

**December 1992**

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**NMFS FISHERIES  
MANAGEMENT REPORT**

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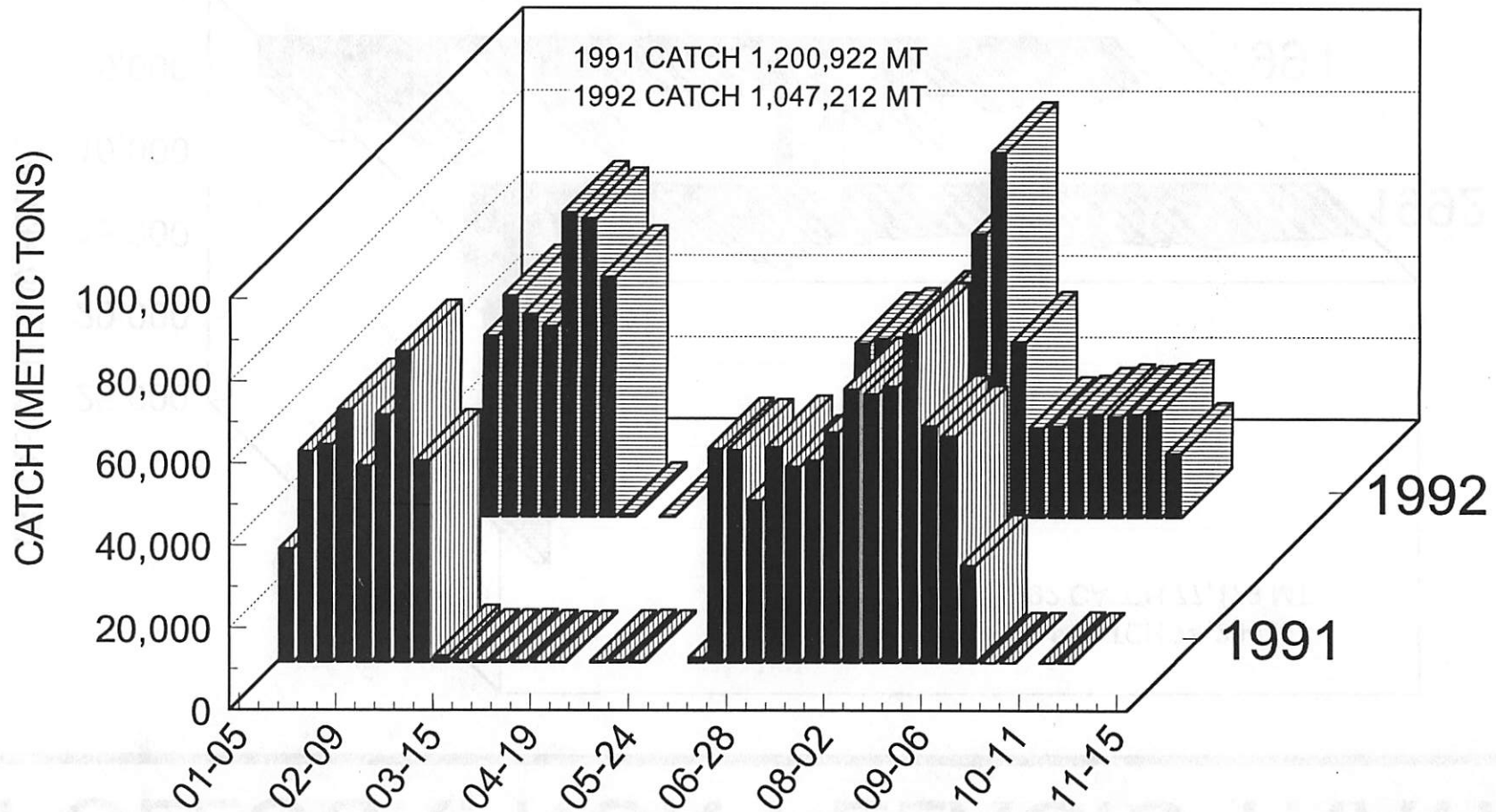
# 1991 & 1992 BERING SEA INSHORE/ OFFSHORE POLLOCK



	91 INSHORE	91 OFFSHORE	92 INSHORE	92 OFFSHORE
A SEASON ■	138,616	322,901	129,302	400,689
B SEASON ▨	250,600	557,597	261,183	462,292

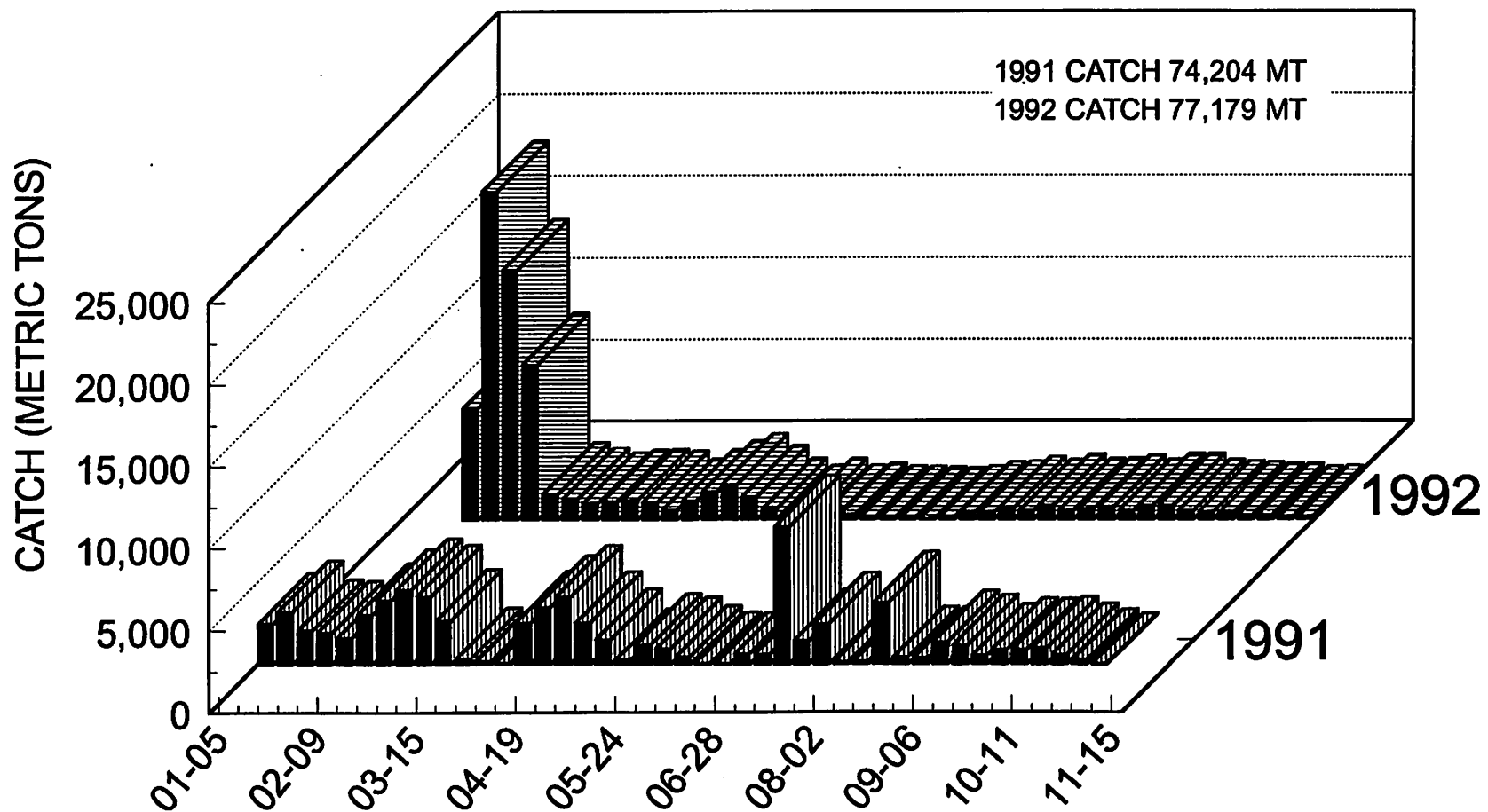
(through 11/15/92)

# 1991 & 1992 BERING SEA POLLOCK, PELAGIC TRAWL



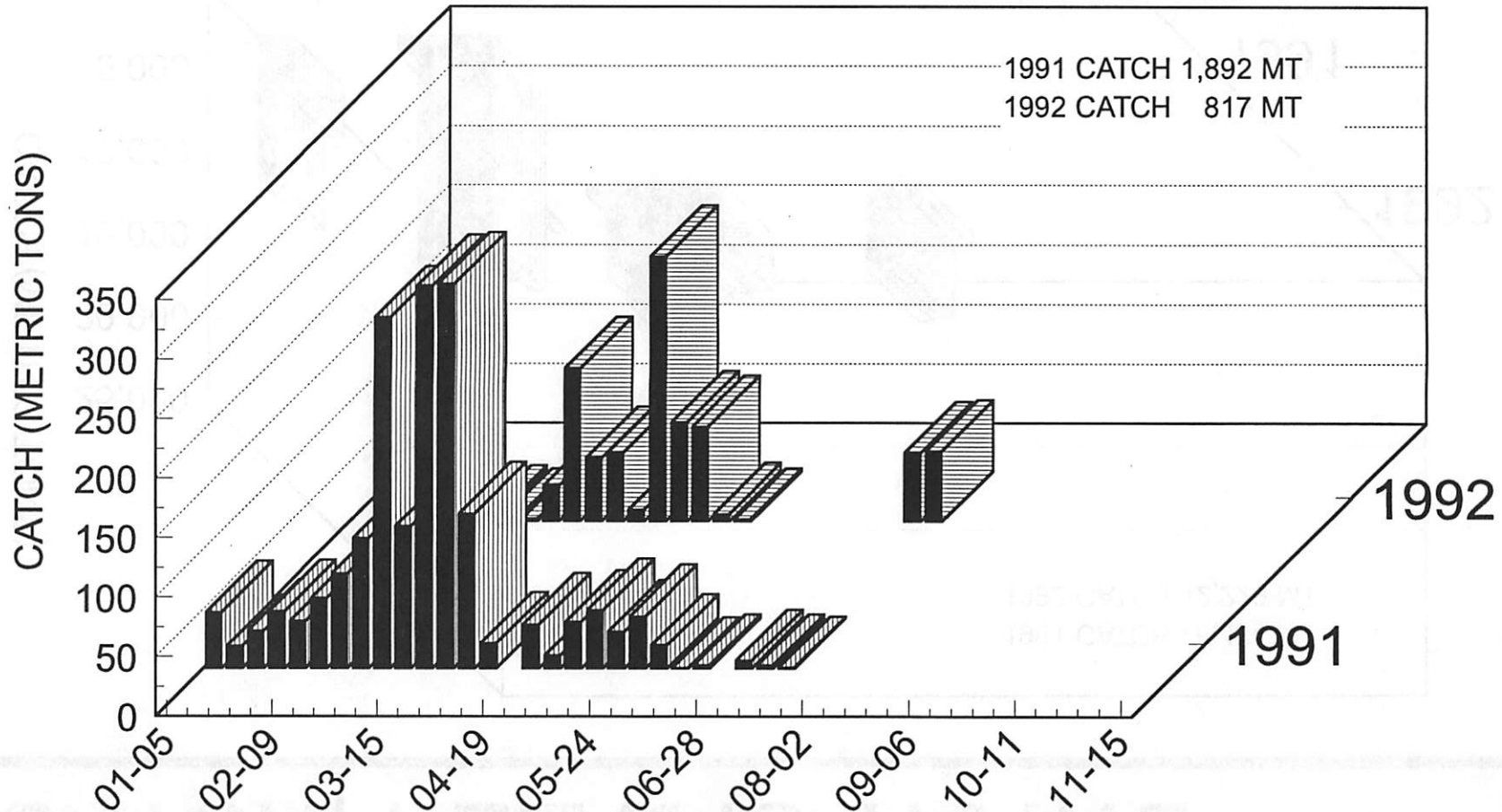
(through 11/15/92)

# 1991 & 1992 BERING SEA POLLOCK, NON-PELAGIC TRAWL



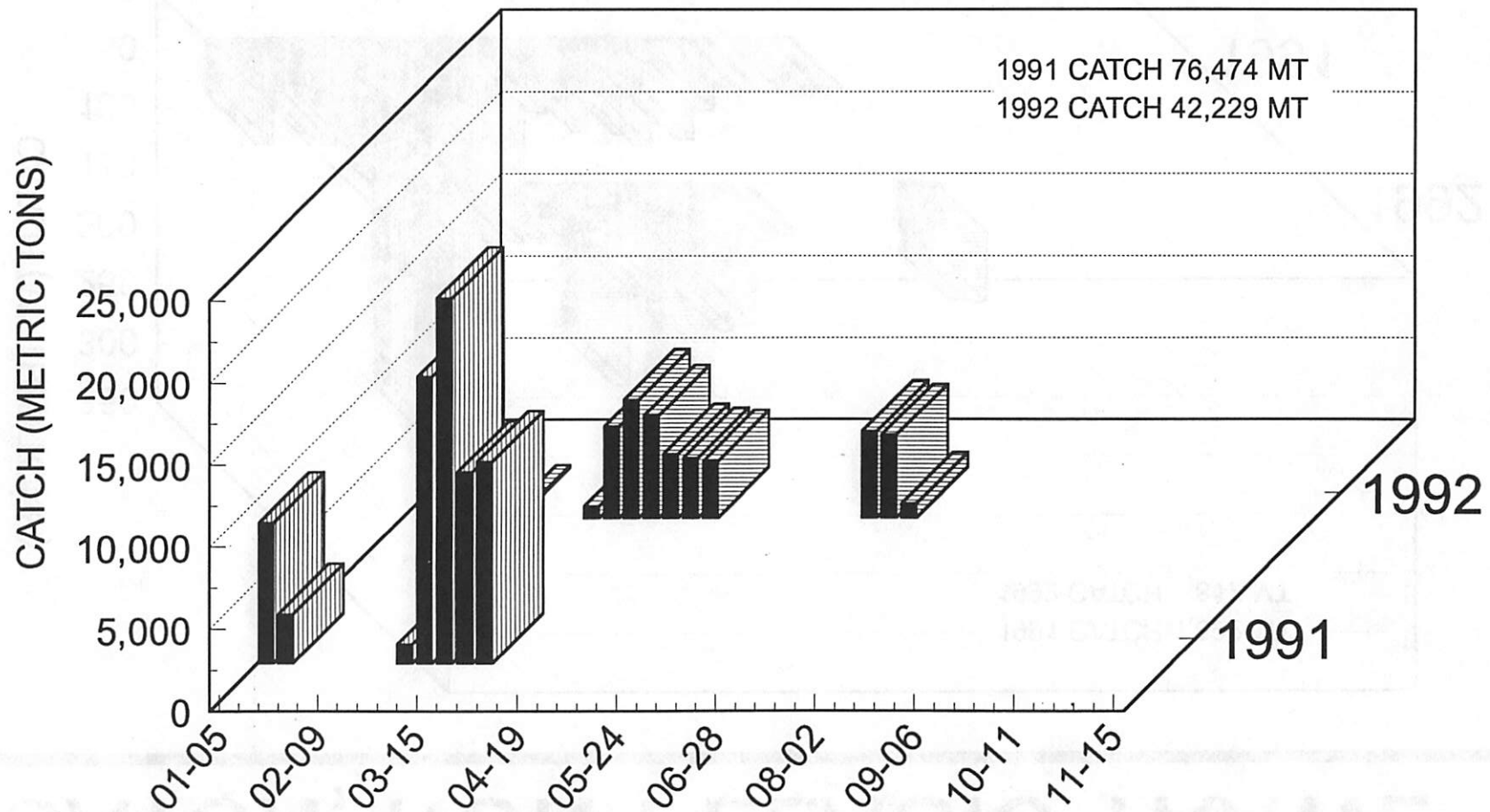
(through 11/15/92)

