF&G) provided additional information related to this issue at a Sea Grant sponsored North Aleutian Basin Energy-Fisheries Workshop, at which NMFS staff also presented. Having NMFS, the Council, and ADF&G involved in this issue helped to ensure fisheries concerns were included in MMS's decision-making process. MMS subsequently dropped the North Aleutian Basin from its plans for the leasing program.

3. In 2008, NMFS staff informed Council staff that the GCI/Spandex marine cable project included plans to run a new fiber-optic telecommunications cable from Oregon to several landfalls in Alaska. The projected cable route transected nearshore areas important to groundfish and salmon as well as offshore commercial fishing areas. NMFS facilitated using Council meetings as a venue for the proponents to inform commercial fishermen about the project and for the fishing industry to voice any concerns. The early coordination and assistance were key to a transparent consultative process, leading the project sponsors to route the cables within existing dedicated cable corridors and avoid laying cable through Habitat Areas of Particular Concern (the Alaska Seamount Habitat Protection Areas).
4. In 2009, NMFS staff briefed Council staff on information related to the proposed Pebble Mine and its potential effects to fishery resources in Bristol Bay. Staff jointly determined that the proposal had not yet advanced to the point that it should be brought to the Council, and agreed to keep in communication about this issue in the future. NMFS is still tracking this issue and most recently has been assisting the Environmental Protection Agency (EPA) with EPA's assessment of the effects of large scale mining in the Bristol Bay watershed. NMFS will keep Council staff informed as appropriate.

Conclusion

During EFH consultations between NMFS and other agencies, NMFS strives to provide reasonable and scientifically based recommendations for reducing the loss and degradation of habitats that sustain Council-managed species. These recommendations are non-binding, as specified by the MSA. The consultations serve to inform agencies with relevant jurisdiction about potential consequences of their actions for EFH and ways to minimize adverse effects to Alaska's valuable fishery resources.

The attached report, "Accomplishments of the Alaska Region's Habitat Conservation Division in Fiscal Year 2011," provides highlights of a number of EFH consultations completed during the past year as well as other NMFS Habitat Conservation Division activities. NMFS provides copies of this report to the Council office annually. The annual reports are also available on the internet at www.alaskafisheries.noaa.gov/habitat.



Accomplishments of the Alaska Region's Habitat Conservation Division in Fiscal Year 2011

Campbell Creek Estuary; Photo by Mark Lester

This report provides highlights of Habitat Conservation Division (HCD) activities from October 1, 2010 through September 30, 2011. HCD works with industries, stakeholder groups, government agencies, and private citizens to avoid, minimize, or offset the adverse effects of human activities on Essential Fish Habitat (EFH) and living marine resources in Alaska. HCD carries out NOAA Fisheries' statutory responsibilities for habitat conservation in Alaska under the Magnuson-Stevens Fishery Conservation and Management Act, Fish and Wildlife Coordination Act, National Environmental Policy Act, Federal Power Act, and other laws. HCD has two principal programs: identification and conservation of EFH through fishery management, and environmental review of non-fishing activities to minimize impacts to EFH or other habitats for living marine resources. HCD also supports habitat restoration projects in conjunction with the NOAA Restoration Center.

HCD coordinates extensively with other groups to facilitate habitat conservation. HCD works in close partnerships with numerous NOAA offices as well as other agencies and organizations such as the North Pacific Fishery Management Council, Army Corps of Engineers, Environmental Protection Agency, U.S. Fish and Wildlife Service, Bureau of Ocean Energy Management, U.S. Forest Service, Bureau of Land Management, Federal Energy Regulatory Commission, Federal Aviation Administration, Alaska Department of Fish and Game, Alaska Department of Natural Resources, Alaska Department of Transportation and Public Facilities, local governments, and a variety of industry and conservation groups.

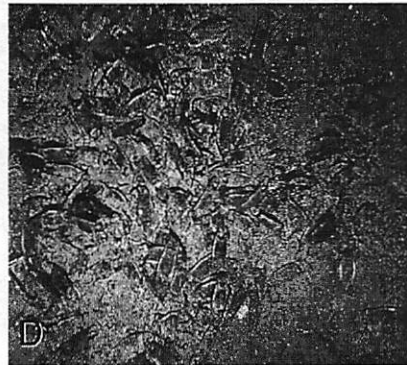
Essential Fish Habitat and Fishery Management

Omnibus EFH Amendment to Fishery Management Plans

HCD staff worked closely with the North Pacific Fishery Management Council to revise the EFH components of fishery management plans for Gulf of Alaska and Bering Sea / Aleutian Islands groundfish, weathervane scallops, and Bering Sea / Aleutian Islands crab. The Council adopted the omnibus amendment in April 2011. With these changes the fishery management plans will incorporate the most recent scientific information including revised descriptions of EFH for several species, thereby reflecting more accurately the habitats that are necessary to support managed species. The amendment also updated the information regarding the effects of non-fishing activities on EFH, revised the process for identifying Habitat Areas of Particular Concern, and highlighted the need for a more specific analysis of the potential effects of fishing on EFH for Bristol Bay red king crab, which is now underway. The omnibus amendment stemmed from a once-every-five-years review of the EFH components of fishery management plans, which HCD and the Alaska Fisheries Science Center completed in 2010.

Habitat Areas of Particular Concern for Skates

In 2010 HCD staff worked with Alaska Fisheries Science Center experts to develop a proposal to identify six skate nurseries (egg case concentration sites) in the Bering Sea as Habitat Areas of Particular Concern. Skates lay their eggs in cases they deposit on the sea floor, and development of embryos within the cases can span over three years, making the nursery areas vulnerable to disturbance by bottom-tending fishing gear. In February 2011 the North Pacific Fishery Management Council voted to proceed with an analysis of the proposal and associated management measures to protect these sites, which are used by several species of skates. HCD worked with Science Center experts and Council staff to develop the concept further and begin the analysis, which will be presented to the Council for action in 2012.



A skate nursery area in the Bering Sea

Environmental Review to Minimize Habitat Loss

Bristol Bay Watershed Assessment

HCD provided major support to help the Environmental Protection Agency conduct a comprehensive assessment of how future large-scale mining development may affect the Bristol Bay watershed, including water quality, salmon fisheries, and indigenous peoples. HCD contributed a synthesis of relevant literature regarding the ecological processes that support spawning and rearing habitat for salmon in these watersheds, and drafted a section discussing the contributions of salmon from the watershed to fish and marine mammal populations in Bristol Bay. HCD also supported EPA's development of a predictive risk assessment. EPA expects to release its watershed assessment in 2012 and to use the information in its regulatory decisions regarding the proposed Pebble Mine.

Knik Arm Bridge

HCD completed an EFH consultation for the proposed bridge over Knik Arm near Anchorage. The proposed crossing would include almost a mile of solid fill causeways from the eastern and western shores leading to an 8,200 foot long pile supported bridge spanning over the deepest part of Knik Arm and would result in the loss of 90 acres of intertidal and subtidal habitat. Concerns include likely adverse effects to migrating salmon, which will lose their shallow water migratory corridor and may experience increased mortality in deeper, faster moving water under the narrower opening that remains once the project is built. HCD coordinated its review with the Protected Resources Division, which completed consultation under the Endangered Species Act for impacts to beluga whales. The Army Corps of Engineers is proceeding with its evaluation of the project and will likely issue a permit in the near future.