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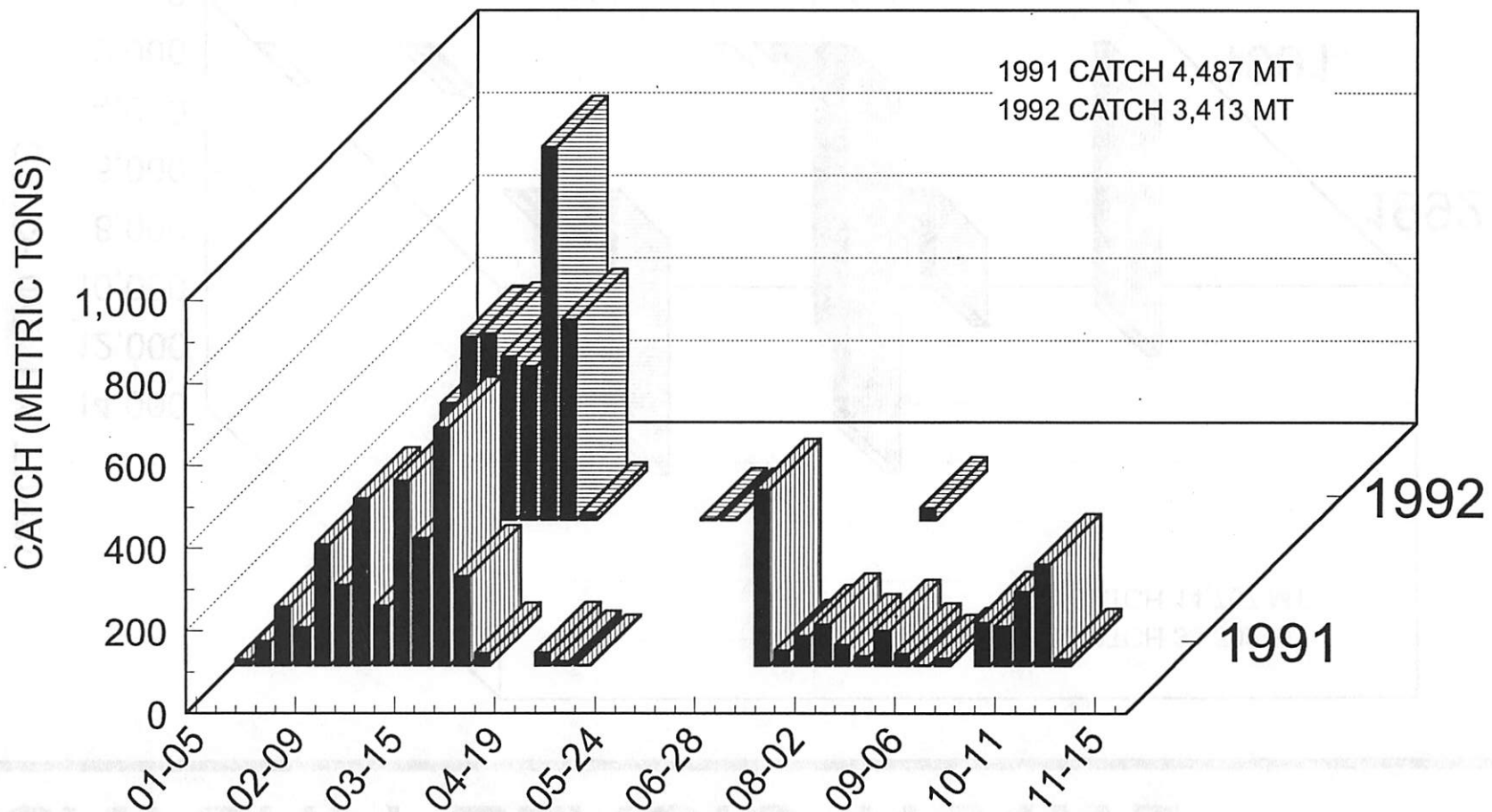
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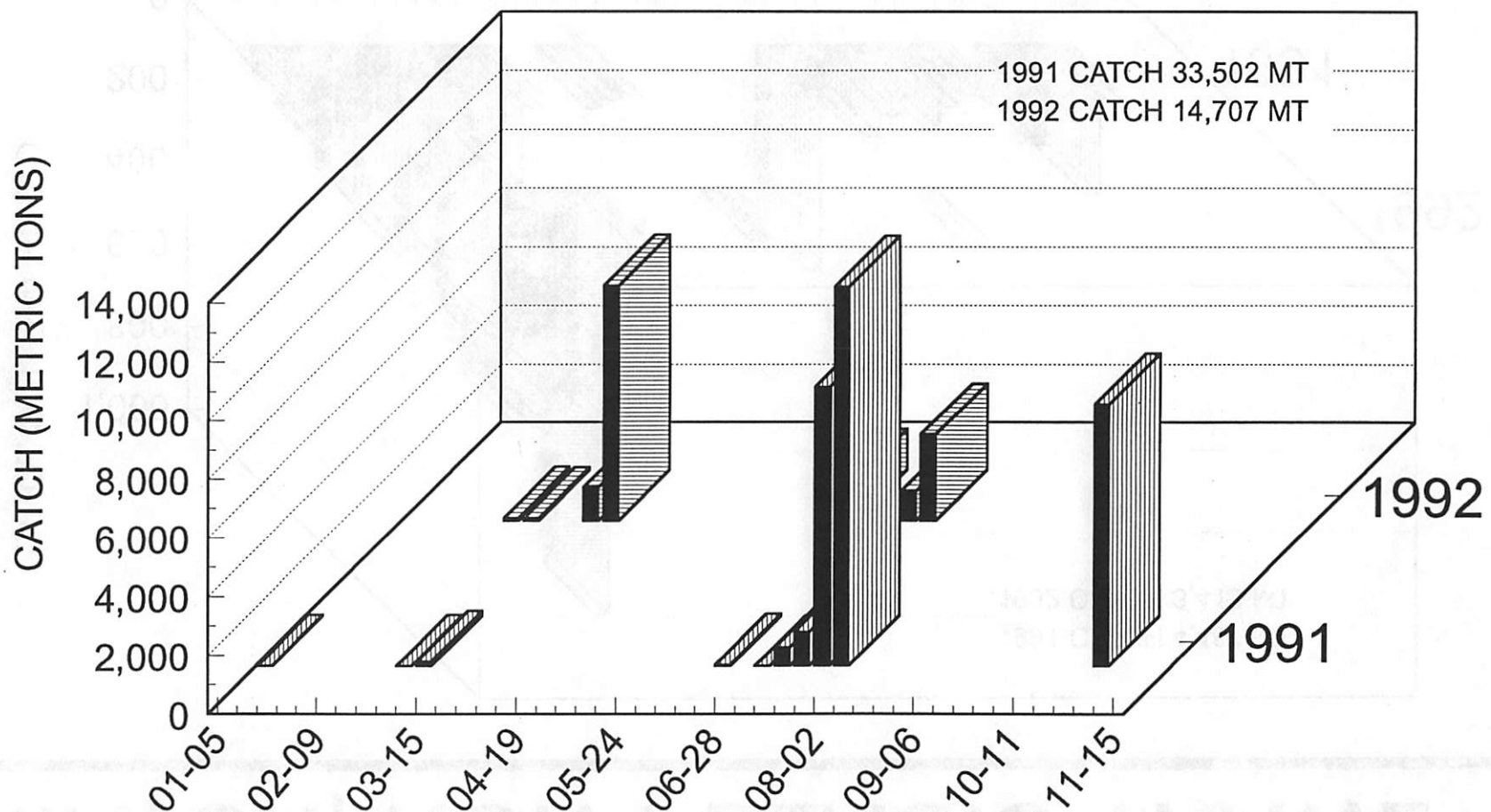
(through 11/15/92)

# 1991 & 1992 GOA 610 POLLOCK CATCH, NON-PELAGIC TRAWL



(through 11/15/92)

# 1991 & 1992 GOA 610 POLLOCK CATCH, PELAGIC TRAWL

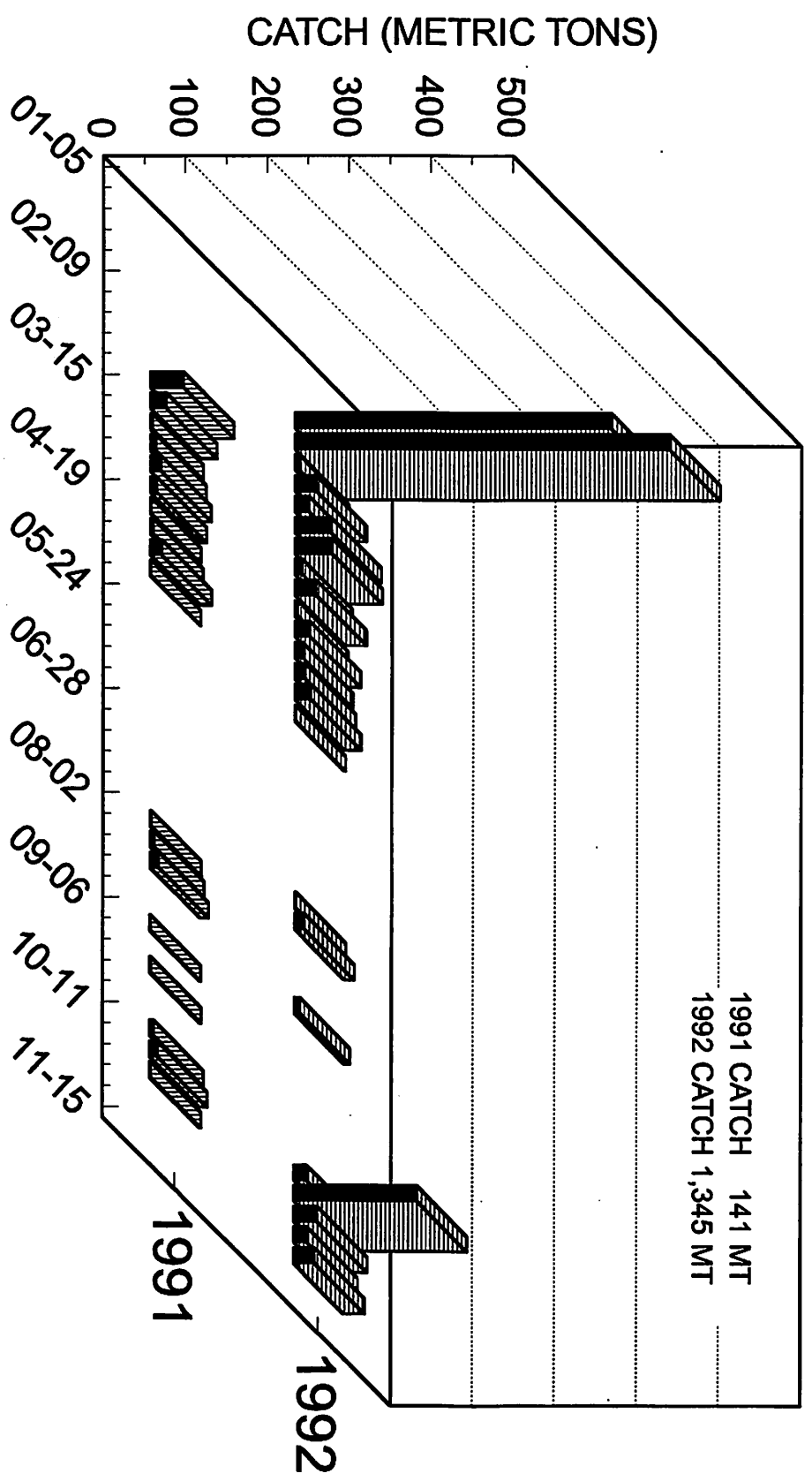


(through 11/15/92)



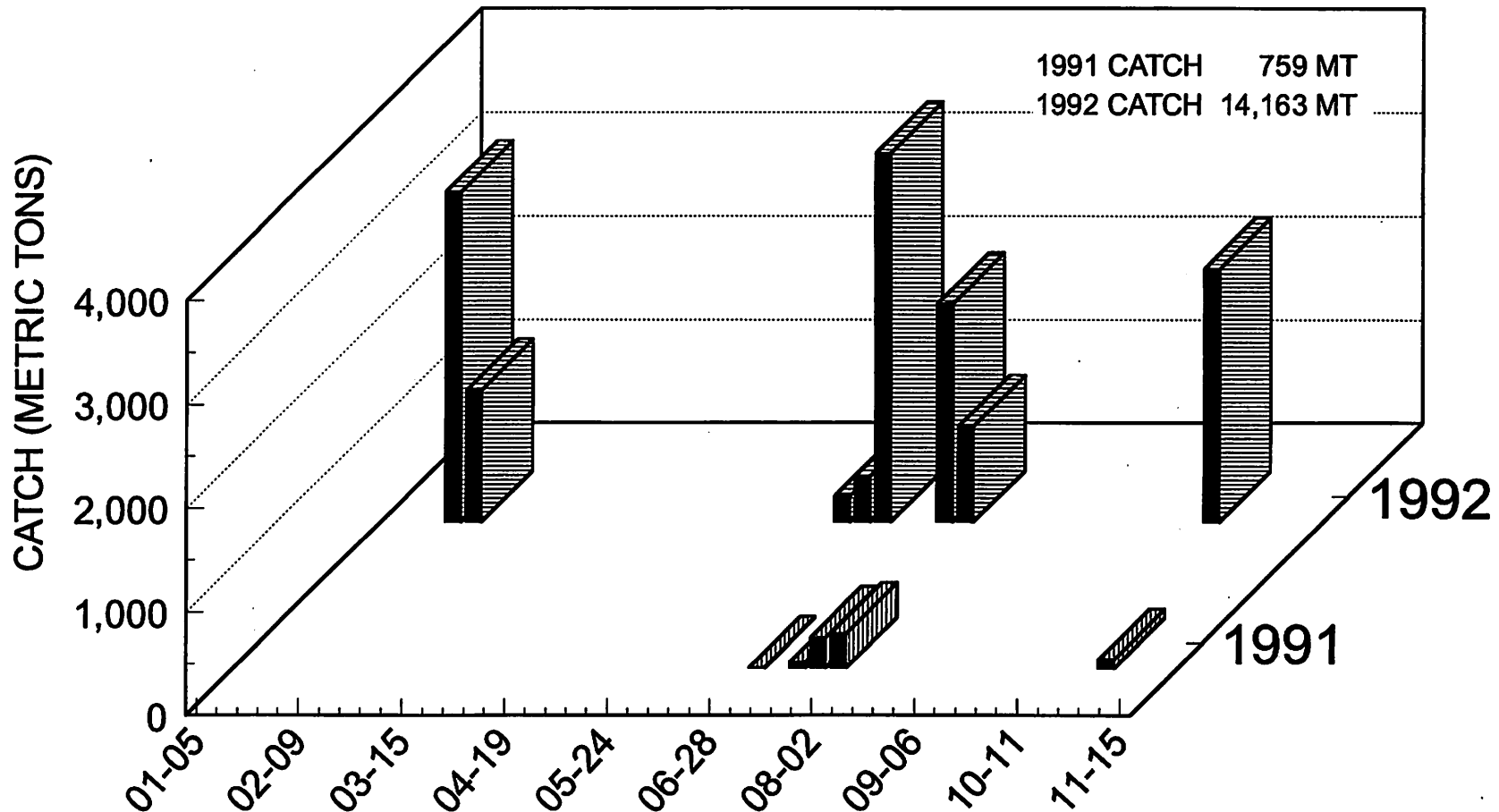
# 1991 & 1992 GOA 620 POLLOCK CATCH, NON-PELAGIC TRAWL

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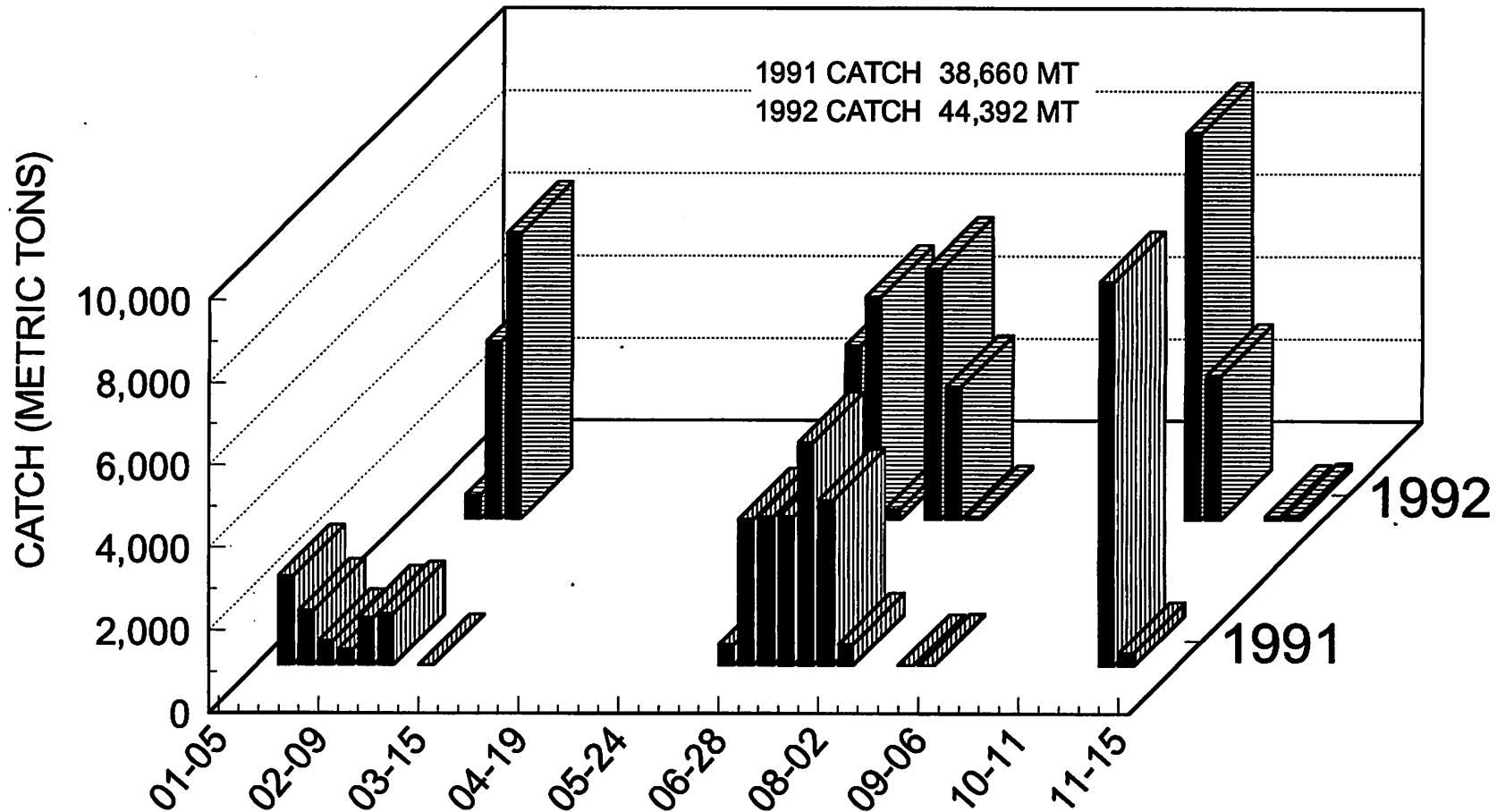
(through 11/15/92)