Nome Airport Runway Extension

HCD staff recommended improving habitat in the Snake River in Nome, which the Alaska Department of Transportation and Public Facilities and the Federal Aviation Administration are proposing to realign as part of the Nome Airport Runway Safety Area Expansion Project. This reach of the Snake River was heavily impacted by historic mining. The morphology of this reach will require decades to develop and to re-establish complexity, which will primarily be accomplished from slump blocks sliding into the channel. Realignment of the river has the



Snake River near Nome Airport

potential to increase the habitat value for this reach. HCD suggested including features in the design of the Snake River realignment that would increase holding and rearing areas in a reach that currently provides very little habitat diversity, and converting the current channel to an engineered slough to provide refuge for juvenile salmon.

Siting Log Storage Areas to Minimize Impacts

As a result of HCD's concerns and recommendations, a proposed log storage facility that would have been built in intertidal habitat in Klawock Inlet was instead located in a nearby upland site. The original proposal involved filling 4.5 acres of intertidal area with wood waste from a lumber mill. Filling the area would have eliminated the habitat and caused water quality problems in the vicinity due to leachate from the wood waste. A considerable body of research has shown that leachate from decomposing wood fiber can contain high concentrations of contaminants that can be acutely toxic to marine life. HCD's review led the applicant to reexamine an upland location for the log storage yard, allowing the project to proceed with no impacts to marine habitat.

In a second project involving log storage, HCD reviewed a proposal to operate log storage areas in productive shallow water habitat in Nutkwa Inlet at Prince of Wales Island. The proposal involved storing 20 million board feet of timber annually in an uncommon shallow salt-chuck lagoon that provides rearing habitat for salmon and forage species. The applicant has two log transfer facilities in Nutkwa Inlet that include upland log storage yards as well as log rafting and storage areas in deep waters, so HCD recommended that the applicant pursue log storage

either in the existing upland sites or in deeper portions of the inlet where effects to fish habitat are less of a concern. The Corps of Engineers agreed to pursue these less damaging alternatives with the applicant.

Mitigation Banks and In-Lieu Fee Arrangements

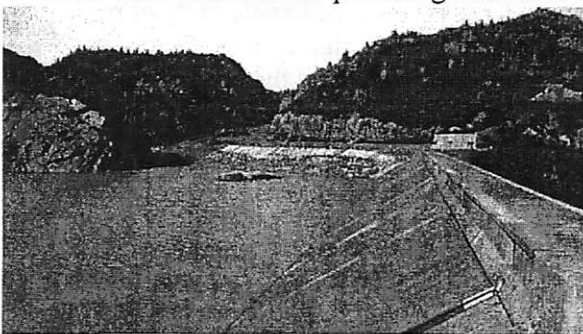
HCD staff assisted private sector partners with the development of four new agreements for mitigation banks or in-lieu fee arrangements to compensate for unavoidable impacts to fish habitat. Mitigation banks provide a mechanism for habitats to be restored or protected and then set aside in perpetuity, with the credits to be used in the future to offset losses of similar habitat from development activities. Similarly, in-lieu fee arrangements allow a sponsor to pool fees from Clean Water Act permit applicants to purchase valuable habitats that are then preserved in perpetuity. The arrangements are called “in-lieu fee” because the applicants pay fees in lieu of providing compensatory mitigation (like restoring wetlands) to offset impacts caused by a development project. HCD staff worked with the sponsors as well as the Corps of Engineers, Environmental Protection Agency, and U.S. Fish & Wildlife Service to develop the operating procedures for these new mitigation banks and in-lieu fee arrangements. NOAA Fisheries signed the four agreements as a member of the interagency review team: the Pioneer Reserve Umbrella Mitigation Bank Instrument, the Su-Knik Umbrella Mitigation Bank Instrument, the In-Lieu Fee Instrument for the Great Land Trust, and the In-Lieu Fee Instrument for the Southeast Alaska Land Trust. As an example of the benefits, the Pioneer Reserve includes 135 acres of wetlands, streams, and ponds with abundant salmon use throughout the system, and its preservation will provide direct compensation for fish habitat function lost due to development in the same area.