# 1991 & 1992 GOA 620 POLLOCK CATCH, PELAGIC TRAWL



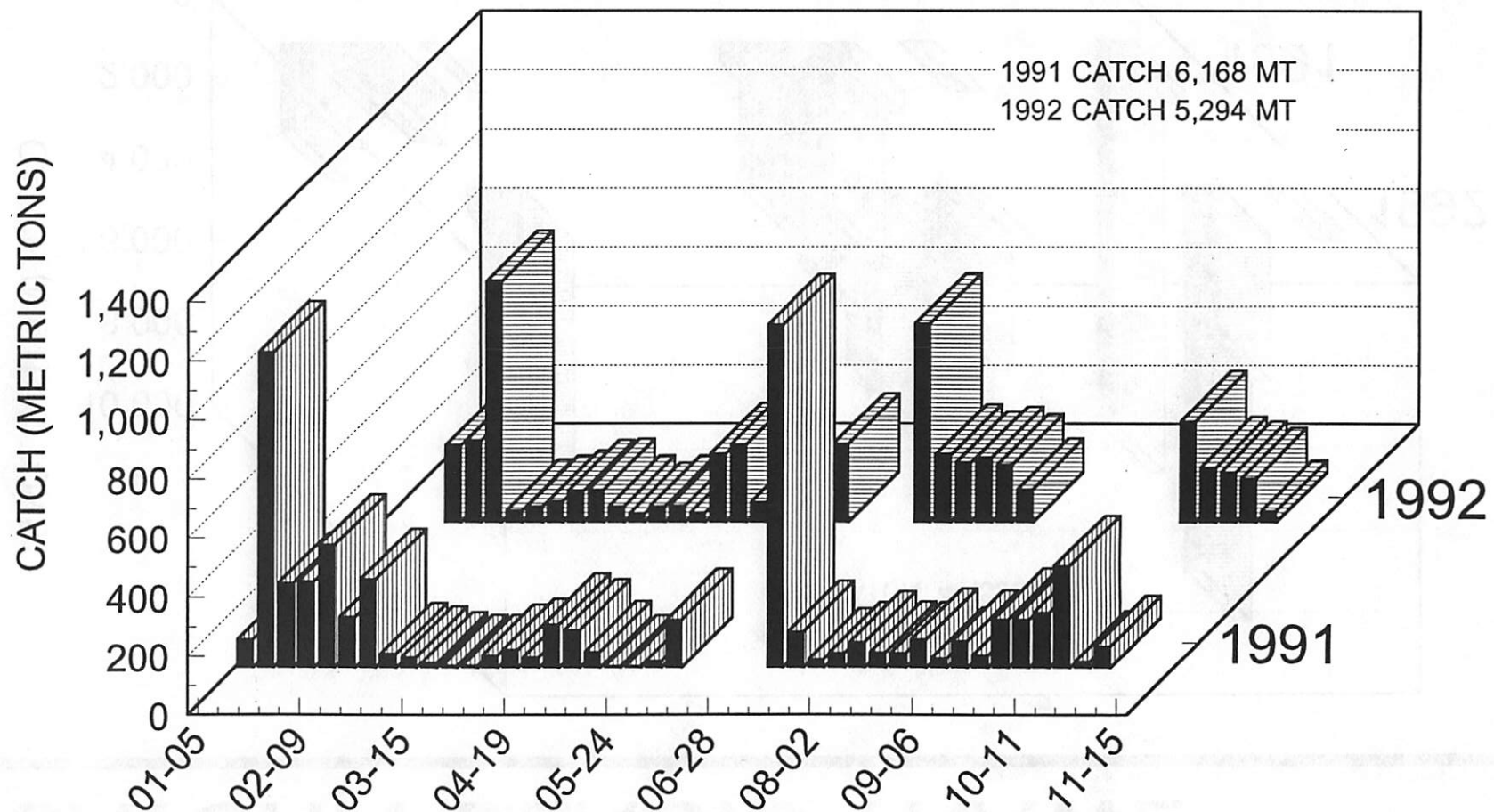
(through 11/15/92)

# 1991 & 1992 GOA 630 POLLOCK CATCH, PELAGIC TRAWL



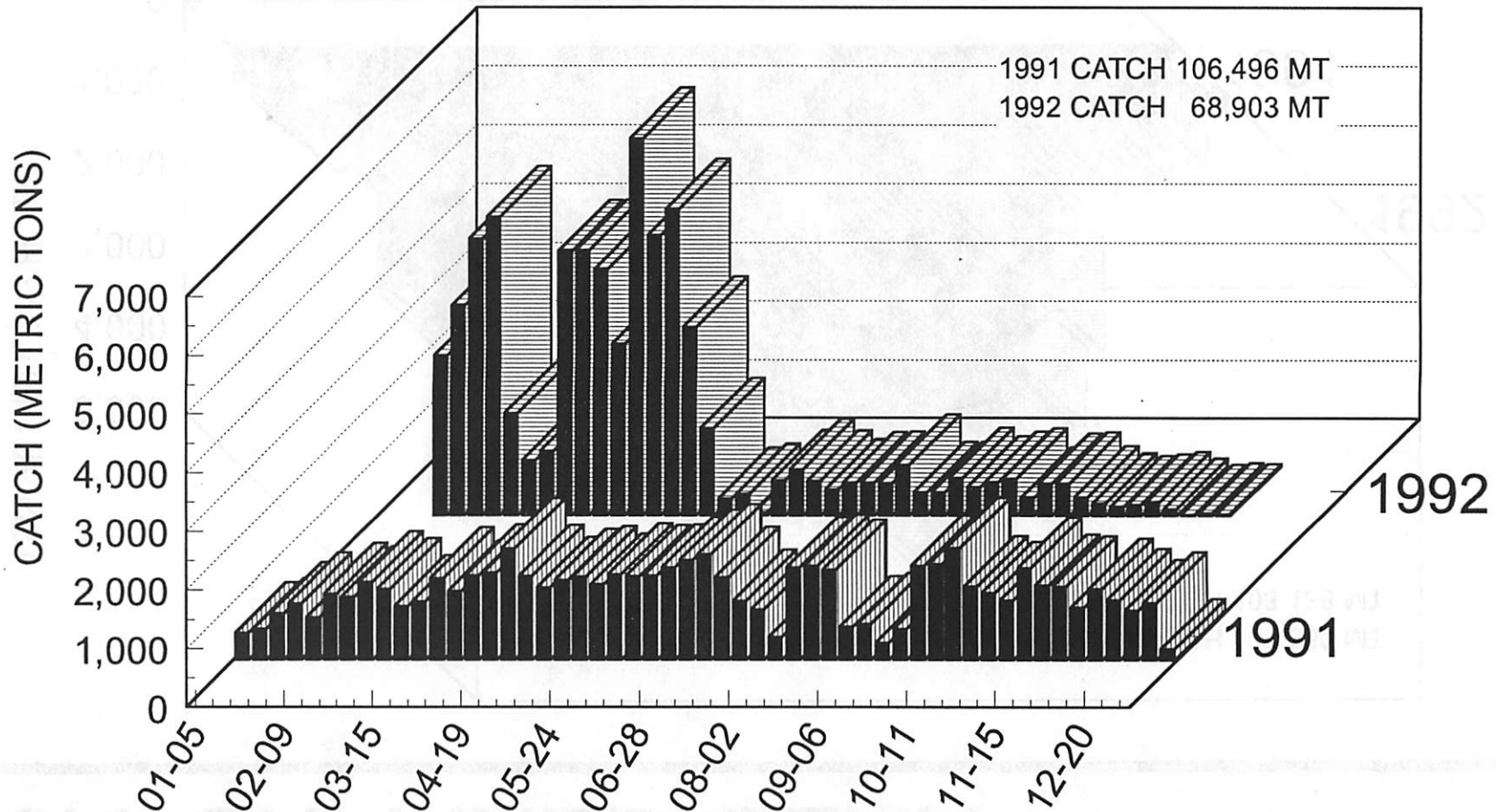
(through 11/15/92)

# 1991 & 1992 GOA 630 POLLOCK CATCH, NON-PELAGIC TRAWL



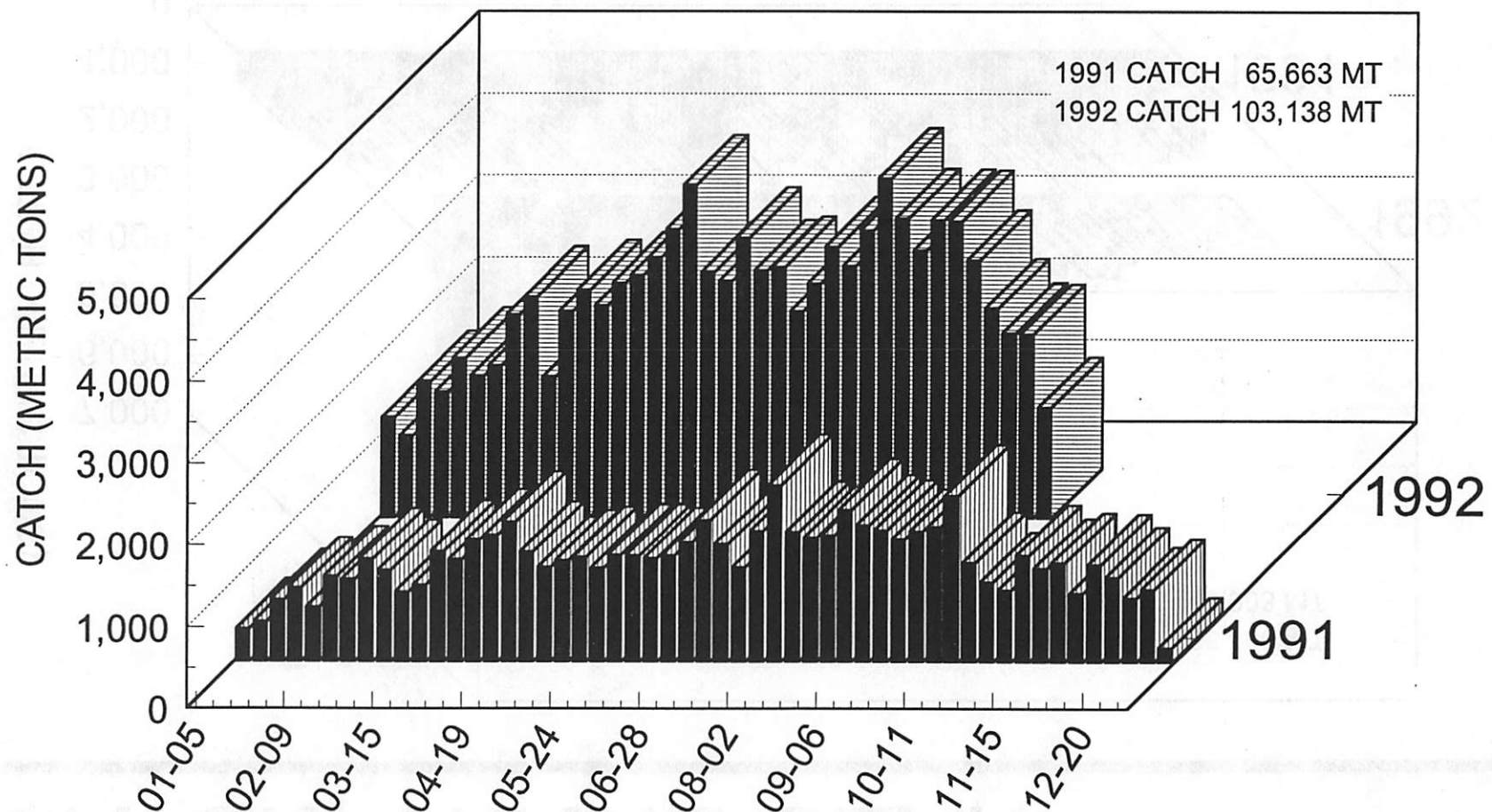
(through 11/15/92)

# 1991 & 1992 BSAI PACIFIC COD CATCH, TRAWL GEAR



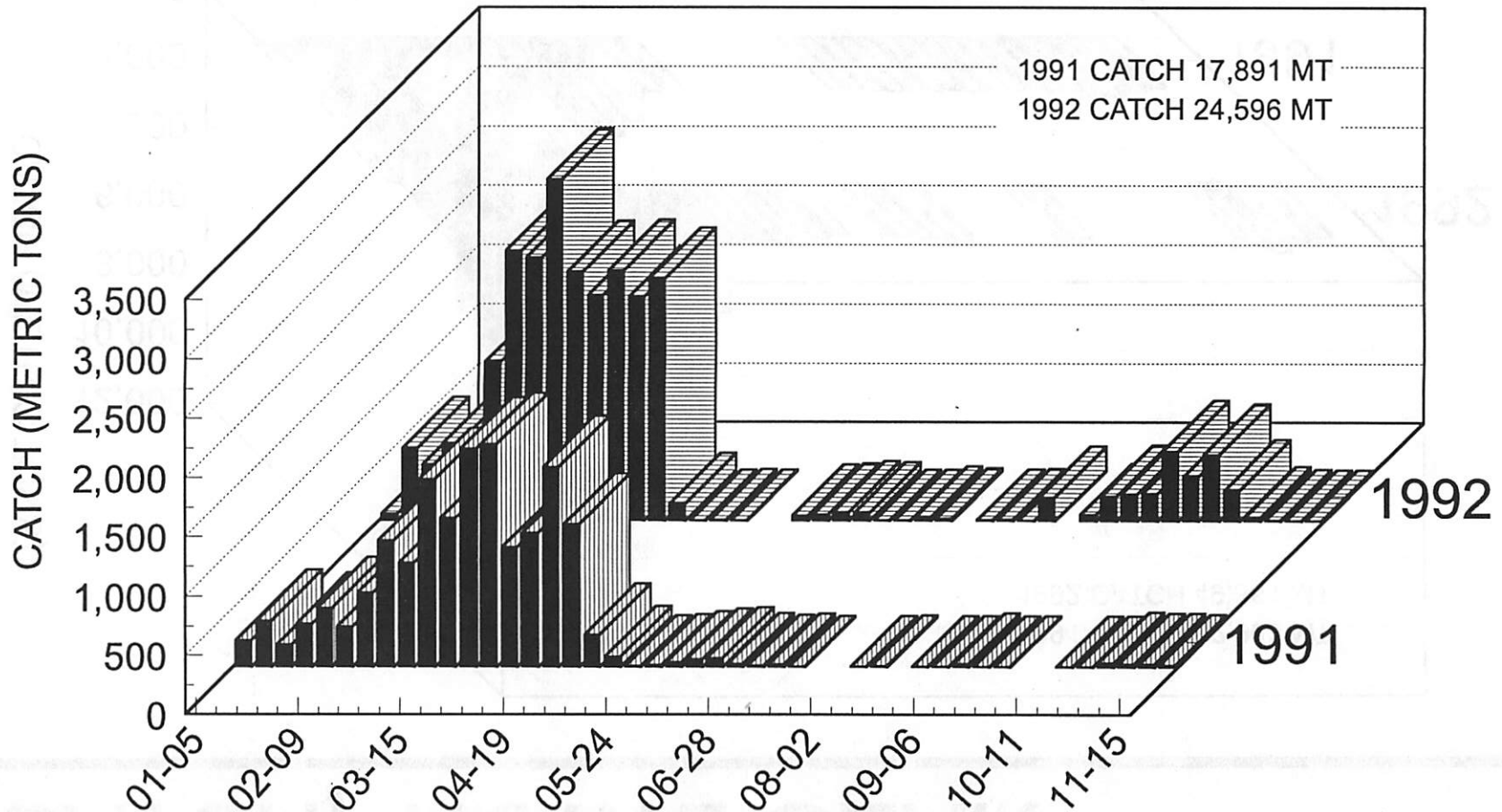
Quantity 11/15/92

# 1991 & 1992 BSAI PACIFIC COD CATCH, FIXED GEAR



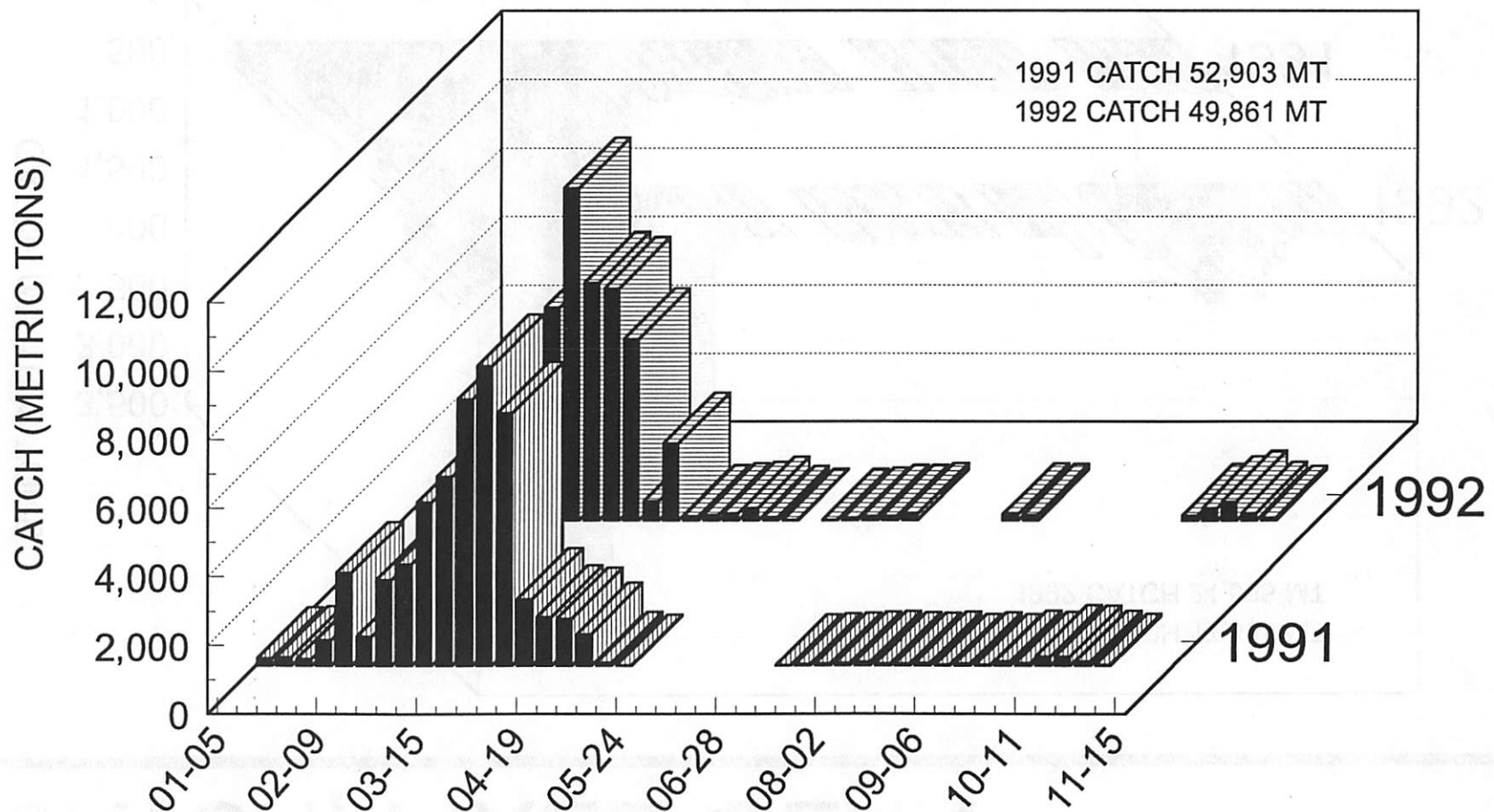
(through 11/15/92)

# 1991 & 1992 GOA PACIFIC COD CATCH, FIXED GEAR



(through 11/15/92)

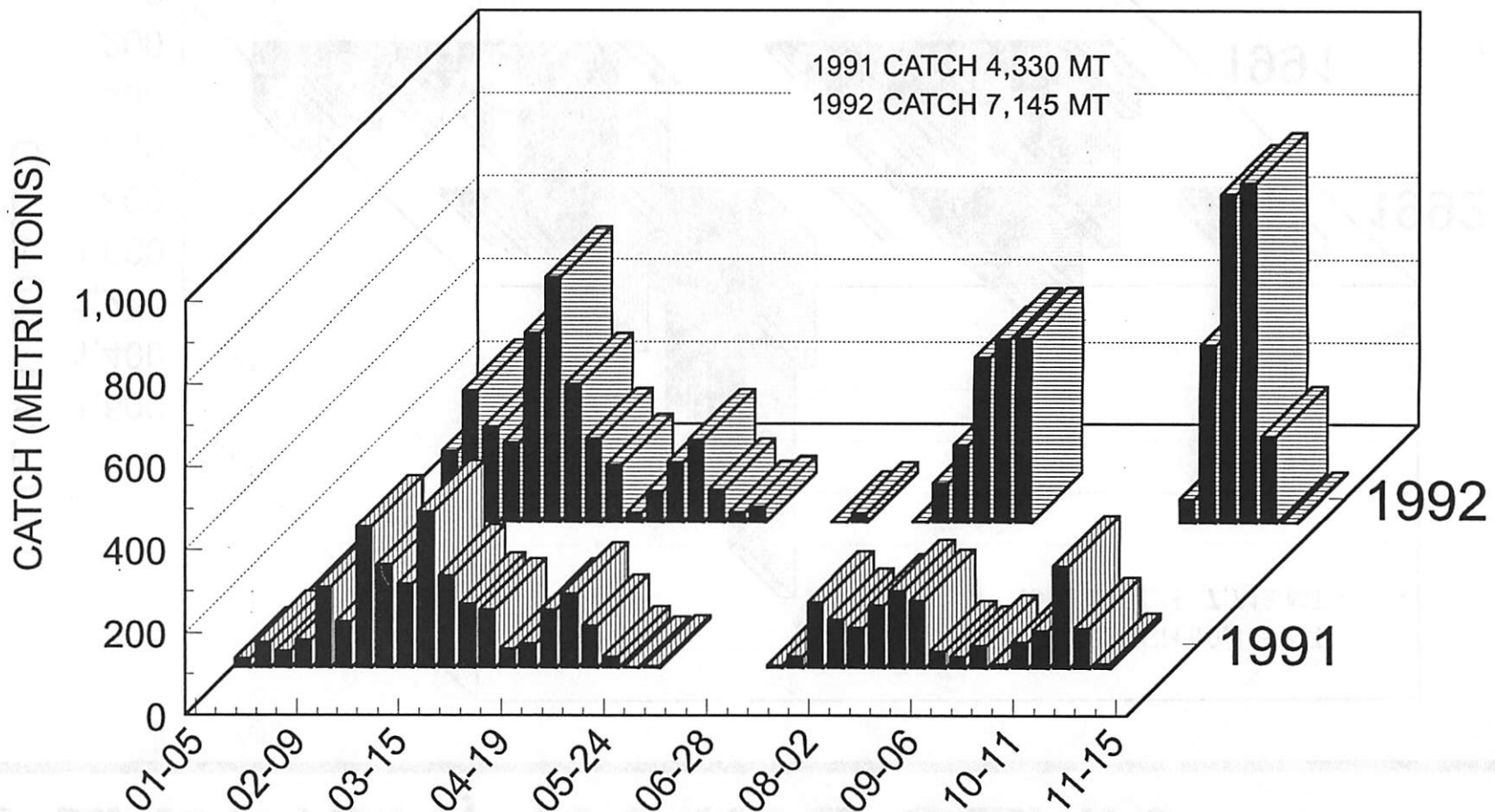
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(through 11/15/92)

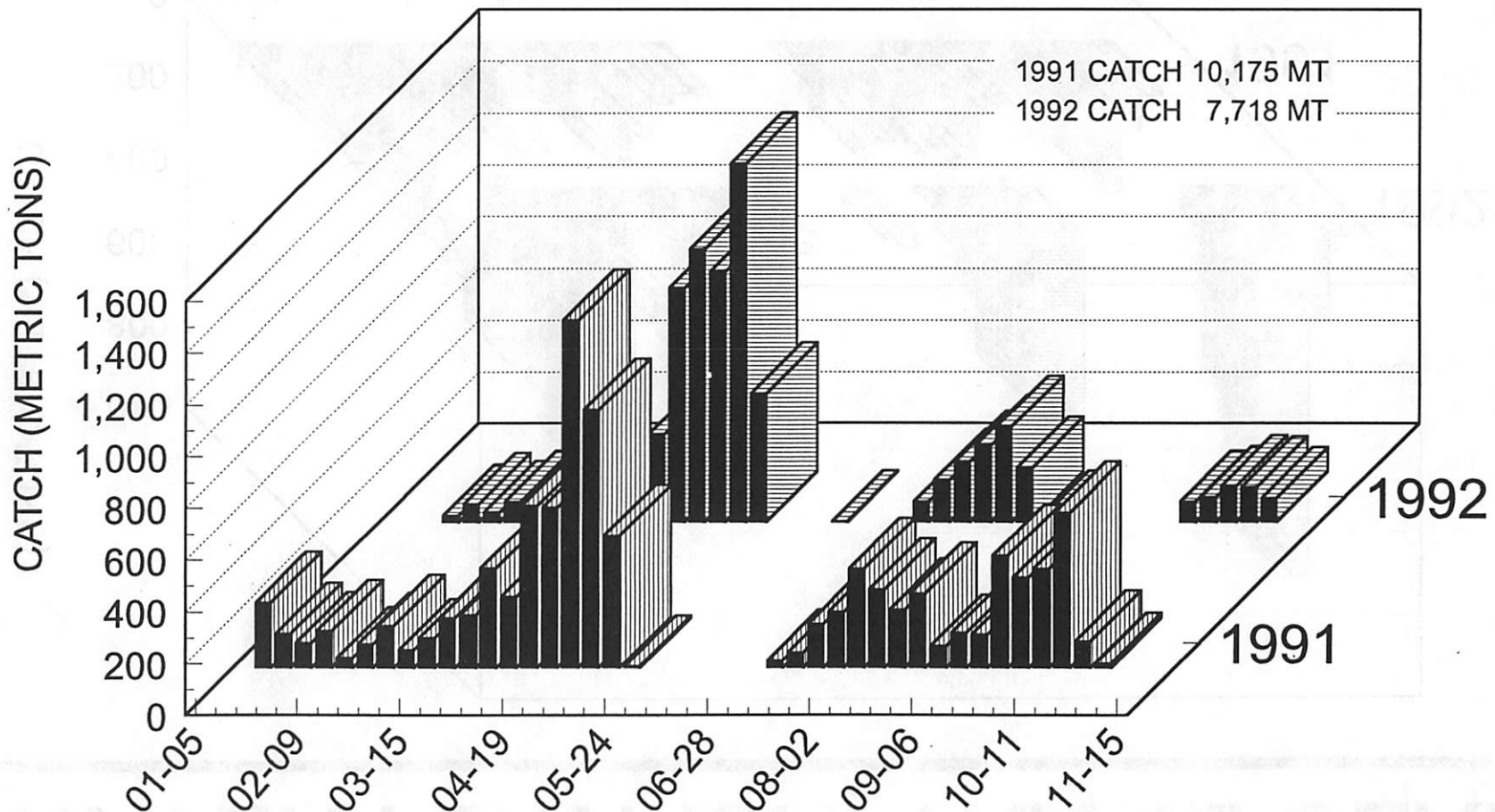


# 1991 & 1992 GOA SHALLOW WATER FLATFISH, TRAWL GEAR



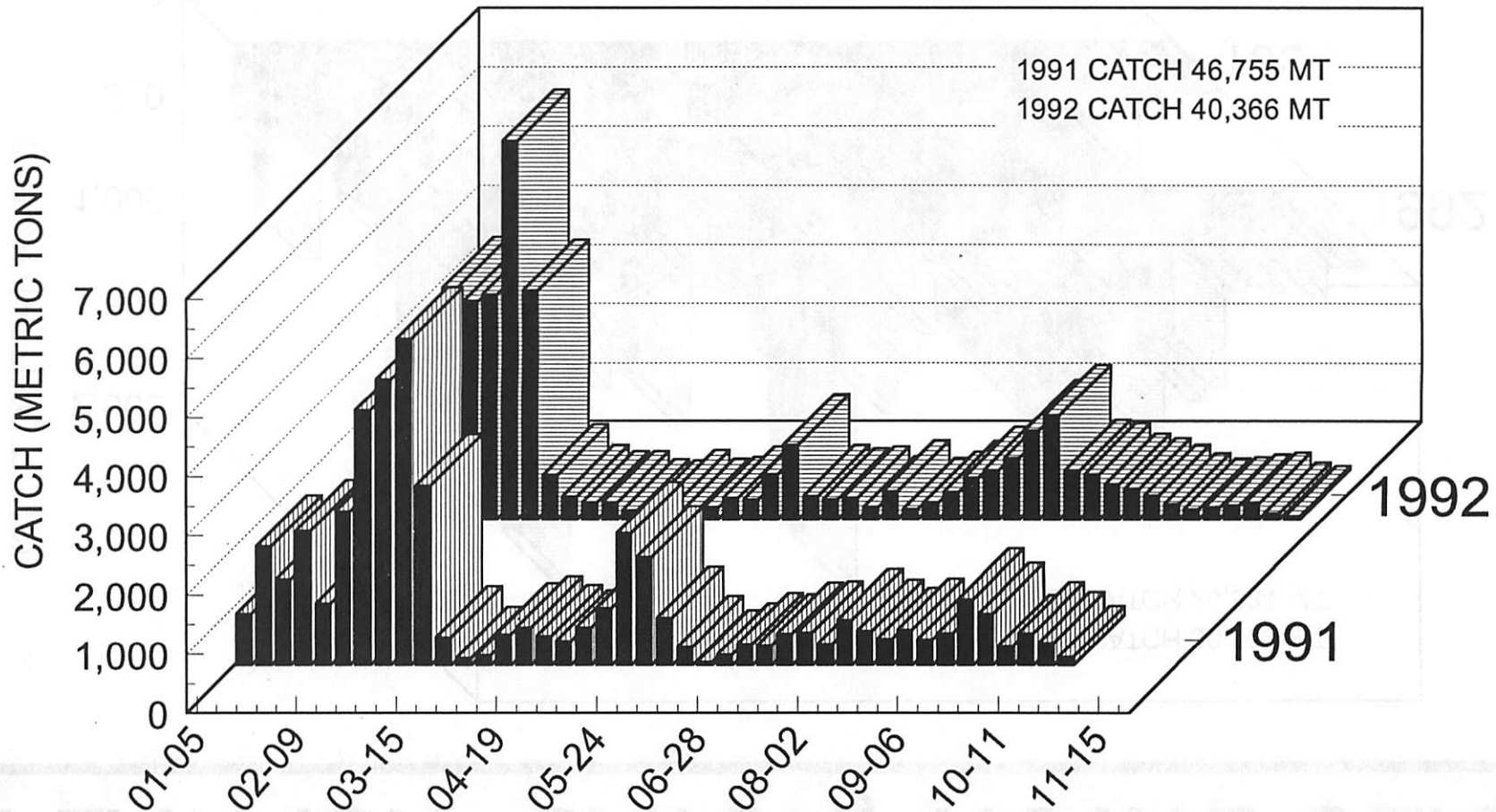
(through 11/15/92)

# 1991 & 1992 GOA DEEP WATER FLATFISH, TRAWL GEAR



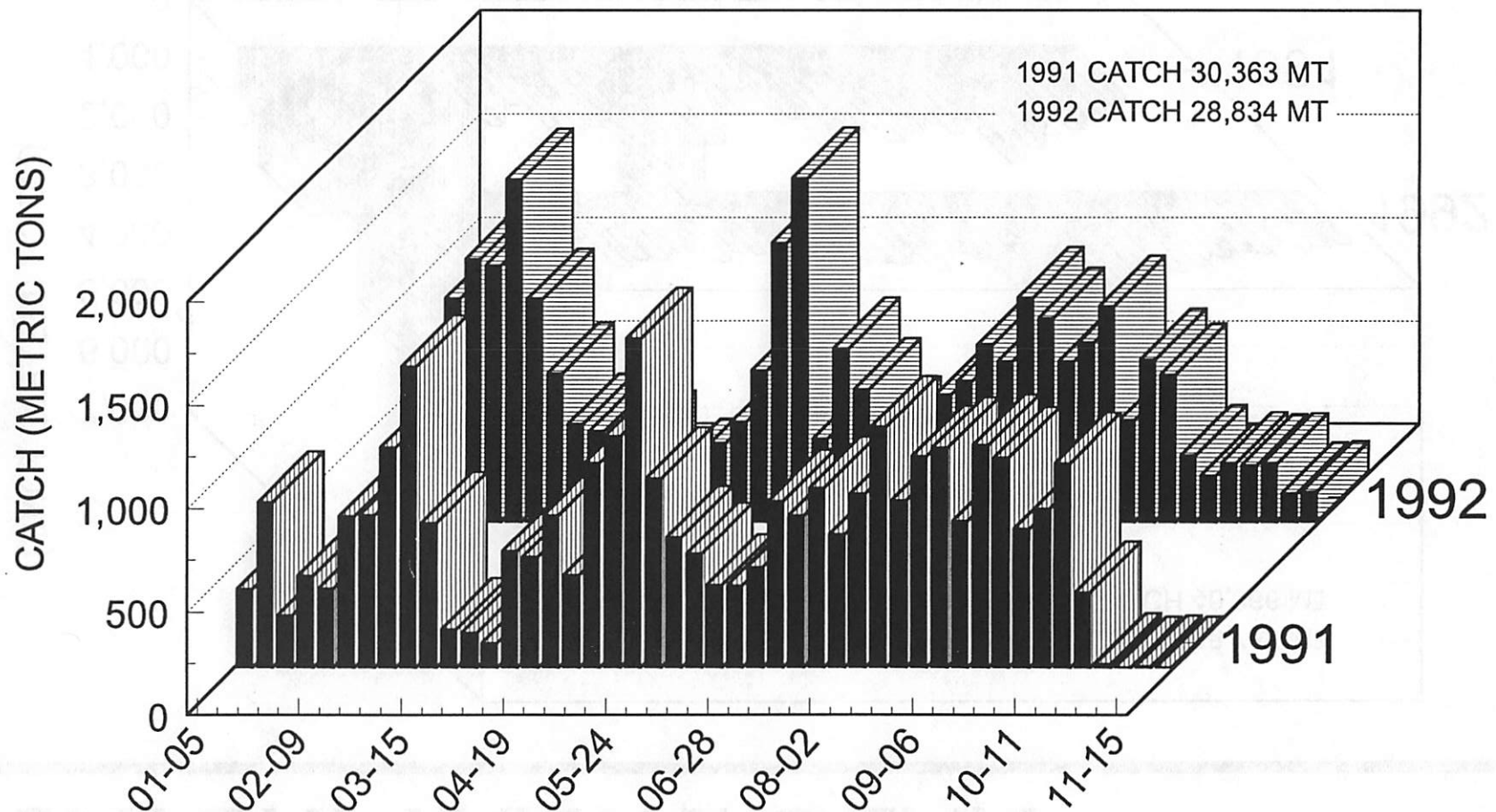
(through 11/15/92)