Haines Boat Harbor Expansion

As part of the planning process for proposed expansion of a federal navigation project in Haines, HCD staff participated in field surveys to assess baseline environmental conditions at the project site and potential mitigation sites. Mitigation options include remediating a former log transfer facility and using dredged material from the harbor expansion to create new kelp bed habitat. HCD assisted with determining the extent of degradation at the closed log transfer facility and evaluating the feasibility of the mitigation concepts. HCD also helped to define objectives for the field work, assist divers, and develop preliminary recommendations that will provide a foundation for identifying environmentally preferred alternatives. HCD will continue to assist the Corps of Engineers as this civil works project progresses.

Hydropower Development

HCD staff continued to provide guidance to hydropower developers to minimize adverse impacts to salmon and their habitats. Several proposed projects entered the study plan phase in 2011, and HCD advised the applicants on methods to assess impacts on hydrology and stream and estuarine habitats. HCD staff also participated in the Federal Energy Regulatory Commission’s licensing process for proposed traditional dam projects and hydrokinetic energy projects. Licensees for several existing projects submitted or are



Crest of Bradley Lake Dam

developing amendment applications. HCD recommended ways to reduce the effects these hydroelectric projects would have on anadromous and marine habitats, including instream environmental flow requirements, passage requirements, and alteration of project structure and operation to limit effects on anadromous fish.

Susitna-Watana Hydroelectric Project

HCD participated in a variety of pre-license application meetings and events with the Alaska Energy Authority on the proposed Susitna-Watana hydroelectric project, which would involve constructing a new 700 foot high two mile long dam on the Susitna River. The early coordination allowed HCD to promote concerns and build collegial relationships. Staff attended a site visit with the Alaska Energy Authority and other agencies, including a project overview and discussion of the licensing process. Staff also participated in meetings regarding a gap analysis to identify data needs, and expect to see a Preliminary Application Document submitted to the Federal Energy Regulatory Commission before the end of 2011.



Susitna River at the proposed Watana Dam site

HCD Hydropower Website

In 2011 HCD launched a new webpage to provide valuable resource information to the

Habitat Conservation Division - Hydropower Program

HYDROPOWER AND HYDROKINETIC PROJECT REVIEW

Alaska is in a unique position relative to most other regions in having robust and viable fish stocks and diverse populations of marma mammals, combined with the aggressive pursuit of new hydropower development throughout the state. NMFS reviews proposed and existing hydropower and hydrokinetic projects in cooperation with applicants and operators, the Federal Energy Regulatory Commission (FERC), other federal agencies, the State of Alaska, tribes, and communities. NMFS reviews proposed projects throughout the licensing phase and develops recommended license terms and conditions necessary to protect, mitigate damage to, and enhance fish and wildlife habitat affected by hydropower project construction and operation. NMFS also reviews existing hydropower projects, usually on an annual basis, to determine if project operations are meeting goals for protection of NMFS trust species or if adaptive management is necessary.

Click here for a larger version of the map of proposed and existing hydropower and hydrokinetic projects in Alaska.

general public, developers, and regulatory agencies on hydropower development in Alaska and NOAA Fisheries' role in hydropower project review. The webpage provides examples, references, and maps to describe NOAA Fisheries' role in reviewing projects throughout the Federal Energy Regulatory Commission's licensing phases and how HCD develops recommended license terms and conditions necessary to protect, mitigate damage to, and enhance fish and wildlife habitat affected by hydropower project

construction and operation. Please visit the site at www.alaskafisheries.noaa.gov/habitat/hydro/.