# 1991 & 1992 BSAI ROCK SOLE CATCH, TRAWL GEAR



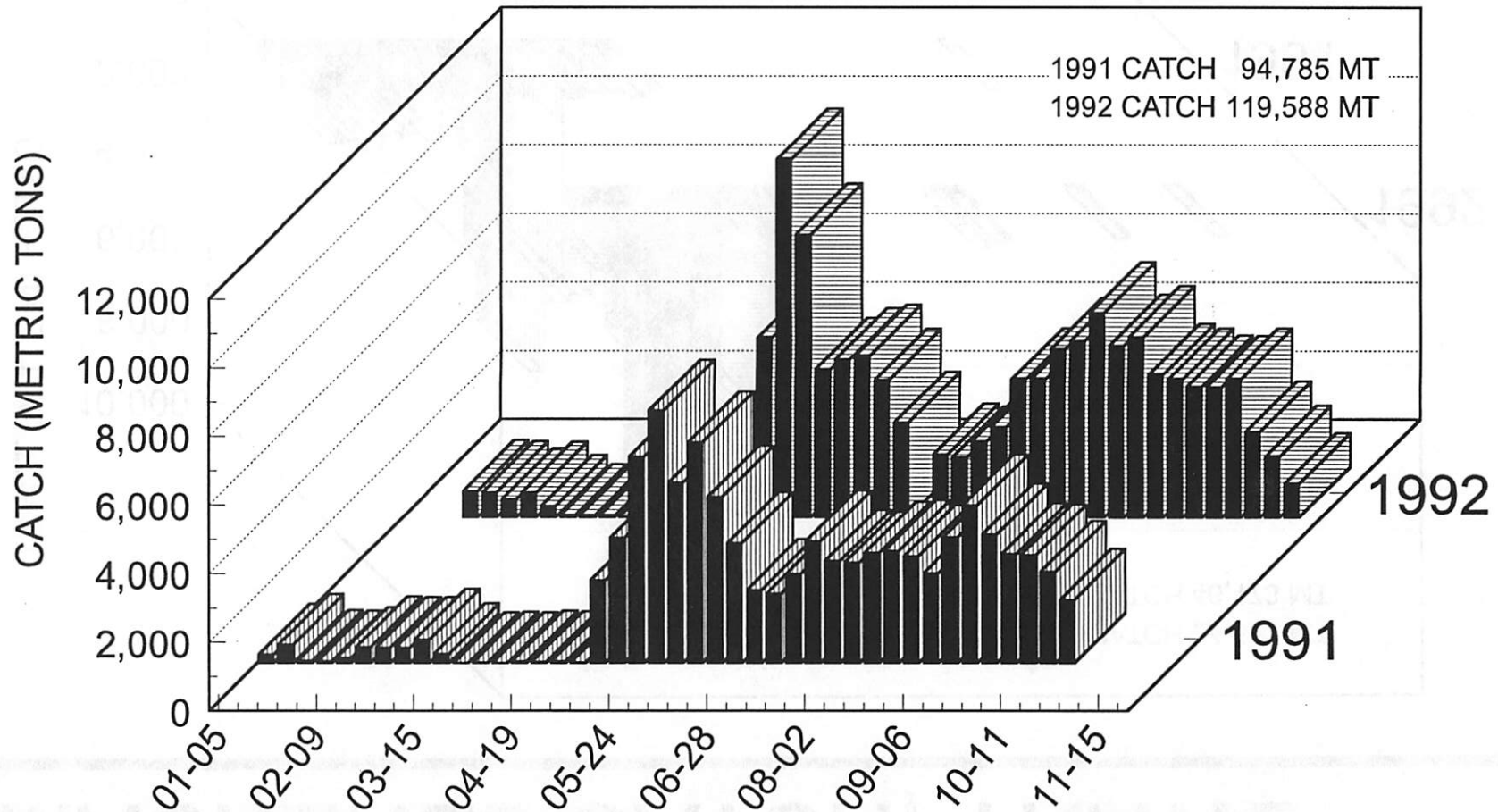
(through 11/15/92)

# 1991 & 1992 BSAI "OTHER FLATFISH" CATCH, TRAWL GEAR



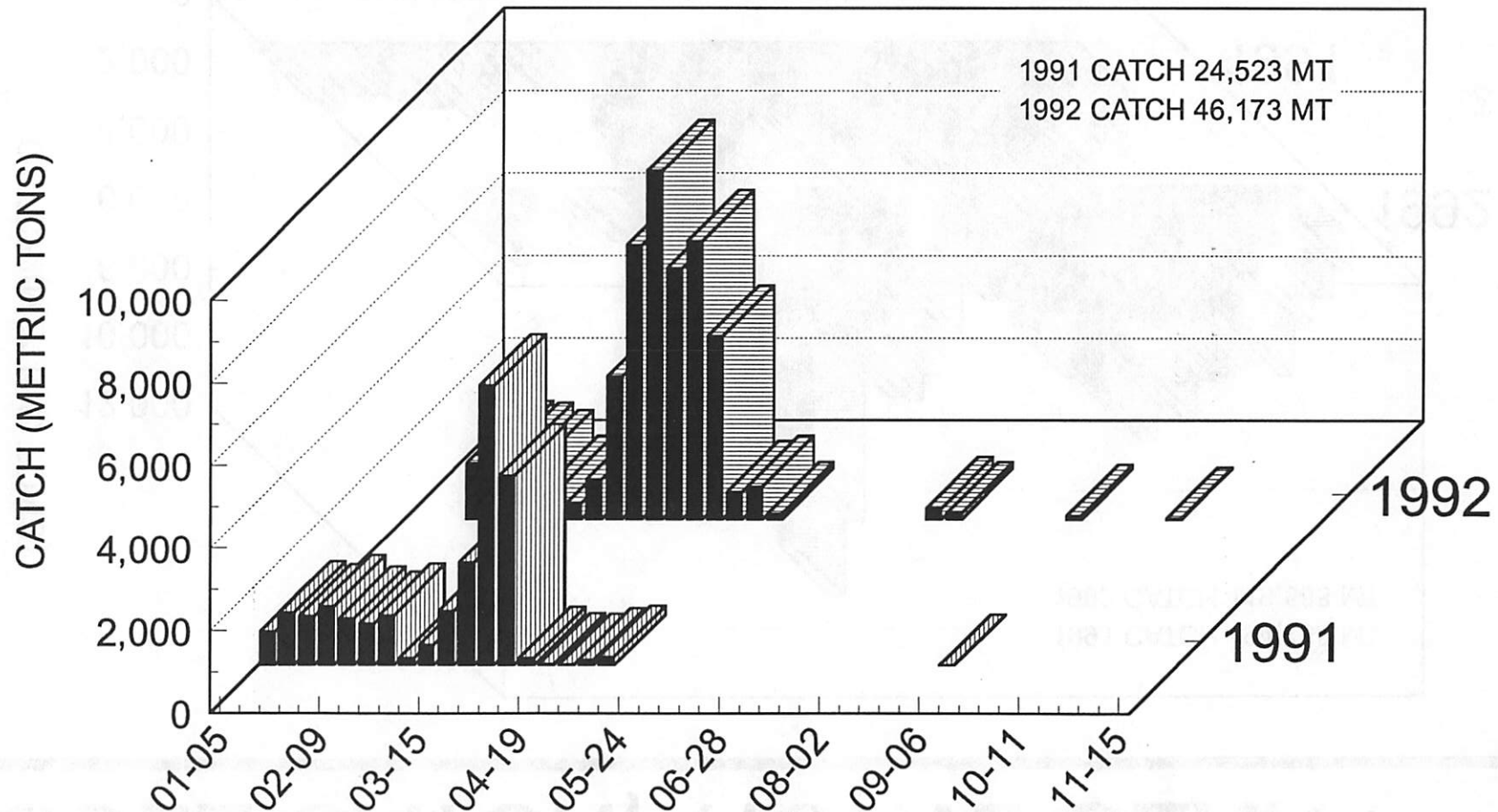
(through 11/15/92)

# 1991 & 1992 BSAI YELLOW FIN SOLE CATCH, TRAWL GEAR



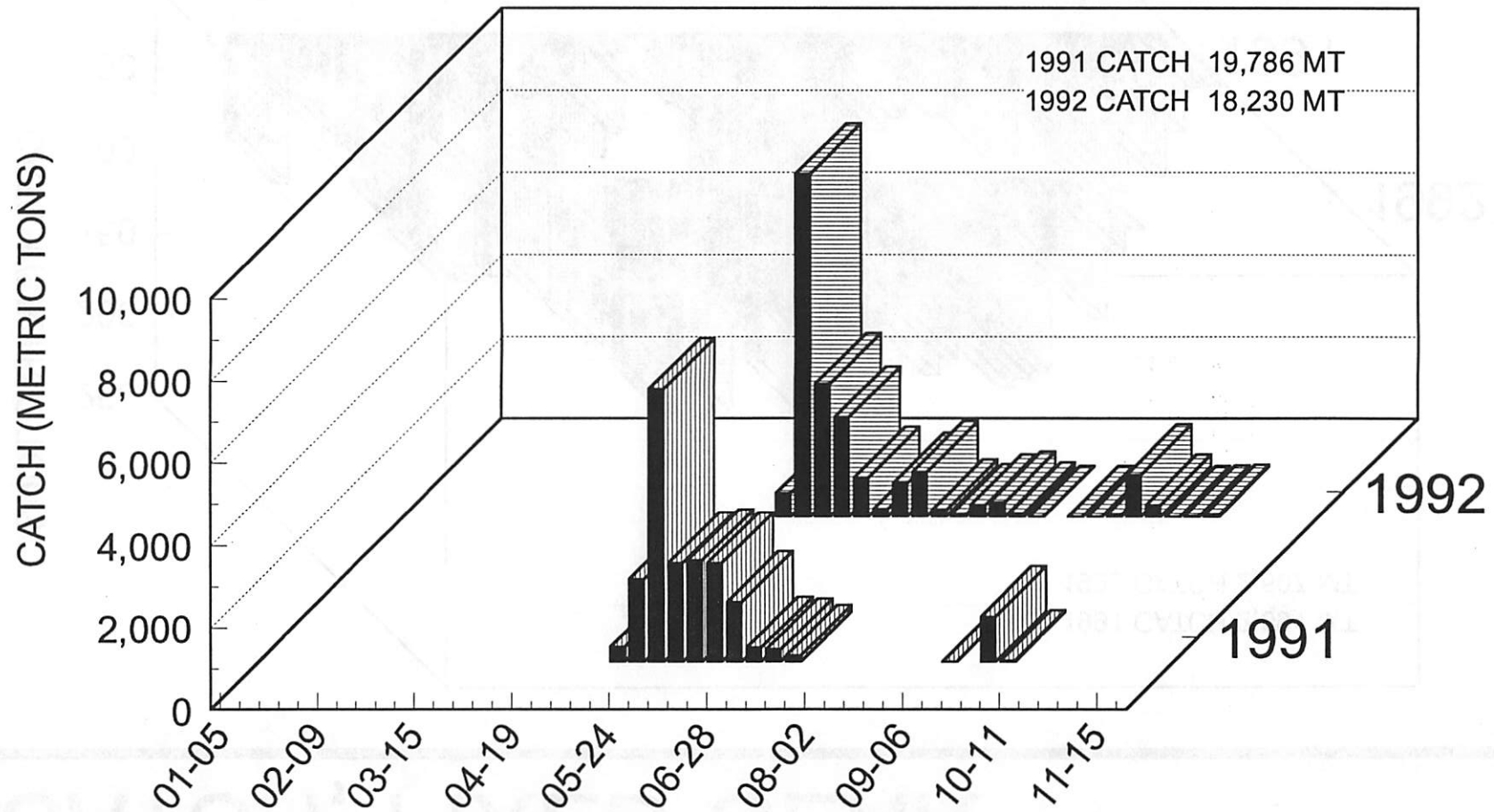
(through 11/15/92)

# 1991 & 1992 BSAI ATKA MACKEREL CATCH, TRAWL



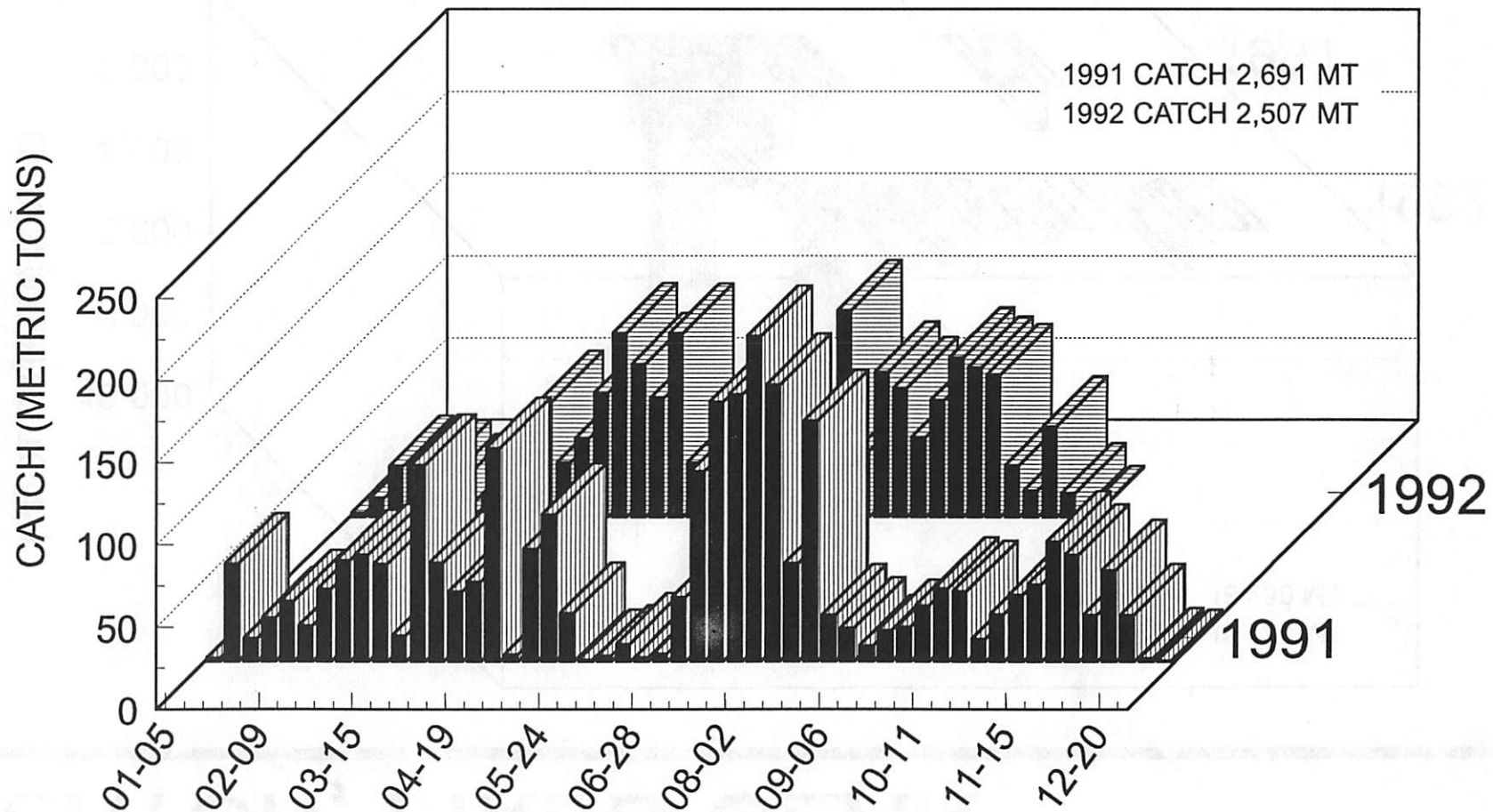
(through 11/15/92)

# 1991 & 1992 GOA SABLEFISH CATCH, FIXED GEAR



(through 11/15/92)