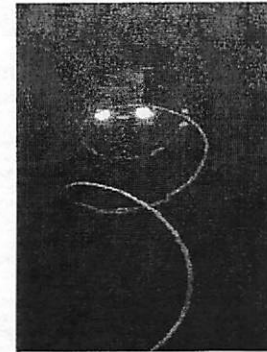
Habitat Protection and Restoration

National Fish Habitat Action Plan

HCD continued to support the National Fish Habitat Plan in Alaska. Staff participated in planning for a new Pacific Marine and Estuarine Fish Habitat Partnership which initially was described to include the Pacific coast from Baja through Southeast Alaska. The proposal eventually was scaled back to focus on California, Oregon, and Washington, so HCD worked with partners in Southeast Alaska to pursue regionally relevant strategies for habitat conservation, leading to a proposal for a Southeast Alaska Fish Habitat Partnership. That proposal was recognized by the National Fish Habitat Board as a Candidate Partnership in August 2011. One of the key goals is to develop a strategic plan that identifies conservation and restoration priorities. In addition, HCD continued to support other fish habitat partnerships in Alaska: the Matanuska-Susitna Basin Salmon Habitat Partnership, Kenai Peninsula Fish Habitat Partnership, and Southwest Alaska Salmon Habitat Partnership. HCD assists the partnerships in many ways, such as helping to write portions of strategic plans, looking for funding opportunities to promote habitat protection and restoration, and recognizing noteworthy outcomes by nominating partners for national awards. HCD is also working with the U.S. Fish & Wildlife Service to create a statewide umbrella group to assist in coordinating the administrative and data needs of all the Alaska fish habitat partnerships.

Invasive Species

HCD staff continued to work with the Alaska Department of Fish and Game, U.S. Fish and Wildlife Service, Smithsonian Environmental Research Center, University of Alaska, and other partners to address the infestation of an invasive colonial tunicate, *Didemnum vexillum*, discovered in Whiting Harbor near the Sitka airport in 2010. As part of the combined effort, HCD teamed up with the Alaska Fisheries Science Center to conduct a remotely operated vehicle survey to determine if the infestation had spread. Fortunately the infestation remains fairly localized. HCD also provided recommendations and guidance for additional *D. vexillum* surveys in Sitka's other harbors (none has been found), and helped to evaluate potential treatment methods and management actions to contain or eradicate the infestation. This work is integrated with continuing HCD staff coordination of the Alaska Invasive Species Working Group's marine subcommittee, which addressed other invasive species issues this year such as green crab monitoring. Finally, HCD staff now represent NOAA Fisheries on the Western Regional Panel of the Aquatic Nuisance Species Task Force and joined its coastal and marine subcommittee to seek ways to coordinate and promote Alaska invasive species issues.

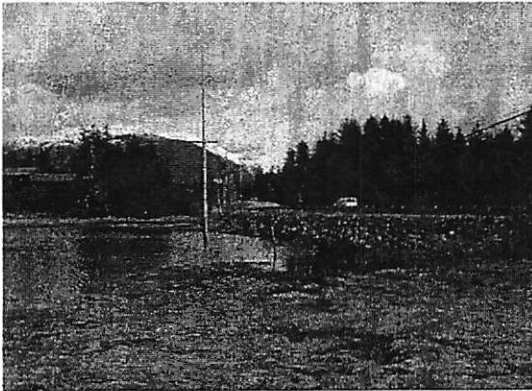


Remotely Operated Vehicle surveying for invasive tunicates in Sitka

Klawock Causeway Bypass

HCD assisted the NOAA Restoration Center, The Nature Conservancy, and the Alaska Department of Transportation and Public Facilities in implementing a major restoration project on the Klawock River in southeast Alaska using funds from the American Recovery and Reinvestment Act. The project involved breaching a large causeway on an outlet of Klawock Lagoon to provide fish passage, improve tidal flushing, and enhance eelgrass beds. At high tide,

water and fish are now crossing the causeway for the first time in 50 years via a new three-sided cast concrete culvert. A remote motion-sensing camera operated by the Forest Service is being used to monitor salmon passage through the culvert. Members of the Klawock Tribe will continue the monitoring program developed by NOAA and The Nature Conservancy, and the NOAA Coastal Services Center is helping to produce baseline maps from aerial photography. The completion of this part of the project concludes an 11 year commitment by about 14 different organizations. Monitoring will continue for several years.