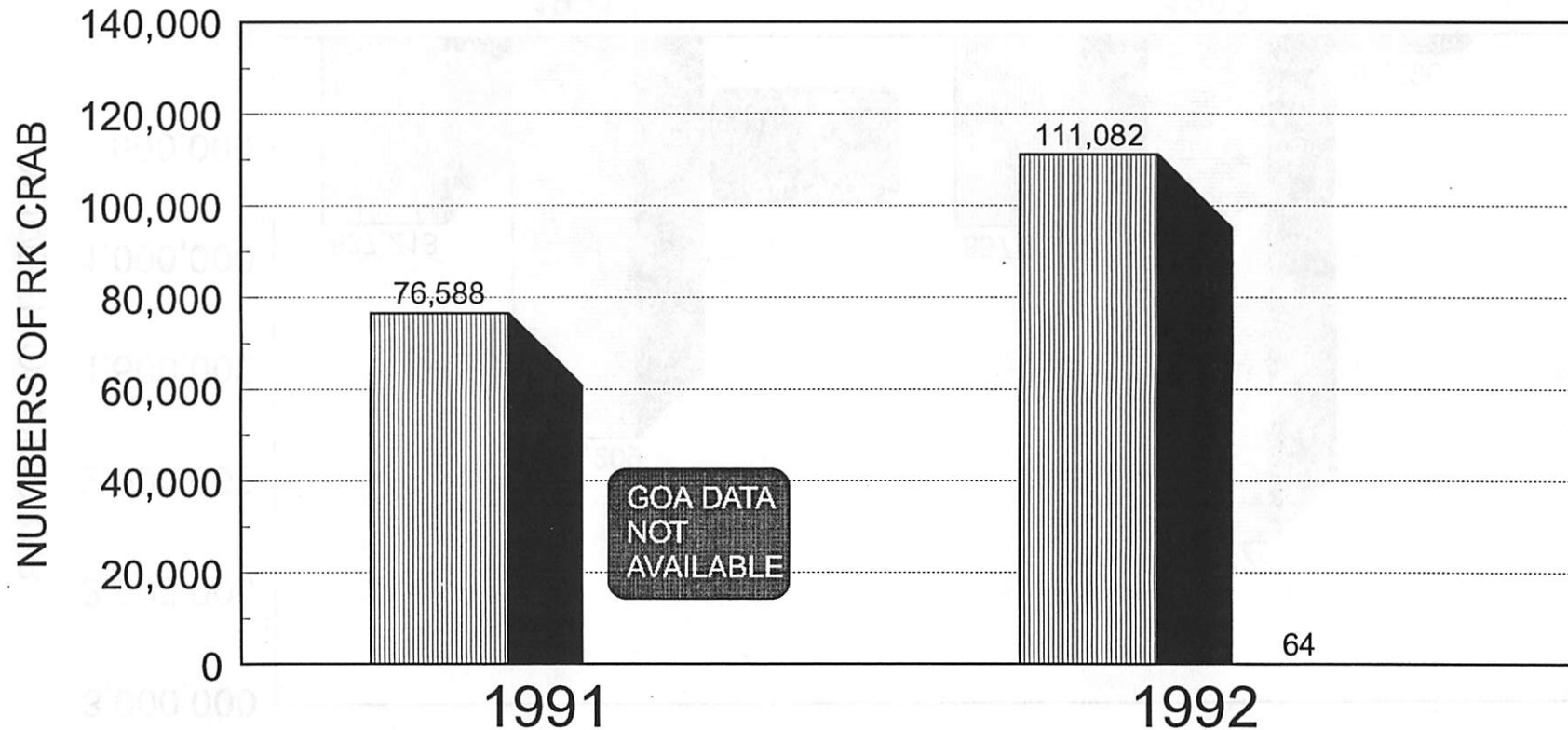
# 1991 & 1992 BSAI SABLEFISH CATCH, FIXED GEAR



(through 11/15/92)



# 1991 & 1992 RED KING CRAB TRAWL BYCATCH, BSAI & GOA

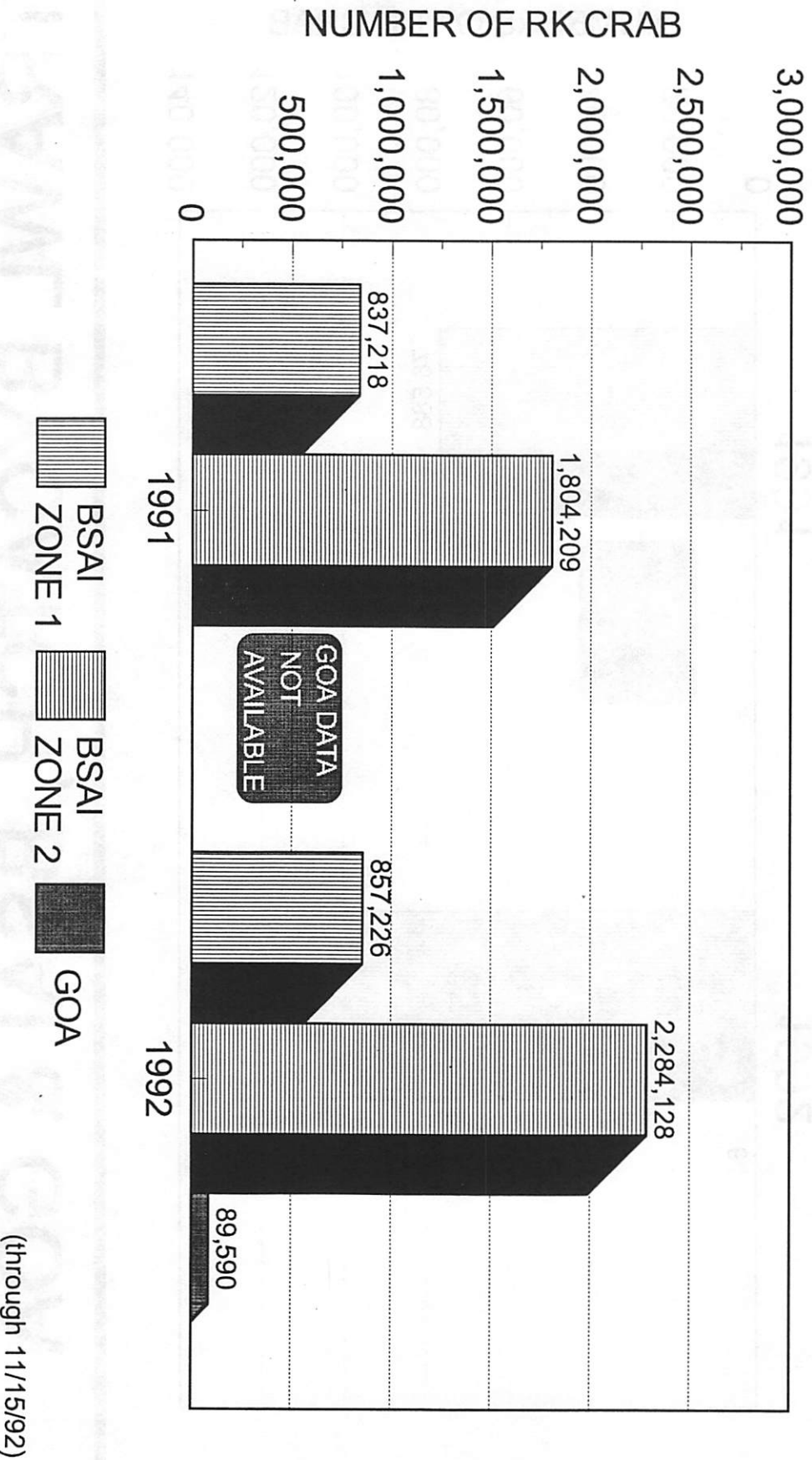


BSAI ZONE 1 GOA

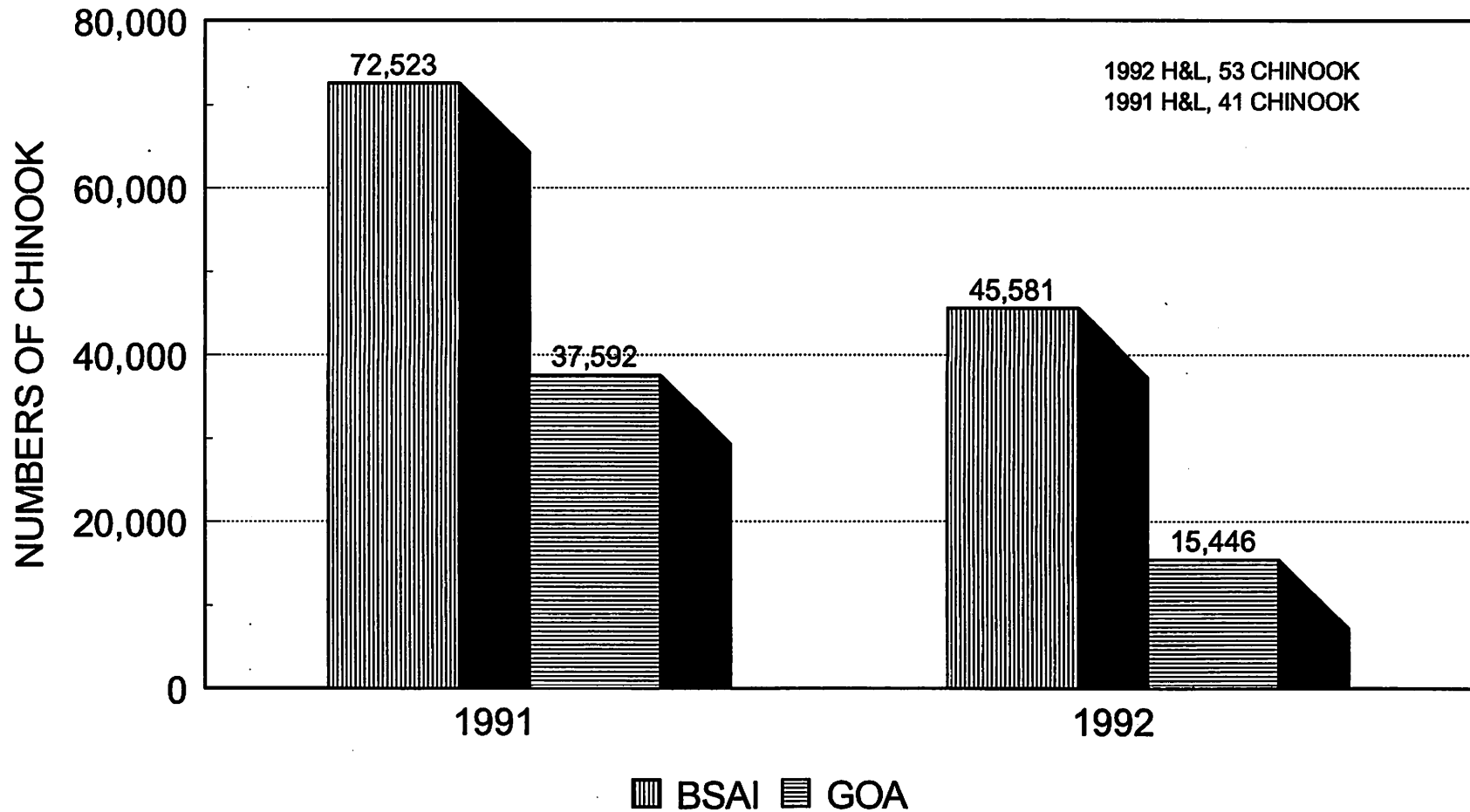
(through 11/15/92)

# 1991 & 1992 GOA & BSAI TRAWL BAIRDI TANNER CRAB BYCATCH

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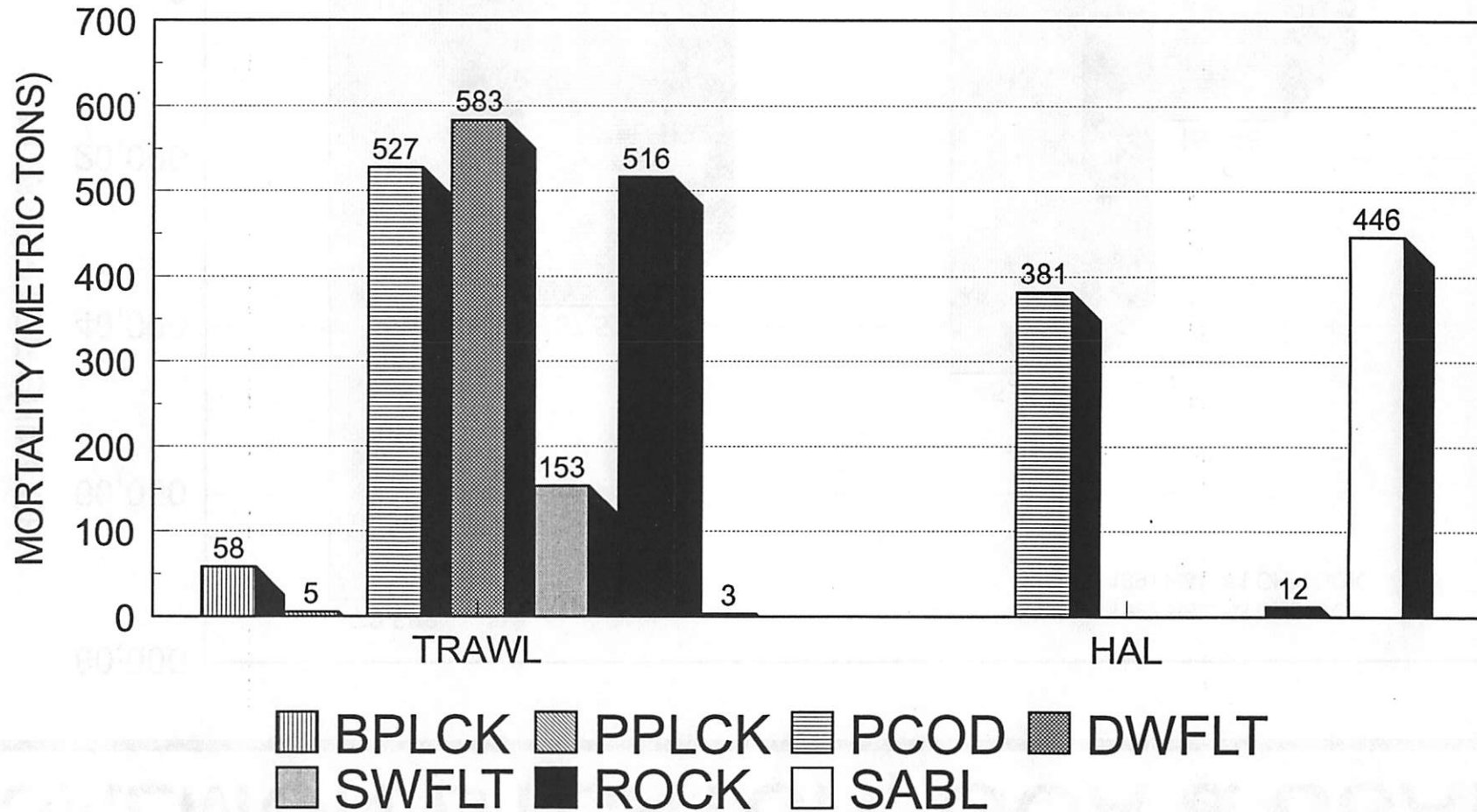
# 1991 AND 1992 TRAWL CHINOOK SALMON BYCATCH, GOA & BSAI



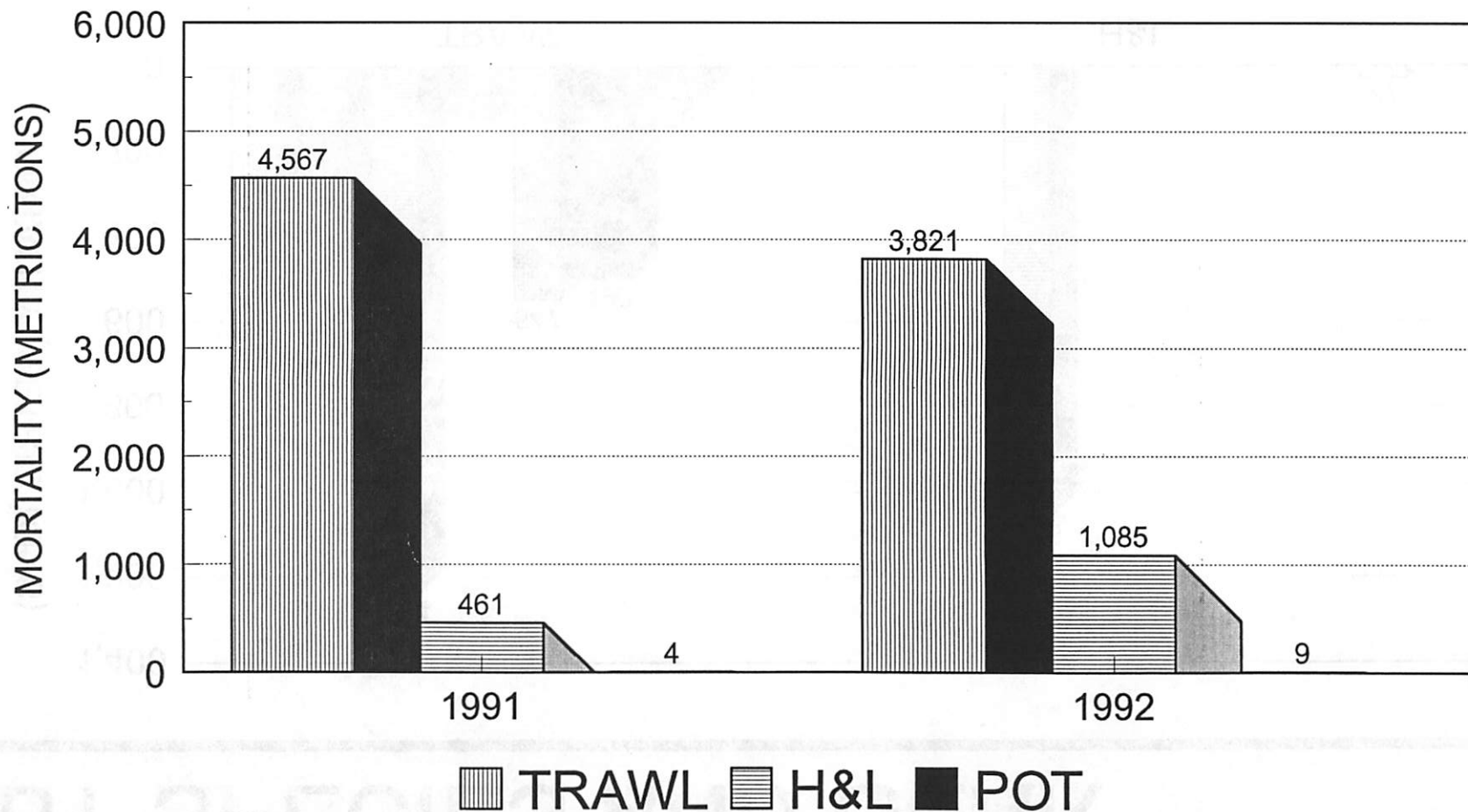
1992 H&L, 53 CHINOOK  
1991 H&L, 41 CHINOOK