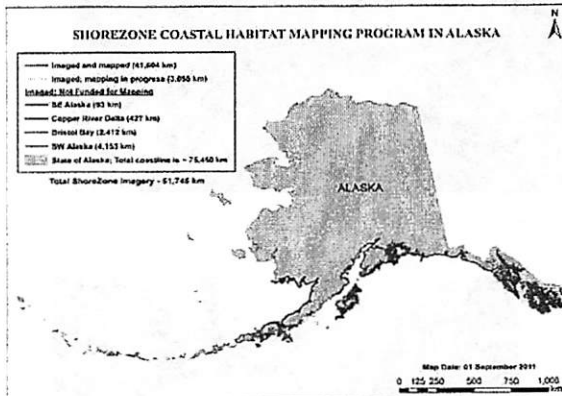


Klawock lagoon causeway before and after the breach restored tidal flushing and fish access; Photos by TNC

Other Noteworthy Activities

ShoreZone Mapping

ShoreZone is a coastal habitat mapping and classification system in which spatially referenced aerial imagery is combined with geological and biological interpretation to

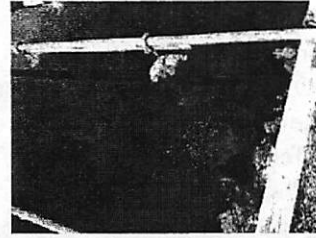


characterize coastal features and allow users to virtually “fly” the coast from any computer with internet access. To date 51,745 km or approximately 69% of Alaska’s shoreline has been imaged, which is an increase of 6% from last fiscal year. Fifty-five percent of the coastline is mapped with geomorphic and biologic features identified and entered into the ShoreZone database. Mapping is in progress for an additional 4,840 km. Imagery and mapping data are accessible via an interactive website to provide coastal habitat

information to decision makers and the public (www.alaskafisheries.noaa.gov/shorezone). HCD continues to work with other agencies and organizations to promote use of ShoreZone data and fund additional data collection. During FY11 HCD staff coordinated ShoreZone briefings for several agencies; gave presentations at statewide and national conferences to attract additional partners and users; secured \$85,000 from the U.S. Fish and Wildlife Service’s National Wildlife Refuge System for ShoreZone work; assisted the Forest Service and Bureau of Ocean Energy Management with their contracting for ShoreZone work; and contracted for mapping a section of the Bristol Bay coastline in 2012.

HCD Diving and Small Boat Operations

HCD's divers and small boat operators performed several successful operations during FY2011. HCD assisted the Kachemak Bay National Estuarine Research Reserve with an assessment of invasive species near Homer. Divers investigated a 20+ year old oyster farm structure (pictured at right) and the surrounding embayment for non-indigenous species, and fortunately found none. HCD divers also assessed several sites in southeastern Prince William Sound for marine debris. The sites were selected due to their proximity to known shoreline marine debris accumulation areas. The team catalogued marine debris by



location, type, and estimated weight. HCD also participated in an agency-wide small boat managers meeting to share lessons learned and focus on ways to maintain and improve safe small boat operations in diverse operational areas from the Arctic to the Florida Keys.

Grant Creek Habitat Study

HCD participated in a 2-dimensional hydraulic study with the US Geological Survey, Fish and Wildlife Service, and Alaska Department of Fish and Game. The study collected stream topographic, hydraulic, and geomorphic information in a heavily utilized reach of Grant Creek. The results will help to develop measures to protect flows and habitat in the steep stream, which could be affected by hydropower development in nearby Grant Lake.



Topographic survey of Grant Creek for 2-D habitat model; Sockeye salmon in Grant Creek

Outreach and Education

HCD staff participated as judges in several school science fairs and made presentations in classrooms on fish habitat issues, helping to teach the next generation of stewards for healthy aquatic habitats.

Scenic Park Elementary School outreach event with first graders to talk about hydrology and fish habitat after judging a school-wide science fair



Please visit our website: www.alaskafisheries.noaa.gov/habitat

**FISHING VESSEL OWNERS' ASSOCIATION
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September 28, 2011

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 West 4th Street, Suite 36
Anchorage, AK 99501-2252

RE: ***NPFMC March 2011 Adoption of Amendment to the Halibut and Sablefish Quota Share Program to Restrict Initial QS Recipients***

Dear Chairman Olson:

The Fishing Vessel Owners' Association ("FVOA") requests that the North Pacific Fishery Management Council ("Council") reconsider and clarify a previously adopted final action. We request that the control date of February 12, 2010, which is part of the Amendment adopted by the Council, referenced above, be effective no earlier than the date on which the Council actually adopted the amendment in March 2011. We are asking the Council to take this action before the regulatory process of NMFS begins to finalize the Council's action. The members of FVOA respect the Council process and wish this date to be the choice of the Council. We intend to provide comments to the Council at the December meeting under NMFS B reports regarding this issue.

In March 2011, the Council adopted an amendment to the halibut and sablefish Individual Fishing Quota ("IFQ") plan prohibiting the use of hired skippers for certain catcher vessel quota share ("QS") transferred after February 12, 2010 ("Amendment"). The effect of the Amendment is to require that the IFQ owner be aboard the vessel when it is fishing for halibut or sablefish QS acquired after February 12, 2010. The FVOA believes that applying the Amendment to existing and valid contracts for the sale and purchase of QS entered into before the Amendment was actually adopted violates existing law on the retroactive application of rules and is unfair and inequitable. Therefore, we urge the Council to clarify that the effective date of the Amendment is no earlier than the date on which the Council actually adopted the Amendment.

In February 2010, the Council stated its intent to consider February 12, 2010 as the control date on which to apply any owner on board ("OOB") rule the Council might later adopt regarding the acquisition of additional QS. The Council did not actually adopt the Amendment and the control date until 13 months later in March 2011.

This series of events creates two general categories of people. First, there is the category of people who had entered into contracts for the sale and purchase of QS before the February 2010 Council action but who had not completed performance of the contract by

February 12, 2010. These contracts often contained penalty clauses for non-performance. Second, there are people who initiated contract negotiations for the sale of QS after February 12, 2010, which contracts closed before March 2011. Many of these contracts also had penalty clauses for non-performance.

In 1988, the Supreme Court clarified the law concerning the power of agencies to make rules with retroactive effect. *Bowen v. Georgetown*, 488 U.S. 204 (1988). In that case, the Court unanimously held that the Department of Health and Human Services lacked the statutory authority to issue retroactive legislative rules to implement the Medicare program. The Department of Health and Human Services had promulgated a rule retroactively changing the formula by which hospitals received Medicare reimbursement. The Court held:

Retroactivity is not favored in the law.... [A] statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.

Id. at 208. The Court noted “[t]he statutory provisions establishing the Secretary’s general rulemaking power contain no express authorization of retroactive rulemaking.” *Id.* at 213. In other words, *Bowen v. Georgetown* prohibits an agency from issuing a retroactive legislative rule such as the Amendment unless Congress has expressly authorized the agency to issue retroactive legislative rules. *Id.* at 208. See also *Kankamalage v. INS*, 335 F.3d 858 (9th Cir. 2003).