(through 11/15/92)

# 1992 GOA HALIBUT MORTALITY BY SPECIES AND GEAR

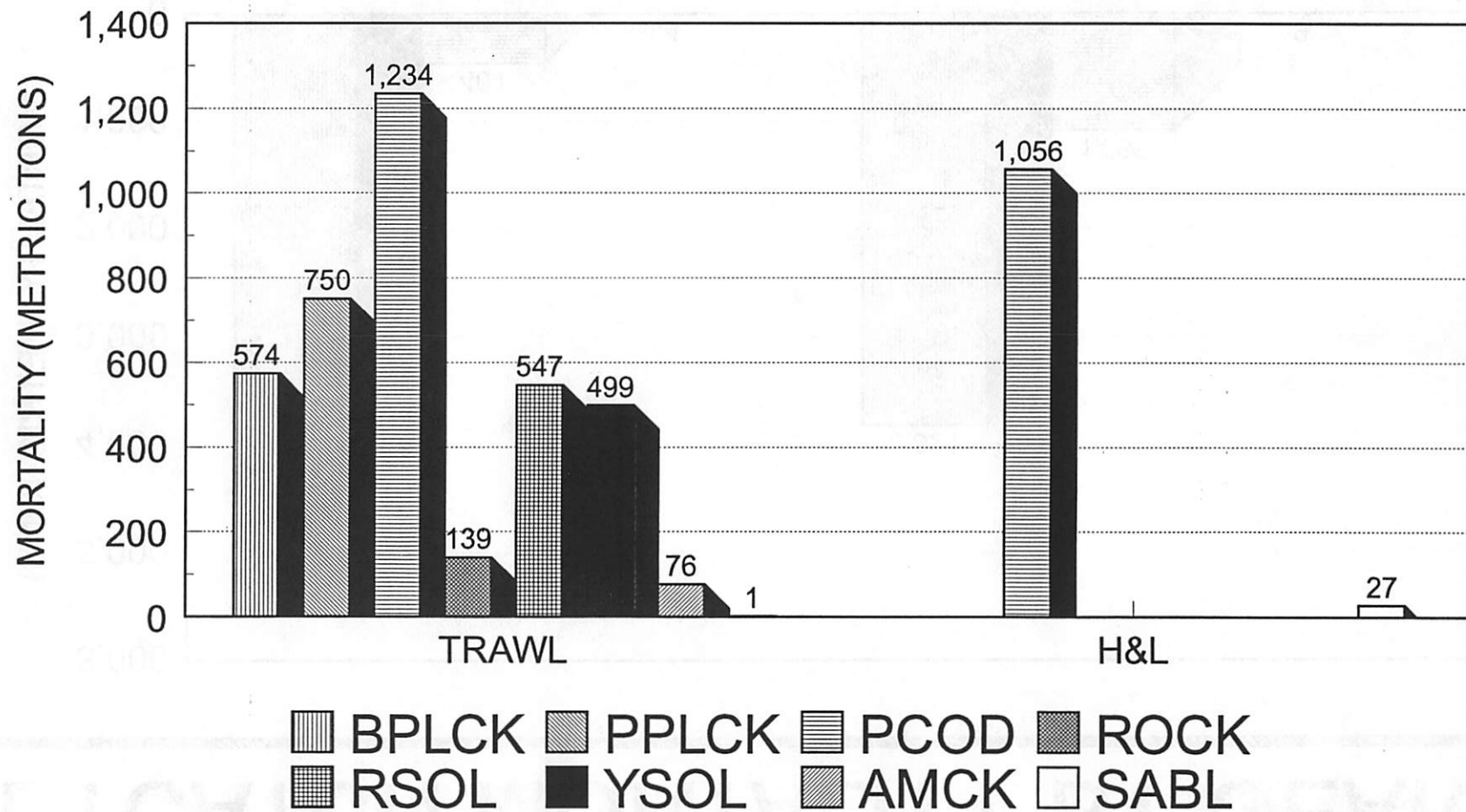


# 1991 & 1992 BSAI HALIBUT BYCATCH MORTALITY BY GEAR

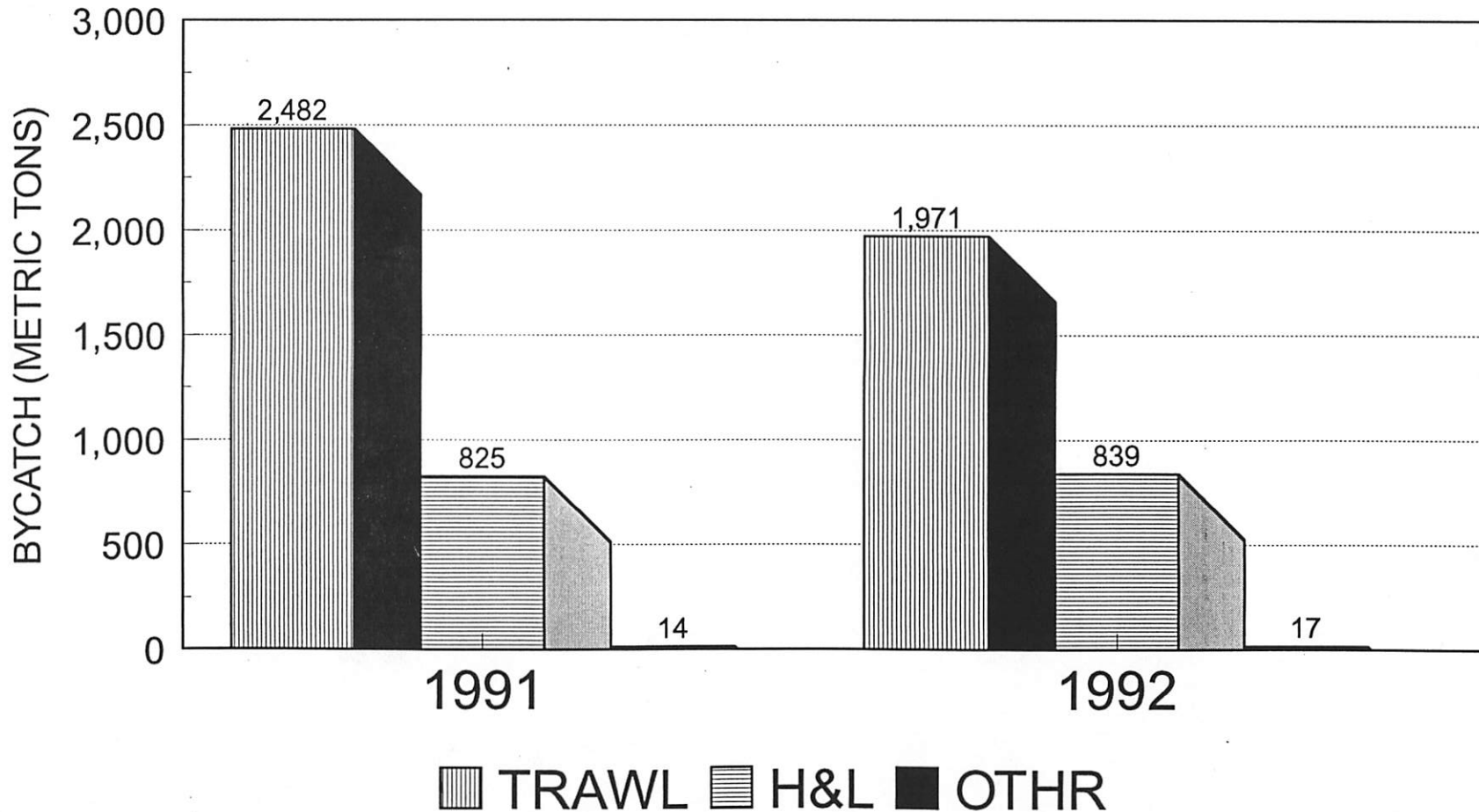


(through 11/8/92)

# 1992 BSAI HALIBUT MORTALITY BY SPECIES AND GEAR



# 1991 & 1992 GOA HALIBUT BYCATCH MORTALITY BY GEAR



(through 11/8/92)

Billing Code: 3510-22

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 921105-2305]

King and Tanner Crab Fisheries of the Bering Sea and Aleutian  
Islands

Agency: National Marine Fisheries Service (NMFS), NOAA,  
Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is issuing an interim final rule that supersedes State of Alaska (State) pot limit regulations in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSAI). This action is necessary because NMFS has determined that the pot limit regulations adopted by the State for the king and Tanner crab fisheries of the BSAI are inconsistent with provisions of the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the BSAI (FMP). The intended effect of this action is to further the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to the FMP by superseding State pot limit regulations in the EEZ



that are inconsistent with the FMP.

DATES: Effective November 30, 1992. Comments on the interim final rule must be received by NMFS at the following address on or before [insert date 30 days from date of publication in the Federal Register].

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, (Attn. Lori Gravel), Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, or delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska. Individual copies of the environmental assessment (EA) and Federalism Assessment may also be obtained from this address. Comments on the EA are requested.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, Fishery Management Biologist, Alaska Region, NMFS, at 907-586-7228.

SUPPLEMENTARY INFORMATION:

Description of the FMP

The commercial king and Tanner crab fisheries in the EEZ of the BSAI are managed under the FMP. The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management

Act (Magnuson Act). It is a framework FMP that, with Council and Secretarial oversight, delegates management of the crab resources in the BSAI to the State. It was approved by the Secretary of Commerce (Secretary) and became effective on June 2, 1989.

Section 9 of the FMP provides the interested public with a procedure for appeal to the Secretary of any State preseason fisheries actions alleged to be inconsistent with the FMP, Magnuson Act, or any other applicable Federal laws. First, an interested person who objects to a State crab regulation must petition the Alaska Board of Fisheries (Board) under the State Administrative Procedure Act for the repeal of a State crab regulation and/or the adoption of a consistent regulation. If, and only if, a person obtains an adverse ruling from the Board, the person may appeal the regulation to the Secretary. The Crab Interim Action Committee (CIAC) will review the regulation prior to the Secretary deciding on the appeal.

The CIAC was established by the Council pursuant to section 2 of the FMP to provide oversight and Council review of State regulatory actions that are promulgated by the Board. The CIAC has no authority to grant or reject an appeal. A function of the CIAC is to comment in writing on preseason appeals to assist the Secretary with the review of State crab regulations to determine if they are consistent with the FMP, the Magnuson Act, and other Federal laws.

Under section 9.3 of the FMP, if the Secretary makes a preliminary determination that the State regulations are inconsistent with the FMP, the Magnuson Act, or any other applicable Federal laws, then the Secretary will publish a proposed rule that is consistent, together with the reasons for the rule, and request comments for 30 days. The Secretary must

also provide actual notice of the proposed rule to the Council and the Commissioner of the Alaska Department of Fish and Game (ADF&G). The FMP allows the State 20 days to request an informal hearing. The Secretary may withdraw the proposed rule if the Secretary ultimately decides that the State regulations in question are consistent. If the Secretary determines that the regulations are inconsistent, the Secretary may publish a final rule that would supersede the State regulations in the EEZ.

The FMP allows for an expedited review when necessary to make a Federal rule effective in a timely fashion. The Secretary must notify the Council and the Commissioner of ADF&G of the use of an expedited review. In an expedited review, the Secretary will provide for comment by the Council (or a committee of the Council) and the Commissioner of ADF&G, if at all possible. However, if necessary, the Secretary can immediately publish in the Federal Register an interim final rule that supersedes any State regulation in the EEZ that the Secretary finds is inconsistent. The Secretary will then request comments on the interim final rule before issuing a final rule. The authority of the Secretary in these matters has been delegated to the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) and the Director, Alaska Region, NMFS.

Among the management measures authorized by the FMP are pot limits. Section 8.2.7 of the FMP lists seven factors that the State can consider when establishing pot limits. Under the FMP, only special types of situations warrant the use of pot limits. It describes two such situations, although others may exist. The first is to prevent wastage as a result of pots lost to advancing ice cover. The second is to control the harvest in a fishery when only a small guideline harvest limit (GHL) is available. Section 8.2.7 also states that "[p]ot limits must be designed in

a nondiscriminatory manner. For example, pot limits that are a function of vessel size can be developed which affect large and small vessels equally."

### State Pot Limit Regulations

During March 3-5, 1992, the Board met to consider gear limitations for king and Tanner crab in response to a request submitted by a portion of the crab industry and data presented by the ADF&G staff indicating that levels of gear deployed in these fisheries were creating conservation and management difficulties. Prior to its deliberations, the Board considered reports and presentations by staff from ADF&G, NMFS, University of Alaska, and the State Attorney General's Office on the fisheries, pot gear usage and loss, impacts of alternative pot limits, State/Federal responsibilities frameworked in the FMP, and an overview of the FMP criteria and the Magnuson Act. The Board also received public testimony from 30 individuals and a working group that was composed of 10 fishermen and processors.

The Board found the following facts, identified in staff reports and through public testimony, to be specific issues of concern:

(1) Bristol Bay red king crab fishery and Tanner crab fishery--Recent increases in vessels and gear in Bristol Bay have led to derby-style king crab fishing with short seasons (7 days in 1991) that are difficult to manage. The ADF&G staff indicated that a season length of at least 2 weeks was required to properly manage the fishery in-season. The Board noted a similar situation in the Tanner crab fishery.

(2) Norton Sound red king crab, Pribilof Islands red and blue king crab, and St. Matthew blue king crab fisheries--The

potential level of effort is so high in relation to GHL, that the ability to manage these fisheries and prevent overfishing has been lost.

(3) Snow crab fishery--Fast moving ice conditions have caused excessive pot loss, which has resulted in increased crab mortality and habitat degradation. The State has been unsuccessful in enforcing its biodegradable escape panel regulation, which was intended to reduce mortality associated with lost pots.

The Board considered various management options including: (1) closing fisheries; (2) changing dates of fisheries; (3) trip limits; (4) exclusive or super-exclusive registration areas; (5) requiring pre-registration and dividing up the GHL in some manner; and (6) pot limits. The Board considered two types of pot limits. The first type was a single uniform limit on all participating vessels regardless of the size of the vessel and its harvesting capacity. The second type was limits on individual vessels or classes of vessels in proportion to vessel length. The Board determined that uniform pot limits was its preferred management alternative.

The Board established the following uniform pot limits that became effective under State law on June 19, 1992:

5 AAC 34.825.LAWFUL GEAR

(e) During a commercial king crab season in Statistical Area T (Bristol Bay), an aggregate of no more than 250 king crab pots may be operated from a vessel registered to fish king crab.

(f) Instead of the requirements of 5 AAC 34.050(e)(3), in Statistical Area T replacement of lost identification tags is permitted if the vessel operator and three crew members, in

person, submit to the ADF&G office in Dutch Harbor a sworn statement or affidavit describing how the tags were lost and listing the numbers of the lost tags.

5 AAC 34.925.LAWFUL GEAR

(i) During a commercial king crab season in Statistical Area Q (Bering Sea), an aggregate of no more than 100 king crab pots may be operated from a vessel registered to take king crab.

(j) Instead of the requirements of 5 AAC 34.050(e)(3), in Statistical Area Q replacement of lost identification tags is permitted if the vessel operator and three crew members, in person, submit to the ADF&G office in Dutch Harbor a sworn statement or affidavit describing how the tags were lost and listing the numbers of the lost tags.

5 AAC 35.525.LAWFUL GEAR

(j) During a commercial tanner crab season in the Bering Sea District, an aggregate of no more than 250 tanner crab pots may be operated from a vessel registered to fish tanner crab.

(4) The department may replace tags lost during the season if the vessel operator submits a sworn statement or affidavit describing how the tags were lost and listing the numbers of tags; however, for the Bering Sea District only, the vessel operator and three crew members shall, in person, submit to the ADF&G office in Dutch Harbor a sworn statement or affidavit describing how the tags were lost and listing the numbers of the lost tags.

Appeal of the Board's preferred management alternative

On May 5, 1992, the Coalition of Bering Sea Crab Fishermen (Coalition) petitioned the Board for reconsideration of the pot limit regulations. In a letter dated June 17, 1992, the Board said that it considered the petition but did not find an emergency per the "Joint Board Petition Policy" (5 AAC 96.625), and thus denied the petition without reviewing its merits.

On June 30, 1992, the Coalition appealed the Board's decision to adopt regulations limiting the number of pots that may be carried aboard vessels in certain BSAI king and Tanner crab fisheries to NMFS. The Coalition challenged the State pot limit regulations on the grounds that they are inconsistent with the FMP, the Magnuson Act, and other applicable Federal laws. The Coalition alleged that uniform pot limits: (1) violate section 8.2.7 of the FMP because they discriminate against large vessels in favor of small to medium vessels; (2) fail to meet national standard 5 of the Magnuson Act because their principal effect is to redistribute effort away from larger vessels to smaller vessels without a clear gain in terms of reduced amount of gear or longer seasons; (3) fail to meet national standard 7 of the Magnuson Act because uniform pot limits are unenforceable and thus do not minimize costs; and (4) are inconsistent with other applicable Federal laws, namely, E.O. 12291, the Regulatory Flexibility Act, and the equal protection guarantees of the U.S. Constitution because, in part, the potential benefits of uniform pot limits do not outweigh the potential costs, most of the regulatory burden is imposed on one class of vessels, and only the efficiency of larger vessels is reduced. The Coalition requested that NMFS immediately supersede the State pot limit regulations in an expedited manner.

The CIAC met on August 26, 1992, to review the appeal presented by the Coalition. During its meeting, the CIAC

reviewed the purposes and function of the FMP. The CIAC received a briefing on the appeals process from NOAA General Counsel, a summary of the Board action and findings presented by ADF&G staff, a synopsis of the content of the appeal by NOAA General Counsel, and a history and description of the FMP by Council and NMFS staff. The CIAC received public testimony from seven individuals, including the appellant Coalition. The State also commented on the appeal.

At the meeting, the CIAC spent some time examining the need for pot limits. In this regard, some members felt that one of the problems in evaluating the adequacy of the Board's uniform pot limits is the vastly different circumstances of the individual crab fisheries. Whereas the Bristol Bay red king crab fishery has a GHL of 10.3 million pounds (4,672 metric tons (mt)), the Tanner and snow crab fisheries, with GHLS of 39.2 million (17,781 mt) and 207 million pounds (93,894.5 mt) for the 1992/1993 fishing season, offer greatly different conservation concerns. The CIAC was unable to reach consensus on its written comments to the Secretary to assist her in making determinations about the pot limits. CIAC members agreed to submit their individual comments in writing. Their submissions and the entire report are included in Appendix 1 of the EA prepared for this action.

Section 8.2.7 of the FMP provides that "[p]ot limits must be designed in a non-discriminatory manner. For example, pot limits that are a function of vessel size can be developed which affect large and small vessels equally." NMFS concludes that this provision prohibits pot limits that adversely affect or burden only large vessels and that the FMP requires the economic burden imposed by pot limits to be shared equally by large and small vessels alike.



NMFS has reviewed an economic analysis by J. Greenberg, M. Herrmann, and P. Hooker that was presented to the Board (attached to EA). That analysis concluded that the uniform pot limits adopted by the Board cause an adverse economic impact only upon the larger crab vessels that have the capacity to carry more pots than those allowed by the uniform pot limits. The analysis demonstrated that medium and small vessels experience little or no adverse economic impact as a result of the pot limits. These conclusions are not in dispute.

NMFS has reviewed the report from the CIAC, the concerns raised by each member, the findings of the Board, and other background information. NMFS has determined that the uniform pot limits of 250 and 100 pots, which the State imposed on all vessels regardless of their size, are inconsistent with section 8.2.7 of the FMP.

Based on the factors summarized above, NMFS concludes that the challenged pot limit regulations impermissibly discriminate against large vessels in violation of the FMP, and in accordance with section 9.3 of the FMP, publishes this interim final rule to supersede those regulations in the EEZ of the BSAI.

#### Classification

The Assistant Administrator determined that this rule is necessary for the conservation and management of crab fisheries in the EEZ of the BSAI, and that it is consistent with the Magnuson Act and other applicable laws.

The Assistant Administrator also finds that the reasons summarized above justifying promulgation of this rule make it contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date

under sections 553(b) and (d) of the Administrative Procedure Act. Some crab fisheries subject to the State's pot limit regulations have already commenced. This rule must be made effective immediately to remove the economic burden that the State's pot limit regulations have imposed on large vessels and to allow sufficient time for vessel operators to plan for upcoming crab fishery openings. The public has had an opportunity to comment on the State pot limit regulations, and their consistency with the FMP, Magnuson Act, and other applicable law at the Board meeting in March 1992 and at the CIAC meeting in August 1992. At each meeting, public testimony was received. Additional comment on this interim final rule will be accepted for a period of 30 days after the effective date.

This interim final rule is exempt from the normal review procedures of E.O. 12291. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that Order for the reason set forth in the preamble of this interim final rule.

Because neither the Administrative Procedure Act, nor any other statute, requires public notice and opportunity to comment upon this rule, no regulatory flexibility analysis is required.

NMFS has determined that this interim final rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

The Alaska Region, NMFS, prepared an EA for this action. The Assistant Administrator found that no significant impact on the human environment would result from implementation of this

rule. A copy of the EA may be obtained (see ADDRESSES).

NMFS has determined that the management measures implemented under this interim final rule would not adversely affect endangered or threatened species. Therefore, further consultation pursuant to section 7 of the Endangered Species Act is not required for the implementation of this rule.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Federalism Implementation Officer of the Department of Commerce has certified that this action is consistent with the federalism principles, criteria, and requirements set forth in Sections 2 through 5 of E.O. 12612. A copy of the Federalism Assessment prepared for this action may be obtained (see ADDRESSES).

List of Subjects in 50 CFR Parts 671

Fisheries, Reporting and recordkeeping requirements.

Dated:

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For the reasons set out in the preamble, 50 CFR Chapter VI is amended by adding part 671 to read as follows:

PART 671--KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

Subpart A--General Provisions

Sec.

671.1 Purpose and scope.

671.2 Definitions.

Subpart B--Management Measures

671.20 Pot limits.

Authority: 16 U.S.C. 1801 et seq.

Subpart A--General Provisions

§ 671.1 Purpose and scope.

The purpose of this part is to supersede State of Alaska regulations applicable to the commercial king and Tanner crab fisheries of the Bering Sea and Aleutian Islands in the EEZ that are determined to be inconsistent with the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands, the Magnuson Fishery Conservation and Management Act, or other applicable Federal law.

§ 671.2 Definitions.

In addition to the definitions in the Magnuson Fishery Conservation and Magnuson Act and in § 620.2 of Title 50, CFR, Bering Sea and Aleutian Islands Area means those waters of the exclusive economic zone off the west coast of Alaska lying south of Point Hope (68°21'N. latitude), and extending south of the Aleutian Islands for 200 nautical miles west of Scotch Cap Light (164°44'36"W. longitude).

Subpart B--Management Measures

§ 671.20 Pot limits.

State of Alaska pot limits shall not apply to vessels fishing for red king crab (Paralithodes camtschatica), blue king crab (P. platypus), brown (or golden) king crab (Lithodes aequispina), Tanner crab (Chionoecetes bairdi), and snow crab (C. opilio) in the Bering Sea and Aleutian Islands Area.

## FAX CONFIRMATION

Sent \_\_\_\_\_ Rec'd 11/23/92



UNITED STATES DEPARTMENT OF COMMERCE  
 The Under Secretary for  
 Oceans and Atmosphere AGENDA B-3 Supplemental  
 Washington, D.C. 20230 DECEMBER 1992

NOV 23 1992

Richard B. Lauber, Chairman  
 North Pacific Fishery Management Council  
 P. O. Box 103136  
 Anchorage, Alaska 99510

Dear Chairman Lauber:

My March 4, 1992, letter advised that I had disapproved certain portions of Amendment 18 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Amendment 18 proposed an allocation of the pollock resource between the inshore and offshore sectors of the fishery to prevent preemption of the smaller, more localized vessels supplying processing facilities on shore by the larger, more mobile offshore fleet. As first submitted, Amendment 18 would have allocated 35% of the pollock resource to the inshore sector in 1992, 40% to the inshore sector in 1993, and 45% to the inshore sector in 1994 and 1995.

Because the Council had not prepared an economic analysis which would allow an assessment of the costs and benefits of the allocations that had been proposed by the Council, I asked the economists at the National Marine Fisheries Service to prepare a cost/benefit analysis during the public comment period. After reviewing the record, including the economic analysis, I approved the Council's recommended allocation for that portion of the 1992 season that had not yet commenced -- the "B season". This partial approval of Amendment 18 was intended to resolve the preemption problem for the balance of 1992. However, the NMFS cost/benefit analysis, based on the best data available at the time, indicated a substantial net economic loss to the nation if the allocations proposed for 1993, 1994, and 1995 were approved. Accordingly, the allocations proposed for 1993 through 1995, except for the community development quota program, were disapproved.

In my letter, I asked the Council to examine and refine the assumptions and methodology of the NMFS economic review, to identify any countervailing benefits, and to consider modifications to the allocation percentages that would minimize economic loss to the nation from the Council's action. I am pleased that the Council has responded to my suggestions in a positive manner. As a result, the economic consequences of revised Amendment 18 are more favorable than the earlier version. Moreover, because of the time available and the care that has been taken in conducting the cost/benefit analysis, I am more confident that my final decision is in the national interest.

THE ADMINISTRATOR



I have approved the Council's decision to allocate 35% of the pollock in each subarea and for each season to the inshore component, beginning in 1993 and continuing through 1995. By the same action, the offshore fleet is ensured the opportunity to harvest 65% of the pollock resource beginning in 1993 and continuing through 1995 in each subarea and in each season.

I have also approved the Council's modification of the catcher vessel operational area (CVOA) in its entirety. By this action, the Council has eliminated the possibility that the highly mobile offshore sector will deprive the less mobile inshore sector of fishing opportunities that are so vital to the local economies in Aleutian Islands and along the Bering Sea coastline. With respect to the CVOA, the Council reduced the application of this measure to the "B season" only and has allowed motherships to enter the CVOA to receive fish from harvester vessels. As such, the CVOA has a potential adverse effect on only the catcher-processor segment of the offshore sector. I have examined the records of actual catcher-processor fishing locations in the years preceding adoption of the CVOA; these records confirm that the reduced CVOA will have minimal adverse effects on catcher-processor, but will avoid the potential for conflict with the smaller vessels that operate in the CVOA.

Comments received from both sectors confirm that the NMFS economic model is basically sound, although both sectors disagree with various assumptions concerning the discard and product recovery rates and the relevance to the economic analysis of crew wages, taxes, and degree of foreign ownership. The disputed issues have been thoroughly reviewed. The analysis used 1992 data concerning discard and product recovery rates and took into account the wages of all industry employees. These are clearly the best information available.

The analysis also evaluated the extent of foreign ownership in each sector, but I have not based my decision on the degree of foreign ownership because the data are incomplete and the conclusions are conjectural. In terms of the national interest, there is little difference between a vessel or processing plant owned in whole or in part by foreign interests and a vessel or plant that was extensively financed by loans received from foreign sources. In both cases, a significant portion of the funds received from sale of fish products will benefit foreign interests. Although some data are available on foreign ownership in both sectors, the records are not complete and there are almost no data on the extent of foreign financing of U.S.-owned vessels or facilities. Additionally, data concerning corporate taxes paid by both sectors, reinvestment of profits in the United States, and effects on the balance of trade in fisheries products have not been analyzed.

The NMFS economic analysis indicates that the annual net economic loss to the nation of the 35/65 allocation is no more than \$1.7 million dollars. In a fishery of this magnitude and value, this

potential loss to the nation is inconsequential compared to the Council's legitimate objective of avoiding preemption of one sector by the other.

Although the 35% inshore allocation slightly exceeds that sector's performance in recent years, and I might have personally selected a lower percentage, the Magnuson Act and its legislative history support leaving such initial policy decisions in the hands of the Councils as representatives of those who depend on these valuable public resources. The Secretary's national standards guidelines state that an allocation of fishing privileges should be rationally connected with the furtherance of a legitimate objective. See 50 C.F.R. 602.14(c)(3)(1). I believe that the Council's 35% initial allocation meets this test.

While the Council is free to recommend changes from initial allocations from time to time, the Council must justify its recommendations by reference to a plan objective or other national interest. The Council has consistently justified the allocations put forward in Amendment 18 as being necessary to avoid preemption. In my view, by adopting the 35/65 allocation, the Council has fully obtained the objective it identified.

An increased allocation for the inshore sector from 35% to 37.5% would, under the Secretary's guidelines, have to be justified by an increase in net national benefits. See 50 C.F.R. 602.14(c)(3)(B). The NMFS economic analysis, however, indicates that a further increase in the inshore allocation in 1994 and 1995 would further reduce the national economic benefits available from the pollock resource. Unlike the economic loss which the Council felt was necessary to avoid preemption, and which I have approved, this economic loss has not been justified by any other legitimate objective of the fishery management plan. Not only does the analysis indicate the probability of a negative result being more likely than a positive result, but the unknowns of foreign leakage could contribute further to a negative result.

Given that the 35% allocation should completely satisfy the preemption concerns, I cannot conclude that any further inshore allocation that would increase the risk of negative national benefits is warranted or justified by the record. Disapproving this reallocation would not cause unemployment or other social problems in coastal communities, but approving it would reduce crew shares and profits otherwise available to the Nation from the offshore sector. The Council's proposal to increase the inshore allocation from 35% to 37.5% is disapproved because, on the present record, its sole purpose is economic allocation and it violates national standards 4, 5 and 7 and Executive Order 12291.

There may be some who will argue that the Magnuson Act authorizes only approval or disapproval of management measures submitted by a Council, but does not allow the substitution of a different



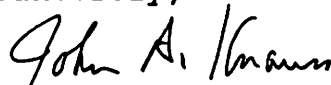
management measure by the Secretary's delegate through a partial disapproval. I do not believe Congress intended the Secretary or her delegates to face the dilemma of having either to accept a Council decision that is not fully consistent with law or to return the action to the Council knowing that the problem the Council had attempted to address might well get worse while the Council attempted to come up with the perfect allocation percentages.

The 35% inshore allocation was selected by the Council and I believe it meets the requirements of the law. I also firmly believe that continuation of the Council's initial allocation for two additional years, by this partial disapproval of an increased inshore allocation, is preferable to having no allocation at all for 1994 and 1995 until another plan amendment and Secretarial review cycle could be completed.

I have also reviewed revised Amendment 18 in light of its environmental impacts. The environmental impacts that will result from approval of revised Amendment 18 are within the scope of impacts analyzed in the Final Supplemental Environmental Impact Statement (FSEIS) prepared for Amendments 18 and 23 and a formal section 7 consultation initiated for Amendment 18. The FSEIS concluded that none of the alternatives analyzed would result in negative environmental impacts. A March 4, 1992, biological opinion for Amendment 18 concluded that Amendment 18 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. Based on these documents and the supplemental analysis dated September 3, 1992, I have determined that partial approval of revised Amendment 18 is not likely to result in negative environmental impacts. NMFS will continue to evaluate the suitability of the existing management measures in the southeastern Bering Sea shelf to ensure adequate protection for Steller sea lions.

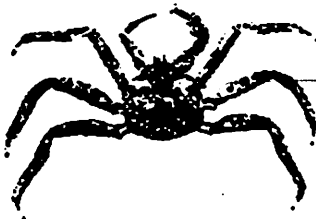
In my review of these very contentious issues, a central point made by both the inshore and the offshore sectors was the need to achieve stability in this fishery so that long term planning could take place. I strongly urge the Council not to resubmit Amendment 18 again, because, in my judgment, it will distract the Council from its major responsibility to develop a market-based allocation system for the long term. The Council has many other important issues before it. I hope the Council will avoid any further efforts to select winners and losers in the pollock fishery when there appears to be no economic gain to the Nation from such efforts.

Sincerely,



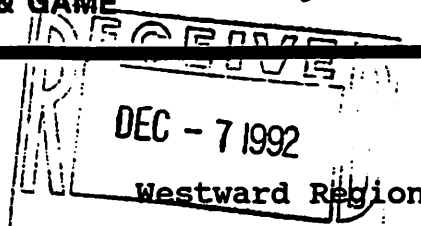
John A. Knauss

# COMMERCIAL FISHERIES



## NEWS RELEASE

ALASKA DEPARTMENT  
OF FISH & GAME



STATE OF ALASKA

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IMMEDIATE RELEASE

Date: December 1, 1992

### ATTENTION BERING SEA CRAB FISHERMEN

On November 30, 1992, the National Marine Fisheries Service announced that the Secretary of Commerce had implemented an interim final rule superseding the State's pot limit regulations in the Bering Sea. The pot limit was found to be inconsistent with Section 8.2.7 of the Fishery Management Plan for Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands.

The State of Alaska, Board of Fisheries and the Alaska Department of Fish and Game strongly support the pot limit concept for the Bering Sea/Aleutian Islands king and Tanner crab fisheries as a useful management tool. Even with the problems associated with the buoy stickers, the state was able to prosecute two fisheries and manage them effectively. Had a pot limit not been in effect, the St. Matthew fishery, because of its large effort level, may not have been conducted. Because of the pot limit and the reduced gear levels in the Bristol Bay red king crab fishery, additional fishing time was allowed.

The Board of Fisheries will re-confirm their commitment by establishing an alternate plan and pot limits in the Bering Sea/Aleutian Islands king and Tanner crab fisheries for management and conservation purposes during the February 1993 shellfish meeting. The public is urged to attend these meetings.