Nowhere does the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §1801 *et seq.* (“MSA”), expressly authorize the retroactive application of rules. Not only does the MSA contain no such express authorization, but the issues in *Bowen v. Georgetown* are analogous to the Amendment in that the Medicare reimbursement costs at issue were determined by a formula akin to a contract between the government and the providing hospitals. The Court held that the contract could not be changed retroactively. Here, initial IFQ recipients had lawful contracts for the sale or purchase of QS that were entered into before the Council adopted the Amendment in March 2011. Indeed, the Council admits the actions the Amendment now seeks to proscribe were legal. Public Review Draft of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis for the Proposed Regulatory Amendment to the Halibut and Sablefish Individual Fishing Quota Program to Prohibit Use of Hired Skippers for Future Transfers of Halibut and Sablefish B, C, and D Class Quota Shares After Control Date of February 12, 2010, dated March 2011 (“Draft RIR/IRFA”) at 3. It is these legal contracts that would be improperly changed by the Amendment in violation of the standards set out by the Supreme Court in *Bowen v. Georgetown*.

A recent decision, *Sierra Forest Legacy v. Sherman*, 646 F.3d 1161 (9th Cir. 2011), is instructive. In that case, plaintiffs asserted the United States Forest Service (“Service”) had violated the National Forest Management Act (“NFMA”) by failing to comply with monitoring requirements in a 2004 forest management plan. The Service asserted the 2004 requirement was mooted by a 2007 amendment to the forest management plan that retroactively eliminated the monitoring requirement. In holding that retroactive application of the 2007 amendment was unlawful, the Ninth Circuit reasoned that the 2007 amendment could not apply retroactively without statutory authority in the NFMA because the Service would only have the authority to

"change the legal consequences of completed acts ... if Congress conveys such authority in an express statutory grant." *Id.* at 1188, citing *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1070 (9th Cir. 1998). The court held the NFMA did not provide the Service with such authority. *Id.* at 1188. The analogy to the control date in the Amendment is that the Amendment changes the legal consequences of valid contracts without express statutory authorization to take such retroactive actions.

The Amendment also violates the Administrative Procedure Act ("APA"). A fundamental purpose of the APA is to provide due process to persons affected by new rulemaking. In that regard, the critical point is that the Council did not adopt the February 12, 2010 control date in February 2010. The Council's only action before March 2011 was to state an intent to consider February 12, 2010 as a control date. The Council did not, in fact, adopt February 12, 2010 as a control date until thirteen months later. Thus, there was no legal requirement of which the public could be aware until March 2011 at the earliest. In taking this action, the Council violated the principles and requirements of the APA. See *U.S. v. Mowat*, 582 F.2d 1194 (9th Cir. 1978); *Paulsen v. Daniels*, 413 F.3d 999 (9th Cir. 2005); *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479 (9th Cir. 1992); *Service Employees International Union Local 102 v. County of San Diego*, 60 F.3d 1346 (9th Cir. 1995); *Bohner v. Daniels*, 243 F.Supp.2d 1171, 1174-1175 (D. Or. 2003), *aff'd* 413 F.3d 999 (9th Cir. 2005).

FVOA recognizes that control dates are typical in fishery management plans and plans containing such dates have withstood judicial challenge. That may be true but those cases involve management plans conferring future rights based on past performance. Such future management plans differ significantly from the Amendment. The fundamental distinction is that the Amendment retroactively changes existing and legal contractual rights and obligations. NMFS' regulations authorize the contracts affected by the Amendment's control date and the Council admits the contracts are legal. Retroactively applying new rules to invalidate previously legal behavior is contrary to the APA.

In sum, FVOA believes the Amendment violates the Supreme Court's prohibition on retroactive rulemaking. The MSA does not expressly grant to the Council or NMFS the authority to issue retroactive rules. Even if such authority existed, the earliest time the Council can be said to have actually adopted the February 12, 2010 control date was March 2011. Before that, the Council's only action was a statement of an intent to consider a date, hardly the adoption of a legally binding standard. The Council's action violates the intent and standards of the APA.

For all of these reasons, we urge the Council to clarify that the effective date of the Amendment is no earlier than the date on which the Council actually adopted the Amendment.

Sincerely,



Robert D. Alverson
Manager

RDA:cmb

Cc: Eric Schwaab